Passage of the

Community Empowerment (Scotland) Bill 2014

SPPB 215
Passage of the
Community Empowerment (Scotland) Bill 2014
SP Bill 52 (Session 4), subsequently 2015 asp 6

SPPB 215
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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
• Introduction, followed by publication of the Bill and its accompanying documents;
• Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
• Stage 2: the Bill returns to a committee for detailed consideration of amendments;
• Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available free of charge on the Parliament’s website (www.parliament.scot).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The Local Government and Regeneration Committee was the lead committee at Stage 1. Relevant extracts from the Official Report and minutes, and all written submissions received (all originally published separately from the Stage 1 Report on the Parliament’s website) are included in this volume, after the Stage 1 Report.

The Rural Affairs, Climate Change and Environment Committee took evidence on the issue of Community Right to Buy in Part 4 of the Bill at Stage 1. Relevant Official Report and minute extracts, along with written submissions received, are included at the appropriate point. No formal report was issued by the Committee in relation to this evidence.

The Delegated Powers and Law Reform Committee and the Finance Committee also reported on the Bill as a whole at this stage. Again, any additional material relating
to each Committee’s consideration of the Bill is included after the relevant committee report.

Various additional pieces of relevant correspondence are also included throughout.
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An Act of the Scottish Parliament to make provision about national outcomes; to confer functions on certain persons in relation to services provided by, and assets of, certain public bodies; to amend Part 2 of the Land Reform (Scotland) Act 2003; to enable certain bodies to buy abandoned or neglected land; to make provision for registers of common good property and about disposal and use of such property; to restate and amend the law on allotments; to enable local authorities to reduce or remit non-domestic rates; and for connected purposes.

PART 1

NATIONAL OUTCOMES

1 National outcomes

(1) The Scottish Ministers must determine outcomes for Scotland (referred to in this Part as “the national outcomes”) that result from, or are contributed to by, the carrying out of functions by—

(a) a Scottish public authority which is not a cross-border public authority, but only in relation to functions carried out by the authority that do not relate to reserved matters,

(b) a cross-border public authority, but only in relation to functions carried out by the authority—

(i) that are exercisable in or as regards Scotland, and

(ii) that do not relate to reserved matters, and

(c) any other person carrying out functions of a public nature, but only in relation to such functions—

(i) that are exercisable in or as regards Scotland, and

(ii) that do not relate to reserved matters.

(2) Before determining the national outcomes, the Scottish Ministers must consult such persons as they consider appropriate.

(3) The Scottish Ministers must publish the national outcomes.
(4) A Scottish public authority which is not a cross-border public authority must have regard to the national outcomes in carrying out any function of the authority that does not relate to reserved matters.

(5) A cross-border public authority must have regard to the national outcomes in carrying out any function of the authority that—
   (a) is exercisable in or as regards Scotland, and
   (b) does not relate to reserved matters.

(6) Any other person carrying out functions of a public nature must have regard to the national outcomes in carrying out such functions, but only in so far as such functions—
   (a) are exercisable in or as regards Scotland, and
   (b) do not relate to reserved matters.

(7) In this section—
   “cross-border public authority” has the meaning given by section 88(5) of the Scotland Act 1998,
   “reserved matters” is to be construed in accordance with the Scotland Act 1998.

2 Review of national outcomes

(1) The Scottish Ministers may review the national outcomes at any time (but subject to subsections (2) and (3)).

(2) The Scottish Ministers must begin a review of the national outcomes before the expiry of the period of 5 years beginning with the date on which the national outcomes were published under section 1(3).

(3) The Scottish Ministers must begin further reviews of the national outcomes before the expiry of each 5 year period.

(4) Following a review, the Scottish Ministers—
   (a) may revise the national outcomes, and
   (b) must—
      (i) where the national outcomes are revised, publish the outcomes as revised,
      (ii) where the national outcomes are not revised, republish the outcomes.

(5) Before making any revisions to the national outcomes under subsection (4)(a), the Scottish Ministers must consult such persons as they consider appropriate.

(6) References to the national outcomes in subsections (4) to (6) of section 1 and in section 3 include references to the national outcomes revised under subsection (4)(a) of this section.

(7) In subsection (3), “5 year period” means the period of 5 years beginning with the date on which the national outcomes were published under sub-paragraph (i) of paragraph (b) of subsection (4) or, as the case may be, republished under sub-paragraph (ii) of that paragraph.

3 Reports

(1) The Scottish Ministers must prepare and publish reports about the extent to which the national outcomes have been achieved.
(2) The Scottish Ministers must include in reports published under subsection (1) information about any change in the extent to which the national outcomes have been achieved since the publication of the previous report under that subsection.

(3) Reports must be prepared and published at such times as the Scottish Ministers consider appropriate.

**PART 2**

**COMMUNITY PLANNING**

4 **Community planning**

(1) Each local authority, the persons listed in schedule 1 and any community bodies (as mentioned in paragraph (c) of subsection (5) and to the extent mentioned in that paragraph) must participate with each other in community planning.

(2) In subsection (1), “community planning” means planning that is carried out with a view to improving the achievement of outcomes in relation to the area of the local authority resulting from, or contributed to by, the provision of services delivered by or on behalf of the local authority or the persons listed in schedule 1 (“community planning”).

(3) Outcomes of the type mentioned in subsection (2) (“local outcomes”) must be consistent with the national outcomes determined under section 1(1) or revised under section 2(4)(a).

(4) In relation to the area of each local authority—

(a) the local authority and the persons listed in schedule 1 when participating in community planning are collectively referred to in this Part as a “community planning partnership”, and

(b) the authority and each such person is referred to in this Part as a “community planning partner”.

(5) A community planning partnership must—

(a) consider which community bodies are likely to be able to contribute to community planning,

(b) make all reasonable efforts to secure the participation of such community bodies in community planning, and

(c) to the extent (if any) that such community bodies wish to participate in community planning, take such steps as are reasonable to enable the community bodies to participate in community planning to that extent.

(6) The Scottish Ministers may by regulations modify schedule 1 so as to—

(a) add a person or a description of person,

(b) remove an entry listed in it,

(c) amend an entry listed in it.

(7) Regulations under subsection (6) may provide that a person or a description of person listed in schedule 1 is to participate in community planning for a specific purpose.
(8) In this section, “community bodies”, in relation to a community planning partnership, means bodies, whether or not formally constituted, established for purposes which consist of or include that of promoting or improving the interests of any communities (however described) resident or otherwise present in the area of the local authority for which the community planning partnership is carrying out community planning.

5  **Local outcomes improvement plan**

(1) Each community planning partnership must prepare and publish a local outcomes improvement plan.

(2) A local outcomes improvement plan is a plan setting out—

(a) each local outcome to which the community planning partnership is to give priority with a view to improving the achievement of the outcome,

(b) a description of the proposed improvement in the achievement of the outcome, and

(c) the period within which the proposed improvement is to be achieved.

(3) In preparing a local outcomes improvement plan, a community planning partnership must consult—

(a) such community bodies as it considers appropriate, and

(b) such other persons as it considers appropriate.

(4) Before publishing a local outcomes improvement plan, the community planning partnership must take account of—

(a) any representations received by it by virtue of subsection (3), and

(b) the needs and circumstances of persons residing in the area of the local authority to which the plan relates.

6  **Local outcomes improvement plan: review**

(1) Each community planning partnership must keep under review the question of whether it is making progress in improving the achievement of each local outcome referred to in section 5(2)(a).

(2) Each community planning partnership—

(a) must from time to time review the local outcomes improvement plan published by it under section 5,

(b) may, following such a review, revise the plan.

(3) Subsections (3) and (4) of section 5 apply in relation to a local outcomes improvement plan revised under subsection (2)(b) as they apply in relation to a local outcomes improvement plan prepared and published under subsection (1) of that section (but subject to the modification in subsection (4)).

(4) The modification is that the reference in subsection (4)(a) of section 5 to representations received by virtue of subsection (3) of that section is to be read as if it were a reference to representations received by virtue of that subsection as applied by subsection (3) of this section.

(5) Where a community planning partnership revises a local outcomes improvement plan under subsection (2)(b), it must publish a revised plan.
(6) Subsection (2) applies in relation to a revised local outcomes improvement plan published under subsection (5) as it applies in relation to a local outcomes improvement plan published under section 5; and the duty in subsection (5) applies accordingly.

7 Local outcomes improvement plan: progress report

(1) Each community planning partnership must prepare a progress report for each reporting year.

(2) A progress report is a report setting out the community planning partnership’s assessment of whether there has been any improvement in the achievement of each local outcome referred to in section 5(2)(a) during the reporting year to which the report relates.

(3) In this section, “reporting year” means—
   (a) a period of one year beginning on 1 April, or
   (b) in relation to a particular community planning partnership, a period of one year beginning on such other date as may be specified in a direction given by the Scottish Ministers to the community planning partnership.

8 Governance

(1) For the area of each local authority, each community planning partner mentioned in subsection (2) must—
   (a) facilitate community planning,
   (b) take reasonable steps to ensure that the community planning partnership carries out its functions under this Part efficiently and effectively.

(2) The persons are—
   (a) the local authority,
   (b) the Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978 whose area includes, or is the same as, the area of the local authority,
   (c) Highlands and Islands Enterprise where the area within which, or in relation to which, it exercises functions in accordance with section 21(1) of the Enterprise and New Towns (Scotland) Act 1990 includes the whole or part of the area of the local authority,
   (d) the chief constable of the Police Service of Scotland,
   (e) the Scottish Fire and Rescue Service,
   (f) Scottish Enterprise.

(3) The Scottish Ministers may by regulations modify subsection (2) so as to—
   (a) add a person or a description of person,
   (b) remove an entry listed in it,
   (c) amend an entry listed in it.
9 Community planning partners: duties

(1) Despite the duties imposed on community planning partners by this Part, a community planning partnership may agree—

(a) that a particular community planning partner need not comply with a duty in relation to a particular local outcome, or

(b) that a particular community planning partner need comply with a duty in relation to a particular local outcome only to such extent as may be so agreed.

(2) Each community planning partner must co-operate with the other community planning partners in carrying out community planning.

(3) Each community planning partner must, in relation to a community planning partnership, contribute such funds, staff and other resources as the community planning partnership considers appropriate—

(a) with a view to improving, or contributing to an improvement in, the achievement of each local outcome referred to in section 5(2)(a), and

(b) for the purpose of securing the participation of the community bodies mentioned in section 4(5)(a) in community planning.

(4) Each community planning partner must provide such information to the community planning partnership about the local outcomes referred to in section 5(2)(a) as the community planning partnership may request.

(5) Each community planning partner must, in carrying out its functions, take account of the local outcomes improvement plan published under section 5 or, as the case may be, section 6(5).

10 Guidance

(1) Each community planning partnership must comply with any guidance issued by the Scottish Ministers about the carrying out of functions conferred on the partnership by this Part.

(2) Each community planning partner must comply with any guidance issued by the Scottish Ministers about the carrying out of functions conferred on the partner by this Part.

(3) Before issuing guidance of the type mentioned in subsection (1) or (2), the Scottish Ministers must consult such persons as they think fit.

11 Duty to promote community planning

The Scottish Ministers must promote community planning when carrying out any of their functions which might affect—

(a) community planning,

(b) a community planning partner.
12 Establishment of corporate bodies

(1) Following an application by a local authority and at least one other community planning partner for the area of the authority, the Scottish Ministers may by regulations establish a body corporate with such constitution and functions about community planning (including in particular its conduct and co-ordination) as may be specified in the regulations.

(2) The application referred to in subsection (1) must include information about the following matters—

(a) any consultation about the question of whether to make the application,

(b) representations received in response to any such consultation,

(c) the functions to be specified in regulations made under subsection (1),

(d) such other matters as may be prescribed by the Scottish Ministers by regulations.

(3) Regulations under subsection (1) may include provision about—

(a) the membership of the body established by the regulations,

(b) the proceedings of the body,

(c) the transfer of property and other rights and liabilities to and from the body,

(d) the appointment and employment of staff by the body,

(e) the supply by other persons of services to the body,

(f) the audit of accounts by the body,

(g) the dissolution of the body, and

(h) such other matters as the Scottish Ministers think fit.

(4) A function may be specified in regulations under subsection (1) even if another enactment or rule of law—

(a) provides that the function is to be carried out by a person other than the body established by virtue of subsection (1), or

(b) prevents the carrying out of the function by that body.

13 Interpretation of Part 2

In this Part—

“community bodies” has the meaning given by section 4(8),

“community planning” has the meaning given by section 4(2),

“community planning partner” has the meaning given by section 4(4),

“community planning partnership” has the meaning given by section 4(4),

“local outcomes” has the meaning given by section 4(3).
PART 3
PARTICIPATION REQUESTS

Key definitions

14 Meaning of “community-controlled body”
In this Part, a “community-controlled body” means a body (whether corporate or unincorporated) having a written constitution that includes the following—

(a) a definition of the community to which the body relates,
(b) provision that the majority of the members of the body is to consist of members of that community,
(c) provision that the members of the body who consist of members of that community have control of the body,
(d) provision that membership of the body is open to any member of that community,
(e) a statement of the body’s aims and purposes, including the promotion of a benefit for that community, and
(f) provision that any surplus funds or assets of the body are to be applied for the benefit of that community.

15 Meaning of “community participation body”
(1) In this Part, “community participation body” means—

(a) a community-controlled body,
(b) a community council established in accordance with Part 4 of the Local Government (Scotland) Act 1973, or
(c) a body mentioned in subsection (2).

(2) The body is a body (whether corporate or unincorporated)—

(a) that is designated as a community participation body by an order made by the Scottish Ministers for the purposes of this Part, or
(b) that falls within a class of bodies designated as community participation bodies by such an order for the purposes of this Part.

(3) Where the power to make an order under subsection (2)(a) is exercised in relation to a trust, the community participation body is to be the trustees of the trust.

16 Meaning of “public service authority”
(1) In this Part, “public service authority” means—

(a) a person listed, or of a description listed, in schedule 2, or
(b) a person mentioned in subsection (3).

(2) The Scottish Ministers may by order modify schedule 2 so as to—

(a) remove an entry listed in it,
(b) amend an entry listed in it.

(3) The person is a person—
(a) that is designated as a public service authority by an order made by the Scottish Ministers for the purposes of this Part, or
(b) that falls within a class of persons designated as public service authorities by such an order for the purposes of this Part.

(4) An order under subsection (3) may designate a person, or class of persons, only if the person, or (as the case may be) each of the persons falling within the class, is—
(a) a part of the Scottish Administration,
(b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998), or
(c) a publicly-owned company.

(5) In subsection (4)(c), “publicly-owned company” means a company that is wholly owned by one or more public service authorities.

(6) For that purpose, a company is wholly owned by one or more public service authorities if it has no members other than—
(a) the public service authority or (as the case may be) authorities,
(b) other companies that are wholly owned by the public service authority or (as the case may be) authorities, or
(c) persons acting on behalf of—
(i) the public service authority or (as the case may be) authorities, or
(ii) such other companies.

(7) In this section, “company” includes any body corporate.

(8) Subsection (9) applies where the Scottish Ministers make an order under subsection (3).

(9) The Scottish Ministers may specify in the order a public service that is or may be provided by or on behalf of the person designated, or (as the case may be) a person falling within the class designated, in respect of which a specified outcome may not be specified in a participation request.

Participation requests

17 Participation requests

(1) A community participation body may make a request to a public service authority to permit the body to participate in an outcome improvement process.

(2) In making such a request, the community participation body must—
(a) specify an outcome that results from, or is contributed to by virtue of, the provision of a service provided to the public by or on behalf of the authority,
(b) set out the reasons why the community participation body considers it should participate in the outcome improvement process,
(c) provide details of any knowledge, expertise and experience the community participation body has in relation to the specified outcome, and
(d) provide an explanation of the improvement in the specified outcome which the community participation body anticipates may arise as a result of its participation in the process.
(3) A participation request may be made jointly by two or more community participation bodies.

(4) In this Part—

“outcome improvement process”, in relation to a public service authority, means a process established or to be established by the authority with a view to improving an outcome that results from, or is contributed to by virtue of, the provision of a public service,

“participation request” means a request made under subsection (1),

“public service” means a service provided to the public by or on behalf of a public service authority,

“specified outcome” means an outcome of the type mentioned in subsection (2)(a).

18 Regulations

(1) The Scottish Ministers may by regulations make further provision about participation requests.

(2) Regulations under subsection (1) may in particular make provision for or in connection with specifying—

(a) the manner in which requests are to be made,

(b) the procedure to be followed by public service authorities in relation to requests,

(c) the information to be provided in connection with requests (in addition to that required under section 17(2)).

Decisions about participation requests

19 Participation requests: decisions

(1) This section applies where a participation request is made by a community participation body to a public service authority.

(2) The authority must decide whether to agree to or refuse the participation request.

(3) In reaching its decision under subsection (2), the authority must take into consideration the following matters—

(a) the reasons set out in the request under section 17(2)(b),

(b) any other information provided in support of the request (whether such other information is contained in the request or otherwise provided),

(c) whether agreeing to the request mentioned in subsection (2) would be likely to promote or improve—

(i) economic development,

(ii) regeneration,

(iii) public health,

(iv) social wellbeing, or

(v) environmental wellbeing,
(d) any other benefits that might arise if the request were agreed to, and
(e) any other matter (whether or not included in or arising out of the request) that the
authority considers relevant.

(4) The authority must exercise the function under subsection (2) in a manner which
encourages equal opportunities and in particular the observance of the equal opportunity
requirements.

(5) The authority must agree to the request unless there are reasonable grounds for refusing
it.

(6) The authority must, before the end of the period mentioned in subsection (7), give notice
(in this Part, a “decision notice”) to the community participation body of—
(a) its decision to agree to or refuse the request, and
(b) if its decision is to refuse the request, the reasons for the decision.

(7) The period is—
(a) a period prescribed in regulations made by the Scottish Ministers, or
(b) such longer period as may be agreed between the authority and the community
participation body.

(8) The Scottish Ministers may by regulations make provision about—
(a) the information (in addition to that required under this Part) that a decision notice
is to contain, and
(b) the manner in which a decision notice is to be given.

20 Decision notice: information about outcome improvement process

(1) This section applies where a public service authority gives a decision notice agreeing to
a participation request by a community participation body.

(2) Where the authority at the time of giving the notice has established an outcome
improvement process, the decision notice must—
(a) describe the operation of the outcome improvement process,
(b) specify what stage in the process has been reached,
(c) explain how and to what extent the community participation body is expected to
participate in the process, and
(d) if any other person participates in the process, describe how the person
participates.

(3) Where the authority at the time of giving the notice has not established an outcome
improvement process, the decision notice must—
(a) describe how the proposed process is intended to operate,
(b) explain how and to what extent the community participation body which made the
participation request is expected to participate in the proposed process, and
(c) if any other person is expected to participate in the proposed process, describe
how the person is expected to participate.
Proposed outcome improvement process

(1) This section applies where a public service authority gives a community participation body a decision notice as mentioned in section 20(3).

(2) The community participation body may make written representations in relation to the proposed outcome improvement process.

(3) Any representations under subsection (2) must be made before the end of the period of 28 days beginning with the day on which the notice is given.

(4) Before giving notice under subsection (5), the authority must take into consideration any representations made under subsection (2).

(5) The authority must, before the end of the period of 28 days beginning with the day after the expiry of the period mentioned in subsection (3), give a notice to the community participation body containing details of the outcome improvement process that is to be established.

(6) The authority must publish such information about the process as may be specified in regulations made by the Scottish Ministers.

(7) The authority must publish the information mentioned in subsection (6) on a website or by other electronic means.

Power to decline certain participation requests

(1) Subsection (2) applies where—

(a) a participation request (a “new request”) is made to a public service authority,

(b) the new request relates to matters that are the same, or substantially the same, as matters contained in a previous participation request (a “previous request”), and

(c) the previous request was made in the period of two years ending with the date on which the new request is made.

(2) The public service authority may decline to consider the new request.

(3) For the purposes of subsection (1)(b), a new request relates to matters that are the same, or substantially the same, as matters contained in a previous request only if both requests relate to—

(a) the same public service, and

(b) the same, or substantially the same, outcome that results from, or is contributed to by virtue of, the provision of the public service.

(4) For the purposes of this section, it is irrelevant whether the body making a new request is the same body as, or a different body from, that which made the previous request.

Outcome improvement processes

Duty to establish and maintain outcome improvement process

A public service authority that gives notice under section 21(5) must—

(a) before the end of the period of 90 days beginning with the day on which the notice is given, establish the outcome improvement process in respect of which the notice is given by taking whatever steps are necessary to initiate the process, and

(b) maintain that process.
24 **Modification of outcome improvement process**

(1) This section applies where a public service authority establishes an outcome improvement process under section 23(a) following a participation request by a community participation body.

(2) Following consultation with the community participation body, the authority may modify the outcome improvement process.

(3) Where the outcome improvement process is modified under subsection (2), the authority must publish such information about the modification as may be specified in regulations made by the Scottish Ministers.

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25 **Reporting**

(1) This section applies where—

(a) a participation request has been made, and

(b) the outcome improvement process relating to that request is complete.

(2) The public service authority that established the process must publish a report—

(a) summarising the outcomes of the process, including whether (and, if so, how and to what extent) the specified outcome to which the process related has been improved,

(b) describing how and to what extent the participation of the community participation body that made the participation request to which the process related influenced the process and the outcomes, and

(c) explaining how the authority intends to keep the community participation body and any other persons informed about—

(i) changes in the outcomes of the process, and

(ii) any other matters relating to the outcomes.

(3) The authority must publish the report mentioned in subsection (2) on a website or by other electronic means.

(4) The Scottish Ministers may by regulations make provision about reports published under subsection (2), including the information (in addition to that required under that subsection) that reports are to contain.

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26 **Interpretation of Part 3**

In this Part—

“community-controlled body” has the meaning given by section 14,

“community participation body” has the meaning given by section 15(1),

“constitution”, in relation to a company, means the memorandum and articles of association of the company,

“decision notice” is to be construed in accordance with section 19(6),
“equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 (equal opportunities) of Part 2 of Schedule 5 to the Scotland Act 1998,

“outcome improvement process” has the meaning given by section 17(4),

“participation request” has the meaning given by section 17(4),

“public service” has the meaning given by section 17(4),

“public service authority” has the meaning given by section 16,

“specified outcome” has the meaning given by section 17(4).

**PART 4**

**COMMUNITY RIGHT TO BUY LAND**

**Modifications of Part 2 of Land Reform (Scotland) Act 2003**

**27** Nature of land in which community interest may be registered

(1) In section 33 of the 2003 Act (registrable land)—

(a) in subsection (1)—

(i) the words “The land in which” are repealed,

(ii) for the words “(registrable land)” is” substitute “in”,

(b) in subsection (2), for the words “described as such in an order made by Ministers” substitute “consisting of mineral rights to oil, coal, gas, gold or silver which are owned separately from the land in respect of which they are exigible”,

(c) after subsection (2), insert—

“(2A) Subject to subsections (1) and (2), land in which a community interest may be registered under this Part includes land consisting of—

(a) salmon fishings, or

(b) mineral rights,

which are owned separately from the land in respect of which they are exigible.”, and

(d) subsections (3) to (7) are repealed.

(2) The title to section 33 of the 2003 Act becomes “Land in respect of which community interest may be registered”.

**28** Meaning of “community”

(1) Section 34 of the 2003 Act (definition of “community”) is amended as follows.

(2) Before subsection (1), insert—

“(A1) A community body is, subject to subsection (4)—

(a) a body falling within subsection (1) or (1A), or

(b) a body of such other description as may be prescribed which complies with prescribed requirements.”.
(3) In subsection (1)—

(a) for the words “community body is, subject to subsection (4) below” substitute “body falls within this subsection if it is”;

(b) in paragraph (f), the words “and the auditing of its accounts” are repealed,

(c) after paragraph (f) insert—

“(fa) provision that, on the request of any person for a copy of the minutes of a meeting of the company, the company must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,

(fb) provision that, where a request of the type mentioned in paragraph (fa) is made, the company—

(i) may withhold information contained in the minutes, and

(ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so,”, and

(d) in paragraph (h)—

(i) in sub-paragraph (i), for “or crofting community body” substitute “, crofting community body or Part 3A community body (as defined in section 97D)”, and

(ii) in sub-paragraph (ii), for “or crofting community body” substitute “, crofting community body or Part 3A community body (as so defined)”.

(4) After subsection (1), insert—

“(1A) A body falls within this subsection if it is a Scottish charitable incorporated organisation (a “SCIO”) the constitution of which includes the following—

(a) a definition of the community to which the SCIO relates,

(b) provision enabling the SCIO to exercise the right to buy land under this Part,

(c) provision that the SCIO must have not fewer than 20 members,

(d) provision that the majority of the members of the SCIO is to consist of members of the community,

(e) provision under which the members of the SCIO who consist of members of the community have control of the SCIO,

(f) provision ensuring proper arrangements for the financial management of the SCIO,

(g) provision that, on the request of any person for a copy of the minutes of a meeting of the SCIO, the SCIO must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,

(h) provision that, where a request of the type mentioned in paragraph (g) is made, the SCIO—

(i) may withhold information contained in the minutes, and

(ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and

(i) provision that any surplus funds or assets of the SCIO are to be applied for the benefit of the community.”.
(5) In subsection (2), after “(1)(c)” insert “or (1A)(c)”.

(6) After subsection (4), insert—

“(4A) Ministers may by regulations from time to time amend subsections (1) and (1A).

(4B) If provision is made under subsection (A1)(b), Ministers may by regulations make such amendment of section 35(A1) and (1) in consequence of that provision as they consider necessary or expedient.”.

(7) In subsection (5)—

(a) the words “Unless Ministers otherwise direct” are repealed,

(b) in paragraph (a), at the end, insert “or a prescribed type of area (or both such unit and type of area)”;

(c) in paragraph (b)(i), at the end, insert “or in that prescribed type of area”, and

(d) in paragraph (b)(ii), after “units” insert “or that prescribed type of area”.

(8) In subsection (8)—

(a) after “section” insert “—”, and

(b) at the end insert—

“Scottish charitable incorporated organisation” has the meaning given by section 49 of the Charities and Trustee Investment (Scotland) Act 2005.”.

29 Modification of memorandum, articles of association or constitution

(1) Section 35 of the 2003 Act (provisions supplementary to section 34) is amended as follows.

(2) Before subsection (1) insert—

“(A1) During the relevant period, a community body may not modify its memorandum, articles of association or constitution without Ministers’ consent in writing.

(A2) In subsection (A1), “relevant period” means the period—

(a) beginning on the day on which the community body submits an application under section 37(1) for registration of a community interest in land, and

(b) ending with—

(i) registration of the community interest in land,

(ii) a decision by Ministers that the community interest in land should not be registered,

(iii) Ministers declining, by virtue of section 39(5), to consider the application, or

(iv) withdrawal of the application.”.

(3) In subsection (1), for “or articles of association” substitute “, articles of association or constitution”.

22
30 Period for indicating approval under section 38 of 2003 Act

In section 38 of the 2003 Act (criteria for registration)—

(a) in subsection (2), at the beginning insert “Subject to subsection (2A) below,”,

(b) after that subsection, insert—

“(2A) Ministers may not take into account, for the purposes of subsection (2), the approval of a member of the community if the approval was indicated earlier than 6 months before the date on which the application to register the community interest in land to which the approval relates was made.”.

31 Procedure for late applications

(1) Section 39 of the 2003 Act (procedure for late applications) is amended in accordance with this section.

(2) For subsection (1), substitute—

“(1) This section (other than subsections (4A) and (5)) applies in relation to an application to register a community interest in land which satisfies—

(a) the conditions mentioned in subsection (1A), or

(b) the condition mentioned in subsection (1B).

(1A) The conditions are that—

(a) before the date on which the application is received by Ministers, the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land has taken action which, if a community interest had been registered, would be prohibited under section 40(1), and

(b) on the date on which the application is received by Ministers—

(i) missives for the sale and purchase of the land in pursuance of that action have not been concluded, or

(ii) an option to acquire the land in pursuance of that action has not been conferred.

(1B) The condition is that, where another community body has registered an interest in the land, the application is received by Ministers—

(a) after the date on which the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land has, under section 48(1), notified that community body that a transfer is proposed, and

(b) before Ministers have consented, under section 51(1), to a transfer to that community body.”.

(3) In subsection (2)—

(a) after paragraph (a), insert—

“(aa) Ministers may, before the end of the period of 7 days following receipt of the views of the owner of the land or, as the case may be, such a creditor under that section, request—
(i) the owner, such a creditor or the community body making the application to provide such further information as they consider necessary in connection with their being informed as mentioned in paragraph (a), and

(ii) that the further information be supplied within 7 days of the request,”,

(b) in paragraph (b)(ii), after ““30”” insert “or (in a case where further information is requested under paragraph (aa)) “44””.

(4) In subsection (3), for paragraph (a) substitute—

“(a) that—

(i) such relevant work as Ministers consider reasonable was carried out by a person, or

(ii) such relevant steps as Ministers consider reasonable were taken by a person,

(aa) that the relevant work was carried out or the relevant steps were taken—

(i) at a time which, in the opinion of Ministers, was sufficiently in advance of the owner of the land or, as the case may be, the creditor taking the action such as is mentioned in subsection (1A), or giving notice such as is mentioned in subsection (1B),

(ii) in respect of land with a view to the land being used for purposes that are the same as those proposed for the land in relation to which the application relates, and

(iii) by the community body making the application or by another person with a view to the application being made by the community body,”.

(5) After subsection (3), insert—

“(3A) Ministers may, before the end of the period of 7 days following receipt under section 37(5) of the views of the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land, request—

(a) any person they believe may be able to provide them with such further information as they consider necessary in connection with the matters mentioned in subsection (3) to provide the information, and

(b) that the information be supplied within 7 days of the request.”.

(6) In subsection (4)(c), after ““59(1)” insert “, 60A(1)”.

(7) After subsection (4), insert—

“(4A) Subsection (5) applies in relation to an application to register a community interest in land where the application is received by Ministers after the following have occurred—

(a) the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land has taken action which, if a community interest in land had been registered, would be prohibited under section 40(1), and

(b) either—
(i) missives for the sale and purchase of the land are concluded, or
(ii) an option to acquire the land is conferred.”.

(8) In subsection (5), the words from “Where” to “land” are repealed.

(9) After subsection (5), insert—

“(6) In subsection (3)—

“relevant work” means anything done by way of preparation of an application to register a community interest in land,
“relevant steps” means any steps towards securing ownership of land by a community body.

(7) In subsection (6), “land” means any land whether or not it is land in respect of which an application in relation to which this section applies is made.”.

32  Evidence and notification of concluded missives or option agreements

After section 39 of the 2003 Act, insert—

“39A  Evidence and notification of concluded missives or option agreements

(1) Subsection (2) applies where—

(a) an application to register a community interest in land is made,
(b) on the date on which the application is received by Ministers—
   (i) missives for the sale and purchase of the land have been concluded, or
   (ii) an agreement conferring an option to acquire the land exists, and
(c) the application does not disclose that such missives have been concluded or such an agreement has been conferred.

(2) The owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land must, within 21 days of receiving a copy of the application under section 37(5)(a)—

(a) provide Ministers with evidence of the concluded missives or (as the case may be) the agreement,
(b) where there is an agreement such as is mentioned in subsection (1)(b)(ii) which contains a date on which it will expire—
   (i) notify Ministers of that date, and
   (ii) provide Ministers with information about whether, and if so how, the agreement is capable of being extended.

(3) Subsection (4) applies where—

(a) an application to register a community interest in land is made,
(b) on the date on which the application is received by Ministers—
   (i) missives for the sale and purchase of the land have been concluded, or
   (ii) an agreement conferring an option to acquire the land exists,
the application discloses that such missives have been concluded or such an agreement has been conferred, and accordingly, by virtue of section 39(4A) and (5), no copy of the application is sent to the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land.

(4) Ministers must—

(a) send a copy of the application and the accompanying information to the owner of the land or, as the case may be, the creditor,

(b) notify the owner of the land or, as the case may be, the creditor that Ministers must decline to consider the application by virtue of section 39(5), and

(c) require the owner of the land or, as the case may be, the creditor to provide Ministers with the information mentioned in subsection (5) within 21 days of receipt of the copy of the application sent under paragraph (a).

(5) The information is—

(a) evidence of the concluded missives or, as the case may be, the agreement, and

(b) where there is an agreement such as is mentioned in subsection (3)(b)(ii) which contains a date on which it will expire—

(i) that date, and

(ii) information about whether, and if so how, the agreement is capable of being extended.”.

Notification of transfer

In section 41 of the 2003 Act (provisions supplementary to and explanatory of section 40), after subsection (2), insert—

“(3) Where an owner of land or a creditor in a standard security having a right to sell land makes a transfer of land as mentioned in any of paragraphs (a) to (h) of subsection (4) of section 40, the owner of the land or, as the case may be, the creditor must within 28 days of the transfer—

(a) notify Ministers of—

(i) the transfer,

(ii) the name and address of the person to whom the land was transferred, and

(iii) the date of the transfer, and

(b) provide Ministers with a description of the land transferred, including maps, plans or other drawings prepared to such specifications as may be prescribed.”.

Changes to information relating to registered interests

After section 44 of the 2003 Act, insert—
“44A  Duty to notify changes to information relating to registered interest

(1) This section applies where a community interest in land is registered in pursuance of an application under section 37.

(2) Where—

(a) the application contains information enabling Ministers to contact the community body which made the application, and

(b) there is a change in that information,

the community body must, as soon as reasonably practicable after the change, notify Ministers of the change.

(3) Where—

(a) the application contains information enabling Ministers to contact the owner of the land to which the application relates, and

(b) there is a change in that information,

the owner must, as soon as reasonably practicable after the change, notify Ministers of the change.

(4) Where—

(a) the application contains information relating to a creditor in a standard security over an interest in the land, and

(b) there is a change in that information,

the owner of the land to which the application relates must, as soon as reasonably practicable after the change, notify Ministers of the change.

(5) Subsection (6) applies where—

(a) there is a creditor in a standard security over an interest in the land to which the application relates, but

(b) the application does not disclose the existence of the creditor (whether because the standard security did not exist at the time the application was made or otherwise).

(6) The owner of the land to which the application relates must, as soon as reasonably practicable after the interest in land is registered—

(a) notify Ministers of the existence of the creditor, and

(b) provide Ministers with such information relating to the creditor as would enable Ministers to contact the creditor.

(7) Subsection (8) applies where there is a change in information provided by a community body or an owner of land in pursuance of the duty under subsection (2), (3), (4) or (6).

(8) The community body or, as the case may be, the owner of the land must as soon as reasonably practicable after the change notify Ministers of the change.”.

Notification under section 50 of 2003 Act

In section 50 of the 2003 Act (power to activate right to buy land where breach of Part 2)—
(a) in subsection (3)(b), after “land”, insert “, to any creditor in a standard security with a right to sell the land”, and

(b) after subsection (5), insert—

“(6) For the purposes of subsection (2)(c), the circumstances in which a community interest in land remains in effect include that—

(a) the community body that applied under subsection (1) has, in accordance with subsection (2) of section 44, applied to re-register the interest, and

(b) the Keeper has, by virtue of a direction under subsection (3) of that section, re-entered the interest in the Register.”.

36 Approval of members of community to buy land

In section 51 of the 2003 Act (exercise of right to buy: approval of community and consent of Ministers), in subsection (2)(a)—

(a) in sub-paragraph (i)—

(i) for the words “at least half” substitute “the proportion”,

(ii) after “above,” insert “who”, and

(iii) after “land” insert “is, in the circumstances, sufficient to justify the community body’s proceeding to buy the land;”,

(b) the word “; or” immediately following sub-paragraph (i) is repealed, and

(c) sub-paragraph (ii) is repealed.

37 Appointment of person to conduct ballot on proposal to buy land

After section 51 of the 2003 Act, insert—

“51A Ballots under section 51: appointment of ballotter, etc.

(1) The ballot is to be conducted by a person (the “ballotter”) appointed by Ministers who appears to them to be independent and to have knowledge and experience of conducting ballots.

(2) Ministers must, within the period mentioned in subsection (3), provide the ballotter with—

(a) a copy of the application made by the community body under section 37 to register an interest in the land in relation to which the body has confirmed it will exercise the right to buy, and

(b) such other information as may be prescribed.

(3) The period is the period of 28 days beginning with the date on which a valuer is appointed under section 59(1) in respect of the land in relation to which the community body has confirmed it will exercise the right to buy.

(4) Ministers must provide the community body with such details of the ballotter as will enable the community body to contact the ballotter.

(5) The community body must, before the end of the period of 7 days following receipt of notification under section 60(2) of the valuation of the land, provide the ballotter with wording for the proposition mentioned in section 51(2)(b); and the ballotter must conduct the ballot on the basis of such wording.
(6) At the same time as providing that wording, the community body must also provide the ballotter, in such form as may be prescribed, with such information as may be prescribed relating to—

(a) the community body,

(b) its proposals for use of the land in relation to which it has confirmed it will exercise its right to buy,

(c) the valuation, and

(d) any other matters.

(7) The expense of conducting the ballot is to be met by Ministers.”.

38 Consent under section 51 of 2003 Act: prescribed information

After section 51A of the 2003 Act (inserted by section 37), insert—

“51B Consent under section 51: duty to provide information

(1) For the purposes of deciding whether they are satisfied as mentioned in section 51(3) in relation to a community body, Ministers must take into account—

(a) the information mentioned in subsection (2), and

(b) any other information they consider relevant.

(2) The information referred to in subsection (1)(a) is information—

(a) provided by the community body, and

(b) that is of such a kind as may be prescribed.

(3) Information mentioned in subsection (2) must be provided in the prescribed form.

(4) Information that may be prescribed under subsection (2)(b) includes, in particular—

(a) information relating to the matters mentioned in section 51(3), and

(b) additional information relating to such information.

(5) Ministers may, no later than 7 days after receiving the information mentioned in subsection (2), request the community body to provide such further information as they consider necessary.

(6) The community body must, no later than 7 days after receiving any such request, provide Ministers with the further information requested.”.

39 Representations etc. regarding circumstances affecting ballot result

After section 51B of the 2003 Act (inserted by section 38), insert—

“51C Circumstances affecting result of ballot

(1) Within 7 days of receipt by the community body of notification under section 52(3) of the result of the ballot, the body may make representations to Ministers in writing about any circumstances that the body considers have affected the result of the ballot.

(2) Where the community body makes such representations it must, when making them—
(a) provide Ministers with such evidence as is reasonably necessary to establish the existence and effect of the circumstances to which the representations relate, and

(b) send a copy of the representations and the evidence to the owner of the land to which the ballot relates.

(3) Within 7 days of receipt of any representations under subsection (1), Ministers may request the community body to provide such further information relating to the representations or related evidence as they think fit.

(4) Within 7 days of receiving such a request, the community body must respond to it.

(5) Within 7 days of receipt of a copy of the representations and evidence under subsection (2)(b), the owner of the land may provide Ministers with comments on the representations and evidence.

(6) Where the owner of the land provides comments under subsection (5) the owner must, when providing them, send a copy of the comments to the community body.

(7) Within 7 days of receipt of a copy of comments under subsection (6), the community body may give Ministers views on the comments.

(8) Within 7 days of receiving such views under subsection (7), Ministers may request the community body to provide such further information relating to the views as they think fit.

(9) Within 7 days of receiving such a request, the community body must respond to it.

(10) In deciding whether they are satisfied as mentioned in section 51(2)(a), Ministers must take account of any—

(a) representations made under subsection (1),

(b) evidence provided under subsection (2)(a),

(c) further information provided under subsection (4) or (9),

(d) comments under subsection (5), and

(e) views under subsection (7).”.

(2) In section 51 of the 2003 Act (exercise of right to buy: approval of community and consent of Ministers), after subsection (6), insert—

“(6A) Where a community body makes representations under section 51C(1), the references to 21 days in paragraphs (a) and (b) of subsection (6) are to be read as references to 35 days.”.

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40 **Ballot not conducted as prescribed**

In section 52 of the 2003 Act (ballot procedure), after subsection (6) (inserted by schedule 4), insert—

“(7) Provision may be prescribed for or in connection with—

(a) reviewing whether a ballot was conducted in accordance with provision prescribed under subsection (1),
(b) providing notification to such persons, or description of persons, as may be prescribed that a ballot has not been so conducted,

c) in a case where a ballot has not been so conducted, requiring a further ballot to be conducted on such a basis, and by such persons or description of persons, as may be prescribed,

(d) requiring any such further ballot to be conducted—

(i) in compliance with such conditions as may be prescribed (including conditions that the ballot be conducted in accordance with provision prescribed under subsection (1)),

(ii) within such timescales as may be prescribed,

(e) specifying persons, or descriptions of persons, who are to meet the expenses of conducting any such further ballot,

(f) specifying that any review mentioned in paragraph (a) be carried out by—

(i) such persons,

(ii) such description of persons, or

(iii) such a court or tribunal,

as may be prescribed,

(g) specifying the action that may be taken by such persons, persons of such description or such a court or tribunal following such a review.”.

41 Period in which ballot results and valuations are to be notified

(1) In section 52 of the 2003 Act (ballot procedure), in subsection (4), for the words from “28 days” to the end of the subsection, substitute “12 weeks beginning with—

(a) the date on which a valuer is appointed under section 59(1) in respect of the land in relation to which the community body has confirmed it will exercise its right to buy, or

(b) where—

(i) the ballotter receives notification under subsection (3C) of section 60, and

(ii) the date notified under paragraph (c) of that subsection is after the end of the 12 week period beginning with the date on which a valuer is appointed as mentioned in paragraph (a) above,

the day following the date notified to the ballotter under paragraph (c) of that subsection.”.

(2) In section 60 of the 2003 Act (procedure for valuation), after subsection (3) insert—

“(3A) An application under subsection (3) must be made within the period of 21 days beginning with the date of appointment of the valuer.

(3B) Any longer period as mentioned in that subsection must be fixed under that subsection within the period of 7 days beginning with the day on which the application was received.
(3C) Where such a longer period is fixed, Ministers must notify the persons mentioned in subsection (3D) of—

(a) the fact that a longer period has been so fixed,
(b) the length of the period, and
(c) the date on which the period ends.

(3D) The persons are—

(a) the community body which is exercising its right to buy the land,
(b) the person appointed to conduct the ballot in relation to the land, and
(c) the owner of the land.”.

42 **Exercise of right to buy: date of entry and payment of price**

In section 56 of the 2003 Act (procedure for buying)—

(a) in subsection (3)(a), for the word “6” substitute “8”, and
(b) after subsection (6), insert—

“(7) Where a later date is agreed as mentioned in subsection (3)(c), the community body must, within 7 days of the agreement—

(a) notify Ministers in writing of the agreement,
(b) inform Ministers—

(i) of the date on which the agreement was made, and
(ii) what the later date is, and
(c) provide evidence to Ministers of the matters mentioned in paragraph (b).”.

43 **Views on representations under section 60 of 2003 Act**

In section 60 of the 2003 Act (procedure for valuation)—

(a) after subsection (1), insert—

“(1A) Where written representations under subsection (1) are received—

(a) from the owner of the land, the valuer must invite the community body which is exercising its right to buy the land to send its views on the representations in writing,
(b) from the community body which is exercising its right to buy the land, the valuer must invite the owner of the land to send the owner’s views on the representations in writing.

(1B) In carrying out a valuation under section 59, the valuer must consider any views sent under subsection (1A).”, and
(b) in subsection (3), for the word “6” substitute “8”.

44 **Expenses of valuation of land**

After section 60 of the 2003 Act, insert—
“60A Liability of owner of land for valuation expenses

(1) Subsection (2) applies where—

(a) Ministers have received a confirmation sought by them under section 49(2)(a) that a community body will exercise its right to buy land in which it has a registered interest, and

(b) after Ministers have appointed a valuer under section 59(1) to assess the value of the land, the owner of the land gives notice under section 54(5) of the owner’s decision not to proceed further with the proposed transfer.

(2) Ministers may require the owner of the land to pay any expense incurred by them in connection with the valuation of the land under section 59 by sending the owner a demand for payment of the expense.

(3) Where Ministers are considering sending a demand under subsection (2), they may request the owner of the land to provide such information as they consider necessary for the purposes of enabling Ministers to determine whether or not to send the demand.

(4) The owner of the land may, within 21 days of the receipt of a demand under subsection (2), appeal to the sheriff against the demand.

(5) The decision of the sheriff in an appeal under subsection (4) is final.

(6) The owner of the land must pay the amount specified in a demand under subsection (2)—

(a) within 28 days of receipt, or

(b) where an appeal against the demand is made under subsection (4) and not upheld, within 28 days of the determination of the appeal.”.

45 Creditors in standard security with right to sell land: appeals

In section 61 of the 2003 Act (appeals)—

(a) after subsection (3), insert—

“(3A) A creditor in a standard security with a right to sell land may appeal to the sheriff against—

(a) a decision by Ministers that a community interest in the land is to be entered in the Register, or

(b) a decision by Ministers to give consent to the exercise by a community body of its right to buy the land.”,

(b) in subsection (4), for the words “or (3)” substitute “, (3) or (3A)”, and

(c) in subsection (6)—

(i) the word “and” immediately following paragraph (a)(i) is repealed,

(ii) in paragraph (a), after sub-paragraph (ii), insert “and

(iii) any creditor in a standard security with a right to sell the land to which the appeal relates;”,

(iii) the word “and” immediately following paragraph (b)(i) is repealed,

(iv) for the word “or” immediately following paragraph (b)(ii) substitute “and
(iii) any creditor in a standard security with a right to sell the land to which the appeal relates;”;

(v) the word “and” immediately following paragraph (c)(ii) is repealed,

(vi) in paragraph (c), after sub-paragraph (iii), insert “and

(iv) any creditor in a standard security with a right to sell the land to which the appeal relates;”;

(vii) after paragraph (c), insert “or

(d) under subsection (3A) above, the creditor must intimate that fact to—

(i) the community body,

(ii) the owner, and

(iii) Ministers.”.

46 Calculation of time periods in Part 2 of 2003 Act

After section 67 of the 2003 Act, insert—

“67A Calculation of time periods

(1) In calculating for the purposes of this Part any period of time within which an act requires to be or may be done, no account is to be taken of any public or local holidays in the place where the act is to be done.

(2) Subsection (1) does not apply to a period of time specified in—

(a) section 56(3)(a) or (b),

(b) section 60(3), or

(c) Chapter 6 of this Part.”.

47 Duty to provide information about community right to buy

After section 67A of the 2003 Act (inserted by section 46), insert—

“67B Duty to provide information about community right to buy

(1) Ministers may, for the purpose of monitoring or evaluating any impact that the right to buy land conferred by this Part has had or may have, request a person mentioned in subsection (2) to provide them with the information mentioned in subsection (3).

(2) The persons are—

(a) a community body,

(b) the owner or former owner of land in respect of which an application to register a community interest under section 37 was made.

(3) The information is such information as Ministers may reasonably require for the purpose mentioned in subsection (1) relating to the effects that the operation of the provisions of this Part have had, or may be expected to have, on such matters as may be specified in the request.

(4) A person to whom a request under subsection (1) is made must, to the extent that the person is able to do so, provide Ministers with the information requested.”.
Abandoned and neglected land

48 Abandoned and neglected land

After section 97A of the 2003 Act, insert—

“PART 3A

COMMUNITY RIGHT TO BUY ABANDONED OR NEGLECTED LAND

97B Meaning of “land”

In this Part, “land” includes—

(a) bridges and other structures built on or over land,
(b) inland waters,
(c) canals, and
(d) the foreshore, that is to say, the land between the high and low water marks of ordinary spring tides.

97C Eligible land

(1) Land is eligible for the purposes of this Part if in the opinion of Ministers it is wholly or mainly abandoned or neglected.

(2) In determining whether land is eligible, Ministers must have regard to prescribed matters.

(3) Eligible land does not include—

(a) land on which there is a building or other structure which is an individual’s home unless the building or structure falls within such class or classes as may be prescribed,
(b) such land pertaining to land of the type mentioned in paragraph (a) as may be prescribed,
(c) eligible croft land (as defined in section 68(2)),
(d) any croft occupied or worked by its owner or a member of its owner’s family,
(e) land which is owned or occupied by the Crown by virtue of its having vested as bona vacantia in the Crown, or its having fallen to the Crown as ultimus haeres,
(f) land of such other descriptions or classes as may be prescribed.

(4) Ministers may prescribe descriptions or classes of building or structure which are to be treated as being an individual’s home for the purposes of subsection (3)(a).

(5) In subsection (3)(d), the reference to a croft being occupied includes—

(a) a reference to its being occupied otherwise than permanently, and
(b) a reference to its being occupied by way of the occupation by its owner of any dwelling-house on or pertaining to it.
97D Part 3A community bodies

(1) A Part 3A community body is, subject to subsection (4) below, a company limited by guarantee the articles of association of which include the following—

(a) a definition of the community to which the company relates,
(b) provision enabling the company to exercise the right to buy land under this Part,
(c) provision that the company must have not fewer than 20 members,
(d) provision that the majority of the members of the company is to consist of members of the community,
(e) provision whereby the members of the company who consist of members of the community have control of the company,
(f) provision ensuring proper arrangements for the financial management of the company,
(g) provision that any surplus funds or assets of the company are to be applied for the benefit of the community, and
(h) provision that, on the winding up of the company and after satisfaction of its liabilities, its property (including any land acquired by it under this Part) passes—

(i) to such other community body or crofting community body as may be approved by Ministers, or
(ii) if no other community body or crofting community body is so approved, to Ministers or to such charity as Ministers may direct.

(2) Ministers may, if they think it in the public interest to do so, disapply the requirement specified in subsection (1)(c) in relation to any body they may specify.

(3) In subsection (1), “company limited by guarantee” has the meaning given by section 3(3) of the Companies Act 2006.

(4) A body is not a Part 3A community body unless Ministers have given it written confirmation that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development.

(5) A community—

(a) is defined for the purposes of subsection (1)(a) by reference to a postcode unit or postcode units or a prescribed type of area (or both such unit and type of area), and
(b) comprises the persons from time to time—

(i) resident in that postcode unit or in one of those postcode units or in that prescribed type of area, and
(ii) entitled to vote, at a local government election, in a polling district which includes that postcode unit or those postcode units or that prescribed type of area (or part of it or them).
(6) In subsection (5), “postcode unit” means an area in relation to which a single postcode is used to facilitate the identification of postal service delivery points within the area.

(7) The articles of association of a company which is a Part 3A community body may, notwithstanding the generality of paragraph (h) of subsection (1), provide that its property may, in the circumstances mentioned in that paragraph, pass to another person only if that person is a charity.

(8) In this section, “charity” means a body entered in the Scottish Charity Register.

97E Provisions supplementary to section 97D

(1) A Part 3A community body which has bought land under this Part may not, for as long as the land or any part of it remains in its ownership, modify its memorandum or articles of association without Ministers’ consent in writing.

(2) If Ministers are satisfied that a Part 3A community body which has, under this Part, bought land would, had it not so bought that land, no longer be entitled to do so, they may acquire the land compulsorily.

(3) Subsection (2) does not apply if the Part 3A community would no longer be entitled to buy the land because the land is not eligible for the purposes of this Part.

(4) Where the power conferred by subsection (2) is (or is to be) exercised in relation to land, Ministers may make an order relating to, or to matters connected with, the acquisition of the land.

(5) An order under subsection (4) may—

(a) apply, modify or exclude any enactment which relates to any matter as to which an order could be made under that subsection,

(b) make such modifications of enactments as appear to Ministers to be necessary or expedient in consequence of any provision of the order or otherwise in connection with the order.

97F Register of Community Interests in Abandoned or Neglected Land

(1) The Keeper must set up and keep a register, to be known as the Register of Community Interests in Abandoned or Neglected Land (the “Part 3A Register”).

(2) The Part 3A Register must be set up and kept so as to contain, in a manner and form convenient for public inspection, the following information and documents relating to each application to exercise the right to buy under this Part registered in it—

(a) the name and address of the registered office of the company which constitutes the Part 3A community body which has submitted the application,

(b) a copy of the application to exercise the right to buy under this Part,

(c) a copy of any notification given under section 97K(4)(b),

(d) a copy of the notice given under section 97M(1),

(e) a copy of any notice under section 97P(1),
(f) a copy of any notice under section 97P(2)(a),
(g) a copy of any notice under section 97P(2)(b),
(h) a copy of any acknowledgement sent under section 97P(3),
(i) such other information as Ministers consider appropriate.

(3) If the Part 3A community body registering an application requires that any such information or document relating to that application and falling within subsection (4) as is specified in the requirement be withheld from public inspection, that information or document is to be kept by or on behalf of Ministers separately from and not entered in the Register.

(4) Information or a document falls within this subsection if it relates to arrangements for the raising or expenditure of money to enable the land to which the application relates to be put to a particular use.

(5) Nothing in subsection (3) or (4) obliges an applicant Part 3A community body, or empowers Ministers to require such a body, to submit to Ministers any information or document within subsection (4).

(6) Ministers may by regulations modify—
(a) paragraphs (a) to (h) of subsection (2),
(b) subsection (3),
(c) subsection (4).

(7) The Keeper must ensure—
(a) that the Part 3A Register is, at all reasonable times, available for public inspection free of charge,
(b) that members of the public are given facilities for getting copies of entries in the Part 3A Register on payment of such charges as may be prescribed, and
(c) that any person requesting it is, on payment of such a charge, supplied with an extract entry certified to be a true copy of the original.

(8) An extract so certified is sufficient evidence of the original.

(9) In this Part, “the Keeper” means—
(a) the Keeper of the Registers of Scotland, or
(b) such other person as Ministers may appoint to carry out the Keeper’s functions under this Part.

(10) Different persons may be so appointed for different purposes.

97G Right to buy: application for consent

(1) The right to buy under this Part may be exercised only by a Part 3A community body.

(2) That right may be so exercised only with the consent of Ministers given on the written application of the Part 3A community body.

(3) That right may be exercised in relation to more than one holding of land but in order so to exercise the right an application must be made in respect of each such holding and applications so made may be differently disposed of.
(4) In subsection (3), a “holding” of land is land in the ownership of one person or in common or joint ownership.

(5) An application under this section—
   (a) must be made in the prescribed form,
   (b) must specify—
      (i) the owner of the land, and
      (ii) any creditor in a standard security over the land or any part of it, and
   (c) must include or be accompanied by information of the prescribed kind including information (provided, where appropriate, by or by reference to maps or drawings) about the matters mentioned in subsection (6).

(6) The matters are—
   (a) the reasons the Part 3A community body considers that its proposals for the land are—
      (i) in the public interest, and
      (ii) compatible with furthering the achievement of sustainable development in relation to the land,
   (b) the reasons the Part 3A community body considers that the land is wholly or mainly abandoned or neglected,
   (c) the location and boundaries of the land in respect of which the right to buy is sought to be exercised,
   (d) all—
      (i) rights and interests in the land,
      (ii) sewers, pipes, lines, watercourses or other conduits and fences, dykes, ditches or other boundaries in or on the land, known to the applicant body or the existence of which it is, on reasonably diligent inquiry, capable of ascertaining,
   (e) the proposed use, development and management of the land, and
   (f) whether and how the matters referred to in paragraph (e) would affect any of the facilities referred to in paragraph (d)(ii) in so far as those facilities connect with similar facilities on other land or also serve other land.

(7) A Part 3A community body applying under this section must, at the same time as it applies—
   (a) send a copy of its application and the accompanying information to the owner of the land to which the application relates, and
   (b) where there is a standard security in relation to the land or any part of it, send a copy of the application and the accompanying information to the creditor who holds the standard security and invite the creditor—
(i) to notify the Part 3A community body and Ministers, within 60 days of receipt of the invitation, if any of the circumstances set out in subsection (8) has arisen (or arises within 60 days of receipt of the invitation), and

(ii) if such notice is given, to provide Ministers, within that time, with the creditor’s views in writing on the application.

(8) Those circumstances are that—

(a) a calling-up notice has been served by the creditor under section 19 of the Conveyancing and Feudal Reform (Scotland) Act 1970 in relation to the land which the Part 3A community body is seeking to exercise its right to buy or any part of the land and that notice has not been complied with,

(b) a notice of default served by the creditor under section 21 of that Act in relation to the land or any part of the land has not been complied with and the person on whom the notice was served has not, within the period specified in section 22 of that Act, objected to the notice by way of application to the court,

(c) where that person has so objected, the court has upheld or varied the notice of default,

(d) the court has granted the creditor a warrant under section 24 of that Act in relation to the land or any part of the land.

(9) On receipt of an application under this section, Ministers must—

(a) invite—

(i) the owner of the land,

(ii) any creditor in a standard security over the land or any part of it, and

(iii) any other person whom Ministers consider to have an interest in the application,

to send them, so as to be received not later than 60 days after the sending of the invitation, views in writing on the application,

(b) take reasonable steps to invite the owners of all land contiguous to the land to which the application relates to send them, so as to be received not later than 60 days after the sending of the invitation, views in writing on the application, and

(c) send copies of invitations given under paragraphs (a) and (b) to the Part 3A community body.

(10) An invitation given under subsection (9)(a)(i) must also invite the owner to give Ministers information about—

(a) whether the owner considers that it would be in the public interest for Ministers to consent to the application and, if not, the reasons the owner considers that it would not be in the public interest for such consent to be given,
(b) whether the owner’s continuing to own the land would be compatible with furthering the achievement of sustainable development in relation to the land,

(c) whether the owner considers the land to be wholly or mainly neglected or abandoned and the reasons for the owner’s view,

(d) any proposals that the owner has for the land,

(e) any rights or interests in the land of which the owner is aware that are not mentioned in the application, and

(f) any other matter that the owner considers is relevant to the application.

(11) Ministers must, as soon as practicable after receiving an application, give public notice of it and of the date by which, under subsection (9)(a), views are to be received by them and, in that notice, invite persons to send to Ministers, so as to be received by them not later than 60 days after the publication of the notice, views in writing on the application.

(12) That public notice is to be given by advertisement in such manner as may be prescribed.

(13) Ministers must—

(a) send copies of any views they receive under this section to the Part 3A community body, and

(b) invite it to send them, so as to be received by them not later than 60 days after the sending of that invitation, its responses to these views.

(14) Ministers must, when considering whether to consent to an application under this section, have regard to all views on it and responses to the views which they have received in answer to invitations under this section.

(15) Ministers must decline to consider an application which—

(a) does not comply with the requirements of or imposed under this section,

(b) is otherwise incomplete, or

(c) otherwise indicates that it is one which Ministers would be bound to reject;

and Ministers are not required to comply with subsections (9) to (14) in relation to such an application.

(16) Ministers must not reach a decision on an application before—

(a) the date which is 60 days after the last date on which the Part 3A community body may provide Ministers with a response to the invitation given under subsection (13), or

(b) if by that date the Lands Tribunal has not advised Ministers of its finding on any question referred to it under section 97X in relation to the application, the date on which the Lands Tribunal provides Ministers with that finding.
(17) A Part 3A community body may require Ministers to treat as confidential any information or document relating to arrangements for the raising or expenditure of money to enable the land to be put to a particular use, being information or a document made available to Ministers for the purposes of this section.

97H Criteria for consent

Ministers must not consent to an application made under section 97G unless they are satisfied—

(a) that the land to which the application relates is eligible land,

(b) that the exercise by the Part 3A community body of the right to buy under this Part is—

(i) in the public interest, and

(ii) compatible with furthering the achievement of sustainable development in relation to the land,

(c) that, if the owner of the land were to remain as its owner, that ownership would be inconsistent with furthering the achievement of sustainable development in relation to the land,

(d) that the owner of the land is accurately identified in the application,

(e) that any creditor in a standard security over the land or any part of it is accurately identified in the application,

(f) that the owner is not—

(i) prevented from selling the land, or

(ii) subject to any enforceable personal obligation (other than an obligation arising by virtue of any right suspended by regulations under section 97N(3)) to sell the land otherwise than to the Part 3A community body,

(g) that the Part 3A community body complies with the provisions of section 97D,

(h) that—

(i) a significant number of the members of the community defined under section 97D to which the application relates have a connection with the land, or

(ii) the land is sufficiently near to land with which those members of that community have a connection,

(i) that the community so defined have approved the proposal to exercise the right to buy, and

(j) that, otherwise than by virtue of this Part, the Part 3A community body has tried and failed to buy the land.
Part 4—Community right to buy land

97J  Ballot to indicate approval for purposes of section 97H

(1) The community, defined in pursuance of section 97D in relation to a Part 3A community body which has applied to buy land, are to be taken for the purposes of section 97H(i) as having approved a proposal to buy if—

(a) a ballot of the members of the community so defined has, during the period of six months which immediately preceded the date on which the application was made, been conducted by the Part 3A community body on the question whether the Part 3A community body should buy the land,

(b) in the ballot—

(i) at least half of the members of the community so defined have voted, or

(ii) fewer than half of the members of the community so defined have voted but the proportion which voted is sufficient to justify the Part 3A community body’s proceeding to buy the land, and

(c) the majority of those voting have voted in favour of the proposition that the Part 3A community body buy the land.

(2) The ballot is to be conducted as prescribed.

(3) The provisions prescribed must in particular include provision for—

(a) the ascertainment and publication of the number of persons eligible to vote in the ballot,

(b) the number who did vote,

(c) the numbers of valid votes respectively cast for and against the proposition mentioned in subsection (1)(c), and

(d) the form and manner in which the result of the ballot is to be published.

(4) The Part 3A community body which conducts a ballot must, within 21 days of the ballot (or, if its application under section 97G is made before the expiry of that period, together with the application), and in the prescribed form of return, notify Ministers of—

(a) the result,

(b) the number of persons eligible to vote,

(c) the number of persons who voted, and

(d) the number of persons who voted in favour of the proposition mentioned in subsection (1)(c).

(5) Ministers may require the Part 3A community body—

(a) to provide such information relating to the ballot as they think fit, and

(b) to provide such information relating to any consultation with those eligible to vote in the ballot undertaken during the period in which the ballot was carried out as Ministers think fit.

(6) The expense of conducting a ballot under this section is to be met by the Part 3A community body.
(7) If the ballot is not conducted as prescribed, the Part 3A community body’s right to buy the land to which the body’s application relates is, so far as proceeding on that application, extinguished.

97K Right to buy same land exercisable by only one Part 3A community body

(1) Only one Part 3A community body may exercise the right under this Part to buy the same land.

(2) Where two or more such bodies have applied to buy the same land, it is for Ministers to decide which application is to proceed.

(3) Ministers may not make such a decision unless they have had regard to all views on each of the applications, and responses to the views, which they have received in answer to invitations under section 97G.

(4) On Ministers so deciding—
   (a) the other body’s right to buy the land which is the subject of the body’s application is, so far as proceeding on that application, extinguished, and
   (b) they must notify the bodies and each person invited, under section 97G(9)(a), to send them views on the application of that fact.

97L Consent conditions

Ministers may make their consent to an application made under section 97G subject to conditions.

97M Notification of Ministers’ decision on application

(1) Ministers must give written notice, in prescribed form, of their decision on an application made under section 97G, and their reasons for it, to—
   (a) the applicant Part 3A community body,
   (b) the owner of the land to which the application relates,
   (c) every other person who was invited, under section 97G(9)(a), to send them views on the application, and
   (d) the Keeper of the Registers of Scotland.

(2) The form of notice is to be prescribed so as to secure that the notice includes a full description of—
   (a) the land to which the application relates (provided, where appropriate, by or by reference to maps and drawings), and
   (b) where their decision is to consent to the application, any conditions imposed under section 97L.

(3) The notice given under subsection (1) must—
   (a) contain information about the consequences of the decision notified and of the rights of appeal against it given by this Part, and
   (b) state the date on which consent is given or refused.
97N Effect of Ministers’ decision on right to buy

(1) Ministers may by regulations make provision for or in connection with prohibiting, during the prescribed period, prescribed persons from transferring or otherwise dealing with land in respect of which a Part 3A community body has made an application under section 97G.

(2) Regulations under subsection (1) may in particular include provision—
(a) prescribing transfers or dealings which are not prohibited by the regulations,
(b) requiring or enabling prescribed persons in prescribed circumstances to register prescribed notices in the Register of Community Interests in Abandoned or Neglected Land,
(c) in prescribed circumstances, requiring prescribed information to be incorporated into prescribed deeds relating to the land.

(3) Ministers may by regulations make provision for or in connection with suspending, during the prescribed period, such rights in or over land in respect of which a Part 3A community body has made an application under section 97G as may be prescribed.

(4) Regulations under subsection (3) may in particular include provision specifying—
(a) rights to which the regulations do not apply,
(b) rights to which the regulations do not apply in prescribed circumstances.

(5) Nothing in this Part—
(a) affects the operation of an inhibition on the sale of the land,
(b) prevents an action of adjudication from proceeding, or
(c) affects the commencement, execution or operation of any other diligence.

97P Confirmation of intention to proceed with purchase and withdrawal

(1) A Part 3A community body’s right to buy land under this Act is exercisable only if, within 21 days of the date of notification under section 97S(10), it sends notice in writing confirming its intention to proceed to buy the land to—
(a) Ministers, and
(b) the owner of the land.

(2) A Part 3A community body may, at any time after—
(a) making an application under section 97G, withdraw the application, or
(b) confirming its intention to proceed under subsection (1), withdraw that confirmation,
by notice in writing to that effect sent to Ministers.

(3) Ministers must, within 7 days of receipt of notice under subsection (1) or (2), acknowledge receipt and send a copy of that acknowledgement to the owner of the land.
97Q Completion of purchase

(1) It is for the Part 3A community body to secure the expeditious exercise of its right to buy and, in particular—

(a) to prepare the documents necessary to—

(i) effect the transfer to it of the land, and

(ii) impose any conditions (including any real burdens or servitudes) which Ministers, under section 97L, require to be imposed upon the title to land, and

(b) in so doing, to ensure—

(i) that the land in the application to which Ministers have consented is the same as that to be transferred, and

(ii) that the transfer is to be effected in accordance with any other conditions imposed by Ministers under section 97L.

(2) Where the Part 3A community body is unable to fulfil the duty imposed by subsection (1)(b) because the land or part of the land in respect of which Ministers’ consent was given is not owned by the person named as its owner in the application made under section 97G, it must refer that matter to Ministers.

(3) On a reference under subsection (2), Ministers must direct that the Part 3A community body’s right to buy the land is, so far as proceeding on that application, extinguished.

(4) The owner of the land being bought is obliged—

(a) to make available to the Part 3A community body such deeds and other documents as are sufficient to enable the body to proceed to complete its title to the land, and

(b) to transfer title accordingly.

(5) If, within 6 weeks of the date on which Ministers consent to an application to buy land, the owner of the land refuses or fails to make those deeds and other documents available, or they cannot be found, the Lands Tribunal may, on the application of the Part 3A community body, order the owner or any other person appearing to the Lands Tribunal to have those deeds and documents to produce them.

(6) If the owner of the land refuses or fails to effect such sufficient transfer as is mentioned in subsection (4), the Lands Tribunal may, on the application of the Part 3A community body, authorise its clerk to adjust, execute and deliver such deeds or other documents as will complete such transfer to the like force and effect as if done by the owner or person entitled.

97R Completion of transfer

(1) The consideration for the transfer of the land is its value as assessed under section 97S.

(2) Subject to subsections (3) and (4), that consideration must be paid not later than the “final settlement date”, being the date on which expires a 6 month period beginning with the date (the “consent date”) when Ministers consented to the application made under section 97G to buy the land.
(3) Where—

(a) the Part 3A community body and the owner so agree, the consideration may be paid on a date later than the final settlement date,

(b) the assessment of the valuation of the land has not been completed by a date 4 months after the consent date, the consideration must be paid not later than 2 months after the date when that assessment is completed,

(c) that valuation is the subject of an appeal which has not been determined within 4 months of the consent date, the consideration must be paid not later than 2 months after the date of that determination.

(4) If, on the date the consideration is to be paid, the owner is not able to effect the grant of a good and marketable title to the Part 3A community body—

(a) the consideration, or

(b) if, for any reason, the consideration has not been ascertained, such sum as may be fixed by the valuer appointed under section 97S as a fair estimate of what the consideration might be,

must be consigned into the Lands Tribunal until that title is granted or the Part 3A community body gives notice to the Tribunal of its decision not to proceed to complete the transaction.

(5) Except where subsection (4) applies, if the consideration remains unpaid after the date not later than which it is to be paid, the Part 3A community body’s application made under section 97G in relation to the land is to be treated as withdrawn.

(6) Any heritable security which burdened the land immediately before title is granted to the Part 3A community body in pursuance of this section ceases to do so on the recording of that title in the Register of Sasines or registration in the Land Register of Scotland of the body’s interest in the land.

(7) Where such a security also burdens land other than the land in respect of which title is granted to the Part 3A community body, the security does not, by virtue of subsection (6), cease to burden that other land.

(8) Unless the creditors in right of any such security otherwise agree, the Part 3A community body must pay to them according to their respective rights and preferences any sum which would, but for this subsection, be paid to the owner by the Part 3A community body as consideration for the land.

(9) Any sum paid by a Part 3A community body under subsection (8) must be deducted from the sum which the body is to pay to the owner as consideration for the land.

97S Assessment of value of land etc.

(1) Where Ministers consent to an application made under section 97G, they must, subject to subsection (2), within 7 days of doing so appoint a valuer, being a person who appears to Ministers to be suitably qualified, independent and to have knowledge and experience of valuing land of a kind which is similar to the land being bought, to assess the value of the land to which the application relates.
(2) The validity of anything done under this section is not affected by any failure by Ministers to comply with the time limit specified in subsection (1).

(3) In assessing the value of land in pursuance of an appointment under subsection (1), a valuer—

(a) does not act on behalf of the owner of the land or of the Part 3A community body which is exercising its right to buy the land under this Part, and

(b) is to act as an expert and not as an arbiter.

(4) The value to be assessed is the market value of the land as at the date when Ministers consented to the application made under section 97G relating to the land.

(5) The “market value” of land is the aggregate of—

(a) the value it would have on the open market as between a seller and a buyer both of whom are, as respects the transaction, willing,

(b) any depreciation in the value of other land or interests belonging to the seller which may result from the transfer of land, including depreciation caused by division of the land by the transfer of land to the Part 3A community body, and

(c) the amount attributable to any disturbance to the seller which may arise in connection with the transfer of the land to the Part 3A community body.

(6) In arriving, for the purposes of this section, at the value which land would have on the open market in the circumstances mentioned in subsection (5)(a)—

(a) account may be taken, in so far as a seller and buyer such as are mentioned in subsection (5) would do so, of any factor attributable to the known existence of a person who (not being the Part 3A community body which is exercising its right to buy the land) would be willing to buy the land at a price higher than others would because of a characteristic of the land which relates peculiarly to that person’s interest in buying it,

(b) no account is to be taken of—

(i) any depreciation of the type mentioned in subsection (5)(b),

(ii) any disturbance of the type mentioned in subsection (5)(c),

(iii) the absence of the period of time during which the land would, on the open market, be likely to be advertised and exposed for sale.

(7) The expense of a valuation under this section is to be met by Ministers.

(8) In carrying out a valuation under this section, the valuer must—

(a) invite—

(i) the owner of the land, and

(ii) the Part 3A community body which is exercising its right to buy the land,

the owner of the land, and
(b) consider any representations made accordingly.

(9) Where the Part 3A community body and the owner of the land have agreed the valuation of the land they must notify the valuer in writing of that valuation.

(10) The valuer must, within the period set out in subsection (11), notify Ministers, the Part 3A community body and the owner of the land of the assessed value of the land.

(11) The period referred to in subsection (10) is the period of 8 weeks beginning with the date of appointment of the valuer or such longer period as Ministers may, on an application by the valuer, fix.

(12) The validity of anything done under this Part is not affected by any failure by a valuer to comply with the time limit specified in subsection (11).

97T Compensation

(1) Any person, including an owner or former owner of land, who has incurred loss or expense—

(a) in complying with the requirements of this Part following the making of an application under section 97G by a Part 3A community body,

(b) as a result of the withdrawal by the Part 3A community body of its confirmation under section 97P or its failure otherwise to complete the purchase after having so confirmed its intention under that section, or

(c) as a result of the failure of the Part 3A community body which made that application to complete the purchase,

is entitled to recover the amount of that loss or expense from the Part 3A community body.

(2) There is no such entitlement where the application made under section 97G is refused.

(3) Where such an application has been refused, the owner of the land who has incurred loss or expense as mentioned in subsection (1)(a) is entitled to recover the amount of that loss or expense from Ministers.

(4) Ministers may, by order, make provision for or in connection with specifying—

(a) amounts payable in respect of loss or expense incurred as mentioned in subsection (1),

(b) amounts payable in respect of loss or expense incurred by virtue of this Part by a person of such other description as may be specified,

(c) the person who is liable to pay those amounts,

(d) the procedure under which claims for compensation under this section are to be made.

(5) Where, at the expiry of such period of time as may be fixed for the purposes of this subsection by an order under subsection (4)(d), any question as to whether compensation is payable or as to the amount of any compensation payable has not been settled as between the parties, either of them may refer the question to the Lands Tribunal.
97U Grants towards Part 3A community bodies’ liabilities to pay compensation

(1) Ministers may, in the circumstances set out in subsection (2), pay a grant to a Part 3A community body.

(2) Those circumstances are—

(a) that after settlement of its other liabilities connected with the exercise of its right to buy land under this Part, the Part 3A community body has insufficient money to pay, or to pay in full, the amount of compensation it has to pay under section 97T,

(b) that the Part 3A community body has taken all reasonable steps to obtain money in order to pay, or to pay in full, that amount (other than applying for a grant under this section) but has been unable to obtain the money, and

(c) that it is in the public interest that Ministers pay the grant.

(3) The fact that all the circumstances set out in subsection (2) are applicable in a particular case does not prevent Ministers from refusing to pay a grant in that case.

(4) A grant under this section may be made subject to conditions which may stipulate repayment in the event of breach.

(5) Ministers may pay a grant under this section only on the application of a Part 3A community body.

(6) An application for such a grant must be made in such form and in accordance with such procedure as may be prescribed.

(7) Ministers must issue their decision on an application under this section in writing accompanied by, in the case of a refusal, a statement of the reasons for it.

(8) Ministers’ decision on an application under this section is final.

97V Appeals

(1) An owner of land may appeal to the sheriff against a decision by Ministers to give consent to the exercise by a Part 3A community body of its right to buy the land.

(2) A Part 3A community body may appeal to the sheriff against a decision by Ministers not to give consent to the exercise by the Part 3A community body of its right to buy.

(3) Subsection (2) does not extend to Ministers’ decision under section 97K on which of two or more applications to buy the same land is to proceed.

(4) A person who is a member of a community as defined for the purposes of section 97D in relation to a Part 3A community body may appeal to the sheriff against a decision by Ministers to consent to the exercise by the Part 3A community body of its right to buy land.

(5) A creditor in a standard security with a right to sell land may appeal to the sheriff against a decision by Ministers to give consent to the exercise by a Part 3A community body of its right to buy the land.
An appeal under subsection (1), (2), (4) or (5) must be lodged within 28 days of the date on which Ministers decided to consent to the exercise of the right to buy land or refuse such consent.

The sheriff in whose sheriffdom the land or any part of it is situated has jurisdiction to hear an appeal under this section.

Where an appeal is made—

(a) under subsection (1) the owner must intimate that fact to—
   (i) the Part 3A community body,
   (ii) Ministers, and
   (iii) any creditor in a standard security with a right to sell the land to which the appeal relates,

(b) under subsection (2) the Part 3A community body must intimate that fact to—
   (i) the owner,
   (ii) Ministers, and
   (iii) any creditor in a standard security with a right to sell the land to which the appeal relates,

(c) under subsection (4) the member of the community must intimate that fact to—
   (i) the Part 3A community body,
   (ii) the owner,
   (iii) Ministers, and
   (iv) any creditor in a standard security with a right to sell the land to which the appeal relates, or

(d) under subsection (5), the creditor must intimate that fact to—
   (i) the Part 3A community body,
   (ii) the owner, and
   (iii) Ministers.

The decision of the sheriff in an appeal under this section—

(a) may require rectification of the Register of Community Interests in Abandoned or Neglected Land,

(b) may impose conditions upon the appellant,

(c) is final.

Appeals to Lands Tribunal: valuation

The owner of the land and the Part 3A community body which is exercising its right to buy the land may appeal to the Lands Tribunal against the valuation carried out under section 97S.
(2) An appeal under this section must state the grounds on which it is being made and must be lodged within 21 days of the date of notification under section 97S(10).

(3) In an appeal under this section, the Lands Tribunal may reassess the value of the land.

(4) The valuer whose valuation is appealed against may be a witness in the appeal proceedings.

(5) The Lands Tribunal must give reasons for its decision on an appeal under this section.

(6) Ministers are not competent parties to any appeal under this section by reason only that they appointed the valuer whose valuation is the subject of the appeal.

(7) Ministers’ powers under the Lands Tribunal Act 1949 to make rules as respects that Tribunal extend to such rules as may be necessary or expedient to give full effect to this section.

97X Reference to Lands Tribunal of questions on applications

(1) At any time before Ministers reach a decision on an application which has been made under section 97G—

(a) Ministers,

(b) any person who is a member of the community defined in relation to the applicant Part 3A community body in pursuance of section 97D,

(c) the owner of the land which is the subject of the application,

(d) any person who has any interest in the land giving rise to a right which is legally enforceable by that person, or

(e) any person who is invited, under section 97G(9)(a)(iii), to send views to Ministers on the application,

may refer to the Lands Tribunal any question relating to the application.

(2) In considering any question referred to it under subsection (1), the Lands Tribunal may have regard to any representations made to it by—

(a) the applicant Part 3A community body,

(b) the owner of the land which is the subject of the application, or

(c) any other person who, in the opinion of the Lands Tribunal, appears to have an interest.

(3) The Lands Tribunal—

(a) must advise Ministers of its finding on any question so referred, and

(b) may, by order, provide that Ministers may consent to the application only if they impose, under section 97L, such conditions as the Tribunal may specify.

(4) If the Lands Tribunal considers any question referred to it under this section to be irrelevant to Ministers’ decision on the application to which it relates, it may decide to give no further consideration to the question and find accordingly.
97Y Agreement as to matters referred or appealed

An appeal under section 97V or 97W does not prevent the parties from settling or otherwise agreeing the matter in respect of which the appeal was made between or among them.

97Z Interpretation of Part 3A

(1) Any reference in this Part to a creditor in a standard security with a right to sell land is a reference to a creditor who has such a right under—
   (a) section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970, or
   (b) a warrant granted under section 24(1) of that Act.

(2) In calculating for the purposes of this Part any period of time within which an act requires to be or may be done, no account is to be taken of any public or local holidays in the place where the act is to be done.

(3) Subsection (2) does not apply to a period of time specified in section 97R(2), 97V(6), or 97W(2).”.

Meaning of “the 2003 Act”

49 Meaning of “the 2003 Act” in Part 4

In this Part, “the 2003 Act” means the Land Reform (Scotland) Act 2003.

PART 5

ASSET TRANSFER REQUESTS

Key definitions

50 Meaning of “community transfer body”

(1) In this Part, “community transfer body” means—
   (a) a community-controlled body, or
   (b) a body mentioned in subsection (2).

(2) The body is a body (whether corporate or unincorporated)—
   (a) that is designated as a community transfer body by an order made by the Scottish Ministers for the purposes of this Part, or
   (b) that falls within a class of bodies designated as community transfer bodies by such an order for the purposes of this Part.

(3) Where the power to make an order under subsection (2)(a) is exercised in relation to a trust, the community transfer body is to be the trustees of the trust.

51 Meaning of “relevant authority”

(1) In this Part, a “relevant authority” means—
   (a) a person listed, or of a description listed, in schedule 3, or
(b) a person mentioned in subsection (3).

(2) The Scottish Ministers may by order modify schedule 3 so as to—
   (a) remove an entry listed in it,
   (b) amend an entry listed in it.

(3) The person is a person—
   (a) that is designated as a relevant authority by an order made by the Scottish Ministers for the purposes of this Part, or
   (b) that falls within a class of persons designated as relevant authorities by such an order for the purposes of this Part.

(4) An order under subsection (3) may designate a person, or a class of persons, only if the person or (as the case may be) each of the persons falling within the class is—
   (a) a part of the Scottish Administration,
   (b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998), or
   (c) a publicly-owned company.

(5) In subsection (4)(c), “publicly-owned company” means a company that is wholly owned by one or more relevant authorities.

(6) For that purpose, a company is wholly owned by one or more relevant authorities if it has no members other than—
   (a) the relevant authority or (as the case may be) authorities,
   (b) other companies that are wholly owned by the relevant authority or (as the case may be) authorities, or
   (c) persons acting on behalf of—
      (i) the relevant authority or (as the case may be) authorities, or
      (ii) such other companies.

(7) In this section, “company” includes any body corporate.

Requests

52 Asset transfer requests

(1) A community transfer body may make a request in accordance with this section (in this Part, an “asset transfer request”) to a relevant authority.

(2) An asset transfer request is a request—
   (a) in relation to land owned by the relevant authority, for ownership of the land to be transferred to the community transfer body, or
   (b) in relation to land owned or leased by the relevant authority—
      (i) for the land to be leased to the community transfer body, or
      (ii) for the authority to confer rights in respect of the land on the community transfer body (including, for example, rights to manage or occupy the land or use it for a purpose specified in the request).
(3) An asset transfer request of the type mentioned in subsection (2)(a) may be made only by a community transfer body falling within section 53; and references in the remainder of this Part to the making of an asset transfer request by a community transfer body are to be read accordingly.

(4) A community transfer body making an asset transfer request must specify in the request—

(a) the land to which the request relates,
(b) whether the request falls within paragraph (a), (b)(i) or (b)(ii) of subsection (2),
(c) the reasons for making the request,
(d) the benefits which the community transfer body considers will arise if the authority were to agree to the request,
(e) where the request falls within subsection (2)(a), the price that the community transfer body would be prepared to pay for the transfer of ownership of the land,
(f) where the request falls within subsection (2)(b)(i)—

(i) the amount of rent that the community transfer body would be prepared to pay in respect of any lease resulting from the request,
(ii) the duration of any such lease, and
(iii) any other terms and conditions that the community transfer body considers should be included in any such lease,
(g) where the request falls within subsection (2)(b)(ii), the nature and extent of the rights sought, and
(h) any other terms or conditions applicable to the request.

53 Community transfer bodies that may request transfer of ownership of land

(1) A community transfer body falls within this section if—

(a) it is a company the articles of association of which include provision such as is mentioned in subsection (2),
(b) it is a Scottish charitable incorporated organisation the constitution of which includes provision that the organisation must have not fewer than 20 members,
(c) in the case of a body designated by an order under paragraph (a) of subsection (2) of section 50, the order includes provision that the body may make an asset transfer request of the type mentioned in section 52(2)(a), or
(d) in the case of a body falling within a class of bodies designated in an order made under paragraph (b) of that subsection, the order includes provision that bodies falling within the class may make an asset transfer request of that type.

(2) The provision mentioned in subsection (1)(a) is provision that—

(a) the company must have not fewer than 20 members, and
(b) on the winding up of the company and after satisfaction of its liabilities, its property (including any land, and any rights in relation to land, acquired by it as a result of an asset transfer request under this Part) passes—

(i) to another community transfer body,
(ii) to a charity,
(iii) to such community body (within the meaning of section 34 of the Land Reform (Scotland) Act 2003) as may be approved by the Scottish Ministers,

(iv) to such crofting community body (within the meaning of section 71 of that Act) as may be so approved, or

(v) if no such community body or crofting community body is so approved, to the Scottish Ministers or to such charity as the Scottish Ministers may direct.

54 Asset transfer requests: regulations

(1) The Scottish Ministers may by regulations make further provision about asset transfer requests.

(2) Regulations under subsection (1) may in particular make provision for or in connection with—

(a) specifying the manner in which requests are to be made,

(b) specifying the procedure to be followed by a relevant authority in relation to requests,

(c) specifying the information to be included in requests (in addition to that required under section 52(4)),

(d) requiring publication, by such method as may be prescribed in the regulations, of the fact that a request is being made,

(e) requiring notification of the making of a request to be given to such persons or descriptions of persons, and in such circumstances, as may be prescribed in the regulations.

(3) The Scottish Ministers may make regulations for or in connection with—

(a) enabling a community transfer body to request information from a relevant authority about land in respect of which it proposes to make an asset transfer request,

(b) specifying how the authority is to respond to the request for information,

(c) specifying the circumstances in which the authority must provide information,

(d) specifying the type of information the authority must provide in circumstances specified under paragraph (c),

(e) specifying the circumstances in which the authority need not provide information.

Decisions

55 Asset transfer requests: decisions

(1) This section applies where an asset transfer request is made by a community transfer body to a relevant authority.

(2) The authority must decide whether to agree to or refuse the request.

(3) In reaching its decision, the authority must take into consideration the following matters—

(a) the reasons for the request,
(b) any other information provided in support of the request (whether such other information is contained in the request or otherwise provided),

(c) whether agreeing to the request would be likely to promote or improve—
   (i) economic development,
   (ii) regeneration,
   (iii) public health,
   (iv) social wellbeing, or
   (v) environmental wellbeing,

(d) any other benefits that might arise if the request were agreed to,

(e) any benefits that might arise if the authority were to agree to or otherwise adopt an alternative proposal in respect of the land to which the request relates,

(f) how such benefits would compare to any benefits such as are mentioned in paragraphs (c) and (d),

(g) how any benefits such as are mentioned in paragraph (e) relate to other matters the authority considers relevant (including, in particular, the functions and purposes of the authority),

(h) any obligations imposed on the authority, by or under any enactment or otherwise, that may prevent, restrict or otherwise affect its ability to agree to the request, and

(i) such other matters (whether or not included in or arising out of the request) as the authority considers relevant.

(4) The authority must exercise the function under subsection (2) in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.

(5) The authority must agree to the request unless there are reasonable grounds for refusing it.

(6) In subsection (3)(e), an “alternative proposal” includes—
   (a) another asset transfer request,
   (b) a proposal made by the authority or any other person.

(7) The authority must, within the period mentioned in subsection (8), give notice (in this Part, a “decision notice”) to the community transfer body of—
   (a) its decision to agree to or refuse the request, and
   (b) the reasons for its decision.

(8) The period is—
   (a) a period prescribed in regulations made by the Scottish Ministers, or
   (b) such longer period as may be agreed between the authority and the community transfer body.

(9) The Scottish Ministers may by regulations make provision about—
   (a) the information (in addition to that required under this Part) that a decision notice is to contain, and
   (b) the manner in which a decision notice is to be given.
Agreement to asset transfer request

(1) This section applies where a relevant authority decides to agree to an asset transfer request made by a community transfer body.

(2) The decision notice relating to the request must—

(a) specify the terms on which, and any conditions subject to which, the authority would be prepared to transfer ownership of the land, lease the land or (as the case may be) confer rights in respect of the land to which the request relates (whether or not such terms and conditions were specified in the request),

(b) state that, if the community transfer body wishes to proceed, it must submit to the authority an offer to acquire ownership of the land, lease the land or (as the case may be) assume rights in respect of the land, and

(c) specify the period within which such an offer is to be submitted.

(3) The period specified under subsection (2)(c) must be a period of at least 6 months beginning with the date on which the decision notice is given.

(4) An offer such as is mentioned in subsection (2)(b)—

(a) must reflect any terms and conditions specified in the decision notice,

(b) may include such other reasonable terms and conditions as are necessary or expedient to secure—

(i) the transfer of ownership, the lease or (as the case may be) the conferral of rights, and

(ii) that such a transfer, lease or (as the case may be) conferral of rights takes place within a reasonable time,

(c) must be made before the end of the period specified in the decision notice under subsection (2)(c).

(5) Where no contract is concluded on the basis of such an offer before the end of the period mentioned in subsection (7), the decision to agree to the request is of no effect.

(6) Where a decision to agree to a request is of no effect under subsection (5), that is not to be treated as a refusal of the request for the purposes of an appeal under section 58.

(7) The period is—

(a) the period of 6 months beginning with the date of the offer, or

(b) such longer period—

(i) as may be agreed between the authority and the community transfer body, or

(ii) in the absence of any such agreement, as may be specified in a direction by the Scottish Ministers.

(8) A direction under subsection (7)(b)(ii) may be made only on the application of the community transfer body.

(9) An application under subsection (8) may be made on more than one occasion.

(10) The Scottish Ministers may by regulations make provision about—

(a) the form of, and procedure for making, an application such as is mentioned in subsection (8),
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(b) the manner in which a direction under subsection (7)(b)(ii) is to be given,

(c) the information that such a direction is to contain.

57 Prohibition on disposal of land

(1) Subsection (2) applies where a relevant authority decides to agree to an asset transfer request made by a community transfer body.

(2) During the relevant period, the authority must not sell, lease or otherwise dispose of the land to which the request relates to any person other than the community transfer body.

(3) In subsection (2), the “relevant period” is the period beginning on the day on which the decision notice relating to the request is given and ending—

(a) if no offer such as is mentioned in paragraph (b) of subsection (2) of section 56 is made by the final day of the period specified in the decision notice under paragraph (c) of that subsection, on the day after that final day, or

(b) if such an offer is made by that final day, on one of the days mentioned in subsection (4).

(4) The days are—

(a) the day on which the authority concludes a contract with the community transfer body on the basis of the offer,

(b) the day on which the period mentioned in paragraph (a) or (where applicable) paragraph (b) of subsection (7) of section 56 expires with no such contract having been concluded.

(5) Where, by virtue of subsection (2), a relevant authority is prevented from selling, leasing or otherwise disposing of any land, any contract by virtue of which the authority is obliged to sell, lease or otherwise dispose of the land to a person other than the community transfer body referred to in that subsection is void.

Appeals and reviews

58 Appeals

(1) Subsection (2) applies where—

(a) an asset transfer request is refused by a relevant authority,

(b) an asset transfer request is agreed to by a relevant authority but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or

(c) a relevant authority does not give a decision notice relating to an asset transfer request to the community transfer body making the request within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 55(8).

(2) The community transfer body making the request may appeal to the Scottish Ministers unless the relevant authority is—

(a) the Scottish Ministers, or

(b) a local authority.

(3) The Scottish Ministers may by regulations prescribe—

(a) the procedure to be followed in connection with appeals under subsection (2),
(b) the manner in which such appeals are to be conducted, and
(c) the time limits within which such appeals must be brought.

(4) The provision that may be made by virtue of subsection (3) includes provision that the manner in which an appeal, or any stage of an appeal, is to be conducted is to be at the discretion of the Scottish Ministers.

(5) On an appeal under subsection (2), the Scottish Ministers—
(a) may allow or dismiss the appeal,
(b) may reverse or vary any part of the decision of the relevant authority (whether the appeal relates to that part of it or not),
(c) must, in the circumstances mentioned in either paragraph (a) or (b) of subsection (6), issue a direction to the authority requiring the authority to take such steps, or achieve such outcomes, as are specified in the direction within such time periods as are so specified,
(d) may, in any other circumstances, issue such a direction, including a direction relating to any aspects of the asset transfer request to which the appeal relates (whether or not the authority’s decision relates to those aspects).

(6) The circumstances are—
(a) that the appeal is allowed,
(b) that any part of the decision of the relevant authority is reversed or varied to the effect that the authority is required to—
   (i) transfer ownership of any land, lease any land or confer rights in respect of any land, or
   (ii) agree to the asset transfer request subject to such terms and conditions as may be specified in the direction.

(7) The references in subsections (5)(b) and (6)(b) to any part of the decision includes any terms and conditions specified in the decision notice relating to the asset transfer request.

(8) A direction issued under subsection (5)(c) must require the relevant authority to issue a further decision notice—
(a) specifying the terms on which, and any conditions subject to which, the authority would be prepared to transfer ownership of the land, lease the land or (as the case may be) confer rights in respect of the land, including any terms and conditions required to be included by virtue of the direction,
(b) stating that, if the community transfer body wishes to proceed, it must submit to the authority an offer to acquire ownership of the land, lease the land or (as the case may be) assume rights in respect of the land, and
(c) specifying the period within which such an offer is to be submitted (which must be at least 6 months beginning with the date on which the further decision notice was issued).

(9) A further decision notice issued by virtue of a direction mentioned in subsection (8) replaces any decision notice relating to the asset transfer request in respect of which the appeal was made.
(10) Subsections (4) to (10) of section 56 apply in relation to a further decision notice issued by virtue of a direction mentioned in subsection (8) as they apply in relation to a decision notice referred to in that section; but as if in subsection (4) of that section—

(a) the reference to an offer such as is mentioned in subsection (2)(b) of that section were a reference to an offer such as is mentioned in subsection (8)(b) of this section, and

(b) the reference to the period specified in the decision notice under subsection (2)(c) of that section were a reference to the period specified in a further decision notice by virtue of subsection (8)(c) of this section.

59 Review by local authority

(1) Subsection (2) applies in a case where—

(a) an asset transfer request is made to a local authority by a community transfer body, and

(b) the authority—

(i) refuses the request,

(ii) agrees to the request but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or

(iii) does not give a decision notice relating to the request to the community transfer body within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 55(8).

(2) On an application made by the community transfer body, the local authority must carry out a review of the case.

(3) The Scottish Ministers may by regulations prescribe—

(a) the procedure to be followed in connection with reviews under subsection (2),

(b) the manner in which such reviews are to be carried out, and

(c) the time limits within which applications for reviews must be brought.

(4) The provision that may be made by virtue of subsection (3) includes provision that the manner in which a review, or any stage of a review, is to be carried out by a local authority is to be at the discretion of the authority.

(5) A local authority may, in relation to a decision reviewed under subsection (2)—

(a) confirm its decision,

(b) modify its decision, or any part of its decision (including any terms and conditions specified in the decision notice to which the asset transfer request relates), or

(c) substitute a different decision for its decision.

(6) Following a review under subsection (2), the local authority must—

(a) issue a decision notice as respects the asset transfer request to which the review relates, and

(b) provide in the decision notice the reasons for its decision.

(7) A decision notice issued under subsection (6) replaces any decision notice relating to the asset transfer request in respect of which the review was carried out.
(8) Subsections (3) to (5) of section 55 apply in relation to a decision relating to an asset transfer request in a review under subsection (2) of this section as they apply in relation to a decision relating to the request under subsection (2) of that section.

(9) Section 56 applies in relation to a decision to agree to an asset transfer request (including a decision to confirm such an agreement) following a review under subsection (2) as it applies in relation to a decision mentioned in subsection (1) of that section.

Disapplication of certain lease restrictions

60 Disapplication of restrictions in lease of land to relevant authority

(1) This section applies where—

(a) land is leased to a relevant authority,

(b) an asset transfer request is made to the authority by a community transfer body for the authority to—

(i) lease the land to the body, or

(ii) confer a right of occupancy on the body in respect of the land,

(c) the land is leased to the relevant authority by another relevant authority or by a company that is wholly owned by another relevant authority, and

(d) no other person is entitled to occupy the land to which the request relates (whether by virtue of a sub-lease by the authority or otherwise).

(2) Any restrictions in the lease of the land to which the request relates such as are mentioned in subsection (3) do not apply as between the relevant authority and the person from whom the authority leases the land.

(3) The restrictions are any restrictions—

(a) on the power of the relevant authority to sub-let the land,

(b) on the power of the authority to share occupancy of the land,

(c) relating to how the land may be used by the authority or any other occupier of the land.

(4) Nothing in this section affects any restrictions in the lease of the land to the relevant authority on the power of the authority to assign or transfer rights and liabilities under the lease.

(5) If the relevant authority leases the land to, or confers a right of occupancy in respect of the land on, a community transfer body, the authority continues to be subject to any obligations under the lease of the land to the authority.

Power to decline subsequent requests

61 Power to decline certain asset transfer requests

(1) Subsection (2) applies where—

(a) an asset transfer request (a “new request”) relating to land is made to a relevant authority,
(b) the new request relates to matters that are the same, or substantially the same, as
matters contained in a previous asset transfer request (a “previous request”) made
in relation to the land,

(c) the previous request was made in the period of two years ending with the date on
which the new request is made, and

(d) the authority refused the previous request (whether following an appeal or not).

(2) The relevant authority may decline to consider the new request.

(3) Where a new request is declined to be considered under subsection (2), that is not to be
treated as a refusal of the new request for the purposes of—

(a) an appeal under section 58, or

(b) a review under section 59.

(4) For the purposes of subsection (1)(b), a new request relates to matters that are the same,
or substantially the same, as matters contained in a previous request only if both
requests, in relation to the land to which they relate, seek (or sought)—

(a) transfer of ownership of the land,

(b) lease of the land, or

(c) the same or substantially the same rights in respect of the land.

(5) For the purposes of this section, it is irrelevant whether the body making a new request
is the same body as, or a different body from, that which made the previous request.

Interpretation of Part 5

62 Interpretation of Part 5

(1) In this Part—

“asset transfer request” has the meaning given by section 52(2),

“community-controlled body” has the meaning given by section 14,

“community transfer body” has the meaning given by section 50(1),

“charity” means a body entered in the Scottish Charity Register,

“decision notice” is to be construed in accordance with section 55(7),

“equal opportunities” and “equal opportunity requirements” have the same
meanings as in Section L2 (equal opportunities) of Part 2 of Schedule 5 to the
Scotland Act 1998,

“relevant authority” has the meaning given by section 51,

“Scottish charitable incorporated organisation” has the meaning given by section
49 of the Charities and Trustee Investment (Scotland) Act 2005.

(2) References in this Part to land include references to part of the land.
PART 6

COMMON GOOD PROPERTY

Registers

63 Common good registers

(1) Each local authority must establish and maintain a register of property which is held by the authority as part of the common good (a “common good register”).

(2) Before establishing a common good register, a local authority must publish a list of property that it proposes to include in the register.

(3) The list may be published in such a way as the local authority may determine.

(4) On publishing a list under subsection (2), the local authority must—

(a) notify the bodies mentioned in subsection (5) of the publication, and

(b) invite those bodies to make representations in respect of the list.

(5) The bodies are—

(a) any community council established for the local authority’s area, and

(b) any community body of which the authority is aware.

(6) In establishing a common good register, a local authority must have regard to—

(a) any representations made under subsection (4)(b) by a body mentioned in subsection (5), and

(b) any representations made by other persons in respect of the list published under subsection (2).

(7) Representations as mentioned in subsection (6) may in particular be made in relation to—

(a) whether property proposed to be included in the register is part of the common good,

(b) the identification of other property which, in the opinion of the body or person making the representation, is part of the common good.

(8) A local authority must—

(a) make arrangements to enable members of the public to inspect, free of charge, its common good register at reasonable times and at such places as the authority may determine, and

(b) make its common good register available on a website, or by other electronic means, to members of the public.

64 Guidance about common good registers

(1) In carrying out any of the duties imposed on it by section 63, a local authority must have regard to any guidance issued by the Scottish Ministers in relation to the duties.

(2) Before issuing any such guidance, the Scottish Ministers must consult—

(a) local authorities,

(b) community councils, and
(c) such community bodies as the Scottish Ministers think fit.

Disposal and use

65 Disposal and use of common good property: consultation

(1) Subsection (2) applies where a local authority is considering—

(a) disposing of any property which is held by the authority as part of the common good, or

(b) changing the use to which any such property is put.

(2) Before taking any decision to dispose of, or change the use of, such property the local authority must publish details about the proposed disposal or, as the case may be, the use to which the authority proposes to put the property.

(3) The details may be published in such a way as the local authority may determine.

(4) On publishing details about its proposals under subsection (2), the local authority must—

(a) notify the bodies mentioned in subsection (5) of the publication, and

(b) invite those bodies to make representations in respect of the proposals.

(5) The bodies are—

(a) any community council established for the local authority’s area, and

(b) any community body that is known by the authority to have an interest in the property.

(6) In deciding whether or not to dispose of any property held by a local authority as part of the common good, or to change the use to which any such property is put, the authority must have regard to—

(a) any representations made under subsection (4)(b) by a body mentioned in subsection (5), and

(b) any representations made by other persons in respect of its proposals published under subsection (2).

66 Disposal etc. of common good property: guidance

(1) In carrying out any of the duties imposed on it by section 65, a local authority must have regard to any guidance issued by the Scottish Ministers in relation to the duties.

(2) A local authority must have regard to any guidance issued by the Scottish Ministers in relation to the management and use of property that forms part of the common good.

(3) Before issuing any guidance as mentioned in subsection (1) or (2), the Scottish Ministers must consult—

(a) local authorities,

(b) community councils, and

(c) such community bodies as the Scottish Ministers think fit.
Interpretation of Part 6

Interpretation of Part 6

In this Part—

“community bodies”, in relation to a local authority, means bodies, whether or not formally constituted, established for purposes which consist of or include that of promoting or improving the interests of any communities (however described) resident or otherwise present in the area of the local authority,

“community council” means a community council established by a local authority under Part 4 of the Local Government (Scotland) Act 1973.

PART 7

ALLOTMENTS

Key definitions

Meaning of “allotment”

In this Part, “allotment” means land that is—

(a) owned or leased by a local authority,
(b) leased or intended for lease by a person from the authority,
(c) used or intended for use—

(i) wholly or mainly for the cultivation of vegetables, fruit, herbs or flowers, and
(ii) otherwise than with a view to making a profit, and
(d) of such size as may be prescribed.

Meaning of “allotment site”

In this Part, “allotment site”—

(a) means land consisting wholly or partly of allotments, and
(b) includes other land owned or leased by a local authority that may be used by tenants of allotments in connection with their use of allotments.

Request to lease allotment

(1) Any person may make a request to the local authority in whose area the person resides to lease an allotment from the authority.

(2) A request must be made in writing and include—

(a) the name and address of the person making the request, and
(b) such other information as may be prescribed.

(3) Where the person making the request is a disabled person who has a physical impairment, the request may include information about the person’s needs on the grounds of disability relating to—
(a) access to an allotment site or an allotment,
(b) possible adjustments to an allotment.

(4) A request may be made to a local authority even if the authority does not own or lease any allotments.

(5) A request may be made jointly by two or more persons if each person resides in the area of the local authority to which the request is made.

(6) The local authority must give written notice to a person who made a request under subsection (1) confirming receipt of the request before the expiry of the period of 28 days beginning with the date on which the request is received by the authority.

(7) Before making regulations under subsection (2)(b), the Scottish Ministers must consult—
(a) each local authority, and
(b) any other person appearing to the Scottish Ministers to have an interest.

Local authority functions

71 Duty to maintain list

(1) Each local authority must establish and maintain a list of persons who make a request to it under section 70(1).

(2) The list may be established and maintained by the local authority in such form as the authority thinks fit.

(3) The duty to maintain a list under subsection (1) includes a duty to remove from the list—
(a) the name of any person—
   (i) whose request under section 70(1) is agreed to, or
   (ii) who withdraws such a request before it is agreed to, and
(b) any other information relating to any such person.

72 Duty to provide allotments

(1) Where subsection (2) or (3) applies, each local authority must take reasonable steps to ensure that the number of persons entered in the list maintained under section 71(1) is no more than one half of the total number of allotments owned and leased by the authority.

(2) This subsection applies where—
(a) on the commencement date, a local authority does not own or lease any allotments, and
(b) at any time after that date, the number of persons entered in the list mentioned in subsection (1) is 15 or more.

(3) This subsection applies where—
(a) on the commencement date, a local authority owns or leases allotments, and
(b) at any time after that date, the number of persons entered in the list mentioned in subsection (1) is one or more.
(4) The Scottish Ministers may by order amend subsection (1) by substituting for the proportion for the time being specified there such other proportion as they think fit.

(5) The Scottish Ministers may by order amend subsection (2) or (3) by substituting for the number of persons for the time being specified there such other number of persons as they think fit.

(6) Where a request under section 70(1) is made jointly by two or more persons, the persons making the request are to be treated as one person for the purposes of calculating the number of persons referred to in—

(a) subsection (1),

(b) subsection (2) (including that subsection as amended by an order under subsection (5)),

(c) subsection (3) (including that subsection as amended by an order under subsection (5)),

(d) section 79(2)(g) or (l).

(7) In this section, “commencement date” means the date on which this section comes into force.

73 Allotment site regulations

(1) Each local authority must make regulations about allotment sites in its area.

(2) The first regulations under subsection (1) must be made before the expiry of the period of two years beginning with the date on which this section comes into force.

(3) Regulations under subsection (1) must in particular include provision for or in connection with—

(a) allocation of allotments,

(b) rent,

(c) cultivation of allotments,

(d) maintenance of allotments,

(e) maintenance of allotment sites,

(f) buildings or other structures that may be erected on allotments, the modifications that may be made to such structures and the materials that may or may not be used in connection with such structures,

(g) the keeping of livestock (including poultry), and

(h) landlord inspections.

(4) Regulations under subsection (1) may in particular include provision for or in connection with—

(a) buildings or other structures that are permitted,

(b) buildings or other structures that may be erected on land mentioned in paragraph (b) of the definition of “allotment site” in section 69, the modifications that may be made to such structures and the materials that may or may not be used in connection with such structures,

(c) access by persons (other than allotment tenants) and domestic animals,
(d) liability for loss of or damage to property,
(e) acceptable use of allotments and allotment sites,
(f) sale of surplus produce (in addition to the provisions of any regulations made under section 87(1)).

(5) Regulations under subsection (1) may make different provision for different areas or different types of allotment site.

74 Allotment site regulations: further provision

(1) Before making regulations under section 73(1), a local authority must consult persons appearing to the local authority to have an interest.

(2) At least one month before making regulations under section 73(1), a local authority must—

(a) place an advertisement in at least one newspaper circulating in its area giving notice of—

(i) the authority’s intention to make the regulations,
(ii) the general purpose of the proposed regulations,
(iii) the place where a copy of the proposed regulations may be inspected,
(iv) the fact that any person may make written representations in relation to the proposed regulations,
(v) the time within which a person may make representations, and
(vi) the address to which any representations must be sent, and

(b) make copies of the proposed regulations available for inspection by the public without payment—

(i) at its offices, and
(ii) if it considers it practicable, at the allotment site to which the regulations are to apply.

(3) Any person may make a representation in writing in relation to the proposed regulations no later than one month after the last date on which notice under subsection (2)(a) is given.

(4) Before making the regulations, the authority must—

(a) offer any person who makes a representation under subsection (3) the opportunity to make further representations in person, and

(b) take account of any representations received by it by virtue of subsection (3) and paragraph (a).

(5) The regulations are executed by being signed by the proper officer of the authority.

(6) The regulations—

(a) come into force on the day after the day on which they are executed or such later date specified in the regulations, and

(b) continue in force unless revoked.

(7) Subsections (1) to (4) apply in relation to—
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(a) a proposed amendment,
(b) a proposed revocation,
(c) an amendment, or
(d) a revocation,
of regulations under section 73(1) as they apply in relation to proposed regulations, or
(as the case may be) the making of proposed regulations, under that section.

(8) Subsections (5) and (6) apply in relation to an amendment, or a revocation, of
regulations under section 73(1) as they apply in relation to regulations under that section
(but subsection (6)(b) does not apply in relation to such a revocation).

(9) A copy of the regulations must be displayed at the entrance to an allotment site to which
they apply.

(10) A local authority must provide a copy of the regulations without charge to any person
following a request.

(11) In the case where an allotment site is leased by a local authority, the regulations are
subject to any provision of such a lease which is contrary to, or otherwise inconsistent
with, the regulations.

Disposal etc. of allotments and allotment sites owned by local authority

(1) This section applies where a local authority owns an allotment site.

(2) A local authority may not dispose of the allotment site or change the use of the allotment
site without the consent of the Scottish Ministers.

(3) The Scottish Ministers may make the granting of consent subject to such conditions as
they think fit.

(4) The Scottish Ministers may not grant consent unless they are satisfied that—
(a) the tenant of each allotment on the allotment site is to be offered a lease of another
allotment in the area of the local authority within a reasonable distance of the
allotment site, or
(b) the provision of another allotment for the tenant is unnecessary or not reasonably
practicable.

Disposal etc. of allotments and allotment sites leased by local authority

(1) This section applies where a local authority leases an allotment site.

(2) A local authority may not renounce its lease of the allotment site without the consent of
the Scottish Ministers.

(3) In the case where a change of use of the allotment site proposed by the local authority is
permitted by the lease, the local authority may not change the use of the allotment site
without the consent of the Scottish Ministers.

(4) The Scottish Ministers may make the granting of consent mentioned in subsection (2) or
(3) subject to such conditions as they think fit.

(5) The Scottish Ministers may not grant consent mentioned in subsection (2) or (3) unless
they are satisfied that—
(a) the tenant of each allotment on the allotment site is to be offered a lease of another allotment in the area of the local authority within a reasonable distance of the allotment site, or

(b) the provision of another allotment for the tenant is unnecessary or not reasonably practicable.

77 Duty to prepare food-growing strategy

(1) Each local authority must prepare a food-growing strategy for its area.

(2) A local authority must publish the food-growing strategy before the expiry of the period of two years beginning with the day on which this section comes into force.

(3) A food-growing strategy is a document—

(a) identifying land in its area that the local authority considers may be used as allotment sites,

(b) identifying other areas of land in its area that could be used by a community for the cultivation of vegetables, fruit, herbs or flowers,

(c) describing how, where the authority is required to take reasonable steps under section 72(1), the authority intends to increase the provision in its area of—

(i) allotments, or

(ii) other areas of land for use by a community for the cultivation of vegetables, fruit, herbs or flowers, and

(d) containing such other information as may be prescribed.

(4) The authority must publish the food-growing strategy on a website or by other electronic means.

78 Duty to review food-growing strategy

(1) Each local authority must review its food-growing strategy before the end of—

(a) the period of 5 years beginning with the day on which the strategy is first published under section 77(2), and

(b) each subsequent period of 5 years.

(2) If, following a review under subsection (1), the authority decides that changes to its food-growing strategy are necessary or desirable, the authority must publish a revised food-growing strategy on a website or by other electronic means.

79 Annual allotments report

(1) As soon as reasonably practicable after the end of each reporting year, each local authority must prepare and publish an annual allotments report for its area.

(2) An annual allotments report is a report setting out in respect of the reporting year to which it relates—

(a) the location and size of each allotment site,

(b) the number of allotments on each allotment site,
(c) the proportion of land on each allotment site (excluding any land falling within paragraph (b) of the definition of “allotment site” in section 69) that is not leased from the authority,

(d) where an allotment site is leased by the local authority—
   (i) the period of the lease of each allotment site, and
   (ii) the rent payable under the lease by the authority,

(e) the period of any lease between the authority and the tenant of an allotment site,

(f) the rent payable under any lease between the authority and the tenant of an allotment site,

(g) the number of persons entered in the list maintained under section 71(1) on the final day of the reporting year to which the report relates,

(h) the steps taken by the authority to comply with the duty imposed by section 72(1),

(i) reasons for any failure to comply with that duty,

(j) the number of allotments on each allotment site that are accessible by a disabled person who has a physical impairment,

(k) the number of allotments on each allotment site adjusted by the authority during the reporting year to meet the needs of a tenant who is a disabled person who has a physical impairment,

(l) the number of persons entered in the list maintained under section 71(1) during the reporting year whose request under subsection (1) of section 70 included information under subsection (3) of that section,

(m) the income received, and expenditure incurred, by the authority in connection with allotment sites, and

(n) such other information as may be prescribed.

(3) The authority must publish the annual allotments report on a website or by other electronic means.

(4) In this section, “reporting year” means—
   (a) the period of a year beginning with any day occurring during the period of a year after the day on which this section comes into force, and
   (b) each subsequent period of a year.

80 Power to remove unauthorised buildings from allotment sites

(1) This section applies where—
   (a) a building or other structure that is not permitted by, or does not comply with, a provision of regulations made under section 73(1) is erected on an allotment site, and
   (b) at the time the building or other structure was erected or, as the case may be modified, regulations made under section 73(1) prohibited such erection or modification.

(2) The local authority within whose area the allotment site is situated may—
   (a) remove the building or other structure from the allotment site,
(b) dispose of the materials that formed the building or other structure as it thinks fit, and
(c) recover the cost of the removal, and the disposal of the materials, of the building or other structure from a liable tenant.

(3) “Liable tenant” means, where the building or other structure was erected by or on behalf of a tenant—

(a) on the tenant’s allotment, that tenant, or

(b) on other land as mentioned in paragraph (b) of the definition of “allotment site” in section 69, and the building or other structure on that other land was erected—

(i) without the consent of the tenants of other allotments on the allotment site of which that other land forms part, that tenant, or

(ii) with the consent of any tenants of such other allotments, that tenant and any other tenant who consented.

(4) A liable tenant mentioned in subsection (3)(b)(ii) is jointly and severally liable with other liable tenants mentioned in that subsection.

(5) Where a local authority proposes to take any action in exercise of a power conferred by subsection (2), it must—

(a) no later than one month before taking such action, give notice in writing of the authority’s proposed action to each tenant who would be affected by such action,

(b) allow each such tenant the opportunity to make representations to the authority in relation to the proposed action,

(c) take account of any representations received by it by virtue of paragraph (b), and

(d) give notice in writing to each tenant mentioned in paragraph (a) to inform them of the authority’s decision in relation to the proposed action and, if applicable, the date on which the proposed action is to take place.

(6) If the authority decides to take the proposed action, any tenant who was notified under subsection (5)(a) may appeal to the sheriff against the decision of the authority before the expiry of the period of 21 days beginning with the day on which the notice mentioned in subsection (5)(d) is given.

(7) The Scottish Ministers may by regulations make further provision for or in connection with the procedure to be followed in relation to the exercise of the powers conferred by subsection (2).

(8) In the case where an allotment site is leased by a local authority, the authority may not exercise a power conferred by subsection (2) if such exercise would contravene a provision of the lease.

81 Delegation of management of allotment sites

(1) A person who represents the interests of the tenants of each allotment on an allotment site may make a request to the local authority that owns or leases the site that the authority delegate to the person any of the authority’s functions mentioned in subsection (2) in relation to the allotment site.

(2) The functions are—

(a) the functions under—
(i) section 70(6) (request to lease allotment),
(ii) section 71(1) (duty to maintain list),
(iii) section 74(9) and (10) (display and copies of allotment site regulations),
(iv) section 82 (promotion and use of allotments: expenditure),

(b) the giving of notice under—
   (i) section 83(1) (notice of termination of lease of allotment or allotment site),
   (ii) section 84(2)(c) (notice of resumption),
   (iii) section 85(2) (notice of termination: sublease by local authority).

(3) A request under subsection (1) must—

(a) be made in writing, and

(b) include—
   (i) the name and address of the person making the request, and
   (ii) such other information as may be prescribed.

(4) The authority may within 14 days of receiving the request, ask—

(a) the person making the request for such further information as it considers necessary in connection with the request, and

(b) that the information be supplied within 14 days of the authority’s request.

(5) The authority must give notice to the person making the request of its decision to agree to or refuse the request—

(a) where further information is requested by the authority under subsection (4), before the expiry of 56 days beginning with the date on which the request is received by the authority, or

(b) in any other case, before the expiry of 28 days beginning with the date on which the request is received by the authority.

(6) If the decision is to refuse the request, the notice referred to in subsection (5) must include reasons for the authority’s decision.

(7) If the decision is to agree to the request, the authority must decide—

(a) which of its functions that are mentioned in subsection (2) are to be delegated to the person making the request, and

(b) the timing of any review of the delegation of those functions by the authority.

(8) Before making a decision under subsection (7), the authority must consult the person who made the request.

(9) The authority may recall the delegation of any of its functions delegated under this section if—

(a) it considers that the person to whom the functions are delegated is not satisfactorily carrying out a function, or

(b) there is a material disagreement between the authority and the person to whom the functions are delegated about the carrying out of the functions.
(10) In the case where an allotment site is leased by a local authority, the authority must not delegate any functions under this section to the person making the request where the delegation would contravene a provision of the lease.

82 Promotion and use of allotments: expenditure
A local authority may incur expenditure for the purpose of—

(a) the promotion of allotments in its area, and

(b) the provision of training by or on behalf of the authority to tenants, or potential tenants, of allotments about the use of allotments.

Termination of lease

83 Termination of lease of allotment or allotment site
(1) A local authority may terminate the lease of the whole or part of an allotment or an allotment site on a specified date if the authority has given the tenant of the allotment or the allotment site notice of the termination in accordance with subsection (2).

(2) Notice is given in accordance with this subsection if—

(a) it is in writing, and

(b) it is given—

(i) if subsection (3) applies, at least one month before the specified date,

(ii) if subsection (4) applies, at least one year before the specified date.

(3) This subsection applies if, following the expiry of the period of 3 months beginning with the date on which the lease commenced, the tenant has failed to a material extent to comply with any provision of the regulations made under section 73(1).

(4) This subsection applies if the Scottish Ministers have consented to—

(a) the disposal of the allotment site subject to the lease or, as the case may be, the allotment site on which the allotment is situated under section 75,

(b) the change of use of the allotment site subject to the lease or, as the case may be, the allotment site on which the allotment is situated under section 75 or 76,

(c) to the renunciation by the local authority of its lease of the allotment site subject to the lease or, as the case may be, the allotment site on which the allotment is situated under section 76.

(5) Before sending any notice under subsection (1), a local authority must—

(a) no later than one month before giving any notice under that subsection, write to the tenant to inform the tenant that the authority is proposing to give notice of termination under that subsection and give reasons for the authority’s proposal,

(b) allow the tenant the opportunity to make representations to the authority in relation to the authority’s proposal,

(c) take account of any representations received by it by virtue of paragraph (b), and

(d) either—
(i) write to the tenant to inform the tenant that the authority no longer proposes
to give notice under subsection (1) for the reasons referred to in paragraph
(a), or
(ii) give notice under subsection (1) for those reasons.

(6) A tenant who is aggrieved by a notice given under subsection (1) may appeal to the
sheriff within 21 days of the date of the notice.

(7) If subsection (4) applies, an appeal under subsection (6) may be made on a point of law
only.

(8) A notice under subsection (1) has no effect until—

(a) the period within which an appeal may be made under subsection (6) has elapsed
without an appeal being made, or
(b) where such an appeal is made, the appeal is withdrawn or finally determined.

(9) The decision of the sheriff on appeal under this section is final.

(10) The Scottish Ministers may by regulations make further provisions as to the procedure
to be applied in connection with the exercise of the power conferred by subsection (1).

(11) Where, under subsection (2) of section 85, a local authority sends a copy of the notice
mentioned in that subsection to a person, the authority need not also send a notice under
subsection (1) of this section.

(12) In this section, “specified” means specified in the notice under subsection (1).

84 Resumption of allotment or allotment site by local authority

(1) This section applies where a person leases an allotment or an allotment site from a local
authority.

(2) Despite any provision of the lease, the authority may resume possession of the whole or
part of the allotment or the allotment site if—

(a) the resumption is required for building, mining or any other industrial purpose or
for the construction, maintenance or repair of any roads or sewers necessary in
connection with any such purpose,
(b) the Scottish Ministers have consented to the resumption, and
(c) the authority has given the tenant notice of the resumption in accordance with
subsection (3).

(3) Notice is given in accordance with this subsection if—

(a) it is in writing,
(b) it is given at least three months before the date on which the resumption is to take
place, and
(c) it specifies that date.

(4) The Scottish Ministers may make the granting of consent mentioned in subsection (2)(b)
subject to such conditions as they think fit.

(5) The Scottish Ministers may not grant consent unless they are satisfied that—
(a) the tenant of the allotment, or (as the case may be) the tenant of each allotment on the allotment site, is to be offered a lease of another allotment in the area of the local authority within a reasonable distance of the allotment site or the allotment site on which the allotment is situated, or

(b) the provision of the same or another allotment for the tenant is unnecessary or not reasonably practicable.

Notice of termination: sublease

85 Notice of termination: sublease

(1) Subsection (2) applies where—

(a) a local authority leases an allotment site from another person,

(b) the authority has granted a sublease of the allotment site or an allotment on the allotment site to a person, and

(c) the authority receives notice of termination of the lease of the allotment site.

(2) The authority must—

(a) send a copy of the notice to—

(i) the subtenant of the allotment site, or

(ii) the subtenant of each allotment on the allotment site, and

(b) inform each subtenant to whom a copy of the notice is sent under paragraph (a) that the effect of the notice is that the subtenant’s sublease is terminated on the date specified in the notice as the date on which the lease of the allotment site is terminated.

86 Notice of termination: sublease by allotment association

(1) Subsection (2) applies where—

(a) the local authority gives a notice under section 83(1), 84(2) or 85(2)(a)(i) to the tenant of an allotment site,

(b) allotments on the allotment site are sublet to another person (“subtenant”) by the tenant, and

(c) the tenant of the allotment site represents the interests of each subtenant.

(2) The tenant must—

(a) send a copy of the notice to each subtenant, and

(b) inform each subtenant that the effect of the notice is that the subtenant’s sublease is terminated on the date specified in the notice as the date on which the lease of the allotment site is terminated or, as the case may be, the date on which the allotment site is resumed.

Tenants’ rights

87 Sale of surplus produce

(1) A tenant of an allotment may sell (other than with a view to making a profit) produce grown by the tenant on the allotment if the produce falls within a prescribed description.
(2) Before making regulations under subsection (1), the Scottish Ministers must consult each local authority and any other person appearing to the Scottish Ministers to have an interest.

88 Removal of items from allotment by tenant

5 (1) A tenant of an allotment may remove from the allotment any of the items mentioned in subsection (2) before the expiry or termination of the tenant’s lease.

(2) The items are—
(a) any buildings (or other structures) erected by or on behalf of the tenant,
(b) any produce, trees or bushes—
   (i) planted by or on behalf of the tenant, or
   (ii) acquired by the tenant.

Compensation

89 Compensation for disturbance

(1) Subsection (2) applies where—
(a) the lease of the whole or part of an allotment is terminated—
   (i) by notice under section 83(2)(b)(ii),
   (ii) as a result of a notice of termination of the lease of the allotment site on which the allotment is situated under section 83(2)(b)(ii),
   (iii) as a result of resumption of the allotment, or the allotment site on which the allotment is situated, under section 84(2), or
   (iv) as a result of a notice mentioned in section 85(1)(c), and
(b) the tenant of the allotment suffers damage caused by disturbance of the enjoyment of the tenant’s allotment as a result of the termination of the lease.

(2) The local authority in whose area the allotment is situated is liable to compensate a person referred to in subsection (1)(b).

(3) The minimum amount of compensation payable under subsection (2) is—
(a) where the termination of the lease relates to the whole of an allotment, an amount equal to one year’s rent of the allotment payable immediately before the termination of the lease,
(b) where the termination of the lease relates to part of an allotment, a proportion of the amount mentioned in paragraph (a) that is in the same proportion that the part of the allotment bears to the whole of the allotment.

(4) The Scottish Ministers must by regulations make further provision for or in connection with compensation payable under subsection (2).

(5) Regulations under subsection (4) must include, in particular, provision about the procedure to be followed in—
(a) determining whether the local authority is liable to pay compensation under subsection (2), and
(b) subject to subsection (3), assessing the amount of compensation for which the local authority is liable in cases where the lease does not make such provision.

(6) Before making regulations under subsection (4), the Scottish Ministers must consult—

(a) each local authority, and

(b) any other person appearing to the Scottish Ministers to have an interest.

(7) A person referred to in subsection (1)(b) who is aggrieved about any decision by the local authority in connection with the duty imposed by subsection (2) may appeal to the sheriff within 21 days of receiving notice of the authority’s decision.

90 Compensation for deterioration of allotment

(1) This section applies where—

(a) the lease of a person (“the tenant”) of an allotment has expired or been terminated, and

(b) it appears to the local authority that leased the allotment to the tenant that—

(i) the allotment deteriorated during the tenant’s lease of the allotment, and

(ii) the deterioration was caused by the fault or negligence of the tenant.

(2) The tenant is liable to pay compensation for the deterioration to the local authority.

(3) The amount of compensation payable is the cost of remedying the deterioration.

(4) The Scottish Ministers must by regulations make further provision for or in connection with compensation payable under subsection (2).

(5) Regulations under subsection (4) must include, in particular, provision about the procedure to be followed—

(a) in determining whether the tenant is liable to pay compensation under subsection (2), and

(b) in accordance with subsection (3), assessing the amount of compensation for which the tenant is liable in cases where the lease does not make such provision.

(6) Before making regulations under subsection (3), the Scottish Ministers must consult—

(a) each local authority, and

(b) any other person appearing to the Scottish Ministers to have an interest.

(7) A tenant who is aggrieved about any decision by the local authority in connection with the duty imposed by subsection (2) may appeal to the sheriff within 21 days of receiving notice of the authority’s decision.

91 Compensation for loss of crops

(1) This section applies where—

(a) the whole or part of an allotment is resumed under section 84(2), and

(b) the tenant of the allotment suffers loss of any crop as a result of the resumption.

(2) The local authority that resumed the allotment under section 84(2) is liable to compensate the tenant.
(3) The Scottish Ministers must by regulations make further provision for or in connection with compensation payable under subsection (2).

(4) Regulations under subsection (3) must include, in particular, provision about the procedure to be followed in—

(a) determining whether the local authority is liable to pay compensation under subsection (2), and

(b) assessing the amount of compensation for which the local authority is liable in cases where the lease does not make such provision.

(5) Before making regulations under subsection (3), the Scottish Ministers must consult—

(a) each local authority, and

(b) any other person appearing to the Scottish Ministers to have an interest.

(6) A tenant who is aggrieved about any decision by the local authority in connection with the duty imposed by subsection (2) may appeal to the sheriff within 21 days of receiving notice of the authority’s decision.

92 Set-off of compensation etc.

(1) Where a local authority is liable to pay compensation to a former tenant under section 89(2) or 91(2), the local authority may deduct from the compensation any sum that the former tenant is liable to pay to the local authority in connection with the lease that was terminated.

(2) Where a tenant is liable to pay any sum to the local authority in connection with a lease of an allotment, the tenant may deduct from the sum any compensation that the local authority is liable to pay to the tenant under section 89(2) or 91(2).

Interpretation of Part 7

93 Interpretation of Part 7

In this Part—

“allotment” has the meaning given by section 68,

“allotment site” has the meaning given by section 69,

“disabled person” means a person who is disabled for the purposes of the Equality Act 2010,

“food-growing strategy” has the meaning given by section 77(3),

“lease” and “leased” include “sublease” and “subleased”,

“prescribed” means prescribed by the Scottish Ministers by regulations,

“tenant” includes “subtenant”.

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Community Empowerment (Scotland) Bill
Part 7—Allotments
Schemes for reduction and remission of non-domestic rates

(1) After section 3 of the Local Government (Financial Provisions etc.) (Scotland) Act 1962, insert—

“3A Schemes for reduction and remission of rates

(1) This section applies in relation to rates leviable for the year 2015-16 and any subsequent year.

(2) A rating authority may, in accordance with a scheme made by it for the purposes of this section, reduce or remit any rate leviable by it in respect of lands and heritages.

(3) Any reduction or remission under subsection (2) ceases to have effect at such time as may be determined by the rating authority.

(4) A scheme under subsection (2) may make provision for the rate to be reduced or remitted by reference to—

(a) such categories of lands and heritages as may be specified in the scheme,
(b) such areas as may be so specified,
(c) such activities as may be so specified,
(d) such other matters as may be so specified.

(5) Any reduction or remission under subsection (2) ceases to have effect on a change in the occupation of the lands and heritages in respect of which it was granted.

(6) Before exercising the power conferred by subsection (2), or amending a scheme made under that subsection, the rating authority must have regard to the interests of persons liable to pay council tax set by the authority.”.

(2) In Schedule 12 to the Local Government Finance Act 1992 (payments to local authorities by the Scottish Ministers), in paragraph 10(3)(a)—

(a) in sub-paragraph (iii), after “Provisions” insert “etc.”, and
(b) after that sub-paragraph insert—

“(iiiia)section 3A (schemes for reduction and remission of rates) of that Act;”.

(3) In paragraph 2 of Schedule 1 (rules for the calculation of non-domestic rating contributions) to the Non-Domestic Rating Contributions (Scotland) Regulations 1996 (S.I. 1996/3070), in sub-paragraph (c), after “section” insert “3A or”.

(4) Paragraph 10(4) of Schedule 12 to the Local Government Finance Act 1992 does not apply in relation to the amendment made by subsection (3).
PART 9
GENERAL

95 Guidance under Parts 2 and 6: publication
The Scottish Ministers must publish, in such manner as they think fit, any guidance issued by them relating to Part 2 or Part 6.

96 Subordinate legislation
(1) Any power of the Scottish Ministers to make an order or regulations under this Act includes a power to make—
   (a) different provision for different purposes,
   (b) incidental, supplementary, consequential, transitional or transitory provision or savings.
(2) An order under—
   (a) section 72(4) or (5), or
   (b) section 97(1) containing provisions which add to, replace or omit any part of the text of an Act,
   is subject to the affirmative procedure.
(3) Regulations under section 12(1) are subject to the affirmative procedure.
(4) Any other orders and regulations under this Act are subject to the negative procedure.
(5) This section does not apply to—
   (a) regulations under section 73(1), or
   (b) orders under section 99(2).

97 Ancillary provision
(1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitional or transitory provision or savings as they consider necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
(2) An order under this section may modify any enactment (including this Act), instrument or document.

98 Minor and consequential amendments and repeals
(1) Schedule 4 contains minor amendments and amendments consequential on the provisions of this Act.
(2) The enactments mentioned in the first column of schedule 5 (which include enactments that are spent) are repealed to the extent set out in the second column.

99 Commencement
(1) This section, sections 95 to 97 and section 100 come into force on the day after Royal Assent.
(2) The remaining provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may include transitional or transitory provision or savings.

5 100 Short title

The short title of this Act is the Community Empowerment (Scotland) Act 2015.
SCHEDULE 1
(introduced by section 4(1))

COMMUNITY PLANNING PARTNERS

The board of management of a regional college designated by order under section 7A of the Further and Higher Education (Scotland) Act 2005 which is situated in the area of the local authority

The chief constable of the Police Service of Scotland

The Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978 whose area includes, or is the same as, the area of the local authority

Highlands and Islands Enterprise where the area within which, or in relation to which, it exercises functions in accordance with section 21(1) of the Enterprise and New Towns (Scotland) Act 1990 includes the whole or part of the area of the local authority

Any integration joint board established by virtue of section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014 to which functions of the local authority and the Health Board are delegated

A National Park authority, established by virtue of a designation order under section 6 of the National Parks (Scotland) Act 2000, for a Park whose area includes the whole or part of the area of the local authority

A regional strategic body specified in schedule 2A to the Further and Higher Education (Scotland) Act 2005 which is situated in the area of the local authority

Scottish Enterprise

The Scottish Environment Protection Agency

The Scottish Fire and Rescue Service

Scottish Natural Heritage

The Scottish Sports Council

The Skills Development Scotland Co. Limited

A regional Transport Partnership established by virtue of section 1(1)(b) of the Transport (Scotland) Act 2005 whose region includes, or is the same as, the area of the local authority

VisitScotland

SCHEDULE 2
(introduced by section 16(1))

PUBLIC SERVICE AUTHORITIES

The board of management of a college of further education (those expressions having the same meanings as in section 36(1) of the Further and Higher Education (Scotland) Act 1992)

A Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978

Highlands and Islands Enterprise
A local authority

A National Park authority established by virtue of a designation order under section 6 of the National Parks (Scotland) Act 2000

The Police Service of Scotland

Scottish Enterprise

The Scottish Environment Protection Agency

The Scottish Fire and Rescue Service

Scottish Natural Heritage

A regional Transport Partnership established by virtue of section 1(1)(b) of the Transport (Scotland) Act 2005

SCHEDULE 3
(introduced by section 51(1))

RELEVANT AUTHORITIES

The board of management of a college of further education (those expressions having the same meanings as in section 36(1) of the Further and Higher Education (Scotland) Act 1992)

The British Waterways Board

The Crofting Commission

A Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978

Highlands and Islands Enterprise

A local authority

A National Park authority established by virtue of a designation order under section 6 of the National Parks (Scotland) Act 2000

The Scottish Court Service

Scottish Enterprise

The Scottish Environment Protection Agency

The Scottish Fire and Rescue Service

The Scottish Ministers

Scottish Natural Heritage

The Scottish Police Authority

Scottish Water

A Special Health Board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978

A regional Transport Partnership established by virtue of section 1(1)(b) of the Transport (Scotland) Act 2005
Local Government Act 1992

1 In section 1 of the Local Government Act 1992 (publication of information as to standards of performance), in subsection (1)(b), for the words “Part 2 (community planning) of the Local Government in Scotland Act 2003 (asp 1)” substitute “Part 2 (community planning) of the Community Empowerment (Scotland) Act 2015”.

Land Reform (Scotland) Act 2003

2 (1) The Land Reform (Scotland) Act 2003 is amended in accordance with this paragraph.

(2) In section 37 (registration of interest in land)—

(a) after subsection (7)(b) insert “and

(c) any notice sent under section 44A,”,

(b) in subsection (11)(c), for the words “not registrable land” substitute “excluded land as defined in section 33(2) above”,

(c) in subsection (18), after paragraph (a), insert—

“(aa) where the decision is that such an interest is to be entered in the Register, contain information about the duties imposed under section 44A,”,

(d) in subsection (19), after “above” insert “, including that subsection as modified by section 39(2)(b) below,”.

(3) In section 51 (exercise of right to buy: approval of community and consent of Ministers)—

(a) in subsection (2)(a)(i), the words “conducted by the community body” are repealed, and

(b) in subsection (6)—

(i) in paragraph (a), after “receipt” insert “by Ministers”,

(ii) in that paragraph, the words “conducted by the body” are repealed, and

(iii) in paragraph (b), the words “conducted by those bodies” are repealed.

(4) In section 52 (ballot procedure)

(a) in subsection (3)—

(i) for the words “community body which conducts a ballot” substitute “ballotter appointed under section 51A”,

(ii) after “notify” insert “Ministers, the community body, the owner of the land to which the ballot relates and any creditor in a standard security with a right to sell the land of”,

(iii) the word “and” immediately following paragraph (c) is repealed,

(iv) after paragraph (d) insert—

“(e) the wording of that proposition, and...
(f) any information provided by the ballotter to persons eligible to vote in the ballot.”.

(v) the words “to Ministers” are repealed, and

(b) after subsection (4) insert—

“(5) Within 7 days of receiving notification under subsection (3) above, Ministers may—

(a) require the ballotter to provide such information relating to the ballot as they think fit,

(b) require the community body to provide such information relating to any consultation with those eligible to vote in the ballot undertaken during the period in which the ballot was carried out as Ministers think fit.

(6) The validity of anything done under this Part of this Act is not affected by any failure by a ballotter to comply with the time limit specified in subsection (4).”.

(5) In section 98 (general and supplementary provisions)—

(a) in subsection (5)—

(i) for “or 94” substitute “94 or 97E(4)”, and

(ii) after “above” insert “or regulations made under section 34(A1)(b) or (4A), 97C(2), (3) or (4), 97F(6) or 97N(1) or (3) above”, and

(b) in subsection (8), for “and 52(3)” substitute “, 52(3), 97G(7) and (9) and 97J(4)”.

20 SCHEDULE 5
(introduced by section 98(2))

REPEALS

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<tr>
<td>Land Reform (Scotland) Act 2003</td>
<td>In section 38(1), paragraph (a) and, in paragraph (b), the word “substantial” where it appears in each of sub-paragraphs (i) and (ii).</td>
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<td>Section 40(4)(g)(iv).</td>
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<td>Enactment</td>
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<td>In section 50, subsection (2)(b).</td>
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<td>In section 51, subsection (3)(a).</td>
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<td>In section 52, subsection (2).</td>
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<td>In section 61(3), the words from “or” to “person”.</td>
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<td>In section 62, subsections (5), (6) and (8) and, in subsection (7), the words “within 4 weeks of the hearing of the appeal”.</td>
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<td>In section 98(5), the word “33”.</td>
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Community Empowerment (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about national outcomes; to confer functions on certain persons in relation to services provided by, and assets of, certain public bodies; to amend Part 2 of the Land Reform (Scotland) Act 2003; to enable certain bodies to buy abandoned or neglected land; to make provision for registers of common good property and about disposal and use of such property; to restate and amend the law on allotments; to enable local authorities to reduce or remit non-domestic rates; and for connected purposes.

Introduced by: John Swinney
Supported by: Derek Mackay, Paul Wheelhouse
On: 11 June 2014
Bill type: Government Bill
COMMUNITY EMPOWERMENT (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Community Empowerment (Scotland) Bill introduced in the Scottish Parliament on 11 June 2014:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government statement on legislative competence; and
- the Presiding Officer’s statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 52–PM.
EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

OVERVIEW

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

4. The Bill comprises 9 Parts with 5 schedules:
   - **Part 1** places a duty on Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, which builds on the “Scotland Performs” framework.
   - **Part 2** places community planning partnerships on a statutory footing and imposes duties on them around the planning and delivery of local outcomes. Schedule 1 lists the bodies which are to be community planning partners. This Part replaces provision in Part 2 of the Local Government in Scotland Act 2003, which is repealed by schedule 5.
   - **Part 3** provides a mechanism for communities to have a more proactive role in having their voices heard in how services are planned and delivered. Schedule 2 lists “public service authorities” to whom participation requests can be made.
   - **Part 4** amends Part 2 of the Land Reform (Scotland) Act 2003, extending the community right to buy to all of Scotland, and introduces a new Part 3A to that Act to make provision for community bodies to purchase neglected and abandoned land where the owner is not willing to sell that land.
   - **Part 5** provides community bodies a right to request to purchase, lease, manage or use land and buildings belonging to local authorities, certain Scottish public bodies or Scottish Ministers. The list of “relevant authorities” affected is given in schedule 3.
   - **Part 6** places a statutory duty on local authorities to establish and maintain a register of all property held by them for the common good. It also requires local authorities
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

to publish their proposals and consult community bodies before disposing of or changing the use of common good assets.

- **Part 7** updates and simplifies legislation on allotments. It requires local authorities to take reasonable steps to provide more allotments if waiting lists exceed certain trigger points and ensures appropriate protection for local authorities and plotholders. This replaces the provisions of the Allotments (Scotland) Acts 1892, 1922 and 1950, which are repealed in their entirety by schedule 5, and some provisions of the Land Settlement (Scotland) Act 1919.

- **Part 8** provides for a new power which will allow councils to create and fund their own localised business rate relief schemes to better reflect local needs and support communities. It does this by inserting a new section into the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

- **Part 9** makes general provisions in relation to the Bill, including provision about subordinate legislation, ancillary provision and commencement. Schedule 4 makes minor and consequential amendments to other legislation, and schedule 5 provides for repeals.

**COMMENTARY ON SECTIONS**

**Part 1: National outcomes**

5. The Bill places a duty on the Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland. They must also regularly and publicly report progress towards those outcomes. These duties do not require governments to use a particular model of purpose, targets, outcomes and indicators. They require national outcomes to be determined, but there is flexibility as to how these may be presented and measured.

**National outcomes**

6. Subsection (1) of section 1 provides that the Scottish Ministers must determine national outcomes. National outcomes are outcomes for Scotland that result from or are contributed to by the devolved functions carried out by the persons set out in subsection (1)(a) to (c). The definitions are wide to allow the inclusion of all organisations that could be considered as “public bodies”, and other organisations that carry out public functions, such as private or third sector bodies who are contracted to deliver public services. The persons included in the category “Scottish public authority” include the Scottish Ministers and local authorities.

7. Subsection (2) requires the Scottish Ministers to consult “such persons as they consider appropriate” before determining the national outcomes. No list is specified, but since the national outcomes will have an impact on the devolved functions of all public bodies, it is expected that Ministers will want to consult widely.

8. Subsections (4) to (6) impose a duty on those persons set out in subsection (1)(a) to (c) to “have regard to” the national outcomes in carrying out their devolved functions. “Have regard to” means that all of these bodies should be consistent with the national outcomes in what they are trying to achieve in carrying out their devolved functions.
Review of national outcomes

9. Subsection (1) of section 2 provides that the Scottish Ministers may review the national outcomes at any time. This is subject to subsection (2) which requires that, once the Scottish Ministers have published national outcomes, they must begin to review them before the expiry of 5 years from publication at a minimum. It will be for the Scottish Ministers to decide how frequently within that 5 year period they wish to review the national outcomes.

10. Subsection (1) is also subject to subsection (3) which provides that the Scottish Ministers must begin further reviews of the national outcomes every 5 years at a minimum from the date of publication of revised national outcomes or republished national outcomes. Subsection (4) provides that the Scottish Ministers may revise the national outcomes following a review. The national outcomes must then either be published as revised or, where no changes are made, they must be republished. In either case, this will mark the beginning of the 5 year period under subsection (3).

11. Subsection (5) requires that the Scottish Ministers consult with “such persons as they consider appropriate” when reviewing the national outcomes and that any changes made must be published.

Reports

12. Section 3 requires that the Scottish Ministers must publicly report on progress towards achieving the national outcomes, whether that is positive or negative progress.

13. This does not necessarily require a written report, although it may do. The format of the reporting will be for the Scottish Ministers to decide. The current system, “Scotland Performs”, uses a website showing upward and downward arrows to indicate positive or negative progress: http://www.scotland.gov.uk/About/Performance/scotPerforms/indicator.

Part 2: Community planning

14. This Part replaces provisions on community planning in Part 2 of the Local Government in Scotland Act 2003. It provides a statutory basis for community planning partnerships, and places duties on them around the planning and achievement of local outcomes. It also focuses responsibilities on community planning partners to support each partnership to fulfil its duties.

Community planning

15. Section 4 defines “community planning”, “community planning partners” and “community planning partnerships”. Community planning is planning that is carried out with a view to improving the achievement of outcomes in relation to the area of a local authority resulting from, or contributed to by, the provision of services delivered by or on behalf of the community planning partners. Subsection (3) states that these local outcomes must be consistent with national outcomes which Scottish Ministers determine under section 1(1), or as revised under section 2(4)(a). The persons listed in schedule 1, together with local authorities, are the community planning partners. The community planning partnership comprises these partners when they participate together in community planning. Subsection (5) requires a community
planning partnership to make all reasonable efforts to secure the participation of appropriate community bodies in community planning, and to take steps to enable them to participate to the extent they wish to.

16. Subsection (6) enables Scottish Ministers to amend the list of community planning partners in schedule 1 by regulations. Subsection (7) states that the regulations may provide that a community planning partner may participate in community planning for a specific purpose, where participation is required in relation to some of that partner’s functions but not others.

**Local outcomes improvement plan**

17. Under section 5 each community planning partnership must prepare a local outcomes improvement plan. To that end the community planning partnership must identify the local outcomes to which it is to give priority with a view to improving the achievement of the outcome. The plan will provide a description of the improvement in local outcomes that is sought and the timeframe for achieving the improvement (subsection (2)). Subsection (3) requires the partnership to consult such community bodies and other persons as it considers appropriate when it prepares its plan. Subsection (4) sets out what a partnership must take account of before it publishes its final plan. This includes representations it receives as a result of the consultations with community bodies and other persons carried out in accordance with subsection (3). The partnership must also take account of the needs and circumstances of people and communities in the area.

18. Section 6 requires that the community planning partnership must monitor progress in improving the achievement of local outcomes referred to in its local outcome improvement plan. It must keep the plan under review to determine whether the plan itself is still appropriate and must publish any revised plan which results from such a review.

19. Each partnership must prepare and publish an annual report of the progress made in improving the achievement of local outcomes referred to in its local outcome improvement plan, in accordance with section 7. The period which these reports must cover is the year beginning on 1 April, unless Ministers specify another date for the year to start in a direction to the partnership.

**Governance**

20. Section 8 places governance responsibilities on specified community planning partners for the purpose of effective community planning. Under subsection (1)(a) the specified partners must facilitate community planning and under subsection (1)(b) the specified partners must take reasonable steps to ensure that the partnership operates efficiently and effectively. Subsection (2) lists the persons to whom these governance duties apply. Subsection (3) enables Ministers to modify this list by regulations.

**Duties on community planning partners**

21. Subsections (2) to (5) of section 9 describe how the community planning partners, listed in schedule 1, must participate in community planning. These responsibilities include cooperating with other community planning partners in carrying out community planning
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

(subsection (2)) and taking account of the published local outcomes improvement plan as part of its work (subsection (5)). They also include committing appropriate resources to the achievement of local outcomes set out in that plan and for the purpose of securing the participation of relevant community bodies in community planning (subsection (3)). Each community planning partner must provide the partnership with such information about the local outcomes in the plan which the partnership may request (subsection (4)). Section 9(1) enables a partnership to agree with a partner a reduction in the extent to which that partner is expected to comply with its duties to that partnership.

Guidance by Scottish Ministers

22. Section 10 provides that community planning partnerships and partners must carry out their functions in relation to community planning in accordance with any relevant guidance issued by the Scottish Ministers. The Scottish Ministers must consult such persons as they think fit before they issue any such guidance.

Duty to promote community planning

23. Section 11 requires the Scottish Ministers to promote community planning when discharging any function which might affect community planning, or a community planning partner. It reproduces a provision previously in section 16(8) of the Local Government in Scotland Act 2003.

Establishment of corporate bodies

24. Section 19 of the Local Government in Scotland Act 2003 gives Scottish Ministers a power to establish corporate bodies to co-ordinate community planning. As a body corporate, a community planning partnership could, for example, hold its own budgets and assets and employ its own staff.

25. Section 12 of the Bill retains the option of incorporation in appropriate cases, by replacing the provisions of section 19 of the 2003 Act. Subsection (1) allows Scottish Ministers to establish a body corporate by regulations, following an application made by a local authority and at least one other community planning partner in the area. Any application must include information about the matters which are listed in subsection (2). Subsection (3) lists matters about the body corporate which Scottish Ministers can specify in any regulations they make. Subsection (4) allows the regulations to provide that the corporate body may discharge a function, even where another enactment specifies that as the function of another body or prevents the carrying out of that function by the corporate body.

Part 3: Participation requests

26. This Part sets out how a “community participation body” can make a request to a “public service authority” to participate in a process with a view to improving an outcome of a public service, and how public service authorities are to deal with such requests. The Bill provides the main structure of the approach, and there are powers for the Scottish Ministers to make regulations adding more detail about procedures to be followed, timescales, and information to be provided or published.
Community controlled body

27. Section 14 defines a “community-controlled body”. This can be a corporate body or unincorporated, but it must have a written constitution which:

- defines the community to which the body relates;
- provides membership rules which ensure the body is open to and controlled by members of that community, and that the majority of the members of the body are members of that community;
- sets out aims and purposes which include the promotion of a benefit for that community; and
- provides that any surplus funds or assets are to be used for the benefit of that community.

There are no restrictions on how a community may be defined for this purpose: it may be based, for example, on geographical boundaries, common interests, or shared characteristics of its members (such as ethnic background, disability, religion, etc.).

Community participation body

28. Section 15 defines a “community participation body”, which is the type of body which can make a participation request under section 17. A community participation body may be a community-controlled body, a community council, or a body designated by the Scottish Ministers. The Scottish Ministers may designate individual bodies as community participation bodies, or may designate a whole class of bodies, so that any body of that type will qualify as a community participation body. Subsection (3) states that where a trust is designated, the designated body will be the trustees, since a trust is not incorporated.

Public service authority

29. Schedule 2, introduced by section 16, lists the bodies to which a participation request can be made, to be known as “public service authorities”. This includes local authorities, Health Boards, and certain other Scottish public bodies. The public bodies selected are involved in providing or supporting local services. The list does not include, for example, boards which advise Ministers or which regulate certain professions.

30. The remainder of section 16 gives the Scottish Ministers a power to remove or amend any entry on the list, or to make an order designating other bodies or classes of bodies as public service authorities. Subsection (4) provides that persons may only be designated if they fall into the following categories:

- part of the Scottish Administration (which has the meaning given in sections 126(6) to (8) of the Scotland Act 1998);
- “Scottish public authorities with mixed functions or no reserved functions under the Scotland Act 1998” – this means that UK Government Departments and public bodies that deal with matters reserved to the UK Government cannot be included;
- companies wholly-owned by public service authorities.
Under subsection (9), when adding a person to the list, Scottish Ministers may exclude some of the services they provide from being subject to participation requests.

**Participation requests and the outcome improvement process**

31. Section 17 provides that a community participation body, or two or more bodies jointly, may make a participation request to a public service authority. This is a request to take part in a process established by the authority with a view to improving an outcome of a public service. Subsection (2) says that the request must focus on an outcome relating to a service provided by that authority, and the community participation body must explain why it considers it should be involved, what it can bring to the process (for example, members’ experience as users of the service), and what improvement it expects might be achieved as a result.

32. Section 18 gives the Scottish Ministers powers to make regulations setting out further detail on participation requests. Regulations can, in particular, cover how requests are to be made, how public service authorities should deal with them, and additional information to be provided in connection with requests.

33. Section 19 requires a public service authority to agree to or refuse any participation request it receives, and sets out in subsections (3) to (5) how the authority must make that decision. In addition to the reasons provided in the request, the authority must consider whether agreeing to the request would be likely to promote or improve economic development, regeneration, public health, social or environmental wellbeing, and any other benefits or matters the authority considers relevant. The authority must also take into account its responsibilities in relation to equal opportunities. It must agree to the request unless there are reasonable grounds for refusal. Subsection (6) requires the authority to give notice of its decision to the community participation body within a prescribed period, and if it refuses the request, it must give reasons for that refusal.

34. When a public service authority agrees to a participation request, the decision notice sent to the community participation body must, under section 20, describe how the outcome improvement process will work, how the body is expected to take part in the process, and whether and how any other person (including another body or another authority) will be involved. The authority may already have established a process with which the community participation body can join in, in which case the authority must say what stage the process has reached. If a new process is to be established as a result of the request, the community participation body has 28 days to comment on that new process, under section 21(2) and (3). The public service authority has a further 28 days to provide final details of that process, taking those representations into account, and must then (under section 23) establish the outcome improvement process within 90 days, and maintain it. The authority must publish information about the process if required to do so by regulations made under section 21(6). Section 24 provides that the public service authority may modify the process, following consultation with the community participation body. If it does so, it must publish information about the modification, if required to do so by regulations.

35. When an outcome improvement process has been completed, section 25 requires the public service authority to publish a report on the process. The report must summarise the outcome of the process, including whether the outcome to which it related has been improved,
and describe how the community participation body that made the request influenced the process and the outcomes. It must also explain how the authority will keep the community participation body and others informed about changes in the outcomes of the process and any other matters relating to the outcomes. Subsection (4) gives the Scottish Ministers power to make regulations setting out further detail about these reports and the information they are to contain.

36. Section 22 allows a public service authority to decline to consider a participation request, if a new request is made within 2 years about the same outcome relating to the same service. The new request may be declined whether it is made by the same community participation body as the previous request or by a different body.

Part 4: Community right to buy land (sections 27 to 47 – modifications of Part 2 of Land Reform (Scotland) Act 2003

Introduction


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

Nature of land in which community interest may be registered

39. Section 27 of the Bill amends section 33 of the 2003 Act. Section 33 of the 2003 Act sets out the land in which a community body may register an interest. It provides that an interest can be registered in “registrable land”, which is anything other than “excluded land”. “Excluded land” is designated in the Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2009 as land comprising the settlements listed in the order (which are all settlements of over 10,000 people). In this way, the community right to buy under the 2003 Act applies to community bodies representing rural communities.

40. Section 27(1)(a) of the Bill removes references to “registrable land” in section 33(1) of the 2003 Act which means that an interest can be registered in any land other than “excluded land”. As a result, community bodies will be able to register an interest in respect of land across Scotland, irrespective of the size of settlement.

41. Section 27(1)(b) of the Bill removes the power of the Scottish Ministers to define “excluded land” by order. It amends the definition of “excluded land” in section 33(2) of the 2003 Act to make reference to land consisting of the mineral rights to oil, coal, gas, gold or silver in which an interest cannot be registered if these rights are owned independently of the land.
42. Section 27(1)(d) of the Bill repeals subsections (3) to (7) of section 33 of the 2003 Act. Section 27(1)(c) inserts new subsection (2A) into section 33 of the 2003 Act which reflects the terms of the repealed subsection (6) to provide that a community interest may be registered in salmon fishings and mineral rights which are owned separately from the land to which those interests relate.

**Meaning of “community”**

43. Section 28 of the Bill modifies section 34 of the 2003 Act which defines a community body eligible to register an interest in land. Section 34 of the 2003 Act provides that a community body is a company limited by guarantee that meets certain criteria.

44. Section 28(2) of the Bill inserts subsection (A1) into section 34 of the 2003 Act. This extends the types of body which may be community bodies under Part 2 of the 2003 Act to include Scottish Charitable Incorporated Organisations (“SCIOs”) and any other type of body which Ministers specify in regulations. Section 28(2) also confers a power on Ministers to specify in regulations, and subsequently modify, any requirements which must be met by any such type of body.

45. Section 28(3)(c) of the Bill provides an additional requirement that must be satisfied for a company limited by guarantee to be a community body. The company’s articles of association must make provision for the minutes of meetings to be given to a person on request within 28 days of the request being made if that request is reasonable. The articles of association must also allow the community body to withhold information, provided that reasons are given for doing so.

46. Section 28(3)(d) of the Bill amends section 34(1)(h) of the 2003 Act to include reference to “Part 3A community bodies” which are provided for in the new Part 3A of the 2003 Act (inserted by section 48 of the Bill). This means that community bodies eligible to apply to purchase land under the new Part 3A of the 2003 Act are among the alternative bodies to which community bodies under Part 2 of the 2003 Act may pass their assets upon winding up in terms of their articles of association.

47. Section 28(4) of the Bill inserts new subsection (1A) into section 34 of the 2003 Act which sets out the provisions that a SCIO must include in its constitution for it to be a community body and so eligible to apply to register an interest in land under Part 2 of the 2003 Act.

48. Section 28(6) of the Bill inserts subsection (4A) into section 34 of the 2003 Act. This subsection gives Ministers the power to modify, by way of regulations, the criteria which must be met by companies limited by guarantee and SCIOs in order to be community bodies under Part 2 of the 2003 Act.

49. Section 28(6) of the Bill also inserts subsection (4B) into section 34 of the 2003 Act. This subsection gives Ministers the power to amend, by way of regulations, subsection (1) and the new subsection (A1) of section 35 of the 2003 Act (inserted by section 29 of the Bill) where Ministers have exercised the power contained in the new subsection (A1)(b) of section 34 of the 2003 Act to extend, by way of regulation, the types of bodies which may be eligible to be
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

community bodies under Part 2 of the 2003 Act. The power contained in subsection (4B) means that the prohibition on a community body modifying its articles of association, memorandum or constitution without the written consent of the Scottish Ministers can be amended to extend to any other kind of constitutive document which may apply to new types of body which may be community bodies as a result of the regulations made by Ministers under the new subsection (A1)(b) of section 34 of the 2003 Act.

50. Section 28(7) of the Bill amends subsection (5) of section 34 of the 2003 Act which provides for the use of postcode units in order to define the community that the community body represents. Section 28(7) of the Bill confers a power on Ministers to make regulations which prescribe other types of area with which a community may define itself.

Modification of memorandum, articles of association or constitution

51. Section 29 of the Bill amends section 35 of the 2003 Act which provides that a community body may not modify its memorandum or articles of association without Ministers’ consent whilst they hold a registered interest or own land purchased under Part 2 of the 2003 Act.

52. Section 29(2) of the Bill inserts subsection (A1) into section 35 of the 2003 Act which prohibits a community body from modifying its memorandum, articles of association or constitution without the consent of Ministers during a specified period prior to registration of an interest. Section 29(2) of the Bill also inserts subsection (A2) into section 35 of the 2003 Act which provides that the specified period starts with the day a community body submits an application for a registered interest in land and ends with the registration of interest in land, rejection of the application to register land, Ministers declining to consider the application under section 39(5) of the 2003 Act or withdrawal of the application by the community body. This means that the existing prohibition which applies whilst the interest is registered and throughout the time they own land purchased under Part 2 of the 2003 Act (in terms of subsection (1) of section 35 of the 2003 Act) is extended to the period prior to registration.

53. Section 29(3) of the Bill amends subsection (1) of section 35 of the 2003 Act to make reference to the “constitution” of a community body. This amendment takes account of the inclusion of SCIOs as bodies which may be community bodies.

Period for indicating approval under section 38 of the 2003 Act

54. Section 30 of the Bill amends section 38 of the 2003 Act which sets out the criteria which must be met before an application to register a community interest in land is approved by Ministers. Subsection (1)(d) of section 38 of the 2003 Act provides that there must be sufficient community support to justify the registration.

55. The word “substantial” is repealed in section 38(1) of the 2003 Act and so the requirement concerning community members having a substantial connection with the land that the community body is seeking to register an interest in will be amended to just refer to a connection with that land.
56. Section 30 of the Bill inserts new subsection (2A) into section 38 of the 2003 Act to preclude Ministers considering any community support that is dated earlier than 6 months before the date an application to register a community interest in land is received by Ministers.

**Procedure for late applications**

57. Section 31 of the Bill amends section 39 of the 2003 Act relating to the procedure for late applications. An application is deemed to be “late” when it is received by Ministers after the owner of the land to which an application relates has taken action to transfer the land but before missives are concluded, or an option to acquire is granted, in pursuance of that action.

58. Section 31(2) of the Bill rewords subsection (1) of section 39 of the 2003 Act which sets out the conditions which must be met in order for section 39 to apply.

59. Section 31(3) of the Bill inserts a new paragraph (aa) into section 39(2) of the 2003 Act. The new paragraph allows Ministers to request further information from the owner of the land or a creditor in a standard security with the right to sell the land before the end of the 7-day period following the landowner or the creditor giving their views on the application under section 37(5) of the 2003 Act. The owner of the land or the creditor must provide the information within 7 days of receipt of the request. This information is requested to ensure that Ministers have the necessary evidence on which to decide whether the application is “late”.

60. Section 31(3)(b) of the Bill modifies subsection (2)(b)(ii) of section 39 of the 2003 Act to extend the time in which Ministers have to make a decision on whether the interest should be registered in the case of a “late” application where further information is requested. Where Ministers request further information, this period will be 44 days instead of 30 days.

61. Section 31(4) of the Bill amends subsection (3) of section 39 of the 2003 Act which sets out matters on which Ministers must be satisfied, in addition to the matters set out in section 38, before approving a “late” application. Section 31(4) of the Bill removes the requirement to show “good reasons” why an application was not submitted prior to the land coming on the market and replaces it with a requirement that such relevant work as Ministers consider reasonable was carried out by a person or such relevant steps as Ministers consider reasonable were taken by a person. Section 31(9) of the Bill inserts a new subsection (6) into section 39 of the 2003 Act to define “relevant work” and “relevant steps”.

62. Section 31(4) of the Bill also inserts paragraph (aa) into section 39(3). This sets out the timescales in which the relevant work or steps must have been taken. It is for Ministers to determine whether the relevant work or steps were carried out sufficiently in advance of the landowner taking action with a view to selling the land or giving notice that a transfer was proposed under section 48(1). The new paragraph (aa) also provides that the relevant work or steps undertaken must be in relation to the land to which the application relates or other land being used for the same purposes as the land to which the application relates. The relevant work or steps are to have been carried out by the community body or by another person with a view to the application being made by the community body. The definitions of “relevant work” and “relevant steps” are inserted as new subsection (6) of section 39 of the 2003 Act by section 31(9) of the Bill.
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63. Section 31(5) of the Bill inserts a new subsection (3A) into section 39 of the 2003 Act. The new subsection (3A) allows Ministers to request further information about an application from any relevant party they deem necessary in connection with the criteria on which Ministers must be satisfied under section 39(3) of the 2003 Act. Ministers can request such information until the end of the 7-day period following receipt of the landowner’s views (or the views of a creditor in a standard security with a right to sell the land) under section 37(5) of the 2003 Act.

64. Section 31(6) of the Bill amends section 39(4)(c) which sets out the impact of an application being “late” on the community right to buy process. For the purposes of the provisions listed, the community body is deemed to have confirmed their intention to proceed with the purchase on the date on which the interest is registered. The amendment inserts a reference to the new section 60A(1) of the 2003 Act.

65. Section 31(7) of the Bill inserts a new subsection (4A) into section 39 of the 2003 Act and section 31(8) amends subsection (5) of the same. These provisions provide that where missives have been concluded in respect of the sale of land or an option conferred in respect of that land, Ministers must decline to consider the application. These amendments simplify the wording in the 2003 Act.

66. Section 31(9) of the Bill provides for a new subsection (7) of section 39 of the 2003 Act which makes it clear that the land in respect of which the relevant work or steps have been carried out does not need to be the same land as that to which the application relates.

Evidence and notification of concluded missives or option agreements

67. Section 32 of the Bill inserts a new section 39A into the 2003 Act in relation to evidence and notification of concluded missives or option agreements. The new subsection (4A) and amended subsection (5) of section 39 of the 2003 Act (under section 31(7) and (8) of the Bill) provide that where an application is received after missives have been concluded in respect of the land or an option conferred, Ministers must decline to consider the application. If the application did not disclose that missives have been concluded or an option conferred then the owner of the land (or a creditor in a standard security with a right to sell) must provide evidence of concluded missives or an option agreement to Ministers within 21 days of receiving a copy of the application under section 37(5)(a). Additional information on option agreements must also be provided, namely, the date of the option agreement and whether or not and how it may be extended. If the application does disclose that missives have been concluded or an option conferred and by virtue of section 39(4A) and (5) of the 2003 Act Ministers are not required to send a copy of the application to the land owner or a creditor in a standard security with a right to sell, then section 39A(4) will apply. This requires Ministers to send a copy of the application to the land owner and any such creditor and require them to provide evidence of the concluded missives or option conferred. The land owner and creditor will also be required to provide further information about the option conferred.

Notification of transfer

68. Section 33 of the Bill amends section 41 of the 2003 Act which is supplementary to and explanatory of section 40 of the 2003 Act. Section 40 of the 2003 Act prohibits owners and certain creditors from transferring land or taking action with a view to transferring land that is
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subject to a registered interest for so long as the interest is registered, other than in accordance with section 40(4) of the 2003 Act, which provides for “exempt” transfers.

69. Section 33 of the Bill inserts subsection (3) into section 41 of the 2003 Act. It requires that where an owner or a creditor in a standard security with a right to sell land makes a transfer in terms of section 40(4) of the 2003 Act, they must inform Ministers within 28 days of this taking place. The new subsection (3) of section 41 of the 2003 Act also sets out the information which the owner or creditor must provide.

Changes to information relating to registered interests

70. Section 34 of the Bill inserts a new section 44A into the 2003 Act, which applies where a community interest in land is registered.

71. Subsection (2) of the new section 44A of the 2003 Act requires that where any change has been made in the contact information of a community body provided in its application to register an interest, that community body must inform Ministers of that change as soon as is reasonably practicable.

72. Subsection (3) of the new section 44A of the 2003 Act requires that where any change has been made in the contact information of an owner provided in an application by a community body, the owner must inform Ministers of any changes to their contact information as soon as is reasonably practicable.

73. Subsection (4) of the new section 44A of the 2003 Act requires that the owner of the land must in certain circumstances notify Ministers of any changes to the information in an application relating to a creditor in a standard security as soon as is reasonably practicable.

74. Subsections (5) and (6) of the new section 44A of the 2003 Act require that where there is a creditor in a standard security over an interest in land to which an application relates and the application does not disclose the existence of such a creditor (either because the existence of the creditor was omitted or because it did not exist at the time the application was made), the owner must notify Ministers of the existence of the creditor and its contact details as soon as is practicable after the registration of the interest.

75. Subsections (7) and (8) of the new section 44A of the 2003 Act require that a community body or owner of land must, as soon as is reasonably practicable, make Ministers aware of any subsequent changes to any information submitted under subsections (2), (3), (4) or (6) of the new section 44A of the 2003 Act.

Notification under section 50 of the 2003 Act

76. Section 35 of the Bill amends section 50 of the 2003 Act. Section 50(1) sets out the circumstances in which the Lands Tribunal must notify Ministers that a landowner or creditor in a standard security with a right to sell the land has acted in breach of a prohibition notice under section 37(5)(e) or section 40(1) of the 2003 Act.
77. Section 35(a) of the Bill amends subsection (3)(b) of section 50 of the 2003 Act. It inserts reference to any creditor with a right to sell the land. This requires Ministers to send a copy of the notice from the Lands Tribunal under section 50(1) to such a creditor as well as to the owner of the land.

78. Section 35(b) of the Bill provides for a new subsection (6) to be inserted in section 50 of the 2003 Act. This sets out that a community interest in land remains in effect for the purposes of section 50(2)(c) where a community body has applied to re-register an interest under section 44(2) of the 2003 Act and the Keeper has re-entered the interest on the Register accordingly. Where a registered interest in land under consideration by the Lands Tribunal is due to expire, the relevant community body should ensure that it re-registers their interest in terms of section 44(2) of the 2003 Act. Section 50(2)(b) of the 2003 Act is repealed.

Approval of members of community to buy land

79. Section 36 of the Bill amends section 51(2)(a) of the 2003 Act which relates to the community’s approval of the exercise of the right to buy. Section 51(2)(a) provides that at least half of the members of the community must have voted or, if half of the members have not voted, the proportion which voted is sufficient in the circumstances to justify the community body buying the land.

80. Section 36 of the Bill removes the reference to at least half of the members of the community voting and provides that the requirement in section 51(2)(a) of the 2003 Act is met if the proportion of the members of the community who voted is sufficient to justify the community body proceeding to buy the land. Section 51(3)(a) of the 2003 Act is repealed.

Appointment of person to conduct ballot on proposal to buy land

81. Section 37 of the Bill inserts a new section 51A into the 2003 Act. It provides for an independent ballotter to undertake the community ballot as required under section 51(1)(a) of the 2003 Act.

82. Sections 51 and 52 of the 2003 Act provide for a ballot to be carried out by the community body. Section 37 of the Bill amends the procedure of the ballot and provides that it is to be carried out by an independent ballotter. The responsibility for appointing a ballotter and the expense of conducting the ballot are with Ministers.

83. Subsections (2) to (6) of the new section 51A of the 2003 Act set out the procedure for the conduct of the ballot. So that the ballotter has all the necessary information in order to undertake the ballot, Ministers are obliged under subsection (2) to provide the ballotter with a copy of the application under section 37 of the 2003 Act and such other information as Ministers may prescribe in regulations. Subsection (3) provides that Ministers must do this within 28 days of the valuer being appointed under section 59 of the 2003 Act. Ministers must also provide the community body with the contact details of the ballotter under subsection (4).

84. Subsections (5) and (6) of the new section 51A of the 2003 Act require that the community body must, within 7 days of receiving notification of the value of the land under
section 60(2) of the 2003 Act, provide the ballotter with wording for the proposition that the community body buy the land, together with other information as set out in regulations. The other information to be set out in regulations may relate to the community body, its proposals, the valuation and other matters. The form of the notification of the other information referred to may also be set out in regulations. Section 52(2) of the 2003 Act is repealed.

**Consent under section 51 of the 2003 Act: prescribed information**

85. Section 38 of the Bill inserts a new section 51B into the 2003 Act. This section sets out the information which Ministers must take account of when deciding whether to approve a community body’s exercise of the right to buy.

86. The new section 51B of the 2003 Act confers a power on Ministers to specify the type of information which a community body must provide in regulations, including, in particular, information relating to the matters referred to in subsection (3) of section 51 of the 2003 Act. Subsection (3) of the new section 51B of the 2003 Act requires that the information must be provided in a form set out by Ministers in regulations. Ministers can also take account of any information which they consider to be relevant, regardless of whether it is of the type specified in regulations.

87. Subsection (5) of the new section 51B of the 2003 Act provides that Ministers have 7 days from receipt of information to request further information. Furthermore, in terms of subsection (6) of the new section 51B of the 2003 Act, the community body has 7 days from the receipt of such a request to provide Ministers with the information.

**Representations etc. regarding circumstances affecting ballot results**

88. Section 39 of the Bill inserts a new section 51C into the 2003 Act which sets out a process for where a community body considers that circumstances have affected the ballot result.

89. Subsection (1) of the new section 51C allows the community body, within 7 days of receiving notification of the result of the ballot, to make representations to Ministers on circumstances that the community body considers impacted the ballot result.

90. Subsection (2) requires the community body to provide Ministers with such evidence as is reasonably necessary to establish the existence and effect of the circumstances that affected the ballot result. A copy of the evidence and representations must be sent to the owner of the land by the community body. Subsection (3) allows Ministers to request further information if required and the community body must respond within 7 days under subsection (4).

91. Subsection (5) provides that the owner of the land may provide comments in connection with the representations and evidence provided by the community body within 7 days of receiving copies of such representations and evidence. The owner of the land must send copies of any comments to the community body (subsection (6)). The community body may give their views to Ministers on the owner of the land’s comments (subsection (7)).
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92. Subsection (8) provides that Ministers may request further information from the community body and, in terms of subsection (9), the community body must respond within 7 days.

93. Subsection (10) provides that Ministers must take account of any of the representations, evidence, information, comments or views which have been provided in this process when considering whether the ballot turnout requirement under section 51(2)(a) of the 2003 Act has been met.

94. Due to the administrative steps which have been provided for, section 39(2) of the Bill amends section 51 of the 2003 Act to extend the length of the period in which Ministers must decide whether to consent to the exercise of the right to buy from 21 days to 35 days in cases where representations have been made under section 51C(1).

**Ballot not conducted as prescribed**

95. Section 40 of the Bill amends section 52 of the 2003 Act. Section 52(1) of the 2003 Act provides that a ballot should be conducted as prescribed in regulations. Furthermore, in terms of section 52(2), if a ballot is deemed to be flawed, the community’s right to buy is extinguished.

96. Section 40 of the Bill provides that section 52 of the 2003 Act is amended to include a new subsection (7). The new subsection (7) provides Ministers with the powers to make regulations in connection with reviewing whether a ballot has been properly conducted and other matters relating to ballots not conducted as prescribed.

**Period in which ballot results and valuations are to be notified**

97. Section 41 of the Bill amends section 52(4) of the 2003 Act which provides the timescale for the conduct of the ballot and section 60 which provides the timescale for notification of the valuation figure.

98. Section 52(4) of the 2003 Act provides that the ballot is to take place within 28 days of the notification of the value of the land under section 60(2) and the ballot date is determined by the date of that notification. Section 41(1) of the Bill amends section 52(4) of the 2003 Act to provide that the ballot takes place within the 12 week period beginning on the date the valuer is appointed under section 59(1) of the 2003 Act. Alternatively, in cases where the valuation period has been extended on application by the valuer under section 60(3) of the 2003 Act and the date to which the valuation period has been extended to is after the 12-week period following the appointment of the valuer, the 12-week period begins on the day following the notification of the date under section 60(3C) of the 2003 Act. This means that the ballotter will in all cases have a minimum of 12 weeks to conduct the ballot and notify Ministers of the results.

99. Section 41(2) of the Bill provides that section 60 of the 2003 Act is amended to insert new subsections (3A) to (3D). These provisions detail the procedure of when and how the valuer is able to seek an extension to the timings for reporting the value of the land to parties set out in section 60(2). The community body, the landowner and the ballotter must be informed of the existence of any extension, the length of any extension and the end period for the extension.
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Exercise of right to buy: date of entry and payment of price

100. Section 42 of the Bill amends section 56 of the 2003 Act which sets out the time limits which apply to a community body in respect of payment of the price for the land.

101. Subsection (3) of section 56 of the 2003 Act provides that where the valuation figure is not being appealed under section 62 of the 2003 Act and where the time limit has not been extended by agreement, the price must be paid within 6 months of the date on which the community body confirmed its intention to proceed with the community right to buy in response to a notice under section 49(2)(a) of the 2003 Act or, in the case of a late application, within 6 months of the date of Ministers decision to register that interest in land. Section 42(a) of the Bill extends this time period from 6 months to 8 months.

102. Section 42(b) of the Bill provides for a new subsection (7) in section 56 of the 2003 Act. Where an extension to the 8-month period provided for in the amended section 56(3)(a) of the 2003 Act is required (such extension being permitted by section 56(3)(c) of the 2003 Act), the extension must be agreed, by both parties (landowner and community body), before the 8-month period ends. The community body must notify Ministers of any extension within 7 days of that agreement being made, including when that agreement was made and what that later extended date is. Evidence of such an agreement will be required by Ministers.

Views on representations under section 60 of the 2003 Act

103. Section 43 of the Bill amends section 60 of the 2003 Act, subsection (1) of which requires the valuer to invite the landowner and the community body to comment on issues that may have an impact on the valuation.

104. Section 43 of the Bill inserts a new subsection (1A) into section 60 of the 2003 Act which imposes an obligation on the valuer to pass on any written representations about the value of the land, whether by the landowner or the community body, to the other party and invite counter-representations from that party. The valuer must consider any views made by both or either party while undertaking the valuation under section 59 of the 2003 Act.

Circumstances where expenses of valuation to be met by owner of the land

105. Section 44 of the Bill inserts a new section 60A into the 2003 Act. The new section 60A provides that, in certain circumstances, Ministers may require the landowner to pay the expenses of Ministers in connection with the valuation.

106. Subsection (1) of the new section 60A sets out the circumstances in which Ministers may exercise their discretion and require the landowner to pay the expenses incurred by Ministers in connection with the valuation.

107. Subsection (2) sets out that Ministers have a discretion to require the landowner to meet the costs associated with the valuation where the circumstances in subsection (1) are met. Where Ministers exercise their discretion, a demand for payment will be sent to the landowner.
108. Subsection (3) allows Ministers to request information from the landowner before deciding whether to exercise their discretion.

109. Subsection (4) provides that the landowner may appeal Ministers’ decision to exercise their discretion to the sheriff within 21 days of the Ministers’ decision. In terms of subsection (5), the sheriff’s decision is final.

110. Subsection (6) provides that, where the landowner has not appealed the Ministers’ decision, the landowner must pay the amount specified within 28 days of receiving the demand. Where the landowner appeals the Ministers’ decision and the appeal is not successful, the landowner must pay the amount within 28 days of the determination of the appeal.

**Creditors in standard security with right to sell land: appeals**

111. Section 45 of the Bill amends section 61 of the 2003 Act. Section 61 provides a right of appeal to the sheriff for the landowner, the community body and other interested parties in respect of certain decisions by Ministers. In terms of section 48(4) of the 2003 Act, where there is a creditor with a right to sell the land and that creditor gives notice of a proposal to sell the land under section 48(1), the creditor would also have a right of appeal.

112. Section 45(a) of the Bill expands the interested parties to include a “creditor in a standard security with a right to sell land” in all cases (including where the creditor has not given notice of a proposal to sell the land under section 48(1) of the 2003 Act). Section 45(b) and (c) of the Bill amend the remaining sections of section 61 of the 2003 Act to take account of the creditor’s right of appeal. The words “or” to “person” in section 61(3) of the 2003 Act are repealed.

**Calculation of time periods in Part 2 of 2003 Act**

113. Section 46(1) of the Bill inserts a new section 67A into the 2003 Act which provides that public or local holidays are not to be taken into account when calculating time periods in Part 2 of the 2003 Act.

114. New section 67A(2) of the 2003 Act provides a number of exceptions to the rule provided in new section 67A(1) – statutory periods for the date of entry, the valuation process and any appeals are not to be extended if a public or local holiday falls during the time when these steps are active.

**Duty to provide information about community right to buy**

115. Section 47 of the Bill inserts a new section 67B into the 2003 Act concerning the monitoring of community right to buy.

116. Inserted section 67B(1) and (2) of the 2003 Act provide that a community body, owner or former owner of land in respect of which an application to register an interest was made may be requested by Ministers to provide information, for the purposes of monitoring or evaluating any impacts that the right to buy land conferred by Part 2 of the 2003 Act has had or may have.
117. Inserted section 67B(3) of the 2003 Act sets out the type of information that may be requested by Ministers. It provides that it is any information which Ministers may reasonably require for the purpose of monitoring or evaluating the impact of the right to buy under Part 2 of the 2003 Act. Where a request has been made by Ministers, the recipient must comply to the extent that they are able to do so (inserted section 67B(4)).

**Part 4: Community right to buy land (section 48 – abandoned and neglected land)**

*Introduction*

118. Section 48 of the Bill inserts a new Part 3A into the 2003 Act to give communities a right to buy land that is wholly or mainly abandoned or neglected, for the purposes of the sustainable development of that land, where there is no willing seller.

*Meaning of land*

119. The new section 97B of the 2003 Act provides that land for the purposes of Part 3A of the 2003 Act includes bridges and other structures built on or over land, inland waters, canals, and the foreshore (which is the land between the high and low water marks of ordinary spring tides).

*Eligible land*

120. The new section 97C of the 2003 Act defines land which is to be classed as eligible for the purposes of Part 3A of the 2003 Act. Subsection (1) provides that eligible land is land which is wholly or mainly abandoned or neglected in the opinion of Ministers.

121. Subsection (2) requires Ministers to make regulations setting out what factors they must have regard to when deciding whether land is, in their opinion, wholly or mainly neglected or abandoned.

122. Subsection (3) provides that eligible land does not include certain land. Land which is not eligible includes land on which there is an individual’s home (exceptions may be set out in regulations by Ministers); land pertaining to an individual’s home as may be set out in regulations, eligible croft land (as defined in section 68 of the 2003 Act) or croft land which is occupied or worked by its owner or members of their family; land which is owned by the Crown by virtue of it having vested as *bona vacantia* (because no owner exists or can be identified) or it having fallen to the Crown as *ultimus haeres* (because no heir to the previous owner exists or can be identified); and land of such other descriptions that Ministers may set out in regulations.

*Part 3A community bodies*

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

124. Subsection (1) specifies that a Part 3A community body must be a company limited by guarantee. It also lists the requirements which must be included in the company’s articles of association. If a body does not meet the conditions imposed by subsection (1), it will not be a
Part 3A community body and so will not be eligible to purchase land under Part 3A of the 2003 Act. However, in terms of subsection (2), Ministers have discretion over the minimum number of members a Part 3A community body must have.

125. Subsection (3) defines a “company limited by guarantee” by reference to section 3(3) of the Companies Act 2006 as being a company having the liability of its members limited to such amount as the members undertake to contribute to the assets of the company in the event of it being wound up.

126. Subsection (4) provides that a Part 3A community body is not defined as such until Ministers give their written consent that they are satisfied that the body’s main purpose is consistent with furthering the achievement of sustainable development.

127. Subsection (5)(a) sets out that the articles of association of the company must define the community to which it relates by reference to a postcode unit (or units) or a type of area which Ministers set out in regulation. A community may also be defined with reference to both of these things. Subsection (5)(b) provides that the community includes people who are resident in that postcode unit or in one of the postcode units or other areas set out by Ministers in regulations. In addition to being resident, members of the community must also be entitled to vote at local government elections in a polling district that encompasses that postcode unit or postcode units or the alternative areas set out by Ministers in regulations.

128. Subsection (7) specifies that the articles of association of a Part 3A community body may provide that its property may, in circumstances outlined in subsection (1)(h), pass to another person only if that person is a charity. Subsection (8) defines a charity for the purposes of this section as a body which is entered in the Scottish Charity Register.

Provisions supplementary to section 97D

129. The new section 97D of the 2003 Act sets out the constraints which apply to a Part 3A community body after it has acquired land under Part 3A of the 2003 Act.

130. Subsection (1) provides that a Part 3A community body cannot change its memorandum or articles of association without prior consent from Ministers in writing, while the land bought under Part 3A of the 2003 Act remains in its ownership.

131. Subsection (2) allows Ministers to acquire the land compulsorily if a Part 3A community body, which has bought land under Part 3A of the 2003 Act, would no longer be entitled to buy the land.

132. Subsection (3) provides that Ministers cannot exercise their powers under subsection (2) to acquire the land compulsorily if the land is no longer considered to be eligible. This means that Ministers will not be able to exercise their powers on the basis that a Part 3A community body has purchased the land and the land is no longer considered by Ministers to be wholly or mainly abandoned or neglected.
133. Subsection (4) provides that where Ministers exercise the power conferred by subsection (2), they may make an order in relation to acquiring the land. Subsection (4) sets out the scope of any such order.

Register of Community Interests in Abandoned or Neglected Land

134. The new section 97F of the 2003 Act provides for the creation of a Register of Community Interests in Abandoned or Neglected Land.

135. Subsection (1) requires the Keeper of the Registers of Scotland (“the Keeper”) to set up and maintain a Register of Community Interests in Abandoned or Neglected Land (“the Register”).

136. Subsection (2) specifies information and documents which must be kept in the Register and provides that these must be kept in a form convenient for public inspection.

137. Subsections (3) and (4) allow a Part 3A community body to require that information or documentation which relates to the raising or expenditure of money to allow land to which the application relates to be used should be withheld from public inspection. Such information or documentation will not be entered in the Register. However, in terms of subsection (5), Ministers cannot require a Part 3A community body to provide such information or documentation.

138. Subsection (6) confers powers on Ministers to make regulations to amend the information that is to be made publicly available in the Register, to amend the provision about the Part 3A community body requesting that certain information can be withheld from the Register and amending the type of information that may be withheld.

139. Subsection (7) sets out the duties which are imposed on the Keeper. The Keeper must make the Register available at all reasonable times for inspection free of charge, ensure that members of the public are able to request copies of the entries on payment of a charge as may be set out by Ministers in regulations, and that if anyone requests a true copy of the original document this will be supplied on payment of such a charge.

140. Subsection (9) provides that the Keeper means the Keeper of the Registers of Scotland or such person as Ministers appoint to carry out the Keeper’s functions under Part 3A of the 2003 Act (and under subsection (10) different persons may be appointed in place of the Keeper for different purposes under Part 3A of the 2003 Act).

Right to buy: application for consent

141. The new section 97G of the 2003 Act deals with the process of applying to exercise the right to buy land under Part 3A of the 2003 Act.

142. Subsection (1) provides that the right to buy abandoned or neglected land can only be exercised by a Part 3A community body. Subsection (2) specifies that the right can only be exercised with Ministers’ consent on the written application of the Part 3A community body.
143. Subsection (3) provides that a right to buy land can be exercised on multiple holdings, but separate applications must have been made for each holding of land. A holding of land is defined in subsection (4) as being a plot of land owned by one person or in common or joint ownership. Ministers may consider and make a decision on these applications separately from one another.

144. Subsection (5) specifies that an application must set out who the owner of the land is and any creditor in a standard security with a right to sell the land or any part of it. Ministers must set out the required form of the application in regulations. The application must also include or be accompanied by information of the kind specified by Ministers in regulations.

145. Subsection (6) lists the matters which the Part 3A community body must include in the application or which must accompany the application. These include why a Part 3A community body’s proposed purchase is in the public interest, how it is compatible with furthering the achievement of sustainable development, and the reasons why it considers the land to be wholly or mainly abandoned or neglected.

146. Subsection (7) specifies that at the same time as the Part 3A community body applies to Ministers, it must send a copy of its application form (including the associated material) to the owner of the land. It also requires the Part 3A community body to send a copy of the application to any known creditor in a standard security over the land with a right to sell and invite them to give notice, within 60 days, to the Part 3A community body and Ministers if the creditor has taken the steps mentioned in subsection (8) to enforce the security. If such notice is given, creditors must provide any views or comments they may have about the application to Ministers in writing within the 60-day period.

147. Subsection (9) provides that upon receiving the application under section 97G, Ministers must invite the owner of the land, any creditor in a standard security and any other person that may have an interest in the application to send back written comments on the application within 60 days of the Ministers’ invitation. Ministers must also take reasonable steps to invite comments from owners of land adjacent to the land to which the application relates. The community body must be sent copies of such invitations.

148. Subsection (10) specifies the additional matters which the invitation must invite the landowner to provide comment on.

149. Subsection (11) provides that Ministers must give public notice of receipt of the application as soon as practicably possible and invite views within 60 days of the publication of the notice. Subsection (12) confers a power on Ministers to make regulations to specify the form of the advertisement giving public notice of the application.

150. Subsection (13) provides that Ministers must pass all views received on to the Part 3A community body for further comment. The community body’s comments must be received within 60 days of Ministers sending the invitation to comment.
151. Subsection (14) provides that when considering whether or not to give consent to the application, Ministers must have regard to all views received with regard to the application.

152. Subsection (15) provides that Ministers must decline to consider an application that does not comply with the requirements of the new section 97G, is incomplete or where Ministers are otherwise bound to reject it. If such is the case, then Ministers are not bound to follow the steps laid out in subsection (9) to (14).

153. Subsection (16) sets constraints on the timing of the Ministers’ decision on an application. It provides that Ministers must not make any decision on the application before the end of the 60-day period within which a community may respond to a landowner’s comments, under subsection (13). Alternatively, if by the date of 60 days after the date on which the Part 3A community body may provide Ministers with a response to an invitation sent under subsection (13), the Lands Tribunal has not notified Ministers of any finding under new section 97X of the 2003 Act, Ministers must not make a decision until the date on which the Lands Tribunal provides Ministers with that finding.

**Criteria for consent**

154. The new section 97H of the 2003 Act sets out that Ministers must not consent to a Part 3A community right to buy unless they are satisfied about the matters listed in the section.

155. Paragraph (a) requires Ministers to be satisfied that the land a Part 3A community body is proposing to buy is land which is eligible under the new section 97C of the 2003 Act.

156. Paragraph (b) requires Ministers to be satisfied that the exercise of the right to buy by a Part 3A community body is in the public interest and its plans for the land are compatible with furthering the achievement of sustainable development.

157. Paragraph (c) requires Ministers to be satisfied that if the owner of the eligible land was to remain the owner, it would be inconsistent with furthering the achievement of sustainable development of the land.

158. Paragraph (f) requires Ministers to be satisfied that the owner of the land is not prevented from selling the land or is not under an obligation to sell the land to someone other than the Part 3A community body (other than an obligation which is suspended by the regulations which are to be made by Ministers under the new section 97N(3)).

159. Paragraph (g) requires Ministers to be satisfied that a Part 3A community body meets the requirements in section 97D.

160. Paragraph (h) requires Ministers to be satisfied that a significant number of the members of the community which the Part 3A community body represents have a connection with the land or the land is sufficiently near to land to which those members of the community have a connection.
161. Paragraph (i) requires Ministers to be satisfied that the community which the Part 3A community body represents has approved the proposal to exercise the right to buy under Part 3A. The new section 97J of the 2003 Act provides that the community is taken as having approved the proposal if a ballot is conducted as set out in that section.

162. Paragraph (j) requires Ministers to be satisfied that the Part 3A community body has tried and failed to buy the land, other than by making an application under Part 3A.

**Ballot to indicate approval for purposes of section 97H**

163. The new section 97J of the 2003 Act sets out the requirements for a ballot to establish that a right to buy application by a Part 3A community body has the support of its community.

164. Subsection (1) provides that a proposal by a Part 3A community body to exercise a community right to buy will be deemed to have been approved by the relevant community, if, firstly, the ballot takes place within the six-month period immediately preceding the date of the right to buy application; secondly, that at least half of the community voted in the ballot or where fewer than half of the members of the community voted, the proportion that voted is sufficient to justify the community body proceeding to purchase the land; and finally, that the majority of the votes cast were in favour of making the application.

165. Subsection (2) provides that the ballot must be conducted as prescribed by Ministers in regulations. Subsection (3) sets out the matters which must be prescribed in those regulations.

166. Subsection (4) specifies that the Part 3A community body must notify Ministers of the result within 21 days of the ballot or, where the application is made before the expiry of that 21-day period, at the same time as the application is submitted. This subsection also sets out what information about the ballot the community body must provide to Ministers.

167. Subsection (5) provides that Ministers may require a Part 3A community body to provide further information about the ballot or any consultation that the community body may have held with the wider community about their application.

168. Subsection (6) provides that the Part 3A community body is responsible for the expense of conducting the ballot.

169. Subsection (7) provides that where a ballot is not conducted in accordance with the regulations made by Ministers, the Part 3A community body’s right to buy will be extinguished.

**Right to buy same land exercisable by only one Part 3A community body**

170. The new section 97K of the 2003 Act deals with the situation where there is more than one Part 3A community body interested in buying the same land.

171. Subsection (1) provides that only one Part 3A community body may exercise the right to buy that land.
172. Subsection (2) provides where more than one Part 3A community body submits an application seeking to buy the same land, Ministers will decide which application should be allowed to proceed.

173. Subsection (3) provides that Ministers must not take any decision on any of the applications before they have considered all views and responses related to each application.

174. Subsection (4) provides that once Ministers have decided which Part 3A community body’s right to buy application shall be allowed to proceed, the other community body’s right to buy shall be extinguished. It also specifies who must be notified of Ministers’ decision.

**Consent conditions**

175. The new section 97L of the 2003 Act provides that Ministers may impose conditions to their consent to an application to exercise the Part 3A community right to buy. These conditions may, for example, require that certain actions or steps must be taken by the Part 3A community body.

**Notification of Ministers’ decision on application**

176. The new section 97M of the 2003 Act sets out how Ministers must notify the relevant parties of their decision to consent to or refuse an application.

177. Subsection (1) provides that Ministers must give notice in writing of their decision to consent to or refuse an application under section 97G to exercise the Part 3A community right to buy, and identifies the persons to whom such notice must be given. The form of the notice is to be set out in regulations.

178. Subsection (2) provides that regulations made by Ministers must require that the notice includes a full description of the land covered by the Ministers’ decision and, where consent is given, any conditions imposed by Ministers.

179. Subsection (3) specifies that the notice must contain information about the consequences of the decision and the rights of appeal against it and state the date on which the consent is given.

**Effect of Ministers’ decision on right to buy**

180. The new section 97N(1) of the 2003 Act gives Ministers powers to make regulations prohibiting certain persons from transferring or otherwise dealing with the land in respect of which an application under section 97G has been made.

181. Subsection (2) sets out matters that the regulations under subsection (1) may include.

182. Subsection (3) provides that Ministers may make regulations to suspend rights over land in respect of which a Part 3A application has been made. Subsection (4) sets out that these regulations may provide for rights which will not be suspended, as well as rights which will not be suspended in certain circumstances.
183. Subsection (5) provides that nothing in Part 3A of the 2003 Act prejudices the position of creditors seeking to prevent the disposal of heritable property by a debtor by means of inhibition, action of adjudication or any other diligence.

**Confirmation of intention to proceed with purchase and withdrawal**

184. The new section 97P of the 2003 Act sets out the procedure which follows Ministers consenting to the exercise of a right to buy by a Part 3A community body, depending on whether or not the community body wishes to proceed with the purchase.

185. Subsection (1) provides that a Part 3A community body may exercise its right to buy only if, within 21 days of the valuer notifying Ministers, the Part 3A community body and the owner of the assessed value of the land under 97S(10), the Part 3A community body sends written notice to Ministers and the owner confirming its intention to proceed to buy the land.

186. Subsection (2) provides that, by notice in writing to Ministers, the Part 3A community body may withdraw its right to buy application or its confirmation of its intention to proceed with the purchase at any time.

187. Subsection (3) specifies the action to be taken by Ministers on receipt of such notices.

**Completion of purchase**

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

189. Subsection (1) provides that the Part 3A community body will be responsible for preparing the documents necessary to effect the conveyance of the land and for ensuring that the subjects to be conveyed are the same as those specified in the consent given by Ministers. It places an obligation on the Part 3A community body to ensure that in preparing the documents it takes account of all conditions imposed by Ministers.

190. Subsection (2) provides that where the Part 3A community body cannot comply with its duty regarding the property to be conveyed, due to the fact that all or part of the land covered by the consent to the Part 3A community right to buy is not owned by the person named as owner in the application, then it must refer this matter to Ministers.

191. Subsection (3) provides that where such a reference is made to Ministers under subsection (2) then Ministers must direct that the right to buy is extinguished.

192. Subsection (4) requires the owner of the land subject to the Part 3A right to buy to make title deeds and other documents available to and transfer title to the Part 3A community body.

193. Subsection (5) provides that if, within 6 weeks of Ministers consenting to the application to buy the land, the owner refuses or fails to make these deeds available, or if they cannot be
found, the Part 3A community body can apply to the Lands Tribunal for an order requiring the production of those documents.

194. Subsection (6) provides that the Part 3A community body may apply to the Lands Tribunal to authorise its clerk to effect the transfer of title where the owner refuses, or for other reasons fails, to do so. Where the clerk to the Tribunal does so the effect will be the same as if it were done by the owner.

**Completion of transfer**

195. The new section 97R of the 2003 Act sets out the process for completing the transfer.

196. Subsection (1) provides that the consideration payable for the land in respect of which the Part 3A community right to buy is exercised shall be the value of that land as assessed under section 97S by the valuer appointed by Ministers.

197. Subsection (2) provides that, subject to subsections (3) and (4), the consideration should be paid not later than 6 months after the date on which Ministers consented to the right to buy application.

198. Subsection (3) specifies circumstances where either this payment deadline will not apply or where an alternative deadline will apply. In particular, it allows the landowner and the Part 3A community body to agree an alternative payment date and provides for deferral of payment when the valuation has not been completed or has been subject to an appeal.

199. Subsection (4) specifies that where the owner is unable to grant a good and marketable title to the Part 3A community body by the date of payment, then payment shall be made to and held by the Lands Tribunal pending either completion of the conveyance or notification to the Lands Tribunal by the Part 3A community body that it has decided not to complete the transaction.

200. Subsection (5) specifies that if the consideration is not paid by the Part 3A community body by the due date, the right to buy application will be deemed to have been withdrawn by the Part 3A community body (this subsection does not apply where subsection (4) applies).

201. Subsection (6) provides that when the Part 3A community body records or registers its title, the land acquired is disburdened of any heritable security.

202. Subsection (7) provides that a security that related to the land acquired through the Part 3A community right to buy and to other land continues to apply to that other land.

203. Subsection (8) provides that where land is disburdened of a heritable security on purchase, unless the creditors otherwise agree, the Part 3A community body must pay the creditors under that heritable security whatever sums are due to them.
204. Subsection (9) provides that the Part 3A community body must deduct any sums paid to a heritable creditor under the provisions of subsection (8) from the amount that the body is due to pay the owner for the land. In effect, the landowner will receive a sum for the land which will take account of the sum required to clear any securities.

**Assessment of value of land etc.**

205. The new section 97S of the 2003 Act sets out the procedure for valuation of the land in respect of which a Part 3A community body is exercising its right to buy.

206. Subsection (1) requires that Ministers, where they have consented to a Part 3A community right to buy application, must appoint a valuer to assess the value of that land within 7 days of that consent.

207. Subsection (2) provides that the validity of anything done under the new section 97S will not be affected by Ministers’ failure to comply with the time limit specified in subsection (1).

208. Subsection (3) sets out the role of the valuer.

209. Subsection (4) specifies that the value to be ascertained is the market value at the date Ministers consented to the application to exercise the right to buy.

210. Subsection (5) defines market value as the sum of the open market value if the sale were between a willing seller and willing buyer, compensation for any depreciation in the value of other land and interests belonging to the seller as a result of the forced sale, and compensation for any disturbance to the seller resulting from the forced sale.

211. Subsection (6) specifies that in arriving at the open market value for the purposes of subsection (5)(a), account may be taken of the known existence of a potential purchaser with a special interest in the property (other than the Part 3A community body). It also specifies that no account shall be taken of the fact that no time was allowed for marketing the property or of the depreciation of other land or disturbance (since compensation for these latter two items will be added to the open market value by virtue of subsection (5)(b) and (c)).

212. Subsection (7) states that Ministers shall pay for the valuation under this section.

213. Subsection (8) requires the valuer to ask both the owner and the Part 3A community body for their views in writing on the value of the land and to take these representations into account in arriving at the valuation.

214. Subsection (9) specifies that where the Part 3A community body and the owner have agreed the valuation, they must notify the valuer in writing of that valuation.

215. Subsections (10) and (11) require the appointed valuer to notify Ministers, the landowner and the Part 3A community body of the valuation. This must be done within 8 weeks of being appointed or within a longer period set by Ministers, as requested by the valuer.
216. Subsection (12) sets out that the validity of the transfer is not affected by a failure by the valuer to comply with the time limit.

**Compensation**

217. The new section 97T of the 2003 Act provides for payment of compensation in connection with an application to exercise the Part 3A community right to buy. It provides that the compensation will be payable by the Part 3A community body except where Ministers have refused the application, in which case the compensation due to the owner of the land will be paid by Ministers.

218. Subsection (1) specifies the circumstances in which eligibility for compensation will arise.

219. Subsection (2) provides that the Part 3A community body will not be liable to pay compensation when a Part 3A community right to buy application is made but is not approved by Ministers.

220. Subsection (3) specifies that, in the circumstances covered by subsection (2), compensation for certain losses and expenses can be recovered from Ministers.

221. Subsection (4) provides that Ministers may make an order specifying the amounts payable in respect of loss or expense, who is liable to pay those amounts, and how any compensation is to be claimed under the new section 97T.

222. Subsection (5) provides that if the parties cannot agree whether compensation is payable or the amount of such compensation within the timescale specified in the order, then either party may refer the matter to the Lands Tribunal.

**Grants towards Part 3A community bodies’ liabilities to pay compensation**

223. The new section 97U provides that Ministers may, in certain limited circumstances, pay a grant to a Part 3A community body to assist it in meeting the compensation it has to pay in connection with its exercise of a right to buy.

224. Subsection (2) specifies the circumstances in which payment of such a grant would be permitted and subsection (3) makes it clear that Ministers are not bound to pay a grant even when all the circumstances specified arise.

225. Subsection (4) provides that payment of a grant may be subject to conditions including conditions relating to repayment in the event of a breach.

226. Subsection (5) provides that a grant may be paid only if the Part 3A community body applies for it, and subsection (6) provides that the form of the application and the application procedure shall be as Ministers specify in regulations.
227. Subsection (7) provides that Ministers must issue their decision on an application for a grant in writing and, where that decision is to refuse to pay a grant, include the reasons for that refusal. Subsection (8) provides that Ministers’ decision on whether to pay a grant or not is final.

**Appeals**


229. Subsections (1), (4) and (5) provide that the landowner, a person who is a member of the community to which a Part 3A community body relates and a creditor in a standard security with a right to sell land to which an application relates may appeal against the Ministers’ decision to consent to the application, while subsection (2) allows the Part 3A community body to appeal against a decision to refuse an application. Where there is more than one Part 3A community body wishing to purchase the land, subsection (3) provides that Ministers’ decision on which community body’s application will proceed is final and cannot be appealed to the sheriff.

230. Subsection (6) specifies the timeframe within which an appeal may be made.

231. Subsection (7) specifies that the sheriff court with the jurisdiction to hear an appeal is the sheriff court where the land subject to an appeal is located.

232. Subsection (8) specifies who each appellant must inform when an appeal is made.

233. Subsection (9) provides that the sheriff’s decision is final and may require rectification of the Register of Community Interests in Abandoned or Neglected Land and may impose conditions on the appellant.

**Appeals to Lands Tribunal: valuation**

234. The new section 97W of the 2003 Act sets out the rights of appeal to the Lands Tribunal in connection with the valuation which is carried out under the new section 97S.

235. Subsection (1) provides that the owner of the land and the Part 3A community body exercising its right to buy may appeal the valuation to the Lands Tribunal.

236. Subsection (2) requires such an appeal to state the grounds of the appeal and that it be lodged within 21 days of valuation being notified under section 97S(10).

237. Subsection (3) provides that the Lands Tribunal may reassess the valuation of the land.

238. Subsection (4) provides that the valuer may be a witness in the appeal proceedings.

239. Subsection (5) requires the Lands Tribunal to give reasons for its decision on an appeal.
240. Subsection (6) provides that Ministers are not competent parties to any appeal by reason only that they appointed the valuer.

241. Subsection (7) provides that Ministers’ powers under the Lands Tribunal Act 1949 to make rules are extended so that Ministers can make any rules necessary or expedient in connection with Part 3A.

**Reference to Lands Tribunal of questions on applications**

242. The new section 97X sets out rights of appeal to the Lands Tribunal on a question relating to the Part 3A application.

243. Subsection (1) provides that at any time before Ministers make a decision on an application, any question relating to the application may be referred to the Lands Tribunal by Ministers, the landowner, a person who is a member of the community to which the Part 3A community body relates, any person with an interest in the land giving rise to a legally enforceable right (e.g. a creditor in a standard security with the right to sell land) or any other such person invited to send views on a Part 3A application (under section 97G(9)(a)(iii)).

244. Subsection (2) provides that the Lands Tribunal may consider the views of the Part 3A community body, the owner of the land subject to the Part 3A application and any other person that the Lands Tribunal determines have an interest in the case.

245. Subsection (3) provides that the Lands Tribunal must inform Ministers of its findings on any of the questions referred to it and may, by order, provide for Ministers to consent to an application under the new section 97L only if they impose certain conditions, as directed by the Lands Tribunal.

246. Subsection (4) provides that if the Lands Tribunal finds that the question on the application is not relevant to the Ministers’ decision, the Lands Tribunal may decide not to consider the question further and find accordingly.

**Agreement as to matters referred or appealed**

247. The new section 97Y of the 2003 Act provides that parties to the Part 3A application are not prevented from settling or agreeing on the matter which is subject to an appeal under sections 97V or 97W between them.

**Interpretation of Part 3A**

248. The new section 97Z sets out some matters of interpretation.

249. Subsection (1) provides that any reference to a creditor in a standard security with a right to sell land is a reference to a creditor who has such rights under section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970, or a warrant granted under section 24(1) of that Act.
250. Subsections (2) and (3) provide that public or local holidays should not be taken into account when calculating time periods in Part 3A, except for the 6 month period of completion for the right to buy, the 28-day period for a right of appeal to the sheriff and the 21-day period for a right of appeal to the Lands Tribunal on the valuation.

**Part 5: Asset transfer requests**

251. This Part sets out how a “community transfer body” can request to buy, lease, manage, occupy or use land or buildings belonging to a “relevant authority”, how the authority is to decide whether to agree to or refuse the request, and the procedures to be followed if the request is agreed.

252. Throughout this Bill (except where it amends other legislation) “land” has the meaning set out in the Interpretation and Legislative Reform (Scotland) Act 2010, which is that ““land” includes buildings and other structures, land covered with water, and any right or interest in or over land”.

**Community transfer body**

253. Section 50 defines a “community transfer body”. This is either a community-controlled body, as defined in section 14, or a body designated as a community transfer body by the Scottish Ministers. The Scottish Ministers may designate individual bodies to be community transfer bodies or may designate a whole class of bodies, so that any body of that type will qualify as a community transfer body. Subsection (3) states that where a trust is designated, the designated body will be the trustees, since a trust is not incorporated.

**Relevant authority**

254. A “relevant authority” is defined by section 51. This may be a person (or organisation) listed in schedule 3, or one designated as a relevant authority by the Scottish Ministers. Schedule 3 includes local authorities, the Scottish Ministers, Health Boards, and certain other Scottish public bodies, which have been selected because they own significant amounts of land and buildings.

255. The remainder of section 51 gives the Scottish Ministers a power to remove or amend any entry on the list, or to make an order designating other bodies or classes of bodies as public service authorities. Subsection (4) provides that persons may only be designated if they fall into the following categories:

- part of the Scottish Administration, which has the meaning given in section 126(6) to (8) of the Scotland Act 1998;
- “Scottish public authorities with mixed functions or no reserved functions under the Scotland Act 1998” – this means that UK Government Departments and public bodies that deal with matters reserved to the UK Government cannot be included;
- companies wholly-owned by relevant authorities.
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

Asset transfer requests

256. Section 52 sets out how an asset transfer request can be made. It must relate to land (which includes buildings) owned or leased by a relevant authority. The community transfer body may ask to have ownership of the land transferred to it, if the land is owned by the relevant authority; it may ask to lease the land from the relevant authority; or to obtain other rights in respect of the land, for example to manage or use it for a specified purpose.

257. Subsection (4) sets out the information which must be included in the request. In addition to specifying the land (or building) to which the request relates, and whether the request is for ownership, lease or other rights, the community transfer body must describe the reasons for making the request and the benefits which it considers will arise if the request is agreed to. It must also state how much the body would be prepared to pay, either to buy the land or in rent, and any other terms and conditions that would apply to the request.

258. Section 52(3) provides that a request for transfer of ownership of land may only be made by a community transfer body which meets the criteria set out in section 53, in addition to being covered by section 50. This means it must be a company, or a Scottish Charitable Incorporated Organisation (SCIO), or a body designated as a community transfer body under section 50, where the designation states that the body may make a request for transfer of ownership. Classes of bodies may also be designated as eligible to make a request for transfer of ownership.

259. If a company is to meet the criteria to request transfer of ownership, section 53(2) requires that it must have at least 20 members, and provision in its articles of association to ensure that, on winding up, any remaining property remains within either the community sector or the charitable sector. If the company has registered an interest in or has acquired land under the Land Reform (Scotland) Act 2003, its winding up provisions will need to satisfy the requirements of that Act. Subsection (2)(b)(iii), (iv) and (v) replicate those requirements, so that a company can be both a community transfer body and a community body under Part 2 of the Land Reform (Scotland) Act 2003 or a crofting community body under Part 3 of that Act. If the company is registered as a Scottish charity, the requirements for registration mean that any surplus property must be applied for charitable purposes, as in subsection (2)(b)(ii), so a charitable company can also be a community transfer body. If the company does not need to meet either of those requirements, it may choose to use any of the options in paragraph (b).

260. In order to be registered as a SCIO, a body is required to have appropriate provision in its constitution for surplus property to be distributed for charitable purposes. Therefore, the only additional requirement for a SCIO to be able to make an asset transfer request for ownership of land is that it has at least 20 members, which is provided for in section 53(1)(b).

Regulations

261. A community transfer body may need more information about the property before determining the purchase price, level of rent or other terms and conditions to be proposed. The Scottish Ministers may make regulations under section 54 about asset transfer requests. These may include, under subsection (3), details of how a community transfer body can request such information and how a relevant authority is to respond. Regulations under subsection (2) may also specify how asset transfer requests are to be made, additional information to be included in
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

them, and the procedure to be followed by a relevant authority in relation to requests. They may also include requirements to publish the fact that a request is being made, and to notify specified people about them.

Decisions

262. A relevant authority must decide whether to agree to or refuse an asset transfer request in accordance with section 55. It must compare the benefits that might arise if the request is agreed to with those that might arise from any other proposal for the land, whether made through another asset transfer request, by the authority, or by any other person (subsection (3)(e) and (6)). In doing so it must consider whether the proposals will promote or improve economic development, regeneration, public health, social wellbeing or environmental wellbeing and any other benefits, and the decision must be reached in a manner which encourages equal opportunities and the observance of the equal opportunity requirements. The relevant authority must also consider other matters it considers relevant, including the functions and purposes of the authority, and any obligations that may affect its ability to agree to the request. Subsection (5) requires that the authority must agree to the request unless there are reasonable grounds for refusing it.

263. Subsection (7) requires the relevant authority to give notice to the community transfer body of its decision, and the reasons for that decision, within a specified period, as described in subsection (8). Subsection (9) gives the Scottish Ministers power to make regulations about the information to be included in this decision notice and how it is to be given.

264. Section 56 sets out the procedure to be followed when an asset transfer request is agreed to. The decision notice given by the relevant authority must specify the terms and conditions on which the authority is prepared to carry out the transfer. These terms and conditions may or may not reflect those included in the asset transfer request. The community transfer body must in turn submit an offer, within a period specified in the decision notice, reflecting the terms and conditions set out in the decision notice, and any other terms and conditions needed to make sure the transfer can take place, and that it takes place within a reasonable time. After this the community transfer body and the relevant authority will make arrangements to conclude a contract, as would happen with any sale or lease of property.

265. Subsection (5) provides that if a contract is not concluded within the period set out in subsections (7) to (9), the arrangement ends and is treated as if the asset transfer request had not been agreed. However, this is not treated as a refusal of the request, so no appeal can be made. The period for concluding a contract is normally a minimum of 6 months from the date of the offer. A longer period can be agreed between the relevant authority and the community transfer body. If the relevant authority does not agree to extend the period, the community transfer body may apply to the Scottish Ministers under subsection (8) to direct that the period should be extended. This can be done more than once. Scottish Ministers may make regulations under subsection (10) about these directions and how to apply for them.

266. When a relevant authority has agreed to transfer land in response to an asset transfer request, section 57 prevents the authority from disposing of that land to anyone other than the body that made the request. This applies from the day the decision notice is given to the day when the transfer process ends. The process ends when a contract is concluded (subsection...
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

(4)(a)), or when no offer has been made within the specified period (subsection (3)(a)), or when no contract has been concluded within the specified period (subsection (4)(b)). If the relevant authority enters into a contract with another person, during this period, to sell or lease the land to them, subsection (5) makes that contract unenforceable.

Appeals and reviews

267. Section 58 sets out the circumstances when a community transfer body can appeal in relation to an asset transfer request. This may be because:

- the request has been refused;
- the request has been agreed but the relevant authority has required terms and conditions which are significantly different to those proposed in the request; or
- no decision has been made within the required period.

268. The community transfer body can appeal to the Scottish Ministers, unless the relevant authority is the Scottish Ministers or a local authority. (If the relevant authority is a local authority, section 59 applies instead.) Regulations made under subsection (3) may set out how appeals are to be carried out.

269. The Scottish Ministers may allow the appeal or may dismiss it and may reverse or vary (change) any part of the decision of the relevant authority, including changing any terms and conditions that were imposed. The Scottish Ministers may reverse or vary part of the decision of the relevant authority even if the appeal does not relate to that part. If the Scottish Ministers decide the relevant authority must transfer ownership, lease or confer rights in relation to land, or agree to certain terms and conditions, they must issue a direction requiring the relevant authority to issue a new decision notice in line with the appeal decision. That notice will replace the original decision notice.

270. If a community transfer body has made an asset transfer request to a local authority, instead of an appeal to the Scottish Ministers, the body can ask the local authority to review the case, under section 59. This can be done in the same circumstances as when an appeal can be brought, that is if:

- the request has been refused;
- the request has been agreed but the local authority has required terms and conditions which are significantly different to those proposed in the request; or
- no decision has been made within the required period.

The Scottish Ministers may make regulations prescribing how such reviews are to be carried out, and time limits for reviews to be requested. Regulations may allow local authorities to decide how certain stages of a review are carried out.

271. Subsection (8) means that the local authority must consider the same issues when reviewing a decision as it would in making an initial decision on an asset transfer request, and must agree to the request unless there are reasonable grounds for refusal. Subsection (5) provides that, having carried out a review, the local authority may confirm or change its
decision, including altering any terms and conditions set out in the original decision notice. It must then provide a new decision notice, providing the reasons for the decision made on review. This notice replaces the original decision notice.

272. When an appeal or review results in an asset transfer request being agreed (with or without amended terms or conditions), the process then continues under the provisions of section 56, with the community transfer body making an offer and the two parties proceeding to conclude a contract.

Land leased to a relevant authority

273. Section 60 applies where all the criteria set out in paragraphs (a) to (d) of subsection (1) are met. It deals with the situation where an asset transfer request is made to lease or otherwise occupy land (including a building) which is leased to a relevant authority by another relevant authority, or by a company wholly owned by another relevant authority. Subsections (2) and (3) mean that any conditions in that lease which restrict the relevant authority’s ability to sub-let or share occupancy of the land, or restrict how the land may be used, do not prevent the relevant authority agreeing to lease the land to the community transfer body or to allow the body to occupy the land.

274. This does not apply if any other person is entitled to occupy the land (subsection (1)(d)). Subsections (4) and (5) also provide that it does not affect any restrictions on the power of the relevant authority to assign or transfer rights and liabilities under the lease, and the relevant authority continues to be subject to any obligations under the lease, even if it leases the land to the community transfer body or allows the body to occupy it. For example, the relevant authority would still be responsible to the landlord for any maintenance requirements included in the lease between them.

Repeated requests

275. Section 61 is intended to help relevant authorities deal with repeated, vexatious requests. It means that if a second request relating to the same land or building is made within two years of a previous request, which was refused, the relevant authority may choose not to consider that second request. Subsections (4) and (5) provide that this only applies if the new request seeks the same type of transfer, but it does not matter whether the new request is made by the same body or a different one. For example, if one community transfer body requests to lease a particular building, and is refused, and another body requests to lease the same building within two years, the relevant authority may decline to consider that second request. On the other hand, if the second request was for transfer of ownership instead of a lease, the relevant authority would have to consider it. Declining to consider a request under these circumstances does not count as a refusal of the request and therefore is not eligible for appeal or review.

Part 6: Common good property

276. Common good property is property owned by local authorities for the common good of the inhabitants in their areas which has been passed down, through local government reorganisation, from the former burghs. Those burghs would have received it as a gift or purchased it. It includes land and buildings, moveable items such as furniture and art, and cash
funds. It is sometimes difficult to know whether property is part of the common good, and there may be restrictions on how certain items of common good property are allowed to be used and whether the local authority can dispose of them. In some cases this has to be decided by the courts.

277. This Part of the Bill increases transparency about common good assets and community involvement in decisions taken about their identification, use and disposal. It does not define or redefine common good or remove or alter any restrictions on the use or disposal of common good property.

Common good registers

278. Section 63 requires each local authority to establish and maintain a register of its common good property. Before establishing this register it must publish a list of what it proposes to include, and notify any community councils and other community bodies in its area. In this Part, “community bodies” are defined as any group set up to promote or improve the interests of any communities which exist in the area. Community councils and community bodies must be invited to comment on the proposed register, and the local authority must take account of any comments made by those bodies or anyone else. This gives everyone the opportunity to say whether they think the local authority has missed any common good property from the list, or included anything which is not part of the common good.

279. Subsection (8) requires the local authority to make its completed common good register available for the public to inspect in person, and to make it available on a website or by other electronic means.

280. Section 64 requires local authorities to have regard to any guidance issued by the Scottish Ministers about common good registers. Before issuing any guidance, the Scottish Ministers must consult local authorities, community councils, and appropriate community bodies.

Disposal and use of common good property

281. Section 65 ensures that communities are consulted before a local authority disposes of any common good property or changes its use. As with establishing the common good register, the local authority must publish its proposals, notify community councils and community bodies, and take account of any comments made by them or anyone else. In this case the local authority only needs to consult community bodies which it knows have an interest in that particular property. Common good property is usually of most interest to people in the immediate neighbourhood, and it would not be appropriate to consult community bodies from other parts of the local authority area.

282. Section 66 requires local authorities to have regard to any guidance issued by the Scottish Ministers about disposal or change of use of common good property and about the management and use of common good property.
Part 7: Allotments

Meaning of “allotment”

283. Earlier legislation on allotments does not provide a clear definition of “allotment”. Section 68 of the Bill defines “allotment” for the purpose of this Part. Paragraph (a) provides that an allotment is land that is either owned or leased by a local authority. Privately leased or owned allotments are not covered by the Bill. Additional requirements for land being an allotment under Part 7 of the Bill are that the land is leased, or intended to be leased, by a person resident in the local authority area and that the land is used wholly or mainly for the non-commercial cultivation of vegetables, fruit, herbs or flowers.

284. Land may also only be an allotment if it is of such size as may be set out by the Scottish Ministers in regulations under paragraph (d).

Meaning of “allotment site”

285. No specific definition of “allotment site” has been included in earlier allotment legislation. Section 69 defines “allotment site” for the purpose of Part 7 as an area of land consisting wholly or partly of “allotments”, as defined in section 68. An “allotment site” also includes other local authority land that allotment tenants use in connection with their allotments, such as communal buildings, and environmental areas.

Request to lease allotment

286. Section 70 provides for requests to lease allotments from a local authority. Subsection (1) provides that any resident in a local authority area may request to lease an allotment from that local authority.

287. Subsection (2) provides that this request must be in writing and include the name and address of the applicant. Regulations may also set out further information that must be included in the request.

288. Subsection (3) makes provision for requests for allotments by disabled persons and allows details of any additional requirements regarding access to and adaptation of the allotment to be provided in the request. For example a need for adaptations such as raised beds and wider paths should be specified.

289. Subsection (4) provides that a request for an allotment may be made even if the local authority does not currently provide allotments in their area. A joint request for an allotment may also be made by two or more persons, so long as the applicants are all resident in the relevant local authority area (subsection (5)).

290. Once a request is received, the local authority is under a duty to acknowledge the request in writing within 28 days (subsection (6)).
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

**Duty to maintain list**

291. Section 71 imposes an obligation on local authorities to establish and maintain a waiting list of residents who have requested an allotment.

292. Subsection (2) clarifies that there is no set format for such lists and local authorities may manage them as they see fit. They may, for example, wish to split the list into applicants’ preferred geographical areas. Subsection (3) provides that a person’s details must be removed from the list when they are offered an allotment or withdraw their request.

**Duty to provide allotments**

293. Section 72 imposes a duty on local authorities to take reasonable steps to provide sufficient allotments to keep the list referred to in section 71 at no more than half the authority’s current number of allotments.

294. Where a local authority does not on the date that section 72 comes into force own or lease allotments, subsection (2) sets out that this duty is triggered when there are 15 people on the local authority waiting list maintained under section 71(1). However, where a local authority already owns or leases allotments, subsection (3) sets out that the duty arises after only one person is on the waiting list.

295. The Scottish Ministers may by order amend the number of people on the waiting list that triggers the requirement on the local authority to take reasonable steps to provide more allotments, or the proportion of current allotments below which the waiting list is to be kept (subsections (4) and (5)).

**Allotment site regulations**

296. An obligation is placed on each local authority under section 73(1) to make allotment site regulations for their area within two years of this section coming into force.

297. The matters set out in subsection (3) must be included in the regulations.

298. In addition to the mandatory requirements under subsection (3), subsection (4) sets out other matters local authorities may include in the regulations.

299. Local authorities are permitted to vary the regulations for different areas or different types of allotment sites in order to take account of local circumstances (subsection (5)).

**Allotment site regulations: further provision**

300. Section 74 sets out the process that local authorities must undertake to make allotment site regulations, or to vary or revoke them. Subsection (2) provides that local authorities must at least one month before making regulations advertise their intention to do so, the purpose of the regulations, where they may be inspected and details about making representations. They must also make copies of the proposed regulations available. A person who objects to the regulations
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

may make representations to the local authority and must be allowed an opportunity to be heard and his or her representations taken account of before the local authority makes its final decision (subsections (3) and (4)). Where regulations contravene the local authority’s lease of the site, the provision in the lease is to prevail (subsection (11)).

**Disposal etc. of allotments and allotment sites owned by local authority**

301. Section 75 applies where an allotment site is owned by a local authority.

302. If a local authority wishes to change the use of or dispose of an allotment site it owns, it requires to obtain the consent of the Scottish Ministers before doing so (subsection (2)). The Scottish Ministers may consent subject to conditions (subsection (3)), and in particular may only grant consent if they are satisfied that each of the allotment tenants from the site has been offered an alternative allotment within a reasonable distance, or that the provision of an alternative allotment is not necessary or reasonably practical in the circumstances (subsection (4)).

**Disposal etc. of allotments and allotment sites leased by local authority**

303. Section 76 applies where a local authority leases an allotment site and sub-leases either the site (e.g. to an allotment association), or allotments within the site, to tenants.

304. Subsection (2) sets out that the local authority may not renounce (terminate voluntarily) the lease of an allotment site without the consent of the Scottish Ministers. In addition, even where a change of use is permitted by the head lease, the local authority may not change the use of the allotment site unless the Scottish Ministers consent (subsection (3)).

305. As with section 75 above, the consent of the Scottish Ministers may be subject to conditions (subsection (4)), and the Scottish Ministers may not grant consent unless they are satisfied that the allotment tenants have been offered a suitable alternative allotment within a reasonable distance of the allotment site which is closing, or that the provision of an alternative is not necessary or reasonably practical in the circumstances (subsection (5)).

**Duty to prepare food-growing strategy**

306. Section 77 places a duty on every local authority to prepare a food-growing strategy which must be published within two years of this section coming into force. Subsection (3) provides that the food-growing strategy must identify land in the local authority area which could be used by a community to grow vegetables, fruit, herbs or flowers, as well as land that could be used for allotments, and must describe how the authority intends to increase the provision of allotments or other land for community growing, should there be an identified need. The Scottish Ministers may also prescribe other information to be included in a food growing strategy.

307. Once complete, the local authority must publish the food growing strategy on a website or by other electronic means (subsection (4)).
Duty to review food-growing strategy

308. Each local authority is under a duty to review its food-growing strategy, under section 78. This must be done 5 years after the date of initial publication and every 5 years thereafter (subsection (1)). Where the local authority makes changes to its food growing strategy following a review, the revised strategy must be published on a website or by other electronic means (subsection (2)).

Annual allotments report

309. Under section 79, every local authority is under a duty to prepare and publish an annual allotments report. This requires to be done as soon as is reasonably practicable after the end of each reporting year (as defined in subsection (4)). Publication must be on a website or by other electronic means (subsection (3)).

310. Subsection (2) sets out the matters which require to be detailed in the annual allotments report and allows other information to be required in the report by regulations made by the Scottish Ministers.

Power to remove unauthorised buildings from allotment sites

311. The regulations regarding allotment sites to be made under section 73 must include provision for buildings and structures that are permitted on allotments, including modifications that may be made and the materials that may or may not be used in connection with such structures. The regulations may also include provision for buildings or structures that are permitted on land mentioned in paragraph (b) of the definition of “allotment site”, being communal areas within the site, including permitted modifications and materials. If a building or structure is not permitted under regulations made under section 73(1), and at the time it was erected or modified, that erection or modification was prohibited by such regulations, section 80 gives a local authority the power to remove the building or other structure.

312. Subsection (2) provides that a local authority may:
   - remove the building or other structure from the site;
   - dispose of the materials that formed the building or other structure; and
   - recover the cost of the removal and/or disposal of the materials from a “liable tenant”, being the tenant from whose allotment it is removed or, if on a part of the site that is not an allotment, from the tenant or tenants responsible for its erection (subsection (3)).

313. In cases where more than one tenant has consented to the erection of an unauthorised building or structure, each such tenant shall be jointly and severally liable for the recoverable costs (subsection (4)).

314. Prior to exercising this power to remove unauthorised buildings, a local authority must follow the procedure set down in subsection (5). Firstly, notice must be given to every tenant who may be affected by the removal of the building or structure. Secondly, the tenant(s) must be
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

given the opportunity to make representations about the proposed action and there is a duty placed on the local authority to give appropriate consideration to these representations. Once a decision is reached, the local authority must notify this decision to the affected tenant(s) in writing, specifying the date on which the action is to take place, if applicable. Upon receipt of a notice under subsection (5)(d) a tenant has 21 days to appeal to a sheriff against the decision of the local authority.

315. A limitation placed on this power is that where a local authority leases an allotment site, it cannot remove buildings or other structures if this removal is in breach of a provision of the lease (subsection (8)).

316. Subsection (7) allows the Scottish Ministers to make regulations regarding the procedure to be followed in relation to the exercise of the power to remove buildings or structures, dispose of the materials and recover the costs of removal and disposal.

**Delegation of management of allotment sites**

317. Part 7 of the Bill imposes certain management functions on local authorities in relation to allotment sites. Section 81 allows a local authority to delegate certain functions to a person who represents the interests of the tenants of each of the allotments on a particular site. Usually, this “person” will be an allotment association.

318. Only the functions set out in subsection (2) may be delegated by the local authority.

319. In order for functions to be delegated, a written application must be made by the person wishing to take over the functions of the local authority. The application must include the name and address of the applicant, in addition to such information as the Scottish Ministers set out in regulations (subsection (3)).

320. Upon receipt of an application the local authority has 14 days in which to request from the applicant such further information as it requires in order to make a decision as to whether to agree or refuse the request. The applicant must provide this information within 14 days of it being requested (subsection (4)).

321. There are time limits by which the local authority must make and notify a decision on an application and these are set out in subsection (5). Where no further information has been requested from the applicant, the decision must be notified to the applicant within 28 days of receipt of the application. Where further information has been requested, this time limit is increased to 56 days.

322. If the request is refused, the local authority must send the applicant a decision notice which sets out the reasons for the refusal of the application (subsection (6)).

323. If the request is agreed, the local authority must decide which of its functions it is delegating to the applicant and when the delegation will be reviewed. Prior to the decision on
which functions to delegate, the local authority is under an obligation to consult with the person who has made the request (subsection (8)).

324. In cases where the local authority considers that the person to whom they have delegated functions is not carrying out these functions satisfactorily, or where there is a disagreement between this person and the local authority, the local authority has the power to recall any of the functions it has delegated under this section (subsection (9)).

325. It is also set out in subsection (10) that where the local authority is leasing an allotment site from another person, any delegation of its functions must not contravene the head-lease.

Promotion and use of allotments: expenditure

326. Section 82 permits a local authority to incur expenditure for the purpose of promoting allotments in its area and providing training by or on behalf of the local authority to tenants and potential tenants about the use of allotments.

Termination of lease of allotment or allotment site

327. Section 83 confers a power on a local authority to terminate the lease of whole or part of an allotment or allotment site.

328. Where a tenant has been complying with allotment site regulations made under section 73, the minimum notice of termination the local authority is required to give is one year (subsection (2)). This applies where the Scottish Ministers have consented to disposal of the site, change of its use, or renunciation of the lease of the site under section 75 or 76. Where there has been a breach of allotment site regulations by a tenant, the notice period is reduced to 1 month (subsection (2)).

329. A local authority must write to any tenant to inform them of its intention to give notice to terminate a lease no later than one month in advance of serving such a notice (subsection (5)). The local authority is also required to allow the tenant any opportunity to make representations to the authority in relation to the proposed termination and must take account of such representations. After considering these representations the local authority must write to the tenant to inform them of their intention to no longer proceed or to give notice (subsection (5)(d)). A tenant who is aggrieved by a notice may appeal to the sheriff within 21 days of the date of the notice (subsection (6)). A notice served under this section does not take effect until the appeal period has expired or, where there is an appeal, the appeal has been withdrawn or finally determined (subsection (8)).

330. The written notice must specify the termination date of the lease (subsection (1)). If, however, the local authority has given notice under section 85 where its lease of the site has been terminated by its landlord, it does not require to also give notice under this section (subsection (11)).
Resumption of land by local authority

331. If allotment land is required by the local authority for building, mining or other industrial purpose (or for the construction, maintenance or repair of roads or sewers necessary in connection with these purposes), the local authority can, in certain circumstances, resume the whole or part of an allotment or allotment site, under section 84. This power can only be exercised with the consent of the Scottish Ministers and where the tenant has been given notice in accordance with subsection (3). The Scottish Ministers may grant consent subject to such conditions as they think fit (subsection (4)) and may only grant consent if they are satisfied that each of the allotment tenants from the site has been offered an alternative allotment within a reasonable distance, or that the provision of an alternative allotment is not necessary or reasonably practical in the circumstances (subsection (5)).

332. Subsection (3) provides that written notice of the resumption must be given to allotment tenants and this notice must specify the date on which the resumption is to take place. The minimum notice period is 3 months and the notice must therefore be served in accordance with this prescribed time limit.

Notice of termination: sublease

333. Where a local authority leases an allotment site from another person and then sub-leases either the site or particular allotments to tenants, it is possible that the local authority’s landlord may terminate the head-lease to the local authority. Section 85 provides that the effect of this is that the sub-lease(s) granted by the local authority will come to an end on the date that the head-lease between the landlord and the local authority comes to an end.

334. Section 85(2) places an obligation on the local authority to send a copy of the notice of termination of the head-lease to each subtenant and inform them that the effect of the termination of the head-lease will be the termination of the sub-leases.

Notice of termination: sublease by allotment association

335. Where a person, such as an allotment association, leases an allotment site from a local authority and is given notice by the local authority, section 86 provides that that person must give notice to each subtenant informing them that the effect of termination of the head-lease will be termination of the sub-leases.

Sale of surplus produce

336. Section 87 sets out that allotment tenants may sell produce grown on their allotments provided this is not with a view to making a profit (e.g. it may be sold for charity) if the produce falls within a description set out in regulations. Under subsection (1), the Scottish Ministers are given the power to make regulations which describe the produce which may be sold.

337. Before the Scottish Ministers make regulations under subsection (1) they must consult with each local authority and any other interested persons (subsection (2)).
Removal of items from allotment by tenant

338. Section 88 provides that before the expiry or termination of a tenant’s allotment lease a tenant may remove certain items from their allotment. These items are any buildings or other structures erected by or on behalf of the tenant, or any produce, trees or bushes acquired by the tenant or planted by or on behalf of the tenant.

Compensation for disturbance

339. Where an allotment lease is terminated by way of one year’s notice, termination of the head lease of the site by the local authority’s landlord, or resumption, section 89 provides tenants with a right to be compensated for damage caused by the disturbance of the enjoyment of the allotment (subsections (1) and (2)). A formula sets out how the minimum amount of compensation is to be calculated (subsection (3)). Subsections (4) and (5) require the Scottish Ministers to make further provision in regulations about the process involved in determining liability for, and the amount of, compensation. There is a right of appeal to the Sheriff against a local authority’s decision in respect of compensation (subsection (7)).

Compensation for deterioration of allotment

340. Under section 90, where a lease of an allotment from a local authority has ended and the allotment has deteriorated during the tenant’s tenancy due to the tenant’s fault or negligence, the sum required to remedy the deterioration is due in compensation from the tenant to the local authority. Subsections (4) and (5) require the Scottish Ministers to make further provision in regulations about determining liability for, and the amount of, compensation. A tenant has a right of appeal to the sheriff against a decision of a local authority under this (subsection (7)).

Compensation for loss of crops

341. Section 91 provides that where an allotment lease is terminated by way of resumption and the tenant loses crops due to the resumption, the local authority is liable to compensate the tenant for the loss of crops (subsections (1) and (2)). This compensation is only due to the tenant of an allotment; not to a tenant of an allotment site, such as an allotment association. The Scottish Ministers are required to make regulations about determining liability for, and the amount of, compensation (subsection (3) and (4)). A tenant has a right of appeal to the sheriff against a local authority decision under this section (subsection (6)).

Set-off compensation etc.

342. Where a lease is terminated, section 92(1) allows local authorities who are liable to compensate a tenant or subtenant for disturbance or loss of crops to deduct from the sum due any sum due by the tenant in connection with the lease.

343. Subsection (2) provides that where a tenant is liable to pay a sum to the local authority in connection with the lease, the tenant can deduct any sum due to them by the local authority by way of compensation for disturbance or loss of crops.
Part 8: Non-domestic rates

Schemes for reduction and remission of rates

344. The Bill provides for reduction or remission of rates for non-domestic properties (usually referred to as “land and heritages”) in Scotland. It creates a power to allow rating authorities (which are the local authorities) to reduce or remit non-domestic rates (often referred to as business rates) within their areas, in any financial year from 2015-16 onwards. This power will allow any rating authority to create, if it wishes, local relief schemes for any lands and heritages from which it collects rates.

345. The power is created by an amendment to the Local Government (Financial Provisions etc.) (Scotland) Act 1962. Section 94(1) of the Bill inserts section 3A into that Act to provide the power. Section 3A(4) allows reliefs to apply in schemes defined by categories of property, areas, activities, or any other matter. Any relief awarded ceases to apply when there is a change in the occupation of the premises, under subsection (5) of section 3A. Subsection (6) requires the rating authority to have regard to the interests of people who pay council tax set by the authority before creating or amending a relief scheme. This is because any loss of income from non-domestic rates incurred by the scheme must be offset from other income raised by the local authority.

346. Section 94(2) amends Schedule 12 to the Local Government Finance Act 1992 (payments to local authorities) to ensure that the arrangements for pooling of income from non-domestic rates and funding of rating authorities will accommodate and remain unaffected by the power to create relief schemes. Subsections (3) and (4) make consequential amendments to allow these changes to take effect.

Part 9: General

347. Part 9 provides general information which relates to all Parts of the Bill.

348. Section 95 requires the Scottish Ministers to publish any guidance they issue under Part 2 or Part 6 of the Bill. (These are the only Parts that require people to have regard to guidance issued by the Scottish Ministers.)

349. Section 96 regulates how the Scottish Ministers can make orders or regulations under the Bill, including the procedure (“affirmative” or “negative”) by which they are to be scrutinised by the Scottish Parliament.

350. Section 97 gives Ministers powers to make additional provision that is necessary or expedient to make sure the provisions of the Bill work properly. Section 96(2) provides that any order under section 97 which amends the text of an Act must be scrutinised in the Scottish Parliament by the stronger “affirmative” procedure.

351. Section 99 sets out when the provisions of the Bill come into force. Part 9 comes into force the day after the Bill receives Royal Assent. The rest of the Bill will come into force on
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014.

dates decided by the Scottish Ministers, which will be set out in commencement orders. Different parts of the Bill may be brought into force at different times.
FINANCIAL MEMORANDUM

INTRODUCTION

1. This document relates to the Community Empowerment (Scotland) Bill introduced in the Scottish Parliament on 11 June 2014. It has been prepared by the Scottish Government, to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

OVERVIEW

2. The Bill reflects the policy principles of subsidiarity, community empowerment and improving outcomes and provides a framework which will:

   • empower community bodies through the ownership of land and buildings and strengthening their voices in the decisions that matter to them; and
   • support an increase in the pace and scale of public service reform by cementing the focus on achieving outcomes and improving the process of community planning.

3. In doing so, this Bill aims to support approaches that can contribute to improving outcomes in all aspects of people’s lives. The memorandum summarises the cost implications of the Bill, drawing on consultation responses and information from, and conversations with, a range of organisations including: COSLA, Development Trusts Association Scotland, and Forestry Commission Scotland.

CONTENTS

4. This Financial Memorandum sets out the costs associated with the following parts to the Bill:

   • **Part 1** places a duty on the Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, which builds on the Government’s internationally acclaimed “Scotland Performs” framework.
   • **Part 2** places community planning partnerships (CPPs) on a statutory footing and imposes duties on them around the planning and delivery of local outcomes.
   • **Part 3** provides a mechanism for communities to have a more proactive role in having their voices heard in how services are planned and delivered.
   • **Part 4** amends Part 2 of the Land Reform (Scotland) Act 2003, extending the community right to buy to all of Scotland, and introduces a new Part 3A to that Act to make provision for community bodies to purchase neglected and abandoned land where the owner is not willing to sell that land.
   • **Part 5** provides community bodies a right to request to purchase, lease, manage or use land and buildings belonging to local authorities, Scottish public bodies or the Scottish Ministers.
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

- **Part 6** places a statutory duty on local authorities to establish and maintain a register of all property held by them for the common good and requires local authorities to publish their proposals and consult community bodies before disposing of or changing the use of common good assets.

- **Part 7** updates and simplifies legislation on allotments. It requires local authorities to take reasonable steps to provide more allotments if waiting lists exceed certain trigger points and ensures appropriate protection for local authorities and plot holders.

- **Part 8** provides for a new power which will allow councils to create and fund their own localised business rate relief schemes to better reflect local needs and support communities.

5. There are likely to be some additional, mainly administrative, costs to the Scottish Government, public bodies, local authorities, community bodies and others as a result of the Bill. As set out below, in relation to the parts of the Bill concerned with participation requests, the community right to buy and asset transfer requests the costs will be driven by the demand to use the provisions at a local level and will often depend on the circumstances of the request or application. Increased demand may lead to increasing costs in these areas, in particular for asset transfer requests where public authorities decide to transfer an asset at below market value this will have a financial consequence for the organisation. In these cases an assessment of the costs and benefits associated with an asset transfer would be made to demonstrate that the transfer represents public value. The Financial Memorandum assumes that the Bill provisions will take effect from the financial year 2015-16 onwards, subject to necessary consultation, guidance, secondary legislation and other practical implementation elements having been carried out. Table 1 provides a summary of the additional costs expected as a result of the Bill provisions being introduced.

**Table 1: Summary table of additional costs expected as a result of provisions being introduced**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Financial Memo Paras</th>
<th>Costs on Scottish Administration</th>
<th>Costs on local authorities</th>
<th>Costs on other bodies, individuals or businesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>National outcomes</td>
<td>6 to 9</td>
<td>The Scottish Government expects any costs to be minimal and absorbed within existing budgets.</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Community planning</td>
<td>10 to 17</td>
<td>Nil</td>
<td>It is anticipated that the provisions will impose minor additional costs on local authorities due to the local action that is already underway</td>
<td>It is anticipated that the provisions will impose minor additional costs on public bodies involved due to the local action</td>
</tr>
</tbody>
</table>
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

<table>
<thead>
<tr>
<th>Topic</th>
<th>Financial Memo Paras</th>
<th>Costs on Scottish Administration</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Participation requests</td>
<td>18 to 24</td>
<td>Demand driven</td>
<td>Demand driven</td>
<td>Nil</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Costs will be contingent on how often community participation bodies use the provisions and at this stage it is difficult to forecast use across Scotland.</td>
<td>Costs will be contingent on how often community participation bodies use the provisions and at this stage it is difficult to forecast use across Scotland.</td>
<td>that is already underway to strengthen community planning.</td>
</tr>
<tr>
<td>Community right to buy: modifications of Part 2 of Land Reform (Scotland) Act 2003</td>
<td>25 to 48</td>
<td>Demand driven</td>
<td>Nil</td>
<td>Demand driven</td>
</tr>
<tr>
<td></td>
<td></td>
<td>It is anticipated that the provisions are likely to impose additional administrative costs on the Scottish Government.</td>
<td>Demand driven Costs will be contingent on decisions made by individual community bodies and landowners.</td>
<td>Costs will be contingent on decisions made by individual community bodies and landowners.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Costs in 2012-13 for maintenance</td>
<td>Communities – legal entities: We do not anticipate there to be any significant additional costs in setting up a Scottish Charitable Incorporated Organisation.</td>
<td>Costs in 2012-13 for maintenance</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Landowners withdrawing land from sale: landowners may be asked to pay back Ministers for the costs of the independent valuation if they</td>
<td></td>
</tr>
<tr>
<td>Topic</td>
<td>Financial Memo Paras</td>
<td>Costs on Scottish Administration</td>
<td>Costs on local authorities</td>
<td>Costs on other bodies, individuals or businesses</td>
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</tr>
<tr>
<td>and upkeep of Register of Community Interests in Land were £7,410. Additional costs likely to arise with extension of community right to buy to urban Scotland. Community – legal entities: £10,000 to develop a model for Scottish Charitable Incorporated Organisations. Valuation of land: Average cost is £2,382 so between 5 and 10 valuations per year would lead to an average cost of between £11,910 and £23,820. Monitoring: limited additional costs in collecting, assessing and presenting the results of monitoring exercises. Late applications: Potential for increased requests for compensation from landowners.</td>
<td></td>
<td>with draw the land from sale, average cost for valuation is £2,382. “Exempt” transfer of land: Landowners may incur legal representation costs if they chose to engage a solicitor. Appeals: The provisions allow for a number of appeals. In some circumstances costs may have to be borne by a landowner or community body. Costs will vary from case to case.</td>
<td></td>
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</table>
### Financial Memo

<table>
<thead>
<tr>
<th>Topic</th>
<th>Financial Memo Paras</th>
<th>Costs on Scottish Administration</th>
<th>Costs on local authorities</th>
<th>Costs on other bodies, individuals or businesses</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Assuming 5 to 10 ballots per year the average yearly cost could vary between £5,200 and £53,530 based on the model used and the size of the community being balloted.</td>
<td></td>
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</tr>
</tbody>
</table>

Appeals: The provisions allow for a number of appeals. In some circumstances costs may have to be borne by the Scottish Ministers. The Scottish Government’s legal costs for 2012-13 were £21,225 and will vary from year to year and case to case.

### Summary

Annual costs:

Valuations and ballots:
£17,110 to £77,350.

Other administrative and legal costs will be dependent on any increase in demand.

One off costs:
£10,000 to develop
<table>
<thead>
<tr>
<th>Topic</th>
<th>Financial Memo Paras</th>
<th>Costs on Scottish Administration</th>
<th>Costs on local authorities</th>
<th>Costs on other bodies, individuals or businesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community right to buy: neglected and abandoned land</td>
<td>49 to 69</td>
<td>Demand driven It is anticipated that the provisions will impose additional administrative costs on the Scottish Government dependent on the level of demand. Community – legal entities: £10,000 to develop a model for the right to buy neglected and abandoned land. Valuation of land: Average cost is £2,382 so between 5 and 10 valuations per year would lead to an average cost of between £11,910 and £23,820. The right for a landowner to make counter-representations may increase the costs associated with valuation. Compensation costs: There is provision for those who have incurred a loss or expense under the</td>
<td>Nil</td>
<td>Demand driven Costs will be contingent on decisions made by individual community bodies and landowners. Communities – legal entities: We anticipate there to be minimal additional costs in setting up a company limited by guarantee. Balloting: The average cost of each ballot for a community body would be between £1,040 and £5,353 Compensation costs: There is provision for those who has incurred a loss or expense under the provisions to be entitled to compensation. It is expected that costs will vary from case to case. Appeals: The</td>
</tr>
<tr>
<td>Topic</td>
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<td>provisions to be entitled to compensation. It is expected that costs will vary from case to case.</td>
<td></td>
<td>provisions allow for appeals at different stages. In some circumstances costs may have to be borne by a landowner, community body or third party. Costs will vary from case to case.</td>
</tr>
<tr>
<td>Register of applications: set up costs of £10,000 and on-going maintenance and update costs of £10,000.</td>
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<tr>
<td>Appeals: The provisions allow for a number of appeals. In some circumstances costs may have to be borne by the Scottish Ministers. Costs will vary from case to case.</td>
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<tr>
<td><strong>Summary</strong></td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>Annual costs:</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Valuation of land: average cost of between £11,910 and £23,820.</td>
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<td></td>
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<tr>
<td>Register of applications: on-going maintenance and update costs of £10,000.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Set-up costs:</td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>Community – legal</td>
<td></td>
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</tbody>
</table>
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

<table>
<thead>
<tr>
<th>Topic</th>
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<tr>
<td></td>
<td></td>
<td>entities: £10,000 to develop a model for the right to buy neglected and abandoned land. Register of applications: set up costs of £10,000</td>
<td>Demand driven Additional costs will be contingent on how often community bodies use the provisions and at this stage it is difficult to forecast use across Scotland. Scottish Government may decide to transfer assets at less than market value, which will have a financial consequence depending on the value of the asset. Asset transfers, including those undertaken at less than market value, will be done on the basis of a full assessment of the costs and benefits, including predicted savings in the delivery of services and improved local outcomes to demonstrate that a</td>
<td>Demand driven Additional costs will be contingent on how often community bodies use the provisions and at this stage it is difficult to forecast use across Scotland. Local authorities may decide to transfer assets at less than market value, which will have a financial consequence depending on the value of the asset. Asset transfers, including those undertaken at less than market value, will be done on the basis of a full assessment of the costs and benefits, including predicted savings in the delivery of services and improved local outcomes to demonstrate that a</td>
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<th>Costs on other bodies, individuals or businesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common good property</td>
<td>83 to 91</td>
<td>Nil</td>
<td>It is anticipated that the provisions will impose some additional costs on local authorities.</td>
<td>Nil</td>
</tr>
<tr>
<td>Allotments</td>
<td>92 to 100</td>
<td>Nil</td>
<td>Duty to provide allotments: costs will be dependent on how much provision is required to meet individual local authority targets and how much provision is actually possible.</td>
<td>Nil</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Local authority estimates on recent cost ranged from £1,900 to £6,250 per plot, and from £21,000 to £150,000 for a whole site.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Duty for local authorities to hold and maintain waiting lists: Local authority estimates of maintaining a waiting list varied from £100 to £9,000 per year.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Duty for local authorities to publish an annual report and produce a food growing strategy: Local</td>
<td></td>
</tr>
</tbody>
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<tr>
<td></td>
<td></td>
<td></td>
<td>authority estimate to produce an annual report is between £500 and £1,000. Estimates on the costs of producing a strategy are between £5,000 and £9,350.</td>
<td>Nil</td>
</tr>
<tr>
<td>Non-domestic rates: schemes for reduction and remission of rates</td>
<td>101 to 106</td>
<td>Nil</td>
<td>The power for local authorities to award rate relief is discretionary and will be met by the local authority.</td>
<td>Nil</td>
</tr>
</tbody>
</table>

PART 1: NATIONAL OUTCOMES

Introduction

6. The Bill places a duty on the Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland. They must also regularly and publicly report progress towards those outcomes. It requires national outcomes to be determined, but there is flexibility as to how these may be presented and measured.

Costs on the Scottish Administration

7. It is anticipated that the provisions will impose minor additional administrative costs on the Scottish Government. All costs associated with this provision would be met from existing Scottish Government resources. The Bill’s proposed requirements to develop, consult and report on national outcomes would be considered a core part of Scottish Government business.

Costs on local authorities

8. It is not anticipated that the provisions should impose any additional costs on local authorities. Local authorities routinely respond to Scottish Government consultations as part of their core business.

Costs on other bodies, individuals and businesses

9. It is not anticipated that the provisions should impose any additional costs on other bodies, individuals and businesses.
PART 2: COMMUNITY PLANNING

Introduction

10. The measures in the Bill seek to strengthen the roles and responsibilities of community planning partnerships (CPPs) and place new duties on public sector partners to play a full and active role in community planning and the resourcing and delivery of local priority outcomes. In doing so they complement and reinforce the significant national and local action that is already underway to strengthen community planning. These include action by CPPs to implement new Single Outcome Agreements (SOA) which the Scottish Ministers and Council Leaders signed off in July and August 2013; and action by key public sector partners in community planning (including local authorities, NHS bodies and enterprise bodies) to work within CPPs to ensure that collective resources are more closely aligned towards shared priority outcomes in their SOA.

Costs on the Scottish Administration and public bodies

11. Schedule 1 to the Bill sets out a list of public sector bodies which will be required to participate in community planning. Some of these bodies (including NHS bodies, Scottish Enterprise and Highland and Islands Enterprise) are already statutory community planning partners. Others (including Skills Development Scotland, Scottish Natural Heritage and the Scottish Environmental Protection Agency) are not statutory partners at present but as a matter of practice frequently participate in community planning.

12. For those public sector bodies which are complying with national and local action already underway at policy level to strengthen community planning, it is anticipated that the provisions will impose either no or minor additional costs. Any direct costs are most likely to relate to additional travel and related costs to participate in meetings with the CPP and partners. Any indirect costs are most likely to relate to additional commitment by senior officers and elected members.

13. More broadly, the provisions in the Bill will reinforce national and local policy expectations about how these public sector bodies allocate their resources, so they are more closely targeted towards improving outcomes, especially on themes which a CPP has prioritised in its local outcomes improvement plan.

Costs on local authorities

14. Local authorities currently incur modest costs for facilitating community planning in their area, by servicing and co-ordinating the work of the CPP. These are principally staff costs for community planning officers. We understand from one medium-sized local authority that expenditure for servicing its CPP (including its thematic sub-groups) is approximately £210,000 per annum. A small local authority estimates it spends approximately £70,000 for this purpose. These figures exclude indirect costs for senior officers and elected members (e.g. time spent attending meetings, preparing papers and initiating follow-up work).

15. The provisions in the Bill do not place any specific additional requirements about how the CPP must operate which would result in additional direct servicing costs for the local authority. For those local authorities which are complying with national and local action already
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

underway at policy level to strengthen community planning, it is anticipated that the provisions will impose either no or minor additional indirect costs, in terms of commitment by senior officers and elected members.

16. More broadly, the provisions in the Bill will reinforce national and local policy expectations about how local authorities allocate their resources, so they are more closely targeted towards improving outcomes, especially on themes which a CPP has prioritised in its local outcomes improvement plan.

Costs on other bodies, individuals and businesses

17. Part 2 of the Bill does not place duties on other bodies, individuals and businesses. It is therefore not anticipated that the provisions should impose any additional costs on other bodies, individuals and businesses.

PART 3: PARTICIPATION REQUESTS

Introduction

18. The Scottish Government sets clear expectations that all public sector organisations must engage with communities and support their participation in setting priorities and in the design and delivery of services. The provisions in this Part of the Bill are not intended to replace that activity, but they give community bodies an additional power to initiate that dialogue on their own terms, and a right to have their views properly considered.

19. Where an appropriate community body, or a group of bodies, believes it could help to improve the outcome of a service, it will be able to make a request to the public body or bodies that deliver that service, asking to take part in a process to improve that outcome. The public body must agree to the request for dialogue unless there are reasonable grounds for refusal. At the end of the process the public body must publish a report on whether the outcomes were improved and how the community body contributed to that improvement.

Costs on the Scottish Administration and public bodies

20. These provisions will apply in relation to public services provided by listed public bodies. There are likely to be costs associated in responding to participation requests. However, the costs will depend on how often community participation bodies use the provisions and at this stage it is difficult to forecast use across Scotland. The Bill explicitly allows public service authorities to invite community bodies to join existing processes, therefore limiting the need for additional costs.

21. The costs to a public body of providing an outcome improvement process will vary according to circumstances. An example for a local authority is provided below in paragraph 23 and shows costs associated with a number of different community engagement events they undertook.
Costs on local authorities

22. There are likely to be costs associated in responding to participation requests. However, the costs will depend on how often community participation bodies use the provisions and at this stage it is difficult to forecast use across Scotland. The Bill explicitly allows public service authorities to invite community bodies to join existing processes, therefore limiting the need for additional costs.

23. The costs to a local authority of providing an outcome improvement process will vary according to circumstances. For example, a local authority provided some costs associated with a number of community engagement events they undertook. The costs ranged from £1,100 for a series of events aimed at involving local older people in identifying key priorities and concerns up to £41,000 for a series of engagement events to tackle health inequalities. The majority of the costs in each case were staffing costs.

Costs on other bodies, individuals and businesses

24. It is not anticipated that the provisions should impose any additional costs on other bodies, individuals and businesses.

PART 4: COMMUNITY RIGHT TO BUY LAND

Introduction

25. Based on the experience of those using the legislation over the first decade of community right to buy, the Bill makes a number of changes to the detailed procedures and requirements. These provisions are intended to make the process easier and more flexible for communities, while continuing to strike a fair balance between the rights of communities and landowners.

26. The Bill also extends the right to buy to all of Scotland, removing the power of the Scottish Ministers to designate “excluded land”, which currently excludes all settlements over 10,000 population. This, and the streamlining of procedures, may be expected to lead to more communities registering interest in land and taking up the right to buy. However, it is not possible at this stage to accurately estimate the demand and how many new applications may be received.

Sections 27 to 47: modifications of Part 2 of the Land Reform (Scotland) Act 2003

Costs on the Scottish Administration

27. It is not anticipated that the provisions should impose any significant additional costs on the Scottish Government. The elements of the Bill which may lead to an increase in costs on the Scottish Government are identified below. All additional costs would be met from existing resources.

Community – appropriate legal entities

28. We propose that there will be model constitutions available to communities wishing to use the community right to buy provisions under the Bill. The Scottish Government currently has
a model Articles of Association for companies limited by guarantee, which was developed in partnership with Highlands and Islands Enterprise and commercial solicitors.

29. A model for any other forms of community organisations would need to be developed and made compliant with the legislation. This will also need to be updated as necessary. We anticipate that it will cost in the region of £10,000 for the Scottish Government to develop a model for Scottish Charitable Incorporated Organisations in the first instance.

Valuation of the land

30. The Scottish Ministers currently pay for an independently conducted valuation once the community right to buy is triggered. These costs will continue under the Bill. The average cost of the 38 valuations since 2005 has been £2,382 which at an average of 4 per year is £9,528.

31. As noted above, as the Bill is extending the community right to buy all of Scotland and is making the process easier and more flexible we would expect that the average number of times that community right to buy is used to increase. It is difficult to forecast the number but an increase to between 5 and 10 per year would lead to an average cost of the valuation of land of between £11,910 and £23,820 per year.

32. The Bill introduces a right for the landowner to make counter-representations in relation to the valuation. A valuation currently takes six weeks to complete. With counter-representations, it is expected that the valuation will take up to eight weeks to complete. There will therefore be increased costs associated with valuation as additional work is required to be undertaken, in particular in the exchange of views on the valuation, and consideration of these views. We do not anticipate that this increase in cost will be significant.

Monitoring the community right to buy

33. There will be cost implications for the Scottish Government in collecting, assessing or presenting the findings of monitoring exercises. The costs of this requirement will depend on the arrangements put in place. We anticipate that any additional cost will be minor.

Late applications

34. Landowners are entitled to request compensation from the Scottish Ministers for the costs of maintaining their land and assets while a community body is seeking to use the community right to buy provisions. The period of the right to buy will be extended from 6 months to 8 months; this could therefore lead to increased requests for compensation. Requests for compensation under this provision have generally been limited.

Balloting

35. Community bodies currently make their own arrangements to ballot their community. In some cases the costs of the ballot were incurred by the community body, while in others they were borne by a local authority or another party. Section 37 provides that the Scottish Ministers will make arrangements for all ballots, and will bear the costs of these.
36. Over the period when the community right to buy has been used, there have been 40 ballots, in which 67,063 persons have been balloted (table 2). The average number of persons being balloted in a single ballot is 1,677 persons; the smallest ballot involved 43 persons (at Silverburn); the largest is 6,634 persons (Seton Fields).

37. The costs of this provision to the Scottish Ministers will depend on the number of applications made, the size of the community to be balloted in each case, and the approach adopted to the ballot.

38. As shown in table 2 below we have identified three models for costing the ballot: one is based on an estimated figure of a £2,000 standing charge and £2 per head administrative charge; a second one is based on the costs as applied to crofting elections; a third one is based on a ballot undertaken by a local authority. Using these possible models had the Scottish Government paid for the administration of the ballot, they would have spent between £41,579 and £214,126 on balloting costs since 2005. The average cost of each ballot would have been between £1,040 and £5,353.

<table>
<thead>
<tr>
<th>Year</th>
<th>No. registered interests (approved)</th>
<th>No. rights to buy “triggered” and no. ballots</th>
<th>No. people balloted</th>
<th>Costs based on estimated figure*</th>
<th>Costs based on crofting elections ballots</th>
<th>Costs based on a Local Authority example**</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>13</td>
<td>10</td>
<td>2,343</td>
<td>£14,686</td>
<td>£5,108</td>
<td>£1,453</td>
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<tr>
<td>2006</td>
<td>10</td>
<td>4</td>
<td>8,187</td>
<td>£22,374</td>
<td>£17,848</td>
<td>£5,076</td>
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<tr>
<td>2007</td>
<td>28</td>
<td>7</td>
<td>16,046</td>
<td>£52,092</td>
<td>£34,980</td>
<td>£9,949</td>
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<tr>
<td>2008</td>
<td>14</td>
<td>4</td>
<td>1,109</td>
<td>£6,218</td>
<td>£2,418</td>
<td>£688</td>
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<td>2009</td>
<td>9</td>
<td>1</td>
<td>152</td>
<td>£2,304</td>
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<td>2010</td>
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<td>21,948</td>
<td>£57,896</td>
<td>£47,847</td>
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<tr>
<td>2011</td>
<td>6</td>
<td>1</td>
<td>406</td>
<td>£6,812</td>
<td>£885</td>
<td>£252</td>
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<tr>
<td>2012</td>
<td>10</td>
<td>3</td>
<td>12,921</td>
<td>£35,842</td>
<td>£28,168</td>
<td>£8,011</td>
</tr>
<tr>
<td>2013</td>
<td>13</td>
<td>3</td>
<td>3951</td>
<td>£15,902</td>
<td>£8,613</td>
<td>£2,450</td>
</tr>
<tr>
<td>2014</td>
<td>2</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>166</td>
<td>40</td>
<td>1,677</td>
<td>£214,126</td>
<td>£146,198</td>
<td>£41,581</td>
</tr>
<tr>
<td>Average</td>
<td>16.6</td>
<td>4</td>
<td></td>
<td>£5,353</td>
<td>£3,655</td>
<td>£1,040</td>
</tr>
</tbody>
</table>

*Estimated figure of £2,000 for standing charge, £1.50 printing and postage per ballot paper, and 50p counting charge.  
**Costs from Seton Fields ballot conducted by East Lothian Council.

39. As noted above, as the Bill is extending the community right to buy to all of Scotland and is making the process easier and more flexible. We would expect the average number of times that community right to buy is used to increase.

40. Assuming that there is an average of between 5 and 10 right to buy applications each year, and an average of 1,667 persons being balloted, then average yearly costs could vary
between £5,200 and £53,530. This figure may be higher or lower, depending on the number of
ballots and the number of people to be balloted. We might also expect that the number of people
to be balloted in urban areas is at the higher end of the scale, given that population concentration
will be higher in any given defined community area.

41. In exceptional circumstances where a ballot is flawed, a re-ballot will be required, which
will incur further costs at an average cost of between £1,040 and £5,353.

Appeals

42. As we expect that there will be greater use made of the community right to buy
provisions, we anticipate that there may be an increased number of appeals to the sheriff courts
and to the Lands Tribunal for Scotland (LTS). The Scottish Government’s legal costs for 2012-
13 were £21,225 and will vary from year to year and case to case. The Scottish Tribunals Service
(STS) provides administrative support to the LTS. Arrangements for providing funding to the
STS for cases to the LTS will be provided on a case-by-case basis. It is envisaged that funds will
be reimbursed as cases progress through the LTS. At this stage it is not possible to accurately
estimate how many cases will progress to the LTS and the time needed for each case will vary on
the complexity of the case in question. The last recorded cases that the lead policy team has for
appeals that went to the Sheriff Court were in 2009. In total, since 2004 there have been six
cases brought against decisions by the Scottish Ministers pertaining to various things in the
application process. Where the Scottish Ministers won an appeal costs were covered by the
appellant. In certain cases, where the appellant was unable to pay, this was taken under
consideration by the Scottish Ministers. Where the Scottish Ministers lost an appeal, the costs
were borne by them. Costs are entirely dependent on level of legal representation required and a
case’s complexity and have varied between £3,000 and £20,000.

Costs on local authorities

43. It is not anticipated that the provisions should impose any additional costs on local
authorities.

Costs on other bodies, individuals and businesses

44. The elements of the provisions on community right to buy which may lead to an increase
in costs on other bodies, individual and businesses are identified below. However, there is a large
degree of uncertainty on the level of costs that may be incurred as it will be up to individual
community bodies and landowners in how to use and respond to the provisions, including the
need for appropriate legal advice.

Communities – appropriate legal entities

45. Model constitution documents allow communities to set up a legal entity as easily and
cheaply as possible. Whether communities need to engage a solicitor or other expertise in this
process is entirely up to them. The current costs of setting up a company limited by guarantee
are negligible, with the Scottish Government’s solicitors checking over drafts before
incorporation to ensure compliance with the requirements of the 2003 Act.
46. We do not anticipate there to be any significant additional costs on community bodies in setting up a Scottish Charitable Incorporated Organisation.

**Landowner withdrawing land from sale**

47. If landowners withdraw the land from sale after the right to buy has been triggered they may be asked to pay for the costs of the independent valuation. As stated above the average cost of land valuations since 2005 has been £2,382.

**“Exempt” transfer of land**

48. Under specific circumstances a landowner may transfer land while there is a registered interest in their land. Landowners are to inform the Scottish Ministers of such a transfer. It is up to a landowner to decide how to respond. There could be legal representation costs incurred by a landowner, whose solicitor will write to the Scottish Government to inform them that there has been an exempt transfer of land. The landowner alternatively may wish to make the representation themselves.

**Section 48: neglected and abandoned land (new Part 3A of the Land Reform (Scotland) Act 2003)**

**Costs on the Scottish Administration**

49. It is not anticipated that the provisions should impose any significant additional costs on the Scottish Government. The elements of the Bill which may lead to an increase in costs on the Scottish Government are identified below. All additional costs would be met from existing resources.

**Community – appropriate legal entities**

50. As indicated in paragraph 45 above, we propose that there will be a model constitution available to communities wishing to use the provisions under the Bill. The Scottish Government currently has a model Articles of Association for companies limited by guarantee, which was developed in partnership with Highlands and Islands Enterprise and commercial solicitors.

51. A model for the right to buy neglected and abandoned land will be developed and made compliant with the legislation. This will also need to be updated as necessary. We anticipate that it will cost less than £10,000 for the Scottish Government to develop a model, as the existing model for community companies for Part 2 of the Act provides a starting point.

**Valuation of the land**

52. The Scottish Ministers currently pay for an independently conducted valuation under Part 2 and Part 3 of the community right to buy and crofting community right to buy provisions. These costs will also be met by the Scottish Ministers under these provisions. As indicated above in paragraph 30 the average cost of the 38 valuations since 2005 has been £2,382.

53. The use of the provisions inserted by section 48 is difficult to forecast at this stage but there will be a cost associated with an increased number of valuations. A range of between 5 and
10 per year would lead to an average cost of the valuation of land of between £11,910 and £23,820.

54. The Bill introduces a right for the landowner to make counter-representations in relation to the valuation. This mirrors changes to the valuation procedures under Part 2 of the 2003 Act as indicated above in paragraph 32. With counter-representations, it is expected that the valuation will take up to eight weeks to complete. There will therefore be increased costs associated with valuation as additional work is required to be undertaken, in particular in the exchange of views on the valuation, and consideration of these views. We do not anticipate that this increase in cost will be significant.

Compensation costs

55. Any person who has incurred loss or expense under the provisions may, in certain circumstances, be entitled to compensation. This includes an owner or a former owner of land. Under certain circumstances the community body is to pay for the compensation, under others the Scottish Ministers pay for it. Community bodies can apply to the Scottish Ministers for a grant towards their liability to pay compensation under certain circumstances. Compensation costs will vary from case to case.

Register of applications by communities of neglected and abandoned land

56. It is proposed that all applications by communities to buy neglected and abandoned land will be lodged on a register. It is expected that a register will cost £10,000 to set up, similar to the original costs by the Registers of Scotland in setting up the Register of Community Interests of Land (RCIL) for Part 2 of the 2003 Act. Thereafter, there will be on-going site maintenance and update costs anticipated to be up to £10,000 per year. This figure is based on current Registers of Scotland invoicing to the Scottish Ministers.

Costs arising from appeals

57. There are a number of appeals that can be made by the landowner, community body or another party throughout the provisions, including the appeal of the Scottish Ministers decision on an application, and appeal of the independent valuation. These appeals are made either to the sheriff court in the area where the land to be acquired is located or to the Lands Tribunal of Scotland, as set out in the provisions.

58. The Scottish Tribunals Service (STS) provides administrative support to the LTS. Arrangements for providing funding to the STS for cases to the LTS will be provided on a case-by-case basis. It is envisaged that funds will be reimbursed as cases progress through the LTS.

59. It is difficult to assess at this stage the number of appeal cases that will be heard and it is of course expected that the Scottish Ministers will make robust decisions that stand up to appeal. Costs may have to be borne the person who brings the appeal or by the person who made the decision being appealed. Costs will vary depending on the case and its complexity.

60. The Scottish Ministers will keep the number of appeals under review and remain in close contact with the courts and Lands Tribunal to assess any significant changes in work load.
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

Costs on local authorities

61. It is not anticipated that the provisions should impose any additional costs on local authorities.

Costs on other bodies, individuals and businesses

62. The elements of the provisions on community right to buy neglected and abandoned land which may lead to an increase in costs on other bodies, individual and businesses are identified below. However, there is a large degree of uncertainty on the level of costs that may be incurred as it will be up to individual community bodies and landowners in how to use and respond to the provisions, including the need for appropriate legal advice.

Communities – company limited by guarantee

63. Model constitution documents allow communities to set up a legal entity as easily and cheaply as possible. Whether communities need to engage a solicitor or other expertise in this process is entirely up to them. The current costs of setting up a company limited by guarantee are negligible, with the Scottish Government’s solicitors checking over drafts before incorporation to ensure compliance.

64. We do not anticipate there to be any significant additional costs on community bodies in setting up a company limited by guarantee.

Balloting

65. When making an application to buy abandoned or neglected land community bodies will be required to make their own arrangements to ballot their community and to pay for that ballot to be undertaken.

66. The costs outlined for balloting in paragraphs 35 to 41 above will also apply to community bodies under these provisions. The costs to be met by an individual community body will depend on the size of the community to be balloted and the approach adopted to the ballot. Using the possible models outlined in table 2 above the average cost of each ballot for a community body would be between £1,040 and £5,353.

Compensation costs

67. Any person who has incurred loss or expense under the provisions may, in certain circumstances, be entitled to compensation. This includes an owner or a former owner of land. Under certain circumstances the community body is to pay for the compensation, under others the Scottish Ministers pay for it. Community bodies can apply to the Scottish Ministers for a grant towards their liability to pay compensation under certain circumstances. Compensation costs to community bodies will vary from case to case.

Costs arising from appeals

68. As indicated in paragraphs 57 to 60 there are a number of appeals that can be made by the landowner, community body or another party throughout the provisions, including the appeal of the Scottish Ministers decision on an application, and appeal of the independent valuation. These
appeals are made either to the sheriff court in the area where the land to be acquired is located or to the Lands Tribunal of Scotland, as set out in the provisions.

69. Costs may have to be borne by a landowner, community body and third parties. Costs will vary depending on the case and its complexity.

PART 5: ASSET TRANSFER REQUESTS

Introduction

70. The public sector owns a wide range of land and buildings throughout Scotland, ranging from forests to schools, hospitals to waterworks. Many communities may wish to take control of assets in their area, enabling them to address local needs and deliver community benefit. This will also contribute to achieving the outcomes set by public sector bodies, and can lead to reduced demand for public services.

71. The Bill seeks to build on existing good practice to ensure that there is consistency in asset transfer processes across the country, while allowing for the very wide range of individual circumstances that will occur on a case by case basis.

72. By making the process more consistent and ensuring public bodies provide a reasoned response to requests, it is hoped the provisions will result in an increasing numbers of asset transfers. To give an indication of the current level of demand, the Community Ownership Support Service, funded by the Scottish Government, works with community groups and local authorities to facilitate asset transfers and has been involved in 38 asset transfers from 2011 to 2014.

73. A core purpose of the legislation is to allow community bodies to identify for themselves which assets would help them develop their communities. It is founded on the principle that the transfer process should be initiated by a community body with an interest in an asset, rather than by public bodies looking to dispose of an asset. We cannot predict how many community bodies may be in that position and it is not possible at this stage to accurately estimate how many asset transfers will take place each year.

74. Subject to an assessment of the overall benefit of a transfer, public bodies, including the Scottish Government and local authorities, may decide to transfer assets at less than market value, which will have a financial consequence for the organisation. This will be done on the basis of a full assessment of the costs and benefits, including predicted savings in the delivery of services and improved local outcomes. The provisions encourage a wide consideration of the value of benefits to the communities which may be enhanced by asset transfer.

Costs on the Scottish Administration and public bodies

75. The costs of these provisions will depend on the arrangements put in place and any additional costs would be met from existing resources.
76. The process for the Scottish Government and other public bodies taking a decision on whether to agree to a request involves an assessment of whether the request would be likely to promote or improve: economic development; regeneration; public health; social wellbeing; or environmental wellbeing, and must take equal opportunities into account. Considering the relevant costs and savings associated with such benefits will be central to the assessment process.

**Costs on local authorities**

77. During the consultation on the Bill local authorities were not able to provide monetary estimates for any costs or savings that may arise as a result of the Bill. This in part reflects the difficulty in predicting how many requests will be made, the wide variety in the types of request that could be made, for example from the use of a small patch of derelict land to the purchase of a large community centre, and the complexity in predicting savings associated with better service provision.

78. As for public bodies above in paragraph 76 the process for a local authority taking a decision on whether to agree to a request involves an assessment of whether the request would be likely to promote or improve: economic development; regeneration; public health; social wellbeing; or environmental wellbeing, and must take equal opportunities into account. Considering the relevant costs and savings associated with such benefits will be central to the assessment process.

**Costs on other bodies, individuals and businesses**

79. The Bill will require a community body making a request to outline the public benefit that would follow from a transfer. Details of what is to be included in a request will be set out in regulations. These are yet to be drafted, but it is expected that they will include the need to demonstrate that any transfer would be financially sustainable in the long term, providing confidence that the proposed benefits can realistically be achieved.

80. It is not possible to accurately predict the cost for individual community bodies that may arise over the next few years as it will be dependent on the type, value and condition of the asset the community body is seeking to own, lease or manage. In addition there will be other costs such as refurbishment or re-development costs, administrative costs, legal fees and specialist advice that will vary from case to case.

81. Recent examples provided by the Community Ownership Support Service highlight the variation in asset transfer costs (not including other administrative etc. costs):
    - Argyll and Bute, outward bound centre, cost £220,000, transferred December 2013
    - Western Isles, old primary school building, cost £10,000, transferred March 2014
    - Highland, old primary school building, cost £50,000, transferred May 2014
82. Forestry Commission Scotland under their National Forest Land Scheme have given a number of communities the opportunity to buy or lease National Forest land. The value of these asset transfers ranges from £5,000 to £1.55 million, as shown in the following table:

<table>
<thead>
<tr>
<th>Asset / forest name</th>
<th>Community organisation</th>
<th>Main future use</th>
<th>Area (ha)</th>
<th>Value (£)</th>
<th>Financial year sold</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Ardhu and Langa mull forests</td>
<td>North West Mull Community Woodland Company</td>
<td>Community woodland</td>
<td>691.0</td>
<td>£340,000</td>
<td>2006-07</td>
</tr>
<tr>
<td>Slewdrum Forest</td>
<td>Birse Community Trust</td>
<td>Community woodland</td>
<td>167.0</td>
<td>£160,000</td>
<td>2006-07</td>
</tr>
<tr>
<td>Strathmasie Forest</td>
<td>Laggan Forest Trust</td>
<td>Community woodland</td>
<td>19.0</td>
<td>£75,000</td>
<td>2006-07</td>
</tr>
<tr>
<td>Ford</td>
<td>Ford Community Project Ltd</td>
<td>Community centre</td>
<td>2.6</td>
<td>£170,000</td>
<td>2007-08</td>
</tr>
<tr>
<td>Burghead</td>
<td>Burghead Thistle Junior Football Club</td>
<td>Football pitch</td>
<td>1.4</td>
<td>£20,000</td>
<td>2008-09</td>
</tr>
<tr>
<td>Badluarach and Durnamuck</td>
<td>Badluarach and Durnamuck Community Woodland</td>
<td>Community woodland</td>
<td>8.5</td>
<td>£7,000</td>
<td>2009-10</td>
</tr>
<tr>
<td>Acharossan Forest</td>
<td>Kilfinan Community Forest Company</td>
<td>Community woodland</td>
<td>125.0</td>
<td>£130,000</td>
<td>2009-10</td>
</tr>
<tr>
<td>Gaudiedale strip</td>
<td>Bennachie Access Group</td>
<td>Access</td>
<td>0.1</td>
<td>£5,000</td>
<td>2009-10</td>
</tr>
<tr>
<td>Balfour Wood</td>
<td>Birse Community Trust</td>
<td>Community woodland</td>
<td>241.0</td>
<td>£291,000</td>
<td>2010-11</td>
</tr>
<tr>
<td>Rumster Forest</td>
<td>Latheron, Lybster &amp; Clyth Community Development Company</td>
<td>Renewable Energy Scheme</td>
<td>40.0</td>
<td>£80,000</td>
<td>2010-11</td>
</tr>
<tr>
<td>Tormore Forest</td>
<td>Sleat Community Trust</td>
<td>Community woodland</td>
<td>440.0</td>
<td>£330,000</td>
<td>2011-12</td>
</tr>
<tr>
<td>Broadford Wood</td>
<td>Broadford and Strath Community Company</td>
<td>Community woodland</td>
<td>20.0</td>
<td>£35,000</td>
<td>2011-12</td>
</tr>
<tr>
<td>Ardentinny Wall Garden</td>
<td>Ardentinny Community Trust</td>
<td>Visitor attraction</td>
<td>1.4</td>
<td>£10,000</td>
<td>2012-13</td>
</tr>
<tr>
<td>Stronafian</td>
<td>Glendaruel and Colintraive Community Development Trust</td>
<td>Community woodland</td>
<td>615.0</td>
<td>£1,550,000</td>
<td>2012-13</td>
</tr>
</tbody>
</table>
PART 6: COMMON GOOD PROPERTY

Introduction

83. “Common good”, in Scotland, refers to certain assets which were originally acquired by former burghs, and to which title has been passed down to local authorities through successive rounds of local government re-organisation. They include both moveable items (furniture, paintings, regalia etc.) and heritable ones (land and buildings), as well as cash funds which may have been derived from the use or sale of common good property.

84. Audit Scotland stated that at 31 March 2011, councils managed common good assets valued at £219 million. Due to the special status of common good, it has to be accounted for in a particular way, separate from other local authority assets, and there are special rules about its disposal. There is a long history of common law decisions clarifying whether particular items form part of the common good and how they can be used or disposed of.

85. While local authorities should already have details of their common good assets, in line with accounting good practice, this is not always readily available to the public, and there may be disputes about what is included. The aim of this part of the Bill is to increase transparency about the existence, use and disposal of common good assets, and to increase community involvement in decisions taken about their identification, use and disposal.

Costs on the Scottish Administration

86. It is not anticipated that the provisions should impose any additional costs on the Scottish Government.

Costs on local authorities

87. The Bill places a new statutory duty on local authorities to establish and maintain a register of all property held by them for the common good. When establishing the register, a proposed list must be published and community councils and other community bodies must be invited to comment on it. The completed register must be made available for inspection and online.

88. Further provisions require local authorities to publish their proposals and consult community councils and other community bodies before disposing of or changing the use of common good assets.

89. These new statutory duties will have costs associated with them. In the consultation, local authorities expressed some concern about the potential resources involved in establishing registers. However, none placed an estimate of monetary value on the process. As local authorities are currently required to account for Common Good assets separately, we can assume that any process required to establish an accessible register will be starting from a very firm foundation.
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

90. The Bill is not prescriptive about how local authorities should consult on their Common Good registers, and as such it would be for each local authority to decide the method that offers best value for money, while ensuring it is inclusive of everyone who may wish to comment. For example, it may be possible to include common good in existing consultation or engagement processes.

Costs on other bodies, individuals and businesses

91. It is not anticipated that the provisions should impose any additional costs on other bodies, individuals and businesses.

PART 7: ALLOTMENTS

Introduction

92. The Bill replaces the existing legislation relating to allotments, updating and clarifying the requirements on local authorities. The Scottish Government’s National Food and Drink Policy made a clear commitment to strategically support allotments and community growing spaces. These can increase the production of cheap, healthy, locally grown and nutritious food, provide savings in household budgets and increase local self-reliance.

Costs on the Scottish Administration

93. It is not anticipated that the provisions should impose any additional costs on the Scottish Government.

Costs on local authorities

Duty to provide allotments

94. Section 72 of the Bill replaces the existing duty to provide allotments “where the local authority considers there to be a demand” with a requirement to “take reasonable steps” to provide more allotments if the waiting list exceeds a trigger point – when the number of persons who have made a request to lease an allotment is more than half the number of allotments owned or leased by the authority. This will encourage more proactive allotment provision by local authorities.

95. Local authority costs will be dependent on how much provision is required to meet their targets, how much provision is actually possible due to land availability and costs, and factors such as the local cost of land and whether road access, toilets etc. need to be created.

96. Of the 15 local authorities that provided information on costs, 8 have opened new allotment sites in the last 5 years. Estimates on how much this allotment provision had cost ranged from £1,900 to £6,250 per plot, and from £21,000 to £150,000 for a whole site. Seven of the respondents needed no more plots to meet the target that the waiting list should be no more than half of the current number of allotment plots, while others were facing substantial demand.
Duty for local authorities to establish and maintain waiting lists

97. Section 71 requires each local authority to compile and maintain an allotments waiting list. Of the 15 local authorities that responded 11 already hold and maintain waiting lists, suggesting that this requirement will not incur significant increased costs. The estimated costs of maintaining the waiting list varied from £100 to £9,000 a year.

Duty for local authorities to publish an annual report and produce a food growing strategy

98. Local authorities will also be required to publish an annual report and produce a food growing strategy. Much of the information required for this strategy will already have been collected within the Open Space Strategy and Local Development Plan and no significant additional costs are anticipated.

99. Only one of the local authority respondents to the consultation currently produces an annual report with another reporting on accounts only. They estimate their costs in producing the report to be £500 and £1,000.

100. 7 of the 15 local authorities who responded already have or are in the process of producing an Allotments Strategy. Two local authorities estimated the costs of producing their strategy to be £5,000 and £9,350.

PART 8: NON-DOMESTIC RATES

Introduction

101. The Bill includes a power to allow local authorities the discretion to reduce or remit the amount of non-domestic (business) rates leviable by it, in effect this allows them to create localised relief schemes to respond to local needs and demands. Such schemes are to be administered and funded locally and will operate in addition to the current national rates reliefs schemes and centrally set national poundage rate. The poundage is the pence in the pound tax rate used to calculate all business rates bills in Scotland. The total non-domestic rates collected (net of any national mandatory rates reliefs) by local authorities is paid into the Scottish Government non-domestic rates pool and then re-distributed back to local authorities as part of their guaranteed annual local government financial settlement. Any discretionary reliefs awarded by a local authority must be funded from within that authority’s existing resources and not at the expense of the pool.

102. There is no equivalent power for a local authority to levy additional rates on any property or ratepayer.

Costs on the Scottish Administration

103. It is not anticipated that the provisions should impose any additional costs on the Scottish Government.
Costs on local authorities

104. The costs of any locally awarded rates relief scheme are to be met by the Local Authority. Before exercising the power to offer local rates relief, the Local Authority must have regard to the interests of persons liable to pay council tax set by the authority.

105. As the power for local authorities to award rates relief is discretionary the cost to local authorities cannot be estimated given that individual local authority may, or may not choose to use this discretionary power. Local authorities will notify the Scottish Government in the regular non-domestic rates returns which will allow any uptake to be monitored and costed.

Costs on other bodies, individuals and businesses

106. The provisions should not impose any additional costs on other bodies, individuals and businesses as the relief which can be awarded is at the discretion of local authorities and will be funded from within their existing resources.
SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 11 June 2014, the Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney MSP) made the following statement:

“In my view, the provisions of the Community Empowerment (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 11 June 2014, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Community Empowerment (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
COMMUNITY EMPOWERMENT (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Community Empowerment (Scotland) Bill introduced in the Scottish Parliament on 11 June 2014. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 52–EN.

POLICY AIM OF THE BILL

2. The core purpose of the Scottish Government is to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. This will only be achieved by making the most of all the resources available in Scotland, especially the collective talents, creativity and determination of Scotland’s people.

3. The Scottish Government believes that Scotland’s people are its greatest asset: they are best placed to make decisions about our future, and to know what is needed to deliver sustainable and resilient communities. A key aim underpinning the Scottish Government’s core purpose is to create the conditions for community empowerment, as reflected in Empowering Scotland: The Government’s Programme for Scotland 2013-14 (2013)\(^1\).

4. In line with trusting the people who live and work in Scotland to make decisions about the nation’s future, the essence of self-determination, the Scottish Government is also committed to supporting subsidiarity and local decision-making. The Scottish Government and local government have a strong partnership approach, which has built on the Concordat signed in 2007. Local authorities have a key role to play in providing leadership, and in promoting and supporting community empowerment. They have a strong understanding of the needs and aspirations of local communities, together with a democratic mandate to make decisions which balance the needs and aspirations of people across the local authority area. The proposals in this Bill reflect and build on that role.

\(^1\)[http://www.scotland.gov.uk/Publications/2013/09/8177](http://www.scotland.gov.uk/Publications/2013/09/8177)
5. The Bill reflects these policy principles of subsidiarity, community empowerment and improving outcomes and provides a strategic framework which will:

- Empower community bodies through the ownership of land and buildings and strengthening their voices in the decisions that matter to them; and
- Support an increase in the pace and scale of Public Service Reform by cementing the focus on achieving outcomes and improving the process of community planning.

In doing so, this Bill aims to support approaches that can contribute to improving outcomes in all aspects of people’s lives.

6. Empowerment is a core pillar of the human rights approach. The Bill will help to ensure people can meaningfully participate in decisions that affect their lives. In carrying out their duties and making decisions under the Bill, public authorities will also be bound by equalities legislation and the Public Sector Equality Duty\(^2\) under Part 11 of the Equality Act 2010.

**BACKGROUND**

Community Empowerment

7. When people feel they can influence what happens in their community and can contribute to delivering change, there can be many benefits. Communities can often achieve significant improvements by doing things for themselves, because they know what will work for them. They become more confident and resilient; there are often opportunities for people to gain new skills and for increased employment as well as improved access to services and support. These in turn can lead to improvements in a wide range of areas such as crime, health, and reducing inequalities. Community empowerment can therefore have an important impact on a range of outcomes in the Government’s National Performance Framework: [http://www.scotland.gov.uk/About/Performance/purposestratobjs](http://www.scotland.gov.uk/About/Performance/purposestratobjs)

8. Scotland has a long and proud tradition of people coming together to use their energy and creativity to make a difference for their communities. A wide range of groups often play an anchor role within communities, including Community Controlled Housing Associations, Community Development Trusts, and more informal associations. There is now a strong network of community groups across Scotland, supporting one another, exchanging ideas and encouraging more communities to become involved.

9. The Scottish Community Empowerment Action Plan: Celebrating Success: Inspiring Change\(^3\), published jointly in 2009 by the Scottish Government and COSLA, defined community empowerment as “a process where people work together to make change happen in their communities by having more power and influence over what matters to them”.

10. Community empowerment means different things for different communities. Some communities will want to take on the ownership or management of land or buildings, or delivery

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\(^1\) [http://www.crer.org.uk/public-sector-equality-duty]

\(^2\) [http://www.scotland.gov.uk/Topics/People/engage/empowerment]

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of services to members of their community. Others may be more interested in engaging with the public sector to have more say in how services are delivered or how assets are used.

11. All public service providers have a responsibility to create the conditions that encourage and support strong, independent and resilient communities, and ensuring a focus on supporting community empowerment is a key plank of public service reform. Communities are often best placed to determine outcomes for local services, and public service providers should facilitate processes which fully engage communities in the decisions that are taken about the design and delivery of services to achieve those outcomes. The Scottish Government is clear that it is important that community voices are heard in public sector processes, but that this engagement differs from community empowerment, where communities lead change for themselves.

**Democratic Engagement**

12. Local government and other public service providers increasingly use a range of community engagement and participatory activities to seek views on their service delivery. This recognises that representative democracy needs to be complemented by other ways in which people can express their views and influence decisions which affect them. Such activities can in turn inspire increased engagement with local and national government. When people are actively engaged in tackling issues in their communities, have direct contact with elected representatives and feel that they can influence decisions, they are more likely to become involved in the electoral process themselves, whether at Community Council, local authority or national level. This enhances the relationship between elected members and the communities they represent and can lead to better-informed decision making all round.

**Public service reform**

13. Scotland’s public sector organisations provide high quality services which people value. They play an important role in creating a stronger economy and a fairer society. However, in order to ensure they maintain that quality and remain financially viable, further reform is needed. The *Report of the Commission on the Future Delivery of Public Services (2011)*⁴, chaired by Campbell Christie (“the Christie Commission”) made clear that public sector organisations must work more effectively together and in partnership with communities, with a focus on achieving outcomes.

14. The Scottish Government’s response to the Christie Commission’s report (*Renewing Scotland’s Public Services: Priorities for Reform in Response to the Christie Commission (2011)*⁵) is founded on four pillars: People; Partnership; Prevention; and Performance. These four pillars were drawn together to help focus on achieving success and meeting the ambitions of the Christie Commission. There was also a clear recognition in the report and in the Government’s response, of the need to work with people rather than doing things to them, and in the importance of “place”.

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⁴ [http://www.scotland.gov.uk/Publications/2011/06/27154527/0](http://www.scotland.gov.uk/Publications/2011/06/27154527/0)
**Community Planning**

15. At local level, Community Planning Partnerships (CPPs) have a key role to play in shaping and delivering change. Community planning is the process by which key public service providers work together and with communities to plan and provide services within a local authority area. The key strategy document for each CPP is the Single Outcome Agreement (SOA) which provides a shared ‘plan for place’ aimed at reducing inequalities and delivering better outcomes for communities.

16. The Statement of Ambition for Community Planning and SOAs⁶, issued by the Scottish Government and COSLA in March 2012, says that—

   “Effective community planning arrangements will be at the core of public service reform. They will drive the pace of service integration, increase the focus on prevention and secure continuous improvement in public service delivery, in order to achieve better outcomes for communities.”

17. Work is already underway to strengthen community planning. For example, the National Community Planning Group brings together public and third sector leaders including from COSLA, the NHS and the Scottish Government. It is providing national leadership for efforts to strengthen community planning, with a focus on making public sector budgets work better together, preventing problems before they happen, working more effectively with communities, governance, accountability and improving performance. The Bill will underpin these developments by strengthening the legal base for community planning.

**Role of legislation**

18. Ultimately, community empowerment cannot be delivered by legislation alone, although creating a supportive legal framework will enhance the process. The availability of appropriate support, guidance and a culture of nurturing community action are also key. As communities become more empowered they are likely to seek partnerships with organisations in the public private and voluntary sector to achieve their goals. Supporting such approaches is increasingly becoming a priority in the context of re-shaping public services.

19. Empowering communities is not a new process. There are already many examples of community empowerment in action throughout Scotland. Where communities want to do something for themselves this has often been facilitated by good practice guidance, funding being available and the attitudes, skills and commitment of many people working in many different organisations.

20. However, it is clear from a range of sources, for example the report of the Local Government and Regeneration Committee’s Delivery of Regeneration in Scotland Inquiry (published 24 February 2014), that experience across the country has been mixed. It is also the case that in many areas of community empowerment, different public sector organisations have different levels of involvement. For example, local authorities often have greater experience

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⁶ http://www.scotland.gov.uk/Topics/Government/local-government/CP/soa
This document relates to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

than many other public authorities. A key reason for bringing forward this legislation is to address this inconsistency and promote best practice throughout Scotland.

21. The purpose of the Bill is to remove barriers and make it easier for communities to achieve their goals, by giving communities clear rights to play a more pro-active role, and placing clear duties on public sector bodies to engage with communities and to respond to their requests.

22. Many of the issues in the Bill build on existing guidance and the experience of communities themselves in becoming more empowered, as well as those who have been working over the years to support communities. As such, it does not seek to introduce any completely new or novel concepts. Rather, it puts in place a consistent and transparent framework and processes which will underpin, extend and improve good current practice to make it universal and enduring.

CONSULTATION

23. The Scottish National Party’s 2011 manifesto\(^7\) proposed a Community Empowerment and Renewal Bill which would “give local people a greater say in their area, enabling them to deal more easily with derelict and eyesore properties and take over underused or unused public buildings for the benefit of their community”. The Christie Commission report also recommended that the Bill should “promote significantly improved community participation in the design and delivery of services” (paragraph 4.41).

24. An exploratory Consultation on the proposed Community Empowerment and Renewal Bill\(^8\) was held between June and September 2012, setting out a wide range of actions which, it had been suggested, could strengthen participation, unlock enterprising community development and renew communities. During the consultation period, Scottish Government officials took part in a series of conferences and local meetings with a range of people from the public and voluntary sectors and with community volunteers. A series of road-shows was also organised with the assistance of COSLA to meet local government officials and representatives. 447 responses to the consultation were received from a mix of individuals, community and voluntary groups, community councils, and the public and private sectors. An independent analysis of the responses was published in January 2013\(^9\).

25. The results of the exploratory consultation showed that some issues needed to be addressed through legislation. On other issues, it was felt that other approaches might be more effective. Proposals from the exploratory consultation not taken forward in this Bill include:

- Duty on public services to publish and communicate community engagement plans
- Duty for public service authorities to have a named community engagement officer

\(^8\) [http://www.scotland.gov.uk/Publications/2012/06/7786](http://www.scotland.gov.uk/Publications/2012/06/7786)
\(^9\) [http://www.scotland.gov.uk/Publications/2013/01/9545](http://www.scotland.gov.uk/Publications/2013/01/9545)
It was felt that much effort could be expended on producing a plan, rather than actually engaging with communities. Similarly, having a single named officer might result in a perception that other officers were not responsible for community engagement. A requirement to engage with communities is included in the Bill in relation to community planning, and is expressed with a focus on the outcome, rather than the process.

- Improving procurement processes to increase access for community groups to public service delivery contracts

Measures in the Procurement Reform (Scotland) Bill are designed to make it simpler to access and bid for public sector contracts. These measures will help tackle unnecessary inconsistencies for suppliers doing business with the public sector and will help ensure that doing business with the public sector can be simple, transparent and more accessible to suppliers.

- Right for communities to be consulted on local budgets

The Bill will strengthen requirements for communities to be involved in setting priorities for public services, which has a significant impact on how budgets are spent. The Scottish Government also supports Participatory Budgeting (PB), which directly involves local people in decisions on a specific budget. A number of small PB projects have taken place across Scotland in recent years. The Scottish Government is funding consultancy support to help more local authorities develop PB in their areas.

- Power to enforce the sale or lease of long-term empty property

There are already a range of powers available to local authorities to bring long term empty property back into use, and it was not clear that new legislation would be more effective than the current powers. The Government is continuing the work of the Empty Homes Partnership and monitoring the use of other powers, such as compulsory purchase for immediate re-sale and the Local Government Finance (Unoccupied Properties etc) (Scotland) Act 2012.

- Community Councils

Community Councils are elected bodies established by local authorities under the Local Government (Scotland) Act 1973. They have a statutory role in representing the views of the community to the local authority and other public bodies. Community Council activity is very variable across Scotland; some are seen almost as community anchor organisations, with good connections to all the groups within their community, others play a largely formal role and a local development trust or Tenants and Residents Association may be more active.

There was no clear support for legislative change to the status of Community Councils in the exploratory consultation, or in the recommendations of the Community Councils Short Life Working Group which reported in October 2012. The Scottish Government is taking forward work to strengthen the role of Community Councils and increase the diversity of members.
While the Bill does not amend the legislative status of Community Councils, it does recognise their interest in shaping local services, and gives them a specific role in relation to common good assets.

26. A second, more detailed Consultation on the Community Empowerment (Scotland) Bill\textsuperscript{10} was held between November 2013 and January 2014 on a set of 10 topics which had been identified for possible inclusion in the Bill, including draft legislative provisions on 4 topics and detailed questions about the proposed content of legislation on a further 3. This consultation included new issues which had been suggested for inclusion since the earlier consultation. The Minister for Local Government and Planning and Scottish Government officials attended over 30 events and meetings to provide information about the Bill to stakeholders to help them in preparing their responses. The Government is grateful to all those organisations that arranged events for their members to discuss the proposals, and to those local authorities that hosted regional events for local government.

27. 424 responses were received from a wide range of public sector, community, third sector and private organisations, and from individuals. Non-confidential consultation responses were published on 28 February on the Scottish Government website\textsuperscript{11}. The Scottish Government commissioned the independent consultancy organisation, The Research Shop, to undertake a formal analysis of consultation responses, which was published on 12 June 2014.

28. Overall, there was general support for the topics proposed to be included in the Bill, and helpful suggestions were made to improve the proposals. There was concern that people might have difficulty in understanding the language of the draft legislation and that many communities would need support to be able to take the opportunities offered by the Bill. As noted earlier in this document, the Scottish Government expects all public service providers to support communities in using these processes and in becoming more empowered generally. Full guidance on the procedures established by the Bill will be developed in partnership with stakeholders.

29. Further detail on the responses to individual sections of the consultation is provided in relation to each Part of the Bill below.

**SPECIFIC PROVISIONS**

**Part 1: National Outcomes**

30. In 2007, the Scottish Ministers introduced “Scotland Performs”\textsuperscript{12}, to provide a clear vision for the kind of Scotland they want to see. This was refreshed in 2011. It sets out the Government’s core Purpose, supported by 5 Strategic Objectives and 16 National Outcomes. There are also detailed Purpose Targets and National Indicators which track progress towards the Purpose and National Outcomes. All devolved public services in Scotland are now aligning their work to this single framework. It is part of a new way of making policy, and is helping to change the way public services are delivered. The outcomes approach means that different

\textsuperscript{10} http://www.scotland.gov.uk/Publications/2013/11/5740
\textsuperscript{11} http://www.scotland.gov.uk/Publications/2014/02/2073
\textsuperscript{12} http://www.scotland.gov.uk/About/Performance
organisations are working towards shared goals, defined in terms of the impact they make for individuals and communities, rather than just how efficiently the service is delivered.

31. Scotland Performs has been recognised both in the UK and internationally as an innovative and useful approach to defining strategic outcomes for government, and demonstrating progress towards them. It provides a description of what contributes to National Wellbeing, and ways of measuring that. The Carnegie UK Trust recommended in its report Shifting the Dial in Scotland (2013) that the outcomes approach should be embedded in legislation, to ensure it continues to be used in the long term.

32. In consultation, almost all those who responded to this issue supported placing the outcomes approach in legislation. The Bill places a duty on the Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, which must be reviewed at least once every 5 years. They must also regularly and publicly report progress towards those outcomes. These duties are not intended to require future governments to use the same model of purpose, targets, outcomes and indicators as currently used in Scotland Performs. It requires national outcomes to be determined, but there is flexibility as to how these may be presented and measured.

**Alternative approaches**

33. The alternative would be to continue the national outcomes based approach on a non-statutory basis. It is considered that, whilst this has worked well up until now, putting the outcomes on a statutory footing is necessary to demonstrate a long-term commitment to the approach, strengthen the prominence of the outcomes approach and enhance accountability.

**Part 2: Community Planning**

34. Community planning is currently established in Part 2 of the Local Government in Scotland Act 2003. This places a duty on local authorities to initiate, maintain and facilitate a process by which public services are planned and provided in the local authority area. Core partners are under a duty to participate in the process. There is no statutory requirement to establish Community Planning Partnerships (CPPs), although it is an expectation in supporting statutory guidance. There are 32 CPPs in Scotland, one for each local authority area.

35. Current guidance makes clear that CPPs should be engaging with their communities in identifying and prioritising the outcomes that are to be delivered, and working with communities to develop their capacity to contribute to community planning and to their achievement of better outcomes. However, this is not currently a clear statutory requirement.

36. Legislative changes to community planning are an important element of a series of reforms which give effect to the Statement of Ambition (see paragraph 16). The Scottish

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13 Core partners under the 2003 Act are local authorities, health boards, police and fire services, Scottish Enterprise, Highlands and Islands Enterprise, and Regional Transport Partnerships.
Government therefore expects CPPs to drive public service reform effectively at local level. This is needed to achieve an overarching purpose of sustainable economic growth, better outcomes and reduced inequalities for local communities in Scotland through delivery of high quality public services.

37. The measures in the Bill seek to support this ambition by putting CPPs on a statutory basis with defined roles and responsibilities, and placing new duties on public sector partners to play a full and active role in community planning and the resourcing and delivery of local priority outcomes. In doing so they complement and reinforce the significant national and local action that is already underway to strengthen community planning. For example, CPPs have developed and are delivering new Single Outcome Agreements, which are their strategic plans for improving local outcomes (the equivalent of local outcome improvement plans as described in the Bill). These should provide a clear “plan for place”, focused on prevention and reducing inequalities. The Accounts Commission and Auditor General have led the introduction of new external audits which provide assurance for the performance of CPPs and help them to deliver better outcomes. A National Community Planning Group has been established to provide political and strategic leadership and guidance. And, the Scottish Government and Economic and Social Research Council are investing £3 million in What Works Scotland, an independent centre which will support effective practice, for communities and CPPs, by evaluating evidence from emerging approaches to public service delivery and reform.

38. The consultation paper sought views on what changes to legislation would help to improve community planning. There was general support for the direction of change. Many constructive comments were made which have shaped the provisions in the Bill and will continue to be taken into account in providing guidance.

39. As outlined above, the 2003 Act frames community planning as a process by which the planning and provision of public services in an area takes place. The Bill amends this legislative basis so that community planning is the process by which public bodies work together and with community bodies to plan for, resource and provide services which improve local outcomes in the local authority area. This clearly sets out how the Scottish Government intends community planning to operate, and the presence of communities in the core of the process.

40. The Bill requires the community planning partners to come together in each local authority area to form a CPP. The role of a CPP is to prepare a plan for improving local outcomes, in consultation with community bodies and others. These outcomes are to be consistent with the national outcomes determined by the Scottish Ministers under Part 1 of the Bill. The CPP must publish the plan, monitor progress being made and report annually on progress.

41. The Bill also extends the list of key partners to include a wider range of public bodies that may have a role in influencing local outcomes, including Scottish Natural Heritage, Skills Development Scotland, and the new integration joint boards formed under the Public Bodies (Joint Working) (Scotland) Act 2014. Individual partners have a duty to work collaboratively and to take into account the plan for local outcomes when setting their individual priorities. These partners are also expected to commit resources to delivery of the plan and report to the CPP on their contribution.
42. The 2003 Act provides that local authorities should maintain and facilitate the community planning process. The predominant view of responses to the second consultation was that it is important the CPP should not be perceived as an extension of the local authority, and that a more robust accountability framework is needed for CPPs. The Bill therefore places additional duties on a defined set of public sector partner bodies (including local authorities, NHS bodies and Police Scotland) to ensure that the CPP carries out its functions efficiently and effectively, and its partners work collaboratively.

Alternative approaches

43. As noted above, a range of significant national and local action is currently underway to strengthen community planning. Nevertheless, the Scottish Government and COSLA agreed that, to give full effect to the Statement of Ambition, it would be necessary to place formal requirements on CPPs to plan for outcomes in their SOA and ensure that appropriate action is taken to collaborate in the delivery of local priority outcomes. They also agreed that partner bodies should be under a duty to work together to improve outcomes for local communities through participation in CPPs and the provision of resources to deliver the SOA. These proposals require changes to the existing legislation, in particular so that duties can be placed on CPPs rather than only on the partners, to place the focus on the delivery of improved outcomes rather than on process, and to update the duties on partners. No alternative approaches could achieve this.

Part 3: Participation requests

44. The Christie Commission recommended that this Bill should seek to strengthen communities’ voices in shaping the services which affect them. Evidence shows that involving people more regularly and more effectively in the decisions that affect them leads to better outcomes, making the most of the knowledge and talent that lies in communities. It also increases confidence and fosters more positive relationships between communities and the public sector.

45. There is a strong history of the public sector engaging with communities across Scotland. In particular, local authorities have used a variety of engagement methods over the years and have promoted the use of tools like the National Standards for Community Engagement (Communities Scotland, 2005 – now available, with support materials, from the Scottish Community Development Centre). The Scottish Government sets clear expectations that all public sector organisations must engage with communities and support their participation in setting priorities and in the design and delivery of services. The provisions in Part 3 of the Bill are not intended to replace that activity, but they give community bodies an additional power to initiate that dialogue on their own terms, and a right to have their views properly considered.

46. A concern of respondents to the consultations, from all sectors, was how to ensure community bodies are open, inclusive, and truly represent their communities. Section 14 identifies the key features of a body which meets these requirements, ensuring that it is open to all members of the community and controlled by those members. It is for the body to define the

16 http://www.scdc.org.uk/what/national-standards/
community it represents, whether that is by geographical boundaries or by common interests or characteristics of its members.

47. Where an appropriate community body, or a group of bodies, believes it could help to improve the outcome of a service, it will be able to make a request to the public body or bodies that deliver that service, asking to take part in a process to improve that outcome. The community body will need to explain what experience it has of the service and how it could contribute to its improvement; this could be as simple as showing that its members are users of the service and outlining their ideas. The public body must agree to the request for dialogue unless there are reasonable grounds for refusal. If it refuses the request, it must explain the reasons. At the end of the process the public body must publish a report on whether the outcomes were improved and how the community body contributed to that improvement.

48. Community bodies might use these provisions to discuss with service providers how they could better meet the needs of users, to offer volunteers to support a service, or even to propose that they take on the delivery of a service themselves. It will be for the public body to decide whether to make any changes to existing service delivery arrangements. If the community body proposes to deliver services itself, the public body will need to decide whether the community body has an appropriate corporate structure and the capacity to take on that role.

49. The public body does not need to set up a separate outcome improvement process for each community body that makes a request. If it has a number of requests relating to the same service, or already has a participation process in place, it may invite other community bodies to join in the existing process. Community bodies may also choose to come together to make a request jointly.

Alternative approaches

50. As noted in the Consultation section, the Scottish Government sought views on a range of approaches which could potentially widen participation and contribute to empowering communities. The Bill builds on the consultation responses and provides an enabling legislative framework to support community participation in setting priorities and in the design and delivery of local services. The Bill will work alongside actions being taken by other means, as described in the Background and Consultation sections.

51. The first consultation showed significant support for a right for communities to challenge service provision if they were not satisfied. Such a right can only be implemented through legislation, therefore non-legislative approaches were not considered. This right complements community engagement and participation activities which are taken forward on the basis of guidance, as described in paragraph 45 above.

52. An alternative approach which might have been taken in legislation is that of the “Community Right to Challenge” contained in the Localism Act 2011 which affects England and Wales. That right enables a community body to require a local authority to put a service out to tender, at which point the community body may bid to run the service. Responses to the Scottish Government’s consultation considered that model did not necessarily give the community body any new influence over the service, and could result in the tender being awarded to a commercial provider who was less responsive to community needs. In the second consultation on the draft
This document relates to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

Bill, respondents were generally in favour of the outcome improvement process approach. A range of comments were provided which are either addressed in the Bill or will be addressed in guidance.

Parts 4 and 5: Community control of land and buildings

53. In many cases, the key to effective community led action may be ownership or control of land or buildings. This can be about protecting or enhancing local facilities, creating new spaces and new uses, generating income for community activity or providing alternative stewardship for heritage and environmental assets. It can increase community confidence and cohesion, allowing communities to realise their aspirations and control their destinies. Whether it is retaining the local shop, renovating a derelict site or providing a hub for community activities, control of assets can be a key factor in making a community more attractive to live in, supporting economic regeneration and sustainable development.

54. The community right to buy, introduced by Part 2 of the Land Reform (Scotland) Act 2003 (the 2003 Act), came into effect in June 2004. Alongside this legislation, the Scottish Government and other bodies have put in place a range of funding and advice to help communities take control of assets which will help them achieve economic, social and environmental benefits. Some of this support is targeted to particular areas while other projects work throughout Scotland. Support includes, for example, the Scottish Land Fund, worth £9 million over 2012-16, the BIG Lottery Fund’s Growing Community Assets programme, and advice available from Highlands and Islands Enterprise and the Community Ownership Support Service provided by the Development Trusts Association Scotland. There is also a flourishing network of community bodies ready to offer their experience and encouragement to others seeking to take on assets.

55. In the past 20 years, nearly half a million acres of land have transferred into community ownership, either through the community right to buy or by negotiation. The Scottish Government has set a target of increasing this to one million acres by 2020.

Part 4: Community Right to Buy

56. The Bill makes amendments to the community right to buy provided for under Part 2 of the Land Reform (Scotland) Act 2003 (“the 2003 Act”). These changes build on the experience gained over 10 years of working with the legislation, extensive post-legislative scrutiny of the 2003 Act, the submissions made to the Land Reform Review Group and the interim views of that Group.

57. The Bill also inserts a new Part 3A into the 2003 Act which provides a framework for community bodies representing communities across Scotland to purchase abandoned or neglected land without a willing seller, in order to further the achievement of sustainable development of land.

Extension of community right to buy to the whole of Scotland

58. Under Part 2 of the 2003 Act, the Scottish Ministers can define what is “registrable land” and “excluded land” for the purposes of the Act. “Registrable land” must be land that appears to
Ministers to be rural. To meet that requirement, “excluded land” has been defined, in the Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2009, by reference to settlements of over 10,000 population. Only land outwith those settlements is currently covered by the community right to buy regime.

59. While there can be particular issues in relation to the ownership and use of land in rural areas, existing community activity has demonstrated that there is also substantial public benefit to be gained from community ownership of land and buildings in urban areas. The same issues of community confidence and cohesion, sustainability and improvements to the built and natural environment apply wherever communities are empowered to take control of assets. In the consultation, 93% of those who responded to the question supported the extension of the community right to buy to urban areas. A key reason given was to provide people living in urban areas with the same rights as those in rural areas.

60. Section 27 of the Bill therefore repeals the wording in the 2003 Act relating to the definition of “registrable land” and the power of the Scottish Ministers to define “excluded land”. The effect of this will be that the community right to buy will apply throughout Scotland.

Changes to procedures, including streamlining and increasing flexibility

61. Based on the experience of those using the legislation over the first decade of the community right to buy, the Bill makes a number of changes to the detailed procedures and requirements of the process under Part 2 of the 2003 Act. These changes will help to give communities greater flexibility in how they use aspects of the provisions (such as the way they define their “community” and broadening the scope of legal entities that can use them), allow communities to focus on the development of their plans and to clarify them. It will allow communities to use the legislation in circumstances where they could not do so before. The streamlined provisions will also strengthen and clarify aspects of the legislation and improve administration of the provisions for all parties using them. The provisions will help to bring more land into community ownership, while continuing to strike a fair balance between the rights of communities and landowners.

62. There was substantial support for the changes which were set out in the consultation. In many cases over 80% of those who responded to each question agreed with the proposal. A number of other changes have been made which were not consulted on, but which address issues experienced by parties using the provisions.

63. The amendments made by sections 28 to 47 of the Bill include:

- Making it easier for communities to define their “community” in a greater variety of ways, not just by postcode;
- Extending the legal entities that can use the community right to buy provisions to include Scottish Charitable Incorporated Organisations (SCIOs), and allowing for other legal entities to be added by subordinate legislation;
- In relation to the ballot required after the right to buy has been triggered, providing for the Scottish Ministers to arrange for this to be conducted by an independent third party,
and for Ministers to meet the cost of this, making the community right to buy process easier for community bodies;

- Extending the period available to complete the right to buy;
- Replacing the “good reasons” test for “late” applications with one which sets out clear requirements to be met by community bodies when submitting a “late” application;
- Making the valuation process more robust by allowing for counter-representations between the landowner and the community body;
- Giving Ministers discretion to allow them to recover the cost of the independent valuation from the landowner where the landowner has withdrawn the land from sale after the valuer has been appointed, thus deterring landowners from allowing the process to proceed where the land is not genuinely being offered for sale.

“Compulsory” community right to buy for abandoned and neglected land

64. While the existing community right to buy under Part 2 of the 2003 Act allows a community to register an interest in land at any time, it can only buy the land if the owner decides to sell: it requires a willing seller.

65. Land that is neglected or abandoned can be a barrier to the sustainable development of land. In some cases it may prevent the community from developing or improving facilities. There are also cases where derelict or neglected sites become a blight on the surrounding area, and the community could bring the land back into productive use. The Scottish Government considers that in such circumstances, where all other options fail to achieve improvement, communities should be able to acquire the land without having to wait for it to be put on the market. Section 48 inserts a new Part 3A into the 2003 Act providing for community bodies to acquire land in certain circumstances, without a willing seller. Where Ministers approve the community’s application, the owner will be required to transfer the land to the community body, which will be required to pay market value for the land.

66. In consultation, 83% of those who responded to the question on whether there should be a compulsory power for communities to buy neglected or abandoned land in certain circumstances supported this proposal. However, there was a clear difference between sectors. In particular, many local government respondents felt that such complex issues could be better resolved by powers vested in local authorities.

67. The Scottish Government considers that there is a general public interest in removing barriers to sustainable development of land by enabling community bodies to purchase neglected and abandoned land. Before approving an application Ministers will have to be satisfied, amongst other things, that it is in the public interest for the right to buy to be exercised in that case, that the right to buy is compatible with furthering the achievement of sustainable development in relation to the land and that the continued ownership of the land by the owner is inconsistent with furthering the achievement of sustainable development in relation to the land.

68. Section 97C of the new Part 3A provides that land is eligible to be bought under that Part if in the opinion of Ministers it is wholly or mainly abandoned or neglected. In making that
decision, Ministers must have regard to matters that will be prescribed in secondary legislation. 
These will be subject to further consultation. However, it is suggested that the matters to be 
considered could include: the physical condition of the land or building; its current use (or non-
use); any detrimental economic or environmental impact on the local area; and any failure by the 
landowner to comply with regulatory requirements. Ministers would also need to consider any 
environmental, planning or historic designations affecting the land or buildings, for example if 
there are any restrictions on its use or development relating to conservation purposes.

69. Section 97C also sets out land that is not eligible land and so Part 3A will not apply to it. 
This includes land which is eligible for the crofting community right to buy under Part 3 of the 
2003 Act and certain land on which a person’s home is situated. Other types of land may be 
excluded by subordinate legislation.

70. In terms of procedure, the crofting community right to buy in Part 3 of the 2003 Act 
already provides a right to buy without a willing seller for crofting communities wishing to buy 
their croft land. The procedure for Part 3A is based on the procedure in Part 3 of the 2003 Act. 
This includes a requirement for Ministers to invite the owner and others affected by the 
application to give their views on the application. Ministers must have regard to any views 
submitted in making their decisions. The procedure also makes provision for valuation of the 
land, for payment by the community body of the market value of the land, for the payment of 
compensation in certain circumstances, and for appeals against the Minister’s decision or against 
the valuation.

Alternative approaches

71. Consultation clearly showed support for extending the community right to buy to all of 
Scotland, and for a compulsory community right to buy in appropriate circumstances. These 
proposals can only be addressed through legislation.

72. Some stakeholders have proposed broader rights for the community purchase of land 
without a willing seller. The Scottish Government considers that the approach taken in the Bill 
is appropriate in order to further the achievement of sustainable development of the land.

73. There was also a desire to address promptly a range of improvements which have been 
suggested to the procedures for community right to buy under Part 2 of the 2003 Act. Given 
these are statutory procedures, legislation is required to amend them. An overall review of the 
system was carried out to determine whether it continued to be fit for purpose, in the light of ten 
years’ experience. This concluded that fundamental change was not required, and helped to 
identify or confirm those areas where adjustments would be helpful.

Part 5: Asset Transfer Requests

74. The public sector owns a wide range of land and buildings throughout Scotland, ranging 
from forests to schools, hospitals to waterworks. Many communities may wish to take control of 
assets in their area, enabling them to address local needs and deliver community benefit. In 
many cases this will also contribute to achieving the outcomes set by public sector bodies, and 
can lead to reduced demand for public services.
It is always important for community bodies to consider what assets would be appropriate for their needs and what form of control is best for them. The focus should not be just on buildings or land that a public authority is closing or has deemed to be “surplus”, but on what the community seeks to achieve and what property would help them achieve that. Similarly, ownership is not always the best answer; leasing, or managing a site on behalf of the owner, may be a better solution which allows for a division of responsibilities and costs. This may also be a stepping-stone to ownership in the future.

An increasing number of public authorities have established asset transfer schemes and are working with communities as part of their wider asset management strategies. This is a welcome development. The Bill goes further, giving the initiative to communities to identify property they are interested in, and placing a duty on public authorities to agree to the request unless they can show reasonable grounds for refusal.

Community bodies will be able to approach public authorities for detailed information about a property they are interested in, before making a formal request. Details of what information is to be provided will be set out in secondary legislation. It may include, for example, information about maintenance costs and energy efficiency.

When a community body makes a request for a public sector asset, the relevant authority will be required to assess the community body’s proposals against the current use or any other proposal. The decision will be based on the economic, social and environmental benefits of different proposals, and other factors that may be relevant including the functions and purposes of the authority. The authority must agree to the request unless there are reasonable grounds for refusal.

If a request is refused by a relevant authority other than the Scottish Ministers or a local authority, the community body may appeal to the Scottish Ministers. Local authorities, which are democratically accountable in their own right, are required to make separate arrangements for review of their decisions. Ministers may make regulations about the form those arrangements must take.

Consultation and alternative approaches

Promoting community asset transfer was a core element in original proposals for the Bill. This attracted substantial support in consultation, and the detailed provisions have been strongly informed by suggestions made by respondents.

Many local authorities, and some other parts of the public sector in Scotland, already have asset transfer schemes in place. The Scottish Government encourages this through a range of policies, and funds the Community Ownership Support Service, which provides advice and support on the process to both community groups and public sector organisations. However, there are still cases where requests for asset transfer are dismissed, or where the process is not clear or takes too long. It was therefore felt that a legislative solution was necessary to achieve consistent good practice across the public sector, rather than the alternative of continuing with further guidance and support.
82. One alternative approach which could have been taken is to limit asset transfer to land and buildings which were considered “unused or underused”, or to those which had been identified as surplus by the current owner. However, this would not meet the aim of empowering communities to identify for themselves which sites are important to them and best suit their needs.

83. Another alternative would have been to change who has the power to take decisions on asset transfer. Some respondents to the consultation suggested a new Commission, that the Scottish Ministers should have oversight of all decisions, or that community bodies should have an automatic right to purchase. The Scottish Government considers that it is most appropriate for these decisions to be taken by the current public sector owners of the land or building. Local authorities are democratically accountable for their decisions; for land owned by public bodies there is a right of appeal to the Scottish Ministers.

Part 6: Common Good Property

84. “Common good”, in Scotland, refers to certain assets which were originally acquired by former burghs, and to which title has been passed down to local authorities through successive rounds of local government re-organisation. They include both moveable items (furniture, paintings, regalia etc) and heritable ones (land and buildings), as well as cash funds which may have been derived from the use or sale of common good property. CIPFA’s guidance on Accounting for the Common Good\(^\text{17}\) provides a useful description of how common good arises.

85. Audit Scotland stated that at 31 March 2011, councils managed common good assets valued at £219 million\(^\text{18}\). While this is less than 1% of the estimated total value of council owned property assets (then valued at £35 billion), common good assets often have strong historical and emotional value to local communities, as well as being of practical use to them.

86. Due to the special status of common good, it has to be accounted for in a particular way, separate from other local authority assets, and there are special rules about its disposal. There is a long history of common law decisions clarifying whether particular items form part of the common good and how they can be used or disposed of.

87. While local authorities should already have details of their common good assets, in line with accounting good practice, this is not always readily available to the public, and there may be disputes about what is included. The aim of Part 6 of the Bill is to increase transparency about the existence, use and disposal of common good assets, and to increase community involvement in decisions taken about their identification, use and disposal. 75% of respondents to this consultation question agreed that the proposals would achieve this.

88. Part 6 places a new statutory duty on local authorities to establish and maintain a register of all property held by them for the common good. When establishing the register, a proposed


list must be published and community councils and other community bodies must be invited to comment on it. The completed register must be made available for inspection and online.

89. Further provisions require local authorities to publish their proposals and consult community councils and other community bodies before disposing of or changing the use of common good assets.

90. The Scottish Ministers may issue guidance about these duties and about the management and use of common good property, to which local authorities must have regard. Such guidance is expected to include details of the information to be included in the register and appropriate arrangements for consultation.

91. These provisions do not seek to provide a new definition of common good. Inclusion on the register, or exclusion from it, will not determine whether property is in fact common good. Given the complexity of the subject, there is a high risk that any such approach might not cover all existing assets which are considered to be common good, and might cover things which are currently excluded. Rather, the intention is to provide an opportunity for community councils, other community bodies and individuals to see what the local authority considers to be common good property, and to highlight any items they believe should be included (or omitted). It is not intended that local authorities will be expected to legally verify the status of every item on the register or proposed during the consultation; this will normally only be necessary if there is significant dispute.

92. The requirement for consultation before common good property is disposed of or its use is changed will similarly increase transparency about common good assets, and fits with the general aim of ensuring that communities are fully involved in decisions that matter to them. In relation to land and buildings, this will also be in line with good practice in asset management and asset transfer strategies.

Alternative approaches

93. There is a strong demand from stakeholders for greater transparency about common good property, and for communities to have more say in its management. One option to achieve this could have been the production of further guidance and encouragement. However, it was felt that a stronger approach was required, and therefore the Bill proposes statutory duties on local authorities to ensure transparency and consultation with communities.

Part 7: Allotments

94. In recent years interest in local food has grown, along with a desire to know where our food comes from. More and more people are interested in growing their own food. It is also increasingly recognised that gardening and working with the environment can bring a range of health and social benefits. Many community bodies include community growing among their activities, and the community right to buy and asset transfer (including lease or use) may be used to provide space for this. Another key way to provide suitable land for people to grow their own food is by the provision of allotments.
95. In 2009 the Scottish Government published its first National Food and Drink Policy – Recipe for Success. This Policy made a clear commitment to strategically support allotments and community growing spaces. To help the Scottish Government meet this end the Grow Your Own Working Group was established. One of its recommendations was to amend the legislation governing allotments, and specifically to review the duties placed on Local Authorities. The SNP Manifesto in 2011 reflected this recommendation by making a commitment to update the legislation.

96. The existing legislative framework for allotments is complex, and consultation has shown strong agreement that it needs to be updated. The principal legislation is the Allotments (Scotland) Act 1892 as amended by the Land Settlement (Scotland) Act 1919 and the Allotment (Scotland) Acts of 1922 and 1950. In addition to the two consultations on the Bill, a separate consultation on the allotments legislation was held in April-May 2013, which has informed the detail of the provisions in the Bill. The Bill repeals the existing legislation and makes new, simplified provision. Where appropriate, this includes restatement of provisions of the old legislation.

97. Part 7 of the Bill provides a new, clear definition of an allotment and an allotment site, reflecting current usage. It places a duty on local authorities to hold and maintain waiting lists for allotments, and to take reasonable steps to provide more allotments if the waiting list exceeds certain trigger points. This addresses a key concern about the level of demand for allotments and the length of time people may be on a waiting list. The Bill also prevents local authorities from disposing of or changing the use of an allotment site without the consent of the Scottish Ministers, thereby providing a level of protection to allotment sites.

98. Local authorities must publish an Annual Allotments Report and a food-growing strategy, setting out land that has been identified for allotments or other community growing in the local authority’s area and how it will meet demand. They are required to make regulations about allotments (which was previously optional). These will cover issues such as allocations, rent, maintenance, and whether tenants are allowed to keep livestock or sell surplus produce. The Bill also clarifies arrangements relating to the management of allotments and the rights of allotment tenants.

Alternative approaches

99. As set out above, the proposal for revision of the legislation on allotments arose from the recommendations of the Grow Your Own Working Group. This group set out a wide range of recommendations to support allotments and community growing spaces, requiring varying approaches to implement them. The Working Group continues to meet and is making good progress on the recommendations; further information can be found at http://www.scotland.gov.uk/Topics/Business-Industry/Food-Industry/own.

100. Amending the legislation governing allotments was identified as a specific task within the wider aim of supporting people to grow their own food. It was recognised that the existing legislation needed to be updated, simplified and clarified. Given the complex legislative framework governing allotments, creating new provisions was considered to be a more straightforward approach than seeking to amend the previous legislation. Detailed consultation
This document relates to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014.

has resulted in a balanced framework that places appropriate duties on local authorities, while allowing flexibility to reflect local circumstances.

**Part 8: Non-domestic rates**

101. Supporting businesses to flourish is a key strand in promoting resilient communities and sustainable places. One element of that is ensuring that non-domestic rates are set appropriately and reflect the needs of businesses and the local economy.

102. There is a wide range of business rate relief schemes set nationally, which benefit small businesses or those in particular sectors or geographic areas. Local authorities currently have very little scope to vary the reliefs locally. The Bill introduces a new power to allow councils to create localised relief schemes to better reflect local needs and support communities. There will be no restrictions on this power; local authorities will be able to grant the relief to any type of ratepayer or for any reason, as they see fit.

103. Any local reliefs introduced by a local authority will need to be fully funded by that authority, so it will need to balance the interests of taxpayers across its area. Local authorities will not be able to change the poundage rate or introduce local supplements.

*Alternative approaches*

104. This power was consulted on as part of a wider consultation on business rates reform, “Supporting Business, Promoting Growth”, carried out between November 2012 and February 2013, in which a range of options were explored for how the rating system can help stimulate sustainable economic growth and how to improve transparency and streamline the operation of the rating system, including the appeals process. The option of allowing local authorities flexibility to introduce and fund relief schemes to reflect local circumstances and priorities received strong support, which has been echoed in ongoing stakeholder engagement since.

105. Legislation is the only way of implementing this new power. Given the level of support for this option, the alternative of doing nothing was rejected.

**EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

**Equal Opportunities**

106. An Equality Impact Assessment (EQIA) has been carried out and will be published shortly on the Scottish Government website at [http://www.scotland.gov.uk/Publications/Recent](http://www.scotland.gov.uk/Publications/Recent).

107. The EQIA concludes that the Bill’s provisions are neither directly or indirectly discriminatory on the basis of age, disability, race, religion or belief, sex, sexual orientation or gender reassignment.

108. The provisions of the Bill are largely enabling, giving powers and duties to the Scottish Ministers, local authorities and public bodies to make decisions that meet local needs, either in
response to community proposals or demand, or resulting from engagement and consultation with the community. All these bodies are subject to the public sector equality duty under the Equality Act 2010. In making decisions under the provisions of the Bill they will need to have that equality duty in mind. In response to suggestions from stakeholders, this has been included as an issue which public authorities are explicitly required to consider when making decisions on asset transfer requests or participation requests. It may also be appropriate for public authorities to carry out an EQIA when developing policies in relation to the provisions of the Bill, for example on provision of allotments or asset transfer.

Human Rights

109. The Scottish Government is satisfied that the provisions of the Bill are compatible with the European Convention on Human Rights.

Amendments to Part 2 of the Land Reform (Scotland) Act 2003 (sections 27 to 47)

110. The Scottish Government acknowledges that the community right to buy provided for by Part 2 of the 2003 Act engages Article 1 of Protocol 1 as it constitutes a “control of use” of property. The rights under Article 1 of Protocol 1 are not absolute and the use of property can be controlled where it is in accordance with law, justified in the public interest and is proportionate.

111. The extension of the community right to buy to urban areas provided for by section 27 will engage Article 1 of Protocol 1 as it extends the “control of use” to urban land. However, this can be justified by reference to the public interest, as the benefits of community ownership have been shown to apply to urban as well as rural land. The process which is provided for in Part 2 strikes a fair balance between the public interest in community ownership and the rights of the landowner. The amendments made by sections 28 to 47 to Part 2 do not interfere with this balance and we therefore consider them to be compliant with Article 1 of Protocol 1.

112. Article 6 provides a right to a fair hearing. It applies to proceedings which constitute a determination of civil rights and obligations of the parties to the proceedings and any criminal charges. Part 2 of the 2003 Act provides sufficient safeguards and procedures to protect the Article 6 rights of the individual. The amendments made by sections 28 to 47 to Part 2 provide safeguards where appropriate.

Abandoned and neglected land (section 48)

113. The Scottish Government acknowledges that the ability of a community body to purchase land without the agreement of the owner of that land, provided for by section 48, will engage Article 1 of Protocol 1 as this will constitute a deprivation of property. However, the rights under Article 1 of Protocol 1 are not absolute and may be interfered with if this can be justified in the public interest, is proportionate and is in accordance with the law. Section 48 does not deprive any person of property but provides a process whereby Ministers may consent to an application by a community body which would result in a land owner being required to transfer land to the community body. Section 48 makes provisions pursuing the legitimate aim of sustainable development of land, and the process provided for this right to buy pursues this aim proportionally and strikes a fair balance between the general community interest and the protection of land owners’ fundamental rights. The provisions are, therefore, either compatible with Article 1 of Protocol 1 or capable of being exercised in a manner that is so compatible.
114. Article 6 concerns the right to a fair hearing. This provides that in the determination of a person’s civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Section 48 provides for adequate and appropriate rights of appeal in relation to the community right to buy neglected and abandoned land.

Allotments (Part 7)

115. The Scottish Government acknowledges that certain provisions within Part 7 of the Bill engage Article 1 of Protocol 1. In particular, the power of local authorities to remove unauthorised buildings and structures from allotments and allotment sites at section 80 amounts to a deprivation of property. However the rights under Article 1 of Protocol 1 are not absolute and may be interfered with if such interference is justified in the public interest, proportionate and in accordance with law. Section 80 does not of itself deprive any person of property. It provides a process for local authorities to follow where a building or structure contravenes regulations, including notice to the tenant and an opportunity to be heard, the removal of the property being the final step in the process where resolution is not reached. This interference can be justified in the public interest in keeping land available for community growing, including allotments. It strikes a fair balance between this public interest and the rights of tenants. The Scottish Government therefore considers this provision to be compatible with Article 1 of Protocol 1.

116. Article 6 provides that in the determination of a person’s civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Section 80 provides adequate and appropriate rights of appeal against any decision of a local authority to remove a building or structure.

117. Sections 83 and 84, providing for termination of a tenant’s lease of an allotment and resumption of land by local authorities, and section 90, providing for compensation for deterioration of allotments payable by a tenant, also engage Article 1 of Protocol 1 as deprivation of property. However, these can also be justified in the public interest and the provisions strike a fair balance between the rights of the tenant and the public interest. The Scottish Government considers these provisions to be compatible with Article 1 of Protocol 1. The provisions also provide sufficient safeguards and procedures to protect the Article 6 rights of the individual. Sections 89 and 91, which provide for compensation to allotment tenants in certain circumstances, also engage Article 6 and those provisions also provide sufficient safeguards and procedures to protect Article 6 rights.

118. Section 73 provides that local authorities must make regulations about the running of allotment sites in its area. This engages Article 1 of Protocol 1 as it will constitute a control of use of property. However, this is justified in the public interest in making land available for community growing, including allotments. The process set out in section 73 for making regulations strikes a fair balance between this public interest and tenants’ rights. Section 73 provides sufficient safeguards and procedures to protect the Article 6 rights of the individual.
Island Communities

119. The Bill will apply to all communities across Scotland, including island communities. No differential impact on island communities is anticipated for the majority of the Bill provisions.

120. Some responses to the consultation highlighted that there can be a shortage of land available to local authorities for allotments in crofting areas, which include the three Islands authorities. A possible solution, suggested by one of those authorities, is for local authorities to work with other landowners and public service providers to discuss the possibility of allotment provision on their land.

Local Government

121. The Bill will directly impact on local authorities in carrying out their functions, and particularly in the planning, design and delivery of services. These impacts are set out in this Policy Memorandum and the other Accompanying Documents to the Bill.

122. The Bill has been developed in partnership with COSLA. A Reference Group on the Bill is co-chaired by the Minister for Local Government and Planning and Councillor Harry McGuigan, COSLA spokesperson on Community Wellbeing. COSLA also co-ordinated the arrangement of consultation events for local government officials and representatives during both consultations on the Bill. 36 local government bodies responded formally to the consultation on the Bill proposals.

Sustainable Development

123. A pre-screening report on the environmental impact of the Bill has been completed. This confirmed that the Bill will have minimal or no impact on the environment and, as such, is exempt for the purposes of section 7 of the Environmental Assessment (Scotland) Act 2005.

124. Individual proposals brought forward under the provisions of the Bill may have an impact on the environment. Whether proposals promote or improve “environmental wellbeing” is an issue which relevant authorities must consider in taking decisions on asset transfer or participation requests. When the Scottish Ministers consider an application for a right to buy under Part 3A of the Land Reform (Scotland) Act 2003 they must be satisfied that that approval is necessary for the sustainable development of the land. Where public authorities bring forward plans of their own they must consider whether a Strategic Environmental Assessment is required for those plans.
COMMUNITY EMPOWERMENT (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Community Empowerment (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

Outline of Bill provisions

3. The Bill reflects the policy principles of subsidiarity, community empowerment and improving outcomes and provides a framework which will:
   • Empower community bodies through the ownership of land and buildings and strengthening their voices in the decisions that matter to them; and
   • Support an increase in the pace and scale of Public Service Reform by cementing the focus on achieving outcomes and improving the process of community planning.

4. The Bill comprises 9 Parts with 5 Schedules:
   • Part 1 places a duty on Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, which builds on the Government’s internationally acclaimed “Scotland Performs” framework.
   • Part 2 places community planning partnerships on a statutory footing and imposes duties on them around the planning and delivery of local outcomes. Schedule 1 lists the bodies which are to be community planning partners. This Part replaces provision in Part 2 of the Local Government in Scotland Act 2003, which is repealed by Schedule 5.
   • Part 3 provides a mechanism for communities to have a more proactive role in having their voices heard in how services are planned and delivered. Schedule 2 lists “public service authorities” to whom participation requests can be made.
This document relates to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

- **Part 4** amends Part 2 of the Land Reform (Scotland) Act 2003, extending the community right to buy to all of Scotland, and introduces a new Part 3A to the 2003 Act to make provision for community bodies to purchase neglected and abandoned land where the owner is not willing to sell that land.

- **Part 5** provides community bodies a right to request to purchase, lease, manage or use land and buildings belonging to local authorities, Scottish public bodies or Scottish Ministers. The list of “relevant authorities” affected is given in Schedule 3.

- **Part 6** places a statutory duty on local authorities to establish and maintain a register of all property held by them for the common good. It also requires local authorities to publish their proposals and consult community bodies before disposing of or changing the use of common good assets.

- **Part 7** updates and simplifies legislation on allotments. It requires local authorities to take reasonable steps to provide more allotments if waiting lists exceed certain trigger points and ensures appropriate protection for local authorities and plotholders. This replaces the provisions of the Allotments (Scotland) Acts 1892, 1922 and 1950, which are repealed in their entirety by Schedule 5, and some provisions of the Land Settlement (Scotland) Act 1919.

- **Part 8** provides for a new power which will allow councils to create and fund their own localised business rate relief schemes to better reflect local needs and support communities. It does this by inserting a new section into the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

- **Part 9** makes general provisions in relation to the Bill, including provision about subordinate legislation, ancillary provision and commencement. Schedule 4 makes minor and consequential amendments to other legislation, and Schedule 5 provides for repeals.

**Rationale for subordinate legislation**

5. In deciding whether provision should be set out in subordinate legislation rather than on the face of the Bill, the Scottish Government has considered the need to:

- Strike the right balance between the importance of the issue and providing sufficient flexibility to respond to changing circumstances without the need for primary legislation;

- Anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament;

- Make proper use of valuable parliamentary time;

- Allow detailed administrative arrangements to be kept up to date within the basic structures set out in the Bill; and

- Take account of the likely frequency of amendment.

6. The relevant provisions are described in detail below. For each provision, the memorandum sets out:
This document relates to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

- The person upon whom the power to make subordinate legislation is conferred and the form in which the power is to be exercised;
- Why it is considered appropriate to delegate the power to subordinate legislation and the purpose of each such provision; and
- The parliamentary procedure to which the exercise of the power to make subordinate legislation is to be subject, if any.

Delegated powers

Part 2 – Community Planning

Section 4(5) – Power to modify schedule 1 community planning partners

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

7. Section 4 defines “community planning”, “community planning partners” and “community planning partnerships”. Community planning is planning that is carried out in the area of a local authority so that public services improve the achievement of local outcomes. Schedule 1 lists the bodies who are community planning partners.

8. Subsection (5) enables the Scottish Ministers to amend the list of community planning partners in schedule 1 by regulation. Subsection (6) further states that the regulations may provide that a community planning partner may participate in community planning for a specific purpose, where participation is required in relation to some of that partner’s responsibilities but not others.

Reason for taking power

9. Schedule 1 contains a list of bodies who are partners in the community planning partnership and includes a wide range of public bodies that may have a role in influencing local outcomes. The power in subsection (5) is to provide flexibility in future should changes be required to the list of bodies in schedule 1. As the bodies listed in schedule 1 have a range of functions and duties it may be necessary to be more specific about the purpose for which a community planning partner is to be involved in community planning so as to provide any necessary clarity as to their role, which is the reason for the power in subsection (6).

Reason for choice of procedure

10. It is not considered that the inclusion or removal of particular bodies in the list of community planning partners is sufficiently significant to merit affirmative procedure. Negative procedure will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations on the other.
Section 8(3) – Power to modify list of community planning partners with a governance role

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision
11. Section 8 places governance responsibilities on specified community planning partners for the purpose of achieving effective community planning. The partners specified in subsection (2) must facilitate community planning and take reasonable steps to ensure that the partnership operates efficiently and effectively.

12. Subsection (3) enables Ministers to modify by regulation the list of community planning partners set out in subsection (2) to whom the governance duties apply, either by adding a new partner, removing a partner or amending an entry.

Reason for taking power
13. The community planning partners set out in subsection (2) are those most directly involved in community planning and they therefore have a critical role to play in ensuring that the process runs as efficiently and effectively as possible. The power in subsection (3) is to provide flexibility in future should changes be required to the list of bodies in subsection (2).

Reason for choice of procedure
14. The power relates to making changes that may be required as the nature and practice of community planning evolves and the provisions of this part of the Bill take effect. It is not considered that the placing governance responsibilities on bodies which are community planning partners is sufficiently significant to merit affirmative procedure. Negative procedure will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations on the other.

Section 12(1) – Power to establish a body corporate for community planning purposes

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure

Provision
15. Section 12 of the Bill replaces the provisions of section 19 of the Local Government in Scotland Act 2003 and gives the Scottish Ministers a power to establish corporate bodies to co-ordinate community planning and to say what their constitution and functions are. As a body corporate, a community planning partnership could, for example, hold its own budgets and assets and employ its own staff.
16. Subsection (1) allows the Scottish Ministers to establish such a body corporate by regulations, following an application made by a local authority and at least one other community planning partner in the area.

17. Further detail is provided in subsections (2) to (4), including the information to be included in the application and the type of provision which the regulations made under subsection (1) may include. Subsection (4) provides that a corporate body established under subsection (1) may discharge a function, even where another enactment specifies that as the function of another body or prevents the carrying out of that function by the new corporate body.

**Reason for taking power**

18. The power is required to retain the option of establishing corporate bodies as was provided under section 19 of the Local Government in Scotland Act 2003. With Community Planning Partnerships now having a statutory basis, it is considered appropriate to translate these powers to the Bill. The Scottish Government does not want to limit the options that are available to community planning partners should the need arise in the future.

**Reason for choice of procedure**

19. The Scottish Government considers affirmative procedure is appropriate as the establishment of a corporate body can be a significant step and may include functions about community planning that override another enactment or rule of law.

**Section 12(2)(d) – Power to prescribe other matters to be addressed in an application for incorporation**

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**Provision**

20. As stated above, section 12 of the Bill replaces section 19 of the Local Government in Scotland Act 2003 and gives the Scottish Ministers a power to establish corporate bodies with community planning functions.

21. Subsection (2) provides that an application to establish a corporate body must include certain information, including information on consultation undertaken, representations received and the proposed functions of the body. Subsection (2)(d) provides a power to make regulations setting out other matters that the Scottish Ministers may want to be included in an application.

**Reason for taking power**

22. The power allows flexibility when developing the detail of the content of the application to establish a corporate body. It is be important that the application contains all the relevant information that the Scottish Ministers require. Subsection (2)(a) to (c) requires that certain information be provided but as the detail of what should go in the application is developed it may be appropriate to require additional information. Provision regarding additional information is
likely to be fairly detailed. Further, from time to time in the light of practical experience the Scottish Ministers may wish to make changes to the additional information that an application is to contain.

Reason for choice of procedure

23. The question of what additional information should be contained in an application is an administrative matter. It is therefore considered appropriate that regulations made under subsection (2)(d) should be subject to negative procedure, which will achieve the best balance between use of Parliamentary time and resource on the one hand and the content of the regulations on the other.

Part 3 – Participation Requests

Section 15(2)(a) – Designation of a community participation body

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Provision

24. Section 15 defines a “community participation body”, which is the type of body which can make a participation request under section 17 to participate in an outcome improvement process. A community participation body may be a community-controlled body, a community council or a body, or a body of a class of bodies, designated by the Scottish Ministers.

25. Subsection (2)(a) provides that the Scottish Ministers may by order designate individual bodies as community participation bodies.

Reason for taking power

26. Community bodies come in many different forms. The intention of the policy is that as wide a range of community bodies as possible should be able to act as a community participation body and make a request to a public service authority to participate in an outcome improvement process. It is important that community participation bodies are open, inclusive and represent their community, and in most cases this should be demonstrated by meeting the criteria for a community-controlled body. However, there may be bodies which are established in a different way, especially those established before current approaches became standard, which Ministers still consider should be able to act as community participation bodies. The power will allow the Scottish Ministers to designate additional community bodies for this purpose. Further, it will allow the Scottish Ministers to de-designate bodies if needed, for example, if the body has disbanded or are no longer in existence for whatever reason.

Reason for choice of procedure

27. The Scottish Government considers negative procedure is appropriate. The power will allow particular bodies of bodies to be a community-controlled body for the purposes of the Act. The nature of the power is that it may involve the addition, from time to time, of individual
bodies and it is considered that this sort of modification is not of such significance as to require affirmative procedure.

Section 15(2)(b) – Designation of a class of bodies as community participation bodies

Power conferred on: Scottish Ministers  
Power exercisable by: Order  
Parliamentary procedure: Negative procedure

Provision

28. As stated above, section 15 defines a “community participation body”, which is the type of body which can make a participation request under section 17, and it may be a community-controlled body, a community council or a body, or body of a class of bodies, designated by the Scottish Ministers.

29. Subsection (2)(b) provides that the Scottish Ministers may by order designate a whole class of bodies so that any body of that type will qualify as a community participation body.

Reason for taking power

30. As detailed above under section 15(2)(a), the intention of the policy is that as wide a range of community bodies as possible should be able to act as a community participation body and make a request to a public service authority to participate in an outcome improvement process, provided that they are open, inclusive and representative. If it appears that the characteristics of a type of body meet those requirements, the power will allow the Scottish Ministers to designate that class of bodies as community participation bodies for this purpose. Further, it will allow the Scottish Ministers to de-designate that class of bodies if needed.

Reason for choice of procedure

31. The Scottish Government considers negative procedure is appropriate. The nature of the power is that it may involve the addition, from time to time, of classes of bodies and it is considered that this sort of modification is not of such significance as to require affirmative procedure.

Section 16(2) – Power to modify schedule 2 public service authorities

Power conferred on: Scottish Ministers  
Power exercisable by: Order  
Parliamentary procedure: Negative procedure

Provision

32. Schedule 2, introduced by section 16, lists public service authorities to which a participation request can be made. This includes local authorities, the Scottish Ministers, Health Boards, and other Scottish public bodies. The public bodies selected are involved in providing or supporting local services.
33. Subsection (2) enables the Scottish Ministers to remove or amend an entry on the list of public service authorities in schedule 2 by order.

Reason for taking power

34. Schedule 2 provides a list of public bodies to which a participation request can be made. The bodies listed in schedule 2 may change over time and the power in subsection (2) is to provide flexibility in future should changes be required, either by removing the body from the list or making any necessary amendments to an entry.

Reason for choice of procedure

35. The power relates to modifications that may be required based on future changes to the bodies listed in schedule 2. It is therefore considered appropriate that the negative procedure be used. The power enables modifications, from time to time, of individual bodies and it is considered that this sort of modification is not of such significance as to require affirmative procedure and that negative procedure provides the appropriate balance required between scrutiny and the use of parliamentary resource.

Section 16(3)(a) – Power to designate a public service authority

Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

Provision

36. In addition to the bodies listed in schedule 2, participation requests can also be made by a person that is designated as a public service authority or that falls within a class of persons designated as public service authorities.

37. Subsection (3) allows the Scottish Ministers to designate a public service authority by order. Subsections (4) to (9) provide more detail on who may be designated as a public service authority and also provide that in making an order the Scottish Ministers may exclude some services from being subject to participation requests.

Reason for taking power

38. The public bodies listed in schedule 2 are involved in providing or supporting local services. Once participation requests are in operation and their use and impact have been determined it may be appropriate to designate other public bodies that provide or support local services as a public service authority. Further, should new public bodies that provide or support local services be created in future it may be considered appropriate to designate the public body as a public service authority.

Reason for choice of procedure

39. The Scottish Government considers negative procedure is appropriate. The power allows a particular body to be a public service authority to which a participation request can be made. This may involve the addition, from time to time, of individual bodies and it is considered that
This document relates to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

this sort of modification is not of such significance as to require affirmative procedure. It is therefore considered appropriate that the negative procedure be used to provide the balance required between scrutiny and the use of parliamentary resource.

Section 16(3)(b) – Power to designate a class of public service authorities

Power conferred on: Scottish Ministers  
Power exercisable by: Order  
Parliamentary procedure: Negative procedure

Provision

40. In addition to the bodies listed in schedule 2 and to persons designated as public service authorities under section 16(3)(a) participation requests can also be made by a person that falls within a class of persons designated as public service authorities.

41. Subsection (3)(b) provides that the Scottish Ministers may by order designate a class of persons so that any person of that class will qualify as a public service authority. Subsections (4) to (7) provide more detail on who may be designated as a public service authority.

Reason for taking power

42. As detailed above under section 16(3)(a), it may be appropriate to designate other persons that provide or support local services as a public service authority. In addition, it may be that a person of a class of body should be treated as a public service authority, and section 16(3)(b) will allow the Scottish Ministers to designate that class of persons for this purpose.

Reason for choice of procedure

43. The Scottish Government considers negative procedure is appropriate. The nature of the power is that it may involve the addition, from time to time, of classes of bodies and it is considered that this sort of modification is not of such significance as to require affirmative procedure. It is therefore considered appropriate that the negative procedure be used to provide the balance required between scrutiny and the use of parliamentary resource.

Section 18(1) – Power to make further provision regarding participation requests

Power conferred on: Scottish Ministers  
Power exercisable by: Regulations  
Parliamentary procedure: Negative procedure

Provision

44. Section 18(1) gives the Scottish Ministers a power to make regulations with provision about participation requests in addition to that contained in section 17. Subsection (2) provides that the regulations can, in particular, cover how requests are to be made, how public service authorities should deal with them, and which information is to be provided in connection with requests (in addition to the information required under section 17(2)).
Reason for taking power

45. Under section 17(1) participation requests allow a community participation body to make a request to a public service authority to permit the body to participate in an outcome improvement process, which is a process established by the authority with a view to improving an outcome that results from, or is contributed to by virtue of, the provision of a public service. Section 17(2) describes the information which must accompany the request.

46. The Scottish Government considers that section 18(1) is necessary to require that further information is provided and to make provision on the procedure for making requests and for handling them.

Reason for choice of procedure

47. Any further provision that is required regarding participation requests and the process and procedure to be used is a largely administrative matter. The regulations may also need to change over time to reflect practical experience in the use of participation requests. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

Section 19(7)(a) – Power to prescribe a time for a decision notice to be given

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<td>Parliamentary procedure:</td>
<td>Negative procedure</td>
</tr>
</tbody>
</table>

Provision

48. Section 19 provides that a public service authority must decide whether to agree to or refuse any participation request it receives and sets out the matters which must be taken into consideration. Subsection (6) requires the authority to give notice of its decision to the community participation body before the end of the period mentioned in subsection (7) and if it refuses the request, it must give reasons for that refusal.

49. Under subsection (7) the period referred to in subsection (6) is either a period prescribed in regulations under subsection (7)(a) or such longer period as may be agreed between the authority and the community participation body.

Reason for taking power

50. The Bill provides the legislative framework around which decisions on participation requests will be made and following enactment of the Bill the Scottish Government will consult on what is a reasonable time period for a decision to be made by public service authorities.

Reason for choice of procedure

51. The period of time for a public service authority to respond to a participation request is an administrative matter and will be informed by a short and focussed consultation. It is also possible that the time period may change in future. It is therefore considered appropriate that the
negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

Section 19(8) – Power to make provisions regarding the information contained in a decision notice and the manner in which it is to be given

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

52. Section 20 describes the information which must go in a decision notice when a public service authority decides to agree to a participation request.

53. Section 19(8) allows the Scottish Ministers to set out in regulations other information that a decision notice is to contain and also the manner in which a decision notice is to be given.

Reason for taking power

54. The power allows flexibility when developing the detail of the decision notice procedure. It will be important that the decision notice will contain relevant information, and that it is given in an appropriate manner which is accessible to members of the community participation body. Section 20 provides for a certain amount of information to be provided about the outcome improvement process, when a participation request is successful. However, as the detail of the decision notice procedure is developed it may be considered appropriate to include other information. Further, from time to time in the light of practical experience and other developments the Scottish Ministers may wish to make changes to the information that a decision notice is to contain and also the manner in which a decision notice is to be given.

Reason for choice of procedure

55. The information that a decision notice is to contain and the manner in which a decision notice is to be given are administrative matters. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

Section 21(6) – Power to specify information to be published about the outcome improvement process

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

56. Section 21 applies when a decision notice agreeing to participation has been sent but the outcome improvement process has not yet been established. It provides that the community participation body may, within 28 days, make representations in relation to the proposed process.
The public service authority must within 28 days of the expiry of the 28 day period for making representations give a notice containing details of the outcome improvement process that is to be established.

57. Subsection (6) is a power to make regulations specifying information about the outcome improvement process which must be published.

Reason for taking power

58. The power in subsection (6) will enable Ministers to ensure that appropriate information about the outcome improvement process is published on a website or electronically.

Reason for choice of procedure

59. The specification of information about the outcome improvement process that must be published is a largely procedural and administrative matter. The regulations may also change over time to reflect experience and practice. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

Section 24(3) – Power to specify information about the modification of an outcome improvement process

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

60. Section 24 provides that the public service authority may modify the outcome improvement process, following consultation with the community participation body.

61. Subsection (3) provides that, if the public service authority does modify the outcome improvement process, it must publish such information about the modification as may be specified in regulations made by the Scottish Ministers.

Reason for taking power

62. The Scottish Ministers may require authorities to publish relevant information regarding an outcome improvement process, by regulations made under section 21(6) as outlined above. This additional power is required to ensure that where changes to established outcome improvement processes have been made, then the modifications will also be published.

Reason for choice of procedure

63. The specification of information about modifications to an outcome improvement process that must be published is a largely procedural and administrative matter. The regulations may also change over time to reflect experience and practice. It is therefore considered appropriate
that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

Section 25(4) – Power to make provision about reports that are made as a result of a participation request

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

**Provision**

64. Where a participation request has been made and an outcome improvement process has been completed, section 25 requires the public service authority to publish a report on the process and describes the information to go in the report.

65. Subsection (4) gives the Scottish Ministers power to make regulations about reports, including additional information they must contain.

**Reason for taking power**

66. Section 25(2) describes information about the outcome improvement process to be contained within a report. The subsection (4) power to make additional provision about reports allows for flexibility when developing the detail of the reporting process. It will be important that the report contains relevant information on the results of the outcome improvement process.

**Reason for choice of procedure**

67. The publication of a report on an outcome improvement process is a largely procedural and administrative matter and are likely to be fairly detailed. The regulations may also change over time to reflect experience and practice. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

**Part 4 – Community Right to Buy**

Part 4 of the Bill makes amendments to the Land Reform (Scotland) Act 2003 (“the 2003 Act”).

**BODIES THAT MAY COMPRISE A “COMMUNITY BODY” FOR THE PURPOSES OF THE COMMUNITY RIGHT TO BUY**

Section 28(2) – inserting section 34(A1)(b) into the 2003 Act - Power to prescribe bodies that are “community bodies”

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Affirmative procedure
This document relates to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

Provision

68. Section 28 of the Bill amends section 34 of the 2003 Act to extend the types of body which may be eligible to become community bodies under Part 2 of the 2003 Act to include Scottish Charitable Incorporated Organisations (“SCIOs”) and any other type of body that Ministers may specify in regulations. These regulations may also specify the requirements that such a body must satisfy in order to be a community body.

Reason for taking this power

69. Since the 2003 Act came into operation, new legal structures have been developed which enable communities to be able to undertake a range of activities for their community, including owning land. The Scottish Government anticipates that further legal bodies could emerge that would be suitable community bodies for the purpose of Part 2 of the 2003 Act. Being able to make regulations providing for such bodies to be community bodies would allow Ministers to be able to respond quickly to such developments.

Choice of procedure

70. It is considered appropriate to allow the Scottish Parliament to give a high level of scrutiny to such provision. Only specific types of legal entities are able to be community bodies for the purposes of the 2003 Act. Any extension of the bodies that can be a community body may have a significant impact of who can make use of the right to buy in Part 2 of the 2003 Act. Use of this power could therefore have a significant impact on the scope of the legislation and so the affirmative procedure is appropriate.

REQUIREMENTS FOR A COMMUNITY BODY

Section 28(6) – insertion of section 34(4A) and (4B) into the 2003 Act - Power to make regulations to amend the requirements for a body to be a community body.

Power conferred on: Scottish Ministers
Power Exercisable by: Regulations
Parliamentary Procedure: Affirmative procedure

Provision

71. Section 28(6) of the Bill inserts a new section 34(4A) into the 2003 Act. Section 34(4A) gives the Scottish Ministers the power to make regulations modifying the criteria which must be met by companies limited by guarantee and SCIOs in order to be community bodies under Part 2 of the 2003 Act.

72. Section 28(6) also inserts a new section 34(4B) into the 2003 Act. Section 34(4B) provides that if the Scottish Ministers make regulations under section 34(A1)(b) then they can also amend section 35(A1) and (1) of the 2003 Act by regulations.

73. Any regulations made under section 34(A1)(b) would set out the bodies, other than companies limited by guarantee and SCIOs, which may be classed as “community bodies” for the purposes of the 2003 Act. Section 35(A1) prohibits the alteration (without consent of Ministers) of the memorandum, articles of association or constitution of a community body.
during the relevant period (as defined in section 35(A2) of the 2003 Act). The Scottish Ministers can make regulations using the power inserted in section 34(4B) to amend section 35(A1) and (1) of the 2003 Act to extend the prohibition to any different kinds of constitutive document which may apply to the new types of body which are eligible to become community bodies.

Reasons for taking power

74. Ministers already have powers to disapply the requirement at section 34(1)(c) of the 2003 Act. It is appropriate that Ministers also have power to vary the requirements for a community body in section 34(1) and (1A) of the 2003 Act. The power to make regulations gives Ministers flexibility to make these changes.

75. Where Ministers make regulations extending the bodies that may comprise a “community body”, Ministers will also need to be able to set out the requirements that these bodies need to satisfy to be a community body. The power to make regulations gives Ministers flexibility to set out these provisions and to make any changes to them in the future.

Choice of procedure

76. It is considered appropriate to allow the Scottish Parliament a high level of scrutiny to the detail of any changes to primary legislation. Regulations made under section 34(4A) and (4B) of the 2003 will amend primary legislation.

DEFINITION OF A “COMMUNITY”

Section 28(7) – amendments to section 34(5) of the 2003 Act – Power to define a “community”

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

77. For the purposes of the community right to buy in Part 2 of the 2003 Act, section 34(5) of the 2003 Act provides that a “community” is defined by reference to a geographical area. The geographical area is currently defined by reference to a postcode unit or units, unless otherwise directed by Ministers. Section 28(7) amends section 34(5) of the 2003 Act so the provision that allows the Scottish Ministers to direct that a “community” can be defined other than by reference to postcode units is removed and the Scottish Ministers are given a power to make regulations which may set out a specific type or types of area, in addition to postcode unit or units, which can be used to define a “community”.

Reason for taking this power

78. There have been comments that postcodes do not provide community bodies with the greatest flexibility in describing their “community”. In particular, some communities comprise a large number of postcodes which may also change frequently, making it cumbersome to describe their “community”. There are a number of building blocks which could be used in addition to
This document relates to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

postcodes and postcode areas, such as settlement areas and wards. To list these in the primary legislation would be cumbersome and regulations provides flexibility in making any changes to the list of criteria to describe a “community”.

Choice of procedure

79. It is considered that the use of this power can be left to the level of Parliamentary scrutiny attached to the negative procedure. The power does not define what amounts to a community in any particular case but sets out another method which may be used to define a particular community, such as settlement areas or wards. This is therefore essentially an administrative matter.

DESCRIPTION OF LAND TRANSFERRED BY A LANDOWNER OR HERITABLE CREDITOR AS AN “EXEMPT” TRANSFER

Section 33 – insertion of section 41(3)(b) into the 2003 Act – power to specify the description of land

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

80. Landowners and creditors in a standard security with a right to sell the land are prohibited from transferring land or taking action with a view to transferring land that is subject to a registered interest for so long as the interest is registered, other than to a community body which has a registered interest in that land or in accordance with section 40(4) of the 2003 Act which provides for “exempt transfers”. Section 33 of the Bill inserts subsection (3) into section 41 of the 2003 Act and sets out that where a landowner or a heritable creditor transfers land by means of exempt transfer they must provide Ministers with certain information including a description of the land being transferred, including maps, plans or other drawings. Section 41(3)(b) of the 2003 Act enables Ministers to make regulations setting out the specifications that maps, plans and drawings describing the land transferred must be prepared in accordance with.

Reason for taking this power

81. Ministers are currently not required to be informed if a landowner or creditor in a standard security with a right to sell land makes a transfer of land which is exempt from the prohibition on transfers (by virtue of section 40(4) of the 2003 Act). In some cases landowners or creditors have transferred all of the land which has a registered interest in it, while in other cases they have transferred only part of the land, or have transferred it to more than one owner. This power enables Ministers to make regulations setting out how the land that has been subject to an exempt transfer should be described when Ministers are notified of the transfer. It is considered that the level of procedural detail which is to be set out is more appropriately left to regulations.
Choice of procedure

82. It is considered appropriate that this power is subject to negative procedure. This provision is required to set out in detail how land is to be described in informing Ministers about the transfer of that land. This is therefore an administrative matter.

BALLOT PROCEDURE

Section 37 – insertion of section 51A(2)(b) into the 2003 Act - Power to prescribe information to be provided to the ballotter

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

83. Section 37 of the Bill inserts a new section 51A into the 2003 Act to provide for an independent ballotter to undertake the community ballot under section 51(1)(a) of the 2003 Act.

84. Section 51A(2)(a) of the 2003 Act sets out that Ministers must provide the ballotter with a copy of the of the application to register an interest in land made by the community body. Section 51A(2)(b) allows the Scottish Ministers to make regulations which specify other information which must be provided by the Scottish Ministers to the ballotter within the timeframe set out in section 51A(3).

Reason for taking these powers

85. It is important that an independent ballotter is provided with the appropriate information by Ministers so that the ballot is conducted in an appropriate manner. It is considered that the level of procedural detail which is to be set out is more appropriately left to regulations.

Choice of procedure

86. It is considered that the use of these powers can be left to the level of Parliamentary scrutiny attached to the negative procedure. The matters to be detailed in regulations are details of procedure. For example, these matters could relate to the contact details of the community body, the statutory timescales when the ballot is to be completed and the ballot return made to the Scottish Ministers, the community body and other specified persons. The current ballot procedures under the 2003 Act are set out in regulations subject to the negative procedure.

BALLOT PROCEDURE

Section 37 – insertion of section 51A(6) into the 2003 Act - Power to prescribe information to be provided to the ballotter by a community body

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure
This document relates to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

Provision

87. Section 37 of the Bill inserts a new section 51A into the 2003 Act to provide for an independent ballotter to undertake the community ballot under section 51(1)(a) of the 2003 Act.

88. New section 51A(6) requires the community body to provide the ballotter with certain information. The Scottish Ministers may make regulations setting out the specific information required and the form in which this information should be provided.

Reason for taking these powers

89. It is important that an independent ballotter is provided with the appropriate information by the community body so that the ballot is conducted in an appropriate manner. It is considered that the level of procedural detail which is to be set out is more appropriately left to regulations.

Choice of procedure

90. It is considered that the use of these powers can be left to the level of Parliamentary scrutiny attached to the negative procedure. The matters to be detailed in regulations are details of procedure. For example, this could include requiring the community body to provide the ballotter with the ballot question on which the community is to be balloted. The current ballot procedures under the 2003 Act are set out in regulations subject to the negative procedure.

REQUIREMENT FOR A COMMUNITY BODY TO PROVIDE CERTAIN INFORMATION TO SCOTTISH MINISTERS

Section 38 – insertion of section 51B(2)(b) and (3) - Power to make regulations which set out the information a community body must provide to Scottish Ministers

Powers conferred on: Scottish Ministers
Powers exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

91. Section 38 of the Bill inserts a new section 51B into the 2003 Act which supplements section 51 of the 2003 Act. Section 51 of the 2003 Act sets out that before a community body can exercise its right to buy (after the right to buy has been activated), both the approval of the community and the consent of the Scottish Ministers are required. The Scottish Ministers are not able to grant consent unless they are satisfied that the conditions set out in subsections 51(3)(a)-(e) are met. In making this decision, new section 51B of the 2003 Act requires Ministers to take into account the information provided by the community body and any other information they consider relevant. New section 51B(2)(b) gives the Scottish Ministers the power to make regulations set out in regulations what form this information should be provided in.
Reason for taking these powers

92. In the past community bodies have provided Ministers with a wide range of information in relation to their right to buy, and in particular as to why their proposal for the land is compatible with furthering the achievement of sustainable development. Sometimes this information is extensive, and other times it is succinct; sometimes it can include all the information that Ministers need to take a decision, while sometimes points are not included or require to be clarified. This provision allows Ministers to set out the information that they need to consider when making a decision. It also provides greater transparency in the assessment process and for the streamlining of information to be provided by a community body. It is considered that the level of procedural detail and detail required to be set out is more appropriately left to regulations.

Choice of procedure

93. It is considered that the use of this power can be left to the level of Parliamentary scrutiny attached to the negative procedure. The information that a community body will be required to provide include matters such as evidence as to why the proposals for land will further sustainable development and the detail as to the information which is to be provided is not appropriate for primary legislation. This level of procedural detail is best dealt with by way of the negative procedure.

BALLOT NOT CONDUCTED AS PRESCRIBED

Section 40 – insertion of section 52(7) into the 2003 Act - Ballot not conducted as prescribed

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

94. A ballot must be conducted in accordance with the requirements set out in regulations made by the Scottish Ministers under section 52(1) of the 2003 Act. A new subsection 52(7) is being inserted into the 2003 Act by section 40 of the Bill. Section 52(7) allows the Scottish Ministers to make further regulations in respect of: reviewing how the ballot was conducted; notifying specific persons that the ballot was not conducted correctly; requiring a further ballot to be conducted and specifying the persons who are to undertake this; and how that further ballot is to be conducted, and that timescales for undertaking that further ballot. In addition, these regulations under section 57(7) may state who is to conduct the review of the first ballot and the action which can be taken by such person following the review.

Reason for taking this power

95. While most of the ballots undertaken by the community right to buy have been undertaken in accordance with the 2003 Act and the regulations made under it, there have been a small number of cases where the ballot has not been so conducted. Clarity is needed as to what happens when there is a flawed ballot and also the administrative procedures to deal with such a ballot. It is considered that the level of procedural detail which is to be set out is more appropriately left to regulations.
Choice of procedure

96. It is appropriate that this power is subject to negative procedure because it will be used to set details of procedure. This is also essentially an administrative matter.

Section 48 of the Bill

Section 48 of the Bill inserts a new Part 3A into the 2003 Act to give communities a right to buy land that is wholly or mainly abandoned or neglected, for the purposes of the sustainable development of that land, where there is no willing seller.

ELIGIBLE LAND

Section 48 – inserted section 97C(2) of the 2003 Act - power to prescribe whether land is eligible for the purposes of Part 3A

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure

Provision

97. This provision requires Ministers to have regard to matters set out in regulations in determining whether land is, in their opinion, eligible for the purposes of Part 3A of the 2003 Act.

Reason for taking this power

98. The Bill does not define what is abandoned or neglected land for the purposes of Part 3A of the 2003 Act. It is considered that as Ministers will need to have regard to a number of matters which are too detailed to include in the primary legislation and are more appropriately set out in regulations.

Choice of procedure

99. It is appropriate that this power is subject to affirmative procedure to allow Parliament a high level of scrutiny, given that what constitutes “eligible land” is fundamental to the scope and application of Part 3A.

Section 48 – inserted section 97C(3)(a) of the 2003 Act - power to prescribe that eligible land does not include certain land for the purposes of Part 3A

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure

Provision

100. Section 97C(1) provides that land is eligible for the purposes of Part 3A if in the opinion of Ministers it is wholly or mainly abandoned or neglected. Section 97C(3)(a) provides that
eligible land does not include land on which there is a building or structure that is an individual’s home, other than buildings or structures that may be set out in regulations by Ministers.

Reason for taking this power

101. The intention is that eligible land should not include an individual’s home. The regulation making power will enable there to be flexibility as to exactly what buildings or structures constitute an individual’s home.

Choice of procedure

102. It is appropriate that this power is subject to affirmative procedure to allow Parliament a high level of scrutiny, given that what constitutes “eligible land” is fundamental to the scope and application of Part 3A.

Section 48 – inserted section 97C(3)(b) of the 2003 Act - power to prescribe that eligible land does not include certain land for the purposes of Part 3A

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure

Provision

103. Section 97C(1) provides that land is eligible for the purposes of Part 3A if in the opinion of Ministers it is wholly or mainly abandoned or neglected. Section 97C(3)(a) provides that eligible land does not include land on which there is a building or structure that is an individual’s home, other than buildings or structures that may be set out in regulations by Ministers. Section 97C(3)(b) provides that eligible land does not include land set out in regulations that pertains to an individual’s home that is excluded from being eligible land by section 97C(3)(a).

Reason for taking this power

104. The regulation making power will give the Ministers the ability to ensure that land pertaining to a person’s home, such as a private garden (to the extent that this does not fall within section 97C(3)(a)) is excluded from being eligible land. The description of the type of land that could be excluded from the definition of “eligible land” by this power is expected to be detailed and therefore is better suited for secondary legislation.

Choice of procedure

105. It is appropriate that this power is subject to affirmative procedure to allow Parliament a high level of scrutiny, given that what constitutes “eligible land” is fundamental to the scope and application of Part 3A.
Section 48 – inserted section 97C(3)(f) of the 2003 Act - power to prescribe that eligible land does not include certain land for the purposes of Part 3A

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure

Provision
106. Section 97C(1) provides that land is eligible for the purposes of Part 3A if in the opinion of Ministers it is wholly or mainly abandoned or neglected. Section 97C(3)(f) sets out that Ministers may set out in regulations other descriptions of land that is not eligible land.

Reason for taking this power
107. This power will enable Ministers to set out other classes of land that are not “eligible land”. This is important in setting out what land is outwith the scope of Part 3A as it will enable Ministers to exclude certain types of land from Part 3A should in the future this be considered to be appropriate. This land may need to be described in detail, and therefore it is appropriate that this is set out in secondary legislation.

Choice of procedure
108. It is appropriate that this power is subject to affirmative procedure to allow Parliament a high level of scrutiny, given that what constitutes “eligible land” is fundamental to the scope and application of Part 3A.

Section 48 – inserted section 97C(4) of the 2003 Act - power to prescribe buildings or structures that are to be treated as an individual’s home for the purposes of section 97C(3)(a)

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure

Provision
109. Section 97C(1) provides that land is eligible for the purposes of Part 3A if in the opinion of Ministers it is wholly or mainly abandoned or neglected. Section 97C(3)(a) provides that eligible land does not include land on which there is a building or structure that is an individual’s home, other than buildings or structures that may be set out in regulations by Ministers. Section 97C(4) enables Ministers to make regulations setting out descriptions or classes of buildings that are to be treated as an individual’s home for the purposes of section 97C(3)(a) and so the land on which these are on will not be eligible land.

Reason for taking power
110. An individual’s home can include a range of buildings with varying extents of land around it. This power will give Ministers flexibility to ensure that any buildings or structures which do constitute an individual’s home but which Ministers consider should be treated as if
they were such a home can be treated as such. These buildings or structures may need to be described in detail, and it is therefore appropriate for secondary legislation.

Choice of procedure

111. It is appropriate that this power is subject to affirmative procedure to allow Parliament a high level of scrutiny, given that what constitutes “eligible land” is fundamental to the scope and application of Part 3A.

DEFINITION OF “COMMUNITY”

Section 48 – inserted section 97D(5)(a) of the 2003 Act – Power to set out the definition of a “community”

Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

Provision

112. Section 97D sets out the requirements for a company limited by guarantee to be a Part 3A community body. One of the requirements is that the articles of association of the company define the community to which the company relates. Section 97D(5)(a) provides that a community is defined by reference to postcode unit or units or type of area set out in regulations. This provision allows Ministers to set out in regulations the areas that can be used to describe a “community”.

Reason for taking this power

113. Community bodies that have used the community right to buy provisions in Part 2 of the 2003 Act, together with stakeholders, such as Community Land Scotland, have commented that postcodes do not provide community bodies with the greatest flexibility in describing their “community”. In particular, some communities comprise a large number of postcodes which may also change frequently, making it cumbersome to use these to describe their “community”. There are a number of building blocks which could be used in addition to postcodes and postcode areas, including settlement areas and wards. To list these in the primary legislation would be cumbersome.

Choice of procedure

114. It is considered that the use of this power can be left to the level of Parliamentary scrutiny attached to the negative procedure. The power does not define what amounts to a community in any particular case but sets out another method which may be used to define a particular community, such as settlement areas or wards. This is therefore essentially an administrative matter.
This document relates to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

PROVISIONS SUPPLEMENTARY TO SECTION 97D

Section 48 – inserted section 97E(4) of the 2003 Act – provision to make an order relating to matters connected with the acquisition of the land

Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Affirmative procedure

Provision

115. Section 97E sets out circumstances in which the Scottish Ministers may compulsorily acquire land that has been purchased by a Part 3A community body under Part 3A of the 2003 Act. Section 97E(4) confers power on the Scottish Ministers to make provision by order in connection with the compulsory purchase of such land.

Reason for taking this power

116. There may be cases where the Scottish Ministers consider it appropriate to exercise their power to compulsorily acquire land under section 97E and further provision would be of assistance in setting out how this is to operate, by way of an order.

Choice of procedure

117. It is appropriate, that this power is subject to affirmative power, for Parliament to give a high level of scrutiny given that this power can be used to modify primary legislation.

REGISTER OF COMMUNITY INTERESTS IN ABANDONED OR NEGLECTED LAND

Section 48 – inserted section 97F(6) – power to modify the information and documents that are to be contained in the Register of Community Interests in Abandoned or Neglected Land.

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure

Provision

118. Section 97F requires the Keeper of the Registers of Scotland to set up and keep a Register of Community Interests in Abandoned or Neglected Land. Section 97F(2) sets out the information and documents that must be kept on the Register, including copies of applications made by Part 3A community bodies to exercise the right to buy under Part 3A. Section 97F(6)(a) enables the Scottish Ministers to make regulations modifying the information and documents that must be kept on the Register.

119. Section 97F(3) and (4) allows a Part 3A community body to require that information or documentation, which relates to the raising or expenditure of money to allow land to which the application relates to be used, should be withheld from public inspection. Such information or documentation will not be entered on the Register. However, section 97F(5) provides that Ministers cannot require a Part 3A community body to provide such information or
This document relates to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

documentation. Section 97F(6)(b) and (c) allows the Scottish Ministers to make regulations modifying section 97F(3) and (4). Ministers require these powers to ensure that they can modify the information or documents relating to the raising or expenditure of money.

Reasons for taking this power

120. These powers are required to ensure that Ministers can vary the information and documents that are to be kept in the Register of Community Interests in Abandoned or Neglected Land. It is important that Ministers can respond to the need to make changes to the information that is contained in the Register.

Choice of procedure

121. These powers are subject to the affirmative procedure. It is considered that it is appropriate to allow the Scottish Parliament to give a high level of scrutiny as these regulations will be amending primary legislation.

REGISTER OF COMMUNITY INTERESTS IN ABANDONED OR NEGLECTED LAND – PAYMENT OF CHARGES

Section 48 – inserted section 97F(7)(b) – Payment of charges for copies of entries in the Part 3A Register of Community Interests in Abandoned or Neglected Land

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

122. By virtue of section 97F(7) the Keeper of the Register of Community Interests in Abandoned or Neglected Land must ensure that members of the public are given facilities for obtaining copies of entries in the Register. Section 97F(7)(b) enables the Scottish Ministers to make regulations setting charges for such copies.

Reason for taking this power

123. The Keeper should be able to recover costs where they have provided members of the public with copies of entries in the Register of Community Interests in Abandoned or Neglected Land. This allows Ministers to keep charges under review.

Choice of procedure

124. It is appropriate that this power is subject to negative procedure because it will be used to set details of costs. This is essentially an administrative matter.
APPLICATION FORM FOR CONSENT TO A RIGHT TO BUY

Section 48 – inserted section 97G(5)(a) – Power to prescribe the application form for Ministers to consent to a Part 3A community body’s right to buy

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision
125. Section 97G(5)(a) provides that the application form that must be submitted to the Scottish Ministers by a Part 3A community body in order to exercise the right to buy under Part 3A is to be in the form set out in regulations made by the Scottish Ministers.

Reason for taking this power
126. A prescribed application form allows Ministers to set out information that they need to consider when making a decision. It also provides greater transparency in the assessment process and for the streamlining of information to be provided by a community body. It is considered that the level of procedural detail and detail required to be set out is more appropriately left to regulations.

Choice of procedure
127. It is considered that the use of this power can be left to the level of Parliamentary scrutiny attached to the negative procedure. This level of procedural detail is best dealt with through regulations. It also allows for flexibility in making changes to the application form where this is appropriate.

Section 48 – inserted section 97G(5)(c) – power to prescribe information in an application form for Ministers to consent to a Part 3A community body’s right to buy

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision
128. Section 97G(5)(a) provides that the application form that must be submitted to the Scottish Ministers by a Part 3A community body in order to exercise the right to buy under Part 3A is to be in the form set out in regulations made by the Scottish Ministers.

Reason for taking this power
129. A prescribed application form allows Ministers to set out information that they need to consider when making a decision. It also provides greater transparency in the assessment process and for the streamlining of information to be provided by a community body. It is considered that the level of procedural detail and detail required to be set out is more appropriately left to regulations.
Choice of procedure
130. It is considered that the use of this power can be left to the level of Parliamentary scrutiny attached to the negative procedure. This level of procedural detail is best dealt with through regulations. It also allows for flexibility in making changes to the application form where this is appropriate.

ADVERTISEMENT OF A PUBLIC NOTICE OF AN APPLICATION

Section 48 – inserted section 97G(12) – power to prescribe the manner in which an application under Part 3A is given public notice

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision
131. Section 97G(12) enables the Scottish Ministers to make regulations setting out how an application to exercise the right to buy made under Part 3A is to be given public notice.

Reason for taking this power
132. This provision provides Ministers with flexibility in setting out how such an application is to be given public notice. This allows Ministers to take account of changing means of conveying technology, such as the use of electronic means and social media and developments with such technologies.

Choice of procedure
133. The setting out of how a public notice is to be given by advertisement is an administrative matter. It is considered that negative procedure will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations on the other.

CONDUCT OF BALLOT TO INDICATE COMMUNITY SUPPORT OF PROPOSALS

Section 48 - inserted sections 97J(2) and (4) – powers to prescribe how the ballot of the community is undertaken and the form of the ballot return to Ministers

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision
134. Section 97J(2) requires the Scottish Ministers to make regulations setting out how a ballot of the community is to be conducted. Such a ballot is undertaken in order to show whether a community has approved a proposal by a Part 3A community body to buy land. The regulations must include provision for certain matters including ascertaining the number of people who voted and the number of valid votes that were cast for and against the ballot question. Section
97J(4) gives Ministers power to set out how the ballot result and others details about the ballot are to be notified to Ministers.

**Reason for taking these powers**

135. The requirements that the ballot must comply with includes a number of detailed processes and steps. It is important that these are set out so that the ballot can be properly and fairly conducted. Detailed matters relating to the procedure to undertake a ballot are not considered appropriate to be included in primary legislation. It is important that the ballot results are notified in a standard format so that they are clear and there is no ambiguity. The reporting of these results is an administrative matter and is best dealt with in regulations.

**Choice of procedure**

136. It is considered that the use of this power can be left to the level of Parliamentary scrutiny attached to the negative procedure. The use of negative procedure is appropriate for such administrative procedural matters as the conduct of a ballot and the reporting of the results of that ballot.

**MINISTERS’ DECISION ON AN APPLICATION**

**Section 48 – inserted section 97M(1) and (2) – Ministers’ notification of their decision on an application under Part 3A**

**Powers conferred on:** Scottish Ministers  
**Powers exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

**Provision**

137. Section 97M(1) requires the Scottish Ministers to make regulations setting out the form for their decision as to whether to consent to an application to exercise the right to buy under Part 3A. Section 97M(2) requires the regulations setting out the form of notice to include certain information.

**Reason for taking these powers**

138. It is important that the Ministers’ decision on an application is clearly set out and includes all the information that all parties involved in an application need to know as to how Ministers came to their decision. A written notice in a form set out in regulations ensures that the Scottish Ministers set out the same information in each case. As this information is of a detailed nature, it is appropriate that it is included in secondary legislation.

**Choice of procedure**

139. As the form of notice as to the Ministers’ decision on an application made under section 97G and the particular information to be included in that notice is an administrative matter, it is considered that the negative procedure is appropriate for these powers.
EFFECT OF AN APPLICATION TO EXERCISE THE RIGHT TO BUY ON TRANSFERS OR DEALINGS IN LAND

Section 48 – inserted section 97N(1) – effect of the Ministers’ decision on rights to buy

- **Power conferred on:** Scottish Ministers
- **Power exercisable by:** Regulations
- **Parliamentary procedure:** Affirmative procedure

**Provision**

140. Section 97N(1) enables Ministers to make regulations setting out persons who are prohibited from undertaking certain transfers or dealings in respect of land which a Part 3A community body has made an application to buy under Part 3A. The regulations may include provisions as to the types of transfers or dealings which are not permitted, the persons who are not permitted to undertake these transfers or dealings and the period for which these transfers or dealings may not be undertaken.

**Reason for taking this power**

141. When a Part 3A application is received by Ministers it is important that the owner or certain creditors with a right to sell the land should not be able to sell the land until Ministers have made a decision on the application. This is so that the Ministers can properly undertake the administration of the provisions before coming to a decision on an application. However, there may be circumstances when it would be appropriate to allow the transfer of the land. To deal with this, Ministers require flexibility to set out the persons that are prohibited from undertaking certain transfers or dealings in relation to that land which is the subject to a Part 3A application and the consequences of this, such as provision that is to be made in the Register of Community Interests in Abandoned or Neglected Land.

**Choice of procedure**

142. It is considered appropriate to allow the Scottish Parliament to give a high level of scrutiny to the detail of such a prohibition given that this will impact on how a land owner can deal with their land.

EFFECT OF AN APPLICATION EXERCISING THE RIGHT TO BUY ON RIGHTS IN OR OVER LAND

Section 48 – inserted section 97N(3) – power to suspend the rights in or over land

- **Power conferred on:** Scottish Ministers
- **Power exercisable by:** Regulations
- **Parliamentary procedure:** Affirmative procedure

**Provision**

143. Section 97N(3) allows Ministers to make regulations suspending rights over land where a Part 3A community body has applied to exercise the right to buy in respect of that land.
regulations may set out the rights which are to be suspended and the period for which the rights are to be suspended.

Reason for taking this power
144. The power may be used to make regulations providing that at a certain point in the application process for the right to buy, then certain rights of pre-emption, redemption or option to purchase are suspended until the transfer of the land is completed or it has been determined that the transfer is not to be completed. Ministers require flexibility to set out how these rights will be affected.

Choice of procedure
145. It is considered appropriate to allow the Scottish Parliament to give a high level of scrutiny given that the regulations will be capable of effecting existing rights in land.

COMPENSATION

Section 48 – inserted section 97T(4) – power to make provision in relation to compensation

Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

Provision
146. This power allows Ministers to make regulations setting out details in relation to the entitlement to compensation arising under section 97T(1) including amounts payable in respect of loss or expenditure, the person who is liable to pay these amounts, and how any compensation is to be claimed under this section.

Reason for taking this power
147. The provision needed for compensation will include a number of detailed matters. For example, the regulations will need to set out the evidence to be submitted to support the claim for compensation. It is important that these are clearly set out with the appropriate level of detail. Detailed matters relating to the payment and procedures and to apply for compensation are considered appropriate matters to be dealt in regulations.

Choice of procedure
148. Matters relating to the entitlement of compensation are likely to be detailed and administrative in nature and may require to be amended periodically. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of parliamentary time on the one hand and the nature of the content of the regulations on the other.
COMPENSATION – APPLICATION BY A PART 3A COMMUNITY BODY FOR A GRANT

Section 48 – inserted section 97U(6) – power to make grants towards Part 3A community bodies’ liabilities to pay compensation

Power conferred on: Scottish Ministers
Power exercisable by: Regulation
Parliamentary procedure: Negative procedure

Provision

149. Under certain limited circumstances, a Part 3A community body can apply to the Scottish Ministers for a grant to assist it in meeting the compensation it has to pay in connection with its exercise of the right to buy. Section 97U(6) provides that Ministers can make regulations setting out the form of the application and the application procedure to be used.

Reason for taking this power

150. Making provision for an application form and application procedure for Part 3A community bodies seeking to apply for a grant to assist in connection with their right to buy will ensure that Ministers receive the information they need to deal with the application and providing an application procedure will ensure that applicants are informed of the process to submit an application. As this is an administrative matter it is best dealt with in regulations.

Choice of procedure

151. The matters to be detailed in regulations are details of procedure for a Part 3A community body applying for a grant from the Scottish Ministers to assist in meeting the compensation it has to pay in connection with its exercise of a right to buy and also the information that is to be specified in this application process. For example, the Ministers may make regulations setting out the application form to be used by the Part 3A community body or evidence that a Part 3A community body must provide in its application. As these matters are administrative ones, they are best dealt with by negative procedure.

APPEALS TO LANDS TRIBUNAL: VALUATION

Section 48 – inserted section 97W(7) – Rules affected by Ministers in relation to the Lands Tribunal Act 1949

Power conferred on: Scottish Ministers
Power exercisable by: Rules
Parliamentary procedure: as provided for rules made under the Lands Tribunal Act 1949

Provision

152. Section 97W(1) provides that the owner of the land and the Part 3A community body exercising its right to buy may appeal to the Lands Tribunal against the valuation carried out under section 97S. Section 97W(7) provides that Ministers’ powers to make rules under the Lands Tribunal Act 1949 are extended to the extent that it is necessary to give full effect to
section 97W. For example, under section 3(6) of the Lands Tribunal Act 1949 rules can be made regulating proceedings before the Lands Tribunal. Rules under section 3(6) are not subject to any Parliamentary procedure. A similar provision is included in section 62(10) of the 2003 Act in relation to the community right to buy in Part 2 of the 2003 Act.

Reasons for taking this power

153. This power is needed to ensure that the Scottish Ministers have the same powers in relation to the Lands Tribunal’s role under Part 3A as they do in relation to other aspects of the Lands Tribunal’s role. This will ensure that section 97W operate effectively.

Choice of procedure

154. Ministers require flexibility to ensure that procedure for the Lands Tribunal in relation to Part 3A of the Act works effectively. This is an administrative matter and can be dealt with in the same way as rules under the Lands Tribunal Act 1949.

Part 5 – Asset Transfer Requests

Section 50(2)(a) – Designation of a community transfer body

Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

Provision

155. Section 50 defines a “community transfer body”. This is a community-controlled body (as defined in section 14), a body designated as a community transfer body by the Scottish Ministers or a body of a class of bodies designated as community transfer bodies. Community transfer bodies can make an asset transfer request to have rights in land held by relevant authorities transferred to them.

156. Subsection (2)(a) provides that the Scottish Ministers may by order designate individual bodies to be community transfer bodies.

Reason for taking power

157. Community bodies come in many different forms. The intention of the policy is that as wide a range of community bodies as possible should be able to act as a community transfer body and make an asset transfer request. It is important that community transfer bodies are open, inclusive and represent their community, and in most cases this should be demonstrated by meeting the criteria for a community-controlled body. However, there may be bodies which are established in a different way, especially those established before current approaches became standard, which Ministers still consider should be able to act as community transfer bodies. The power will allow the Scottish Ministers to designate additional community bodies for this purpose.
Reason for choice of procedure

158. The Scottish Government considers negative procedure is appropriate. The power will allow particular bodies of bodies to be a community-controlled body for the purposes of the Act. The nature of the power is that it may involve the addition, from time to time, of individual bodies and it is considered that this sort of modification is not of such significance as to require affirmative procedure.

Section 50(2)(b) – Designation of a class of bodies as community transfer bodies

Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

Provision

159. As stated, section 50 defines a “community transfer body”. This is either a community-controlled body (as defined in section 14), a body designated as a community transfer body or a body of a class of bodies designated as community transfer bodies.

160. Section 50(2)(b) provides that the Scottish Ministers may by order designate a class of bodies as community transfer bodies, so that any body of that type will qualify as a community transfer body.

Reason for taking power

161. As detailed above under section 50(2)(a), the intention of the policy is that as wide a range of community bodies as possible should be able to act as a community transfer body and make an asset transfer request, provided that they are open, inclusive and representative. If it appears that the characteristics of a type of body meet those requirements, the power will allow the Scottish Ministers to designate that class of bodies as community transfer bodies for this purpose.

Reason for choice of procedure

162. The Scottish Government considers negative procedure is appropriate. The nature of the power is that it may involve the addition, from time to time, of classes of bodies and it is considered that this sort of modification is not of such significance as to require affirmative procedure.

Section 51(2) – Power to modify Schedule 3 relevant authorities

Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

Provision

163. Schedule 3, introduced by section 51, lists some of the persons to which an asset transfer request can be made (“relevant authorities”). Schedule 3 includes local authorities, the Scottish...
Ministers, Health Boards, and other Scottish public bodies, which have been selected because they own significant amounts of land and buildings.

164. Subsection (2) gives the Scottish Ministers a power, by order, to remove or amend an entry on the list of relevant authorities in schedule 3.

Reason for taking power

165. Schedule 3 provides a list of persons to which an asset transfer request can be made. The bodies listed in schedule 3 may change over time and the power in subsection (2) is to provide flexibility in future should changes be required, either by removing a body from the list or making any necessary amendments to an entry.

Reason for choice of procedure

166. The power relates to modifications that may be required based on future changes to the bodies listed in schedule 3. It is therefore considered appropriate that the negative procedure be used. The power enables modifications, from time to time, of individual bodies and it is considered that this sort of modification is not of such significance as to require affirmative procedure and that negative procedure provides the appropriate balance required between scrutiny and the use of parliamentary resource.

Section 51(3)(a) – Power to designate a relevant authority

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Order</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Negative procedure</td>
</tr>
</tbody>
</table>

Provision

167. In addition to the persons listed in schedule 3, under section 51(1)(b) and (3) a person designated as a community transfer body or of a class of bodies designated as community transfer bodies is also a relevant authority to whom an asset transfer request can be made.

168. Section 51(3)(a) gives the Scottish Ministers power to designate a relevant authority by order. Subsections (4) to (7) provide more detail on who may be designated as a relevant authority.

Reason for taking power

169. As stated above, the public bodies listed in schedule 3 have been selected because they own significant amounts of land and buildings. It may be appropriate to designate other public bodies that own land and buildings in future. Further, should new public bodies be created in future that own significant amounts of land and buildings, it may be considered appropriate to designate the public body as a relevant authority.
Reason for choice of procedure

170. The Scottish Government considers negative procedure is appropriate as it relates to the potential designation of relevant authorities to which an asset transfer request can be made in the future. It is not considered that the inclusion of particular bodies as a relevant authority is sufficiently significant to merit affirmative procedure and therefore considered appropriate that the negative procedure be used to provide the balance required between scrutiny and the use of parliamentary resource.

Section 51(3)(b) – Power to designate a class of relevant authorities

Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

Provision

171. In addition to the persons listed in schedule 3, under section 51(1)(b) and (3) a person designated as a community transfer body or of a class of bodies designated as community transfer bodies is also a relevant authority to whom an asset transfer request can be made.

172. Subsection (3)(b) provides that the Scottish Ministers may by Order designate a whole class of persons as community transfer bodies so that any person of that type will qualify as a relevant authority. Subsections (4) to (7) provide more detail on designating classes of persons.

Reason for taking power

173. As detailed above under section 51(3)(a), it may be appropriate to designate persons of a class of persons that own land and buildings in future as relevant authorities. It may be that a class of person should be treated as a relevant authority, and the power will allow the Scottish Ministers to designate that class of persons as relevant authorities for this purpose.

Reason for choice of procedure

174. The Scottish Government considers negative procedure is appropriate as it relates to the potential designation of a class of relevant authorities to which an asset transfer request can be made in the future. It is considered that nature of the provision is not sufficiently significant to merit affirmative procedure and therefore considered appropriate that the negative procedure be used to provide the balance required between scrutiny and the use of parliamentary resource.

Section 54(1) – Power to make further provision about asset transfer requests

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

175. Section 54(1) gives the Scottish Ministers a power by regulations to make further provision about asset transfer requests.
176. Subsection (2) provides that the regulations can, in particular, specify how asset transfer requests are to be made, information to be included in them (in addition to that required under section 52(4)) and the procedure to be followed by a relevant authority in relation to requests. They may also include requirements to publish the fact that a request is being made, and to notify specified people about them.

Reason for taking power

177. The Scottish Government considers that section 54(1) and (2) is necessary to enable further detail to be provided on the asset transfer request process. It is appropriate for this to be done by regulations, due to the level of detail required and to allow the regulations to be amended from time to time to reflect the experience of both community transfer bodies and relevant authorities.

Reason for choice of procedure

178. Further provision that may be required regarding asset transfer requests and the process and procedure is a largely administrative matter and likely to be fairly detailed. The regulations may also need to evolve over time to reflect practical experience in the use of asset transfer requests. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

Section 54(3) – Power to make provision about information relating to land in respect of which an asset transfer request is proposed

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

179. Section 54(3) provides that that the Scottish Ministers may make regulations in connection with enabling a community transfer body to request information from a relevant authority about land in respect of which it proposes to make an asset transfer request, how a relevant authority is to respond to the request for information, the circumstances in which the authority must provide the information, the type of information that the authority must provide and the circumstances in when the authority need not provide the information requested.

Reason for taking power

180. A community transfer body may need more information about the property before making an asset transfer request and determining such matters as the purchase price, maintenance costs, energy efficiency, level of rent or other terms and conditions to be proposed.

181. The Scottish Government considers that subsection (3) is necessary as further detail on the pre-transfer requirements and the process and procedure may be required. It may also be necessary from time to time to update the regulations to reflect the experience of both...
community transfer bodies and relevant authorities and ensure that the procedure is as effective and efficient as possible.

**Reason for choice of procedure**

182. Provision that may be required regarding information about land which is the subject of a proposed asset transfer request is a largely administrative matter and likely to be fairly detailed. The regulations may also need to evolve over time to reflect practical experience in the use of asset transfer requests. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

**Section 55(8) – Power to prescribe a time for a decision notice to be given**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

**Provision**

183. Under section 55(2) a relevant authority must decide whether to agree to or refuse an asset transfer request. Subsection (3) sets out the matters to be taken into consideration when reaching a decision. Under subsection (7) the authority must within the period mentioned in subsection (8) give a decision notice. Under subsection (8) the period is a period prescribed by the Scottish Ministers or such longer period as may be agreed between the authority and the community transfer body.

**Reason for taking power**

184. The Bill provides the legislative framework around which decisions on asset transfer requests will be made and following enactment of the Bill the Scottish Government will consult on what is a reasonable time period for a decision to be made by relevant authorities. Once the Bill is enacted and in the light of experience and greater understanding a change to the time period may be deemed advisable and the power will allow that to be done straightforwardly.

**Reason for choice of procedure**

185. The period of time for a relevant authority to respond to an asset transfer request is an administrative matter and will be informed by a short and focussed consultation. It is also possible that the time period may change in future. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

**Section 55(9) – Power to make provisions regarding the information contained in a decision notice and the manner in which it is to be given**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure
This document relates to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

Provision

186. Under section 55(7) the relevant authority must give a decision notice to the community transfer body with its decision with regard to the asset transfer request and the reasons for it.

187. Section 55(9) gives the Scottish Ministers the power to make regulations with provision about information that a decision notice is to contain (in addition to the information required under Part 5) and also the manner in which a decision notice is to be given.

Reason for taking power

188. The power is to enable the development of the decision notice procedure. It will be important that the decision notice will contain relevant information and is given in an appropriate manner which is accessible to members of the community transfer body. Section 56(2) describes information to be contained within a decision notice that relates to a successful asset transfer request. However, as the detail of the decision notice procedure is developed it may be considered appropriate to include other information. Further, from time to time in the light of practical experience and other developments the Scottish Ministers may wish to make changes to the information that a decision notice is to contain and also the manner in which a decision notice is to be given.

Reason for choice of procedure

189. The information that a decision notice is to contain and the manner in which a decision notice is given are administrative matters, and will change from time to time. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

Section 56(10) – Power to make provision about a direction to extend the period within which a contract is to be concluded

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

190. Section 56 sets out the procedure to be followed when an asset transfer request is agreed to. Subsection (5) provides that if a contract is not concluded within the period set out in subsection (7), the decision to agree to the request is of no effect. Under subsection (7) the period for concluding a contract is 6 months from the date of the offer or such longer period as agreed between the relevant authority and the community transfer body. If the relevant authority does not agree to extend the period, the community transfer body may apply to the Scottish Ministers under subsection (8) for a direction that the period should be extended.

191. Subsection (10) gives the Scottish Ministers power to make regulations with provision about the form and procedure for making an application for a direction under subsection (8), the manner in which a direction is to be given and the information which a direction is to contain.
Reason for taking power

192. The power is to enable the development of the direction procedure. It will be important that the form and procedure for making an application is effective and efficient, that the direction contains relevant information and is given in an appropriate manner which is accessible to the relevant authority and the community transfer body. Further, from time to time in the light of practical experience and other developments the Scottish Ministers may wish to make changes to the form and procedure for making an application, the information that a direction is to contain and also the manner in which a direction is to be given.

Reason for choice of procedure

193. The form and procedure for making an application, the information that a direction is to contain and also the manner in which a direction is to be given are administrative matters, and may change from time to time. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

Section 58(3) – Power to prescribe asset transfer request appeal procedure, time limits and the manner in which appeals are to be conducted

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

194. Section 58 sets out the circumstances when a community transfer body can appeal in relation to an asset transfer request. The community transfer body can appeal to the Scottish Ministers, unless the relevant authority is the Scottish Ministers or a local authority.

195. Subsection (3) enables the Scottish Ministers by regulations to prescribe the appeal procedure, the manner in which appeals are to be conducted and the time limits within which appeals must be brought.

Reason for taking power

196. The power is to enable the development of the asset transfer request appeal process and procedure. It will be important that the process and procedure for appeals is transparent, effective and efficient. Further, from time to time in the light of practical experience and understanding the Scottish Ministers may wish to make changes to the process and procedure for appeals.

Reason for choice of procedure

197. The asset transfer appeal process and procedure are administrative matters, and may change from time to time. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.
Section 59(3) – Power to prescribe procedure, time limits and the manner in which local authority reviews of asset transfer requests are to be conducted

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

198. Under section 59(1), if a community transfer body has made an asset transfer request to a local authority and the authority has refused the request, agreed to it but attached material terms and conditions different to those in the request or has not given a decision notice the body can apply to the local authority to review the case and if an application is made the authority must carry out a review.

199. Subsection (3) enables the Scottish Ministers by regulations to prescribe the procedure to be followed in connection with reviews, the manner in which such reviews are to be carried out and the time limits within which applications for review must be made. Under subsection (4) the regulations may also provide that the manner in which a review, or any stage of a review, is to be carried out is at the discretion of the authority.

Reason for taking power

200. The power is to enable the development of the process and procedure for local authority reviews of asset transfer requests. It will be important that the process and procedure for reviews is transparent, effective and efficient. Further, from time to time and in the light of practical experience the Scottish Ministers may wish to make changes to the procedure for local authority reviews, for example, to highlight best practice and ensure consistency in procedure across Scotland.

Reason for choice of procedure

201. The process and procedure for asset transfer reviews by local authorities are administrative matters, and may change from time to time. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the order/regulations on the other.

Part 7 – Allotments

Section 68(d) – Meaning of “allotment”

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

202. Section 68 defines “allotment” for the purpose of Part 7 of the Bill. The definition does not include size parameters and so land that meets the criteria set out in section 68(a) to (c) will be an allotment regardless of the size of the land. The power in section 68(d) will allow the
Scottish Ministers to make regulations setting out the size of land that is to constitute an allotment for the purposes of Part 7 of the Bill.

Reason For Taking Power

203. This power will enable Scottish Ministers to make provision on the specific size of an allotment should this be required. Currently, allotment sizes vary both within and between allotment sites. This variability is a reflection of individual tenants’ needs and abilities to maintain and grow on an area. The Bill enables this variability to continue. Should there however, be a need to specify a prescriptive size for an allotment the Scottish Ministers have been provided with the relevant powers.

Choice of Procedure

204. It is not considered that detailed Parliamentary scrutiny is required for this provision since it will define the size an allotment should it be required. Negative procedure will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations on the other.

Section 70(2)(c) – Request to lease allotment

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

205. A request to lease an allotment must be made in writing and include the name and address of the person making the request, information about the needs of a disabled applicant and such other information as the Scottish Ministers may set out in regulations.

206. Before making regulations the Scottish Ministers must consult each local authority and any other person appearing to the Scottish Ministers to have an interest.

Reason For Taking Power

207. This power will allow the Scottish Ministers flexibility to extend the information provided by any person making a request for an allotment should the need arise. For example, a situation may arise whereby there is great demand in a local area for allotments and a local authority may wish to know, within any request made, whether the applicants are already tenants on an allotment so that allotment provision may be prioritised.

Choice of Procedure

208. The negative procedure is considered appropriate because this is an administrative matter. Additionally, before the Scottish Ministers make regulations under this power section 70(6) of the Bill requires that local authorities and any other person, with an interest, has to be consulted and therefore it is considered unnecessary for further Parliamentary scrutiny.
Section 72(4) and (5) – Duty to provide allotments

Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Affirmative procedure

Provision

209. Section 72(1) provides that, where section 72(2) or (3) applies, a local authority must take reasonable steps to ensure the number of people on its waiting list for an allotment is no more than half the number of allotments owned and leased by the authority. Section 72(4) allows the Scottish Ministers to amend the proportion referred to section 72(1). Where a local authority already owns or leases allotments, the duty under section 72(1) is triggered as soon as there is one person on the waiting list. Where an authority does not own or lease allotments, the duty is triggered when there are 15 people on the waiting list. Section 72(5) provides the Scottish Ministers with power to amend the specified number of people recorded on a waiting list referred to in section 72(2) and (3) which triggers the duty.

Reason For Taking Powers

210. Current legislation places a duty on local authorities to provide an allotment if there is an identified need. The consultation on the potential content of a Community Empowerment and Renewal Bill (September 2012) and stakeholder events highlighted that demand for allotments in Scotland is currently high and that the waiting times to gain an allotment are long.

211. These powers will enable the Scottish Ministers to vary the trigger point at which a local authority has to take reasonable steps to provide an allotment in response to changes in demand.

Choice of Procedure

212. These powers are subject to the affirmative procedure allowing for detailed Parliamentary scrutiny. This is considered appropriate since these powers would result in amendment of primary legislation.

Section 73(1) – Allotment site regulations: additional provision

Power conferred on: Local Authority
Power exercisable by: Regulations
Parliamentary Procedure: None

Provision

213. Local authorities must make regulations about allotment sites in their area and these must be made before the expiry of the period of two years beginning with the date on which this section comes into force. This power allows for different provisions for different areas or types of allotment sites.
Reason For Taking Power

214. It is considered to be appropriate for local authorities to have power to make regulations for the allotment sites in its area. This will give local authorities flexibility to manage allotment sites as they consider fit. The power allows local authorities to make different provision for different areas or different types of allotment site as there is a wide variety of allotment site-types with respect to their layout and management.

Choice of Procedure

215. Since this provision is delegating powers to local authorities to regulate allotment sites in their local area it was viewed that Parliamentary scrutiny was not appropriate. Section 74 makes provision for the consultation that local authorities must undertake before making regulations under section 73(1) and provides that the regulation are executed by being signed by the proper officer of the local authority.

Section 77(3)(d) – Duty to prepare food-growing strategy

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

216. Section 77(1) requires each local authority to prepare a food-growing strategy for its area. A food-growing strategy is a document that identifies land in the local authorities’ areas that may be used for allotments and identifies other land that could be used by communities for growing vegetables, fruit, herbs or flowers, describing how the local authority intends to increase the provision in its area of allotments and containing such other information that may be set out in regulations. Section 77(3) makes further provision about the food-growing strategy and section 77(3)(d) allows the Scottish Ministers to make regulations setting out additional information that is to be included in a food-growing strategy.

Reason For Taking Power

217. This provision enables the Scottish Ministers to prescribe any additional information required for inclusion in a local authority food-growing strategy so enabling the ‘type’ of information to vary depending on what is considered to be appropriate at that time.

Choice of Procedure

218. This provision will result in additional information being required to be included in a local authority food-growing strategy and is likely to change over time in the light of experience and best practice. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.
Section 79(2)(n) – Annual allotments report

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

219. Section 79 requires each local authority to prepare and publish an annual allotments report. Section 79(2) sets out the information to be included in an annual allotments report and section 79(2)(n) allows the Scottish Ministers to make regulations setting out additional information that is to be included within the annual report.

Reason For Taking Power

220. By enabling the Scottish Ministers to make regulations requiring additional information to be provided in an annual report this allows the reporting process to be more responsive to future information needs. For example, in the future it may be appropriate to require information about the number of organic allotment sites.

Choice of Procedure

221. This provision will result in additional information being required to be included in a local authority annual allotments report and is likely to change over time in the light of experience and best practice. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

Section 80(7) – Power to remove unauthorised buildings from allotment sites

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

222. Section 80 makes provision enabling local authorities to remove unauthorised buildings from allotment sites in certain circumstances. Section 80(7) gives the Scottish Ministers power to make regulations making further provision as to the procedure to be applied in connection with the exercise of the powers of a local authority in section 80(2) to remove an unauthorised building from an allotment site.

Reason For Taking Power

223. The power allows flexibility when developing the detail of the procedure to remove an unauthorised building from an allotment site. Further, from time to time in the light of practical experience and other developments the Scottish Ministers may wish to make changes to the
This document relates to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

procedure. Detailed matters relating to procedure are not considered appropriate to be included in primary legislation.

Choice of Procedure

224. The procedure to remove an unauthorised building from an allotment site is an administrative matter and the regulations may also need to change over time to reflect practical experience. Negative procedure will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations on the other.

Section 81(3)(b)(ii) – Delegation of management of allotment sites

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

225. Section 81(1) allows a person representing the interests of certain tenants on an allotment site to make a request to the local authority that owns or leases the allotment site that the local authority delegates certain functions relating to the allotment site to that person. Section 81(3) provides that the request must be made in writing and include the name and address of the person making the request. Section 81(3)(b)(ii) enables the Scottish Ministers to make regulations setting out other information that must be included in the request.

Reason For Taking Power

226. Allotments and allotment sites are managed in different ways both within and between local authorities and this variability is likely to continue in the future. Given this variability the power allows the Scottish Ministers to make regulations requiring further information about the person requesting to take over management of certain functions in relation to an allotment site should the need arise.

Choice of Procedure

227. The requirement for further information regarding the delegation of management of allotment sites is an administrative matter. Negative procedure will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations on the other.

Section 83(10) – termination of lease of allotment or allotment site

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

228. Section 83(1) allows a local authority to terminate the whole or part of a lease of an allotment by giving written notice to the tenant. Section 83 sets out the process that a local
authority must comply with to terminate the lease and provides a tenant of an allotment with a right of appeal to the sheriff against the notice of termination. Section 83(10) enables Ministers to make regulations make further provision about the procedure to be applied when a local authority terminates a lease under section 83.

Reason For Taking Power

229. The power allows flexibility when developing the detail of the procedure that a local authority must comply with to terminate the lease and the level of detail that may be required is best set out in regulations. Further, from time to time in the light of practical experience and other developments the Scottish Ministers may wish to make changes to the procedure.

Choice of Procedure

230. The procedure that a local authority must comply with to terminate the lease under section 83 is an administrative matter and the regulations may also need to change over time to reflect practical experience. Negative procedure will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations on the other.

Section 87(1) – Sale of surplus produce

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

231. Section 87(1) provides that a tenant of an allotment may only sell (other than with a view to making a profit) produce grown on the allotment if the produce falls within a description set out in regulations made by the Scottish Ministers.

Reason For Taking Power

232. During the consultation process this area was raised by stakeholders as an area of concern and it is now being addressed through the Bill. The power will provide Ministers with flexibility in setting out the description of produce grown on an allotment that may be sold, including the ability to respond swiftly if required.

Choice of Procedure

233. Before the Scottish Ministers make regulations under this power section 87(2) of the Bill requires that local authorities and any other person, with an interest, has to be consulted. Given this and the type of detail to be included in the regulations it is not considered that a more detailed level of parliamentary scrutiny is required and so the negative procedure is appropriate.

Section 89(4) – Compensation for disturbance

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

SP Bill 52–DPM 46 Session 4 (2014)
Provision

234. Section 89 makes provision for the payment by local authorities of compensation to tenants of allotments for disturbance in certain circumstances. Section 89(4) requires the Scottish Ministers to make regulations making further provisions in relation to the payment of compensation for disturbance. Section 89(6) requires the Scottish Ministers to consult each local authority and other interested persons before making the regulations.

Reason For Taking Power

235. This provision requires the Scottish Ministers to make provision about matters such as the determination of the amount of compensation and the process through which compensation would be claimed. This provision is likely to be fairly detailed and more suited to inclusion within regulations.

Choice of Procedure

236. Before the Scottish Ministers make regulations under this power section 89(6) of the Bill requires that local authorities and any other person, with an interest, has to be consulted. Given this and the type of detail to be included in the regulations it is not considered that a more detailed level of parliamentary scrutiny is required and so the negative procedure is appropriate.

Section: 90(4) – Compensation for deterioration of allotment

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

237. Section 90 makes provision for tenants to be required to pay compensation for deterioration of an allotment to the landlord in certain circumstances. Section 90(4) requires Scottish Ministers to make regulations making further provision in connection with such compensation.

Reason For Taking Power

238. This provision requires Scottish Ministers to make regulations about matters such as the liability for and the determination of the amount of compensation. This provision is likely to be fairly detailed and more suited to inclusion within regulations.

Choice of Procedure

239. Since this provision requires the Scottish Ministers to consult each local authority and any other person with an interest before making regulations (section 90(6)) and the type of detail to be included in the regulations it is considered that detailed Parliamentary scrutiny is unnecessary and as such a negative procedure is considered appropriate.
Section: 91(3) – Compensation for loss of crops

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

240. Section 91 makes provision for the payment of compensation by a local authority to a tenant for loss of crops following resumption of the allotment in certain circumstances. Section 91(3) requires the Scottish Ministers to make regulations making further provisions in connection with such compensation.

Reason For Taking Power

241. This provision requires the Scottish Ministers to make regulations and this must include provision about the determination of the amount of compensation and the process through which compensation would be claimed. This provision is likely to be fairly detailed and more suited to inclusion within regulations.

Choice of Procedure

242. Given that this provision requires the Scottish Ministers to consult each local authority and any other person with an interest before making regulations (section 91(5)) and the type of detail to be included in the regulations it is considered that detailed Parliamentary scrutiny is unnecessary and the negative procedure is considered appropriate.

Part 9 - General

Section 97(1) – Ancillary provision

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure – where regulations amend primary legislation. Negative procedure – where the regulations do not amend primary legislation

Provision

243. Section 97 confers on the Scottish Ministers a power to make incidental, supplementary, consequential, transitional or transitory provision or savings as they consider necessary or expedient for the purposes of, or in consequence of, or for giving full effect to, any provision of the Act or any provision made under it. Under subsection (2) an order under section 97 may modify any enactment (including the Act), instrument or document.

Reason for taking power

244. Any body of new law may give rise to a need for a range of ancillary provisions. Without the power to make incidental, supplementary and consequential provision it may be necessary to return to the Parliament, through subsequent primary legislation, to deal with minor matters.
which require to be dealt with to give full effect to the original Bill. That would not be an effective use of either the Parliament’s or the Government’s resources. The power itself is circumscribed by being entirely ancillary to the provisions of the Bill and any such provision must be for the purposes of the Bill or in consequence of it or for giving full effect to it. It is appropriate for significant transitional, transitory or saving provision (as opposed to routine provision connected to commencement) to be subject to parliamentary procedure.

**Reason for choice of procedure**

245. Under section 96(2) any regulations made under section 97(1) will be subject to affirmative procedure if they contain provisions which make textual changes to an Act. Otherwise, they will be subject to negative procedure. This provides the appropriate level of parliamentary scrutiny for the textual amendment of primary legislation while ensuring that other ancillary provision is still subject to appropriate scrutiny by Parliament.

**Section 99 – Commencement**

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Regulations</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>No parliamentary procedure</td>
</tr>
</tbody>
</table>

**Provision**

246. Section 99 provides that the provisions of the Bill (other than Part 9 which comes into force the day after Royal Assent) come into force on such day as the Scottish Ministers may by order appoint.

**Reason for taking power**

247. In a Bill of this nature which makes a number of improvements and reforms, the decision on when and to what extent the Bill is commenced is best determined by the Scottish Ministers, particularly as Ministers may wish (or find it appropriate) to commence provisions at different times. Transitional, transitory and saving provision may be made by a commencement order and the Scottish Government considers that those ancillary powers are required to ensure that, for example, pre-existing situations may be dealt with appropriately when Bill provisions are commenced.

**Reason for choice of procedure**

248. Section 99 has the effect that any such commencement order will not be subject to parliamentary procedure. This is typical of commencement powers and is justified having regard to the administrative nature of commencement of the Bill provisions which have been agreed to by the Scottish Parliament.
Local Government and Regeneration Committee
2nd Report, 2015 (Session 4)

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Local Government and Regeneration Committee

Remit and membership

Remit:
To consider and report on a) the financing and delivery of local government and local services, and b) planning, and c) matters relating to regeneration falling within the responsibility of the Cabinet Secretary for Infrastructure and Capital Investment.

Membership:
Clare Adamson (from 3rd December 2014)
Cameron Buchanan
Willie Coffey (from 3rd December 2014)
Cara Hilton (from 14th January 2015)
Mark McDonald (until 27th November 2014)
Stuart McMillan (until 27th November 2014)
Anne McTaggart (until 8th January 2015)
Alex Rowley
Kevin Stewart (Convener)
John Wilson (Deputy Convener)

Committee Clerking Team:

Clerk to the Committee
David Cullum

Senior Assistant Clerk
Claire Menzies Smith

Assistant Clerk
Seán Wixted

Committee Assistant
Ross Fairbarin
The Committee reports to the Parliament as follows—

INTRODUCTION

Introductory Chapter

1. This report covers the scrutiny of the Community Empowerment (Scotland) Bill by the Local Government and Regeneration Committee (LGR) Committee.

2. Prior to introduction to the Parliament on 11 June 2014 of the Community Empowerment (Scotland) Bill the Scottish Government undertook two separate consultations on aspects of the Bill. The first commenced in June 2012. The second began in November 2013 and was accompanied by draft legislation covering asset transfer, (what has become) participation requests and Common Good proposals.\(^1\) In addition the latter consultation sought views on community right to buy land, measures to strengthen community planning and on allotments. Finally views were sought on including a provision that places a duty on Scottish Ministers to develop, consult on and publish a set of outcomes that describe their long term, strategic objectives for Scotland, and include a complementary duty to report regularly and publicly on progress towards these outcomes (what has become Part 1 of the bill).

3. In between the consultations a Parliamentary debate was held on 12 September 2013 giving members the opportunity to “help to inform the future debate and work”\(^2\).

4. Following each consultation we took evidence from a wide variety of interested parties, including community groups, third sector organisations, local authorities, Community Planning Partnerships (CPPs), public sector organisations,

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\(^1\) In addition the draft contained proposals on Defective and Dangerous Buildings which have since been covered by separate legislation: [http://www.legislation.gov.uk/asp/2014/13/contents/enacted](http://www.legislation.gov.uk/asp/2014/13/contents/enacted)

Audit Scotland and the former Minister.\(^3\) This allowed us to follow closely the evolution of proposals and hear the aims of those affected and aspirations of Government as the legislation developed.

5. Other work we undertook during this period is closely linked to aspects of what is now the Bill in particular our three part inquiry into Public Services Reform\(^4\), our inquiry into Regeneration in Scotland\(^5\) and the work we undertook in considering the National Planning Framework and review of Scottish Planning Policy. All had a close community focus and assisted in our consideration of this Bill. We also understand from the Scottish Government this work was taken account of and assisted in relation to the eventual formulation of the Bill.\(^6\)

6. Once the Bill was introduced we were designated as lead committee for stage 1 consideration. On introduction the Bill had 8 substantive Parts as follows:

- Part 1 National Outcomes
- Part 2 Community Planning
- Part 3 Participation Requests
- Part 4 Community Right to Buy Land
- Part 5 Asset Transfer Requests
- Part 6 Common Good Property
- Part 7 Allotments and
- Part 8 Non-Domestic Rates.

7. Each part could have been a Bill in its own right and accordingly we resolved to look at each part individually whilst also being mindful of the overlaps that did exist and common themes underpinning the Bill. As a consequence this report is divided into Parts corresponding to each part of the Bill with an introductory chapter pulling together some of the common themes as well as our overall conclusion on the general principles of the Bill. Each part of the report looking at the individual Bill parts (with the exception of Part 4) follows a similar format,

- setting out the background to and an overview of that Part of the Bill,
- summarising key aspects of the submissions received by the committee (from whatever source and timeframe), and

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Strand 3, developing new ways of delivering services: [http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/56442.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/56442.aspx)


8. We are indebted to the Rural Affairs and Climate Change Committee (RACCE) who, given their earlier experiences and interest in land reform, agreed to consider Part 4 of the Bill. We have included their report and findings at Annex A of our Report. We anticipate RACCE will continue to be involved at stage 2 at which time the Government have indicated an intention to bring forward amendments to make changes to Part 3 of the Land Reform (Scotland) Act 2003 on crofting right to buy.\(^7\)

9. We also received reports from the Finance and Delegated Powers and Law Reform Committees. Both are annexed (Annexes B and C respectively) to this report. We questioned the Minister on the reports and our views, conclusions and recommendations are contained later in this introductory chapter.

**Policy underpinning the Bill**

10. The various debates and hearings gave us an expectation of what the Bill and the underlying policy were intended to deliver. For example in the debate on 12 September 2013 the Minister stated he was talking about more than legislation or regulation “We are talking about culture, leadership, and the practical support that can be provided to deliver community empowerment” and that he wanted to “set the people free.” Noting the proposed Bill represented “the biggest potential transfer of powers to local communities since devolution.”\(^8\)

11. In evidence to us on 5 March the Minister suggested:-

“The driving force behind the bill is the view that we can unlock much of Scotland’s potential through community empowerment, and we believe that the various components of the bill can make a difference in doing that. Specifically, the bill will make it easier for communities to take on public sector assets and make better use of them; give communities a right to be listened to when they have proposals to improve services in their area”

12. He added: “Legislation will not fix everything, but it can help with the creation of a culture in which community empowerment is the right thing to do.”\(^9\)

13. Following the Government reshuffle the new Minister Marco Biagi stated empowering communities is at the heart of everything we do.\(^10\)

14. The Scottish Government’s states on its website the benefits of community empowerment,

\(^7\) Letter from Minister Mackay preceding his appearance before the Committee in November 2014: [http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Kevin_Stewart_MSP_Letter_-_6_November_2014.pdf](http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Kevin_Stewart_MSP_Letter_-_6_November_2014.pdf)

\(^8\) Scottish Parliament Local Government and Regeneration Committee, *Official Report, 12 September 2013, closing speech*


\(^10\) Scottish Parliament Local Government and Regeneration Committee, *Official Report, Chamber 11 December, column 44*
“Where communities are empowered we would expect to see a range of benefits: local democratic participation boosted; increased confidence and skills among local people; higher numbers of people volunteering in their communities; and more satisfaction with quality of life in a local neighbourhood. Better community engagement and participation leads to the delivery of better, more responsive services and better outcomes for communities.”

15. The Bill will, according to the Policy Memorandum, help to ensure people can meaningfully participate in decisions that affect their lives. It reflects policy principles of subsidiarity, community empowerment and improving outcomes and provides a strategic framework which will:

- Empower community bodies through the ownership of land and buildings and strengthening their voices in the decisions that matter to them; and

- Support an increase in the pace and scale of Public Service Reform by cementing the focus on achieving outcomes and improving the process of community planning.

16. As well as considering the policy detail underpinning the Bill, throughout our consideration we have given consideration to looking closely at the extent to which it will alter the balance between the state in all its manifestations and the people. In particular the extent to which the Bill succeeds in its intentions of empowering communities.

17. The recent substantial turnout in the referendum on Scottish independence showed us people are motivated to become involved in the decision making process when the decision directly affects their lives.

Christie Commission principles and Committee scrutiny of the Bill

18. From all of our work this session it is clear to us much of the Bill, particularly those parts giving rights to communities and groups, has become necessary as a consequence of the failure of public authorities and agencies to listen and to act on communities’ priorities and to embrace the principles espoused by the Christie Commission. Some of the key relevant ones being:

- Recognising that effective services must be designed with and for people and communities - not delivered ‘top down’ for administrative convenience

- Maximising scarce resources by utilising all available resources from the public, private and third sectors, individuals, groups and communities

- Working closely with individuals and communities to understand their needs, maximise talents and resources, support self reliance, and build resilience

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11 The Scottish Government, Community Empowerment. Available at: http://www.scotland.gov.uk/Topics/People/engage
• Making provision in the proposed Community Empowerment and Renewal Bill to embed community participation in the design and delivery of services

• Implementing new inter-agency training to reduce silo mentalities, drive forward service integration and build a common public service ethos\textsuperscript{12}

19. The Minister on 5 March 2014 noted—

“The committee’s work has assisted [in the development of the Bill]. The four pillars of the Christie commission’s report around prevention, integration, people and the workforce, and improvement are absolutely what this work is about. The bill is principally about prevention and people. For example, if people have the tools to do the job, they will be able to help to set their own destiny by creating community projects that deliver for them. That is very empowering and very much fits in with the preventative and the people agendas, so the bill will be absolutely in tune with the Christie commission recommendations on empowerment. The bill will also be about decentralisation because it is about taking away bureaucracy in order to support that agenda.”\textsuperscript{13}

20. The Accounts Commission for Scotland and Auditor General have noted a need for fundamentally different ways of working to be adopted in the redesign and delivery of public services including a need to address ways of working.\textsuperscript{14} Kay Gilmour (East Ayrshire Council) told us public bodies need to go on a journey of cultural improvement and only then will they avoid getting anxious if they receive suggestions about doing things differently and better or other innovations are suggested.\textsuperscript{15}

21. To succeed, the Bill must be a catalyst for change including significant cultural change across our public services. We return to this aspect at various parts of this report.

22. In the words of the Minister—

“We are removing barriers, creating consistency and giving people access to resources that are, in essence, already theirs through public ownership.”\textsuperscript{16}

23. To commence our scrutiny we wrote to the Scottish Government seeking clarification of a number of issues relating to the information supplied in the Policy Memorandum. In total we posed 147 questions, answers to which we considered would assist our scrutiny and assist those responding to our call for evidence. We

\textsuperscript{12} The Scottish Government, Commission on the Future Delivery of Public Services http://www.scotland.gov.uk/Publications/2011/06/27154527/2

\textsuperscript{13} Scottish Parliament Local Government and Regeneration Committee, \textit{Official Report, 5 March 2014}, column 3181

\textsuperscript{14} Accounts Commission for Scotland & Auditor General for Scotland. Written submission.

\textsuperscript{15} Scottish Parliament Local Government and Regeneration Committee, \textit{Official Report 27, October 2014}, column 40

are extremely grateful to the Scottish Government for responding timeously to this request which we were told assisted those responding to us, and may well have restricted the need for other comment. References to the additional information supplied is made throughout our report, which highlights the value attached to its production.

24. We heard from a wide range of witnesses at six meetings including meeting in Dumfries and Fort William. At both of these external meetings we also heard informally from a range of people mainly from the local communities. In addition members visited a number of allotment sites in Glasgow. We are grateful to all those who wrote to us or gave their time to speak to us directly. All the information received has been considered by us and it is only through the input of such a range of people that we are able to complete this task and report as required. Official Reports from each meeting and notes taken at the informal meetings are all available on-line.

25. In a change to the usual order of events we heard from the Minister on the Bill prior to taking evidence in Fort William and we are grateful to the Minister and his officials for their flexibility in this matter.

26. While we took discrete evidence at our sessions directed at individual parts of the Bill, some common themes apply across the entire bill and these are covered in the following paragraphs.

**Engagement**

27. The Bill in a number of places requires public bodies and others including the Scottish Government to undertake consultation and engagement with communities before actions are taken. Some issues were raised around a lack of specification as to how this should be conducted.

28. Councillor McGuigan made the point that engagement can happen in all sorts of ways, sometimes hollow sometimes fruitful. He further noted a need to get into

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18 Local Government and Regeneration Committee. Note of roundtable discussion held in Dumfries on 27 October 2014. Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Dumfries_roundtable_notes.pdf

19 Note of roundtable discussion held in Fort William on 24 October 2014. Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Fort_William_roundtable_notes.pdf

Elma Murray, representing the Society of Local Authority Chief Executives and Senior Managers (SOLACE) said:

―The communities that we work with tell us what they want and we listen to that. We work with them to make decisions about what we prioritise.‖

29. However Ms Murray later admitted some communities are disempowered by the structures and processes determined largely by authorities. Adding that communities tend to be organised by the authorities to suit the convenience of the authority. 23 Councillor O’Neill President of COSLA added that a poll undertaken for the Commission on Strengthening Local Democracy found “government is remote from communities”. 24

30. A number of respondents called for the National Standards for Community Engagement to be included in the Bill to act as a code of conduct for engagement, albeit an updated list of standards that has co-production embedded within them.

31. Children in Scotland made the point—

32. “there are groups and individuals who are detached and disengaged from effective engagement with community structures and that they are likely also to be those who experience marginalisation in other aspects of their lives. It is should not be a case of ‘training’ such people to fit in with structures largely devised and driven by large bureaucratic bodies, but ensuring that systems are accessible, enabling and, critically, can show that community participation is not a tokenistic compliance with a statutory duty but can bring about positive change.”

33. During our meeting on 24 September we were reminded by Councillor McGuigan about what happens when only “experts” are consulted—

“although we had consulted all the experts and some of the influential community groups that operated in the area, we had not consulted the real experts, who were the people who lived in the community and who were experiencing what life was really like there. There were people who had skills, understanding, knowledge and a desire to make a change in their community, but we had forgotten—I had forgotten—to include that important voice. That is what the empowerment bill should be about.” 25

34. We were pleased to hear the Minister go some way to meeting these concerns when he indicated he will lodge an amendment at stage 2 to strengthen accountability in community planning partnerships by making reference to the

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21 Scottish Parliament Local Government and Regeneration Committee, Official Report, 24 September, column 14
22 Scottish Parliament Local Government and Regeneration Committee, Official Report, 24 September, column 20
23 Scottish Parliament Local Government and Regeneration Committee, Official Report, 24 September, column 11
24 Scottish Parliament Local Government and Regeneration Committee, Official Report, 24 September, column 12
national standards of engagement. **We will expect that amendment to apply widely and cover all instances of engagement under the Bill.**

**Empowering only the empowered**

35. At the Committee meeting on 5 March the Minister noted a concern that if the (draft) Bill was applied equally it would make inequality worse. He indicated it required to be framed to give support in such a way as to present a level playing field. He added “the bill must swing the pendulum of power from the state to communities”\(^{26}\) In the earlier debate on 12 September 2013 concerns were noted about the bill “inadvertently widening the inequalities gap by favouring those who already have the capacity to take action to be successful”\(^{27}\)

36. The Scottish Community Alliance summed up the view of many third sector respondents, stating—

“This Bill contains new opportunities that communities can take advantage of and, if they do, these communities are likely to become more empowered than they otherwise would be. It has often been said during the course of the consultations for this Bill, that legislation cannot empower communities - only local people can empower themselves.”\(^{28}\)

37. A note of caution was also expressed by The Poverty Alliance who stated: “the most important aspect of this Bill is around empowering Scotland’s most disadvantaged communities, and narrowing inequalities between those communities which are already empowered and those which will require more support.” They added—

38. “There is a danger that the Bill, in its current form, will most benefit those communities which are already empowered and able to take advantage of the provisions in the Bill.”\(^{29}\)

39. Oxfam for example noted that participation requests “risk becoming the privilege of already empowered communities with greater capacity to access, navigate and resource such a process.”\(^{30}\)

40. A number of other submissions and witnesses also referred to the prospect of the Bill only strengthening the reach and influence of articulate and organised groups and individuals. As a consequence it was suggested empowerment would be for the few with the many left further disempowered. Those communities with ‘sharp elbows’ would end up with the lion’s share of what is available, with perhaps outcomes being improved for one community at the expense of another.

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\(^{26}\) Scottish Parliament Local Government and Regeneration Committee, *Official Report, 5 March 2014* column 3171

\(^{27}\) Scottish Parliament Local Government and Regeneration Committee, *Official Report, 12 September 2013 [Sarah Boyack opening]*

\(^{28}\) Scottish Community Alliance. Written submission.

\(^{29}\) Poverty Alliance. Written submission.

\(^{30}\) Oxfam Scotland. Written submission.
41. During questioning on 1 October a number of witnesses agreed with the idea of moving towards “postcode priorities” focussing on the areas of greatest need and the areas where the greatest inequalities are in communities.

Supporting communities

42. Submissions to us highlighted a mixed picture across the country in terms of support currently available to community groups generally and also specifically for those who wished to take control of existing public sector assets. We heard some excellent examples of how local authorities support communities particularly in Dundee in relation to their regeneration forums which are supported by community officers who are designated specific areas as well as being themselves empowered—

“All the officers meet—monthly, I think—and they meet the chief executive regularly, too. They meet regularly together and with the chief executive and take forward the needs and wants of the volunteers whom they speak to in the area.”

43. While other local authorities, including East Ayrshire and Dumfries and Galloway told us about similar types of officers in place to assist with asset transfer requests the picture was far from universal even across local authorities, let alone the other bodies subject to the provisions of the Bill.

44. Many respondents were concerned about resourcing issues, while most were looking inward at requirements for their own organisations. Aberdeenshire CPP noted it is important there is sufficient support in place for communities to get what they need out of the bill. The support required relates to specific applications, such as participation requests and asset transfer applications but more generally across communities to assist in building capacity to take full advantage of the bill.

45. There was general agreement more needs to be done “to support individuals and communities to participate and tackle inactivity.” This issue was raised with us during our evidence on 5 March when witnesses agreed on the need for community capacity building.

46. Another concern raised by several witnesses from the public sector was around conflicts of interest in assisting applicants and a fear of being blamed if applications were ultimately refused. We were therefore pleased when the Minister stated—

“It sounds like an excuse to me if a local authority thinks that it cannot support a community group in compiling a solid and robust business plan for the benefit of a community that leads to an asset transfer. Conflicts of interests arise when a local authority could be compromised, but I see no reason why a local authority cannot support local groups to produce such a case. Local authorities and other public sector authorities might frustrate community groups by not providing the information that is required, which

31 Scottish Parliament Local Government and Regeneration Committee, Official Report, 8 October 2014 column 52
32 Volunteer Scotland. Written submission.
is why there will be a requirement in legislation to produce the information that is needed to understand the nature of the assets and buildings.”

47. We consider the same position should apply to all parts of the Bill and to all the public bodies subject to provisions. We recommend the Bill, or regulations or guidance should set out requirements in this regard on such bodies to provide upfront support with the necessary expertise to support applicants.

48. We acknowledge the strengthening communities programme as well as the work of the Development Trusts Association (“DTA”) and other third sector bodies. Strengthening communities is however a fundamental area, unless measures are in place and adequately resourced the aims of the bill in relation to empowering communities are bound to fail. We look forward to the views of the Government in relation to the funding of capacity building, recognising the long term aim must be to build capacity directly into communities. We expect the Government to state the current amount spent on community capacity building and the extent to which that will increase as the bill is implemented.

49. The Minister acknowledged concerns when indicating the Government was “tooling up groups that will support the agenda nationally.” We agree with the submission of South Lanarkshire Council who suggested there should be a specific duty on CPP partners to reduce inequality and focus on early intervention and prevention. We look forward to the Scottish Government stating how this will be taken forward.

Petitions referred to us

50. During our scrutiny at stage 1 we have considered petitions PE1433 and PE1497, both of which were referred to us as being relevant to this work. We have used these petitions throughout our scrutiny including taking additional oral evidence from the petitioner Mr Hancox.

51. There are references later in the report to each petition and we are grateful to both petitioners for the information supplied throughout the whole process. Having now concluded our stage 1 consideration of the Bill there is no further action we would wish to take on either petition and accordingly we close them both.

Equality Impact Assessment

52. The Scottish Government’s Equality Impact Assessment (EQIA), contains information central to the general principles of the Bill. The importance of such an exercise is particularly high for this bill given its aims. We have heard concerns throughout stage 1 about the risk to “marginalised communities, such as disabled people if recognition of community groups is granted to professional or already

33 Scottish Parliament Local Government and Regeneration Committee, Official Report, 12 November, column 15
well-resourced groups at the expense of groups representing disadvantaged or equalities groups.”

53. A number of written submissions observed concerns around particular areas, these covered children, the islands, disabled interests and others. We agree the EQIA should be “a fundamental part of the policy development process not an add-on once the main work has been done”.

54. A sizable proportion of respondents to our call for evidence raised concerns about the Bill’s (EQIA) not being available in advance of our call for evidence to help inform their submissions. We asked, in our letter to the Scottish Government Officials on 25 June 2014, when the EQIA would be available and were advised on 1 August it “will be published very shortly. We will inform the Committee and stakeholders when it is available.” The EQIA was finally published on the Government’s website on 4 November, without any reason for the delay being provided.

55. It is unacceptable that equality information was not available until a very late stage in the Committee’s Stage 1 scrutiny, particularly given it clearly indicates that those communities who stand to benefit most from the Bill, might be unable to take advantage of it. This delay in publication had a direct impact on our ability to scrutinise the participation requests provisions in the Bill. We will ask the Scottish Parliament’s Standards, Procedures and Public Appointments Committee to look at this aspect with a view to considering whether lodging of an EQIA document should be mandatory with a bill at introduction.

Accompanying Documents

Financial Memorandum

56. Standing Orders Rule 9.6, require us, as the lead committee at Stage 1, to consider and report on the Bill’s Financial Memorandum (“FM”). In doing so, we are required to consider any views submitted to us by the Finance Committee. That Committee reported to us on 31 October 2014. A copy of their report is at Annexe B.

57. The FM states that it sets out the costs associated with each part of the Bill and on pages 52 to 60 includes a table summarising the additional costs expected to arise as a result of the Bill’s provisions.

58. The Finance Committee came to a number of conclusions throughout their report, and invited us to seek responses, clarification, elaboration and detail from the Minister on various aspects of the FM and costs arising therefrom. In respect of the comments directly referring to Part 4 of the Bill we requested the RACCE Committee consider these as part of their scrutiny of that Part of the Bill.

59. Paragraphs 38 and 54 of the Finance Committee report both specified concerns held by them in relation to the FM. We note from their report these concerns persisted after hearing from officials and receiving supplementary written

35 Inclusion Scotland. Written submission.
36 Unison Scotland Written submission.
37 Q&A paragraph 138
submission dated 24 October from the Minister. In each case the Finance Committee comments suggest difficulties, if not resolved, in reaching the levels of information the Scottish Parliament requires under Standing Orders. These paragraphs are in the following terms:

“38. The Committee acknowledges the difficulties faced in quantifying potential future costs arising from services that will be demand driven. However, the Committee remains concerned that, despite the requirements of Standing Orders, best estimates have not been fully provided.

“54. The Committee acknowledges the difficulty in providing concrete estimates of services that will be demand driven but emphasises that Standing Orders require FMs to provide best estimates of costs, their timescales and margins of uncertainty.”

60. We asked the Minister for further information on the costs provided at our evidence session with him on 12 November.

61. In response the Minister, while recognising the requirements of Standing Orders and “understanding the rules of the Parliament”, made clear he was not going to “make up a figure” for activities he could not quantify as that would be misleading. He added that if the bill was successful, empowering, and well used the Scottish Government would have to consider the financial consequences on public bodies.

62. The Minister further indicated he had provided best estimates by suggesting the costs of the bureaucracy arising from the bill could be absorbed. Adding it was not possible to provide a range of figures because he could not predict demand for the measures in the Bill although he would continue to monitor the situation.

63. Finally the Minister added he would produce a figure if so recommended but “it would be utterly false”.

64. The difficulty here is the requirements set out by Standing Orders. These require the provision of best estimates of all costs coupled with a margin of uncertainty. This information is required to allow Parliament to consider the costs of legislation put before it and to enable a reasoned judgment to be made on whether these costs should be approved.

65. Approval of any such additional costs is provided by way of a financial resolution which must, when the Presiding Officer has, as she has done here, determined costs are relevant. The financial resolution must be approved by Parliament before any bill can proceed past stage 1. Such a decision is separate to the decision on the general principles of a bill at stage 1 and without approval of a financial resolution a bill will fall.

38 Standing Orders rule 9.3.2
66. While we have a degree of sympathy with the reasons expressed by the Minister we do not consider the circumstances of this Bill to be so different from other pieces of legislation, which in the face of similar difficulties in estimating demand, take up and costs, satisfied the requirements of Standing Orders. The Finance Committee, who scrutinise all Financial Memoranda, have not sought to make an exception for this Bill and their report makes their position clear.\footnote{40}

67. We therefore draw to Parliament’s attention when considering the financial resolution on this Bill the concerns of the Finance Committee that, despite the requirements of Standing Orders, best estimates have not been provided.\footnote{41}

**Delegated Powers Memorandum**

68. The remit of the Delegated Powers and Law Reform Committee (DPLRC Committee) includes to consider and report on proposed powers to make subordinate powers in legislation including whether any proposed powers are appropriate. They considered the proposed powers in the Bill and reported to us on 5 November 2014. A copy of their report is at Annexe C. The parts of the report relevant to Part 4 of the Bill have been considered by the RACCE committee and are covered in their report to us (see part 4 of this report).

69. Before considering the detailed comment on three specific powers we draw to the attention of Parliament the general comments the DPLRC committee made at paragraph 17 of their report in relation to the deficiencies in the material presented to them both initially and during their scrutiny.

70. In relation to the powers being sought in the Bill the DPLR Committee report noted 3 areas of concern relevant to aspects of the Bill we considered.

71. The first (at paragraph 34) relates to Part 1 of the Bill when the Committee notes an absence of a role for the Scottish Parliament in the setting and review of the national outcomes (see Part 1 of the Bill). Adding—

> “a more active scrutiny role for the Parliament appears to be justified having regard to the significance of the national outcomes, the discretion afforded to the Scottish Ministers in deciding how the outcomes are presented and measured, and the fact that all public bodies and other persons carrying out functions of a public nature as described in section 1(1) would require to have regard to the outcomes.”

72. We look more closely at this aspect in Part 1 of our report as well as the DPLR’s comments regarding minimum levels of consultation required.

73. The second concern of the DPLR asks the Scottish Government to amend the Bill at Stage 2 so as to make the powers in sections 4(6) and 8(3) (re bodies to be part of CPP’s) subject to the affirmative procedure when exercised so as to add bodies to the lists in schedule 1 or section 8(2) respectively. The Committee also

\footnote{40 See Footnote 39.}

\footnote{41 Paragraphs 66 and 67 were agreed to, by division: For 4 (Cameron Buchanan; Cara Hilton; Alex Rowley; John Wilson), Against 3 (Clare Adamson; Willie Coffey; Kevin Stewart), Abstentions 0.}
recommended that the powers in sections 16(3) and 51(3) be made subject to the affirmative procedure.

74. We were pleased to learn both these recommendations will be taken forward by the Scottish Government.42

75. The third concern of the DPLR relates to section 10 powers to issue guidance. The Committee had a number of concerns, in principle, noting also that such a power is unusual. The Committee noted reasons for taking such a power were not clear from evidence to the Committee nor was it clear how it could be exercised. Other aspects regarding how it would be differentiated, which parts of guidance would be binding and which would not allowing local discretion and innovation were equally unclear and not provided for in section 10. Finally the DPLR Committee commented on the absence of any mechanism to enforce compliance or sanction for failure to comply with guidance issued.

76. Again here we were pleased to learn these concerns will be addressed by the Scottish Government at stage 2.43

General Principles of the Bill and Accompanying Documents

77. The Committee report to Parliament they are content with the general principles of the Bill although ask Parliament to note the comment made throughout this report on the detail.

78. The Committee also draws to the attention of Parliament a general concern around the accompanying documents. We have noted the concerns of the Finance Committee and the DPLR Committee. And also those of the RACCE Committee in their report to us.

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

80. Compliance with Standing Orders should embrace the spirit of openness and the provision of full information. We regret in this instance that may only have been achieved belatedly and to the extent it was achieved only after significant persuasion by the committees undertaking scrutiny. We regret this, not least given the purpose of this Bill.

81. Having given this overview the remainder of this report consider each Part of the Bill in turn.

PART 1 NATIONAL OUTCOMES

Background

82. In 2007, the Scottish Government introduced a new outcomes-based National Performance Framework (NPF). In June 2008, the Government launched Scotland Performs, a website designed to present information on how Scotland is performing against the range of indicators outlined in the NPF. The Framework sets out the Government's core Purpose, supported by 5 Strategic Objectives and 16 National Outcomes.

83. Underpinning the Framework are detailed Purpose Targets and National Indicators which track progress towards the Purpose and National Outcomes.

84. The overall aim of this part of the Bill is to support approaches that can contribute to improving outcomes in all aspects of people's lives such as crime, health, and reducing inequalities. Community empowerment can therefore have an important impact on a range of outcomes in the NPF.\(^{44}\)

85. The proposals in the Bill apply to all devolved public services in Scotland all of whom are aligning their work to this single framework. The Bill also covers private or third sector bodies contracted to deliver public services.

Bill proposals

86. Part 1 of the Bill places a duty on the Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, which must be reviewed at least once every 5 years.

87. The Bill also requires Scottish Ministers to publish regular reports on progress on the National Outcomes, although it does not specify a timescale for these reports.

88. The Bill does not prescribe what the National Outcomes should be, nor the structure of any future NPF, leaving decisions on these matters to future governments. There was a high degree of support for this proposal in the Government's second consultation. We note also the proposal was welcomed in the Finance Committee's final report on the 2014-15 Draft Budget (Finance Committee 2013).

89. The Policy Memorandum suggests the Bill reflects policy principles of subsidiarity, community empowerment and improving outcomes and provides a strategic framework which with particular reference to Part 1 will—

"Support an increase in the pace and scale of Public Service Reform by cementing the focus on achieving outcomes and improving the process of community planning."

\(^{44}\) Policy Memorandum, paragraph 7
90. The Policy Memorandum says Scotland Performs has been recognised both in the UK and internationally as an innovative and useful approach to defining strategic outcomes for government, and demonstrating progress towards them. In particular we noted the Carnegie UK Trust recommended in its report Shifting the Dial in Scotland (2013) that the outcomes approach should be embedded in legislation, to ensure it continues to be used in the long term.

91. Overall the Scottish Government suggested that—

“by aligning the whole public sector around a common set of goals, we can deliver real collaboration and lasting partnership working. Different organisations are now working towards shared goals defined in terms of benefits to citizens, rather than simply efficient service delivery.”

92. The Bill, in keeping with normal practice of not binding successive governments, does not require future governments to use the same model of purpose, targets, outcomes and indicators as currently used in Scotland Performs. It does however require national outcomes to be determined and seeks to provide flexibility as to how these may be presented and measured.

Committee submissions

93. From our call for evidence we received a number of comments and suggestions on this Part of the Bill. A number of respondents commented on the need for the Scottish Government to undertake a widespread consultation exercise when revising the NPF.

94. In answer to our written question on who would be involved and consulted on a review of national outcomes, the Scottish Government explained—

“We would anticipate that all governments would want to consult widely and inclusively on the national outcomes as a whole. However, if a review related only to individual outcomes on particular topics, it might be more appropriate to have a more focused consultation.”

95. Voluntary Action Scotland in their response echoed the response of a number of other bodies including SEPA, Health and Social Care Alliance Scotland, Highland Council officials, Barnardo’s Scotland Inverclyde Council, Co-Cheangal Innse Gall, Glasgow City Council, Oxfam Scotland, North Lanarkshire Council and COSLA. They stated Part 1—

“needs to be strengthened further to ensure that meaningful consultation is undertaken on the outcomes with a broad range of stakeholders, allowing for civic society and communities to voice their opinion and help set the outcomes. This will help empower communities rather than the process being driven and set by the centre.”

45 Q&A 22
46 Section 2(5)
47 Q&A 27
48 Voluntary Action Scotland. Written submission.
96. The Minister in relation to a role for communities stated—

“We expect to consult widely and to publish and review that set of outcomes. If something is about the people of Scotland, we should engage with them. I would not want to specify in primary legislation how that should be done, but it absolutely should be done.”

97. UNISON Scotland expressed hope for the development of the Scotland Performs Website, comparing it to the Virginia system—

“Scotland Performs has surface similarities to Virginia Performs but is nowhere near as extensive in terms of data or analysis. The Virginia site offers both easy to read graphics for a range of geographical and subject areas for those looking for snapshots as well as explanations/discussions of issues and extensive data for those seeking wider information or wishing to do their own analysis. Scotland Performs is not the “go to” place for data on Scotland or the delivery of its services nor has it become a source of debate or discussion.”

98. We were interested in understanding whether there is any role for the Scottish Parliament in the NPF, either as a consultee or in scrutinising results as neither is provided under the Bill. The Government in response to our written questions on the Policy Memorandum explained that the Parliament will be able to use the published information to hold Ministers to account.

“I am not sure that the committee and the Parliament should have a specific role in probing individual community planning partnerships, because it would feel slightly centralist if we were to pick on a community planning partnership. We should understand the national strategy, the national themes and the legislative framework, and the committee should hold the Government, ministers and local authorities to account collectively on our performance.”

99. We were advised Scottish Ministers are ultimately accountable for delivery of the national outcomes. Further it was suggested—

“Accountability will be enhanced due to the prominence of the national outcomes approach. There will be a clear line of sight between delivery and the national outcomes.”

100. We note in this regard the recurring themes of Parliament’s annual budget scrutiny on the need to focus on outcomes. Successive Finance Committees have expressed reservations about the extent to which the Executive is subject to

50 Unison Scotland. Written submission.
51 Q&A 32
53 Q&A 29 and 30
robust performance scrutiny. This was also a finding of the Christie Commission who noted an outcomes based approach had not been fully embraced.

101. The Christie Commission also recommended “tightening the oversight and accountability of public services including consistent data-gathering and performance comparators and the introduction of a new set of statutory powers and duties for all public service bodies, focused on improving outcomes.”

102. The Independent Budget Review (IBR) established by the Scottish Government came to a similar conclusion. The IBR report recommended the—

“need to move towards a more outcomes-based approach to public service management and to improve the quality, availability and application of evaluation, monitoring and reporting data and information in relation to outcomes across the public sector in order to ensure that resources are applied to full benefit. This is vital if the Scottish Parliament is to exercise an effective monitoring and scrutiny role.” 54

103. The Accounts Commission and Auditor General also made a number of comments on Part 1, including—

“if the commitment to set national outcomes is intended to provide greater clarity about trends in national performance, it is important to recognise that national outcomes can mask significant local variation in performance. Given this, it would be important that any national indicators that are set help assess how reductions in the wide inequalities of outcomes (health, life expectancy, educational attainment, etc.) that persist across Scotland are being addressed.” 55

Committee recommendations on Part 1

104. Having considered the responses received on this Part of the Bill we make the following observations and recommendations.

105. We consider Part 1 of the Bill will be extremely valuable in allowing the Scottish Parliament, as well as Ministers, to hold the public sector bodies to account.

106. We consider it one of the duties of the Parliament to not only hold Ministers to account, but also to follow the public pound and hold spending bodies to account. Given the amounts of monies they control we specifically include in this scrutiny the spending of and outcomes achieved by CPPs and those bodies falling within our remit who contribute to them.

107. We agree with the Minister that communities must be empowered. Given this fundamental principle we expect to see the Scottish Government leading by example. In relation to consultation and engagement with those who are affected,

i.e. communities, provision should be enshrined in this Part of the Bill by means of a suitable amendment to Part 1.

108. Given the focus placed on scrutiny of outcomes we consider the Scottish Government, not least to inform budget scrutiny by the Scottish Parliament, should report annually on the extent to which national outcomes have been achieved. The report should be available before the annual draft Scottish budget is published.
PART 2 COMMUNITY PLANNING

Background

109. Part 2 of the Local Government in Scotland Act 2003 places a duty on local authorities to initiate, facilitate and maintain a process called community planning by which public services are provided, after consultation with such community bodies and other bodies or persons as is appropriate. This is undertaken by Community Planning Partnership’s (CPPs) of which there are currently 32 in Scotland, one for each local authority area.

110. Currently guidance expands on the statutory requirements, by focusing the purpose of community planning (including engagement with community bodies) around the planning and achievement of better outcomes on local priority themes. Part 2 of the Bill reflects these expectations in legislation for the first time and proposes a number of reforms to the system of community planning. These replace provisions in the 2003 Act and provide for the first time a statutory basis for CPPs, placing duties on them around the planning and achievement of local outcomes. They also focus responsibilities on community planning partners to support each partnership to fulfil its duties.

111. Part 2 also includes scope to produce guidance to add detail to the new framework provided for. We understand from the Scottish Government that guidance may include the purpose and content of new generation local outcomes improvement plans (under section 5) and how governance duties (section 8) should be applied.

112. A range of reports have criticised the development of community planning since its introduction, including the Christie Commission in 2011. In March 2013, Audit Scotland published a report on Improving Community Planning in Scotland (Audit Scotland 2013), which concluded that—

“Partnership working is now generally well established and many examples of joint working are making a difference for specific communities and groups across Scotland. But overall, and ten years after community planning was given a statutory basis, CPPs are not able to show that they have had a significant impact in delivering improved outcomes across Scotland.

“Our audit work in recent years has found shortcomings in how CPPs have performed. These are widespread and go beyond individual CPPs. Community planning was intended as an effective vehicle for public bodies to work together improve local services and make best use of scarce public money and other resources. Barriers have stood in the way of this happening. All community planning partners needs to work together to overcome the barriers that have stood in the way of this happening. For

56 Q&A 52
example, shifting the perception that community planning is a council-driven exercise, and not a core part of the day job for other partners.”

113. The Local Government and Regeneration Committee has returned to the topic of community planning regularly in Session 4, most notably in our 2013 report on Public Services Reform which concluded that—

“… we share the view of the AC/AGS that 10 years of community planning has yielded little significant evidence of major improvements in public services. Like the AC/AGS, we also found major differences in perceptions about CPPs in terms of their impacts, outcomes, rates of progress, and above all levels of community engagement. We also note that this lack of progress has had its greatest impact on some of the most disadvantaged communities in Scotland.”

114. Putting community planning on a statutory basis, and requiring participation from all partners, not just local authorities, has long been considered a way in which community planning could be improved. In our above report on public service reform, we commented that—

“COSLA argued in its written submission and in oral evidence that an overall statutory duty on other public sector partners to participate in community planning would strengthen the ability to deliver public services in new ways, through greater partnership working. COSLA called this a “paradigm shift”. We consider this term to be misguided. We do not believe that a proposed statutory duty will be enough in itself to ensure that all public bodies participate effectively in community planning, and deliver the public services communities want to see.”

Bill proposals

Community Planning
115. Section 4 of the bill defines community planning as “planning that is carried out with a view to improving the achievement of outcomes in relation to the area of the local authority resulting from, or contributed by, the provision of services delivered by or on behalf of the local authority or the persons listed in schedule 1.” These outcomes must be consistent with the National Outcomes set out by Scottish Ministers. Schedule 1 lists the bodies the bill proposes should be considered to be “community planning partners”. These include Police Scotland, Health Boards, Integration Joint Boards, SEPA, SNH and SDS.

Local outcomes improvement plan
116. Sections 5, 6 and 7 of the Bill require each CPP to produce a local outcomes improvement plan. These are plans which—

60 See footnote 57 – paragraph 12
set out each local outcome to which the community planning partnership is to give priority with a view to improving the achievement of the outcome;
contain a description of the proposed improvement in the achievement of the outcome; and
specify the period within which the proposed improvement is to be achieved.

117. The plan must be reviewed “from time to time” and the CPP must publish an annual report on progress towards achieving the stated outcomes.

118. The Policy Memorandum confirms local outcomes improvement plans are the equivalent of Single Outcome Agreements, currently used by all CPPs. But, it does not explain why new terminology has been used in the Bill.

Governance, funding and other provisions
119. The remainder of Part 2 contains a number of other provisions on community planning. Notably requirements for partners to participate in the community planning process, co-operate with the other partners, and also provision on sharing resources. Each partner must contribute “such funds, staff and other resources” as required by the CPP.

Committee submissions
120. Part 2 received a range of detailed comments from across all sectors. Comments, written and oral, fell into 3 broad categories covering—

- community involvement;
- governance and accountability; and
- partner bodies.

121. Many highlighted problems with the current system of community planning, especially in relation to community involvement. Others sought clarity regarding how the new provisions would work with other existing legislation, including the status of existing community planning partners.

Community Involvement
122. As well as public bodies, the Bill requires CPPs to “make all reasonable efforts to secure the participation” of those community bodies it considers are “likely to be able to contribute to community planning”. The Government confirmed the Bill—

“does not prescribe a process which CPPs should adopt for engaging with community bodies. These are decisions for CPPs and partner bodies to take locally, as they are best placed to determine which approach is most suitable for the particular circumstances of each occasion.”

123. The Bill also makes specific non-prescriptive provision for community bodies to be consulted in the preparation of the local outcomes improvement plan.

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61 Q&A 43
124. The involvement of communities and community bodies in the process of community planning has been a key thread running through our work both on public service reform and on regeneration. In our report on Strand 3 of the public service reform inquiry, we stated—

“We have not found evidence that successes are being collated and replicated systematically. We have found some apparent contradictions amongst our witnesses, especially in terms of perceptions on the rate, scale, nature, direction and levels of community engagement in decisions on PSR, particularly within and across CPPs. Ten years on, there is a consensus that insufficient progress has been made by CPPs. We found varying degrees of community engagement in partnerships generally, and CPPs in particular. We emphasise that there are also significant differences in perception about the levels and effectiveness of community engagement.” 62

125. Similarly, concerns were also raised in responses to the Government’s 2013 consultation. These suggested that providing statutory underpinning could actually marginalise communities even further, as it would reinforce the public sector partners as principal partners, and others as less important.

126. Another dominant theme in that consultation was the need for investment in community capacity building if all communities were to take full advantage of the opportunities in the Bill.

127. We asked the Scottish Government to elaborate on the detail in the Policy Memorandum suggesting communities would be placed at the core 63 and not simply restricted to being consultees. The Scottish Government indicated—

“The role of communities goes well beyond that of consultees. The duties which sections 4, 5 and 9 of the Bill place on CPPs and partner bodies collectively provide a basis within which community bodies can engage closely in community planning.

“Sections 4 and 5 include duties on CPPs around engaging communities. Section 4(5) places a general duty on CPPs to participate with community bodies in community planning – that is, planning that is carried out with a view to improving the achievement of outcomes. In complying with this duty, a CPP must make all reasonable efforts to secure the participation of whichever community bodies it considers can contribute to community planning. It should then take all reasonable steps to enable a community body which wishes to participate to do so. This provides community bodies with a role at the core of community planning activity, which can include understanding needs and circumstances, identifying priority outcomes, deciding how to respond to these priorities and reviewing progress made. Section 5(3) places an additional specific requirement on

63 Policy Memorandum, paragraph 39
CPPs, to consult community bodies and such other persons as it considers appropriate in preparing a local outcomes improvement plan.

“Section 9(3) places complementary duties on community planning partners. In particular, it requires partner bodies to contribute funds, staff and resources as the partnership consider appropriate to secure the participation of community bodies. This may therefore support community capacity building activity. Community planning partners may also resource community bodies to deliver services, as part of their related duty to provide resources to support the improvement of a local outcome.”

128. Given our earlier interest and the comments received from our call for evidence we are particularly interested in the consultation required by CPPs both in preparing local improvement plans and the more general involvement of local bodies and communities in the process. Given this part of the Bill is in response to failures by CPPs over the last 10 years we wondered why the legislation had not set out to be more prescriptive in relation to local involvement. We were also concerned to understand how the Bill would ensure the necessary “paradigm shift” from a top down approach to one that involved people at its core.

129. We asked the Scottish Government a series of questions on the above designed to supplement the information about how the Bill will operate. We were told—

“Section 4 of the Bill does not prescribe a process which CPPs should adopt for engaging with community bodies. These are decisions for CPPs and partner bodies to take locally, as they are best placed to determine which approach is most suitable for the particular circumstances of each occasion.”

“Section 4(5) imposes a general duty to involve community bodies in community planning. In complying with this duty, CPPs will decide for themselves which community bodies to involve because they are likely to be able to contribute to community planning, and how to do so.

“Section 5(3) applies specifically to the preparation of a local outcomes improvement plan. The scope of this consultation may encompass community bodies and persons who are otherwise unable or do not wish to contribute to community planning.

“CPPs use a range of sources to understand the needs and circumstances of people and communities in the CPP. This includes statistical information and feedback which partners receive from their own engagement with communities. The consultation with community bodies which a CPP will be required to conduct under section 5(3) will add to this understanding. A CPP may in addition undertake a public consultation if it considers this would be valuable for obtaining this understanding of local needs and
circumstances. We consider it should be for CPPs to decide for themselves which methods they adopt to acquire this understanding.”

130. Overall the most common written comment was to express disquiet as to the extent to which and indeed whether the provisions in this part of the bill empowered communities. There were two main strands of concern covering the role of the community, namely the extent to which consultation with communities was undertaken meaningfully as well as the timing of their involvement.

131. On the latter point the Accounts Commission for Scotland and the Auditor General in their report *Improving Community Planning in Scotland* stated—

> “many CPPs were rethinking how they consult with local communities with the aim of tailoring services around a clear understanding of local need by involving local communities in identifying local issues and deciding how best to respond to them. However, much of the focus was still on consultation and getting people involved. Therefore there is a long way to go before services are truly designed around communities and the potential of local people to participate in, shape and improve local services is realised”

132. That was a theme echoed by others including COSLA who talked about levelling the playing field between communities and authorities.

133. Others were more critical, Leslie Howson summarised the position when he suggested--

> “I am not convinced that the process will be sufficiently inclusive at any level. The community planning partnership decides what are the priorities as regards outcomes and then also decides whom they will or will not consult.”

134. The SCVO quoting the Royal Society of Edinburgh, noted concerns at the continuation of a top-down approach with “agenda design” remaining with the relevant public body. They went on to suggest—

> “community action is only sought when the implementation phase is reached. However, this approach falls short of genuine empowerment. The ‘bottom-up’ approach, which sees the identification of local agendas and desired outcomes taking place at the grassroots level, requires that a much larger degree of power and trust be handed to communities. By this approach, it truly is the community which identifies the societal challenges it wishes to see addressed, and it is the community which designs the processes to address these and to deliver the changes it wants. If

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67 Q&A 46
69 Leslie Howson. Written submission.
empowerment is to be an aim of public policy, taking a bottom-up approach will be necessary and inevitable.”\textsuperscript{70}

135. Others expressed concerns about who would be consulted. Midlothian Voluntary Action expressing a concern that CPPs chose who to consult—

“We believe that it is important that communities, including voluntary organisations, have some say in who represents them as it is important that community bodies involved in the community planning process engage with other organisations in order to feed into/and from the process.”\textsuperscript{71}

136. Some thought there should be a duty on CPPs to consult. A number, including Scottish Community Development Centre and East Ayrshire Council, stated engagement should be in line with the definition of community engagement embodied within the National Standards for Community Engagement.

137. We were pleased to learn from the Minister that he intends to bring forward an amendment at Stage 2 to strengthen accountability in community planning partnerships by extending and expanding their duties to consult people by reference to the national standards on engagement.\textsuperscript{72}

138. Others noted the need to develop capacity within communities suggesting CPPs should have an explicit duty to undertake this task. We cover this in our introduction and throughout this report.

139. There was confusion at times between the meaning of engagement and empowerment and Alex Rowley summarised the difference by highlighting an example of (lack of) empowerment with the following example from his constituency—

“In Rosyth, in my constituency, there is a housing estate where trees were planted in the grass panels when it was built. The wrong trees were probably put in, because they are now massive. That means that, in the summer, no light comes in people’s windows and, in the winter and on wet days of the kind that we have had this week, the wet leaves make walking dangerous for people, as they might slip.

“The majority of people tell me that the issue needs to be dealt with. That seems to be common sense, but the tree surgeon says that the trees are perfectly healthy and council policy is that such trees are not cut down. For the life of me, I do not understand why that is the case. If we were truly empowering the people on that estate, we would enable them to deal with the issue”.\textsuperscript{73}

\textsuperscript{70} Scottish Council Voluntary Organisations. Written submission.
\textsuperscript{71} Midlothian Voluntary Action. Written submission.
\textsuperscript{72} Scottish Parliament Local Government and Regeneration Committee, Official Report, 2 November 2014, column 35
\textsuperscript{73} Scottish Parliament Local Government and Regeneration Committee, Official Report, 24 September 2014, column 13
140. Out of 160+ submissions sadly only one highlighted the benefits to be gained by public bodies from meaningful consultation with and involvement of the community. The Scottish Council for Development and Industry, correctly in our estimation, observed—

“Communities can be considered experts in their own needs and by enabling greater input into service planning and delivery, the public sector may uncover innovative delivery mechanisms which more effectively meet their service users’ requirements.”

141. We show this specifically to highlight why the legislation has become necessary following the widespread failure of public bodies to engage, consult and empower communities. It is agreed only legislation can bring about the critical cultural change towards “An organisational mindset which sees communities as often best placed to develop local solutions to local issues.”

142. During our first oral evidence session on this aspect of the Bill we noted all the witnesses, with the exception of the police, were exclusively focussed on a top down approach with at best discussion between CPP partners to determine priorities, activities and the allocation of resources. We did not detect any indication of any role, never mind meaningful involvement, at community level. Frequent references to planning at the strategic level suggest to us the size of the cultural change required if involvement, never mind empowerment, is to happen.

143. When in Dumfries we put the quote at 138 above to witnesses with a mixed response. While acknowledging “ideas could come forward that might result in more savings and efficiencies” witnesses were concerned that complexities and conflicts would arise. Kay Gilmour from East Ayrshire Council was perhaps more hopeful saying—

“Public bodies need to go on a journey that is all about a culture of improvement. I am by no manner of means saying that that culture is not there at the moment, but this is a journey and some are further along it than others. If we have a culture of improvement, we do not get anxious if communities, individuals in the community or community groups make suggestions about how to innovate or do things differently and better.”

144. The police had a different viewpoint from other witnesses noting “different communities want and expect different things from public services.” Before adding—

“As soon as we start engaging with and consulting communities, it drives services in a different way. The challenge is in how the consultation and engagement drive the single outcome agreement. I have seen good examples in which a lot of the outcomes that have been identified in single

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74 Scottish Council for Development and Industry. Written submission.
75 Perth and Kinross Council. Written submission.
76 Scottish Parliament Local Government and Regeneration Committee, Official Report, 27 October 2014, column 40
77 Scottish Parliament Local Government and Regeneration Committee, Official Report, 27 October 2014, column 40
outcome agreements were driven by consultation. On the other hand, others have simply been driven by a set of strategic priorities that organisations have put on the table. We need to make sure that that is the right way round and that the outcomes are community driven.”

145. While we recognise Scottish Enterprise’s wider role we were disappointed to hear about their focus being solely on the business community. It is clear to us the views of the community are of no consequence to them. This lack of community focus is all the more surprising given the comments of the then Economy Enterprise and Tourism Committee in 2011 when they recommended in their report “A fundamental review of the purpose of an enterprise agency and the success of the recent reforms” the following—

“The Committee believes that interventions in rural economic development should enable rural communities to imagine the future of its local area and build its capacity to realise that vision. The Committee has heard evidence of and seen for itself the types of project which have had success through such capacity building, or place-shaping approaches, particularly as a result of HIE’s Strengthening Communities remit. The Committee believes that the same approach could successfully be applied to communities outside the HIE area.”

146. We consider Scottish Enterprise are an example of an organisation doing things to people as opposed to with people. Neither Skills Development Scotland nor North Lanarkshire Health Partnership were much better in their outlook.

Governance and Accountability

147. Comments on this aspect were largely from public bodies and considered issues around joint partnership working including leadership, budgets and general governance issues. Comments were also received on the section 12 powers to create corporate bodies.

148. Glasgow City Council highlighted core duties of CPP partners in section 9 in relation to communities and indicated—

“it is not clear what steps will be taken to make it easier for partners to meet them in particular how they will be assisted to commit “appropriate resources to the achievement of local outcomes set out in … [the Local Outcomes]… plan”

“Whilst the change in duties addresses perceived problem of lack of accountability of other public bodies for their contribution to Community Planning, the question arises as to whether this new formulation alters the role of local authorities in Community Planning. On one reading the new duties offer a shared leadership model. However, how will this work in

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78 Scottish Parliament Local Government and Regeneration Committee, Official Report, 1 October 2014, column 16
http://archive.scottish.parliament.uk/s3committees/eet/reports-11/eer11-02-01.htm
practice, if partners don’t agree roles and responsibilities. In addition does it meet the test of accountability?\textsuperscript{80}

149. We agree with Superintendent Irvine who summarised the need for and benefit of leadership in the CPP—

\begin{quote}
"Without leadership, there is no governance, and without governance, there is no activity. Leadership is a critical part of what we need to strengthen at local level."
\end{quote}

150. West Dunbartonshire Council indicated they were content with the proposed changes to governance and structure and North Lanarkshire Council had some queries about how the new arrangements will sit with existing accountability and audit mechanisms. The Accounts Commission for Scotland and the Auditor General wondered about the existing statutory leadership role on CPPs exercised by local authorities as well as: "the extent to which the resourcing of the administration of the community planning process should be seen as a partnership task."\textsuperscript{82}

151. The Accounts Commission for Scotland and the Auditor General were also concerned about how the performance of CPPs as partnerships will be assessed. How governance and accountability arrangements will work and how CPPs will be held to account for the discharge of the duties set out in the Bill, including their progress against outcomes. They also saw the absence of provision in section 8 as a significant gap.

152. COSLA, while welcoming the duties being placed on CPP partners, indicated "it is difficult to see how this can be effectively enforced."\textsuperscript{83}

153. We asked the Scottish Government to comment on this area and they responded as follows—

"Like Part 2 of the 2003 Act, the Bill does not specify sanctions on CPPs and partner bodies for non-compliance. Partners can expect to be held to account for how they fulfil community planning duties as part of their existing formal lines of accountability (e.g. those of NHS Boards to Scottish Ministers, or a council to its electorate).

"In addition, external CPP audit reports are recent additions to the scrutiny landscape. They have been valuable in identifying strengths and areas for improvement in CPP and partner performance, supporting ongoing improvement and providing assurance that expected progress is being made. Themes covered by these audits include clarity of vision leadership, governance, operational structures, performance management, how

\textsuperscript{80} Glasgow City Council. Written submission.
\textsuperscript{81} Scottish Parliament Local Government and Regeneration Committee, \textit{Official Report, 1 October 2014, column 24}
\textsuperscript{82} Accounts Commission for Scotland & Auditor General for Scotland. Written submission.
\textsuperscript{83} COSLA. Written submission.
partners engage with local communities, how partners hold each other to account and the quality of public reporting.\textsuperscript{84}

154. The Minister did not consider there was any role for Government or Parliament in probing individual CPPs, suggesting Government Ministers and local authorities should be held to account collectively on their performance.\textsuperscript{85} Adding this was a role for communities to hold individual CPPs to account.

155. The commitment of resources to the CPP by CPP partners raised a number of questions. NHS Tayside\textsuperscript{86} and Angus Community Planning Partnership\textsuperscript{87} both felt this was “a step too far”. Inverclyde Council noted some practical concerns around community planning partners committing resources towards both delivery of actions and securing participation of community bodies. Inverclyde Council also noted the absence of “freedom in budget setting that would facilitate the easy commitment of resources to particular projects.”\textsuperscript{88}

156. Police (Scotland) indicated potential difficulties under their current centralised budgeting system which sees the spending of all monies determined centrally by the Scottish Police Authority. While there are good examples of local planning by the police involving communities this is restricted to the allocation of people as opposed to monetary resource.

157. South Lanarkshire Council\textsuperscript{89} thought duties around collective accountability were vague and SEPA saw—

“real challenges around the practicalities of dovetailing SEPA’s own priorities with those identified in the LOIP [Local Outcome Improvement Plan]. SEPA’s priorities set out in our Corporate Plan and Annual Operating Plan tend to be strategic and usually non-locational specific.”\textsuperscript{90}

158. In relation to sharing resources the Scottish Government said the duties in section 9(2) to (5) applying to community planning partners will vary from one CPP to another, depending on the particular needs, circumstances and priorities of the area. An example of where the restrictions on applying duties to a CPP partner (section 9(1)) might apply is a scenario where a partner and CPP agree the duties

\textsuperscript{84} Q\&A 50
\textsuperscript{85} Scottish Parliament Local Government and Regeneration Committee, Official Report, 12 November 2014, column 35-36
\textsuperscript{86} Written submission from NHS Tayside. Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/45._NHS_Tayside.pdf
\textsuperscript{87} Written submission from the Angus Community Planning Partnership. Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/122._Angus_Community_Planning_Partnership.pdf
\textsuperscript{88} Written submission from Inverclyde Council. Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/91._Inverclyde_Council.pdf
\textsuperscript{89} Written submission from South Lanarkshire Council. Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/73._South_Lanarkshire_Council.pdf
\textsuperscript{90} Written submission from the Scottish Environment Protection Agency. Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/60._SEPA.pdf

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on the partner in that area can be waived because the duties on that partner under
the rest of section 9 would contribute only modestly to the work of the CPP.\footnote{Q&A 51}

159. Both Highlands and Islands Enterprise and Skills Development Scotland
were concerned about possible conflicts should a CPP determine to utilise
the provisions in section 12 to establish the CPP as a corporate body. We earlier
asked the Scottish Government about these provisions. They did not expect it
would be used to establish a corporate body that substantially delivered services
by itself.\footnote{Q&A 54}

160. In their recent report “Community Planning” Audit Scotland note “although
aspects of community planning are improving, leadership, scrutiny and challenge
are still inconsistent.” Adding: “There is little evidence that CPP boards are yet
demonstrating the levels of leadership and challenge set out in the Statement of
Ambition”\footnote{Audit Scotland. Community planning Turning ambition into action - paragraph 1. Available at:
http://www.audit-scotland.gov.uk/docs/central/2014/nr_141127_community_planning.pdf}

**Partner bodies**

161. A number of responses commented on the proposed membership of CPPs.
sportscotland argued they should not be included whereas a number made
suggestions for others to be included. The Third Sector Interface were suggested
by Community Learning and Development Managers, Orkney Islands Council and
by Children 1\textsuperscript{st} although the TSI representative in Dumfries was clear they did not
desire a formal role, rather wishing to retain their independence.\footnote{Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 27
October, column 9}

162. Some made pleas for enhanced roles to be given to Community Councils.
We heard from a number of community councillors as well as receiving
submissions from councils themselves. We recognise the enthusiasm and
willingness to be involved that we heard which, as we observed in our earlier
report,\footnote{Local Government and Regeneration Committee, 8th Report, 2014 (Session 4): Flexibility and
Autonomy in Local Government. Available at:
http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Reports/lgR-14-08w.pdf}
is not unique to community councils. We are also aware some are truly
representative of their communities having been duly elected. Others, perhaps the
majority, are not. The Minister commented on the variability of community
councils—

“although some are very good and provide services or run things, others
are more mid-range, some are talking shops and some are, frankly, barely
legitimate. That is why we will not pick one group over another as a key
community anchor organisation and say that that group is more important
than another. The situation will differ from one community to another. The

\footnote{Q&A 51}{Q&A 54}{Audit Scotland. Community planning Turning ambition into action - paragraph 1. Available at:
October, column 9}{Local Government and Regeneration Committee, 8th Report, 2014 (Session 4): Flexibility and
Autonomy in Local Government. Available at:
http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Reports/lgR-14-08w.pdf}
key organisation might be the housing association, the community council or the parent and toddler group.\footnote{Scottish Parliament Local Government and Regeneration Committee, \textit{Official Report}, 12 November 2014, column 16}

163. COSLA questioned whether the legislation included all the relevant partners that should be at the table noting an absence of key justice partners.

164. Regional Transport Partnerships made a request to be included, while SEPA noted significant issues around their own involvement particularly relating to resourcing and outcome conflicts.

165. While in Fort William we heard a plea for local flexibility in the composition of the CPP board with partners having the ability to identify the most appropriate composition.\footnote{Scottish Parliament Local Government and Regeneration Committee, \textit{Official Report}, 24 November 2014, column 5}

166. While the focus of the Bill and witnesses is on the role of public bodies we were also interested in what, if anything, the private sector could input and in what ways they could assist the operation of CPPs.

167. Some responses highlighted a need for more business participation with Scottish Enterprise drawing to attention, both in their oral and written submissions, the importance of involving the business community. The Federation of Small Businesses reminded us small businesses are a key part of their communities with skills and expertise that can assist communities.\footnote{Scottish Parliament Local Government and Regeneration Committee, \textit{Official Report}, 24 September 2014, column 10} The Minister agreed, indicating participation needs to go deeper than “just a seat at the table”.\footnote{Scottish Parliament Local Government and Regeneration Committee, \textit{Official Report}, 12 November 2014, column 33}

168. In relation to Scottish Enterprise we note the differences in remit between them and Highlands and Island Enterprise and have concerns as to how Scottish Enterprise can properly undertake partner duties under their current remit which does not include community support. We reached this view despite the evidence from the Minister that they are mindful of their obligations to community planning and his laying out of the support they can provide.\footnote{Scottish Parliament Local Government and Regeneration Committee, \textit{Official Report}, 12 November 2014, column 17-18} The Minister was clear Scottish Enterprise would not be bringing their budget “to the table” which leaves us unable to reconcile their partnership role with the budgetary requirements under the Bill. If one partner is able to choose the extent of their involvement we cannot understand how others can be encouraged to fully participate.

169. The point was made that the DWP (albeit it was suggested for issuing communications as opposed to receiving input) expends significant local resources and is in partnership with other bodies.\footnote{Scottish Parliament Local Government and Regeneration Committee, \textit{Official Report}, 1 October 2014, columns 10 & 25}
170. Finally in this section we note the comments of the Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy when discussing the approach to health and social care integration with us. After expressing frustration around internal disputes between partners over budgeting and support to individuals, and lamenting the consequential consumption of resources that causes he stated: “Adult health and social care integration must lance that, and do so ferociously.” He then this linked to the role of CPPs in taking forward the wider public service reform agenda particularly relating to prevention, adding—

“We look to community planning partnerships to break down the barriers, boundaries or silos …to make sure that we have a much more integrated and focused approach to the delivery of public services. That is crucial to ensuring that we guarantee that the resources that we have at our disposal have the maximum impact and that individuals are able to secure the support that they require.”

Committee Recommendations on Part 2

171. Having considered the responses we have received on this Part of the Bill we make the following recommendations:

Community Involvement

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

173. We remain concerned local communities are not sufficiently and directly involved with CPPs. The Bill should require CPPs to seek involvement and input from a level below that of community representatives. It is for the Scottish Government to suggest how this be done, and as importantly, how it will be assessed.

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

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

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

**Governance and Accountability**

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

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

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

180. The Committee will seek to hold CPPs to account alongside their partners for their individual actions as part of our ongoing scrutiny functions. We would anticipate other committees will do likewise as appropriate.

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

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

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

**Partner Bodies**

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

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

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

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

188. Provision should be made in the Bill for other public bodies to be full CPP partners as appropriate, based on local circumstances and need. We have in mind for example DWP and transport partnerships.
Other
189. We retain concerns about the terminology and language used throughout the Bill and ask the Scottish Government to amend accordingly to ensure the language used is not a barrier to community involvement.

190. The Bill must make clear the linkage between local improvement plans and single outcome agreements.
PART 3: PARTICIPATION REQUESTS

Background

191. Part 3 sets out how a “community participation body” (a community council or another community group with a constitution) can make a request to a “public service authority” (a public service authority listed in Schedule 2, e.g. local authorities, health boards or the police) to participate in a process to improve an outcome of a public service. It also provides how the public sector should deal with these requests. Part 3 is similar to Part 5 on Asset Transfer Requests in that it creates a process for requests and is intended to promote consistency of experience to encourage communities to become involved.

192. The Policy Memorandum states—

“There is a strong history of the public sector engaging with communities across Scotland. In particular, local authorities have used a variety of engagement methods over the years and have promoted the use of tools like the National Standards for Community Engagement […] The Scottish Government sets clear expectations that all public sector organisations must engage with communities and support their participation in setting priorities and in the design and delivery of services.”

193. An example of the type of opportunity which might be explored through a participation request would be a request to improve outcomes related to the upkeep of open spaces owned by public service authorities, for example, a community group could request to take over maintenance of a space from the public body’s private sector maintenance contractors.103

194. Also, the new participation requests process could be used by communities, who have identified a need for a service currently not being delivered, to design a new service with the public service authority to meet their needs. This could be transport to hospitals, childcare, employment skills, whatever communities’ aspirations are.

195. The Commission on the Future of Public Service Delivery (“the Christie Commission) was clear our system of public service delivery was in need of significant transformation. Design and delivery of services had to include people rather than forcing them into pre-determined systems.104

196. Our recent report into the Flexibility and Autonomy of Local Government has shown how community participation and local democracy are tightly linked and can be an indicator of active, resilient and democratic communities. One of our key

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103 Federation of City Farms and Community Gardens (Scotland). Written submission.
Local Government and Regeneration Committee, 2nd Report, 2015 (Session 4)

findings was “adequate powers to devolve responsibilities currently exist which local authorities must begin to exercise.”

197. Ideally, further legislation should not be needed to empower communities, but we also appreciate it is a sizable and complex task to shift power from public service authorities into the hands of the community and to move from a controlling model to one which is more listening and reactive to communities setting the agenda. It has been a few years since the Christie Commission reported, and since then the pace and scale of change has been slower than expected, therefore legislation to create the conditions for further empowerment and consistency of change, at a faster pace, is welcomed.

198. Part 3 builds on Part 2 which establishes local outcomes improvement plans. Participation requests are provided for under sections 14 to 26, and Schedule 2, of the Bill. These sections provide the structure of the process and some of the detail of the procedure. How information is to be provided and published is left to the Scottish Ministers to set out in subordinate legislation.

199. Section 15 defines a “community participation body” which can make a request under section 17 of the Bill. In this section of the Report they are referred to as ‘community groups’. Community groups can be a more formal grouping such as a community council or a less formal group as long as it has a written constitution (section 14 lists the requirements of a constitution). The Scottish Ministers can designate other groups. Requests to participate are made to a “public service authority as listed in Schedule 2, for example, a local authority or a Regional Transport Partnership.

### Participation Requests Process

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<th>The process for participation requests is set out in sections 17 to 25 of the Bill. In summary, the process will run as follows:</th>
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<tr>
<td><strong>1.</strong> When a community participation body (or more than one body jointly) believes it can improve the outcome of a public service, it can make a participation request to the body (or bodies) that run that service.</td>
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<tr>
<td><strong>2.</strong> In doing so, the community participation body will need to set out the outcomes it expects to achieve and its experience of the public service.</td>
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<tr>
<td><strong>3.</strong> It is then for the public service authority to make a decision on whether to agree to the request – but the authority must agree to the request unless there are reasonable grounds not to do so.</td>
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<tr>
<td><strong>4.</strong> Following a decision agreeing to the request, the public service authority must issue a decision notice outlining how the outcome improvement process will work.</td>
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200. It will be for the public service authority to decide whether to make any changes to existing service delivery arrangements. If the community group proposes to deliver services itself, the public service authority will need to decide

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whether the community group has an appropriate corporate structure and the
capacity to take on that role. A public service authority, after agreeing a
participation request must establish an outcome improvement process. At the end
of an outcome improvement process the public service authority must publish a
report on whether the outcomes were improved and how the community group
collected to that improvement.

201. A public service authority may decline a participation request in certain
circumstances, e.g. if a new request is made within two years about the same
outcome relating to the same service, whether it is from the same community
group or a different community group. There is no appeal process unlike Part 5,
Asset Transfer Requests.

Committee submissions

202. A great many of those who responded to our call for evidence took the
opportunity to comment on this part of the Bill, although we had very few
responses from individuals who might seek to use these powers. We undertook an
extensive public engagement programme to seek the views of individuals and
communities from across Scotland on the issues surrounding participation
requests for example, are participation requests the best way of getting people’s
ideas in front of the decision makers; whether it is easier to participate as a group
or individual; as well as what help is needed to encourage participation.

203. As part of this process we undertook fact-finding visits, produced a short
internet video and made use of social media to engage with people and
communities.

204. The engagement greatly added to our scrutiny of Part 3 of the Bill, and
Annexe D sets out the extent of this in more detail, as well as containing
responses we received via social media.

205. The matters which arose are summarised under the following headings—

- effectiveness of legislating for participation requests
- public service authorities’ willingness to allow community
  participation
- a community officer
- role of community engagement in enabling participation
- capacity of community groups to participate
- building community capacity and empowering the disempowered
- operation of the participation request process
- requirement for a written constitution
- refusal of a request
- publicity and guidance to encourage participation

Effectiveness of legislating for Participation Requests

206. Martin Doherty of Volunteer Scotland told us—
“If communities and individuals are not involved at the beginning, you might as well not bother. If the aim is to design a participation request, my advice is that it be designed around the people who need it.”

207. A few respondents wondered why there was a need to legislate to provide for a formal participation process. The Scottish Community Alliance (SCA) believed the debate around community empowerment was heavily shaped by the extent to which communities have been able to engage with the current system of local government. SCA considered “the current level of interest in how communities can be empowered correlates directly with the level of concern about this democratic deficit”. Social Enterprise Scotland also contributed to this discussion, it stated “democracy is not just about elected representatives or local authorities but is also about direct community democracy and community organisations i.e. social enterprises.”

208. The Scottish Government in its response to the Committee’s letter on the Policy Memorandum pointed us to research undertaken by the Electoral Commission which showed social exclusion is strongly correlated with low turnout in elections and limited participation in other forms of democracy.

209. A number of submissions were in favour of legislating, but considered public service authorities should be subject to more directive powers to make supporting participation a priority for public service authorities. This perhaps highlights that without such a specific duty there is a fear, within the third sector and communities, not enough is being done by public bodies to engage with them in a meaningfully way.

210. Others considered the Bill had missed additional opportunities to strengthen communities’ participation. Scottish Council for Voluntary Organisation (SCVO) was “disappointed that this single mechanism is the only concrete proposal for increasing participation in the decision making and the design and delivery of public services” for example SCVO suggested the Scottish Government could have legislated for “10% of the total budget for the public sector in each local authority area could be allocated for participatory budgeting processes.”

211. When the Minister was asked to respond to criticism voiced by Lesley Riddoch that the Bill was ‘toothless’ and ‘a missed opportunity’, he replied

“the bill is about swinging the balance of power towards communities. It does that through participation requests, which will empower groups and communities to initiate decisions and consultations that affect them on their terms.”

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106 Scottish Parliament Local Government and Regeneration Committee, Official Report, 8 October 2014, column 34
107 Scottish Community Alliance. Written submission.
108 Social Enterprise Scotland. Written submission.
109 Q&A 11
110 Scottish Council for Voluntary Organisations. Written submission.
Public service authorities’ willingness to allow community participation

212. The Christie Commission believed “front-line staff, along with people and communities are best placed to identify how to make things work better. It is critical that managers at all levels support staff in empowering users and communities, and to give fresh meaning to their own work”.112

213. The Scottish Government’s Response to the Christie Commission Report, Renewing Scotland’s Public Services: Priorities for Reform in Response to the Christie Commission 2011, reiterated the importance of this point “Reshaping public services to deliver better outcomes for the people of Scotland must be an inclusive and collaborative endeavour involving the workforce at all levels.”113

214. Some of those who wrote or spoke to us, although welcoming a participation process, felt using the process should be a last resort and that a culture of participation needed to be embedded within public service authorities. Orkney Council considered legislation should be there if the simpler route to participation were to be blocked, rather than being obligatory on every occasion.114 Steve Rolfe, an academic responding in a personal capacity, said—

“Whilst it is important for communities to have the new right to request participation, one of the aims of this legislation should be to ensure that it rarely needs to be used, as public sector agencies incorporate community participation and support for community action into their everyday operations.”115

215. Glasgow and West of Scotland Forum of Housing Associations took a slightly different view of the impact of the participation request process. It believed the process “seems designed to introduce a confrontational, ‘stick rather than carrot’ approach between the community and the public body rather than a partnership or co-productive approach”.116

216. Some public service authorities also recognised the need to change their mindset. South Lanarkshire Council cautioned that without significant change in public bodies’ culture and the resulting ways of working, they are likely to face a growing disconnection from the communities they exist to serve.117

217. SCVO suggested the focus should be on developing staff working in public service authorities—

“Effectiveness will still be dependent on the culture and attitudes within the relevant public body. Improving the understanding of participative approaches within public bodies through training or demonstrations of

112 Commission on the Future Delivery of Public Services, Services Built Around People and Communities, paragraph 4.46. Available at: http://www.scotland.gov.uk/Publications/2011/06/27154527/6
113 Renewing Scotland’s Public Services: Priorities for Reform in Response to the Christie Commission 2011, Workforce and Leadership, Available at: http://www.scotland.gov.uk/Publications/2011/09/21104740/6
114 Orkney Islands Council. Written submission. 
115 Steve Rolfe. Written submission. 
116 Glasgow and West of Scotland Forum of Housing Associations. Written submission. 
117 South Lanarkshire Council. Written submission.
good practice is more likely to achieve success than bringing forward legislation that could be ignored or regarded as a nuisance by these bodies.”

218. A further concern for SCVO of legislating was that a formal process “might disrupt positive interactions which already take place if it becomes the main route for engaging the sector in improving services.”

219. We heard from public service authorities at our meeting on 8 October there is a tension between their overarching priorities and those set by communities, however Dundee City Council had worked at finding an approach which meshed these priorities. John Hosie from the Council told us it had developed an impact assessment for their local community plans. These plans are based on community engagement and do not contain top-down actions; there are around 900 actions based on consultation with local people, which allows the Council to measure how effective it is in meeting these objectives and outcomes.

220. Whilst acknowledging there was good practice around, Robin Parker from Barnardo’s Scotland considered participation requests strengthened the community’s hand by enabling communities to say—

“No, it’s our right to be involved in this decision. We think we’ve got something to bring to it, and we want to be involved in the decision-making process.”

221. Legislation can be an aid to cultural change, but public service authorities need to ensure all staff members are knowledgeable about the ethos of community empowerment, are trained to respond to participation requests and feel enabled to adopt best practice and suggest improvements.

A community officer
222. A common theme which arose in our enquiries into both Parts 3 and 5 of the Bill was the difficulty communities encountered when trying to find a staff member who had the requisite knowledge to address their questions.

223. Heather Hall from the Inspired Community Enterprise Trust explained during our stakeholder roundtable event held in Dumfries she had had to speak to 17 people to get information on a single matter. Earlier the Trust had provided us with a presentation about ‘The Usual Place’, a community café to help deliver training services to young people with additional needs to help them gain skills to find employment. Amy Duffy, a potential beneficiary of the project, shared her experience of trying to find employment and told us what it meant to her to have an opportunity to learn new skills. Heather Hall and Linda Whitelaw said the process was very time intensive; so much so they had had to give up their jobs for the sake of pursuing the social enterprise.

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118 Scottish Council for Voluntary Organisations. Written submission.
119 As footnote 116 above.
120 Scottish Parliament Local Government and Regeneration Committee, Official Report, 8 October 2014, column 12
121 Scottish Parliament Local Government and Regeneration Committee, Official Report, 8 October 2014, column 25
224. Other community representatives at the event talked about how the process to acquire a community hall was stalled by a series of council staff changes and a particular individual’s interpretation of the asset transfer process. A participant described their experience of engaging with a local authority while trying to get a decision on a community project as “like wading through treacle”, while another labelled council processes as “lethargic”.

225. When asked about the effect of centralisation of power in the Highlands to Inverness, Rachael McCormack from Highlands and Islands Enterprise (HIE) explained how HIE combat this issue—

“We recognise that, across the region, we have diverse local economies and communities with wide-ranging ambitions and aspirations, and it is imperative that we are close to them and accessible. In addition to our area teams, we have other locally based teams, so, wherever someone is in the Highlands and Islands, they are not terribly far from HIE staff.”

226. In response to the suggestion there should be an officer responsible for assisting communities, the Minister said—

“We want to ensure that there is a shared understanding of community participation. Having clarity on who community groups go to is a good thing, but we are not passing all the responsibility for community engagement or communication in a full public authority to one named person. It might be good practice for that person to be a co-ordinator who can oversee the sharing of information, but that is a matter for that authority”.

**Role of community engagement in enabling participation**

227. The Scottish Government states in its Policy Memorandum, “it is important that community voices are heard in public sector processes, but that this engagement differs from community empowerment, where communities lead change for themselves.”

It sees participation requests as complementary to public authorities’ existing community engagement and participation activities “The provisions in this Part of the Bill are not intended to replace that activity, but they give community bodies an additional power to initiate that dialogue on their own terms, and a right to have their views properly considered.”

228. Poverty Alliance, however, pointed to the varied implementation of the Standards for community engagement across Scotland. Glasgow and West of Scotland Forum of Housing Associations shared this view. In terms of improving the current patchy implementation of the Standards, Poverty Alliance, Voluntary Action Scotland, and other third sector organisations, considered the Bill was an opportunity to require public service authorities to adhere to an updated set of Standards.
National Standards for Community Engagement. Inverclyde Council concurred with this view and described it as "a missed opportunity to build on the Standards of Community Engagement". Robin Parker of Barnardo’s Scotland said “putting the national standards on a statutory basis would make it clear that high-quality and genuine involvement should always take place”.

229. National Standards of Community Engagement are an important method in unlocking a community’s ability to participate. Implementation of the National Standards varies across Scotland, which is not satisfactory given the aim of the Bill is to create the conditions for community empowerment and provide a consistent route to influence services. Although we are not attracted in this part of the Bill to enshrining the National Standards in legislation because we believe these should be reactive to developments in engagement techniques and updated regularly to reflect best practice, we are clear a high standard of engagement is integral to building communities’ trust and confidence in public service authorities’ ability to handle participation requests in a fair manner.

**Capacity of community groups to participate**

230. Many considered it would be the more affluent communities who would benefit from these powers because they already possess the skills necessary to engage with the process. A few responses went further suggesting there was a risk that these new rights could in fact “exacerbate inequality”.

231. Professor Annette Hastings described this trend as “‘middle class capture’ of public services”. She advised that research suggests “a key part of the work undertaken by those working at a range of levels within public services involves ‘managing the middle classes’: that is, resisting or accommodating the demands of an often vociferous, articulate and well-connected social group.”

232. Robin Parker’s comment to us further illustrated this point, “there are groups that are often described as ‘hard to reach’, but Barnardo’s much prefers the term ‘easy to ignore’.

233. Scottish Community Development Centre suggested a legislative approach taken to rebalance power in favour of the least powerful was more important than

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128 Voluntary Action Scotland. Written Submission.
129 Inverclyde Council. Written Submission.
130 Scottish Parliament Local Government and Regeneration Committee, Official Report, 8 October 2014, column 33
131 Steve Rolfe. Written Submission.
132 The Poverty Alliance. Written Submission.
133 Oxfam Scotland. Written Submission.
134 Professor Annette Hastings. Written Submission.
135 Scottish Parliament Local Government and Regeneration Committee, Official Report, 8 October 2014, column 42
a “broad-brush intention to empower”. Leslie Howson, an individual responding to the Committee, further illustrated this concern—

“Power to the people is meaningless if the people whilst been shown the route, do not have the wherewithal for the journey, let alone reaching the outcome stage set for them.”

234. Various other reasons were given as to why communities lacked the capacity to participate. Midlothian Voluntary Action considered the main barriers to be: “less education; transient populations; no access to professionals to join Boards; less confidence; and less relevant skills” noting these communities could potentially need considerable support.

235. Inclusion Scotland considered marginalised communities, such as disabled people, may become even more disempowered by the Bill and referred to its recent survey of 138 disabled people, which found that—

“a third felt that they rarely have adequate opportunities to be included in their community. Cuts to disability benefits & care services and rising living costs, including community care charges, are all reducing disabled people’s ability to meet the access costs of participation”.

236. An attendee at our stakeholder event in Dumfries talked about high levels of fatigue among those who choose to participate in community activities. Capacity to support community empowerment policy initiatives was also highlighted by Volunteer Scotland who drew our attention to the decline in volunteering rates during the past decade across Scotland. Martin Doherty said—

“If there is not at least some stabilisation or increase in the number of people identifying as volunteers, we will not have an empowered community. For us, that rings alarm bells for not only this bill but a range of policy agendas, including the integration of health and social care, areas of which rely heavily on volunteering activity.”

237. He was also keen to point out despite there being a link between low levels of volunteering and deprivation, there were a lot of skilled people in communities of high deprivation, “but, what is lacking are the opportunities to use that skill and to be listened to.”

Building community capacity and empowering the disempowered

238. Our discussions over the past 18 months with individuals, community groups, third sector organisations, and the information gathered from the call for evidence on the Bill, shows there is some concern Parts 3 and 5 (Asset Transfer Requests)

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136 Scottish Community Development Centre. Written Submission.
137 Leslie Howson. Written submission.
138 Midlothian Voluntary Action. Written Submission.
139 Inclusion Scotland. Written Submission.
141 Scottish Parliament Local Government and Regeneration Committee, Official Report, 8 October 2014, column 28
of the Bill will only serve to reinforce the position of already empowered communities. Not all communities are the same – many have different needs and different aspirations. Those commonly termed ‘disadvantaged communities’ does not necessarily mean the people within these communities have less ability to effect change, but often instead have less opportunity. We were keen to explore this further with our witnesses.

239. Building capacity in those less able community groups was seen as critical to the success of the participation request process. Angus Hardie from Scottish Community Alliance said—

“The Government has invested a lot in capacity building in the past and, frankly, it has not worked. We have to look at how we can change our approach to building capacity in the most disadvantaged communities so that it makes an impact and changes the normal pattern of those communities being the last to benefit.”¹⁴²

240. Community Learning and Development Managers described capacity building as “a long-term, purposeful process that builds cohesion and confidence and establishes a social and organisational infrastructure.”¹⁴³ They explained that sharing practice to support the implementation of legislation was their core purpose with their current focus being on “identifying communities' needs for community learning and development” under the Requirements for Community Learning and Development (Scotland) Regulations 2013.¹⁴⁴

241. John Hosie, Dundee City Council, explained his Council’s approach to building capacity, “our resources are deployed in areas of greatest need to plug the inequalities gap”. He recognised this was a long-term aspiration and went on to say—

“It is our core business to build capacity among groups of people who happen to reside in the areas of greatest deprivation. That is negotiated, and sometimes it involves a balance between challenge and support. Sometimes we have to challenge groups to see things slightly differently, while supporting them on their journey”.¹⁴⁵

242. John Hosie further explained the Council’s wider framework to support this work, advising there were regeneration forums in six of the eight most deprived wards in Dundee. These forums elect 15 local people to make decisions about funding allocations with the chairs meeting each month. Beyond this the Dundee

¹⁴² Scottish Parliament Local Government and Regeneration Committee, Official Report, 24 September, column 5
¹⁴³ Community Learning and Development Managers Scotland. Written Submission.
¹⁴⁴ Scottish Parliament Local Government and Regeneration Committee, Official Report, 8 October 2014, column 30
¹⁴⁵ Scottish Parliament Local Government and Regeneration Committee, Official Report, 8 October 2014, column 18
Partnership runs a community conference every six months for people who sit on community groups and the people set the conference agenda.\textsuperscript{146}

243. The Minister drew our attention to funding dedicated to building capacity—

“through a £3 million strengthening communities programme, we will support 150 community-led organisations to build their capacity. That will have a great multiplier effect at local level.”\textsuperscript{147}

244. In terms of spreading best practice Douglas Sinclair, Accounts Commission wondered whether there was a greater role for scrutiny bodies to identify good practice or share lessons learned from approaches which have not worked so well. He recognised the difficulty in spreading good practice and referred to a report on public services in Wales which said “good practice is a bad traveller” which encapsulated the challenge of sharing best practice.\textsuperscript{148}

Requirement for a written constitution

245. The Policy Memorandum states the main reason for requiring those wishing to make participation requests to have a written constitution was “to ensure community bodies are open, inclusive and truly represent their communities.”\textsuperscript{149}

246. Participation requests formalise the process of community involvement in shaping services and their delivery. A number of respondents challenged the need for a group to have a written constitution, particularly where a loose grouping of individuals is campaigning on a single issue. Also not all community groups will wish to deliver services, many may just want to suggest a minor change to an existing service or discuss the level of service without contributing to an outcome improvement process. Voluntary Action Scotland, thought it was “overly prescriptive”\textsuperscript{150} and Highland Council commented “it still appeared overly complex.”\textsuperscript{151}

247. We heard concerns that individuals or loose groupings of individuals, might face increased difficulty in engaging with public service authorities about services more generally. Children in Scotland considered the—

“formality and organisation required of groups before they can apply to participate may deter or disqualify less formal and ad hoc groupings, or single-issue topical campaigns. Specifically we are concerned that those in less advantaged communities and groups may find these requirements a barrier to access.” The organisation believed individuals and groups, formally constituted or not, should feel able to be involved in issues that

\textsuperscript{149} Policy Memorandum, paragraph 46
\textsuperscript{150} Voluntary Action Scotland. Written Submission.
\textsuperscript{151} Highland Council. Written Submission.
affect them directly, such as litter in their street or about standards in their local school.\textsuperscript{152}

248. This need for flexibility was supported by Barnardo’s Scotland \textsuperscript{153} a view also supported by some who came to our stakeholder events, who considered public service authorities may become less responsive to individuals’ calls to improve services and considered that as an individual they should have a right to ‘lobby’. Jeannie Mackenzie who responded to our video on participation request said—

“Sometimes an individual has a very good idea for improving public services, but lacks the time or opportunity to find others and form a constituted group. Therefore, there should also be a place for individual ideas to be presented”\textsuperscript{154}

249. In making the process more accessible, Development Trust Association Scotland (DTAS) suggested it was first necessary to separate influence of service delivery from communities delivering public services. DTAS believed—

“While there is a relationship between both aspects, it would appear to us that a more light touch process would be applicable to the former activity, which should also arguably be available to a wider range of community organisations.”\textsuperscript{155}

250. Scottish Government officials told us this was an area they had simplified following consultation. They had responded to concerns by simplifying the definition of a constitution and by using the same definition across different parts of the Bill. Also the definition was refined so it could include communities of interests leaving it to the community to define itself. Given it was a legislative process they suggested some sort of structure was required. They suggested not a huge amount was required to get involved; a written constitution being the minimum requirement.\textsuperscript{156}

Publicity and guidance to encourage participation
251. Many people highlighted the need for a concerted publicity campaign with plain language guidance to encourage the use of the participation process and support effective implementation more generally. Highland Council made the point “simple guidance will be critical to ensure that groups are not only enabled legislatively, but are able to understand what they have been empowered to participate in” for example the Council suggested the meaning of ‘participation’ in an ‘outcome improvement process’ needed to be clarified.\textsuperscript{157} Maggie Paterson, Community Learning and Development Manager Scotland, said “we need to ensure the processes are clear enough and that the jargon is translated so that

\textsuperscript{152} Children in Scotland. Written Submission.
\textsuperscript{153} Scottish Parliament Local Government and Regeneration Committee, Official Report, 8 October 2014, column 26
\textsuperscript{154} Response to Podcast on Participation Requests
\textsuperscript{155} Development Trusts Association Scotland. Written Submission.
\textsuperscript{156} Scottish Parliament Local Government and Regeneration Committee, Official Report, Scottish Government officials, 24 September, column 40
\textsuperscript{157} Highland Council. Written Submission.
people know what the bill means for them”.

A delegate at the Scottish Older Persons Assembly, when discussing the Bill, advised older people find ‘official’ language very hard to understand and confusing.

252. Some questioned whether the right to participate extended to arm’s length external organisations (ALEOs) and suggested specific guidance would be needed on this aspect. In order to clarify the position, John Glover, Community Land Advisory Service, suggested Parts 3 and 5 should automatically apply to publically owned companies with those excepted being prescribed in regulations, thus making it easier for communities to identify who is subject to the Bill.

253. Scottish Government officials explained there is no single definition of an ALEO and this can take a range of legal forms and carry out a range of functions. It would be possible to designate an ALEO as a public service authority if it was a body corporate and wholly owned by one or more public service authorities. They also clarified “no ALEOs are currently listed in Schedule 2 to the Bill” and Urban Regeneration Companies could also be designated if they were wholly publically owned.

Refusal of a request

254. Further clarity was sought by us about the grounds to be considered by public service authorities when coming to a decision about either a participation request, under Part 3, or an asset transfer request, under Part 5 of the Bill. Some submissions were concerned about consistency of application and thought issues might arise if the criteria were open to interpretation. Glasgow City Council warned—

“until there is clarity in this area, the effect may be disempowering, as in having raised expectation and then having hopes dashed. This could impact on working relationships and may be counter productive to establishing longer term collaboration and trust on which effective community planning and community empowerment should be based.”

255. In terms of how Dundee City Council anticipated addressing reasonable grounds, John Hosie said, “A starting point would be to offer support to the group. The way in which we have developed our outline framework for assessment means that 50 per cent weighting is given to community benefit”.

256. A further operational issue raised was the lack of an arbitration or appeal procedure where dispute about a participation request arises.

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159 Committee meeting papers, LGR/S4/14/28/9, page 108. Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Meeting%20P apers/20141112_Agenda_and_Meeting_Papers.pdf
160 Scottish Parliament Local Government and Regeneration Committee, Official Report, 8 October 2014, column 44
161, Q&A paragraph 61
162 Glasgow City Council. Written Submission.
163 Scottish Parliament Local Government and Regeneration Committee, Official Report, 8 October 2014, column 15
257. Scottish Community Alliance suggested the absence of an appeal mechanism “leaves the balance of power with the public body” and this omission “may ultimately discourage communities from exercising this right”.164 The Scottish Youth Parliament also believed there “should be an appropriate appeals procedure in line with the basic principles of due process and transparency.”165 Martin Doherty, Volunteer Scotland also welcomed an appeals process as he considered it unreasonable to expect small voluntary organisations to be able to challenge a public service authority in the courts.166

258. The Minister, however, considered the Bill would have a positive influence on how public service authorities treated community requests—

“The legal requirements should encourage authorities to put good processes in place. If they do not and a request is not handled competently and effectively, I suspect that the Scottish Public Services Ombudsman will have something to say about that.”167

259. He went on to say “given the presumption in the bill, the courts and the ombudsman will be able to point to what councils should have done. That is a game changer for community rights.”168

Recommendations on Part 3

260. Many of our recommendations about the changes required to public service authorities are to ensure the intention of the Bill is achieved in practice. Given the need for this Bill follows the failure of voluntary arrangements we consider it vital progress is closely monitored. To allow that to happen we recommend the Bill require all public service authorities to produce periodic public reports. The following recommendations set out areas to be covered in such a published report and also other recommendations in respect of this Part.

A community officer (Parts 3 and 5)

261. We support the idea of a community officer with responsibility for coordinating activity under the Bill. We recognise public service authorities should have flexibility and freedom to put in place local solutions when implementing the legislation. We also acknowledge the argument there could be a tendency for staff to rely on the ‘community officer’ rather than individuals within the organisation taking responsibility for this policy in their work area. Taking these concerns into account rather than recommending this role should be a statutory one we recommend the report set out the arrangements made by each body to support communities to utilise these provisions.

164 Scottish Community Alliance. Written Submission.
165 Scottish Youth Parliament. Written Submission.
166 Scottish Parliament Local Government and Regeneration Committee, Official Report, 8 October 2014, column 41
168 See footnote 166
Role of community engagement in encouraging participation
262. The report should set out the methods used to encourage community participation and comment on how successful they have been.

Capacity of community groups to participate
263. The report should set out the steps taken to underpin the community focused provisions in the Bill (Parts 3 and 5). It should also identify those communities which have been supported along with a summary of the support provided and details of how successful this has been.

Building community capacity
264. The report should set out how they have built capacity in communities which has allowed them to take advantage of participation requests and asset transfer requests. In addition it should set out measures taken to address inequalities between communities in their area.

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

Requirement for a written constitution
266. In a Bill designed to empower communities the requirement for a written constitution is disempowering. Part 3 is about the community coming forward with ideas to improve services and nothing in the Bill should be a barrier to this happening by any individual or group of people. The need to have this Part of the Bill has arisen as a consequence of the failure of an informal system and it seems counter-intuitive to provide a process for the community more restrictive than currently exists.

267. Accordingly we recommend the removal of the need for an application to be by a group and in the event of an application under this Part by a group for the requirement for any written constitution together with the removal of any other restrictions which could dilute the community accessing these provisions. For any that are to remain we expect to hear compelling reasons for their inclusion otherwise as the process, which is designed also to assist public service authorities in improving services, should be open to all.

Publicity and guidance to encourage participation
268. We also recommend the report set out the steps taken to provide information to communities, including publicity, and how successful this has been in making the participation request process accessible to all.

Refusal of a request
269. We recommend complaints concerning the handling of participation requests made to the Scottish Public Services Ombudsman (SPSO) are separately identifiable in their records and shown in annual reports. This will enable implementation and effectiveness of the new process to be monitored.
270. Finally, we recommend information be included in the reports on public service authorities’ willingness to allow community participation; the number of participation requests made; the number refused; and an explanation of organisational initiatives which encourage community participation in shaping of and the delivery of services.
PART 4: COMMUNITY RIGHT TO BUY

271. The report on Part 4 of the Bill by the Rural Affairs, Climate Change and Environment Committee can be found at Annexe A of this report.

PART 5: ASSET TRANSFER REQUESTS

Background

272. Part 5 sets out a framework for an asset transfer process for certain public bodies. In other words, how a “community transfer body” (the community body acquiring the asset) can request to buy, lease, manage, occupy or use land belonging to a “relevant authority” (a public body listed in Schedule 3, for example a local authority or a health board), and how the authority is to deal with such requests. The definition of “land” in the Bill relies on the Interpretation and Legislative Reform (Scotland) Act 2010\(^\text{169}\), and as such ‘land’ referred to in this report also includes buildings and other structures, land covered with water, and any right or interest in or over land.

273. At present, a number of public authorities have established asset transfer schemes to allow communities to take control (i.e. buy, lease, manage, occupy or use) of assets within their area. The Policy Memorandum welcomes the existence of current schemes but states that—

“The Bill goes further, giving the initiative to communities to identify property they are interested in, and placing a duty on public authorities to agree to the request unless they can show reasonable grounds for refusal.”\(^\text{170}\)

274. The Policy Memorandum also highlights that the intention is not for the focus of asset transfer requests to necessarily be on buildings and land considered surplus to the public sector’s requirements, but on—

“what the community seeks to achieve and what property would help them achieve that.”\(^\text{171}\)

275. Community ownership of assets is one approach to achieving community participation, developing community enterprises and community renewal. The Christie Commission findings highlighted the value of transferring assets that the public sector currently owns on behalf of communities to communities themselves allowing them to achieve better outcomes.

276. Prior to the Bill, other policy approaches have sought to stimulate the transfer of public assets to communities. For example, the Scottish Government commissioned the Development Trusts Association Scotland (DTAS) to raise awareness and improve the practice of local authority asset transfer which subsequently led to the creation of the Community Ownership Support Service (COSS). COSS supports and represents over 200 Development Trusts in

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\(^{169}\) Interpretation and Legislative Reform (Scotland) Act 2010 asp10, Schedule 1 Definitions of Words and Expressions. Available at: \url{http://www.legislation.gov.uk/asp/2010/10/schedule/1}

\(^{170}\) Policy Memorandum, paragraph 76

\(^{171}\) Policy Memorandum, paragraph 75
Scotland.\textsuperscript{172} This work has led some local authorities to develop their own asset transfer strategies and procedure. COSS has been involved in 38 asset local authority transfers from 2011 to 2014\textsuperscript{173} and almost half of Scotland’s local authorities now have asset transfer strategies in place.\textsuperscript{174}

277. In addition, a recent relaxation in the procedural requirements to be followed by local authorities when disposing of assets now means that under the Disposal of Land by Local Authorities (Scotland) Regulations 2010\textsuperscript{175} a local authority can dispose of an asset for less than market value where the local authority is satisfied that it is achieving “best value” through economic, regeneration, social, environmental or health benefits.

278. Some communities in Scotland have already acquired assets ranging from village halls and bowling greens to sports facilities; from amenity land to rural estates. A study in 2009 showed 75,891 assets are owned by a total of 2,718 community-controlled organisations in Scotland and have a combined value of £1.45bn. Included in these assets is 483,006 acres – 2.38% of Scotland’s land area. Also as part of the overall figure 2,740 assets are “community assets” (bring benefits to the whole community) and these have a combined value of £0.65bn\textsuperscript{176}

279. Even though some assets have transferred into community hands, there are cases across Scotland where community asset transfer was possible but had not been achieved because the process had not been clear or had taken too long. The Scottish Government believes both the public sector and communities could benefit from having clear and realistic processes to manage community asset transfer. By making the process more consistent and ensuring relevant authorities provide a reasoned response to requests, the Government hopes the provisions will result in an increase in the number of assets transferred.\textsuperscript{177}

280. Section 50 defines a “community transfer body” as either a ‘community-controlled body’, as defined in section 14, or a body designated as a community transfer body by the Scottish Ministers, such as a company or a Scottish Charitable Incorporated Organisation (SCIO). Section 51 defines a “relevant authority” as a person (or organisation) listed in schedule 3, for example Scottish Water or Scottish Enterprise, or one designated as a “relevant authority” by the Scottish Ministers by subordinate legislation.

\textsuperscript{172} Elected Member Briefing Note No.23, Community Ownership and Transfer of Local Authority Assets, The Improvement Service, July 2014, About this briefing note. Available at: file:///C:/temp/EM%20Briefing%2023%20-%20Community%20Ownership%20Transfer%20of%20Local%20Authority%20Assets.pdf
\textsuperscript{173} Financial Memorandum, paragraph 72
\textsuperscript{174} Scottish Parliament Local Government and Regeneration Committee, Official Report, 8 October, column 37
\textsuperscript{176} Elected Member Briefing Note No.23, Community Ownership and Transfer of Local Authority Assets, The Improvement Service, July 2014, How do we know it works? Available at: file:///C:/temp/EM%20Briefing%2023%20-%20Community%20Ownership%20Transfer%20of%20Local%20Authority%20Assets.pdf
\textsuperscript{177} Financial Memorandum, paragraphs 71-72
Other provisions set out further procedures and time limits to be followed along with how appeals are dealt with by different relevant authorities. In addition there is provision to help relevant authorities deal with repeated or vexatious requests. For example, if a second request relating to the same land or building is made within two years of a previous request, which was refused, the relevant authority may choose not to consider that second request.

**Committee submissions**

282. Overall, the right to request an asset transfer has been welcomed by those responding to our call for evidence, particularly because the power extends not only to ownership of an asset, but also to the right to use, manage or lease. The Big Lottery Fund wrote—

"the Bill provides communities with a variety of ways in which they can make better use of public land and buildings. It also gives them the option to ‘test their mettle’ by maybe starting off by leasing and managing an asset to see how they get on before deciding to buy it outright from the public authority."

283. Another reason for support was it permitted community use in situations where the property was earmarked for another use in the longer term, Linda Gillespie of COSS told the Committee she was supportive of the Bill because it would encourage “meanwhile use of land”.

284. Notwithstanding the overall positive response, there were a number of general concerns about the approach taken in the bill—

- Capacity of communities to request an asset transfer
• Relevant authorities’ willingness to respond to requests
• Timescale for consideration of requests
• Information to be provided to the community transfer body
• Publicly available asset register
• Exclusion of certain public bodies
• Appeals process
• Definition of a community transfer body

Capacity of communities to request an asset transfer

285. Much like Part 3 of the Bill (participation requests), a great many written and oral submissions focussed on the ability of communities to acquire an asset and the potential inequality of access for some communities. Inclusion Scotland considered “marginalised, fractured and impoverished communities will, by definition, have fewer assets, or assets of lower quality, in their areas, which will in turn be harder and more expensive to manage and maintain.” sportScotland cautioned against “asset grab” where strong community groups seek asset transfer for exclusive use to the detriment of the wider community and suggested that inclusivity should be fostered with any community asset transfer.

286. Linda Gillespie was less concerned on the above—

“In general, we find that communities react to threat and opportunity—when there is the threat of closure or when an opportunity emerges”

287. Where the difference occurs, advised Linda Gillespie, was in the cost of going through the transfer process. If a community required grant funding to go through the process it would be in the region of £20,000 to £25,000 whereas if the skills were available in the community the cost would be around £12,000 to access the professional services only.

288. A number of submissions called for dedicated support to be provided to community groups. Children 1st considered support to “navigate complex bureaucratic processes is vital to ensure communities do not find the process alienating”.

289. Unlike participation requests, in terms of supporting communities to take over control of a public sector asset, witnesses considered there could be a conflict of interest. Approaches to this ‘dilemma’ differed. Geraldine McCann, South Lanarkshire considered the Council’s role was to direct communities to where they could get advice. Whereas, Kay Gilmour from East Ayrshire considered the dedicated council team (which includes lawyers) could provide professional advice without compromising the council’s overall legal service.

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180 Inclusion Scotland. Written submission.
181 Scottish Parliament Local Government and Regeneration Committee, Official Report, 8 October, column 31
182 See footnote 181
183 Children 1st. Written submission.
184 Scottish Parliament Local Government and Regeneration Committee, Official Report, 27 October, column 30
185 Scottish Parliament Local Government and Regeneration Committee, Official Report, 27 October, column 30
Community Land Advisory Service suggested third sector support services should be developed to fill this gap.\textsuperscript{186}

290. We have quoted the Ministers response on conflict of interests concerns that they are an excuse he does not consider valid at paragraph 46. He went on to add that “authorities are more at liberty to do that than they suggested to you.”\textsuperscript{187}

291. We agree with the Minister that ‘conflict of interest’ is an unacceptable excuse to avoid suitably supporting communities to acquire assets.

292. DTAS and the Big Lottery Fund believed there was an opportunity to export the knowledge of those who had been through the process of asset transfer. DTAS argued—

“\textit{We need to recognise that the knowledge and expertise increasingly rests, not within external support organisations, but within the development trusts and other community anchor organisations who are turning around failing assets, developing renewable energy projects, managing landed estates, successfully regenerating high streets, taking over post offices, petrol stations and local shops, etc, etc! The implementation of the Community Empowerment Bill presents an exciting opportunity to recognise this, and develop a peer education and peer support programme which taps into and effectively utilises this knowledge and expertise. Such a programme would be incredibly resource efficient in relation to other methods of capacity building, with the added benefit that the main financial beneficiaries would be community organisations themselves.”}\textsuperscript{188}

\textit{Relevant authorities’ willingness to respond to requests}

293. It is clear to us, not only from the information gathered in response to this Bill but also through our work on the delivery of regeneration, that a negative experience of trying to acquire an asset is all too commonplace. We were keen to examine whether there were coordinated strategies for asset transfers and proactive, knowledgeable, frontline staff who have the backing from the very top of the organisation as this can have a significant bearing on the success of communities’ aspirations in relation to acquiring assets.

294. It is apparent not all the relevant authorities who spoke to us were well placed to deal with the impact of the legislation. The Health Boards, although engaging with the community about community health priorities, were focussed on the integration of health and social care. It appeared they had not fully quantified how asset transfers would affect the property they were responsible for. NHS Tayside expressed its concern that—

“\textit{The benefits to communities to exercise their rights to buy and request asset transfers have many potential positive outcomes. However, at a...}
time when we are and will continue to be challenged financially, for most NHS Boards, the need to vacate property ‘not fit for purpose’ and secure optimal returns from the sale of such assets via the open market has been an absolute necessity. The right to buy should therefore be at the full market value of the land or buildings and through the open market.‖

295. Although most witnesses acknowledged the legislation was a “catalyst for change” and could “stimulate culture change” some community representative witnesses were doubtful whether relevant authorities were ready to respond to asset transfer requests.

296. David Coulter from Dumfries Third Sector Interface considered “there needs to be a long-term change in culture around the way in which public authorities view assets.” He sensed public bodies regard assets as being owned by them saying “that might be the legal position, but the reality is that we as a community in Scotland own them”. Linda Gillespie from COSS also considered more work was required “to get public authorities into a mindset where it becomes second nature to make land available to communities”.

297. As well as a change in culture, others noted some relevant authorities would need to make practical changes to facilitate the process.

298. One of the main frustrations expressed by groups wishing to acquire an asset was the difficulty in finding the right person to speak to within a public body who had the knowledge to answer their questions or to direct them to such a person. This was brought into sharp focus in the experiences recounted by the community groups in North Lanarkshire and Dundee. Teresa Aitken from Glenboig Neighbourhood House felt there was “no consistency or accountability” in her dealings with North Lanarkshire Council. She expanded on this point saying “within the authority and its various departments, people do not communicate with one another, so we have to communicate with all the different departments”. This was echoed by Ryan Currie from Reeltime Music who said “public bodies do just enough to get by, and it does not always seem to be joined up”.

299. We heard about successful interactions and the difference these had made to groups trying to acquire an asset. Both Alice Bovill of St Mary’s Centre Dundee and Yvonne Tosh from Douglas Community Open Spaces Group commended Dundee City Council’s approach. Yvonne Tosh commented that in Dundee “we are lucky” adding “we usually get help quite easily and it is sustained, so that is a

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189 Written Submission 45
190 Scottish Parliament Local Government and Regeneration Committee, Official Report, 27 October, column 6
191 Scottish Parliament Local Government and Regeneration Committee, Official Report, 8 October, column 39
193 Scottish Parliament Local Government and Regeneration Committee, Official Report, 8 October, column 24
big help.‖ Alice Bovill pointed to the success of the community officer approach, which “will help us with every individual aspect of what we are trying to do.”

300. Other local authorities adopted an approach where the personnel required to underpin asset transfer were grouped. Kay Gilmour explained East Ayrshire Council’s approach to handling asset transfer requests. The Council established a dedicated community asset transfer team which comprised a surveyor, a lawyer, a person from property services and “importantly” two community workers. She said the team “has been critical in building capacity in our communities”. While South Lanarkshire did not group particular professions together, Geraldine Gilmore told us housing and technical services, planning and regeneration teams have had “a great deal of involvement” and “a number of assets have been transferred successfully to community groups”.

301. Under the current processes, to acquire an asset commonly requires community groups to have a great deal of drive and determination, diverse skills, and even personal finances, to tackle unnecessarily bureaucratic and disjointed procedures. It is of concern to us the Bill will have little impact unless there is a change to public bodies’ mindset to underpin the new asset transfer process; we believe if relevant authorities do not rise to the challenge a large number of good community ideas will be stifled at a very early stage.

302. We commend those relevant authorities which have already geared up for asset transfers and have a proactive and positive approach to assisting communities. By marshalling expertise to support the transfer process these bodies are making it easier for communities to become empowered.

**Timescale for consideration of requests**

303. An area of significant concern for community groups was the time it took to acquire an asset. There is no period set for a relevant authority to issue a decision notice. We note there is a six month period for a community transfer body to conclude a contract, failing which, the offer falls.

304. In Teresa Aitken’s experience, deadlines were set for them to provide information but the authority did not meet its deadlines “the community has to do all the running.” This view was echoed by Ryan Currie who reflected “work is very much done on a piecemeal basis”.

305. One of the sticking points for community groups acquiring an asset is the length of time negotiations take with the relevant public body. We heard from Louise Matheson about her Council’s approach to asset transfers—

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195 See footnote 194
197 Scottish Parliament Local Government and Regeneration Committee, *Official Report, 27 October, column 27*
198 See footnote 194
199 See footnote 194
“Dumfries and Galloway Council has a process that allows a maximum period of 18 months for the community group to bring forward its proposals and for the transfer to happen.”

306. However Inspired Community Enterprise Trust explained it had taken 18 months to negotiate a lease with Dumfries and Galloway Council and this was still on-going. We heard this could have had significant implications for the viability of the project had the Enterprise Trust not successfully separated the funding conditions from the leasing of a property. We have continued to keep an eye on the progress of these negotiations, not least to gain a deeper understanding of the issues involved.

307. Other local authorities advised timescales could vary. Scottish Borders Council advised timescales could vary according to—

“the complexity of the project. Sometimes it can take 2/3 months but it could extend to several years due the need to work with communities to ensure that they have robust and sustainable business plans which enable them to be ready to take on the asset.”

308. We also heard from community representatives about the vagaries of the application process for funding. An inordinate amount of time is spent locating funding streams, making applications for funding, and reapplying to meet previously not communicated conditions. While in Fort William, an attendee at the stakeholder event told us funding organisations are disconnected from local communities today much more so than 20 – 25 years ago. The LEADER programme is managed by business gateway and other funds are managed differently. So it is very hard for local communities and community groups to track where funding is coming from or where it might be available.

309. Yvonne Tosh of Douglas Community Open Spaces Group told us—

“Getting funding has been quite hard for us. We would keep getting told that we fitted the criteria, but when we put in an application we were told that the words were too official. We took it back and wrote it in our language, but it came back to us because we did not fit the criteria.”

310. When asked about whether timescales could be set to minimise the impacts for community groups in the Bill, the Minister advised he was not keen on centralising timescales but said, “we can consider the timescales issue more closely, but I would rather that authorities acted in good faith and considered and responded timeously to any requests that are made of them. I would be slightly

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200 Scottish Parliament Local Government and Regeneration Committee, Official Report, 27 October, column 26
202 Scottish Parliament Local Government and Regeneration Committee, Official Report, 8 October 2014, column 49
fearful if an arbitrary timescale were set whereby they might simply say no."^{203} However, he commented further, "we must ensure that we better calibrate and organise the various funding streams to support community groups, rather than going through the process time and time again."^{204}

311. The Bill does not set a time limit for consideration of a community group’s asset transfer request and the issue of a decision notice. Section 55(8) does enable the Scottish Ministers to prescribe by regulations the period within which a decision notice should be issued. In addition there is no timescale for relevant authorities to conclude a contract, whereas the community transfer body has to conclude the contract within six months of the date of the offer, otherwise a transfer agreement ceases to have effect. The community transfer body can negotiate with the relevant authority to agree a longer period. If a longer period is not agreed then the community transfer body can apply to Scottish Ministers to direct that the period should be extended.

312. We sought to query the timescales with the Minister and following an exchange of correspondence^{205} were advised—

"The scenario you outline in your letter is that a relevant authority has agreed to an asset transfer request, given notice of its decision to the community body, specified the terms of the transfer, lease or other arrangement and has received an offer from the community body. The relevant authority then deliberately delays the conclusion of the contract so that the process ends and is treated as if the asset transfer had not been agreed."^{206}

313. Minister Biagi said "I believe that this scenario is unlikely to happen in practice".^{207} He added—

"We have no plans to amend these provisions. Property transactions can be complex, and issues may arise which take time to work out, or which ultimately make the transfer unachievable, despite the best intentions of both parties."^{208}

314. It is important that an asset transfer is not thwarted by delay, as funding can be time-barred. An appropriate balance must be found between speed and rigor because no one wants to see failed asset transfers in Scotland.

^{206} See footnote 205
^{207} See footnote 205
^{208} See footnote 205
**Information to be provided to community transfer body**

315. The Policy Memorandum\(^{209}\) states secondary legislation will stipulate what information relevant authorities will be required to provide to community groups before they decide to request the transfer of an asset. Examples of maintenance costs and energy efficiency are provided in the Memorandum. We received a number of suggestions which were considered vital by respondents to inform a community’s assessment of whether to obtain an asset:

- value of the asset (if appropriate)
- rental value (if appropriate)
- yearly running costs
- details of impending repairs or maintenance costs
- energy efficiency.

316. Of these submissions, a good number focussed on the importance of valuations within the asset transfer process.

317. Section 52(4)(e) of the Bill requires the community transfer body making an asset transfer request to specify in its request the price it is prepared to pay for the asset it wishes to acquire. The Big Lottery Fund pointed out this would entail the community body having to arrange and pay for a survey/valuation at a very early stage. The Fund believed this to be unfair and onerous at this stage of the process. Instead, it suggested the public body should give prior notice to the community body of the minimum price it would accept. This could prevent the community body having to become embroiled in a costly and time consuming negotiation.\(^{210}\)

318. The preferred approach of both DTAS and Big Lottery Fund would be for the community group to have the valuation early as part of the information relevant authorities are required to provide to community transfer bodies. Big Lottery Fund explained the benefits – it would let the group know the amount of funding they would need and give them the opportunity to make early contact with potential funders to gauge the likelihood of funding being made available.\(^{211}\) DTAS covered this Part in detail in its submission, concluding—

> “The commercial sustainability of an asset transfer will often hinge on the value of the asset and the conditions (e.g. economic burdens) attached to the transfer. It is essential that there is scope for negotiation on these issues within the asset transfer processes and we suggest that clause 56(2)(a) could be reworded to encourage negotiated settlements.”\(^{212}\)

319. Some third sector respondents were concerned to ensure that liabilities were not “offloaded” to communities. On this subject, Professor Annette Hastings, University of Glasgow, drew attention to her ongoing work with English local authorities which are “involved in ambitious asset transfer programmes as part of their approach to managing severe budget cuts”. She suggested offloading “will be

\(^{209}\) Policy Memorandum, paragraph 77
\(^{210}\) Big Lottery Fund. Written submission.
\(^{211}\) Big Lottery Fund. Written submission.
\(^{212}\) Development Trusts Association Scotland. Written submission.
a real danger in some places”. However, local authority witnesses advised us it was important to work with communities to ensure any proposal was viable and sustainable; Geraldine McCann of South Lanarkshire said “it would be wrong to allow an asset to be transferred if by doing so we were setting someone up to fail”.

320. Business organisations had concerns about the impact on local businesses. In particular, the Federation of Small Businesses (FSB) suggested—

“If the transfer of an asset is accompanied by any form of public funding, a rigorous test of displacement is required when assessing the proposed activity. For example, using a vacant building to fund community-run commercial activity which directly competes with existing businesses (or may do so at some point in the future) is particularly unhelpful for our high streets”. The FSB suggested a potential solution would be to require relevant authorities to consult with any business using the asset, prior to agreeing to the transfer request.

Publically available asset register

321. Many of the submissions made to us centred on the lack of a publically-available asset register for relevant authorities which would enable communities to recognise opportunities within their community. It was also a topic discussed by those attending our community events. Many wanted a national asset register.

322. SCVO, the Alliance, DTAS and the Poverty Alliance were strong proponents of a requirement for relevant authorities to maintain and publish an asset register. SCVO stated—

“We are disappointed that the Bill does not provide a duty for public bodies to maintain and publish an asset register. Knowing what assets a public body holds which could be made available for community use would be a significant resource for communities. It would allow them to look at all the assets in their area and identify those which would suit their purpose.”

323. The Minister confirmed in a letter to us he too believed, “there is benefit in requiring relevant authorities to publish their registers of assets, to help community bodies understand what land or buildings may be available for asset transfer.”

324. The Minister did not agree about the benefits of a national asset register, “I do not see what purpose that would serve. As this is about local empowerment and participation, I do not see how a national picture would help us.”

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213 Professor Annette Hastings, Written submission.
214 Federation of Small Businesses Scotland. Written submission.
215 Federation of Small Businesses Scotland. Written submission.
216 Scottish Council for Voluntary Organisations. Written submission.
Exclusion of certain public bodies

325. The Bill lists the bodies subject to asset transfer requests at Schedule 3 – “relevant authorities”. It does not currently extend to bodies such as the National Museums of Scotland or the National Galleries of Scotland amongst other Scottish public bodies.

326. We would welcome an explanation of the rationale as to why some bodies have been listed as a “relevant authority” at Schedule 3 and why others are deemed not appropriate for inclusion.

327. For many communities, usage of an asset may be as important as ownership. A number of submissions, including those from Federation of City Farm and Community Gardens,\(^\text{219}\) Nourish Scotland\(^\text{220}\) and the Community Land Advisory Service, were concerned the:

“main issue with asset transfer requests is that the terms of the Bill do not permit a request to be made to public sector landowners whose functions and governance are reserved to Westminster, so limiting the community benefits that might be realised.”\(^\text{221}\)

328. Nourish Scotland said the Crown Estate, the Forestry Commission, Ministry of Defence and Network Rail are all significant land-owners.\(^\text{222}\)

329. Andy Brown from the Scottish Woodlot Association drew our attention to the incompatibility of the provisions of the Bill with those of the Forestry Act 1967, which precludes Forestry Commission Scotland from leasing woodland for forestry purposes. He went on to explain a further complication in regards to the Public Services Reform (Scotland) Act 2010 which is very specific on the bodies that can lease land—

“While the bill that is before us could in theory enable a non-profit co-operative to lease land from the Forestry Commission, the 2010 Act says that only companies limited by guarantee can do so”.\(^\text{223}\)

330. The Forestry Commission do lease land to the community as Sunny Lochaber Urban Gardeners told us when we visited Fort William, but we note this was for allotments and not for forestry cultivation.

Appeals process

331. Sections 58 and 59 of the Bill deal with Appeals and Reviews. Where a relevant authority refuses an asset transfer request, or specifies conditions which vary significantly from the request, or does not give a decision notice within the prescribed timescale or otherwise agreed timescale, the community transfer body can appeal to Scottish Ministers. Where the relevant body is a local authority the

\(^{219}\) Federation of City Farms and Community Gardens (Scotland). Written submission.

\(^{220}\) Nourish Scotland. Written submission.

\(^{221}\) Community Land Advisory Service. Written submission.

\(^{222}\) Nourish Scotland. Written submission.

\(^{223}\) Scottish Parliament Local Government and Regeneration Committee, Official Report, 27 October 2014, column 8
community group can seek a review. The procedure, manner and timescale are to be set out in regulations.

332. DTAS welcomed the introduction of an appeal provision within the local authority asset transfer process. It requested that appeals should be considered by elected members. DTAS also sought clarification of whether the appeal process will apply to the valuation of the asset and the conditions attached to the transfer.224

333. The Bill currently makes no provision for a right of appeal against a refusal by Scottish Ministers to agree to an asset transfer request.

**Definition of a community transfer body**

334. We received submissions concerning what type of body should be included within the definition of a “community transfer body”. Section 53 stipulates a community group must be incorporated as a company or a Scottish Charitable Incorporated Organisation (SCIO). The Scottish Woodlot Association would have liked to have seen Industrial & Provident Societies (IPS) included within this definition.225 The Association had an understanding that the Scottish Ministers have discretion to designate particular bodies (which might include IPSs) as eligible for asset transfer by purchase, but the timescale for this was not clear. Others, such as Co-Operatives UK considered co-operatives and Community Benefit Societies (BenComs) had an appropriate structure.226 While Social Enterprise Scotland believed Community Interest Companies (CICs) should be specifically mentioned in the Bill.227

335. In correspondence it was explained a key reason for requiring a community body to be a company or a SCIO was because it was seeking to take ownership of an asset. These structures ensured the body had proper governance and financial management, regulated either by Companies House or by the Office of the Scottish Charity Regulator (OSCR). Officials advised there were many resources and model articles of association etc. available, and becoming incorporated was not overly onerous in the context of the other responsibilities of owning land or buildings.228

336. We note the Minister’s commitment229 to bring forward amendments to include BenComs as a type of body which can make an asset transfer request for ownership of land, under section 53 and note BenComs are now defined under the Co-operative and Community Benefit Societies Act 2014.

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224 Development Trusts Association Scotland. Written submission.
225 Scottish Woodlot Association. Written submission.
226 Co-operatives UK. Written submission.
227 Social Enterprise Scotland. Written submission.
337. In addition we note from Scottish Government officials\(^{230}\) it will be for the public body to satisfy itself that the community body has an appropriate structure to take on the responsibilities involved. It may be appropriate for a 25 year lease to require the body to be a company or SCIO; whereas for a short lease or use agreement, an unincorporated association may be sufficient.

338. The Minister gave a commitment to look at the Co-operative and Community Benefit Societies Act 2014 and consider how this will impact on the implementation of the Bill. We are concerned to ensure as many community groups, as long as they have the right safeguards in place, can access ownership of an asset without delay.

### Committee Recommendations on Part 5

339. Some of our recommendations are directed at the changes required to public bodies to ensure the intention of the Bill is achieved in practice. Given this Bill has been found to be necessary we consider it vital progress is closely monitored. To allow that to happen we recommend the Bill require all public bodies to produce periodic reports. The following recommendations include areas to be set out in such a published report and other recommendations.

**Capacity of communities to request an asset transfer**

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

**Relevant authorities’ willingness to respond to requests**

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

**Timescale for consideration of an asset transfer request**

342. The Bill should stipulate a 6 month\(^{231}\) maximum time limit following receipt of community transfer body’s offer within which relevant authorities must conclude contracts unless otherwise agreed by all parties.

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

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

**Information to be provided to community groups**

345. To enable groups to assess the funding options available to them we recommend the Bill should stipulate that as a minimum the information listed at paragraph 315 be included in subordinate legislation.

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\(^{230}\) See footnote 228

\(^{231}\) See paragraph 311 for explanation of timescales
Publically available asset register
346. We welcome the Scottish Government’s commitment to require all relevant authorities subject to Part 5 of the Bill to provide a publically available asset register.

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

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

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

Definition of a community transfer body
350. The Scottish Government should specify which organisational structures it deems appropriate for ownership of assets.
PART 6: COMMON GOOD

Background

351. Part 6 of the Bill proposes to reform the law on common good assets held by Scottish local authorities. Sections 63 to 67 of the Bill place new statutory duties on local government in the way they acquire, handle, manage and dispose of assets held for the common good of the community ("common good assets").

352. The concept of “common good” property has its origins in the Middle Ages where local communities used areas of land/property for communal purposes. Over time such property and other assets became part of the Scottish burghs where they were administered on behalf of local inhabitants.\textsuperscript{232}

353. In today’s terms common good property is owned by local authorities for the common good of the inhabitants in their areas. Common good property can include land, buildings, moveable items such as furniture and art, and cash funds.

354. The Local Government (Scotland) Act 1973 (1973 Act) brought an end to the burgh system in 1975 by abolishing the town councils which had responsibility for the burghs. Their common good assets were, however, transferred to the new district or islands councils and then, in 1996, to the current unitary local authorities (Local Government etc. (Scotland) Act 1994 (1994 Act)) Common good property is, therefore, limited to those assets held by the burghs at the time of their abolition. No new common good property can now be created.\textsuperscript{233}

355. It is sometimes difficult to know whether property is part of the common good, and there may be restrictions on how certain items of common good property are allowed to be used and whether the local authority can dispose of them. Under the common law those that can be used for a different purpose or disposed of are called “alienable” and those which cannot are “inalienable”. In some cases this has to be decided by the courts.\textsuperscript{234}

356. Common good assets are required to be treated differently by local councils when compared to other assets a council holds. They enjoy a certain status and stand apart from other property owned by local authorities and in handling them consideration requires to be given to the particular purpose for which the land or other assets were originally granted to the burgh.

357. The governing framework for these assets is complex and combines elements of both statutory law enacted over time, as well as case law from judicial rulings.


\textsuperscript{234} Explanatory Note, paragraph 276
358. The Bill places a statutory duty on local authorities to establish and maintain a register of all property and assets held by them for the common good. It also requires local authorities to publish their proposals and consult community bodies before disposing of, or changing the use of common good assets.\footnote{Policy Memorandum, paragraph 4}

359. The Policy Memorandum explains the aim of Part 6 of the Bill is to increase transparency “about the existence, use and disposal of common good assets, and to increase community involvement in decisions taken about their identification, use and disposal.”\footnote{Policy Memorandum, paragraph 87}

Committee submissions

360. From the submissions received, the Committee’s oral evidence sessions, and external visits several key issues emerged:

- The definition of common good assets and resolving disputes;
- Assessing whether an asset is alienable or inalienable;
- The scale of the task and the resource implications of Part 6 of the Bill;
- The coordination, timescales and reporting on common good registers (“CG Register”)
- Equalities and devolved powers.

Defining common good assets and resolving disputes

361. The provisions of the 1973 Act in relation to common good assets continue to apply and it is the principal piece of primary legislation regulating the administration of common good assets by local government in Scotland. It does not define the “common good. Neither does Part 6 of the Bill provide a statutory definition of ‘common good’. Local authorities and others in Scotland rely on a series of common law definitions of common good from court rulings supplemented by statutory or regulatory provisions on such issues as how such assets are to be used and disposed of, or how they are to be accounted for in local authority accounts etc.

362. The Policy Memorandum states—

“These provisions do not seek to provide a new definition of common good. Inclusion on the register, or exclusion from it, will not determine whether property is in fact common good. Given the complexity of the subject, there is a high risk that any such approach might not cover all existing assets which are considered to be common good, and might cover things which are currently excluded. Rather, the intention is to provide an opportunity for community councils, other community bodies and individuals to see what the local authority considers to be common good property, and to highlight any items they believe should be included (or omitted). It is not intended that local authorities will be expected to legally verify the status of every
item on the register or proposed during the consultation; this will normally only be necessary if there is significant dispute.”

363. The issue of a definition for common good was raised by a number of witnesses. Glasgow City Council in its written submission stated—

“One of the main difficulties encountered by local authorities in dealing with common good issues is determining what actually constitutes ‘common good land’. The existing law on common good is obscure and uncertain due, mainly, to the lack of legislation in the area and the absence of definitive and clear case law. The Bill does not attempt to “define ‘common good land’ and no guidance is given as to which assets ought to be included in the Register.”

364. Jim Grey of Glasgow City Council, set out the scale of the task facing a council like Glasgow—

“Glasgow City Council might have in the region of 20,000 title deeds to look at. I am not commenting on what proportion of those could fall within the common good definition, but if you want to do an exhaustive analysis, you will require to look at them.”

365. The Society of Local Authority Lawyers and Administrators in Scotland (SOLAR) also raised the following concerns—

- “How and in what circumstances moveable assets held on the common good account [of a local authority] could be disposed of? The legislation is currently silent on this point;

- Definitions of “alienable” and “inalienable” common good. The lack of clarity on these definitions has resulted in the Keeper of the Registers of Scotland refusing to issue a full title indemnity on the sale of any common good land, even where the property is clearly alienable;

- Ideally, the Bill would attempt to define common good rather than having to rely on less than perfect common law definitions.”

366. Commenting on this, Andrew Ferguson of SOLAR stated the main problem with the management of common good assets by local authorities “is uncertainty about the law”. He pointed out the Bill provides an “opportunity to clarify that situation”, adding—

“If property had been held on the common good account or had been acquired and put on the common good account, it would be difficult for a
council, even now, to claim that it was not common good. I do not really see that as a difficulty. I suppose that you could expand the definition to talk about the common good account, so that if property had been acquired after the burgh days it would be included in that definition, but I just do not see it being too difficult."242

367. Mr Ferguson added “people have argued that there is a risk that doing that could exclude something that people have always thought was common good” but he felt that “with a bit of thought, that need not necessarily be the case”.243

368. However, he insisted “defining common good is not terribly difficult”... Indeed, a definition of common good land would also be useful. At the moment, the situation relies on lawyers interpreting some very old case law, and it would be far better if we had modern legislation that anyone could read and make a decent stab at understanding.”244

Disputes over common good assets

369. The Policy Memorandum states it is “not intended that local authorities will be expected to legally verify the status of every item on the register or proposed during the consultation; this will normally only be necessary if there is significant dispute.”

370. Dr Lindsay Neil of the Selkirk Regeneration Company spoke from the perspective of a group who would seek to engage with its local authority on the drawing up and maintaining of a common good register—

“The bill should aim to restore to communities their control and influence over what happens to their common good fund. It should also act as a referee on the management by local authorities of common good funds, because we have had experience—and new examples are still cropping up—of failures by local authorities to observe the existing regulations, never mind any change in regulation. The main thing is to involve local people, because the best guardians of property are its owners.”245

371. Recent cases in Edinburgh and East Renfrewshire246 appear to demonstrate disputes over common good assets can be time consuming and expensive, as well as very detrimental to good community relations.

372. Jim Grey of Glasgow City Council outlined some of the additional expense faced by the Council and explained why they sometimes seek external legal advice on common good assets—

243 See footnote 242
244 See footnote 242
245 Scottish Parliament Local Government and Regeneration Committee, Official Report, 5 November 2014 column 4
“We take that course of action to minimise disputes. Other parties and stakeholders might not agree with the legal advice that we receive from our own solicitors; we will want to create a degree of independence; and such a move stops just short of our going to court. That is the only reason why we would do that, because in general we rely on our own legal advice.”

373. We also heard from Audit Scotland. Responding to comments about its consideration of common good assets it recognised the importance of these issues for communities noting that although councils have made significant strides in registering common good land, buildings and other assets they have made different choices about the priority that should be attached to reconstructing historical records. Audit Scotland recognised making information complete would be a very expensive and possibly impossible task.

374. A further concern raised is the approach taken by the Keeper of the Registers of Scotland who, we were told, had indicated a full title indemnity on the sale of any inalienable common good land could not be issued without court authority. The Minister did not consider the issue to be relevant stating—

“I am not requiring all common good assets to be registered with the keeper of the registers of Scotland or with the land register. The common good register should be a user-friendly register that people can understand and which can trigger their involvement when decisions are being taken about the disposal of assets.”

375. Nevertheless we wrote to the Keeper on this issue who advised—

“One of the changes made by the coming in of the 2012 Act [Land Registration etc. (Scotland) Act 2012 which commenced on 8 December 2014] is to make rectification of the register more straightforward, by breaking the link to the warranty scheme (which replaces indemnity). Accordingly, the consequences of a wrongful registration decision are easier to correct. I anticipate that this may shift the balance in dealing with these borderline cases. In particular, I will be less likely to limit warranty in the majority of cases where the applicant for registration is able to certify the validity of the deed implementing the transfer, bearing in mind that I am entitled to be compensated by the applicant if they fail to comply with the new duty to take reasonable care to ensure that I do not inadvertently make the register inaccurate.”

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250 Registers of Scotland. Written submission.
376. The Minister did not believe definitions of common good or inalienability are necessary for the Bill.\textsuperscript{251} As an alternative he suggested—

“…current CIPFA guidelines are clear that the best professional practice is that local authorities should maintain a separate register of their common good assets, so it should not be a significant cost or bureaucratic exercise to fulfil the bill’s requirements. I fear that the understanding of some local authorities might be that they have to clarify title deeds and have them registered, but that is a different interpretation.”\textsuperscript{252}

He added we--

“…chose not to [define common good] because there is an understanding of what common good is at the moment. If people are carrying out their duties with the CIPFA guidance in mind, they should already have an understanding of what common good is…. Frankly, I think that [a definition] would be a feast for lawyers, and I do not see the need for that.”\textsuperscript{253}

\textbf{Alienable vs inalienable common good assets}

377. As stated earlier, there may be restrictions on how certain items of common good property are allowed to be used and whether the local authority can dispose of them. Those that can be used for a different purpose or disposed of are called “alienable” and those which cannot are “inalienable”. In some cases this has to be decided by the courts.

378. Following recent cases\textsuperscript{254} in which the courts rejected attempts by local authorities to utilise inalienable land to build new schools we were advised this has created an anomaly with disposal of inalienable land to a third party for commercial purposes being permitted without the need for any authority.\textsuperscript{255}

379. Dr Michael Pugh and Dr John Connolly of the University of the West of Scotland called for the Bill to provide “clearer steps for community groups taking control of common good property”.\textsuperscript{256}

380. Fife Community Safety Partnership expressed general concern in terms of the division of common good assets into alienable and inalienable and the problems this can cause in terms of determining whether a common good asset can be disposed of without court consent. The Partnership suggested the Bill—

“provide more certainty for local authorities and communities alike as to what common good property needs consent for disposal, and what does not. This could be provided by a requirement on local authorities to maintain, in their register, separate lists of what they consider to be alienable and inalienable common good property; to do this, it would be

\textsuperscript{253} See footnote 251
\textsuperscript{254} See paragraph 246
\textsuperscript{255} Fife Community Safety Partnership. Written submission.
\textsuperscript{256} Dr Michael Pugh and Dr John Connolly. Written submission.
extremely helpful to have a statutory definition inserted. Again, this would
not in itself be overly difficult. It would be a case of codifying the existing
case law and ensuring that the definition was as clear as possible.\footnote{257}

381. Both SOLAR and Glasgow City Council were anxious to ensure Part 6 of the
Bill was clarified so that the transfer of common good assets, under Part 5 of the
Bill, from councils to community ownership was made easier, and not inadvertently
made more difficult. It was suggested to us “if the community has a plan for it, why
should it not be able to take on that asset without there being blocks standing in
the way?”\footnote{258}

382. Dr Lindsay Neil of the Selkirk Regeneration Company pointed to the issue of
community benefit of common good assets. He contrasted this against the role of
local authorities holding the title to assets and the importance this has for common
good—

“A fine distinction avoided by many people is that the Local Government
(Scotland) Act 1973 did not confer to local authorities the entire ownership
of common good funds. It transferred the title, not the beneficial ownership.
The beneficial ownership remains with the citizens as a form of power and,
in the present day and age, they have very little say indeed in what
happens to their common good fund.”\footnote{259}

383. On the decision not to define common good assets in the Bill the Minister
stated “the same reasons apply [for not defining common good] because of how
common good has been constructed over the years. Some approaches are
centuries old and some are the construct of changes to local authority
structures.”\footnote{260}

384. Responding to the transfer of common good assets to community groups
under Part 5 of the Bill, the Minister stated— “there would be no restriction on a
community body using, managing or leasing such an asset—transfer of ownership
or disposal is the issue—as long as that fits with the use for which the property
was acquired.”\footnote{261}

The scale of the task and resources implications
385. In considering the evidence received on common good there was a lack of
knowledge on the extent of the task involved in estimating the scale and extent of
the work required by councils in complying with Part 6 of the Bill.

\footnotesize{\begin{itemize}
\item \footnote{257} Fife Community Safety Partnership. Written submission.
\item \footnote{258} Scottish Parliament Local Government and Regeneration Committee, \textit{Official Report}, 5 November 2014, column 7
\item \footnote{259} Scottish Parliament Local Government and Regeneration Committee, \textit{Official Report}, 5 November 2014, column 4
\item \footnote{261} Scottish Parliament Local Government and Regeneration Committee, \textit{Official Report}, 12 November 2014, column 26
\end{itemize}}
386. Jim Gray of Glasgow City Council told us there was a significant potential task facing the Council in assessing the title ownership of its assets, both for the purposes of common good and more generally.262

387. Audit Scotland stated that at 31 March 2011, councils managed common good assets valued at £219 million. While this accounts for less than 1% of the estimated total value of council owned property assets (then valued at £35 billion), common good assets often have strong historical and emotional value to local communities, as well as being of practical use to them.

388. Many who gave evidence referred to the administrative task facing councils in relation to the common good provisions of the Bill. For example North Ayrshire Council referred to the challenge it faced in—

“identifying all of the community bodies which are known to the authority. Central registers will require to be established, which can be accessed when representations are required to be offered.”263

389. This concern was also echoed by Highland Council. They pointed out that as a local authority, they have—

“…responsibility for administering ten different Common Good Funds… In relation specifically to Community Councils, the current wording in the Bill would require Highland Council to consult with all 156 Community Councils in its area on the establishment of a register and each disposal of property across any of the funds.”264

390. Highland Council went on to “strongly suggest” the wording [in the Bill] be amended to read “consult only with Community Councils that represent the inhabitants of the areas to which the Common Good related prior to 16 May 1975.” Community bodies agreed, Kincardine and Mearns Community Planning Group stated it would be “unmanageable and unadvisable that every community council in Aberdeenshire be located on every possible change of use of common good land”.265

391. In certain local authorities common good assets make up a large proportion of total assets. Community Planning Aberdeen stated—

“Aberdeen City Council’s Common Good makes up approximately a third of the total city assets therefore Aberdeen has one of the most substantial asset bases of Common Good land in Scotland”.266

392. In response to the debate around the costs of the provisions of the Bill to local authorities, and especially on the compilation of Common Good Registers, the Minister said—

263 North Ayrshire Council. Written submission.
264 Highland Council. Written submission.
265 Kincardine & Mearns Community Planning Group. Written submission.
266 Community Planning Aberdeen. Written submission.
"The bureaucracy—the cost of servicing the process—could easily be subsumed. Take the common good requirements, for example. The Chartered Institute of Public Finance and Accountancy already requests that the register—the understanding of assets as they relate to common good—be kept separate from mainstream council funding. Therefore, it should not be too onerous to produce a register of what is in the common good fund and what those assets are. The question is then about how we engage with communities. If the public sector engaged more collaboratively—through community planning partnerships, for example—it could remove some of the costs of duplicating the consultation by consulting just once, properly and more effectively."  

The coordination, timescales and reporting on common good registers ("CG Register").  
393. It is clear local authorities have had a scattergun approach to common good registers. Given the pressures placed upon them over the last 30 to 40 years in terms of delivering complex and interlinked public services, it is perhaps not surprising that common good had not featured as a priority in their work.  
394. Responding to the view that the public would find it hard to understand how a local authority was unable to state with any certainty all of the assets under their control, Jim Grey of Glasgow City Council responded—

"We have a register, but we regard it as imperfect. We are trying to perfect it and to make it as comprehensive as possible… It is regrettable, but the matter is very complex and over years and decades local authorities have perhaps not given it the priority that they might have."  

395. Andrew Ferguson of SOLAR told us—

"I do not see why the timescale for producing a common good asset register should not be fairly short. As colleagues have said, most local authorities have a common good asset register of some sort. The first step, in terms of the legislation, is to publish those registers, which will lead to a discussion. There is no doubt that community interests will have local knowledge; I know that because we have been through the process in Fife. That local knowledge will feed in and help to create a robust common good register. I see no reason why the timescale for initial publication, as proposed by the bill, should not be short. However, getting to the end of having a common good asset register that is absolutely 100 per cent accurate is a bit like painting the Forth bridge."  

396. Responding on timescales for local authorities to draw up registers, the Minister told us he would consider whether that should be set out in regulations.

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267 Scottish Parliament Local Government and Regeneration Committee, Official Report, 12 November 2014, column 4  
Committee Recommendations on Part 6

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

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

399. We note evidence on the impracticalities of being required to consult all community councils within a local authority area on specific common good assets, especially geographically larger councils. The Bill should be amended to permit regulations to allow for a necessary degree of flexibility.
PART 7: ALLOTMENTS

Background

400. Existing allotments legislation is a complex area, particularly in relation to land owned by local authorities. The principal legislation governing allotments is the Allotments (Scotland) Act 1892 as amended by the Land Settlement (Scotland) Act 1919 and the Allotment (Scotland) Acts of 1922 and 1950. These acts currently detail the duty of local authorities to provide land in their local area for allotments, and the conditions under which this duty is placed. The legislation also gives local authorities powers to provide sufficient numbers of allotments in their area by purchasing or leasing suitable land.

401. Further, the 2003 Local Government Act (Part 3) creates a discretionary power which enables local authorities to do anything they consider is likely to promote well-being of their area and/or people.

402. Part 7 of the Bill proposes to repeal the existing legislation (that specifically relates to allotments) and make a new “updated, simplified and clarified” provision for allotments. The Policy Memorandum notes this was considered to be a more straightforward approach than to seek to amend the previous legislation. The new legislation includes the restatement of existing legislation where appropriate.

403. The Scottish Government published its first National Food and Drink Policy, Recipe for Success in 2009, which included a commitment to strategically support allotments and community growing spaces. Following on from this publication, the Grow Your Own Working Group was established in 2009 and their report (Grow Your Own Working Group 2011) contained a recommendation to amend the existing legislation governing allotments. The Group specifically highlighted the need to review the duties placed on local authorities in this area.

404. In addition to two consultations on the Bill, the Scottish Government also held a separate consultation on the proposed allotments legislation in April-May 2013, which they advise has informed the detail of the provisions in the Bill.

405. The provisions in Part 7 of the Bill seek to ensure local authorities have a duty to provide allotments and to manage requests through the maintenance of a waiting list. Local authorities also have a duty under the Bill to take “reasonable steps” to provide a sufficient number of allotments to ensure that waiting lists are kept below a specified target. This part of the Bill also defines the duties of local authorities in respect of running, maintaining and reporting on their allotment sites. This includes preparing a food-growing strategy and an annual allotments report. The remainder of Part 7 relates primarily to local authority powers to manage allotments and to the rights of allotment tenants in respect of these powers.

Committee submissions

406. Initially only a relatively small number of submissions received focussed on allotments. Given the community focus of this part of the Bill, we undertook an additional public engagement programme to seek the views of allotment holders and communities from across Scotland on the issues surrounding the role of
allotments, access to land and food growing space and how community-based food initiatives could add to physical, economic and social well-being. As part of this process we undertook fact-finding visits, produced a short internet video and made use of social media to engage with people and communities. Annexe D sets out the extent of this in more detail, as well as containing responses we received via social media.

407. A number of areas highlighted were examined further through the Committee’s oral evidence sessions. These matters can be summarised under the following main heading:

- The number of allotments
- Provision of allotments
- Size of an allotment plot
- Availability of land for allotments
- Food growing strategy
- Food growing skills
- CPPs, food growing strategies and cultural change
- Equality and accessibility

**The number of allotments**

408. The number of allotments in Scotland has fluctuated greatly over the last century. The high water mark for allotment use came towards the end of World War II, owing to rationing and the need to generate food during the war, when there were approximately 65,000 allotments in Scotland. Since then numbers have declined.

**Provision of allotments**

409. We heard “more than half” of the current stock of active allotments are “in our four main cities, and the rest—fewer than 3,000 of the 6,500—were scattered across the rest of Scotland”.270 And we were told statistics show there are currently about 4,500 people on waiting lists in our four main cities.271

410. While there is existing legislation to regulate the operation and management of allotments in Scotland, there is currently no statutory duty on local authorities to provide members of the public with allotment sites. Part 7 requires local authorities to “take all reasonable steps” to provide an allotment to those who request one.

411. Scottish Allotments and Garden Society (SAGS) was concerned local authorities would reduce plot sizes to meet demand. Others suggested many people did not put their names on waiting lists as the wait was too long. John Hancock told us “There is a need for provision for people who arrive in town and want to just get on with things rather than putting their name on a waiting list in the expectation that they will still be living in Glasgow in five years’ time.”272

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412. In this regard the Minister told us—

“…councils must take all reasonable steps to satisfy demand. We are not talking about some absolute trigger point whereby, when a certain level is reached, allotments must be produced within said time in said place for said people, because that would take away from the flexibility of local authorities to adapt to circumstances. It is about taking all reasonable steps to meet the demand.”

Size of an allotment plot
413. The ‘traditional’ size for an allotment plot was about 300 square yards, or about 250m\(^2\). SAGS is keen to see this specified in the Bill. It was also concerned about the lack of precision when referencing the size of an allotment and proposed the Bill should refer to a normal plot as being 250m\(^2\), which could then be subdivided into halves or quarters to suit local circumstances.

414. SAGS justified the need for a normal size to be set in term of allotment plots—

“A 250m\(^2\) plot is sufficient for someone to feed a family of four. Plots that are smaller than that will not have that capability.”

415. We explored issues around flexibility for local authorities, and others, to meet the demand for varying types of growing spaces, suitable to the needs of the applicant.

416. Mr Hancox, who has petitioned the Parliament regarding the right of access to land to grow food, told us “small-size growing, which can be growing in a square metre, a barrel or in a flower pot on a windowsill, is all great and I would encourage all of it.” He continued—

“Although I am very much in favour of increasing allotment provision, I think that it is essential that we allow considerable flexibility, whereby local authorities and other agencies can allow land to be used for a period of time without getting too bogged down in legal hurdles…..There has to be a partnership approach with landowners. That is critical. My petition looks at publicly owned land—health board land, local authority land and so forth.”

417. Responding to the need for local authorities to have flexibility in the provision of growing spaces, SAGS stated—

\[ \text{Citations:} 273 \text{ Scottish Parliament Local Government and Regeneration Committee, Official Report, 12 November 2014, columns 6-7} \]
\[ \text{274 Scottish Allotments and Gardens Society. Written submission.} \]
\[ \text{275 Scottish Parliament Local Government and Regeneration Committee, Official Report, 5 November 2014, columns 21-22} \]
\[ \text{276 Scottish Parliament Local Government and Regeneration Committee, Official Report, 5 November 2014, column 25} \]
\[ \text{277 Scottish Parliament Local Government and Regeneration Committee, Official Report, 5 November 2014, columns 22-23} \]
“I take your point about flexibility. We want the 250m$^2$ there as a reference standard, not as an obligatory standard that has to be applied in all instances. Part of the response that we have had to our concerns about the removal of any reference standards is that, if it appeared that the majority of plots provided through local authorities in future were reducing in size, action could be taken but, if there is no reference standard, what would that action be based on?”  

418. The Minister told us the Government wished to be “quite flexible” and to “not be too prescriptive” by leaving it up to local authorities “to decide the size and nature of allotments”. He sought to reassure local authorities that the Bill “will not place a huge new burden on them, but it will certainly move things along more proactive lines.”  

419. On a standard size for allotments he stated—

“...the spirit of the legislation is that the trigger point encourages a local authority to meet demand, which might simply be for a space to grow things in, not necessarily for an allotment of a set size. We want local authorities to be able to define that for themselves. It would send the wrong message about empowerment and localism if I determined everything centrally in Edinburgh, including the size of an allotment, when, for good reason, local variations might be required in relation to things such as the size and nature of a site or the size of allotment that local people want.”

420. He noted also the Government “have powers under the bill to prescribe the size of allotments, if necessary.”

Availability of land for allotments

421. Many local authorities raised concerns about the cost of providing suitable land to meet the statutory duty placed upon them by Part 7 of the Bill. Access to suitable land is, in many respects, central to the discussion around the provision of allotments and access to space for growing food.

422. Much of urban Scotland has parcels of land which are, or could be, made available for cultivation but which are currently sitting idle and not being used for a variety of reasons. Three categories of such land were referred to in evidence to us.

423. The first category is vacant or derelict land earmarked for development at some future point for other uses, such as for house construction, or commercial or retail development. Such land may be owned either by public or private interests, and its interim use is often referred to as meanwhile land (i.e. land which is used

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280 See footnote 279
for a temporary purpose, such as food growing, until such time as it is required by its owner to use for some other form of development).

424. The second category is vacant or derelict land which may be unsuitable for growing due to contamination of the soil with the by-products of its former use. Often this land is former industrial land which may contain hazardous material, chemicals or heavy metals making the land unsuitable for cultivation without remediation and decontamination works being carried out.

425. The final category is land currently used for other purposes, such as parks, green spaces, or land which either forms part of the grounds of existing public or private buildings (e.g. hospitals, offices, or other buildings) or land which is adjacent to major infrastructure systems (such as the road and rail networks, water infrastructure or other areas).

426. Speaking about vacant and derelict land, and its potential usefulness in cultivation and growing areas, John Hancox told us “in Glasgow, there is around 3,000 hectares of vacant and derelict land. There are vast areas of what is known in the trade as green desert—great areas of grass where nothing happens.”

427. Nourish Scotland suggested—

“... we need more ground under community cultivation, whether that is allotments or community gardens. There is 300 hectares of derelict land in Edinburgh alone ... Less ground is being used for allotments in Scotland than there is derelict land in Edinburgh.”

428. Nourish Scotland said there was a need to approach the provision of allotments as part of a much wider strategic process of land reform, and to seek to see such land as a resource to be utilised—

“A strategic approach to supporting allotments and community gardens and, as John Hancox said, using land that is not being used for other purposes will form part of a much more strategic approach by local authorities to promoting local food growing and more sustainable food consumption and reducing food inequalities. We have to see food as part of a much more strategic approach. We also expect that the new land reform legislation will broaden our approach to looking at the use of land in the public interest and for the common good.”

429. We have been impressed by the meanwhile use of land as a method to provide access to growing space for community-based projects, such as the Grove Garden Project at Fountainbridge in Edinburgh. We took the example of the Grove as the basis for a short engagement video to seek further engagement from the public on this Part of the Bill. This video can be viewed on the Parliament’s

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283 See footnote 282
YouTube Channel and Annex D contains examples of the feedback in response.

430. The Federation of City Farms and Community Gardens (FCFCG) spoke of the “potential to use a lot of derelict and underused land” at present. We were told “in Glasgow, the stalled spaces programme has been quite successful in using such land. Guerrilla gardening is but one type of community gardening that people can do to make use of that kind of land.”

431. Nourish Scotland while pointing out the costs associated with decontaminating such land spoke of “good examples of growing on derelict contaminated land” using systems such as raised beds and the like.

432. The FCFCG told us that the “grow your own working group recently launched a contaminated land guide for groups wishing to assess whether their land is contaminated. There could be more support for organisations that are doing that kind of work.”

433. Responding to the view that a broader approach should be taken by requiring land owning public sector bodies to have a duty in relation to both the provision of allotments and the food-growing strategies, the Minister stated—

“That is a very helpful suggestion. ….I would expect a local authority to be able to work with other public sector—or even private sector—partners to identify suitable sites…. Although the absolute duty rests with local authorities, I would expect them to work with other public sector partners, whether the police service, the fire service or the health service, to meet that demand. That would be an example of the true joint planning and resource management that we intend to take place in community planning partnerships.”

Food growing strategy
434. Part 7 also introduces a statutory requirement for local authorities to draw up and maintain a food growing strategy. The requirement reflects the growing awareness of the need to promote sustainable food production locally, and many local authorities already have food growing or horticultural strategies in their areas. This provides an opportunity to link several policy developments together, namely local food growing strategies, the national food and drink strategy and community planning.

435. In its written submission, Nourish Scotland noted—

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“the local authority is also under an obligation to prepare a food growing strategy within two years of the Bill coming into force. The strategy should also identify areas that might be used to provide allotment sites or other areas of land that may be used for community growing. This must be reviewed every 5 years but there is no requirement to report on it.”

436. On 20 November 2014 the Parliament debated the progress to date of A Recipe for Success, and considered how it would be improved and built upon. During the debate reference was made to the need to develop food growing and horticultural skills amongst the public, especially children.

437. Responding to questions about the need to encourage children to take part in gardening and food growing the Cabinet Secretary for Environment and Rural Affairs, Richard Lochhead, said—

“…we have fantastic, nutritious food on our doorstep but not enough people, particularly our children, enjoy and have access to it. If we can make that happen, it will also be good for our economy.”

438. During this debate Alex Rowley MSP said the national food and drink policy, and the provisions of the Bill – especially those relating to allotments – should complement each other—

“…I think that it is important that we look right across Government. The Community Empowerment (Scotland) Bill, which is currently being scrutinised, has a part on allotments. A lot more can be done….local authorities must be a clear partner in the strategy. They are doing a lot of work.”

439. Nourish Scotland indicated a need for a wide approach—

“We should not focus our allotments policy on the existence of waiting lists. We should have a clear public policy that we want to see more people growing more of their own food. It is part of community empowerment and part of a resilient food strategy.”

“We think that the food-growing strategy should include clear provision for traditional allotments, for the use of meanwhile land for community growing, and also for more ambitious larger-scale programmes.”

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290 Nourish Scotland. Written submission.
293 Meeting of the Parliament, Official Report 20 November 2014, column 45
Food growing skills
440. The FCFCG highlighted that “more thought needs to be given to strategically addressing the skills and resources of community groups”. They told us there “is a massive skills gap in horticulture at the moment, and the food-growing strategy seems to be an opportunity to address that at a local authority level”.297

441. SAGS also reflected concerns over the “lack of knowledge and skill” which exists in terms of food growing and gardening, one of the reasons for which is the fact that the “allotment world has shrunk so much that it is not something that features in many people’s experience any longer”. SAGS went on to state—

“…community gardens and the other smaller growing initiatives all have a part to play. That is where people will learn, so there is undoubtedly a value to all that, but there needs to be a mechanism to allow for people who learn and then want more”.298

CPPs, food, growing strategies and cultural change
442. The Parliamentary debate on 20 November reflected a theme we identified in our scrutiny of this Part of the Bill, namely how allotments and community food growing projects can empower communities, not only assisting them in becoming food resilient and reducing their dependency on food banks, but also to assist towards promoting a food-growing economy.

443. In their evidence to us, Nourish Scotland said “there should be an emphasis on a community food economy in and around our cities and that food-growing strategies should contribute to developing that.”299

444. Nourish Scotland did not consider the Bill would support the Government’s strategy of providing allotments and food growing space, it suggested a wider cultural change was necessary.300

445. John Hancox was more positive, suggesting the Bill—

“has the potential to change the culture in local authorities and institutions such as the Forestry Commission, so that they can use their considerable landholdings and financial clout to enable community engagement and develop growing.”301

He added—

“There ought to be a culture in which people are able to identify bits of ground that are not being used and can then dig holes and get on with it. The essence of community empowerment is that people are able to get on with it. The onus should be put on to local authorities and others to be

300 Nourish Scotland. Written submission.
301 See footnote 297
supportive and to enable that process to happen, rather than to create onerous frameworks that put a lot of responsibilities around public liability on to the local groups, which can be difficult for groups that are not terribly powerfully constituted to deal with.”

CPPs, National Performance Framework and local development plans

446. Many we heard from suggested there was potential for food growing strategies to provide the platform necessary to ensure allotment policy and provision of food growing space becomes a central element of community planning.

447. This, in turn, could ensure all CPP partners, and not just local authorities, become responsible for the delivery of allotments and food growing space.

448. Nourish Scotland spoke of the link to outcomes and the importance of ensuring the forthcoming sustainability United Nations goals are integrated into food growing strategies from the outset—

“We welcome the part of the bill that focuses on outcomes being part of community planning. We want to see an outcome related to food squarely in the middle of the new set of outcomes that are agreed with local authorities’ post-2016. We would want them to draw on the new, post-2015 United Nations sustainable development goals, which are being published next year and which include the strategic goal to end hunger, improve nutrition and promote sustainable agriculture. Once those UN goals are in place, they will frame a lot of the single outcome agreements. Once an outcome relating to food is part of the national performance framework, we will see a much greater focus by local authorities on food-growing strategies.”

449. In response to a question as to whether allotments and garden spaces should feature in councils’ local development plans, SAGS responded “yes” and said—

“It is important that people get decent affordable housing, but it is equally important that land is set aside for some type of growing activity or whatever type of green space activity that people want.”

450. Nourish Scotland called for food growing strategies to deliver “far more allotments and community gardens in Scotland,” adding a concern “the bill does not have any levers to require that to happen. The framework of single outcome agreements is the lever that we need.”

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303 Scottish Parliament Local Government and Regeneration Committee, Official Report, 5 November 2014, column 21
451. During our visit to Fort William we were told of the work of Sunny Lochaber Urban Gardeners ("SLUG"), and how they had in 2010 established allotments on land provided by the Forestry Commission owing to a lack of suitable allotment land in the Fort William area.

452. Up until now most of the produce generated by SLUG has been for the personal consumption of the allotment holders and their immediate families. However, SLUG now has ambitions to move into the commercial food growing economy, by selling its produce to local people and businesses (such as restaurants and hotels etc). This is where the commercial restrictions of allotment legislation intersect with the social, commercial and empowering effects which successful community-based allotment and food growing enterprises have, as well as clashing with the longer term aspirations of those involved. SLUG recognised with this might come a need to change its legal basis.

Equality and accessibility
453. The need to ensure the Bill delivers allotments and growing spaces which are accessible to all sectors of society was raised with us.

454. The Glasgow Third Sector Forum sought to ensure the allotments provided under Part 7 of the Bill were accessible and they recommended the Bill be amended by—

“adding a requirement to include a proportionate number of accessible allotments in any new allotment, for use by wheelchair users and buggies. Accessibility aspects would include wide, all-weather decking and raised planting areas. For all existing allotments, we recommend that accessibility be phased-in over five years from the date of the implementation of the Bill. This equalities-based suggestion would clearly need to be resourced, and public bodies should be encouraged or required to make provision for this.”

455. Similar issues were raised during our fact-finding visits to Glasgow, Dumfries and Fort William. Several allotment holders expressed concerns about a lack of accessible or suitable growing space by local authorities. Many felt the Bill should specifically reflect the benefits to wellbeing and health which allotments and growing space can have for people.

456. These points were acknowledged by the Minister when he told us—

“It is fair to say that we need to expand our communities’ capacity, but we need to make the approach more consistent and to build in legislative provision to tackle inequality. In the guidance, we are very mindful of the inequalities that exist and of the fact that there is not a level playing field.”

457. He mentioned a proposed amendment at stage 2 which we understand will broaden the definition of “disability”—

“That is necessary so that, when people are weighing up decisions on asset transfers and so on, they think about inequalities. Local authorities might well want to consider that more fully in relation to allotments.”

Committee Recommendations on Part 7

458. A consistent message we have taken from our scrutiny of Part 7 of the Bill is the opportunities for community empowerment and physical, mental and social well-being through access to allotments and food growing space. In essence it is the basis for a shared community of place and interest, providing many with networking links, and human interaction.

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

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

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

462. The Scottish Government should indicate how it will ensure CPPs are required to engage private and commercial sector land owners to assist in supporting food growing and allotments. As examples such as the Grove Project in Fountainbridge have shown, there are economic and commercial benefits for private landowners to engage and support food-growing strategies.

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

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

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308 Scottish Parliament Local Government and Regeneration Committee, Official Report, 12 November 2014, column 34
465. We recommend the community-based allotment and food growing sector be encouraged to become part of a viable empowering food economy while also ensuring the land available to them is not taken advantage of by the larger scale commercial food production industry. We look forward to an appropriate amendment loosening the restrictions in section 87 to make this clear.

466. The need to ensure allotments and food-growing strategies support the equality agenda is an important one. We welcome the proposed Stage 2 amendment to ensure the provisions relating to physical disabilities address a broader definition of disability and inequality.
PART 8 NON-DOMESTIC RATES

Background

467. Part 8 of the Bill introduces a new power to allow local authorities to create localised relief schemes relating to non-domestic rates (“NDR”). These are also known as “business rates” and are a property based tax charged on properties used as businesses (e.g. shops, offices, warehouses and factories) and the public sector. As at 1 April 2012 there were 217,598 properties subject to non-domestic rates.

468. The rates liability for each property is determined by taking the rateable value and multiplying by a rates poundage set annually by the Scottish Ministers, less any relief to which a ratepayer may be eligible. The rates poundage rises annually, usually in line with inflation.

469. The Scottish Government has a series of relief schemes that are aimed at helping businesses by reducing their rates bill. The main relief is the Small Business Bonus Scheme aimed at supporting small to medium enterprises and business start-ups. Other reliefs include empty property reliefs and reliefs for charitable properties and properties in rural areas. Agricultural land is generally exempt from NDR.

470. In 2011, 57% of business properties paid zero or reduced rates. Currently reliefs are set centrally by the Scottish Government, with local authorities having very limited scope to vary the terms locally.

471. NDR income is currently the single largest source of revenue under the control of the Scottish Government and in the last five years has been increasing annually, principally as rateable values have increased.

472. The administration of business rates and relief schemes is a matter for each local authority. The income is pooled at a Scotland wide level and distributed to each local authority as part of the local government funding settlement. Once set local authorities are guaranteed to receive the amount stipulated, with central government making up any shortfall and local authorities returning any excess collected.

473. This differs from other arrangements for example the Business Rates Incentivisation Scheme (BRIS) which, from 2013/14, allows an authority to keep 50% of any rates growth with the remainder being passed to the Scottish Government.

474. With reference to Part 8 of the Bill the Policy Memorandum states “there will be no restrictions on this power; local authorities will be able to grant the relief to any type of ratepayer or for any reason, as they see fit.” But, it goes on to state that any reliefs “will need to be fully funded by that authority, so it will need to balance the interests of taxpayers across its area.”

309 Policy Memorandum, paragraph 103
475. The Committee sought elaboration on the potential uses of the power in this Part. The Government replied—

"Relief could be granted to a sole property, a street, a town centre or a particular type of business or sector. They could be used, for example, to support or create employment, or to encourage regeneration of a particular area." \(^{310}\)

The reply add relief--

"will vary depending on local economies and communities. By reducing business rates taxation local authorities may, for example, reduce the overheads of community based groups, or owners/occupiers of properties that otherwise support vulnerable communities, or could incentivise such groups to occupy premises they could not otherwise afford." \(^{311}\)

476. These provisions were consulted upon as part of a wider consultation on reform of business rates by the Scottish Government in 2013, Supporting Business, Promoting Growth and received a high level of support (75% of those who expressed a view).

477. The summary of responses to the Government consultation concluded—

"The creation of a new power for local Councils to offer their own localised discounts on business rates was viewed by most consultees as a positive step, including by a majority of Councils themselves. Such a power could, for example, be used to attract new or support existing businesses."

478. Overall forty-one respondents to the Scottish Government consultation supported the proposal with 13 against. The Committee were interested to note that more councils (5) opposed the proposal than business representatives (3).

479. 13 respondents said councils should not have flexibility to introduce and fund relief schemes to reflect local circumstances and priorities. The main theme was the need for uniformity across Scotland. Some said non-domestic rates are a national tax and, as such, there should be limited differences across Scotland while another felt this flexibility might favour large councils. Another noted it may lead to businesses playing councils off against each other.

480. One response from business representative organisation/ trade body groups was illustrative—

"Consistency between Local Authorities is important and we would not wish to see a return to the 32 Scottish Councils having flexibility to set their own poundage rates or fund relief schemes. We believe such flexibilities could only be funded by other local existing business rates payers, increasing their bills and acting as a disincentive to investment. This would create a competitive distortion."

\(^{310}\) Q&A 135  
\(^{311}\) Q&A 132
481. Consistency was also a theme in other responses as well as funding considerations with neither local authorities nor existing local businesses keen to fund discounts.

Committee submissions

482. Only a few respondents to the Committee’s call for evidence commented on Part 8. Argyll and Bute Council were of the view—

“there should not be any flexibility to introduce local relief schemes as NDR is a national tax which local government collects on behalf of the Scottish Government and as such there should be very limited difference in how this is levied across Scotland.”

483. They were particularly concerned they would be—

“subject to many more calls for us to offer rates relief e.g. in response to roadwork disruptions. However it will usually be difficult to fit individual circumstances into an overall “scheme” - which is what is required under this new legislation.”

484. In evidence to us John Mundell, Chief Executive Inverclyde Council highlighted an advantage of the provisions in Part 8 of the Bill—

“They will allow a local authority to take notice of specific local conditions, possibly right down to an individual street or particular community in a local authority area, and to target that area to help incentivise and support businesses.”

485. Garry Clark from Scottish Chambers of Commerce suggested—

“The power to reduce business rates in a local authority area could be a cost to a local authority. That is only right, but the business rates incentivisation scheme ought to be geared to allow that local authority to benefit at least in part from the encouragement of enterprise in its area.”

486. North Lanarkshire Council suggested the current strength of the existing system is it provides a consistent, and reasonably non-discriminatory, tax on business regardless of the location of the business within Scotland. They were concerned the proposal may create a ‘race to the bottom’ where businesses will look to the local authority to better the scheme on offer elsewhere and the cost of the relief granted will be met by the council tax payer. This, they suggested, may favour larger/Council Tax rich local authorities in their ability to fund such schemes at the expense of other local authorities.

487. East Ayrshire Council noted—

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313 See footnote 312
“should the Council wish to continue such schemes for example, to help regenerate town centres by encouraging empty properties back into use, then it would be potentially at the Council’s expense. It would be important therefore that [other] Scottish Government/national funding streams continued to be made available and accessible to support local authorities.”

Adding--

“the ability to introduce local relief schemes puts a degree of control in the hands of the Council. However, while we continue to operate a national pool, this will only impact on the margins. The key determinant of the cost of Non-Domestic Rates for businesses will remain the rateable value (determined by the assessor) and the rate poundage (determined by Scottish Ministers). The challenge will therefore be ensuring that any scheme is fair, affordable and delivers community benefits.”

488. We heard from Garry Clark from the Scottish Chambers of Commerce that “business rates are usually the number 2 or 3 cost for many businesses”\(^{314}\) and the proposed scheme could be a “useful tool in the box”. He added the power would—

“allow a local authority to fine tune the non-domestic rating system in its area, perhaps to target an area or a type of business that it wants to encourage. It could target streets or communities in an area.”\(^{315}\)

489. East Lothian council’s submission to the Finance Committee noted the potential for interested parties to make representations to obtain relief and the concomitant effect that would have administratively. They then answer their concerns indicating—

“To facilitate an orderly administration of relief available under the scheme it would be essential to include any provisions within our Discretionary Rates Relief policy thereby ensuring that decisions are made in a consistent manner, robust enough to withstand appeal.”\(^{316}\)

490. East Lothian council also noted potential benefit based on experience in Leeds which sought to attract new businesses to their area and to encourage economic growth by awarding relief for a limited period. Observing short term costs could be beneficial in the longer term.\(^{317}\)

491. The Scottish Retail Consortium (SRC) supported the principle behind the proposed local discretionary relief, viewing it as a welcome acknowledgement of the need to keep down costs for retailers and other businesses.


\(^{317}\) See footnote 316
492. However the SRC strongly counselled against any amendment to allow councils to increase rates bills, for example in the form of a local discretionary supplement. Their research showing one in every eleven retail premises is empty, and anything that makes it more expensive or more difficult for retailers to invest would only exacerbate this problem.

493. Similarly the Royal Incorporation of Architects Scotland noted a potential benefit; if schemes resulted in an increase in the use of redundant/neglected properties there would be an overall net financial gain. They also suggested the provisions will help empower communities to create solutions to their needs and revitalise run-down town centres.

494. The FSB Scotland suggested local discretion over extending reliefs may be one way to support small, independent businesses. However, they remained “cautious about the likely impact of this new power, particularly if they have to be fully funded by the local authority.”

495. Both the Historic Houses Association Scotland (HHAS) and Scottish Land and Estates cautioned against “any relief scheme which arbitrarily gives a market advantage to one particular type of ownership or governance structure.” HHAS added—

“we could perceive difficulties arising for instance in the rural sphere where a community-owned shop was party to relief, which was not available to an adjacent privately family owned historic house shop paying full rates.”

496. The Scottish Property Federation’s submission to the Finance Committee raised the potential impact this could have on landlords. They were concerned local authorities might seek to recoup the reduced rates income by passing it on to local landlords. Given the restrictions inherent in the scheme we do not understand how this could occur. An alternative scenario was expressed in oral evidence by Jim McCafferty from the Institute of Revenues, Rating and Valuation who suggested there was anecdotal evidence that some landlords would seek to increase rentals for some types of properties benefiting from rates reductions.318

497. John Mundell, Inverclyde Council made the point that—

“any grant or support given by the community planning partnership, or indeed by the council, would have to be tied to some performance measure so that we get some transformational change through that process to help business to grow or to attract them to the area.”319

498. Finally we considered a petition from Ellie Harrison that raised issues about the growth of the large retail sector, such as the Tesco Metro and Sainsbury’s and suggesting their local shops are being created to the detriment of some of the smaller traders in high streets and town centres. We asked whether Part 8 of the Bill takes on board communities’ concerns about the number of Tesco Metros,

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318 Scottish Parliament Local Government and Regeneration Committee, Official Report, 1 October 2014, column 34
319 Scottish Parliament Local Government and Regeneration Committee, Official Report, 1 October 2014, column 32
Sainsbury’s Locals or whatever else that are coming into an area and potentially decimating local high street traders.

499. John Mundell from Inverclyde Council in response indicated powers were more likely to be used to assist—

“not necessarily the Tesco Metros but, say, a local butcher to develop in a town centre or on the high streets of our small towns.” He added “I would rather use the powers in a selective and focused way to attract smaller businesses instead of the national networks such as Tesco that you mentioned.”

Committee Recommendations on Part 8

500. Having considered the responses we have received on this Part of the Bill we make the following observations:

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

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

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

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

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320 Scottish Parliament Local Government and Regeneration Committee, Official Report, 1 October 2014, column 36
ANNEXE A: RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE REPORT ON PART 4 OF THE COMMUNITY EMPOWERMENT (SCOTLAND) BILL

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

EXECUTIVE SUMMARY

1. The Rural Affairs, Climate Change and Environment Committee considered Part 4 of the Community Empowerment (Scotland) Bill and reports to the lead committee as follows.

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

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

4. The Committee is concerned about the level of detail provided in the Policy Memorandum and in the Financial Memorandum. The Committee believes that the significance and complexity of the provisions within Part 4 of the Bill would have merited further explanation and clarification within the Policy Memorandum. The Policy Memorandum could also have provided further consideration of sustainable development and human rights could have been brought into the wider context of the Bill which may have assisted, and might still assist, in establishing an environment which would facilitate a more constructive dialogue between landowners and communities.

5. Whilst the Committee understands that community right-to-buy will be demand-led, the costs for communities and landowners and the costs to public bodies of providing support to communities are unclear and the Committee is of the view that the Financial Memorandum ought to have given greater consideration to this. The Committee recommends that the Scottish Government monitor the cost implications of the Part 4 provisions closely over the coming years, in terms of both the direct costs to communities and landowners and the indirect costs to public bodies and keep the funding requirements under review.
6. The Committee recognises the overwhelming support of stakeholders to extending the community right-to-buy to the whole of Scotland. The Committee considers that parity of opportunity should be available to all communities and welcomes the provisions in section 27 of the Bill extending the community right-to-buy Scotland wide.

7. The Committee heard the views of those who would prefer the Bill to define the characteristics of an eligible community body rather than specify the eligible legal structure. However at this time the Committee remains unconvinced of this approach. The Committee welcomes the commitment of the Cabinet Secretary to consider potential amendments at stage 2 to extend the list of eligible community bodies and recommends that the Scottish Government bring forward amendments to include Community Benefit Societies and Community Interest Companies.

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

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

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

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

12. The Committee is aware that for many communities and applications late registration will continue to be the norm. The Committee considers that the process for late registration should reflect the practical reality for
communities and should be redesigned to accommodate this. The Committee remains unconvinced, where there is a late application, of the need to impose a requirement on communities to show either good reason or demonstrate relevant work.

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

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

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

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

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

18. In the absence of an unambiguous and acceptable definition of abandoned or neglected land produced by the Scottish Government which both removes the barrier that the present proposal is likely to erect, and which avoids the problems of interpretation giving the existing legal concept

321 Alex Fergusson MSP and Jim Hume MSP dissent from paragraphs 14 to 17.
322 Sarah Boyack MSP and Claudia Beamish MSP dissent from paragraph 18 on the basis of the evidence to the Committee which suggested that the requirement on communities to demonstrate that land is neglected or abandoned is likely to present a barrier which would undermine the aims of the Bill.
of abandoned land, then the Committee is likely to ask the Scottish Government to remove the term ‘abandoned or neglected land’ and bring forward a proposal which will allow the widest possible opportunity for community purchase. The Committee reserves the right to take evidence on this issue at stage 2.

19. Should the Scottish Government wish to retain this provision, the Committee recommends that the Scottish Government bring forward amendments at stage 2 to the following effect—

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

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

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

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

20. The Committee considers that there may be a differentiation in urban and rural circumstances and there could be challenges in measuring neglect and abandonment in rural areas. Should this provision remain the Committee considers that it should apply uniformly outwith crofting land. However, further consideration to the criteria for determining neglect or abandonment is necessary and should be set out on the face of the Bill. The Committee considers that land which is classified as agricultural land should be exempt from this provision unless it is determined that it fails to meet ‘good agricultural and environmental condition’. The Committee is also concerned about the possibility that land that is under a low intensity/zero management regime for a valid reason (e.g. natural regeneration for biodiversity or natural flood protection) could be considered ‘wholly or mainly abandoned or neglected’. The Committee considers that land which is intended for recognised conservation or environmental purposes should be exempt from the provision.

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

22. The Committee recognises that there can be very real practical difficulties in identifying land owners and considers that there ought to be a mechanism in this Bill, similar to the existing provisions in the Land Reform (Scotland) 2003 Act, providing for communities to be able to register an interest in land without knowing who the owner is.

23. The Committee agrees with those stakeholders who consider that the mapping requirements for community right-to-buy are excessive and strongly believes that there is a need to streamline the mapping process, simplify the information requirements and align the eligibility criteria with those for Parts 2 and 3A of the amended Act.

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

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

26. The Committee recognises the difficulties faced by communities in seeking to exercise their right-to-buy and is keen to ensure that appropriate support and funding is available to all communities across Scotland to facilitate meeting their aspirations. The Committee considers that public sector bodies have an important role in that regard and welcomes the Scottish Government’s commitment to establish a community land unit to provide support and advice to communities.

27. The Committee understands that the Scottish Government intends to bring forward amendments at stage 2 to include provision for crofting community right-to-buy. The Committee considers that it would have been preferable had consultation on the crofting community right-to-buy been undertaken alongside consultation on the existing part 4 provisions, and that amendments to the crofting community right-to-buy had been included in the Bill as introduced, rather than at stage 2. The Committee considers that the introduction of significant new provisions by way of amendments at stage 2 is undesirable in terms of effective parliamentary scrutiny, as the time available at stage 2 to consider new evidence is limited.
INTRODUCTION

Parliamentary scrutiny

28. The Community Empowerment (Scotland) Bill\(^{323}\) was introduced in the Scottish Parliament on 11 June 2014. The Bill was accompanied by Explanatory Notes\(^{324}\), which include a Financial Memorandum, and by a Policy Memorandum\(^{325}\), as required by the Parliament’s Standing Orders.\(^{326}\)

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

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

“[the Government is now keen to improve the crofting community right-to-buy legislation in line with the amendments to Part 2 of the 2003 Act and intend to take this forward in the Community Empowerment (Scotland) Bill. [...] we discussed and agreed that while the Local Government and Regeneration Committee was still best placed to lead on the overall Bill, there would be merit in the Rural Affairs, Climate Change and Environment Committee taking the lead on consideration of the community right to buy provisions of Part 4 of the Community Empowerment (Scotland) Bill at Stage 1 and reporting its findings to the Local Government and Regeneration Committee. We also thought there would be merit in having any relevant amendments on community right to buy referred to the Rural Affairs, Climate Change and Environment Committee at stage 2. I am happy to confirm that this is the Scottish Government’s preferred way forward.”\(^{327}\)

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

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\(^{323}\) Community Empowerment (Scotland) Bill, as introduced (SP Bill 52, Session 4 (2014)). Available at: [http://www.scottish.parliament.uk/S4_Bills/Community_Empowerment_(Scotland)_Bill/b52s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Community_Empowerment_(Scotland)_Bill/b52s4-introd.pdf).


\(^{325}\) Community Empowerment (Scotland) Bill. Policy Memorandum (SP Bill 52-PM, Session 4 (2014)) Available at: [http://www.scottish.parliament.uk/S4_Bills/Community_Empowerment_(Scotland)_Bill/b52s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Community_Empowerment_(Scotland)_Bill/b52s4-introd-pm.pdf).


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

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

34. The Scottish Parliament Information Centre (SPICe) published a briefing\(^{328}\) on the Bill which proved very helpful to the Committee during its scrutiny.

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

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

**Witnesses**

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

37. Extracts from the minutes of all the meetings at which the Bill was considered are available online\(^{329}\). Where written submissions were made in support of evidence given at meetings, these are linked, together with links to the *Official Report* of the relevant meetings are available online\(^{330}\). A link to all other written submissions, including supplementary written evidence, can be found online\(^{331}\).

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\(^{329}\) Rural Affairs, Climate Change and Environment Committee. Extracts of Minutes. Available at: [http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/86067.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/86067.aspx)

\(^{330}\) See footnote 329

\(^{331}\) Rural Affairs, Climate Change and Environment Committee. Community Empowerment (Scotland) Bill, written submissions. Available at: [http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/82153.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/82153.aspx)
38. The Committee extends its thanks to all those who gave evidence on the Part 4 of the Bill within a very tight timeframe. The cooperation of all involved was very much appreciated.

BACKGROUND TO AND PURPOSE OF THE BILL

Legislative background


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

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

Contents/purpose of the Bill

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

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

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

43. The Bill is in a number of parts—

- Part 1 aims to provide a statutory basis for the issue of ‘National Outcomes’;
- Part 2 contains a number of reforms to the system of community planning;
- Part 3 provides for a process to allow community bodies to become involved in the delivery of public services;
- Part 4 makes a range of changes to the community right to buy land;
- Part 5 provides for a process to allow community bodies to take on assets from the public sector;
- Part 6 makes a number of reforms to the system of common good
- Part 7 is concerned with allotments; and
- Part 8 allows local authorities to set their own reliefs for business rates.

**Part 4 Community Right to Buy**

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

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

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

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

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

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

**Scottish Government consultation**

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

51. The Committee explored the effectiveness of the consultation process on the Bill with stakeholders. Many stakeholders who had been actively involved in the issue of land reform; who had engaged with consultations issued by the Land Reform Review Group; who had participated in consultations on the Bill and; who were also used to dealing with legislation, stated that they were reasonably satisfied with the level of information that was provided. However, the Committee heard that some who were perhaps less used to dealing with legislation found it confusing and would have welcomed further information. Some stakeholders who had been engaged with the land reform agenda considered that there could have been further consultation on some elements of the Bill. In oral evidence to the Committee, Sarah-Jane Laing of Scottish Land and Estates stated—
“We would probably have liked more consultation on the definitions of abandoned land and neglected land, which I am sure we will talk about later”.

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

GENERAL ISSUES CONSIDERED BY THE COMMITTEE

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

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

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

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

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

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

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confusion if we have parallel pieces of legislation dealing with the same issue”.  

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

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

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

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

Has the Bill been appropriately drafted?

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

“There are multiple amendments to certain sections of the 2003 Act which are rather difficult to follow and this does not seem to sit well with the aim of empowering communities. The Society suggests that it would be simpler to repeal and re-enact part 2 of the 2003 Act…The Society also notes that a lot of the detail will be set out in subsequent regulation and also guidance and

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this makes it difficult at this stage to anticipate the overall effect of these provisions.”

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

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

Will the Bill solve the problem?

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

The Policy Memorandum from the 2003 Bill states that—

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

63. Oral evidence to the Committee suggested that the 2003 Act could be viewed as enabling legislation, the benefits of which were challenging to quantify. However, there was broad consensus that community confidence and cohesion in rural Scotland had been transformed in the last 10 years. Jon Hollingdale, of the Community Woodlands Association, stated—

335 Written submission. Law Society of Scotland.
336 Development Trusts Association Scotland baseline survey 2012
“The number of successful acquisitions under the 2003 Act is pretty low; I think that there have been about 16 in 10 years, which does not seem a hugely positive track record, although the Act has a wider symbolic value. The Act sets a framework, and it has been easier to negotiate settlements for other transfers to community ownership because the Act is there. In that respect, the Act has had a very positive effect. Nevertheless, it is probably fair to say that there has not been a step change in the rate of community ownership. .. It has definitely helped, but perhaps not to the extent that we had hoped it would.”\(^{337}\)

64. This view was echoed by a number of stakeholders in the oral evidence sessions including Malcolm Combe\(^{338}\), Rory Dutton of the Development Trusts Association Scotland and Sarah-Jane Laing.

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

“… the Bill has not addressed some of the fundamental structural problems with part 2 of the 2003 Act and the ways in which it does or does not work…. Questions such as whether we need a two-step registration process that is very much at the seller’s whim are far bigger and more fundamental than what form of community body is sitting there, waiting for the land or whatever to become available.”\(^{339}\)

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

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


\(^{338}\) Appearing in an individual capacity.

SUPPORTING DOCUMENTATION

Policy Memorandum

68. In June 2014, the Convener of the LGR Committee wrote to the Minister for Local Government and Planning, seeking clarification on a number of issues relating to the Policy Memorandum stating that it was “little more than a superficial overview” that did not provide “sufficient material to allow for this Part to be scrutinised in a timely manner as part of the Stage 1 process”.340

69. The Scottish Government’s response was received on 1 August 2014. This provided some further detail, and the accompanying letter from the Minister states that the Government aimed to “provide a succinct and broad overview of the policy underlying the Bill as a whole and each Part individually”, adding that “people can be put off by lengthy documents with a great deal of detail”, and that the Policy Memorandum is “only one of the suite of documents that accompany the Bill”.341

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

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

“I am not sure we have had enough information. I have come to the conclusion having discussed elements of the Bill, because we have different people saying provisions mean different things. That means that, somewhere along the line, the explanatory notes and the policy memorandum are not providing enough information.”342

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

“What was missing—we will probably pick up this later—is how certain provisions are expected to deliver the outcomes in the Policy Memorandum. On a line-by-line basis, there are gaps. Although the Government wants to achieve X, it is saying Y. That does not appear to work for us”.343

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

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

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


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

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

This view was supported by Dr Coleen Rowan, of the West of Scotland Forum of Housing Associations.

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

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

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

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

Human rights and equalities

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

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

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

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

“This appears to be a very high and most probably impossible hurdle to be overcome and unnecessary to meet ECHR requirements; it implies that, even if a community was able to show that the land was mainly neglected for the purpose of its sustainable development, and this was not in the public interest, if that owner could show that, none the less, their continuing

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348 Written submission. Malcolm Combe.
ownership was not “inconsistent” with some level of sustainable development then the community’s application must be refused”.  

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

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

83. Professor Miller went on to state—

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

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

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

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

86. The Committee was interested to hear the views of Professor Alan Miller, Chair of the Scottish Human Rights Commission, and considers that human rights could have been brought into the wider context of the Bill. The

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349 Written submission. Community Land Scotland.
352 Written submission. Equalities and Human Rights Commission.
Committee believes that a wider consideration may have assisted, and might still assist, in establishing an environment which would facilitate a more constructive dialogue between landowners and communities.

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

Financial Memorandum

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

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

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

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

355 Written submission to the Finance Committee. Highlands and Islands Enterprise.
91. The importance of adequately resourcing and supporting communities, particularly urban communities, was highlighted by David Cruickshank of the Lambhill Stables Community Development Trust who, in oral evidence, stated—

“The simple fact is that, in urban communities, there is not only significant deprivation but significant lack of resource. There is no point floating the possibility of ownership without resourcing that with capital and on-going revenue. There is no magic wand that will allow deprived communities suddenly to have the confidence and experience to own and manage resources; there must be resources coming in that would make that feasible”. 356

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

“…In addition the financial implications for Glasgow may be significant in the circumstance where the proposed acquisition may deal with a short term issue but is not aligned to the Council’s longer term strategy...(and)...in the circumstance where a registered interest has a negative impact on potential investment in the city.” 357

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

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

95. The Cabinet Secretary confirmed the demand-led nature of community acquisitions and the difficulties in estimating what that demand may be, with the resultant degree of uncertainty in the Financial Memorandum. He noted the increase in the Land Fund to £10m from 2016 and a further £10m for the Empowering Communities Fund that will be available from 2015. He confirmed that the Scottish Government’s commitment to meeting costs related to community right-to-buy (such as balloting costs) would have to be met from within the Government’s budget and stated “Primarily the budgets will be used for

357 Written submission: Glasgow City Council.
communities as opposed to public bodies. If there are costs for public bodies, we will have to take them into account. However, the primary focus of the funds is helping communities.” The Committee heard that funds for the Registers of Scotland to support the registration of all land in Scotland would be made available from Government. The Cabinet Secretary stated that “a number of public agencies and bodies will have to take the burden of this agenda as we move forward.” He also confirmed that the available funds would need to be kept under review in future years.

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

97. The Committee is also concerned that the costs for communities and landowners (e.g. legal costs arising from appeals, costs to communities in preparing and developing proposals and bids) and the costs to public bodies of providing support to communities are unclear. The Committee is of the view that the Financial Memorandum should have better reflected this.

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

Rules relating to lottery funding

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

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

100. The Committee sought clarity from the Cabinet Secretary on how the rules relating to lottery funding might impact on the community right-to-buy. The Cabinet Secretary responded saying “…our initial view is that there is not a conflict and it should not present a problem.”

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

SPECIFIC ISSUES CONSIDERED IN PART 4

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

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

103. Extending the community right-to-buy to the whole of Scotland was welcomed by the majority of stakeholders who considered that parity of opportunity should be extended to all and saw no reason why urban communities and those in settlements of over 10,000 people should not enjoy the same rights as those in smaller rural communities. Nourish Scotland highlighted the importance that small urban sites can have for a high number of people and believe that these sites can have a considerable impact on the surrounding community even though many do not contribute significantly to the acreage target.\(^{361}\)

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

‘‘… a small community in an urban environment might be interested in a particular asset that is part of a larger asset that is capable of development. In such a case, the development could become blighted and there could be a scenario of competing interests. It is important […] to include a safeguard to balance out the greater development good to the Community’’.\(^{362}\)

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

‘‘[…] the blight that we experience in the areas that have bought their land in rural Scotland is not being caused by the community purchase; rather the community bought the land to get round the blight that it felt was there, because the land was not being developed to its full potential by the current ownership structure. The Communities that Sandra Homes and John Watt

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\(^{361}\) Written submission. Nourish Scotland.

help, through their roles, are interested in developing their assets, because they feel that that has not happened in the past. I am sure that the technical points that Mr Burd raised are worth considering, but it would be wrong to characterise the communities as causing blight, because that is not necessarily the case.”

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

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

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

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

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

“… greater certainty in the circumstances in which the community right to buy would operate in relation to active development proposals. In particular, the Society suggests that consideration is given to allowing for a mechanism to obtain a certificate exempting a site from community right-to-buy for a certain amount of time. This would allow investment decisions to be made.

with a degree of certainty but would also retain the community right to buy in
the event that the development did not proceed as envisaged”.

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

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

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

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

Meaning of community (section 28)

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

114. Oral evidence broadly supported the amendments to extend the type of
bodies that can be considered to be a community body and to provide greater
flexibility in the definition of community. However stakeholders expressed
corns in relation to the way in which community bodies were defined and some
stakeholders suggested that the Bill should specify the characteristics of a
community body rather than list the types of legal entity that can apply to register.

Written submission. Law Society of Scotland.

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

Written submission. Community Land Scotland.
Opinion was divided on the focus on geographic communities and on the inclusion of communities of interest. Some stakeholders considered that their inclusion could be ‘a good deal more complex’, and others considered that a way had to be found to put the emphasis on people rather than place.

**Defining community bodies**

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

“In our experience many community organisations using a Bencom structure can meet the ‘prescribed requirements’ of an appropriate community body, and given the increasing use of community shares to fund the acquisition and development of assets, the omission of Bencoms from the legislation seems perplexing.”[^368]

116. In written evidence[^369], the Scottish Federation of Housing Associations call for the Bill to be amended to specifically list housing associations and co-operatives as community bodies. Similarly, the Church of Scotland Trustees proposed that the definition of community body be widened to include charities such as them.[^370]

117. In its written submission to the Committee, Brodies LLP highlighted six different type of community body provided by the Bill and questioned the necessity for this and what it considered to be the “lack of consistency for the requirements of different bodies.”[^371] It suggested that clear guidance on the constitution and powers of each should be provided.

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

“Further, we feel it is inconsistent to include SCIOs as eligible community bodies but not other types of community organisation for example a community benefit society. In Section 28(2) of the Bill, Ministers will be able to make orders allowing other organisational types of community bodies to be eligible. Our concern with this level of non-specificity is that there is no certainty as to when this might happen or what the mechanism for making an allowance order is. Clarification on these points is welcomed.”[^372]

119. The Plunket Foundation also suggested it would be better for legislation to simply define the characteristics of a democratically accountable community body

[^368]: Written submission. The Development Trusts Association Scotland.
[^369]: Written submission. The Scottish Federation of Housing Associations
[^370]: Written submission. Church of Scotland Trustees.
[^371]: Written submission. Brodies LLP.
[^372]: Written submission. Forest Policy Group.
and not restrict the choice of legal structure to the two options currently proposed. It raised particular concerns about the exclusion of Registered Societies (Formerly known as Industrial and Provident Societies) and the inability within the 2003 Act to use community shares to fund the acquisition of the assets, stating—

“We cannot predict now what legal structures communities will need in the future to take advantage of the opportunities presented by the Bill, so cannot see any reason to restrict them unnecessarily? If Ministers are uncomfortable with the proposal that the exact type of legal structure for an eligible community body is left open, eligibility in principle should at the very least be extended to include Community Benefit Societies and Community Interest Companies as well as SCIOs”.373

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

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

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

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

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

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

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

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

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

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

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

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

129. In its written submission, Helensburgh Community Woodland Group raised concerns about the definition of community where, in its view, individual projects in urban areas may only concern part of an area and a minority of those who live within it and questioned whether it would be appropriate to use a single council election ward for a specific area as the interested community rather than the

settlement as a whole. It stated that its preferred option would be that of defining the community by people who would be directly affected or would directly benefit from the facility.

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

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

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

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

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

133. Some stakeholders who have been active in community land acquisitions highlighted a number of practical concerns in relation to the provision of minutes upon request. The Highland Council\(^{377}\) and Community Land Scotland\(^{378}\) sought clarity on a number of points: whether the minutes relate to all meetings – Board meetings, members meetings, sub committees; and whether these provisions relate only to ‘approved minutes’. Community Land Scotland had concerns that this provision would apply retrospectively to existing community bodies (not to a Part 3A or Part 3 body) which would have to convene special meetings to make alterations to their Articles and failure to do so could then result in a termination of interest or trigger consideration of compulsory purchase by Ministers. Community Land Scotland suggested that the same policy could be affected by a requirement for community bodies to enact bylaws or rules.

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\(^{377}\) Written submission. Highland Council.

\(^{378}\) Written submission. Community Land Scotland.
134. The Committee listened to the concerns of stakeholders in relation to the provisions of minutes upon request and recommends that the Scottish Government give consideration to this provision and the need for further clarification and reflect on the impact of this provision on existing community bodies. The Committee recommends that the Scottish Government consider whether there are other means to affect the policy objective such as a requirement for community bodies to enact relevant bylaws or rules, and bring forward relevant amendments at stage 2.

Detailed procedures - Sections 29 - 47

135. The Scottish Government’s letter of 1 August\textsuperscript{379} states that sections 29 to 47 of the Bill make a number of changes to “the detailed procedures and requirements of the community right-to-buy process, including streamlining and increasing flexibility.”

136. Evidence to the Committee indicated some areas of concern in relation to the detailed procedures. In written evidence, John Randall\textsuperscript{380} noted a need to simplify procedures so that “genuine and strong applications cannot be thwarted by legal action on technical issues contrary to the wishes of Parliament when they passed the legislation”.\textsuperscript{381}

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

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

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

139. Community Land Scotland\textsuperscript{382} and the Community Woodlands Association\textsuperscript{383} raised practical concerns in relation to the proposal for a six-month limit precluding Ministers considering any community support that is dated earlier than six months before the date an application to register a community interest in land is received. They both stated that registration of a community body can take in excess of 6 months itself in certain circumstances and feasibility and other studies may date back before that period. These bodies believe that Ministers should be free to take account of anything they consider relevant in indicating approval.

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

\textsuperscript{379} Correspondence from the Scottish Government (1 August 2014). Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Responses_to_LGR_Committee_Questions_-_1st_August_2014.pdf.
\textsuperscript{380} Writing in an individual capacity.
\textsuperscript{381} Written submission. John Randall.
\textsuperscript{382} Written submission. Community Land Scotland.
\textsuperscript{383} Written submission. Community Woodlands Association.
material. The Committee would welcome further consideration of this section by Ministers.

Procedure for late applications (section 31)

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

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

- allowing Ministers to request further information from the current owner (or a creditor in a standard security), to be provided within seven days of receipt of the request, to ensure that Ministers have the necessary evidence to determine whether an application is “late”;

- where further information is requested, extending the time that Ministers have to make a decision on whether an application is “late” from 30 days to 44 days;

- removing the requirement to show “good reasons” for not submitting an application before land came on the market and replacing it with a requirement that such relevant work as Ministers consider reasonable was carried out by a person, or such relevant steps as Ministers consider reasonable were taken by a person. Section 31(9) inserts a new subsection (6) into section 39 of the 2003 Act to define relevant work and relevant steps;

- setting out the timescales in which the relevant work or steps must have been taken. Allowing Ministers to request further information from any relevant party within the relevant timescale;

- providing that where missives have been concluded or an option conferred in respect of the land Ministers must decline to consider the application; and

- land in respect of which the relevant work or steps have been carried out does not need to be the same land as that to which the application relates.

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

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

“I am in two minds about the registration process. The need to register is a prompt for communities to think about how they would like their communities to develop and what opportunities they would like to have to influence how things develop. However, the process is onerous, as is the reregistration process. There is something to be said for having an easier process for registering interest if a piece of land comes up for sale that the community had never anticipated would come up for sale, because things happen that no one could have predicted. As the Bill stands, it will be extraordinarily difficult for communities to do anything about such situations, which might involve the loss of a service or whatever. I am not sure about getting rid of registration altogether, although I can see that that would have advantages. What is useful about having to register is that it gets community organisations to think about why they might want assets and what they might want to do with them. We might not want to lose that prompt if we were to go down the route of not having early registration of interest”. 384

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

“As I understand it, the idea behind pre-registration is to encourage communities to be proactive, and I think that we will agree that being proactive and thinking ahead are generally better than simply being reactive to opportunities. However, having been encouraged to be proactive and make these registrations, communities are then not rewarded for doing that… If I were designing things from scratch, I would have a system in which communities…would carry out community development planning and identify the sort of land and buildings assets that they need to deliver the things that their community wants…. A specification would be laid down and when land came on to the market, communities would have the possibility of pre-emption if that land fitted their previously announced specification”. 385

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

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

“…The first right that we suggested was a “right lite” whereby a community could simply register an interest. Under the 2003 act, there is a right of pre-emption. However, if there was a right to register an interest and to be

notified when land was coming on to the market or ownership was changing, that would trigger the process of the “heavier” right of registering a right of pre-emption. We thought that that might be a way of getting round everything becoming a late registration”.

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

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

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

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

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

152. Notwithstanding that, the Committee considers that the registration process requires considerable simplification. The Committee was also interested to hear the proposals from stakeholders to allow communities to register a purpose. The Committee considers that there may be scope for a dual registration process to enable registration for specified areas of land or buildings and to enable registration for a purpose which could potentially be

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met by a range of assets. The Committee recommends that the Scottish Government give consideration to a simplified registration process that would also include the option to register ‘a purpose’ and bring forward amendments to that effect at stage 2.

Registration for late applications

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

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

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

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

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

156. Community Land Scotland suggested that the new provision which replaces the need for a community to show “good reasons” why it did not apply timeously with a provision to show they had undertaken sufficiently well in advance “such

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388 Written submission. Community Land Scotland.
389 Written submission. Scottish Community Alliance.
relevant work as Ministers consider reasonable was carried out”...may well make the opportunity for a late registration more difficult than it already is. It suggests that “this would not assist any objective of greater community ownership that was in the public interest.”

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

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

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

159. This evidence was supported by Highlands and Islands Enterprise (HIE), which suggested it would be helpful if communities could progress a late registration if they had considered purchase of an asset (specific or general) as detailed in a local development plan and stressed the importance of communities taking a strategic and holistic approach to their development through the establishment of whole community plans. HIE believes that community plans should be considered as appropriate evidence under the proposed ‘taking relevant work’ provision. It also suggested that guidance to clarify eligible work/steps would be beneficial. Based on their experience of working with communities, where often initial work was undertaken by a community council or working group with the intention that another body would pursue the community right to buy application, it suggests that consideration be given to de-coupling the requirements for relevant steps/relevant work and the practical application being made by the same community body.

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

390 Written submission. Community Land Scotland.
391 Written submission. Highland Council.
392 Written submission. Community Land Scotland.
393 Written submission. Highlands and Islands Enterprise.
394 Written submission. Historic Houses Association for Scotland.
395 Written submission. Scottish Land and Estates.
suggested that they would welcome the introduction of a monitoring system into delays in the process for (Ministerial) consideration of applications.

161. Brodies LLP was of the view that community bodies should be obliged to explain why an application was not submitted prior to the land being put on the market and raised concerns that removing the good reasons test could make some landowners wary of putting land on the market for fear of “triggering” community interest.³⁹⁶

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

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

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

Re-registration
165. Many stakeholders expressed concerns with regard to the process and timescale for re-registering an interest in land. Community Land Scotland, the Community Woodland Association, the Development Trusts Association Scotland, Highland Council, and many others, suggested that the five-year timescale is too short and consideration should be given to extending this to ten years. The Committee understands that this view is supported by the Land Reform Review Group in its final report (section 17.1-9 &10).³⁹⁷

166. Many stakeholders considered that it was important to retain the ability to test the will of the community on their continuing interest in purchase, while reducing the burden on communities and were concerned that the proposed re-registration provisions would require replicating the original registration demands.

³⁹⁶ Written submission. Brodies LLP.
Stakeholders suggested that there was considerable scope to simplify the process. Sarah-Jane Laing said—

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

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

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

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

“...Things can change in ten years. You can imagine a community defining itself, imagining its future, putting together its ideas and carrying out its registration but then finding that, ten years later, things were quite different. We do not think that ten years would be a wise approach. The five year period was our judgement of a good timescale.”

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

170. Whilst the Committee has some sympathy with those stakeholders who proposed an extension of the re-registration period from five to ten years, the Committee considers that circumstances can change over time and, if

399 Written submission. Highland Council.
400 Written submission. Scottish Community Alliance.
the re-registration process is substantially simplified, a requirement to re-register every five years is appropriate.

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

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

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

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

174. Scottish Land and Estates,402 the Historic Houses Association for Scotland403 and the Community Land Advisory Service404 comment on section 33, which introduces a requirement for an owner to inform Ministers within 28 days of an exempt transfer being made of this taking place. They considered this to be at odds with the transfer being “exempt” and suggest that as the Registers of Scotland maintain both the Land and Sasine Property Registers and the Register of Community Interests in Land, it would be sufficient to include a declaration in the disposition detailing the exemption rather than placing what they consider to be an unnecessary additional burden on the owner to notify.

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

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

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

402 Written submission. Scottish Land and Estates.
403 Written submission. Historic Houses Association for Scotland.
404 Written submission. Community Land Advisory Service.
“.. this is the wrong policy choice; ... it should be possible for Ministers to consider whether, in the given circumstances, a community interest may be registered over land subject to a prior option.”

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

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

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

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

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

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

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

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405 Written submission. Community Land Advisory Service.
406 Written submission. Helensburgh Community Woodland Group.
407 Written submission. Scottish Property Federation.
Appointment of person to conduct ballot on proposal to buy land (section 37)

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

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

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

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

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

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

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

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

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

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

190. Both Scottish Land and Estates\textsuperscript{411} and the Historic Houses Association Scotland\textsuperscript{412} suggest that as the ballot is at the initiation of the community body, the community body should meet the expenses of this rather than the public purse.

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

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

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

193. The Policy Memorandum states that the Bill gives Ministers discretion to allow them to recover the cost of the independent valuation from the landowner where the landowner has withdrawn the land from sale after the valuer has been appointed, thus deterring landowners from allowing the process to proceed where land is not genuinely being offered for sale.\textsuperscript{413}

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

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

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

196. The Historic Houses Association for Scotland\textsuperscript{414} and Scottish Land and Estates\textsuperscript{415} raised concerns in relation to section 44. In particular, they highlighted

\textsuperscript{411} Written submission. Scottish Land and Estates.
\textsuperscript{412} Written submission. Historic Houses Association Scotland.
\textsuperscript{413} Policy Memorandum. Paragraph 63.
\textsuperscript{414} Written submission. Historic Houses Association for Scotland.
that under community right-to-buy an owner has a right to withdraw his or her land from a sale to a community body after the right-to-buy has been activated, provided the appropriate notification has been given. They sought comfort that this section would not be used arbitrarily to penalise a landowner who, for a variety of reasons (such as where family or financial circumstances of the landowner change or where the land is held in trust, not all of the trustees being made aware of the sale) decide not to proceed with the sale. They sought further clarification on the criteria that would form the basis for Ministers’ decisions on recovery of expenses. They suggested, as did Brodies in its written submission,\(^{416}\) that Ministers should exercise their discretion with care.

197. Some stakeholders, including the Community Land Advisory Service, raised concerns in relation to the basis of the Minister’s decision. Specifically, stakeholders sought further clarification on the criteria which would form the basis of that decision and highlighted the potentially adverse effects on land owners, who might be pursuing long term development proposals.\(^{417}\)

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

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

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

200. The Community Land Advisory Service\(^{418}\) commented on section 47 (the proposed new section 67A of the 2003 Act) highlighting that some periods specified in the revised 2003 Act would include public and local holidays and some would not and this could potentially cause confusion and lead to mistakes.

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

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

\(^{415}\) Written submission. Scottish Land and Estates.

\(^{416}\) Written submission. Brodies LLP.

\(^{417}\) Written submission. Pinsent Masons LLP.

\(^{418}\) Written submission. Community Land Advisory Service.
Community right to buy abandoned and neglected land (section 48)

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

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

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

Meaning of Land (Section 97B)

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

Eligible land (Section 97C)

206. The new section 97C of the 2003 Act defines eligible land as that which is, in the opinion of Ministers, “Wholly or mainly abandoned or neglected” for “the purpose of the sustainable development of that land” and “in order to further the achievement of sustainable development”. Factors which Ministers must have regard to when deciding whether land is eligible will be set out in regulations. Land which is not eligible includes—

- land on which there is an individual’s home, though this can be subject to exceptions set out in regulations;
- land pertaining to an individual’s home as may be set out in regulations;
- eligible croft land (as defined in section 68 of the 2003 Act) or croft land which is occupied or worked by its owner or members of their family;

419 Policy Memorandum. Paragraph 65.
• certain land that is owned by the Crown (because no owner or heir to the previous owner exists or can be identified); or

• land of such other descriptions that Ministers may set out in regulations.

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

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

208. Many stakeholders supported the introduction of the new power extending the community right-to-buy where there is no willing seller, but the majority who commented on this provision viewed it as a power of last resort, to be exercised when other methods and negotiations had failed. They considered that the existence of the power would, however, have an important role in incentivising negotiation. Stakeholders such as the Community Woodland Association\(^{421}\) and Community Land Scotland\(^{422}\) suggested that this proposal responds to a weakness in the 2003 Act, that is, even if it were in the public interest, there is no means by which a community can acquire land unless it comes on the open market. In their view, the new provision means that the matter can now be considered.

209. Whilst stakeholders were broadly supportive of the introduction of this power in principle, many questioned whether the provisions, as drafted, effectively meet the policy objectives. Many also highlighted significant concerns with respect to the definition of abandonment and neglect and the additional requirements resulting from the definition; the scope of eligible land; and the provision for exceptions in relation to an individual’s home. Many stakeholders raised practical concerns in relation to the operation of the provisions. Community Land Scotland\(^{423}\) and the Community Woodland Association\(^{424}\) stated that, in their view, the significant qualifications on the new right would probably make it impossible to exercise in practice. The Community Woodland Association stated—

“The bar is being set too high, there are too many obstacles in the way and there are clear opportunities for avoidance on the part of landowners. We are concerned that this requirement is overly limiting and whilst it may be possible to demonstrate this requirement is met for buildings we do not believe it will be workable in practice with respect to woodlands and other extensive land holdings.”\(^{425}\)

\(^{420}\) Policy Memorandum. Paragraph 68.
\(^{421}\) Written submission. Community Woodland Association.
\(^{422}\) Written submission. Community Land Scotland.
\(^{423}\) Written submission. Community Land Scotland.
\(^{424}\) Written submission. Community Woodland Association.
\(^{425}\) Written submission. Community Woodland Association.
210. Highland Council shared those concerns, suggesting that section 48 appears to introduce a significantly higher barrier to community ownership than currently exists. It had particular concerns that the requirement for an interested community to demonstrate that land had been abandoned, particularly in a rural setting, would be very challenging indeed.\footnote{Written submission. Highland Council.}

211. Community Land Scotland also stated that it did not believe that there was a clear and fundamental difference between the sustainable development of crofting land (as required by the crofting community right-to-buy in the 2003 Act) and the sustainable development of other land which necessitates the additional requirements of abandonment or neglect in order for it to be eligible for the potential exercise of these new powers.\footnote{Written Submission. Community Land Scotland.}

212. John Watt told the Committee that he would prefer the Bill to mention “fulfilling the greatest potential for sustainable development”, rather than including a requirement that land should be proven to be “abandoned or neglected.”\footnote{Scottish Parliament Rural Affairs, Climate Change and Environment Committee. \textit{Official Report}, 3 December 2014, Col 29.}

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

\textit{The public interest and sustainability tests}

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

215. In oral evidence, Peter Peacock stated—

\begin{quote}
“Sustainable development is defined in three ways. That is the problem at the heart of the definition of “abandoned and neglected”: it deals with one of the three definitions of sustainable development but not necessarily with the other two…The difficulty with sticking to a definition of abandonment and neglect is that it appears to relate to the physical construct of the land rather than to sustainable development. The whole policy purpose of the bill, and of the original 2003 act, is about furthering sustainable development. There is a bit of a trap here, given the way in which sustainable development is currently defined. The issue can be sorted—for example, it would be possible to have a third criterion. If the aim of the requirement for a building to be proven to be “abandoned and neglected” …the bill could specify that a building can also be proven to be in need of sustainable or sustained
\end{quote}
development. That would allow the social and economic considerations to be taken into account”. ⁴²⁹

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

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

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

219. The Committee considers that there are convincing arguments that the tests of ‘furthering sustainable development’ and of being ‘in the public interest’ are capable of testing all requirements. On that basis, the Committee recommends that the Scottish Government reconsider the requirement that eligible land be restricted to land which is wholly or mainly abandoned or neglected and recommends that the Scottish Government consider a definition that relates to the wider circumstances which can be a barrier to sustainable development, such as the lack of achievement of the use and/or development of land that could deliver greater public benefit. ⁴³⁰

220. In the absence of an unambiguous and acceptable definition ⁴³¹ of abandoned or neglected land produced by the Scottish Government which both removes the barrier that the present proposal is likely to erect, and which avoids the problems of interpretation giving the existing legal concept of abandoned land, then the Committee is likely to ask the Scottish Government to remove the term ‘abandoned or neglected land’ and bring forward a proposal which will allow the widest possible opportunity for community purchase. The Committee reserves the right to take evidence on this issue at stage 2.

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

⁴³⁰ Alex Fergusson MSP and Jim Hume MSP dissent from paragraphs 216 to 219.
⁴³¹ Sarah Boyack MSP and Claudia Beamish MSP dissent from paragraph 220 on the basis of the evidence to the Committee which suggested that the requirement on communities to demonstrate that land is neglected or abandoned is likely to present a barrier which would undermine the aims of the Bill.
Definitions of abandonment and neglect

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

223. The Law Society of Scotland stated—

“The lack of a definition for abandoned or neglected land gives rise to considerable uncertainty in relation to what land would be within the scope of section 97C. The Society believes that there should be a proper definition of abandoned or neglected land”.432

224. Scottish Land and Estates433 considered that an owner is entitled to know, prior to the Bill becoming law, what is meant by the separate terms “abandoned” and “neglected”. This concern was shared by the Scottish Community Alliance which stated—

“…We would also support the view that more clarity is needed to determine what is meant by abandoned and neglected land….Given that these provisions could result in an asset owner being deprived of his/her property against their wishes, it is very important that there is absolute clarity around the circumstances in which this would be permissible”.434

225. Community Land Scotland raised the question of fairness to landowners and, in its written submission, stated—

“that more consultation and discussion is needed on the sorts of land susceptible to the proposed right to buy. This should include consideration of (1) land land-banked for future development, (2) farmland left fallow as a matter of good agricultural practice and (3) spaces deliberately allowed to go wild for good environmental reasons”.435

226. Malcolm Combe stated that the word “abandoned” is “sub-optimal, because it has a very specific meaning in Scots private law” i.e. it is used in a situation where an owner has actively sought to walk away from an item of property. “Whilst land cannot be cast away in quite the same manner, an owner may seek to disclaim land. This was most recently witnessed in the case SEPA v Joint Liquidators of Scottish Coal (2014 SLT 259)”.436

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

432 Written submission. Law Society of Scotland.
433 Written submission. Scottish Land and Estates.
434 Written submission. Scottish Community Alliance.
435 Written submission. Community Alliance.
“The Committee should consider carefully whether “abandoned” is appropriate. One drastic solution might be to remove “abandoned” entirely, leaving the legislation to relate to “wholly or mainly neglected land.”

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

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

230. The Church of Scotland General Trustees stated—

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

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

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

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

“I think that matters that the Minister would have to consider in deciding whether that definition applies will be followed up within regulation rather than in the Bill, but you are right that the definition should be in the Bill itself. We

436 Written submission. Malcolm Combe.
437 Written submission. Historic Houses Association for Scotland.
438 Written submission. Church of Scotland General Trustees.
439 Written submission. Scottish Land and Estates.
are still actively considering exactly what the definition should be, to ensure that we get it right.”

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

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

- the term “abandoned” is sub-optimal and should be removed entirely, leaving the legislation to relate to “wholly or mainly neglected land;
- the definition of neglected should relate to the sustainable development of the land and not solely to a description of its physical condition and there should be a clear justification for the inclusion of the term;
- if prescribed matters in relation to eligible land are to be set out in regulation these regulations should be laid under the affirmative procedure; and
- owners and communities are entitled to know, prior to the Bill becoming law, what is meant by the separate terms. The Committee considers it is not appropriate to deal with the transfer of fundamental property rights through secondary legislation. The Committee recommends that any definition of terms be set out on the face of the Bill.

*Impact of the provisions in urban and rural areas*

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

236. Some stakeholders including Scottish Land and Estates\(^{443}\) and the Historic Houses Association Scotland\(^{444}\) raised the question as to whether the provisions relating to abandoned and neglected land should apply only in an urban context if

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\(^{441}\) Alex Fergusson MSP and Jim Hume MSP dissent from paragraphs 216 to 219.

\(^{442}\) Sarah Boyack MSP and Claudia Beamish MSP dissent from paragraph 220 on the basis of the evidence to the Committee which suggested that the requirement on communities to demonstrate that land is neglected or abandoned is likely to present a barrier which would undermine the aims of the Bill.

\(^{443}\) Written submission. Scottish Land and Estates.

\(^{444}\) Written submission. Historic Houses Association Scotland.
the focus was on small parcels of land which prevent sustainable development or cause blight.

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

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

239. **The Committee shares the concerns of the National Farmers Union of Scotland (NFUS) in relation to the possible impact of the provisions on agricultural land that may be out of regular use for periods of time. The Committee considers that land which is classified as agricultural land should be exempt from this provision unless it is determined that it fails to meet “good agricultural and environmental condition”. The Committee recommends that the Scottish Government bring forward amendments to that effect at stage 2.**

**Timescales**

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

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

**Other potential impacts of the provisions**

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

243. The Scottish Property Federation highlighted significant concerns in relation to land that may be part of a complex development process (possibly comprising several small plots or buildings) and the impact of potential uncertainty on investor decisions. It also raised concerns in relation to land owned by an entity in administration or other insolvency process connected with the land and

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445 Written submission. National Farmers Union Scotland.
446 Written submission. National Farmers Union Scotland.
447 Written submission. Community Land Scotland.
448 Written submission. Scottish Property Federation.
suggested that there was a need for appropriate and clear policy in relation to this issue.

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

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

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

Management of land
247. The Committee received written evidence and heard oral evidence from Holmehill Community Buyout, which stated that—

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

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

“...may have very limited control over the utilisation of the leased land and short of going through time consuming and potentially costly court processes may be unable to rectify this. It would seem inequitable for land to be

449 Written submission. Holmehill Community Buyout.
compulsorily acquired, where the owner is not actually responsible for the perceived absence of activity or poor management."450 451

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

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

251. Scottish Natural Heritage, referred to paragraph 73 of the Consultation on the Community Empowerment (Scotland) Bill 2013452 which stated that “land which is intended for recognised conservation purposes would not be considered to be neglected or abandoned”. It suggests that this does not seem to be reflected in Section 48 of the Bill, and states—

“In our response to the consultation we commented that the term neglected or abandoned land should be defined so as to exclude land that is delivering wider public goods in the form of ecosystem services despite it not being “actively” managed. The absence of active management is not necessarily a sign of “abandonment” or “neglect”. For example, areas of peat-land might be helping to deliver carbon capture which is part of the Scottish Government’s response to climate change. Owning and managing land for nature conservation is an important land use. We would welcome the legislation reflecting the statement made in the consultation on the draft Bill”.453

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

“…there is nothing in the Bill which would suggest that land or buildings held for conservation could not be considered to be abandoned or neglected. The Scottish Wildlife Trust454 and the National Trust for Scotland would like all land held for conservation to be excluded from the statutory provisions. In addition the National Trust for Scotland requested that the Trust’s inalienable land should be deemed to be held for conservation. “Should this not be accepted by the Committee, we would suggest that the Scottish Ministers should have the power to reject an application where land is held for conservation and the Trust’s inalienable land should be presumed or (preferably) deemed to be held for conservation. If the Trust’s inalienable

450 Written submission. Scottish Land and Estates.
451 Written submission. Historic Houses Association for Scotland.
453 Written submission. Scottish Natural Heritage.
454 Written submission. Scottish Wildlife Trust
land is not absolutely excluded from the statutory provisions, then we would seek a special parliamentary process to be built into the legislation to allow the Trust to appeal any compulsory sale order (in the same form as in the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 and the Crofters Acts..."455

253. SEPA also noted that there could be cases where abandoned or neglected land could have a high value in terms of the ecosystem services it offers such as supporting biodiversity and flood risk management. It highlighted the importance of having a robust evidence base to inform decision making and suggested that both the land valuation and processes of determining requests for transfer of land should take account of ecosystem value in a systematic way. SEPA also suggests that there may be cases where abandoned or neglected land is partly or wholly contaminated and may not be suited to the use that the community would like to see. SEPA suggested that there was a need for appropriate mechanisms to ensure that communities had access to expert advice and support. 456

254. The Historic Houses Association for Scotland stated that—

“...the absence of active management is not necessarily a sign of either “abandonment” or “neglect”. Land may be delivering wider public good in the form of ecosystem services despite not being actively managed. Active management of itself can therefore not be properly used as a term in defining abandonment and neglect. Biodiversity, carbon capture, recreation and cultural value may all be components of different sites and the Bill as drafted does not take into account such circumstances”. 457

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

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

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

455 Written submission. National Trust for Scotland.
456 Written submission. Scottish Environment Protection Agency.
457 Written submission. Historic Houses Association for Scotland.
Government addresses these concerns and ensures that appropriate guidance, advice and support is provided to communities.

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

258. The Delegated Powers and Law Reform (DPLR) Committee reported on the Delegated Powers Memorandum and made a number of specific comments in relation to this, as well as some general observations about the quality of responses received from Scottish Government officials and the detail of the Bill. One of the DPLR Committee’s main concerns relates to the new section 97c(3)(a) on eligible abandoned or neglected land, which states—

“Eligible land does not include land on which there is a building or other structure which is an individual’s home unless the building or structure falls within such classes as may be prescribed”. In its report the DPLR Committee stated that it “[…] remains in a position, having considered both written and oral evidence, whereby it is unable to form a view as to how this power is intended to be used. The Government has not provided an explanation for taking this power beyond a need to retain flexibility within the Bill. The Committee considers that explanation to be inadequate in light of the significance of this power and what it appears to permit. The Committee further finds it concerning that the thinking behind a power of such significance to the scope and application of the Bill appears still to be in the early stages of development”. 458

259. Brodies LLP459 and the Community Land Advisory Service460 also raised concerns in relation to the exclusion of an individual’s home and, in its written evidence, Brodies stated “We are however wary that this exclusion is also subject to further regulation”.

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

261. No detailed information on the thinking behind the power or examples of how it might be used in practice or how it was intended to be used were offered. The Cabinet Secretary stated that he was aware of concerns in relation to the power and undertook to review those concerns but stated “We will still have to have the power to exclude homes…”461.

262. The Committee shares the concerns of the Delegated Powers and Law Reform Committee in relation to the new section 97C(3)(a) on eligible abandoned or neglected land, which states “Eligible land does not include land on which there is a building or other structure which is an individual’s

459Written submission. Brodies LLP.
460Written submission. Community Land Advisory Service.
home unless the building or structure falls within such classes as may be prescribed”. The Committee is also concerned that the thinking behind this significant power is in the early stages of development.

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

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

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

Queen’s and Lord Treasurers Remembrancer (QLTR)
266. The Community Land Advisory Service questioned the proposed new section 97C(3) of the 2003 Act, which states that land administered by the Queen’s and Lord Treasurers Remembrancer (QLTR) is an exception to the general rule.463

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

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

269. Subsection (1) specifies that a Part 3A community body must be a company limited by guarantee. It also lists the requirements which must be included in the company’s articles of association. In terms of subsection (2) Ministers have discretion over the minimum number of members a Part 3A community body must

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462 Bona vacantia means vacant goods and is the name given to ownerless property which passes to the crown.
463 Written submission. Community Land Advisory Service.
have. Ministers must also be satisfied that the body’s main purpose is consistent with furthering the achievement of sustainable development.

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

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

272. The Community Land Advisory Service states that—

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

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

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

Section 97E(1) of the 2003 Act

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

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

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464 Written submission. Community Land Advisory Service.
465 Written submission. Scottish Land and Estates.
466 Written submission. Historic Houses Association for Scotland.
Register of community interests in abandoned or neglected land (section 97F)

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

278. The Community Land Advisory Service suggested that such a register would be unnecessary, as in its view, the proposed Part 3A right to buy is absolute and not pre-emptive. When the Land Registration etc (Scotland) Act 2012 has been fully commenced, it argued, the Keeper of the Registers of Scotland will be empowered to unilaterally register any unregistered parcel and relevant information would be disclosed in routine conveyancing searches.\(^{467}\)

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

Right to buy: application for consent – Section 97G

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

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

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

282. A Part 3A community body must also list in the application why it believes that its proposed purchase is in the public interest, how it is compatible with furthering the achievement of sustainable development of land, and the reasons why it considers the land to be wholly or mainly abandoned or neglected. This application must also be sent to the land owner and any creditor. On the invitation of Ministers, owners and creditors would then have a 60 day period to provide written comments on the application. There is also a 60 day period for public notice and for receipt of the comments from the community body which is provided with all views received by the Minister.

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

\(^{467}\) Written submission: Community Land Advisory Service.
Identification of the owner

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

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

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

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

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

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

289. In relation to the proposed section 97 G (10) some stakeholders considered that the information to be provided by the owner should include information about

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469 Written submission. Community Land Advisory Service.
the effect on the owner’s funder and/or the existence of any leases or other contractual commitments which bind the owner in relation to the land and sought further clarity on this, particularly as such contracts can be rendered void by section 57 (5).

290. In its written submission, Brodies LLP proposed—

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

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

Crichel Down rules

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

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

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

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

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471 Written submission. Brodies LLP.
473 Pinsent Masons LLP, submission number 50.
474 Written submission. Scottish Property Federation.
296. The Committee welcomes the clarification from the Cabinet Secretary that, as the Crichel Down Rules are not statutory, they do not preclude a community having the right-to-buy. The Committee understands that these rules apply only to land bought during the Second World War; however, the Committee would welcome further detail from the Scottish Government on the application of the rules in relation to the land that they do and do not apply to.

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

Mapping requirements

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

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

“there seems no logical or functional rationale for being required to provide the following details: a map and written description showing not only the boundary of the land or lease to be acquired, but also all sewers, pipes, lines, watercourses or other conduits, and fences, dykes, ditches or other boundaries. This goes far beyond what is required in other land or lease transactions and there seems no functional reason to require this information. It is particularly onerous when the area to be purchased extends to several thousand hectares. Yet similar detailed requirements are proposed in Section 48 of the Bill (Clause 7G(6)(d) and (f) for the new proposed Part 3A”.

300. He also had concerns in relation to the requirement for inclusion of all postcodes and OS 1km grid squares to be included in the land or lease area to be

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477 Written submission. Community Woodland Association.
478 Written submission. Community Land Scotland.
published, particularly where the area extended to several thousand acres and highlighted the possibilities for technical challenge due to inadvertent omissions. He stated that in his view—

“...in relation to the mapping requirements, the new Part 3A is modelled on the Part 3 of the 2003 Act, and this “goes far beyond what is required in other land or lease transactions, and there seems no functional reason to require this information...” 479

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

Criteria for consent (section 97H)

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

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

479 Written submission. John Randall.
that the Part 3A community body has tried and failed to buy the land, other than by making an application under Part 3A.

Ownership inconsistent with the achievement of sustainable development

303. Some stakeholders raised concerns in relation to the requirement under section 97H; that Ministers must not consent to an application to buy by a community body unless they are satisfied "that, if the owner of the land were to remain as its owner, that ownership would be inconsistent with furthering the achievement of sustainable development in relation to the land". Many considered that it would be difficult to prove this "as it requires proof of a negative as distinct from proof of a possibility" and that it goes much further than would be required in order to achieve a "fair balance" required by ECHR A1P1.

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

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

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

"on the second part of the test – whether continuing ownership under the current arrangements from the existing owner will further sustainable development – I offer the reassurance that ministers will want evidence and proof from the existing owner...They will want evidence that things are happening, investments are being made, a plan is in the pipeline and people

480 Written submission. Community Land Scotland.
481 Written submission. Community Woodland Association.
have been commissioned to bring the land out of neglect or abandonment.”

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

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

Community demonstration of trying and failing to purchase land

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

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

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

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

312. The new section 97J sets out the requirements for a ballot to establish that a right to buy application by a Part 3A community body has the support of its community. A proposal to exercise a community right to buy will be deemed to have been approved by the relevant community if—

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

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

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

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

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

317. The Community Land Advisory Service suggested that this provision should be modified in the same way as the equivalent provision in Part 2, in order to provide that the ballot is to be conducted by an independent baloter appointed and paid for by Ministers.

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

319. Fife Community Partnership commented on the 50% threshold, stating—
“Groups wishing to undertake the Community Right-to-Buy only have access to the edited register whereby up to 30% of the electorate may not be included. This makes the initial 50% threshold difficult to achieve.”

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

Detailed procedural matters (Sections 97K – R)

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

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

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

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

Consent conditions (Section 97L)

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

325. The National Trust for Scotland considered that this section should be explicit in stating that the conditions set could include the application of Conservation Agreements or Conservation Burdens with a provision relating to conservation agreements similar to those in the Crofters (Scotland) Act 1993 (p.5).488

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

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

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487 Written submission. Fife Community Safety Partnership.
488 Written submission. National Trust for Scotland.
327. This section gives Ministers powers to make regulations prohibiting certain persons from transferring or otherwise dealing with the land in respect of which an application under section 97G has been made. It also provides that Ministers may make regulations to suspend rights over land in respect of which a Part 3A application has been made.

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

Completion of purchase (Section 97Q)

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

330. The Law Society of Scotland noted that, in its view, this provides an opportunity for Ministers to impose statutory burdens and sought clarity as to what was envisaged. For example, what types of burdens and claw-back provisions should be put in place should the plans of the community body not be implemented?\(^{489}\) Similarly, the Scottish Property Federation questioned what would happen were a community body to fail to deliver the proposed benefit within a reasonable period of time.\(^{490}\)

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

Assessment of the value of land (Section 97S)

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

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

334. The Committee received a written submission highlighting that there may be situations in which the valuation has been agreed between the parties but the valuer may not arrive at the same valuation. The submission suggests that this

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\(^{489}\) Written submission. Law Society of Scotland.

\(^{490}\) Written submission. Scottish Property Federation.
may be an issue should the figure agreed be higher than the valuer’s assessment and public money is being used to finance the acquisition.  

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

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

337. The Committee considers that the valuation procedure should ensure that both parties are treated fairly by giving each the opportunity to comment on issues raised in the other’s representations and draw attention to anything inaccurate or potentially misleading. The Committee recommends that the Scottish Government bring forward amendments at stage 2 to provide both the owner and the community body the right to comment on the valuation and other party’s representations.

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

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

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

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

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

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

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

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

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

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

345. Section 97V provides that the landowner, a member of the community to which a Part 3A community body relates and a creditor in a standard security may appeal against the Ministers’ decision to consent to the application. Subsection (2) allows the Part 3A community body to appeal against a decision to refuse an application and, where there is more than one community body wishing to purchase the land, subsection (3) provides that Ministers' decision on which body's application will proceed is final and cannot be appealed.

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

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

494 Written submission. Community Land Advisory Service.
The Committee recommends that the Scottish Government give consideration to an appropriate mediation process and include provision for this within the Bill by way of bringing forward amendments at stage 2.

Other issues considered by the Committee

Community use of land

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

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

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

Best value and best public benefit

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

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

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

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

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

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

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

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

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


to local authorities in relation to their assets, their considerations of best value, and supporting communities to acquire land.

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

Provision of support to communities

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

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

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

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

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

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

505 Written submission. Plunkett Foundation.
506 Written submission. The Children’s Wood.
363. The Committee raised concerns about the difficulties communities encounter when faced with issues such as state aid rules, public finance regulations and a range of other matters with the Cabinet Secretary and sought further information on what steps the Scottish Government is taking to put the necessary support in place.

364. The Cabinet Secretary responded by stating—

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

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

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

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

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

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

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

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

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

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

ISSUES NOT INCLUDED IN THE BILL

Crofting Community Right to Buy (Part 3)

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

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

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

509 Written submission. Community Woodland Association.
the crofting community right-to-buy as a consequence of the new measures.”

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

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INTRODUCTION

1. The Community Empowerment (Scotland) Bill (“the Bill”) was introduced on 11 June 2014 by the Scottish Government (“the Government”). As with all bills, it was accompanied by a Financial Memorandum (FM) (page 51 of the Explanatory Notes) which set out the estimated financial implications of the Bill’s provisions.

2. Under Standing Orders Rule 9.6, the lead committee at Stage 1 is required, among other things, to consider and report on the Bill’s FM. In doing so, it is required to consider any views submitted to it by the Finance Committee (“the Committee”).

THE BILL

3. The FM states that the Bill “reflects the policy principles of subsidiarity, community empowerment and improving outcomes” and provides a framework which will—

   • empower community bodies through the ownership of land and buildings and strengthening their voices in the decisions that matter to them; and
   • support an increase in the pace and scale of public service reform by cementing the focus on achieving outcomes and improving the process of community planning.”

4. The FM states that it sets out the costs associated with the following parts of the Bill—

   • Part 1 places a duty on the Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, which builds on the Government’s internationally acclaimed “Scotland Performs” framework.
   • Part 2 places community planning partnerships (CPPs) on a statutory footing and imposes duties on them around the planning and delivery of local outcomes.
   • Part 3 provides a mechanism for communities to have a more proactive role in having their voices heard in how services are planned and delivered.
   • Part 4 amends Part 2 of the Land Reform (Scotland) Act 2003, extending the community right to buy to all of Scotland, and introduces a new Part 3A to that Act to make provision for community bodies to purchase neglected and abandoned land where the owner is not willing to sell that land.
   • Part 5 provides community bodies a right to request to purchase, lease, manage or use land and buildings belonging to local authorities, Scottish public bodies or the Scottish Ministers.
- **Part 6** places a statutory duty on local authorities to establish and maintain a register of all property held by them for the common good and requires local authorities to publish their proposals and consult community bodies before disposing of or changing the use of common good assets.

- **Part 7** updates and simplifies legislation on allotments. It requires local authorities to take reasonable steps to provide more allotments if waiting lists exceed certain trigger points and ensures appropriate protection for local authorities and plot holders.

- **Part 8** provides for a new power which will allow councils to create and fund their own localised business rate relief schemes to better reflect local needs and support communities.

5. A table summarising the additional costs expected to arise as a result of the Bill’s provisions is provided on pages 52 to 60 of the FM.

**EVIDENCE**

6. The Committee received 16 responses to its call for evidence on the FM, around half of which were from local authorities. Responses were also received from organisations including COSLA, Highlands and Islands Enterprise (HIE), NHS Lothian, The Office of the Scottish Charities Regulator (OSCR), the Scottish Environmental Protection Agency (SEPA), the Scottish Property Federation (SPF) and SportScotland. All written evidence is available on the Committee’s website.

7. The Committee also received a letter dated 3 October 2014 from the Minister for Local Government and Planning (“the Minister”) which provided further financial information with regard to forecasting the use of participation requests and asset transfer requests.

8. The letter highlighted the difficulties the Government and stakeholders had faced in estimating the financial impacts of the Bill, but provided “examples based on current practice to show the level of resource and costs that may be involved in both participation requests and asset transfer requests.”


**Issues highlighted in evidence**

10. A number of written comments were received in respect of specific aspects of the Bill and their estimated financial impacts as set out in the FM. The Committee then raised a number of these points in its oral evidence session with the Bill Team.

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511 Letter to Convener from Minister for Local Government and Planning dated 3 October 2014
11. However, several respondents also commented on the possible financial implications of the Bill as a whole and expressed concerns regarding its overall impact on their budgets. Given that some of the Bill’s costs are expected to be demand driven, the Committee notes that the FM does not fully quantify the total estimated financial implications of the Bill.

**General Comments**

12. A number of general comments about the FM were received with several respondents acknowledging the difficulty in predicting demand. HIE for example, stated that—

“The FM makes a good ‘estimate’ of ‘unit costs’ for aspects of the Bill’s delivery, in many cases providing ranges where those are informative, however, the inability to profile demand take up makes it impractical for the FM to estimate the total costs that might be expected in say the first three years of operation.”  

13. Several local authorities, however, foresaw difficulties in meeting the costs of the Bill and called for additional resources from central government. East Lothian Council for example, stated that—

“Local government will incur extra cost as a result of these provisions (which constitute a new legislative burden) and it is not possible to allocate money to these costs from within our budgets without taking it from other activities. We would expect central Government to add to our settlement any money necessary to fulfil the provisions of the Bill.”

14. Glasgow City Council echoed this view stating that likely additional costs on local authorities were not quantified to any reliable extent in the FM due to difficulties in predicting demand and activity. However, it stated “that the costs will be significant and that local authorities will find it challenging to meet these costs from existing resources.”

15. Inverclyde Council also stated that there was “no evidence” to support the FM’s assertion that costs, in many cases, would be minimal and able to be contained within existing budgets. In its view, this was “not the case” and there was no additional fund within the Council to absorb any demand.

16. Similar suggestions that additional resources would be required to implement the Bill’s provisions were made by other respondents including North Lanarkshire Council and North Ayrshire Council which stated that—

“Where costs have been included in the narrative the ranges are sufficiently wide to accommodate a huge amount of uncertainty. However in other sections there is no mention of costs but it does mention there will

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512 Highland and Islands Enterprise, written submission
513 East Lothian Council, written submission
514 Glasgow City Council, written submission
515 Inverclyde Council, written submission
be additional costs incurred. The implication is that the additional costs will be minimal but there is uncertainty that is not addressed in the bill."

17. However, North Ayrshire Council also stated that "in the main the council was in agreement with the financial implications contained in the Bill."

18. COSLA also acknowledged the difficulties in quantifying demand—

"it is difficult to anticipate the uptake and demand that will be placed upon Local Authorities. This makes it very difficult to quantify the financial cost that will be placed upon local government in complying with the legislation and indeed the Financial Memorandum makes no attempt to quantify a cost for these areas of the proposed legislation…

COSLA seeks reassurance that further work be undertaken to better quantify these costs before the Community Empowerment (Scotland) Bill is passed."\(^{517}\)

19. When asked about the work it had undertaken to attempt to anticipate demand and to ensure local authorities are adequately resourced to effectively deliver the Bill's measures, the Bill Team explained that work had been undertaken prior to publication of the Bill. However, it stated that "little financial information and cost information was provided by others" in response to its consultations and it had "found it difficult to amass information on how the legislation might be used" meaning that "it was difficult to consider what demand might be."\(^{518}\)

20. The Bill Team explained that, as communities are not homogenous and will have different priorities and needs which could not be amalgamated into a single demand profile, it "will be hard to predict what communities will do." It further pointed out that "no one else has been able to do it either."\(^{519}\)

21. In response to concerns expressed by the Committee that the Bill might raise expectations where there was insufficient support available to meet them, the Bill Team explained that, the Government had a general convention that it would provide additional funding where new costs had arisen from legislation. However—

"The difficulty with the bill is that we cannot quantify that funding at the moment. That additional funding would need to be demonstrated and quantified through practice. That would happen through the normal processes and the funding would be provided in that way."\(^{520}\)

22. When questioned about how the funding mechanism would work, given the impossibility of estimating figures, the Bill Team replied—

\(^{516}\) North Ayrshire Council, written submission

\(^{517}\) COSLA, written submission

\(^{518}\) Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 48

\(^{519}\) Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 48

\(^{520}\) Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 49
“We cannot say at this time. If local authorities can demonstrate and quantify what the new duties in the bill have cost them, that will be part of the on-going process of local authority settlements.”\(^{521}\)

23. Given that the Bill was expected to take effect during financial year 2015-16 and the draft budget for that year was expected to be published imminently, the Committee asked how much would be set aside to cover the costs of the Bill’s provisions. In response the Bill Team stated—

“We are not anticipating any particular financial burden in 2015-16. COSLA is right to say that it will not be overly onerous and therefore could be encapsulated within current resources. However, we recognise that additional funding might be required in the future.”\(^{522}\)

24. When it was pointed out that COSLA’s position appeared to be that whilst the costs of the Bill’s individual elements might not be overly onerous, overall costs had the potential to be so, the Bill Team acknowledged this point but stated that it did not agree that overall costs had the potential to be significant. It confirmed that it believed that—

“the cost can be managed within current resources, with some addition if the demand is more than local authorities can cope with.”\(^{523}\)

25. In the event that costs did turn out to be greater than expected as a direct consequence of the Bill, The Bill Team confirmed that—

“That would be part of the normal discussions with local authorities through the annual budgeting process. Local authorities would have to demonstrate and quantify what was involved and then go into discussions with the Scottish Government”\(^{524}\)

26. However, the Bill Team further stated that it would be for the Minister for Local Government and Planning to respond more fully to this question.

27. The Committee invites the lead committee to seek clarity from the Minister regarding whether and by what mechanism additional funding will be made available for local authorities should they incur significant additional costs as a result of the Bill.

28. With particular regard to Parts 3 and 5 of the Bill, the lead committee may wish to explore the issue of how the Government can be confident that any additional costs can be managed within current resources, given that costs are expected to be demand driven.

29. In response to questions from the Committee about whether there was a risk that, had the FM presented more concrete estimates of potential demand and

\(^{521}\) Scottish Parliament Finance Committee. Official Report, 8 October 2014, Col 54


costs, these might have been seen as “an upper limit for how much could be done”, the Bill Team agreed—

“Absolutely: demand will be led by communities, so we cannot work in that way. If we set a limit, that will confine the process and box it in.” 525

30. Expanding on this point, the Bill Team explained that it did not wish to set a benchmark as “we want the legislation to be successful and we want as many communities as possible to use it—it is for the communities to use and not for us to tell them to use it.” 526

31. Towards the end of the evidence session, the Committee drew attention to Standing Orders rule 9.3.2 which states that—

“A Bill shall on introduction be accompanied by a Financial Memorandum which shall set out the best estimates of the administrative, compliance and other costs to which the provisions of the Bill would give rise, best estimates of the timescales over which such costs would be expected to arise, and an indication of the margins of uncertainty in such estimates.” 527

32. When asked whether the FM met these criteria, The Bill Team explained—

“We attempted to include costs in the financial memorandum in a number of places where we believed that we could actually indicate what the costs will be. In some areas, we know that the costs under the current provisions are fairly low, for example, and we therefore have an idea of what the costs may be in the future.

We express a caveat a number of times about the margins of uncertainty, because to attempt to state what the bill might cost in future would be unreasonable and potentially misleading.” 528

33. Following the oral evidence session the Convener wrote to the Minister 529 seeking an explanation of how the FM met the requirements of Standing Orders and also of the Scottish Government’s own guidance on Financial Memoranda (SG 2009/1). 530

34. The Committee received a letter from the Minister dated 24 October 531 which confirmed his view that the FM did meet the requirements of Standing Orders and had been conducted in line with the Government’s guidance.

525 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 52
526 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 52
527 Standing Orders of the Scottish Parliament
528 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 58
529 Letter from Convener to Minister for Local Government and Planning dated 14 October 2014
530 Scottish Government Guidance Note 2009/01: Financial Memoranda that accompany Scottish Government Bills
531 Letter from Minister for Local Government and Planning to Convener of Finance Committee dated 24 October 2014
35. The letter highlighted the work that had been undertaken with stakeholders in order to estimate unit costs and noted that the FM had provided examples of costs arising from similar processes—

“Thus the FM and the additional information supplied contains the full range of financial information that can be made available with certainty in relation to this Bill.”

36. However, the letter also stated that “the FM cannot estimate the level of demand for asset transfer or participation requests, and consequently does not provide ranges for the total potential costs of these provisions.” This, the Minister explained, was intended to avoid giving a flawed figure as the variables inherent to the Bill in terms of “the number of requests, their complexity and their distribution over time” “would make a specific figure or range far too questionable.”

37. Therefore, the letter concluded—

“the information provided is clearly the best estimate that can be provided of the administrative, compliance and other costs to which the provisions of the Bill would give rise, the best estimate of the timescales over which such costs would arise and has given a very clear indication of the margins of uncertainty in such estimates.”

38. The Committee acknowledges the difficulties faced in quantifying potential future costs arising from services that will be demand driven. However, the Committee remains concerned that, despite the requirements of Standing Orders, best estimates have not been fully provided.

39. The Committee invites the lead committee to ask the Minister what plans are in place to ensure that any costs arising from the Bill will be monitored on an ongoing basis. It also invites the lead committee to seek clarity regarding the funding mechanism by which resources will be made available to local authorities in the event that such costs prove to be significant.

Part 2: Community Planning

40. The FM states that the Bill seeks to strengthen CPPs by placing new duties on public sector partners “to play a full and active role in community planning and the resourcing and delivery of local priority outcomes.” It explains that some of these bodies are already statutory community planning partners, whilst others are not, although in practice they “frequently participate in community planning.”

41. The FM states that “for those public bodies which are complying with national and local action already underway at policy level to strengthen community planning it is anticipated that the provisions will impose either no or minor costs” (such as costs relating to travel or staff time).

42. Similarly, the FM states that “for those local authorities which are complying with national and local action already underway at policy level to strengthen community planning, it is anticipated that the provisions will impose either no or
minor additional indirect costs, in terms of commitment by senior officers and elected members.”

43. COSLA’s written submission agreed that any additional costs arising from this part of the Bill “would appear to be minimal.”

44. SEPA expressed surprise that it had been designated as a public body for community planning and expressed concerns about “false expectations that SEPA will fully engage with all CPPs in Scotland” stating that this would be “highly resource intensive and not cost neutral”, especially if it did not “have the flexibility to tailor our engagement with different CPPs, and to deploy our limited resource where we can add the most value.”

45. The Bill Team confirmed that SEPA would be a partner to the 32 CPPs across Scotland, but pointed out that the Bill did not stipulate what the level of engagement with each CPP should be. Therefore, “how SEPA engages will be flexible and will be decided in collaboration with CPP partners, so we do not necessarily see the same resource issues as SEPA does.”

Part 3: Participation Requests

46. The FM states that the Bill will enable community bodies to seek to participate, along with a public body, in a process to improve the outcome of a service delivered by that public body. Public bodies will only be able to decline a request for dialogue where there are “reasonable grounds” to do so and will be required to publish a report at the end of the process.

47. The FM acknowledges that public bodies (including local authorities) are likely to incur costs in responding to participation requests. However, it provides no estimates of what these potential costs might be, stating that “the costs will depend on how often community participation bodies use the provisions and at this stage it is difficult to forecast use across Scotland.”

48. Expanding on this point in oral evidence, the Bill Team gave the example of one local authority area where demand for participation requests might be very low as the public authorities were already excelling in public engagement and participation as opposed to another area which might have low demand as a result of lack of capacity in the community. This scenario, it suggested, highlighted the difficulties in attempting to estimate the demand profile across Scotland.

49. The Bill Team also suggested that demand might increase over time as communities became increasingly aware of their new rights—

“When people see such requests being used, they might catch on. If people see them having an impact in their local area, demand may

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532 COSLA, written submission
533 Scottish Environmental Protection Agency, written submission
534 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 50
increase from that. It all depends on what communities want to do and how they want to use the provisions.\textsuperscript{535}

50. In response to questioning as to why other FMIs previously scrutinised by the Committee where costs were also expected to be demand driven had set out approximate upper and lower limits, albeit with appropriate caveats, yet this one did not, the Bill Team explained that any such ranges would “be too large to be considered worthwhile.” Levels of demand, it stated, would only be seen when the Bill took effect.\textsuperscript{536}

51. Expanding on this, the Bill Team continued—

“There are too many variables to factor into what would be a reasonable demand profile, or a reasonable idea of how many requests could come forward. We have gone back to what the unit cost might be and, as COSLA says, it is not overly onerous.”\textsuperscript{537}

52. When asked to give an example of a piece of previous legislation for which the costs had been similarly unquantifiable the Bill Team confirmed that it had looked but had been unable to find a similar example.

53. The letter from the Minister dated 24 October explained that “there is no existing community-led mechanism comparable to participation requests on which to base estimates of demand” and highlighted the uncertainties over uptake of participation requests and the work required to respond to them.\textsuperscript{538}

54. The Committee acknowledges the difficulty in providing concrete estimates of services that will be demand driven but emphasises that Standing Orders require FMIs to provide best estimates of costs, their timescales and margins of uncertainty.

55. The FM also states that public bodies (including local authorities) will incur costs in relation to the provision of an outcome improvement process, although again, no estimates are provided. Two examples of the costs incurred by a local authority in relation to community engagement events (ranging from £1,100 to £41,000) are provided with the FM stating that they mainly related to staffing costs.

56. HIE agreed that there were “inevitable uncertainties” associated with the extent to which communities would seek to utilise the opportunities presented by the Bill, but anticipated that communities in its area would wish to engage strongly and utilise the new powers conferred by it. However, with regard to participation requests it expected that it would be able to absorb them “to a large extent within the costs of staff time currently devoted to on-going business improvement activities.”\textsuperscript{539}

\textsuperscript{537} Scottish Parliament Finance Committee, \textit{Official Report}, 8 October 2014, Col 54
\textsuperscript{538} Letter from Minister for Local Government and Planning to Convener of Finance Committee dated 24 October 2014
\textsuperscript{539} Highland and Islands Enterprise, written submission

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57. COSLA’s submission drew parallels between the potential impact of participation requests and that of the existing Freedom of Information laws and expressed concerns about the associated administrative burden. However, the Bill Team stated that the Bill was not directly comparable to the Freedom of Information Act 2000 as it applied to everyone whilst participation requests would only apply to community bodies which met the criteria set out by the Bill. Furthermore, any such requests would then be assessed against certain criteria meaning that demand would be more limited.

Capacity Building
58. A number of respondents raised the topic of “capacity building” in community bodies with NHS Lothian, for example, suggesting that the FM’s costs were “arguably understated” and noting that its original consultation response had stated that—

“community bodies may not possess the relevant skills, experience or knowledge to allow them to be meaningfully or effectively involved. Public service authorities would therefore need to consider how they could provide support for capacity building. This could add pressure to public service authorities from an already under-resourced position… There does not seem to be consideration in the bill that addresses the inevitable financial and capacity implications of participation for community bodies in the improvement process.”

59. NHS Lothian also drew attention to the impact of the Bill in terms of tackling inequalities in Scotland, stating that—

“there needs to be specific regard made to what support infrastructures are in place to empower our less equipped communities, if not, the bill will further increase the inequalities gap between communities, some of whom are well equipped and able to articulate their needs while some will struggle to be heard/access this empowerment opportunity.

Without appropriate support and investment in community empowerment the key components of the Bill will not be fairly accessible to communities (both geographic or communities of interest).”

60. East Lothian Council stated that, in order to assist community groups to develop the capacity to take on the opportunities and challenges represented by the Bill, appropriate consideration should be given to the provision of adequate resources nationally “rather than assuming that local authorities will be able to find the resources from current spending allocations.”

61. This view was echoed by South Lanarkshire Council, which suggested that additional resource was required to establish appropriate structures and to support CPPs in maximising the Bill’s impact.

540 NHS Lothian, written submission
541 NHS Lothian, written submission
542 East Lothian Council, written submission
62. However, the Bill Team stated in oral evidence, that whilst it agreed that “communities are not necessarily on a level playing field”, it did not believe that this was a matter for the Bill. Whilst the Bill provided a legal framework for such requests, support for capacity building in community bodies was provided through different avenues such as the Strengthening Communities Fund announced in April.\(^{543}\)

63. South Lanarkshire Council also sought clarification of the definition of a community body, questioning whether such bodies were “restricted locally” or whether national organisations were also covered by the provisions. In the event that the latter was the case, it suggested it could be left open to “vast quantities of requests” leading to substantial costs which it was not resourced to deal with. It also expressed concerns that it could face further substantial costs if the outcome of the improvement process was that it had to “markedly change the way in which it sets its priorities and delivers services.”\(^{544}\)

64. The Explanatory Notes state that—

“There are no restrictions on how a community may be defined for this purpose: it may be based, for example, on geographical boundaries, common interests, or shared characteristics of its members (such as ethnic background, disability, religion, etc.).

65. The lead committee may wish to invite the Minister to respond to the concerns raised by South Lanarkshire Council regarding the definition of a community body.

66. Fife Council also suggested that consideration might need to be given to levels of staffing needed to take on the organisation, assessment, and administration of additional requests from community groups. Whilst acknowledging that any investment in additional staffing might not be significant in terms of its overall budget, it noted that specific services such as Community Learning and Development were already under pressure as a result of having to respond to requests from local groups.\(^{545}\)

67. The letter from the Minister dated 3 October provided examples showing that the overall costs for participation and engagement events could vary depending on the issues being looked at. It suggested that this was also likely to be the case with regard to participation requests and on this basis, estimated that costs per request could range between £1,000 and £7,500 “in most cases”. Therefore, should there be 100 participation requests across Scotland, the total cost could be expected to be between £100,000 and £750,000.\(^{546}\)

Part 4: Community Right to Buy Land

68. The FM states that the Bill makes changes to community right to buy (CRTB) in order “to make the process easier and more flexible for communities while

\(^{543}\) Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 49
\(^{544}\) South Lanarkshire Council, written submission
\(^{545}\) Fife Council, written submission
\(^{546}\) Letter to Convener from Minister for Local Government and Planning dated 3 October 2014
continuing to strike a fair balance between the rights of communities and landowners.” The FM further states that the Bill extends the right to buy to all of Scotland and removes the power of Ministers to designate “excluded land”.

69. Whilst the FM acknowledges that these changes could be expected to lead to more communities taking up the right to buy, it states that “it is not possible at this stage to accurately estimate the demand and how many new applications may be received.”

70. HIE agreed that it was difficult to quantify the likely increase in demand, but suggested that the extension of the right was “likely to generate significantly more CRTB applications” than anticipated with the attendant increase in costs to the Government. Whilst the FM does not make concrete predictions of the likely increase in CRTB applications, it provides examples on the basis of increases of five and ten additional applications per year which HIE suggests is “on the conservative side”, particularly given the extension of the provisions to urban communities. This point was echoed by the SPF which questioned whether this assumption could “remain credible.”

71. The Bill Team agreed that HIE could expect more work as a result of the Bill, but stated that it would have “a certain amount of flexibility” in how it assisted communities. When communities come to HIE, it suggested that —

“the process will not be about engagement and consultation through HIE’s mechanisms; it will be about what the communities want to do.”

72. The Committee acknowledges that bodies such as HIE will have some flexibility in how they deal with increased volumes of CRTB applications. However, the lead committee may wish to seek further clarity over what support might be put in place for such bodies in the event that demand exceeds expectations.

73. Glasgow City Council stated that the FM “wrongly suggests that there are no financial implications for local authorities in relation to right to buy.” It expected costs to arise as a result of the council “putting a process in place and of utilising resource from a range of services in order to enable a response to be made within a very short timescale” where the request relates to its land or that of an Arms Length External Organisation. It also raised the issue of possible financial implications “in the circumstance where the proposed acquisition may deal with a short term issue but is not aligned to the Council’s longer term strategy.”

74. The SPF also suggested that the Bill might result in costs relating to events that did not happen or were delayed as a result of CRTB, for example where funding or investment was available for a limited time only and financial losses might be incurred as a result of delays resulting from CRTB applications.

75. Expanding on this point the SPF stated that its main concern was—

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547 Highland and Islands Enterprise, written submission
548 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 51
549 Glasgow City Council, written submission
“that the enhanced scope of CRTB and by extension asset transfer may inhibit larger scale and complicated investment in development land in a manner that has not hitherto been an issue under the existing CRTB rights.”

76. However, the Bill Team rejected this suggestion, explaining that similar concerns had been expressed during the passage of the Land Reform (Scotland) Bill, but they had not come to fruition. It further explained that in the event that community applications were made with the intention of inhibiting large-scale projects, it was unlikely that they would meet the public interest case set out in the Bill.

77. When asked whether it was correct that “the community land fund was established with a finger in the air to make a judgment, because nobody knew how many communities would apply or register interest in land” the Bill Team confirmed that it understood that to have been the case, although it did not know how the figure was arrived at.

78. The Committee invites the lead committee to seek clarification of how the community land fund’s budget was arrived at and to consider what parallels can be drawn between it and funding for CRTB in the context of the Bill.

79. A further point raised by the SPF was the lack of a clear explanation of how the expansion of CRTB inter-relates with the Government’s guidance on what is known as “the Crichel Down rules” and the potential for costs in the event of a challenge under them. It explained that—

“This is where land has been compulsorily purchased by a public authority but is then surplus and subject to disposal by the public authority in question. In these circumstances it is government policy for the previous owner to have right of first refusal. We do not see any assessment of the costs of ensuring this guidance is followed or indeed, provision made for where challenges might be made by former owners to the (erroneous) sale of properties to CRTB.”

80. The lead committee may wish to seek clarification of how the expansion of CRTB might interact with “the Crichel Down Rules”.

81. The SPF also questioned whether NDPBs such as Historic Environment Scotland would “no longer have the same level of protection under the Bill as had been previously envisaged when they were an Agency of Government”, suggesting that were this to be the case, there could be significant financial implications for its estate and for those of other public bodies.

82. A final point raised by the SPF related to what might happen in the event that a community body—

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Scottish Property Federation, written submission
Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 56
Scottish Property Federation, written submission
“Successfully purchases via CRTB from, for example, a public sector authority but then two or three years later finds it is unable to continue to hold the property and needs to sell the asset on but is unable to. A public authority may well be obliged to resume ownership and we do not see that this has been factored into the financial implications of CRTB or asset transfer.”

83. SportScotland expressed concerns in the context of its duties under funding rules stating—

“We would not wish to see liabilities handed to community groups who then need to seek financial or other support from national organisations such as ours which funding rules do not allow us to give. As a distributor of National Lottery resources, continuing to invest in line with national guidance, we are required to ensure we protect the additionality principle. This means lottery investment adds to, and does not replace, other funding sources, achieving additional impact to what otherwise would have been achieved. Furthermore, our standard terms and conditions attached to awards state that lottery monies must be used for the purpose set out in the approved application and are non-transferable. Any proposed disposal of assets wholly or partially acquired, restored, conserved or improved through lottery (or Scottish Government funding) cannot be progressed without first giving us written notification and we are satisfied that full market value is being sought.”

84. The lead committee may wish to seek clarification of how rules relating to lottery funding might impact on CRTB.

Part 5: Asset Transfer Requests

85. The FM states that the Bill seeks to increase the amount of asset transfers from public bodies to community bodies by allowing such bodies to identify for themselves what they wish to achieve and the assets that they wish to acquire. It notes that the service which supports asset transfers was involved in 38 asset transfers from 2011 to 2014 but states that it cannot accurately predict future demand post-implementation.

86. The FM also states that the Government and/or local authority may decide to transfer an asset at lower than its market value following a full cost/benefit analysis which would include predicted future savings.

87. In respect of the Scottish administration and public bodies, the FM states that “the costs of these provisions will depend on the arrangements put in place and any additional costs will be met from existing resources.”

88. The FM provides no estimate of the financial impact of these provisions on local authorities stating that they “were not able to provide monetary estimates for any costs and savings that may arise.” It explains that this was in part due to the

553 Scottish Property Federation, written submission
554 SportScotland written submission
difficulty of predicting the number and variety of requests as well as the “complexity in predicting savings associated with better service provision.”

89. As with participation requests, the Bill Team explained that there were too many variables in terms of potential demand to quantify the potential volumes of asset transfers—

“As we go forward, we will see what the bill involves, but we cannot give the committee a definite figure for how much it might be used.”

90. East Lothian Council estimated that it would require an additional full-time post costing around £40,000 per annum due to increased workloads arising from asset transfer requests. This additional work would include dealing with enquiries, the provision of detailed information, responding to and processing asset requests, preparing reports and valuations, responding to appeals, and providing plans and information. District Valuer valuations were also estimated to lead to fees of around £5,000 per annum.

91. East Lothian Council also estimated that its legal team could incur costs of between £400 and £1,200 per transaction and that it could spend around £500 each year in dealing with reviews (estimated at four per year).

92. The letter from the Minister dated 3 October provided further information on the possible costs of dealing with asset transfer requests. In addition to the estimates provided by East Lothian Council, the letter also highlights figures from the Forestry Commission Scotland which indicate that it currently incurs costs of between £7,500 and £12,500 per asset transfer under its National Forest Land Scheme which enables communities to buy or lease Forestry Commission land.

93. The letter also provided a breakdown of the potential costs to community bodies undertaking an asset transfer. This states that “the estimate for community transfer bodies to obtain agreement to transfer is between £13,480 and £25,040.”

94. With regard to overall costs, the Minister’s letter dated 24 October explained that “any estimate or range would be inherently flawed” as a result of uncertainties relating to the complexity of requests and demand over time.

95. East Lothian Council also drew attention to councils’ duty to secure best value in their activities and to maximise the use of their assets. It pointed out that—

“It may not necessarily be in the best interests of the community as a whole to transfer a surplus building to a community group on request. The community as a whole may be better-served by attracting an economic use of such a building. In other words, there might be both economic and

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*Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 54*

*East Lothian Council, written submission*

*Letter to Convener from Minister for Local Government and Planning dated 3 October 2014*

*Letter from Minister for Local Government and Planning to Convener of Finance Committee dated 24 October 2014*
community wellbeing justification in seeking interest from the market to see if we could attract an economic use which would increase footfall and employment in the local area.\footnote{East Lothian Council, written submission}

96. Fife Council agreed that it was “difficult to estimate savings, especially if assets are being disposed at less than market value (as has been the case in transfers to community organisations).” With regard to potential costs it stated that—

“Local Councils may need to develop a cross Service team with a suitable skill mix to fully implement and manage any programme of transfer of assets. There is also an unknown potential cost to Councils as they will require to be reactive to communities’ aspirations. In addition to suitable community work expertise to engage with local organisations, legal, financial and property management skills may be required.”\footnote{Fife Council, written submission}

97. However, Fife Council did confirm that it did not expect these costs to be prohibitive in terms of implementing the Bill.

98. South Lanarkshire Council also noted that it could incur costs relating to asset transfers where it had to retain a property off market while the process was ongoing. These could include costs in relation to empty property rates, insurance, security, utility bills, repairs and maintenance. Noting that it could also lose income where the community body sought a reduction in price or rent (which it stated could be expected “in most cases”), it also drew attention to its responsibility to ensure that any such reduction was “clearly set against community benefits.”\footnote{South Lanarkshire Council, written submission}

99. NHS Lothian echoed these concerns stating—

“The longer and more complex the disposal process becomes, the greater the cost to the public sector body. Non-domestic rates will be incurred, security costs will have to be paid and the potential for deterioration and vandalism increases.”\footnote{NHS Lothian, written submission}

100. In addition to these costs, NHS Lothian shared the views of East Lothian Council, suggesting that “the increased complexity and more onerous process may necessitate additional staff resources and a greater demand for consultancy services” as well as costs relating to legal fees and the valuation of assets.

101. In terms of potential savings, South Lanarkshire Council acknowledged that these were more difficult to identify as they would depend on the specific proposal. It stated that savings could be made if the alternative to asset transfer was demolition or if maintenance and operational costs were to be borne by the community organisation. However, it also pointed out that these savings could also be achieved through a sale or lease on the open market.\footnote{South Lanarkshire Council, written submission}
102. COSLA’s submission stated—

“Very little information on the potential cost savings have been outlined, as again this will be demand driven and COSLA is concerned that these savings may have been overstated. COSLA would welcome clarity around this area of the Financial Memorandum.”

103. The Committee invites the lead committee to ask the Minister to respond to COSLA’s request for further clarity in this area.

104. NHS Lothian drew attention to anecdotal evidence that local authorities might regard the transfer of assets to community groups as a cost saving exercise and expressed concerns that such groups might not have “the funds nor the capacity to maintain these areas once a lease has been drawn up.”

105. It also expressed concerns that public bodies could incur losses as a result of the Bill—

“There may be potential costs to public service bodies as a result of land not necessarily being disposed of at true market value. Public bodies may bear a cost if they are not properly financially compensated for any asset transfers under Part 5 of the Bill. The Bill does not appear to require public bodies to be compensated for asset transfers.”

**Part 6 – Common Good Property**

106. The FM states that as of 31 March 2011, local authorities managed common good assets valued at £219 million. It explains that the Bill seeks to improve transparency around such assets and to increase community involvement in decisions regarding their identification, use and disposal.

107. To this end, the Bill will require local authorities to establish and maintain a register of common good assets and to invite community groups to comment on it in draft form.

108. Fife Council pointed out that the Bill does not amend the law of common good to allow local authorities to use certain categories of common good land for other purposes such as building new schools. It went on to suggest that this might have unintended financial consequences for local authorities as it would reduce their options for using their land. This, it suggested, could force councils to “acquire land from third parties at cost rather than making best use of existing resources.”

**Part 7 – Allotments**

109. The Bill replaces existing legislation relating to allotments, “updating and clarifying” the requirements on local authorities.

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564 COSLA, written submission
565 NHS Lothian, written submission
566 Fife Council, written submission
110. Local authorities will be required to provide more allotments when certain trigger points are reached in relation to numbers on a waiting list.

111. The FM states that local authority costs “will be dependent on how much provision is required to meet their targets, how much provision is actually possible due to land availability and costs, and factors such as the local cost of land and whether road access, toilets etc. need to be created.” It also states that estimates provided by some local authorities indicate a cost ranging from £1,900 to £6,250 per plot and from £21,000 to £150,000 for a whole site. The FM states that demand is variable, with some local authorities facing substantial demand whilst others would need no more plots to meet this target.

112. North Ayrshire Council, however, stated that its response to a recent COSLA consultation had indicated an upper limit of £250,000 for a whole site.\textsuperscript{567}

113. South Lanarkshire Council drew attention to the right of the Scottish Ministers to prescribe the size of allotments, which it stated would—

“clearly impact on the cost to the Council since a prescribed size will mean that the Council will have to consider this when acquiring land. Clearly, the larger an allotment is the greater the cost to the Council.”\textsuperscript{568}

114. Whilst Glasgow City Council pointed out that—

“Specific costs are noted for the aspects of the Bill relating to allotments but this focuses on the administrative costs as opposed to the capital investment costs. The council believes that the capital investment costs would be significant.”\textsuperscript{569}

115. COSLA also suggested that significant financial implications could arise for local authorities as a result of the development of new allotments, “in particular, where this includes the provision of roads for access and facilities such as toilets and access to water on site” and expressed concerns that the costs of site maintenance and utility bills had not been considered in the FM.\textsuperscript{570}

116. In oral evidence, the Bill Team agreed that costs in relation to allotments would be “dependent on existing provision and demand” but explained that the FM’s figures were based on information provided by “the 15 out of 32 local authorities that responded” to its consultation.\textsuperscript{571}

117. The Minister’s letter dated 24 October confirmed that—

\textsuperscript{567} North Ayrshire Council, written submission
\textsuperscript{568} South Lanarkshire Council, written submission
\textsuperscript{569} Glasgow City Council, written submission
\textsuperscript{570} COSLA, written submission
\textsuperscript{571} Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 48
“the costs associated with the allotments provisions will depend on the amount of provision already in place compared with any unmet demand, as well as the local cost and availability of land.”\textsuperscript{572}

118. However, it went on to state that “the figures provided by local authorities provide some examples but do not allow robust national estimates to be constructed.”

119. The Committee invites the lead committee to seek clarification as to whether additional resources will be made available to any local authorities which incur significant additional costs as a result of the duty to provide additional allotments.

Part 8 – Non-Domestic Rates

120. The FM states that, in effect, this provision allows local authorities “to create localised relief schemes to respond to local needs and demands.” Any such discretionary reliefs awarded by a local authority must be funded from within that authority’s existing resources and not at the expense of the [Government’s central NDRI] pool.”

121. The Bill does not give local authorities equivalent powers to levy any additional rates.

122. Fife Council stated that “in effect it proposes the establishment of localised relief schemes which could be used to help incentivise development and investment in areas deemed appropriate by the local authority.”\textsuperscript{573}

123. However, Fife Council also noted that whilst this could create opportunity, it could also lead to additional costs in terms of administration costs and the loss of income arising from the reliefs themselves. It further pointed out that the Bill explicitly prevented local authorities from raising NDR in other areas to compensate for any loss of income.

124. East Lothian Council stated that any reliefs would have to be funded by savings elsewhere and would ultimately be borne by council tax payers. It further suggested that the Bill could be expected to lead to a marked increase in applications for NDR relief and related disputes and in their complexity which would inevitably impact on its workload. This additional work, it suggested, could lead to a reduction in the collection of NDR as the absorbing of the additional workload could leave its Business Rates Team with fewer resources to target poor payers.

125. East Lothian Council did acknowledge that longer-term financial benefits could result from the targeted use of reliefs to stimulate economic growth in certain

\textsuperscript{572}Letter from Minister for Local Government and Planning to Convener of Finance Committee dated 24 October 2014  
\textsuperscript{573}Fife Council, written submission
areas, but stated that in the short-term, it would “be costly in a time of monetary constraint as we would be funding any reduction.”

126. North Lanarkshire Council also suggested that “the new localised relief scheme has the potential to benefit larger/Council Tax rich local authorities at the expense of other local authorities.”

127. The SPF raised the issue of whether local authorities might seek to spread the costs of NDR relief among local landlords and expressed the hope that central government would provide some financial support for the policy.

CONCLUSION

128. The lead committee is invited to consider this report as part of its scrutiny of the Community Empowerment (Scotland) Bill’s FM.
ANNEXE C: DELEGATED POWERS AND LAW REFORM COMMITTEE REPORT ON THE COMMUNITY EMPOWERMENT (SCOTLAND) BILL

The Committee reports to the Parliament as follows—

1. At its meetings on 19 August, 30 September, 28 October and 4 November the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Community Empowerment (Scotland) Bill (“the Bill”) at Stage 1. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

OVERVIEW OF BILL

2. This Government Bill was introduced by John Swinney MSP on 11 June 2014. The lead Committee is the Local Government and Regeneration Committee. The Bill makes wide-ranging provision in relation to various types of community body and their rights. It is divided into 9 parts.

3. Part 1 places a duty on the Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, to be reviewed every 5 years. Public authorities are to have regard to the national outcomes in carrying out their functions, as are all persons carrying out functions of a public nature. The Scottish Ministers are obliged to prepare and publish reports about the extent to which the national outcomes have been achieved.

4. Part 2 concerns community planning. Section 4(1) provides that local authorities, the bodies listed in schedule 1 of the Bill and community bodies must participate with each other in community planning. ‘Community planning’ is defined as planning that is carried out with a view to improving the achievement of outcomes in relation to the area of a local authority resulting from, or contributed to by, the provision of services delivered by or on behalf of the local authority or the persons listed in schedule 1 to the Bill. Schedule 1 lists bodies such as National Park authorities, Scottish Enterprise and the Scottish Fire and Rescue Service.

5. Part 2 of the Bill also makes provision in relation to local outcomes improvement plans. These are plans prepared and published by community planning partnerships setting out local outcomes to which the partnership must give priority with a view to improving the achievement of the outcome, as well as a description of the proposed improvement action and the time period within which the improvement is to be achieved. The local outcomes improvement plan is to be kept under review by the community planning partnership.

6. Part 3 of the Bill relates to participation requests. A participation request is a request made by a community controlled body to a public authority to permit the body to participate in an outcome improvement process. In making a request, the community body must set out details of any knowledge, expertise and experience.

577 Community Empowerment (Scotland) Bill [as introduced] available here: http://www.scottish.parliament.uk/S4_Bills/Community%20Empowerment%20(Scotland)%20Bill/b52s4-introd.pdf
the body has in relation to the specified outcome. The Bill also sets out the process to be followed by an authority where it receives a participation request.

7. Part 4 of the Bill does two things. Firstly, sections 27-47 make amendments to Part 2 of the Land Reform (Scotland) Act 2003 ("the 2003 Act"). The principal amendment is an extension of the community right to buy (currently available in respect of rural land only) to all land in Scotland. Sections 27-47 of the Bill also make various other changes to Part 2 of the 2003 Act so as to improve the working of those provisions.

8. Secondly, Part 4 creates a new community right to buy in respect of abandoned or neglected land. Section 48 of the Bill introduces a new Part 3A into the 2003 Act. The provisions set up a process whereby community bodies may apply to the Scottish Ministers to exercise their right to buy land which is abandoned or neglected. The new right to buy differs from the existing rights in Part 2 of the 2003 Act in one important respect, which is that the right to buy abandoned or neglected land may be exercised in circumstances where the owner of the land does not wish to sell.

9. Part 5 of the Bill relates to asset transfer requests. An asset transfer request is a request made by a community controlled body to a 'relevant authority' which seeks permission to buy, lease or otherwise acquire rights in respect of property owned by that relevant authority. A 'relevant authority' is a body listed in schedule 3 to the Bill, and includes local authorities, the Scottish Ministers, SEPA and the Scottish Court Service. Part 5 sets out the requirements to be met by a community body before it can make a request, the process to be followed in making a request and the rights of appeal that are available in the event that a request is refused.

10. Part 6 of the Bill relates to common good property. "Common good" refers to assets originally acquired from former burghs to which local authorities have taken title. The Bill requires each local authority to establish and maintain a common good register which must be available to members of the public for inspection. The Bill also imposes requirements on local authorities to publish details of any decision it proposes to take to dispose of common good assets or to change their use. The authority is required to have regard to any representations it receives in relation to the proposed disposal of common good assets.

11. Part 7 of the Bill concerns allotments. It replaces the provisions of the Allotments (Scotland) Acts of 1892, 1922 and 1950 which are repealed in their entirety. The Bill also repeals some provisions of the Land Settlement (Scotland) Act 1919. The Bill creates a new definition of 'allotment' and 'allotment site', and it places a duty on local authorities to hold and maintain waiting lists for allotments and to take reasonable steps to provide more allotments if the waiting list exceeds key trigger points. The Bill creates compensation rights in favour of tenants of allotments for disturbance, deterioration of an allotment site or loss of crops.

to grant localised relief from business rates. Any relief granted is to form part of a relief scheme which is funded by the authority. Before creating such a scheme, the authority is required to have regard to the interests of persons liable to pay council tax which is set by that authority.


DELEGATED POWERS

14. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”). Due to the volume of powers in the Bill the Committee adopted a staged approach to its scrutiny. At its first consideration of the Bill, the Committee delegated authority to its legal advisers to ask written questions of the Scottish Government. At its meeting on 30 September, the Committee took oral evidence from Scottish Government officials on a number of powers in the Bill following receipt of the Scottish Government’s answers to the written questions.

15. At its meeting on 30 September, the Committee took oral evidence from Scottish Government officials on a number of powers in the Bill following receipt of the Scottish Government’s answers to the written questions.

16. The Committee makes no recommendation in respect of the powers listed at Annex A to this report. These powers are divided into powers with which the Committee was initially content; powers with which the Committee was content following written evidence from the Scottish Government; and powers with which the Committee was content following both written and oral evidence from the Scottish Government.

17. The Committee’s comments and recommendations on the remaining delegated powers in the Bill are detailed below. Before considering the individual powers, the Committee makes the following general observations:

i. The reasons advanced in the DPM for taking many powers in the Bill were not sufficiently detailed so as to enable the Committee to reach a view on whether those powers were acceptable in principle. With regard to several powers, the necessary information was only obtained following both written and oral evidence.

ii. The quality of some of the written answers provided by the Scottish Government in response to the Committee’s questions was inadequate, requiring the Committee to explore a number of issues further with Scottish Government officials in oral evidence. In relation to some key powers in the Bill, for example the power in the new section 97C(3)(a) of the 2003 Act, the answers given by the officials in oral evidence failed to provide the information sought by the Committee.

578 The Delegated Powers Memorandum is available here: http://www.scottish.parliament.uk/S4_Bills/CE_DPM.pdf
iii. In relation to the power in the new section 97C(3)(a) of the 2003 Act, the Committee remains in a position, having considered both written and oral evidence, whereby it is unable to form a view as to how this power is intended to be used. The Government has not provided an explanation for taking this power beyond a need to retain flexibility within the Bill. The Committee considers that explanation to be inadequate in light of the significance of this power and what it appears to permit. The Committee further finds it concerning that the thinking behind a power of such significance to the scope and application of the Bill appears still to be in the early stages of development. The Scottish Government may wish to reflect on its reasons for taking this power as the Bill progresses through the Parliament and the lead Committee may wish to explore the power further when it takes oral evidence from the Minister for Local Government and Planning.

iv. More generally, the Committee finds it unsatisfactory that the Parliament is being asked to confer certain wide-ranging powers on the Scottish Ministers in circumstances where the Scottish Government has not informed the Parliament in sufficient detail of its plans for using those powers or of the reasons for taking a particular approach to the framing of certain powers. The Committee considers that there is a clear need for delegated powers to be fully explained, their terms appropriately framed and their scope clearly delineated.

v. The points made above are concerning to the Committee given the significance of many of the powers in this Bill. The quality of delegated powers memoranda in particular is an issue that the Committee is monitoring on an ongoing basis, and will continue to raise in its annual and quarterly reports and, as appropriate, with the Minister for Parliamentary Business.

**Recommendations**

**Sections 1 and 2 – National outcomes**

Powers conferred on: the Scottish Ministers  
Powers exercisable by: published determination  
Parliamentary procedure: none

*Scrutiny procedure for setting and review of national outcomes*

18. Section 1(1) of the Bill places a duty on the Scottish Ministers to determine national outcomes in relation to Scotland that result from, or are contributed to by, the carrying out of functions of Scottish public authorities, cross-border public authorities, and other persons carrying out functions of a public nature. Such bodies are required to have regard to the national outcomes in carrying out their functions.
19. Section 1(2) of the Bill places a requirement on the Scottish Ministers to consult on the national outcomes and section 1(3) requires Ministers to publish the outcomes. There is no provision for Parliamentary scrutiny of the outcomes prior to their publication, or for the outcomes to be laid before Parliament once published. The Committee sought written explanation as to why it is considered appropriate for the power to decide on national outcomes to be exercisable by informal published determination as opposed to by, for example, Scottish statutory instrument.

20. The Scottish Government’s written response to the Committee indicated that Parliamentary scrutiny will focus on progress toward the national outcomes, not the setting of the outcomes. The response also indicated that it may be that the Parliament would wish to debate the outcomes set out by Ministers, and that the arrangements put forward by the Bill do not prevent that.

21. The Committee explored these issues further with the Scottish Government officials at its meeting on September 30th. Anne-Marie Conlong of the Scottish Government’s Performance Unit explained that—

“The Scottish Government believes that what we have set out in the provisions reflects the current separation of powers between the Scottish Government and the Parliament. It would be for the Scottish Ministers to co-ordinate Government business and to set out the strategic direction for Government – within its overall accountability to the Parliament, of course - and the Parliament would exercise a scrutiny function, holding ministers to account on progress toward the national outcomes and objectives.”

579 Delegated Powers and Law Reform Committee, Official Report, 30 September 2014, Col.3

22. Furthermore, officials indicated that they were—

“…more than happy to take back for further consideration with Ministers the Committee’s views on the respective roles of the Parliament and the Government in setting the outcomes.”

580 Delegated Powers and Law Reform Committee, Official Report, 30 September 2014, Col.3

23. There is recent comparable provision for national outcomes to be set out in subordinate legislation. Section 3(2) of the Public Bodies (Joint Working) (Scotland) Act 2014 requires that a local authority and a health board must, in preparing an integration plan, have regard to the national health and wellbeing outcomes in section 5 (and the integration planning principles in section 4). Section 5(1) enables the Scottish Ministers to prescribe the national health and wellbeing outcomes by regulations which are subject to the affirmative procedure.

24. In the DPM for the 2014 Bill, the Scottish Government explained why it was considered appropriate that the health and wellbeing outcomes should be prescribed by regulations subject to the affirmative procedure: “By allowing Ministers to set national outcomes, it provides for a consistent focus nationally. It is appropriate that outcomes are set by regulations as this requires a process of
consultation to be followed, contemporaneously with integration plans being prepared, to inform the outcomes. It also provides flexibility for the Scottish Ministers to amend outcomes in the future, in response to innovation locally and changing circumstances, and in order to support continuous improvement.... This is subject to affirmative procedure as the national outcomes are fundamental to health and social care integration in that they express its practical purpose. Whilst this level of scrutiny involves more parliamentary time, it is considered that the national outcomes are sufficiently important to justify this, and it is not anticipated that they will be regularly amended.”

25. The Committee considers that there is a clear comparison to be drawn between the health and wellbeing outcomes for Scotland as provided for by the Public Bodies (Joint Working) (Scotland) Act 2014, and the national outcomes under this Bill. The Committee also observes that the national outcomes set under the Bill will be applicable to a wider range of bodies than the health and wellbeing outcomes therefore the requirement for Parliament to have a role in the process of setting or reviewing the outcomes is, in the Committee’s view, greater.

26. The Committee acknowledges, however, that there are alternative ways to afford the Parliament an opportunity to scrutinise the national outcomes. By way of example, the Committee notes the provision in section 16 of the Judiciary and Courts (Scotland) Act 2008. Section 16 relates to guidance issued by the Scottish Ministers or the Lord President as to the manner of exercise by the Judicial Appointments Board for Scotland of its functions. Section 16 provides that before issuing guidance, the Scottish Ministers or, as the case may be, the Lord President, must lay a draft of the proposed guidance before the Parliament. The guidance must not be issued until 21 days after it has been laid before Parliament, and the Parliament may by resolution make recommendations in relation to the draft guidance to which the Government or the Lord President must have regard. The Parliament does not, however, have power to prevent the guidance from being issued.

27. While the Committee acknowledges that the Parliament would not be prevented from debating such outcomes as are set by the Scottish Government, the Committee considers that a more active scrutiny role for the Parliament in relation to the outcomes would be appropriate and should be set out on the face of the Bill. One clear way to enable Parliament to scrutinise the outcomes would be for the outcomes to be prescribed in regulations subject to scrutiny by the affirmative procedure, although as noted above, the Committee acknowledges that there may be alternative ways in which the Parliament could be afforded a role in considering the outcomes and that the formulation of such a role is ultimately a matter for the Scottish Government.

Consultation on the national outcomes

28. Sections 1(2) and 2(5) of the Bill provide that before determining or revising the outcomes, the Scottish Ministers must consult such persons as they consider appropriate. The Committee explored in the oral evidence session why, in principle, the provision does not specify any persons or bodies which (at a minimum) the Scottish Ministers would need to consult.
29. It was explained in the oral evidence session that the intention is to leave the potential scope for consultation as broad as possible, which has been favoured by stakeholders. In some cases consultation would be very wide, but in other cases focussed. The intention is not to limit or narrow the scope of the persons who may be consulted. It was indicated that if the Committee was of the view that the Bill should include a minimum list of bodies that suggestion would be considered further, however the Scottish Government would not want to limit the scope of potential consultation in any future review.

30. Sections 1(2) and 2(5) provide that the consultation on the national outcomes will be with such persons as (subjectively, at the particular time) the Scottish Ministers consider appropriate. The Committee accepts that this approach keeps the scope for consultation as broad as possible, but observes that, equally, it does not offer any guarantee of consultation at a minimum level, where the outcomes are to be set or revised.

31. The Committee also notes that, by comparison, section 5 of the Public Bodies (Joint Working) (Scotland) Act 2014 specifies a minimum level of required consultation before the national health and wellbeing outcomes are prescribed by regulations. Ministers must consult in advance local authorities, Health Boards, each integration joint board at the time established, and in respect of various groups set out in section 5(4) involved in health and social care provision, such persons appearing to be representative of the group as the Ministers think fit.

32. The Committee considers that a list of persons or bodies that, at a minimum, the Scottish Ministers must consult when national outcomes are set or reviewed should be adopted in the Bill. Such an approach could be tailored to ensure a minimum base for consultation while leaving it open to Ministers to consult such other bodies as they think fit in the particular circumstances, having regard to the nature of the outcomes being set or revised.

33. The Committee has concerns that the process for setting and reviewing national outcomes under Part 1 of the Bill leaves no role for the Parliament to scrutinise the outcomes that are proposed to be set or, as the case may be, revised, before they are published.

34. The Committee considers that it would be appropriate for the setting and review of the national outcomes to be subject to the scrutiny of Parliament, possibly through scrutiny of regulations subject to the affirmative procedure. A more active scrutiny role for the Parliament appears to be justified having regard to the significance of the national outcomes, the discretion afforded to the Scottish Ministers in deciding how the outcomes are presented and measured, and the fact that all public bodies and other persons carrying out functions of a public nature as described in section 1(1) would require to have regard to the outcomes.

35. Sections 1(2) and 2(5) provide that before exercising the power to determine or revise the national outcomes, the Scottish Ministers must consult such persons as they consider appropriate. The Committee recognises that the determination of which bodies and persons ought to be
consulted is a policy matter. The Committee draws to the attention of the Local Government and Regeneration Committee however that sections 1(2) and 2(5) keep the scope for consultation as broad as possible, but equally they do not guarantee any minimum level of consultation that might be suitable, depending on whether it is proposed to set or change the outcomes generally or to have a more focused review.

Sections 4(6), 8(3), 16(2) and 51(3) – power to add or remove bodies

Powers conferred on: the Scottish Ministers
Powers exercisable by: regulations (sections 4(6) and 8(3)); order (sections 16(2) and (3) and 51(2) and (3))
Parliamentary procedure: negative

36. Section 4(6) allows Ministers to modify schedule 1 of the Bill to expand the list of community planning partners to which Part 2 of the Bill applies. The power also enables Ministers to remove bodies from the list, thereby reducing the scope of Part 2 of the Bill. Section 8(3) provides a similar power in respect of the list of community planning partners which have governance requirements in relation to community planning as set out in section 8(2).

37. Sections 16(2) and (3) provide powers to expand or reduce the list of public service authorities to which a participation request may be made in terms of Part 3 of the Bill (the list is contained in schedule 2). Sections 51(2) and (3) create similar powers in respect of the list of relevant authorities to whom an asset transfer request may be made under Part 5 (the list of relevant authorities is set out in schedule 3).

38. These powers are subject to the negative procedure. The Committee sought explanation from the Scottish Government as to why that was considered appropriate as opposed to the affirmative procedure, which would afford the Parliament a greater measure of scrutiny over the exercise of these powers which not only permit the modification of primary legislation, but which could also have a considerable impact on the scope and application of Parts 2, 3 and 5 of the Bill.

39. In response, the Scottish Government explained that the negative procedure was considered appropriate for the exercise of these powers, as adding or removing bodies from a list in one of the schedules to the Bill is unlikely to be controversial. The response also drew a parallel with section 4(1) of the Freedom of Information (Scotland) Act 2002 (“the 2002 Act”) where a power to amend a list of bodies is subject to the negative procedure. In oral evidence, the officials explained that these powers provide flexibility to make changes to the relevant lists should that be considered necessary.

40. The Committee considers that the exercise of these powers is capable of having a considerable impact on the scope and applicability of some of the key provisions in the Bill. For example, the power in section 4(6) could in theory be used to considerably expand the application of Part 2 of the Bill by adding large numbers of bodies to the list of community planning partners contained in
schedule 1. Conversely, it could also be used to reduce the application of Part 2 of the Bill by removing bodies from the schedule 1 list.

41. The Scottish Government draws a parallel with section 4(1) of the Freedom of Information (Scotland) Act 2002 as a similar provision to add or remove bodies to or from a list which is also subject to the negative procedure. The Committee observes, however, that more recent powers to make amendments to lists of bodies have adopted a different procedural approach. For instance, section 25 of the Public Services Reform (Scotland) Act 2010 provides that an order which adds a body to the list in schedule 5 is subject to the affirmative procedure, but to the negative procedure where a body is removed from the list. A similar example pertains in section 7 of the Regulatory Reform (Scotland) Act 2014 (power to modify the list of regulators).

42. These examples, which post-date the 2002 Act, suggest that where bodies are added to lists, the powers should be subject to the affirmative procedure. Conversely, where the application of the Bill is shrunk and bodies are removed from lists, the negative procedure may be appropriate. Standing the absence of reasons why the present Bill should not follow these more recent examples, the Committee recommends that the Scottish Government amend the Bill at Stage 2 so as to require these powers to be subject to the affirmative procedure where they add bodies to the lists, but to the negative procedure where they are exercised so as to remove bodies from the lists.

43. The Committee calls on the Scottish Government to amend the Bill at Stage 2 so as to make the powers in sections 4(6) and 8(3) subject to the affirmative procedure when exercised so as to add bodies to the lists in schedule 1 or section 8(2) respectively. The Committee also recommends that the powers in sections 16(3) and 51(3) be made subject to the affirmative procedure.

Section 10 – Power to issue guidance

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
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<tbody>
<tr>
<td>Power exercisable by:</td>
<td>guidance (published)</td>
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<tr>
<td>Parliamentary procedure:</td>
<td>none</td>
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</tbody>
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44. Section 10(1) provides that each community planning partnership must comply with any guidance issued by the Scottish Ministers about the carrying out of functions conferred on the partnership by Part 2 of the Bill. Section 10(2) provides that each community planning partner must comply with any guidance issued by the Ministers about the carrying out of functions conferred on the partner by Part 2. Before issuing either set of guidance, the Ministers must consult such persons as they think fit. Section 95 provides that the guidance will be published on issue, in such manner as the Scottish Ministers think fit.

45. The Committee explored two aspects of the power to issue guidance in the oral evidence session: a) why the guidance is proposed to be binding on community planning partnerships and partners, rather than there being a requirement that they will have regard to it; and b) why there is no provision for
any Parliamentary procedure to apply to the guidance or for it to be laid before Parliament.

46. As to a), the proposed automatically binding nature of the guidance is a change to the provision in section 18 of the Local Government in Scotland Act 2003. That section provides that every person initiating, maintaining, facilitating or participating in community planning shall, in doing so, have regard to any guidance provided by the Scottish Ministers about community planning. The consultation requirement in section 10(3) is similar to that already in section 18(2) of the 2003 Act.

47. The Committee explored in oral evidence the considerations underlying the proposal that the guidance should be binding. A key aspect as outlined by the Scottish Government officials was that the policy intention is that there should be local discretion and local innovation in how community planning is approached and dealt with, but there may be some matters that the Scottish Government feels are fundamental enough to apply on a national level, where the guidance could specify binding requirements on community planning partnerships and partners.

48. In reply to the question how it is foreseen that this power of binding guidance would be utilised, the officials responded—

“It is hard to know at the moment...the guidance will be subject to quite a lot of consultation before we put it out...It is hard to say what particular provisions will be used for, but that will emerge from the process.”

49. The Committee considers that a power to issue guidance which is automatically binding according to its terms is highly unusual, and might be expected to require particular explanation as to why the power is needed. A binding requirement in such guidance would in law be binding in the same way as if the provision was contained in a statutory instrument or in an Act. The Bill appears to put no enforcement mechanism in place for compliance with the guidance. The guidance must cover matters “about the carrying out of functions conferred on community planning partners and partnerships under part 2 of the Bill.” But this is a broad requirement, and there is no enforcement or scrutiny mechanism proposed in the Bill to review whether matters required by the guidance are properly covered as concerning the various functions conferred in Part 2.

50. It was explained to the Committee in evidence that the policy intention is that some matters covered by the guidance should be matters which would be binding on a national level, while others would permit local discretion. However, the scope of the power in section 10 makes no such distinction, for instance by specifying a range of matters or requirements which possibly could be included as binding.

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581 Delegated Powers and Law Reform Committee, Official Report, 30 September 2014, Col.9
51. The Committee accordingly draws to the attention of the Local Government and Regeneration Committee that it has concerns, in principle, as to the proposal that the guidance should be binding on community planning partnerships and partners. This concern has a number of factors, and a power of this nature is unusual.

52. The Scottish Government officials were not clear in their oral evidence to the Committee as to the reasons why this power was being taken and how it could be exercised. It was indicated that there is a policy intention that some matters would be fundamental enough to be binding on a national level, while others would not and could permit local discretion and innovation. This distinction, however, is not provided for in section 10.

53. The Bill also makes no provision for an enforcement mechanism, to enforce compliance with the guidance. The guidance must cover matters “about the carrying out of functions conferred on community planning partners and partnerships under Part 2 of the Bill”. This is a broad requirement and the Bill makes no provision for a scrutiny or review mechanism, to review whether any automatically binding matters which may be specified in the guidance are properly included, because they concern the carrying out of functions conferred in Part 2 of the Bill.

54. These concerns would not apply if, in a similar way to the existing provision for guidance in section 18 of the Local Government in Scotland Act 2003, there was provision that community planning partners and partnerships would “have regard to” the guidance.

Section 48 inserting section 97C(3)(a) into the 2003 Act – Eligible land

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: affirmative

55. The new Part 3A of the 2003 Act as inserted by Part 4 of the Bill will apply only in respect of “eligible land”. Eligible land is defined in the new section 97C(1) of the 2003 Act as land which the Scottish Ministers consider is wholly or mainly abandoned or neglected. The remainder of the new section 97C provides further detail as to the meaning of eligible land.

56. Section 97C(3)(a) provides that eligible land does not include land on which there is a building or structure which is an individual’s home, unless the building or structure falls within such class or classes as may be prescribed. The word ‘prescribed’ adopts the definition set out in section 98(1) of the 2003 Act, meaning “prescribed in regulations made by the Scottish Ministers”. The effect of section 97C(3)(a), therefore, is that Ministers may make regulations prescribing buildings or structures which are eligible for acquisition by a Part 3A community body notwithstanding the fact that such buildings or structures may constitute an individual’s home.
57. The DPM states that the policy intention is that eligible land should not include an individual’s home. It also states that this power will enable there to be flexibility as to exactly what buildings or structures constitute an individual’s home. The power is subject to the affirmative procedure and the DPM states that this is considered appropriate, given that what constitutes “eligible land” is fundamental to the scope and application of the new Part 3A.

58. While the Committee agrees that this power is fundamental to the scope and application of the new Part 3A of the 2003 Act, it does not consider that the DPM provides a sufficiently detailed explanation as to how it is intended to be used. The Committee accordingly sought written clarification from the Scottish Government as to what this power enables the Scottish Ministers to do and how it is intended that the power will be used.

59. In its written answer, the Scottish Government confirmed that section 97C(3)(a) enables Ministers to add prescribed classes of building back into the pool of eligible land to which the new Part 3A applies. The Government explained that it was unable to provide examples of the kinds of building or structure which may be prescribed using this power, but that the power “allows for flexibility”. The Government also stated in its written answer that it would be happy to consider changes to the provision should the Committee be of the view that that would be of benefit to the Bill.

60. At the oral evidence session on 30 September, Members sought further information from the Scottish Government officials as to why this power was being taken, standing the lack of detailed explanation in the Government’s written response and the DPM. Members also asked what factors – other than flexibility – were taken into account in framing this power.

61. In oral evidence Dave Thomson from the Scottish Government’s Land Reform and Tenancy Unit repeated that the power was required to allow for flexibility—

“The flexibility on those powers is the key part at the moment. The policy intent is not to take people’s homes away in any circumstances, but still to allow community bodies to take control of assets. Essentially, the powers that we are looking to take on through that provision are simply to allow that flexibility to set out in detail the types of buildings or assets that can be included or excluded. At the moment, we do not have specific examples, hence the current need for flexibility in those powers.”

62. Rachel Rayner of the Scottish Government Legal Directorate also commented on this power:

“There are regulations made by Ministers would have to comply with the European Convention on Human Rights. As you will be aware, Article 8 of the ECHR provides a right to respect for private and family life, which would include

[582] Delegated Powers and Law Reform Committee, Official Report, 30 September 2014, Col. 10
respect for a person’s home, and that would have to be taken into account were
the power to be used.”

63. The Committee finds it concerning that the taking of a power as
significant as that proposed in section 97C(3)(a) of the 2003 Act has not been
justified by the Scottish Government, either in written or oral evidence, beyond the
apparent need for flexibility. While the Committee accepts that some flexibility in
the available powers could be appropriate to ensure that the scheme envisaged by
the new Part 3A of the 2003 Act is capable of operating effectively in practice, it
considers that flexibility is not in and of itself sufficient explanation for the taking of
such an important power. The Committee also observes that any regulations
made by the Scottish Ministers in exercise of this power - or indeed any power -
require to be ECHR-compatible.

64. In oral evidence, the Scottish Government officials explained that the
policy intent underpinning these provisions is not to take individuals’ homes away
in any circumstances. The power appears, however, to directly contemplate
making buildings and structures available for compulsory acquisition by community
bodies despite the fact that those buildings and structures are an individual’s home.
If it is not the Government’s intention to make homes available for
acquisition by Part 3A community bodies as the officials explained in oral
evidence, the Committee finds it difficult to decide what this power is intended to
do.

65. The Committee further finds it unsatisfactory that the Parliament is being
asked to confer this power upon the Scottish Ministers without having received
satisfactory answers to questions asked about its intended use. When asked to
give examples to demonstrate how the power might be used in practice, the
Scottish Government did not do so either in written or in oral evidence. The
Committee considers it unsatisfactory that the Parliament is being asked to
approve powers where the thinking behind them appears still to be in the early
stages of development and where officials are unable to offer a detailed
explanation of the circumstances in which it is planned that they will be used.

66. The Committee draws the power in the new section 97C(3)(a) of the
2003 Act to the attention of the Local Government and Regeneration
Committee on the basis that it has concerns about the scope of the power
and its intended use.

67. The power permits the Scottish Ministers to make regulations
prescribing buildings or structures which are eligible for acquisition by a
Part 3A community body notwithstanding the fact that such buildings or
structures may be described as an individual’s home. The Committee’s
questions of the Scottish Government, both written and oral, did not elicit a
clear explanation from the Scottish Government as to its reasons for taking
this power, or how the power is intended to be exercised. The Scottish
Government also did not provide the Committee with any examples of the

583 Delegated Powers and Law Reform Committee, Official Report, 30 September 2014, Col.12
kinds of building or structure that may be prescribed in regulations made in exercise of this power.

68. The Committee finds it unsatisfactory that the Parliament is being asked to confer a power of this significance upon the Scottish Government in the absence of a detailed explanation as to why it is necessary or what it is for and in circumstances where the thinking underpinning the power appears to be in the early stages of development. Together with the lack of examples of the kinds of building or structure which may be prescribed using this power, the Committee finds it difficult to reach a view as to whether the power is acceptable in principle and recommends that the lead Committee explore the power further as part of its further consideration of the Bill.

69. The Scottish Government may wish to reflect on its reasons for taking this power as the Bill progresses through the Parliament and the lead Committee may wish to explore the power further when it takes oral evidence from the Minister for Local Government and Planning.

Section 97N(1) and (3) – Effect of Ministers’ decision on right to buy

Powers conferred on: the Scottish Ministers
Powers exercisable by: regulations
Parliamentary procedure: affirmative

70. New section 97N(1) of the 2003 Act provides that Ministers may, by regulations, make provision for or in connection with prohibiting prescribed persons from transferring or otherwise dealing with land which is the subject of an application under Part 3A during the prescribed period. Section 97N(2) provides that those regulations may in particular include provision prescribing transfers or dealings which are not prohibited; requiring or enabling prescribed persons to register prescribed notices in the Register of Community Interests in Abandoned or Neglected land; and in prescribed circumstances, requiring information to be incorporated into prescribed deeds relating to the land.

71. Section 97N(3) provides that Ministers may, by regulations, make provision for or in connection with suspending, during the prescribed period, such rights in or over land in respect of which a Part 3A community body has made an application as may be prescribed. Section 97N(4) provides that such regulations may in particular include provision specifying rights to which the regulations do not apply, and rights to which the regulations do not apply in prescribed circumstances.

72. The Committee considers that it may be appropriate for the Scottish Ministers to make regulations for the purpose of suspending rights in or over land for the duration of the period within which Ministers are considering a Part 3A community body’s application. The Committee also considers it appropriate that these powers are subject to the higher level of scrutiny afforded by the affirmative
procedure. Despite these conclusions, the Committee considers that there are issues of clarity with the drafting of these powers. The Committee explored these issues with the Scottish Government both in written and oral evidence.

73. Section 97N uses the word “prescribed” a number of times. “Prescribed” has a specific definition in section 98(1) of the 2003 Act, meaning “prescribed in regulations made by the Scottish Ministers”. The Committee wrote to the Scottish Government to ask whether the word “prescribed” as used multiple times in section 97N is intended to attract the definition of that term set out in section 98(1) with the effect that section 97N in fact creates a new power to make subordinate legislation each time that word is used, in addition to the two free-standing powers conferred by sections 97N(1) and (3).

74. In its written response, the Scottish Government confirmed that the use of the word “prescribed” in section 97N is intended to attract the definition of that term set out in section 98(1). The Government also stated, however, that its view is that section 97N confers only two powers to make subordinate legislation: the power in section 97N(1) and that in section 97N(3). Sections 97N(2) and (4) are intended to provide further detail of the matters which regulations made under subsections (1) and (3) may cover, and the use of the word “prescribed” in those subsections does not have the effect of conferring separate powers to make subordinate legislation.

75. The Committee considers that if the word “prescribed” as used in section 97N is intended to adopt the definition in section 98(1) of the 2003 Act, it seems clear that multiple powers are being conferred. The existence of the definition means that wherever the word “prescribed” appears in the 2003 Act, including where it appears as a result of amendments made to that Act by this Bill, it is an instruction to the reader to construe the word as conferring a power upon the Scottish Ministers to make regulations unless contrary provision is made.

76. The Committee therefore asked the Scottish Government officials for further explanation of the power when it took oral evidence on 30 September. The Scottish Government officials reiterated their position, which is that section 97N confers only two powers to make subordinate legislation. The officials offered to write to the Committee following the meeting to explain further their position. A letter dated 8 October 2014 is attached at Annex C.

77. This is a technical drafting point. The Committee does not object to the powers in sections 97N in principle, not to the selection of the affirmative procedure as the appropriate level of Parliamentary scrutiny over the powers. Nevertheless, the Committee finds that the use of the word “prescribed” in section 97N is apt to cause confusion when construed in accordance with section 98(1), and, as such, draws the conclusion that the Bill should be clarified at Stage 2.

78. The Scottish Government’s intention is that section 97N confers only two powers to make subordinate legislation: the power to make regulations prohibiting the transfer of land pending a decision on a Part 3A application in section 97N(1); and the similar power to suspend other rights e.g. rights of pre-emption or redemption that is set out in section 97N(3). The Committee considers, however,
that this intention is not readily compatible with the use of the word “prescribed” in section 97N and its definition in section 98(1) of the 2003 Act. Other provisions in the Bill use the word “prescribed” and rely on the definition of that term in section 98(1) to create a free-standing power to make subordinate legislation. It is not clear from the evidence received from the Scottish Government why that same reliance does not apply in the case of the word as used in section 97N.

79. The Committee calls on the Scottish Government to clarify the new section 97N of the Land Reform (Scotland) Act 2003 as inserted by section 48 of the Bill. Section 97N makes repeated use of the word “prescribed”, and the Scottish Government has explained to the Committee, both in written and oral evidence, that while the use of the word “prescribed” in section 97N is intended to adopt the definition of that term in section 98(1) of the 2003 Act meaning “prescribed in regulations made by the Scottish Ministers”, section 97N is considered to confer only two powers to make subordinate legislation: the power in section 97N(1) and the power in section 97N(3).

80. The Committee considers that if the use of the word “prescribed” in section 97N is not intended to confer separate and free-standing powers to make subordinate legislation, the Bill should be clarified for Stage 2 so as to remove the scope for doubt over the interpretation of the section and the powers it confers by re-drafting the provision so as to remove the references to “prescribed”.
Annex A

The Committee was content with the following powers on first consideration of the Bill:

Section 7(3) - local outcomes improvement plan: progress report
Section 12(2)(d) - power to prescribe other matters to be addressed in an application for incorporation
Section 15(2) - meaning of “community participation body”
Section 18(1) - regulations (further provision about participation requests)
Section 19(7)(a) - participation requests: decisions
Section 19(8) - participation requests: decisions
Section 21(6) - power to specify information to be published about the outcome improvement process
Section 24(3) - modification of outcome improvement process
Section 25(4) - reporting (of outcome improvement process)
Section 28(2) - power to prescribe bodies that are “community bodies”
Section 28(7) - power to define a “community”
Section 33 - power to specify the description of land
Section 37 - power to prescribe the information to be provided to the ballotter by the Scottish Ministers
Section 37 - power to prescribe information to be provided to the ballotter by a community body
Section 38 - power to make regulations which set out the information a community body must provide to the Scottish Ministers
Section 40 - ballot not conducted as prescribed
Section 48 - power to prescribe that eligible land does not include certain land for the purposes of Part 3A
Section 48 - power to approve/direct the transfer of property on
winding up

Section 48 - power to set out the definition of a “community”

Section 48 - payment of charges for copies of entries in the Part 3A Register of Community Interests in Abandoned or Neglected Land

Section 48 - power to prescribe the application form for Ministers to consent to a Part 3A community body’s right to buy

Section 48 - power to prescribe the manner in which an application under Part 3A is given public notice

Section 48 - power to prescribe how the ballot of the community is undertaken and the form of the ballot return to Ministers

Section 48 - Ministers’ notification of their decision on an application under Part 3A

Section 48 - power to direct that community body’s right to buy is extinguished

Section 48 - power to make provision in relation to compensation

Section 48 - power to make grants towards Part 3A community bodies’ liabilities to pay compensation

Section 48 - rules affected by Ministers in relation to the Lands Tribunal Act 1949

Section 50(2)(a) - designation of a community transfer body

Section 50(2)(b) - designation of a class of bodies as community transfer bodies

Section 53 - power to approve or direct the transfer of property on winding up

Section 54(3) - power to make provision about information relating to land in respect of which an asset transfer request is proposed

Section 55(8) - power to prescribe a time for a decision notice to be given

Section 55(9) - power to make provision regarding the information contained in a decision notice and the manner in which it is to be given

Section 56(7)(b)(ii) - power to direct an extended period within which a
contract is to be concluded

- power to make provision about a direction to extend the period within which a contract is to be concluded

- power to issue directions following an appeal

- guidance about common good registers

- guidance about disposal etc. of common good property

- meaning of “allotment”

- request to lease allotment

- duty to provide allotment

- duty to prepare food-growing strategy

- annual allotments report

- delegation of management of allotment sites

- termination of lease of allotment or allotment site

- sale of surplus produce

- compensation for disturbance

- compensation for deterioration of allotment

- compensation for loss of crops

- ancillary provision

- commencement

The Committee was content with the following powers after receiving written evidence from the Scottish Government:

- power to establish a body corporate for community planning purposes

- meaning of “community”

- eligible land

- inserting sections 97C(2), 97C(3)(b) and 97C(4) into the 2003 Act
Section 48 - register of Community Interests in Abandoned or Neglected Land

Section 48 - right to buy: application for consent

Section 73(1) - allotment site regulations: additional provision

The Committee was content with the following powers after receiving both written and oral evidence from the Scottish Government:

Section 48 - provisions supplementary to section 97D

Section 54(1) - power to make further provision about asset transfer requests

Sections 58(3) and 59(3) - appeal or review of decisions on asset transfer requests

Section 80(7) - power to remove unauthorised buildings from allotment sites

Annex B – Written Correspondence

Part 1 – National Outcomes

1. Sections 1-3 – publication of national outcomes

a) Sections 1(3), 2(4) and 3(1) provide for the publication of the national outcomes that are determined by the Scottish Ministers, and reports about the extent to which they have been achieved. The Scottish Government is asked to explain why it has been considered appropriate that the power to decide on the national outcomes should be exercisable by informal published determination, and not by Scottish statutory instrument which could be subject to Parliamentary scrutiny and procedure.

The decision was taken not to use Statutory Instruments as we envisage the primary role of Parliament to be scrutiny of progress towards the national outcomes. It may well be that the Scottish Parliament may wish to debate on the national outcomes set by the Scottish Ministers and the arrangements proposed do not prevent that.

b) Section 1(2) states that before determining the national outcomes, the Ministers must consult such persons as they consider appropriate. The Scottish Government is asked to explain why this provision does not specify any persons or bodies which (as a minimum requirement) the Ministers would consult.

The intention here is to leave the potential scope for consultation as broad as possible. In some cases, e.g. where a review is of a technical nature and focuses
on specialist or statistical issues, it may be more appropriate to limit the scope of consultation to those who have expertise and experience in that area. In other cases, the review may be of a more general nature and in those cases, it would appropriate to consult more widely. Consultation with appropriate people would also include consultation with the public as a whole if appropriate.

**Part 2 – Community Planning**

2. **Section 4(6) – power to modify schedule 1**

The power in section 4(6) is capable of being used to considerably expand the list of community planning partners to which Part 2 of the Bill applies, or alternatively to considerably reduce the scope by removing bodies that are listed in schedule 1.

The Scottish Government is asked to explain therefore why it is considered more suitable that any regulations made under section 4(6) should be scrutinised by the negative procedure - rather than by the affirmative procedure where regulations add or remove persons from the schedule 1 list, and the negative procedure for regulations which amend an entry (which could adjust an entry on a change of name of a body).

This power provides flexibility to make future changes to the list of community planning partners in schedule 1. The power to amend the primary legislation is restricted to amending the list of public bodies who are members of a community planning partnership. Adding a body to, or removing it from, the list is unlikely to generate controversy. An example of a power to amend a list of public bodies in a schedule to primary legislation which is subject to negative procedure can be found in section 4(1) of the Freedom of Information (Scotland) Act 2000. In these circumstances it is considered that subjecting the exercise of the power to negative procedure is appropriate.

3. **Section 8(3) – power to modify section 8(2)**

The power in subsection (3) of section 8 is capable of being used to considerably expand the list of community planning partners in subsection (2) which have governance requirements in relation to community planning, or alternatively to considerably reduce the scope by removing bodies from that list.

The Scottish Government is asked to explain therefore why it is considered more suitable that any regulations made under section 8(3) should be scrutinised by the negative procedure - rather than by the affirmative procedure where regulations add or remove persons from the schedule 1 list, and the negative procedure for regulations which amend an entry (which could adjust an entry on a change of name of a body).

The power relates to making changes that may be required as the nature and practice of community planning evolves and the provisions of this part of the Bill take effect. It is restricted to allowing the Scottish Ministers to amend a list of
public bodies who are partners in a community planning partnership so that they are also subject to a governance role. As with the power in section 4(6), it is not considered that the exercise of this power would generate controversy. It is considered that the negative procedure offers an appropriate level of parliamentary scrutiny.

4. **Section 10 – power to issue guidance**

The Scottish Government is asked to explain why the powers to issue guidance in section 10 are appropriate, and how the powers could be used. In particular an explanation is sought as to-

a) why the guidance is proposed to be binding on community planning partnerships and partners, rather than there being a requirement that they will have regard to it; and

b) why there is no provision for any Parliamentary procedure to apply to the guidance or for it to be laid before Parliament.

With regard to the request for an explanation as to why the powers to issue guidance are appropriate, the Scottish Ministers have inherent power to issue guidance and the Bill does not confer express powers to that effect. The purpose of section 10 is to confer a status on any guidance Ministers may issue regarding the carrying out of functions by the Community Planning Partnership. Section 10(3) requires that any guidance must be the subject of consultation before it is issued.

a) The Scottish Government believes that this section will help to enable the dissemination of best practice in community planning across Scotland and is necessary to support the process by which public bodies work together and with community bodies to plan for, resource and provide services which improve local outcomes in the area. With regard to the obligation to comply with guidance, we would of course be happy to consider amending this to an obligation to have regard to the guidance if the Committee feel it would be of benefit to the Bill.

b) There is currently no provision for any Parliamentary procedure to apply to the guidance or for it to be laid before Parliament as it was considered that the guidance would deal with a range of issues in some detail, including administrative issues as necessary and that this was not a necessary or appropriate use of valuable Parliamentary time and resources.

5. **Section 12 – power to establish bodies corporate**

a) The Scottish Government is asked to explain why the wide power to specify any other matters in section 12(3)(h) is required, and how this power could be used.

b) What additional matters would this power enable, beyond the ancillary powers to make incidental, supplementary or consequential provisions contained in sections 96(1) and 97?
Section 12(3)(h) is in the same terms as, and replaces, section 19(3)(h) of the Local Government in Scotland Act 2003. The inclusion of 12(3)(h) provides the necessary flexibility to deal with any new development which may need to be addressed when exercising the power in section 12(1). It also makes it clear that the provision that can be included in the regulations made under section 12(1) is not restricted to the matters listed in section 12(3)(a) to (g).

Part 3 – Participation Requests

6. Section 16 – meaning of “public service authority”

a) The powers in section 16(2) and (3) are capable of being used to considerably expand the list of “public service authorities” to which participation requirements could be made in accordance with Part 3 of the Bill, or alternatively to considerably reduce the scope by removing bodies (or types of body) from the list in schedule 2.

The Scottish Government is asked to explain therefore why it is considered more suitable that any order made under sections 16(2) and (3) should be scrutinised by the negative procedure - rather than by the affirmative procedure where the order proposes to remove persons from the schedule 2 list and/or designate more persons or classes of person as “public service authorities” and the negative procedure for an order which amends an entry in schedule 2 (which could adjust an entry on a change of name of a body).

b) The Delegated Powers Memorandum (“DPM”) states in relation to section 16(2) that the Scottish Ministers are included in schedule 2, but this is not the case. Clarification is sought as to whether there is any intention to include the Ministers in the schedule.

a) These powers provide flexibility to make future changes to the list of public service authorities in schedule 2. The power to amend the primary legislation is restricted to amending the list of public bodies to whom a community participation body may make a participation request. Adding a body to, or removing it from, the list is unlikely to generate controversy. An example of a power to amend a list of public bodies in a schedule to primary legislation which is subject to negative procedure can be found in section 4(1) of the Freedom of Information (Scotland) Act 2000. In these circumstances it is considered that subjecting the exercise of the power to negative procedure is appropriate.

b) The reference to the Scottish Ministers in the Delegated Powers Memorandum in relation to section 16(2) was an error.

Part 4 – Community Right to Buy Land

7. Section 28(6) – duty to provide information about community right to buy
The power in the new section 34(4B) of the 2003 Act, as inserted by section 28(6) of the Bill, appears to be subject to the negative procedure while the DPM refers to the power being subject to the affirmative procedure. Section 98(5) of the 2003 Act, as amended by paragraph 4 of schedule 4 to the Bill, provides that regulations made under the new section 34(4A) will be subject to the affirmative procedure, but there is no reference to regulations made under the new section 34(4B), the effect of which would appear to be to leave such regulations to take the negative procedure.

Can the Scottish Government explain whether this is an error or, if the Scottish Government intends the power to be subject to the negative procedure, can it explain why this is considered appropriate?

The Scottish Government agree that the new section 34(4B) of the 2003 Act, as inserted by section 28(6) of the Bill, is subject to the negative procedure but that it would be appropriate for this power to be subjective to affirmative procedure, as stated in the DPM.

8. **New section 97C of the 2003 Act – eligible land**

a) Can the Scottish Government provide more information as to how it envisages using the power in the new section 97C(2) of the Land Reform (Scotland) Act 2003 (“the 2003 Act”? The DPM refers only to the power being used to prescribe matters which are “too detailed to include in the primary legislation”. Can the Scottish Government provide any examples of matters which it is intended will be prescribed in regulations made in exercise of this power so as to inform the Committee’s consideration of the power?

b) The Scottish Government is asked for a fuller explanation as to the relationship between the powers in the new section 97C(3)(a), 97C(3)(b) and 97C(4) of the 2003 Act, as inserted by section 48 of the Bill. How is it considered that these powers will interact?

c) Does the Scottish Government agree that the power in section 97C(3)(a) enables Ministers to add prescribed classes of building back into the ‘pool’ of eligible land to which the new Part 3A applies despite the fact that such buildings may constitute an individual’s home? Can the Scottish Government provide any examples of classes of building or structure which it intends to prescribe in regulations made in exercise of this power?

(a) The matters that Ministers should take account of in considering whether land is wholly or mainly abandoned or neglected is currently under discussion with stakeholders. Some examples of matters might include the physical condition of land, environmental or historic designations affecting the land and the extent to which the land is having a detrimental effect on the local environment, where environment can be physical or social.

(b) The relationship between the various powers is that that section 97C(3)(a) provides that land on which there is an individual’s home is not eligible land but
this doesn’t apply to classes or descriptions of land set out in regulations. This will enable exceptions to be made should this be considered appropriate in the future. Section 97C(3)(b) will enable regulations to provide that land associated with an individual’s home such as private gardens and land forming the curtilage of the home will not be eligible land, and section 97C(4) allows regulations to be made treating buildings or structures as homes and so the land which these are situated on will not be eligible land. For example a house that is used just for holidays and which doesn’t constitute an individual’s home could be treated as a home and so the land which it is on would not be eligible land.

(c) Section 97C(3)(a) enables Ministers to add prescribed classes of building back into the ‘pool’ of eligible land to which the new Part 3A applies. At this point in time, we are not able to give specific examples, but this power allows for flexibility. We would of course be happy to consider changes if the Committee feel it would be of benefit to the Bill.

9. **Section 97E(4) - power to make an order relating to matters connected with the acquisition of the land**

Can the Scottish Government explain how the power in the new section 97E(4) is intended to be exercised and why it requires to be drawn in such wide terms? Can the Government provide any examples of the kinds of modifications to primary legislation that the Scottish Government anticipates making in exercise of this power as permitted by the provision in section 97E(5)?

The underlying reason behind the power in section 97E(4) is to ensure that the process for buying back land from a community body is open and transparent as well as robust. There are examples of similar powers e.g. sections 1 and 2 of the Transport and Works (Scotland) Act 2007.

10. **Section 97F(6) – power to modify the information and documents that are to be contained in the Register of Community Interests in Abandoned or Neglected Land**

The Scottish Government is asked to explain further its reasons for taking the power to modify new sections 97F(3) and (4) of the 2003 Act as inserted by section 48 of the Bill. In particular, can the Government explain the circumstances in which it considers that it may be appropriate to modify those subsections given that they exempt, in circumstances where a Part 3A community body requires it, any information or documents relating to the raising or expenditure of money by that body from being entered in the Register of Community Interests in Abandoned or Neglected Land?

There is already a similar power in respect of the Register of Community Interests in Land in Part 2 of the Land Reform (Scotland) Act 2003 (section 36(6)) so the power in section 97F(6) ensure that Parts 2 and 3A are consistent. It is allows the Register to be kept relevant should there be any changes to the requirements of community bodies, or the information that they are required, by law, to provide.
11. **Section 97G(5)(c) – power to prescribe information in an application form for Ministers to consent to a Part 3A community body's right to buy**

a) The Scottish Government is asked to justify the power in section 97G(5)(c) as distinct from the power in section 97G(5)(a). The DPM provides the same information in respect of both powers, however the power in section 97G(5)(a) is a power to prescribe the form of an application under Part 3A of the 2003 Act, whereas the power in section 97G(5)(c) is a power to prescribe kinds of information to be included in such a form, or to accompany such a form.

b) Can the Scottish Government explain why this power is necessary, and can it provide examples of the types of information it intends to prescribe in regulations made in exercise of this power?

These powers allow the style of the form, and the information contained in that form, to be set out in regulations. These are two separate things, hence the need for the two powers. There are examples of the sort of form (both in terms of style and content) anticipated in The Community Right to Buy (Prescribed Form of Application and Notices) (Scotland) Regulations 2009.

12. **Sections 97N(1) and 97N(3) – effect of Ministers' decision on right to buy**

a) The Scottish Government is asked whether the word “prescribed”, as used multiple times in the drafting of the new section 97N of the 2003 Act is intended to capture the definition of that term as set out in section 98(1) of the 2003 Act with the effect that new section 97N confers multiple powers to make subordinate legislation, or whether the matters which may be “prescribed” as referred to in that new section are intended to form specific aspects of the two standalone powers expressly conferred by sections 97N(1) and 97N(3).

b) If the Scottish Government does not intend for the word “prescribed” to adopt the definition in section 98(1) of the 2003 Act when it is used in section 97N, can it explain how the Bill prevents this?

Section 98(1) of the 2003 Act defines “prescribed” for the Act and provides that it means “prescribed by regulations made by Ministers”. We agree that the use of “prescribed” in section 97N attracts that definition. Each time the expression is used in section 97N it effectively confers power to specify something in regulations. These powers operate in the context of the powers in section 97N(1) and (3). For example, in section 97N(1) “prescribed period” means the period set out in regulations made by Ministers prohibiting the transfer or other dealing in certain land.

**Part 5 – Asset Transfer Requests**

13. **Section 51(2) – power to modify schedule 3**
The Scottish Government is asked whether, given that the power in section 51(2) of the Bill permits the modification of primary legislation, this power should be subject to the affirmative procedure.

This powers provides flexibility to make future changes to the list of relevant authorities in schedule 3. The power to amend the primary legislation is restricted to amending the list of public bodies to whom a community transfer body may make an asset transfer request. Adding a body to, or removing it from, the list is unlikely to generate controversy. An example of a power to amend a list of public bodies in a schedule to primary legislation which is subject to negative procedure can be found in section 4(1) of the Freedom of Information (Scotland) Act 2000. In these circumstances it is considered that subjecting the exercise of the power to negative procedure is appropriate.

14. Section 54(1) – power to make further provision about asset transfer requests

The Scottish Government is asked why this power requires to be drawn in such wide terms. The specification of particular matters about which regulations may be made in exercise of this power does not appear to restrict the overall width of the power, and consequently the power would appear to be capable of being used to make different provision, subject only to the requirement that that provision be “about asset transfer requests”. The Government is invited to explain why such a wide power is considered to be necessary.

Section 54(2) sets out some of the general scope of the matters which it is envisaged that the regulations relating to asset transfer requests will deal with and the wording of section 54(1) is to ensure flexibility so that other matters which it may be appropriate to include could be included if necessary. As the Committee point out the power is limited by the requirement that the regulations only enable provisions to be made in relation to asset transfer requests and, as the Delegated Powers Memorandum states, the further provision that may be required regarding process and procedure is a largely administrative matter.

15. Section 58(3) and 59(3) – power to prescribe asset transfer request appeal and review procedures, time limits and the manner in which appeals and reviews are to be conducted

a) The Scottish Government is asked for further explanation of the meaning of sections 58(4) and 59(4) of the Bill, which provide that the provision that may be made by virtue of the powers in section 58(3) or 59(3) to prescribe the procedure to be followed in an appeal against or a review of a decision on an asset transfer request includes provision that the manner in which an appeal or review, or any stage of an appeal or review, is to be conducted is to be at the discretion of, respectively, the Scottish Ministers or the local authority.

b) The Scottish Government is asked to explain what aspects of an appeal or review it considers might be made subject to the discretion of the
Scottish Ministers or the local authority in exercise of these powers, and why the Government considers that that would be appropriate, as opposed to specifying the appeals procedure in the subordinate legislation that is made under sections 58(3) or 59(3).

Section 58(4) and 59(4) follow the approach taken in relation to appeal processes in planning (see section 267(1C) of the Town and Country Planning (Scotland) Act 1997). The intention is that the regulations setting out appeal processes would enable the choice of appeal procedure to be flexible and selected in particular cases to meet the needs of that case. It is envisaged, as with planning appeals, that the selection of the appropriate process for conducting the appeal, for example, by written submission or a form of hearing, or mix of procedures would be determined by the Scottish Ministers in the light of the circumstances of each case.

Part 7 – Allotments

16. Section 73(1) – Allotment site regulations: additional provision

Can the Scottish Government explain why the power in section 73(1) is proposed to be exercised by the local authority by way of regulations rather than, for example, by way of byelaws subject to confirmation by the Scottish Ministers (as under section 202 of the Local Government (Scotland) Act 1973)? If it is considered appropriate for the power to be exercised by the local authority by regulations, can the Scottish Government explain why there are no proposals for the regulations to be confirmed by the Scottish Ministers or laid before Parliament, or otherwise to be subject to scrutiny?

The Scottish Government does not consider that the power in section 73(1) falls within the scope of byelaws. Section 201 of the Local Government (Scotland) Act 1973 ("the 1973 Act") confers power on local authorities to make byelaws, "for the good rule and government of the whole or any part of their area, and for the prevention and suppression of nuisances therein". Contravention of byelaws is generally dealt with by summary prosecution. The current approach has been taken since the Regulations are not principally intended to address nuisance and as such carry no criminal sanctions. The sanctions are that the lease holder would be given notice to quit the allotment.

The Scottish Government does not consider it necessary for the regulations proposed under section 73(1) to be confirmed by the Scottish Ministers, laid before Parliament, or otherwise subject to scrutiny. The Scottish Government notes that byelaws made under the 1973 Act have no effect until confirmed (section 202(3)), however contravention of byelaws will generally carry criminal sanctions. Management rules under the Civic Government (Scotland) Act 1982 (to which the Scottish Government considers the proposed regulations more similar) are not subject to confirmation or other scrutiny. In line with the procedure for making management rules, section 74 of the Bill requires local authorities to consult interested persons and provides for a period of notice with an opportunity for representations before regulations under section 73(1) are made. Given the relatively narrow purpose of such regulations and the absence of offences relating
to their contravention, the Scottish Government does not consider scrutiny by the Scottish Ministers or Parliament to be required.

17. Section 80(7) – power to remove unauthorised buildings from allotment sites

Can the Scottish Government explain further the intended purpose of the power in section 80(7) and in particular what further provision, standing the procedural requirements already contained in section 80(5) and (6), the power in section 80(7) might be used to make?

Section 80(7) permits, but does not require, the Scottish Ministers to expand upon the detail of the procedure set down in sections 80(5) and 80(6). At this point in time, we are unable to give specific examples of what further provision this power might be used to make, but the power allows for flexibility. We would of course be happy to consider changes if the Committee feel it would be of benefit to the Bill.

Annex C – Letter from the Scottish Government:


Section 97N(1) and (3) of new Part 3A of the Land Reform (Scotland) Act 2003 (“2003 Act”) (to be inserted by section 48 of the Bill) confers powers on the Scottish Ministers to make regulations. Section 98(1) of the 2003 Act defines “prescribed” for the purposes of the 2003 Act and provides that it means “prescribed by regulations made by [the Scottish] Ministers”. The use of “prescribed” in section 97N has, and is intended to have, the meaning given in section 98(1) of the 2003 Act.

Regulations made under section 97N(1) and (3) will be subject to the affirmative procedure (see paragraph 2(5)(a)(ii) of schedule 4 to the Bill which will amend section 98(5) of the 2003 Act).

Section 97N(1) confers powers on the Scottish Ministers to make regulations prohibiting the transfer of land or otherwise dealing with land if a Part 3A community body has made an application under section 97G for consent from the Scottish Ministers to exercise the right to buy that land. Subsection (1) further provides that those regulations can specify: (a) the period of the prohibition; and (b) the persons who are prohibited from transferring or otherwise dealing with the land during that period.

Subsection (2) sets out particular matters that may be included in any regulations made under subsection (1). Subsection (2) is not a free-standing power. It provides some detail of the provision that may be made in regulations made under section 97N(1).

So for example, the power conferred by section 97N(1) would enable the Scottish Ministers to make regulations setting out that, from when the landowner has received notice of an application made by a Part 3A community body until the Scottish Ministers have determined the application, the landowner is prohibited...
from transferring or otherwise dealing in the land that is the subject of the application. The regulations could also make provision for exceptions to this prohibition. The regulations would be made under section 97N(1) and would specify the period of the prohibition and also specify the persons to whom the prohibition applies. In making exceptions to the prohibition, the Scottish Ministers would still be making use of the power in subsection (1) as further described in subsection (2).

Section 97N(3) confers power on the Scottish Ministers to make regulations making provision for suspending rights in or over land in respect of which a Part 3A community has made an application under section 97G. This subsection further provides that the regulations may specify: (a) the period during which the rights are to be suspended; and (2) the rights that are to be suspended during that period. Subsection (4) provides that any regulations made under subsection (3) may include provision specifying any rights that are not to be suspended and any rights to which the regulations do not apply in certain circumstances. These are examples of the kind of provision that may be made in regulations made under subsection (3). Subsection (4) is not a free-standing power. It provides some detail of the provision that may be made in regulations made under section 97N(3).
ANNEXE D: EVIDENCE RECEIVED VIA SOCIAL MEDIA AND ONLINE VIDEOS

The Committee utilised social media to ensure as much individual and community engagement as possible on the Bill.

The Committee produced two short engagement videos on the Bill, on—

- Part 5 - Participation Requests [http://youtu.be/yVgICs_Rgro](http://youtu.be/yVgICs_Rgro), and

Evidence was received via Facebook, Twitter and Email.

**Responses received via Facebook**

**Video 1 (Participation Requests)**
Responses received via email/twitter to engagement videos

From: Phil Sykes

Received – 22/10/2014

I’d like to make the following comments on the community empowerment bill:-

1. Firstly, I’d like to say that I support a bill like this

2. I’m concerned that if public bodies have a right to decide whether the community group can participate, then there is a danger that only those groups
which are seen to support the public bodies agenda, are allowed to participate, without a long process of appeal.

3. Will there be a process of appeal for those groups the public body does not want to work with?

4. Will there need to be a partnership agreement with the public body for the community group to work with them? These are, in my experience, painful to get, and are written by the public bodies. Adequate legal support is beyond most community groups and there is a danger that they are forced to sign up for things that they don’t understand.

5. I understand that the community group should be formally constituted, but it is often difficult to get groups to form within communities: not because there is lack of interest, but because of many other factors. If this is going to work, then some thought needs to be put to how communities communicate within themselves.

6. Within my community, which was a regeneration area previously, but is now an area of need, we have two community groups – a community council, which represents everyone and a Neighbourhood Management Board which is organised and controlled by the local council. There is a real risk of conflict of interest in having more than one representative community group. How does the bill intend to deal with this situation?

From: Russell McLarty

Received: 8/10/2014

I write as co-ordinator of the Chance to Thrive 5-year church-community pilot project.

We certainly welcome effective ways of taking forward ideas from local communities where we have been offering processes to encourage local communities to take forward their own ideas.

Over the past few years we have provided ‘spaces’ where local ideas have been generated in 8 of the poorest parishes in Scotland – Lochee, Raploch, Drumchapel, Maryhill, Red Road, Cranhill, Castlemilk & Strutherhill in Larkhall.

Particular features of Chance to Thrive are

- regular group meetings for vision and strategy – ‘dreaming and scheming’
- volunteer mentors giving encouragement and helping extend ambition and connections
- the groups have been open to church folk, community folk, project partners and local politicians & officers
- the 8 local groups meeting together to share ideas and approaches
the project has £70,000 research budget in partnership with Carnegie UK Trust to work over a 3 year period with a research team

http://www.carnegieuktrust.org.uk/changing-minds/people---place/chance-to-thrive

The big challenge is always to find ways of funding the ideas generated by the local groups. If the Community Empowerment Bill provides ways of partnership working with government this would be welcomed.

Do you think the Bill as it stands is the best way of getting people's ideas in front of the decision makers?

It really depends on what level removed from the local community this will happen.

We have the sense that the more local the engagement with ‘decision-makers’ the better.

In the past Community Planning Partnerships are often quite remote from ‘natural communities’ where decisions are made far away by ‘token’ representatives who don’t really know the communities involved

There might be greater local engagement in some sort of participatory budgeting process where local communities could generate ideas and decide on their own priorities – the local community being ‘decision-maker’.

Would you use this new right?

The local Chance to Thrive Groups would certainly welcome opportunities to put forward ideas

If not, why not?

Remoteness from ‘decision-makers’

What would stop you?

Lack of engagement by ‘decision-makers' with local groups

Would you find it easier to participate as a group or individual?

Chance to Thrive has a rigorous methodology where the group works through a process looking firstly at the ‘life’ of a community, then ‘place making’ and lastly at buildings where they are possible assets to achieving goals. The process, guided by a volunteer mentor, helps refine and develop ideas getting a wider ‘buy in’ where the group is actively involved. Chance to Thrive looks to work with groups over a number of years and in this way

1. build up local confidence
2. look to short, medium & longer term goals with a more strategic approach
3. get encouragement from small successes

- What help do you need to become involved?

Participation of local politicians and officers with the Chance to Thrive groups has proved in a couple of places to be a great way of building partnership in setting up processes of engaging with the wider community and in thinking through how ideas might be brought into reality.

Russell McLarty - Coordinator

From: Colin McGrath

Received: 4/10/2014

Scottish Borders Community Councils Network (representing 67 Community Council Areas) Evidence Submission to Scottish Government Community Empowerment (Scotland) Bill

“The Bill sets out a plan for empowering all the people of Scotland. This means everyone can get involved and help to make important decisions.”

(page 3 Policy Memorandum – Easy Read Version)

1. Community Planning contains no mention of involvement of Community Councils in the formation of ‘Community Planning Partnerships’. What is the reason for excluding them?

2. Community Organisations contains no mention of Community Councils, which are organisations already existing for this service. What is the reason for excluding them?

3. Empowering all the People of Scotland?

Empowering all the People of Scotland is now of much higher importance following the Referendum. Community Councils are the way of achieving this objective. Local Councillors do not have the in-depth local knowledge of those on Community Councils who are also independent of thinking and do not have any party political allegiance

NOTE

The Response for Evidence had to be submitted by 5th September 2014. I requested an extension because not only was the Community Council Network not meeting but Community Councils themselves did not meet in July and August. An extension was agreed. However today I telephoned to check details and was informed that the person who had agreed to this extension was not empowered to do so as Scot Sayers had left the department and it was under reorganisation. Today a senior member of staff, Jean Waddie, informed me that our submission should be sent to David Cullum, Clark to the Local Government and Regeneration Committee. I telephoned David Cullum on his direct line, but it was an
answerphone, so I left a message saying that our response would be received shortly.

Colin McGrath

From: Nick Underdown – Scottish Environment LINK

Received: 29/09/2014

Response to the call for evidence by the Local Government & Regeneration Committee for the draft Community Empowerment (Scotland) Bill

by the Scottish Environment LINK Marine Taskforce

Date: September 2014

Summary

Scottish Environment LINK’s marine taskforce outlines the potential of Community Empowerment Bill to consider issues of public participation in marine planning and decision-making, namely:

- how the process for participation requests could be adopted in the future by Regional Marine Planning Partnerships
- how broader measures in marine planning governance could assist with community empowerment in Scotland

Background:

The members of Scottish Environment LINK’s marine taskforce collectively engage on a number of marine policy issues relating to the implementation of the Marine (Scotland) Act; specifically the legal framework for marine spatial planning and marine conservation in Scotland via the development of a National Marine Plan, Regional Marine Planning Partnerships and an ecologically coherent network of Marine Protected Areas.

The main interest of LINK’s marine taskforce in the CE Bill is the potential for its provisions to enable community empowerment in relation to marine planning.

The context:

Marine spatial planning is an emerging area in Scotland. It is commonly understood that marine planning in Scotland is 40 years behind the terrestrial planning system, insofar as there has to date been no statutory system that plans, balances and coordinates marine activities in line with national level objectives and commitments to achieve sustainable development. A strategic and responsive marine planning system is urgently required due to the growing competition for limited marine resources: the increasingly varied, interconnected and often competing uses of the sea are occurring within the context of severe ecological decline, documented in the Scottish Government’s own Marine Atlas. Coordinating activities to ensure sustainable development and fulfil a legal duty to “enhance” Scotland’s seas is therefore critical. The role of communities to help drive this...
sustainability agenda should not be under-estimated – coastal communities can be the agents of change in marine management and often experience before the wider public the consequences – both positive and negative - of marine policy and planning decisions.

Marine governance in Scotland is complex. The Scottish Government is a signatory to the UK Marine Policy Statement. The Scottish Government has consequent jurisdiction over marine planning matters from 0 -12 nautical miles and has executively devolved powers (from the UK Government) for marine planning matters from 12 – 200 nautical miles. Marine Scotland takes overall responsibility for most marine planning matters; Transport Scotland is responsible for ferry services, ports and harbours; and Scotland’s local authorities currently have responsibilities for aquaculture. This work is also supported by Local Coastal Partnerships. There are also considerable overlaps with components of the terrestrial planning system via statutory arrangements such as the River Basin Management Plans of the SEPA-led Area Advisory Groups. In short there is a complex multi-agency governance framework for policy and decision-making in the development, management and conservation of the marine environment. This framework has developed organically and is still developing.

A more regional approach to marine planning issues is now on the near horizon. The Marine (Scotland) Act gives Scottish Ministers powers to establish Regional Marine Planning Partnerships (RMPPs), but this is a work in progress and therefore the development would benefit from strategic join up with a community empowerment agenda. Efforts to ‘engage’ communities in policy-making via public consultations in recent years has been notable, but for the reasons set out in response to Question 1 below there is currently reduced scope for meaningful and genuinely community-led policy-making.

This response therefore focuses simply on two aspects of the Community Empowerment Bill:

1. Outcome Improvement processes
2. The future role of Regional Marine Planning Partnerships

1. **To what extent do you consider the Bill will empower communities, please give reasons for your answer?**

We do not attempt to consider whether the Bill will empower communities generally. We also recognise that the Bill was not designed to empower communities in relation to marine planning. However, for many coastal communities decision-making around the use and development of the inshore marine area is of vital importance to the health of those communities. Participation in those processes is therefore a wider requirement of their empowerment. The development of Scottish Marine Regions (and their RMPPs) is understandably a work in progress – such a major administrative change cannot be effected overnight. The continuing lack of clarity around regional marine planning therefore remains a significant blind-spot in the community empowerment agenda. The Clyde and Shetland Scottish Marine Regions will likely develop as ‘pilot areas’ for the roll-out of regional marine planning. This is an approach we support, as both regions will identify a wide spectrum of different challenges owing to the fact that
Shetland comprises just one local authority, whereas the Clyde encompasses seven local authority areas.

Section 12 of the Marine (Scotland) Act provides that Scottish Ministers may develop regional marine plans and delegate functions in relation to those RMPs to a ‘delegate’ (or Regional Marine Planning Partnership). A commissioned report for the Scottish Coastal Forum suggested that the delegate be supported by a technical group; and consultative/advisory groups. The consultative and advisory groups would appear likely to be the only mechanism for community involvement in decision-making and there is no obvious recommendation that would ensure communities have a transparent procedure to proactively request participation in the work of the RMPP. “The Scottish Ministers’ direction should require the establishment of general, topic or geographically based advisory or consultative groups to assist in preparation of the Regional Marine Plan. *The number, remit and administrative arrangements of such groups should be decided by the delegate.*”

LINK MTF members therefore suggest that procedures for participation requests in outcome improvement processes outlined in sections 17-24 the CE Bill could be considered as a mechanism for giving communities a clear right to participate in regional marine planning. This would indeed contribute to the wider National Performance Framework. One of the 50 key indicators of the Scotland Performs framework (designed to track progress towards achieving Scotland’s National Outcomes) is “Improve the state of Scotland's Marine Environment.”

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill

No comment

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions of the Bill? If not what requires to be done to the Bill, or to assist communities, to ensure this happens?

No comment

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Section 16 & Schedule 2 set out the definition and list of “public service authorities” respectively. Regional Marine Planning Partnerships (because they do not yet exist) are not listed in Schedule 2. LINK members note that this list can be modified by Scottish Ministers in the future, but suggest that it would be a strategic time to consider how regional and national marine planning processes can be integrated with community planning processes more widely and whether this would have any implications for the draft Bill.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?
No comment

This response was compiled on behalf of LINK Marine Taskforce and is supported by:

- Hebridean Whale and Dolphin Trust
- Marine Conservation Society
- National Trust for Scotland
- RSPB Scotland
- Scottish Ornithologists Club
- Scottish Wildlife Trust
- Whale & Dolphin Conservation
- WWF Scotland

From: Bruce Morrison – Ferintosh Community Council

Received: 8/10/2014

Hi there,

Some comments on the 'participation request' idea.

- The way it is described in the video would be usable by a Community Council like ourselves with no help required

- I question, however, the statutory approach to compulsion of public servants to comply and respond. Re-designing services through formal request and response will not be nearly as effective as would improving working relationships between public officials and residents. For that to happen there has to be education and culture change and introducing more form filling takes vital time away from relationship building.

From: Jeannie Mackenzie

Received: 6/10/2014

The Local Government and Regeneration Committee ask the following questions for individuals and groups to respond to:

- **Do you think the Bill as it stands is the best way of getting people's ideas in front of the decision makers?** More support needs to be built in to help groups be constituted and the public bodies concerned should be obliged to set out in public their reasons for NOT making the changes. These reasons should have to fall into specific criteria - public bodies should not be let off the hook with spurious excuses.

- **Would you use this new right?** Yes, definitely. I am involved in a local group which may well wish to make such representation to a public body. As an individual, I often have creative ideas for improving services, but don't feel at the moment I have anywhere to take these ideas.
Local Government and Regeneration Committee, 2nd Report, 2015 (Session 4) — Annexe D

- **If not, why not?**

- **What would stop you?** I think what would stop people becoming involved would be the need to form a 'properly constituted' group. Some groups need support to achieve this and the current community development workforce is too poorly resourced at present to do this work.

- **Would you find it easier to participate as a group or individual?** Sometimes an individual has a very good idea for improving public services, but lacks the time or opportunity to find others and form a constituted group. Therefore, there should be also be a place for individual ideas to be presented.

- **What help do you need to become involved?** Personally, I don’t require any, but many groups may. They need strong advocates of community empowerment, people skilled in helping groups form and achieve constitution. The workforce in community development needs to be better resourced.

From: Mairianna Clyde

Received: 7/10/2014

Dear Sir/Madam

I am responding to your request for feedback on the Community Empowerment Bill, specifically on how local groups or individuals can have an idea and engage with local government to improve the delivery of services.

I am a member of a community council in Edinburgh, and have been for some years. I have endured no end of frustration with the City of Edinburgh Council in response to issues that residents think are a good idea but the Council apparently does not.

I do not see how the proposals in the bill as outlined in your video take us any further forward. Councils like Edinburgh are battle-hardened into saying 'No'. The usual excuse is 'resource implications' but more honest councillors will tell you frankly that the real reasons initiatives from the public are not carried forward is 'lack of political will'. Another frequent excuse we hear for doing nothing is 'we have insufficient powers'. Councils employ wily officials who are able to cite numerous laws as to why they can't do what you request. They are less good at finding laws which might actually support their authority to be proactive - except where it suits their own purposes, but not yours. For instance when a group of Edinburgh citizens recently challenged the right of the Council to appropriate 4.5 ha of a public park in order to build a school, successfully gaining a Court of Session ruling in their favour (clarifying the law on common good which suggested that Councils did not have the alleged right), the Council sought the advice of its legal department and overturned this ruling via a private bill from the Scottish Parliament. Now councils all over Scotland are gearing up to consider how they might also acquire common good land for public building purposes thanks to this precedent.
In your video, which featured Whale Arts Centre in Edinburgh, you suggested that the bill aimed to ensure that local people had some say in the services they received and in being able to approach the local council with fresh ideas. You stated that whilst people could come forward with an idea, that currently a Council did not need to respond, but that the bill would mean that councils will now be obliged to respond. Sorry, but this seems like a minuscule gain for local democracy! The right to receive a response! The right to be told No! The obligation of a Council to engage in a futile exercise they have no intention of delivering on! I fail to see how this will lead to actual delivery, given our experience of a 'listening Council' like Edinburgh, especially as your bill proposes that the group must comply with a range of criteria which will put a brake on initiatives and ensure they are controlled by the Council. I'm sorry, but this does not sound like people power, just more authoritarian paternalism of the kind that is a dead weight on civic life in Scotland. It does not enable proactive citizenship.

I cannot speak for other parts of the country but I will say quite emphatically that to their credit, the City of Edinburgh Council DOES respond. It is a 'listening' Council. However that is not to say that it necessarily responds in the way that residents wish, even when they have presented a good case. The way it responds is often to prevent you from going forward with your suggestion by attempting to educate you into how futile and intractable are the proposals you are trying to put forward. They have a welter of ammunition with which to stymie civic initiative.

I will give a couple examples of civic initiatives in my fifteen years of campaigning which have been killed stone dead by a local authority paying only lip service to being a 'listening' Council.

1. Houses in Multiple Occupation

About the turn of the millennia residents in tenemental areas in Edinburgh began experiencing considerable disruption and nuisance from rented flats in areas such as Marchmont. A problem had built up in the 1990s (after Thatcher's 1989 Short Assured Tenancy Act de-regulated the private rented sector, ending 74 years of consensus on fair rents and security of tenure in the private rented sector that had informed policy since the Glasgow Women's Rent Strike of 1915). The 1991 census had revealed only 3% of city centre dwellings were in the private rented sector; the 2011 census revealed that this was now closer to 20%. That this was concentrated in particular streets of an already compact city exacerbated the problem. The problem was specifically that this intensive type of use was accumulating in whole stairs, pushing the settled population out, because there was no on site management. Loud music, frequent parties, litter, stairs not being swept, gardens left to go to ruin, railings being removed, fires, floods, caused owner-occupiers to vote with their feet. As For Sale signs went up the properties were bought by other landlords so that over time only a minority of mainly elderly residents too ill to move were left to manage an unmanageable situation, and there were no longer 'neighbours' in the accepted sense to aid or support them, as the tenants changed so frequently.
In response to this, a local group was formed in Marchmont called Magpie, which initially took an environmental focus to the problem, but eventually began arguing for HMO planning controls to be implemented on a per stair quota basis, as it was discovered that Glasgow had done. This group gained some support from a sympathetic ward councillor.

The Scottish Government also began new legislation on HMOs around that time, but this was geared towards helping tenants, and not towards addressing the fact that tenants, in unmanaged situations, could be making victims of others. Licences for HMOs were to be placed under the control of local authorities and it was hoped that those who were victims of badly managed HMOs might also receive some justice via this means. But sadly this was not to be the case.

Around 2003 the Council also began plans to implement Neighbourhood Partnerships in accordance with recent legislation. NPs were an attempt to do what the community empowerment bill now attempts to do, bring local government closer to communities and enable a more participative approach; and at the initial public meetings, councillors and officials were bombarded by legions of residents wanting action via planning controls on the HMO issue.

Accordingly one councillor proposed setting up a Short Life Working Group on HMOs, to which Magpie and various community councillors like myself were invited to send representatives, but it quickly became apparent that this was a set-up to ensure that though there was an appearance of democracy and participation, that the community's proposal for planning controls or other remedial action would be perpetually blocked. Representatives of various Council services and departments were invited to attend, including those in the Council charged with the new HMO legislation, the Council's legal services, Edinburgh University Students Association, Edinburgh University Accommodation Service, and various landlords and letting agents associations. Discussions were repeatedly stalled by an inability to make any progress because residents groups were outnumbered and outgunned by the preponderance of other stake-holders. As we attempted to move the ball across the pitch, we would find that one or other stake-holder was neatly positioned to block it. Game, set, and match, to Goliath v David.

I accept that governance is always a compromise, and that you can only hope to get a portion of what you ask for, but every single proposal as regards fairness for permanent residents in the implementation of the HMO legislation by the Council that residents groups put forward was blocked. I finally gave up on attending this group when our modest proposal that the Council at least keep a record to be presented before the licensing committee of known bad landlords who owned multiple properties across the city each time a licence renewal came up, was refused on the spurious grounds by the Council's legal officer that this would breach data protection and compromise the landlord's human rights... I had vainly thought this was one area at least that we could all have agreed on; the Council doesn't like bad landlords who avoid registration and other legal compliances; tenants don't like dodgy landlords who withhold deposits and fail to make repairs; ditto university accommodation officers with a duty of care towards students; letting agents and landlords associations like to put across an image of responsible professionalism, so they don't appreciate rogue landlords tarring the rest either. To cap it all, the said legal officer came up with a new legal directive...
from the EU, which stated that henceforth all licences granted by local authorities to commercial operators were to be regarded as the perpetual property of the operator, and that once a licence had been granted 'Europe' was effectively blocking the Council's ability to refuse a licence renewal to a rogue landlord on any grounds whatsoever!

Any educated person can see that the law can be variously argued and interpreted. Such is the complexity of the law that authority can usually be found (after scrutiny and reasoning) when authority is needed. What we were perpetually confronted with was a refusal to engage in that process. Or as one councillor honestly and helpfully put it, 'the lack of political will'.

2. Seagull Action Group

In recent years lesser black backed gulls have been nesting on urban rooftops so successfully that their numbers have increased dramatically and during August at the height of the nesting season these become a fearsome problem, nosediving and threatening attacks on residents. Sometimes they actually do attack - the back of the head, causing gashes needing stitches, and sometimes concussion. Earlier in the season noise and bird mess are the main problem. This species is social and forms large colonies so that there is a build up of the problem over several years where the birds find easy nest sites. And they find that the flat sections of tenement roofs are particularly amenable as here they have space to form large groups. Thus large gull colonies build up where there are also large concentrations of people. So large numbers of residents suffer large amounts of noise and mess. In my local streets we took direct action ourselves after the Council refused to do anything, saying it was not a statutory responsibility and as it was private property it was therefore for private owners to do something. Community meetings were held. I raised money amongst neighbours to hire a falconer as I'd heard this had been tried in Dumfries, and over two seasons between 2000 and 2001 we had entirely eradicated the problem. It was astonishingly successful.

But it became clear that it wasn't the falconer/falcon that was doing the trick, but the nest clearance that he and I undertook to remove the nests as we walked across the roofs. The next and next again seasons I didn't bother to hire the falconer but did these patrols myself with the help of a neighbour. This method was so astonishingly simple, cheap, and effective, (and non-violent) that I felt I had to tell the Council about it, so that other communities could do the same. This fell on deaf ears, and advice was not amended in published Council leaflets which continued to say 'there is nothing you can do'. But not all communities are so well organised, especially in those tenement areas where there is now a large transient population with few owner-occupiers or long term residents willing to take ownership of the issue.

One of our community councillors lived in such an area, and using my experience of what works as a template, she managed to win the support of the Transport and Environment Committee to make a trial of similar methods in her area during 2011-2012. This was an astonishing achievement, and the project (surprise, surprise) came out under budget, just as I advised it would do; because once you gain access to one tenement roof in a street, you can access all the others in that street section. The logistics of the operation turned out to be far less than the
Council had anticipated, and I felt vindicated. The legal issues of such action and access were also explored and found not to be a problem. The costs were negligible. The project was deemed a success. Gull nuisance isn't a specific statutory responsibility, but other aspects of environmental responsibilities do come into play. For instance gull faeces spread a number of pathogens such as e-coli, cryptosporidium and campylobacter. Plus, a Council can choose to take on non-statutory responsibilities if it so wishes. Festivals aren't a statutory responsibility either, but Edinburgh does plenty of them.

But following the local elections and a change in the political composition of the Council, the continuation of the project was abandoned by the next Convener. Grounds of cost were raised as an excuse, although the costs were spurious; Council labour only was used, and there were no capital outlays. The trial was a pilot, merely for the Council's pest control service to become aware of how easily this menace could be dealt with from within the Council's own resources. What I had envisaged emerging out of this eventually was a small Council 'hit' team, of about three men, doing about 12 hours nest clearance during May, June, and early July, plus some slight administration costs. This 'service' would eventually be available to affected areas throughout the city on a rota request basis, as what I discovered was that once nesting populations are dislodged by intensive, targeted action, they disperse and do not return to that area. Thus over several seasons, bit by bit, city centre tenement areas could be progressively cleared of gull colonies.

Having campaigned and attempted to raise the profile of this problem over many years, and having discovered how cheap, effective, and humane the simple solution to it is, I was bitterly disappointed to find that such civic endeavour was so lightly cast aside, apparently on the whim or prejudice of the new Convenor, who seemed to be under the impression that mine's was a 'posh' area trying to hog scant resources, though it contains streets where low income groups live, and it was specifically these sorts of areas that our initiative was trying to help. Plus my plan was to help all of the city, but a bit at a time (unless further resources became available). Citizens can be patient if they see some steady progress; what is utterly disheartening is to see none at all, and problem just ignored.

I could cite several other incidences where local groups have campaigned on local issues and not got anywhere.

I have therefore come to the reluctant conclusion that if community empowerment is ever to be meaningful it needs to bypass large unitary authorities like Edinburgh. The bill's proposals may work better in smaller more rural authorities where there is more of a face-to-face society, life is simpler, and the layers of bureaucracy are less complex.

Direct action by community groups accessing funds directly from the Scottish Government for projects and receiving advice and assistance from the SG to run them themselves would I feel work better than having to deal with the fickleness, bad faith, and arterial sclerosis of large local authorities.
Allotments Video - Responses

From: Ron Smith

Received: 13/11/2014

Quite frankly, I am flabbergasted by this latest 'consultation'. It seems to relate only to allotments, a subject which has little to do with true 'community empowerment'. Even worse, the video relates to only a temporary arrangement at the (welcome) whim of a prospective developer, pending development.

Whilst I would be the first to support any reasonable legislation to ensure that there is a proper provision of permanent allotment garden sites for folk who want them, having promoted two allotment garden sites when I was responsible for the Regeneration of Oatlands in Glasgow and being the Chairman of Burgh Beautiful Linlithgow, I feel that this should NOT be under the heading of 'community empowerment'.

As you will be aware, I did respond to the last stage of the consultation, suggesting that the best form of community empowerment would be the delegation of a range of powers to local communities - 'town councils' or similar. As far as I can see, this representation was completely ignored.

This is most disappointing!

Perhaps the title of the bill needs to be changed to the 'Allotments and Extension of Bureaucracy Bill'!

From: Karen Allan

Received: 21/11/2014

I started the Stonehaven Allotments a few years ago. Despite having many interested members, we got the run-around from the Council who, legally, only have to "consider" providing allotments, not actually provide them!! They asked us what land we wanted, we asked them what land they had, they offered us land, then changed their mind, offered us other land, changed their minds again, and offered us the land they proposed in the first place! All this took about 3 years by which time some of our founding members were too old, others were losing heart, and people were starting to fall out. It is all sorted now, after a generous donation and fundraising helped us on our way, but it was such a strain I would be loath to get involved in a similar project. I propose that District Councils MUST provide land, and perhaps some money, and that allotment societies be set up under the auspices of Community Council. Local parks could also contain community gardens, perhaps not with vegetables, but with herbs, flowers (for bees) and fruit trees/bushes.

That is my tuppence worth.

Good luck!
From: Lynne Palmer

Received: 19/11/2014

Community Empowerment Bill,: further questions. FAO Kevin Stewart MSP & Ann McTaggart. I received an email asking for more suggestions. Lynne Palmer, Nov. 19th 2014.

1) What are the benefits of having access to an allotment?
In my experience, stress relief & relaxation are at the top of the list. Also distraction from life’s problems/escape etc. Relief from city life. Fresh air & exercise. Good for anyone living in a flat or tenement/multi-storey. Contact with natural things & seeing wildlife. Growing & eating your own food & enjoying the growing process.
Some plot-holders enjoy the hard physical work; I remember some years ago asking one tenant about the amount of digging she did, by her response I judged that she loved it & watching her I noticed that the rhythm of digging was possible what she enjoyed. Others I have noticed have great problems getting on with the hard graft, including myself!

2) What other types of spaces could be used to grow food & plants?
   a. Community gardens on land which Local Authorities don’t (or won’t) seem to get on & make use of e.g. in Perth, Tulloch Marshalling Yards. Also there’s a large open space of green land between the Marshalling Yards & the back of Fairfield Housing Association; this land includes The Town Lade & a narrow public footpath. These could be incorporated with a new growing area/community garden.
   b. Bee-keeping could happen on railway sidings or unused railway land. High fences keep people off railways in built-up areas, at least they do at the above mention site. But danger need not be a problem as proper training should be given to bee-keepers who are in an authorised group with permits to enter by certain locked gates.

3) How could a food-growing plan assist you?
As I don’t grow fruit & vegetables, (I have flowering shrubs & plants), I can only suggest help for an allotment association that has problems with pests/diseases. e.g. eel worm on potatoes on more than one plot. So a Plan for plot-holders to try & rid their Association of pests by agreeing to the Plan & sticking to it. An Association would have to start practicing working together.

From: Jane Brennan

Received: 24/11/2014

Hello

We are Edinburgh Garden Partners, an Edinburgh based/focused charity that matches up people who have growing space to spare with those who want to grow.
We target people on the allotment waiting list and match them with people who can no longer, for whatever reason, manage their gardens. They share the garden space and share the produce. A very simple and obvious idea that works really well. We currently have over 50 gardens in production just now with around 90 volunteer gardeners involved.

In reality the people who 'gift' their green space for sharing in this way are elderly, vulnerable people who can no longer maintain their outside space. In return for giving over a dedicated patch to a volunteer gardener the garden is maintained (basic tidying and keeping it looking 'looked after'). It's an exchange that works well and very often results in lasting friendships and an improved quality of life for the elderly garden owners.

If any more information would be useful at this stage please do not hesitate to get in touch.

Best regards

From: Gavin Rosborough

Received: 25/11/2014

Hi Anne,

It’s good to hear you are involved in something like this. I have recently got a small allotment in Yoker. I’m on a waiting list for Scotstounhill which I have been for around 3 years now – getting an allotment isn’t easy and the allotments that are available are not full size allotments due to the government not providing funding and land to expand current plots. The Yoker allotments is a perfect example of this, the surrounding areas have a massive amount of disused space which should be looked at with a view for expansion.

1. What are the benefits of having access to an allotment?
   - Growing your own food and helping the environment is one of the main perks of having an allotment. It also helps communities together and increase friendship within the local community.

2. What other types of spaces could be used to grow food and plants?
   - Disused ground should be used to kick-start new allotment space, there is so much disused ground around the communities it should be used which will reek benefits in the long term as the communities start to bond together.

3. How could a food-growing plan assist you?
   - A food growing plant would help in the learning of growing your own food and how to maintain the land you have. This learning process will be passed on to the younger generation which is would hope to carry on growing.
From: Nick Virgo

Received: 25/11/2014

Dear Ms McTaggart

This is my response to the request for feedback on the allotments part of the Community Empowerment Bill. Apologies, I ramble on a bit.

**What are the benefits of having access to an allotment?**

I’ve had an allotment with my wife in Riddrie by the M8 for the past twelve years or so. The first thing I would say is that despite where it is situated, it is a haven and it is amazing how quickly the noise of traffic disappears as I get on with digging and planting. For me, there is a whole aspect of mental well-being associated with having my plot. It’s not just about physical health and I think this is very important. In high summer we spend at least 17 person hours on the plot per week which I think is a considerable investment of time but absolutely worth it.

We grow a lot of plants as well as veg. Some of the plots are places of extreme beauty when they are fully in bloom. I greatly value the impact this has on our environment. This year our plant growing had the knock on effect of there being enough seedlings to put up hanging baskets in our back court.

We are virtually self-sufficient over the summer months for vegetables. Apart from huge levels of self-satisfaction, I have become more aware of issues around the politics of food: it’s quality, taste, where it comes from and who gets it. The first pack of supermarket salad leaves in the Autumn always highlights these things: it is such a huge disappointment when it could be so much more.

**What other types of spaces could be used to grow food and plants?**

There are all kinds of spaces begging to be grown on. For example large areas of land in Royston and Cranhill which are currently serving no real purpose could be used for growing. I know that groups like Dennistoun Diggers in Glasgow have been proactive in growing on new sites. I’m also aware of pop-up community gardens. My one fear is the transitory nature of many of these: here one moment and gone the next. I was particularly sad when I realised that the Greyfriar’s Gardens in Glasgow Merchant City was only temporary. It was obvious considering the amount of development going on round about, but so many people appeared to have caught the growing bug and in the heart of a city too. I understand they are now joining the waiting lists for allotments outwith the Merchant City.

I think there is room for all kinds of strategies where land is reclaimed on a temporary basis, but local authorities must be proactive and back this up by creating additional allotment sites which are permanent and which meet popular demand. Growing spaces need to be nurtured over years if necessary; a small orchard or decent area for strawberries or other fruit isn’t created in one season. Only permanent spaces will enable this.
If there is one drawback to some of the community gardens I’ve seen, it tends to be to do with the size of growing spaces that are available. These tend to be just large containers. Not much can be grown on them. The old size of allotment was always meant to be enough to sustain a family of four. This seems like a good definition of what an optimum size of growing space should be. Obviously, different people will have different needs but these spaces need to be flexible and cater for all kinds of commitment and need. But I would hate to see spaces proscribed but what is convenient for an authority and not for a grower.

Twelve years ago, our plots were derelict and we couldn’t give them away. Over the last six years, we have created a variety of spaces on our plots: the majority are still full-size plots but we also have a number of half and quarter plots and raised beds. These enable people with different needs and abilities to work on them. Some trade up over the years and some trade down. Some just try out a raised bed for a year and then decide it is not for them. We also have customers from Fair Deal and the Riddrie Centre using their own spaces on the site. It is a thriving community.

**How could a food-growing plan assist you?**

I’m one of the lucky ones. However, I’ve worked in primary schools in Glasgow’s East End and know that getting decent food (or even enough food in some cases) really is a central part of changing people’s lives. Connecting with growing and rediscovering how to cook it is an important part of that.

Anecdotally, our plots have kept bees for the past two years. This year we had the first batch of honey (around 110 jars). At our open day, local people (not from the plots themselves) were queuing to bag a jar. I think the honey was a source of fascination (bees in Riddrie), it was produced by the slightly odd people behind the fence (so that’s what they do), and it was also a source of local pride.

Many thanks for taking the time to read this. Hope it makes sense.

With best wishes

**From: Barbara De La Rue**

**Received: 26/11/2014**

There are benefits for the individual with access and also for the wider community.

**For the individual:**

* there is the opportunity to grow and consume really high quality fruit and vegetables - allotment soil has recently been shown by scientific studies to produce food with a greater range of nutrients than soil of commercial growers

* there is the opportunity for regular exercise in the fresh air,

* there is the companionship of other plot holders
For the wider community

* there is an attractive green space providing a safe habitat for a wide range of wild life (allotment gardeners tend to be mean about their use of pesticides)

* there is a reduction in 'carbon footprint' because the fruit and vegetables grown on allotments usually are grown and supplied to the table using relatively little petro-chemical derived fertiliser, little use of tractors and other petrol driven tools and little use of petrol driven transport.

What other spaces can be used to grow food?

Food can be grown in adequately sized private gardens, but modern developments are tending to minimize garden size. Food can also be grown in communal spaces, but the problem here is who has the right to use the crop. Food is best grown directly in the earth. It is fun, but financially crazy to grow food crops in small raised beds and window boxes. It is possible that the damage done to peat bogs in renewing the compost in such spaces far outweighs any carbon footprint benefits. Food grown commercially in polytunnels etc. requires large inputs of artificial fertiliser and pesticide.

How could a food growing plan assist me? Sorry I do not understand the question. What is meant by a food growing plan? Is this different from the advice given in a good gardening book?

Hope this is helpful

From: Karin Chipulina

Received: 26/11/2014

As an employee for Carr Gomm my remit is to help organisations who work with isolated members of the community in Edinburgh especially in Craigmillar to develop areas of ground to grow food in.

I can therefore say from my own experience of working in this field for 20 odd years that growing food, and being outdoors has many values and one of the very important ones is combating isolation.

Obviously there are an incredible amount of other benefits, difficult to quantify but these include, self-reliance, empowerment, self-esteem, socialisation, community cohesion, health, better diet, fitness, better integration of different cultures through cooking, creating local food networks, keeping things local, fresher food and so on.

Other types of spaces could be roof tops, walls, stalled spaces, brown field land, small areas of unused ground around the centre of town and backyards.

A local food growing plan would assist me in making it easier to find accessible land for various communities, make it more straightforward when it comes to leases and costs and make it easier to get in touch with the right person in the council to deal with such issues.
It is sometimes hard for communities to understand planning laws and who owns which areas of land. It would also be useful as there would be a better understanding of the value of growing food and the many benefits it brings.

**From: Barbara Glass**

**Received: 1/12/2014**

Having been an allotmenteer for the past three years and having worked in the social care sector for thirty nine years, I would like to comment favourably on the stabilising influence that allotments offer in our communities.

Both from an intergenerational and a socioeconomic perspective, the shared experience of working the soil transcends many levels.

Varying gender, cultural, ethnic and religious beliefs work side by side.

Our own allotment is one of the oldest and we have a made space for a local nursery, primary school and learning disability project - alongside our plotters in their eighties and our patents of new babies.

It is imperative that we protect these stable legacies for the future generation.

The opportunity to grow organic, low carbon impact food and sustain our living environment whilst developing our neighbourhoods shared responsibility for biodiversity is a valuable life skill but needs to be sensitively managed by local government and local people and needs to be maintained at a level wee can afford

**From: Georgia Skinner**

**Received: 2/12/2014**

I was the Secretary of Aden Community Allotment Association for two years right from the very start of the project from the find raising right through to our first growing season. Would like to help in any way possible.

**From: Rob Gray**

**Received: 2/12/2014**

Allotments in Scotland where who are owned and let by a local authority must be compatible with current laws i.e. the human rights act Allotments holder must be forced to join an allotment association to obtain an allotment from a local council.

Policing of allotment sites in scotland where the land is owned and let by a local authority must be policed by them and not by the allotment association to whom of many are left in charge in some circumstances are left to run an allotment site with over a hundred people on them without having the proper funding nor training to do so.
From: Laura Thomson

Received: 3/12/2014

I have heard that you’re interested in hearing from people with experience of allotments and community growing and have posed several questions. I’d like to share with you how having an allotment since February of this year has benefitted me.

I am 41. I was diagnosed with mental health problems in my late twenties having been ill but untreated for a long time. I have had various jobs - from temping in various offices as a student to being a Public Relations Executive. Most of the time I was feeling pretty desperate - I couldn’t cope with the interpersonal relationships in the workplace, wasn’t actually good at what I was doing and didn’t see the point to most of it in any case. When I had a psychotic breakdown and was finally diagnosed I was working as a Training & Development Advisor for ScottishPower. After several failed attempts to return to work they and I accepted that this wasn’t going to happen and I accepted an Ill Health Retiral when I turned 31.

There followed ten years of therapy, medications, illness, self-harm and changing diagnoses. I made a few attempts to work again, self-employed or as a volunteer. None of these really had a happy ending. I’d try one activity after another, trying to find some kind of meaning to my life but couldn’t sustain my interest for more than a few days or a couple of weeks. Every time I dropped the threads of a project I felt a failure. I was depressed, unfulfilled and couldn’t see that there was any point in living. I was so ill that Leverndale authorised me to take a high, unlicensed dose of one of my medications with the attendant risks to my physical health that this brings.

In September/October last year I decided to try gardening. I planted vegetable seeds in troughs in a cold frame my parents weren’t using. I watered them. They grew as I watched and, eventually, I ate them. I had grown my own food! Here was something for which I could see the point in working even when I didn’t feel much like it. I kept adding pots and troughs to my parents’ garden and had good results. But I wanted more … and my parents wanted their garden back!

At the beginning of this year I decided to take the plunge and apply for an allotment. I expected to have to wait years and I would have if I wasn’t prepared to travel. It takes two hours to reach ‘Lottie’ by public transport, a little less if I can afford to take the train. Lottie was in quite a state when I first met her but the Allotment Committee gave me lots of support and practical help (and two skips and a lot of muscle power) but by June of this year I was cooking food I’d grown myself. My best moment this year has been cooking a meal using only produce I’d grown myself.

Over the year I’ve learned that:

* I am strong and love hard, physical work.
* I can make friends with people I have something in common with.
* I can work as part of a team.
* It’s OK to ask for help.
* People seem to like me.
* Sometimes all you need is to sit down and watch the birds.

My mental health has improved greatly - I’ve had my medication reduced three times this year and am nearly back to the licensed dose. I’m stronger and healthier than I have been in years. I’m eating well of fresh, organic produce. I’m getting exercise. I’m making friends - something I haven’t been able to do for a very long time, if ever. And I know that there is one place I can go to in Glasgow when I’m feeling ill that somehow makes me feel like all is well with the world.

I couldn’t cope with the world of work and I don’t know if I’ll ever work again. In today’s climate that left me feeling useless and a drain on society even though I knew I’d done my best and damaged myself in the process. But Lottie has given me purpose and a fulfilment I have never felt before. I don’t know why working outside to grow my own food should make such a difference. But it does.

From: Dr Lindsay Neil

Received: 4/12/2014

Comment on the forthcoming Community Empowerment Bill

Allotments

There is no doubt that there is a national demand for allotment provision as there is indeed in Selkirk. A need identified in 2007 was partly met by an entirely private allotment initiative in Bannerfield housing estate in lower Selkirk but the Community Council was unable to help towards allotment provision in Selkirk burgh proper owing to Local Authority inability/refusal to provide. The successful initiative provided 15 allotments for 20 people but there is a present unmet demand for another dozen.

It is also noteworthy that a recent Forestry Commission scheme in D & G to provide 10 smallholdings generated 90 applicants. So one can conclude from these and other sources that there is an embedded desire in Scotland to be part of the food production chain and a widespread desire to ‘grow your own’.

Food security for the next decades must be given a high priority. There is compelling and irrefutable argument for developing a greater level of food production because of the international situation. One of the predictable problems facing the world and Scotland in the next 50 years is shortage of food. This is because of unrestricted world and UK national population increases, diminishing food resources owing to many factors and increasing cost due to competing international demand for what food is available. Add to this unpredictable physical calamities such as weather, conflict etc.
Scotland currently meets approximately 70% of its own food needs before imports. Figures for Scottish agricultural production in the early 1970s show that Scotland produced a surplus¹. This was used to trade for those things which don’t grow well here and is a situation we should strive to recreate.

Encouraging individual ‘home’ expertise in growing food and exploiting popular desire combined with developing potentially cultivable parcels of derelict or presently unused land all round the country is a way to achieve this. Greater provision of allotments could help but will only have a small overall impact. However the ability of the Scottish Parliament to recognise and plan for a predictable future food problem will proclaim to all that Scotland has a mature understanding of international problems. I have 4 suggestions on that which I will detail below.

Future food security is essential. This is a theme that runs through the 2008 “Committee of Enquiry into the Future of Scotland’s Hills and Islands”² (see recommendations 2,3,5,17 & 19, which all mention in passing the advantages of co-ordination among the various agencies in order to achieve better outcomes including food security)

Possible areas the Bill could address:

1. Peremptory encouragement to Local Authorities to provide allotments towards meeting the demand.

2. Empowerment of Local Authorities to use CPOs (Compulsory purchase orders) to acquire land to make allotment provision. The present slow CPO process could be shortened and criteria for CPO eligibility clearly defined for allotment purposes. (derelict or undeveloped land with unmatriculated planning permission, industrial sites etc and any appropriate land suitable for allotments).

3. Ex-industrial urban sites which would be otherwise too polluted for housing and too expensive to develop could be assessed for ‘carpetting’ with impermeable membrane enabling either topsoil or polytunnel facilitation of horticulture/allotments.

4. Extension of Crofting to the Lowlands and better enforcement of crofting regulations re absenteeism and dereliction. The re-establishment of crofts, where decrofting has taken place eg. in the furtherance of sporting estates. (See attached paper which was sadly disregarded when the Crofting amendment act was considered) [Not strictly allotments but can be considered alongside]

¹ ‘Scotland in Figures’ 1972 compiled by RBS.


Dr Lindsay D Neil, Selkirk, 3/11/2014

From: Maureen McKendrick

Received: 6/12/2014

I have been lucky enough to have had an allotment over the past 2 years and thought it important to share my experience so you can consider it when discussing the Community Empowerment bill.

My closest allotments (Budhill and Springboig) put me on their waiting list but in the meantime, I applied to Kennyhill Community Allotments and within a reasonably short time, I was offered a large raised bed to see how I managed this, was I able to plan, prepare the bed etc. and more importantly commit to maintaining it.

Kennyhill is a great site but it’s a 15 minute drive there and back so it’s not just around the corner.

My raised bed was a great success and within a few months I had potatoes, garlic, leeks, onions, strawberries, sprouts and swede all growing away. The only problem was the size of the bed and the constraints I faced due to the limitations of what I could physically cram into the ground!

In the meantime a large plot was being divided into quarters and I was offered one of them as my commitment to growing was clear to see and I was ready to start all over again.

This quarter plot gave me the scope to try out proper crop rotation, good growing principles etc. and I constructed 4 raised beds for this purpose. I grew tomatoes, broccoli, sweetcorn, courgette, and used the lasagne no dig method to try to minimise the amount of heavy digging while at the same time improving the soil.

This plot also opened the possibility of having a shed available for storing hand tools etc. and especially somewhere to shelter from the rain and take a well-earned break!

I had made so much good progress over the year that when a larger half plot came up for grabs I went for it straight away as I wanted to have the space to start off my growing as early as possible in a greenhouse and there just wasn't the space available in my quarter plot.

This half plot had been neglected and it was really hard work initially to clear the space of weeds, composting as much as possible and laying out raised beds, getting the ground ready for planting. This plot benefitted from an old greenhouse and linked shed so it provided all I needed for growing and shelter - apart from it being in a really derelict state! The fact that a gang of wasps also liked my shed
did not deter me and we seemed to get along well by simply ignoring one another! (They were there first after all).

I was delighted to receive an email from Budhill and Springboig Allotments offering me one of 5 x plots which had become available. I walked round with a committee member and although I couldn’t get access to view my current plot, I knew right away that it was going to be the size I wanted and I would never have to move again.

The plot I have now is a full plot and has everything I need in the one place. I can properly rotate my crops, it has a pond with fish and all the associated wildlife this automatically attracts (cats and all), a good strong greenhouse and shed, running water, etc. and I can walk to it in 15 minutes.

This means that I now have the scope to become totally self-sufficient in terms of growing fruit and vegetables to feed my family. Large plots are not for everyone but it is really important that they remain available to those people who first of all prove they can commit the time and effort required to maintain them, but who also want to do what allotments are all about - i.e. saving money, managing what we as a family eat, know where the food is coming from and that it has been grown using good practice.

The current rumblings of having to reduce large plots in order to provide raised beds so that local government can meet their waiting list quotas fills me with dread. This move is absolutely not about promoting the benefits of becoming self-sufficient in producing food for a family, but is simply a box ticking exercise - literally a window box exercise in this case! because some of the raised beds currently being offered are no more than that.

All that is required to manage plot waiting lists effectively is that allotment committees become more organised and consistent in their guidance around what constitutes activity (i.e. a plot that is being actively worked) as opposed to a plot which is clearly being neglected. As long as monthly inspections are maintained and followed up, this will naturally make plots become available as people move out and thereby waiting lists will begin to fall naturally.

Allotments have been running themselves successfully for over a hundred years in some cases and will continue to do so. We don’t need bureaucracy to make things work better - please leave it to the people who know what they are talking about to make the right decisions for their communities.

From: G Williamson

Received: 7/12/2014

Dear All

I am an allotment holder in Kilmarnock and wish to respond to the community empowerment (Scotland) bill
The benefits of having access to an allotment are many but the basics include the benefit to health and wellbeing of the individual. My allotment provides me with much needed exercise at a pace suited to me and allows muscles all over the body to benefit from the non normal everyday use. This exercise promotes a better life for me and also helps to fight off the occasional small dips into a depression type mode which can happen to anybody.

The allotments also promote a sense of comradeship where everyone can help one another and be a social pleasure in meeting and discussing with others the benefits of what they are growing.

My allotment provides me with produce I would probably never buy but allows me to have a taste of the vegetables, it also allows me to pick fresh produce that is ready and picked and on my plate within hours.

My allotment gives me the chance to eat and control what I eat without incurring costs to my normal household bills as I am pretty much self-sufficient throughout the year in a lot of the vegetable areas.

My allotment also helps me know what has gone into the food I grow and eat and whether I wish to be organic or use chemicals which often end up banned in years to come.

My allotment give me a taste of what food was like years ago when food actually had a taste instead of being pumped full of chemicals and other ingredients.

My allotment encourages me to eat more healthy foods and more often instead of reverting to junk food.

My allotment has a wide species of bird life that may help keep the population growing instead of helping with their decline.

So to quickly sum up that section I would say health wealth and wellbeing are the main points of having an allotment.

Other types of spaces that could be used in growing food and plants are many and varied but require more encouragement and security as any work done in these areas may result in vandalism and a sense of despondency.

The use of communal space or a communal garden can be utilised to grow produce along with areas in public parks whereby the local populace may wish to be involved. I know from my experience of youth many years ago that going through our public parks when we had council gardeners was a lovely sight when the parks and gardens were in bloom. These have all been affected by various cut backs and the parks and gardens are no longer the places they used to be. Motorway and Bypass bankings can be used to grow more wildlife friendly areas as we often think only of ourselves when it comes to food produce.

A food-growing plan is like many other plans and ideas. It will only work if the weather allows it to work and the person follows it. I am all for a food growing plan as I have had an allotment now for 25 years and always seem to make the same mistakes every year but also have the same success every year. Food growing
plans are possibly useful depending on the situation but I would never knock one without having tried it.

Allotment growing was a big issue during the war years whereby everything helped but nowadays the generations seem to care less and less about things like this and seem to believe that produce actually comes straight out of the ground all washed and clean and that every swede turnip is the same size and all fruit and veg can be bought cheaply and thrown away if not used. Too much foodstuff is sent to landfill and allotment use may help encourage less of this issue as you would then pick as you need and compost anything that goes over and thus return the compost back to the soil

From: Pat Abel

Received: 16/11/2014

This was discussed at a Land Use working group that arose from Edible Edinburgh and we endorsed the concerns put forward by John Glover at our first meeting.

Community Empowerment Bill – John Glover

John gave an outline of his paper on the concerns about the bill

- Participation Requests The right for community groups to pro-actively approach the public bodies including council and NHS with proposals to improve public services – could include proposals about planting and maintenance of their land. Concern that this right limited to devolved public bodies. 

Extension and Improvement of pre-emptive community right to buy to include urban as well as rural land. However, Bill does nothing to assist community groups in raising the purchase price of the ground or building. Also there is no provision for specialist help and support for community groups going through the buy-out process.

- Community Right to Buy Abandoned and Neglected Land There is little in the way of definition and this could lead to decisions by Ministers be challenged in court by the landowner with the great loss of time and money for the community. Nor is there support for the community in finding out who the land owner is, this can be difficult and costly. Timescale from assessment of market value of the land to actual purchase has to be within 6 months. It may be difficult for a community to raise the purchase price in that time.

- Asset Transfer Requests – right to request transfer of ownership, grant of a tenancy or rights of use and management from certain public bodies. Where a transfer of ownership is sought there is a requirement that the community purchase vehicle be a SCIO or a company subject to an asset lock which, on winding up, prevents the property acquired under the asset transfer passing to members of the company; or such other constitutional form as may be prescribed. The community is to have the right to appeal if the decision does not go their way. Again the public bodies concerned include the Council and NHS but not bodies whose functions are outwith the devolved competence of the Scottish Parliament (e.g. MoD or Network Rail.) John thinks Westminster should legislate to make it
possible to make participation and asset transfer requests to reserved public landowners.

- **Common Good Land** Councils will be required to publish registers of their common good land. However, the Bill does nothing to clarify the obscure rules on what is or is not common good land, and what can or cannot be done with it.

- **Allotments Sections 77 and 78** They place local authorities under a duty to prepare, publish and keep under review a food-growing strategy. This should be separated out from the allotments section as it is about all forms of community growing and not just allotments.

As described in the Youtube, from the Grove Garden in Edinburgh, Community Gardens are a new and growing phenomenon, however, they come in many different shapes and sizes and therefore different needs. The land use sub group has put in a response to the Good Food Nation which might give an understanding of the place of community gardens. More than happy for you to visit the Gracemount Walled Garden and to discuss some of the issues the community there has to provide a long term hub for the community.
Dear Derek,

Re: Policy Memorandum on the Community Empowerment (Scotland) Bill

The Local Government and Regeneration Committee agreed its approach to the Community Empowerment (Scotland) Bill and will launch its call for evidence on the Bill on Thursday 26 June:


As part of its approach, the Committee has agreed I write to you seeking clarification on a number of issues relating to the Policy Memorandum (PM) which accompanies the Community Empowerment (Scotland) Bill.

The Committee notes that paragraph 28 of the PM states a concern “people might have difficulty in understanding the language of the draft legislation”. The elaboration sought in this letter is, in part, to address this concern and make it easier for those who want to participate in the legislative process and provide comment on the provisions to do so.

The questions set out in the Annex are also designed to seek elaboration on information to inform the Committee scrutiny of the Bill and make it easier to meet the challenging parliamentary timetable for consideration. A full response to these questions should significantly reduce the information the Committee will require to gather during the Stage 1 process.

Given the above the Committee have requested that a response to all questions, together with any other information you consider relevant, should be provided to the Clerk of the
Committee by 1 August 2014 in order to assist those who wish to provide written evidence to the Committee.

In general whenever there is reference in the PM to planned guidance and/or regulations by the Government following the passage of the Bill, it would be helpful if the Committee could have an indication of what is to be contained in said guidance or regulations. In addition, in each instance, the Committee would ask that you indicate whether, and when, drafts of these will be available for the Committee to consider in support of stage 1 scrutiny.

If you, or your staff, have any questions, please feel free to contact the clerk of the Committee.

I look forward to hearing from you.

Yours sincerely,

Kevin Stewart MSP
Convener
Local Government and Regeneration Committee

CC: Joe FitzPatrick MSP – Minister for Parliamentary Business
Alasdair McKinlay - Head of Community Planning and Community Empowerment Unit, Scottish Government
Ian Turner - Community Planning and Community Empowerment Unit, Scottish Government
Jean Waddie – Scottish Government Bill Team leader
Robin Haynes – Scottish Government Local Government Unit
David McGill – Head of Chamber Office, Scottish Parliament
Susan Duffy – Head of Committees and Outreach, Scottish Parliament
Tracey White – Head of Legislation Team, Scottish Government
Jim Johnstone – Clerk to the Finance Committee, Scottish Parliament
Euan Donald – Clerk to the Delegated Powers and Law Reform Committee, Scottish Parliament.
Introduction and Background sections

1. In paragraph 5 reference is made to the bill increasing the “pace” and “scale” of Public Service Reform. Given this statement please indicate the ways in which the Bill delivers on these aspects.

2. In the following line the bill cements the focus on achieving outcomes. Please indicate what parts of the Bill deliver this.

3. In paragraph 6 the bill will ensure people can “meaningfully participate”. Could you explain how that differs from the current participation set out in various parts of the memorandum, see for instance paragraph 12 which suggests local authorities use a range of methods.

4. Please provide examples of communities achieving “significant improvements” by doing things themselves as described in paragraph 7.

5. In paragraph 7 the suggestion is made the bill will increase employment. Please indicate which parts of the Bill will contribute to that together with an indication of the respective levels anticipated.

6. Please indicate, preferably with prior examples, how the bill will reduce inequalities as set out in paragraph 7.

7. Paragraph 7 states “Communities can often achieve significant improvements by doing things for themselves because they know what will work for them”. Can you point to evidence in support of this?

8. Could you indicate where the “responsibility” on all public service providers set out in paragraph 11 can be found?

9. Paragraph 12 states that when people are engaged in community issues and come into contact with elected members, “they are more likely to become involved in the electoral process themselves”, please reference to evidence in support of this statement.

10. Towards the end of paragraph 12 there is a suggestion that being ‘heard’ is an insufficient form of engagement in contrast to other parts of the Bill where communities being ‘heard’ is deemed a sufficient form of community empowerment. Could you please clarify this?

11. Please provide examples to justify the “inspire” suggestion in paragraph 12 and also examples of the evidence to support the statements in the second part of the paragraph.

12. In paragraph 14, and elsewhere, “place” is used in quotations. Please explain the significance of the quotations.

13. Paragraph 15 refers to the current CPP process including the role of communities. Could you provide a brief description of how this currently
operates as the Committee have been unable to identify any CPP’s which have
direct community representation.

14. Could you indicate the extent of progress since March 2012 to the introduction of
the bill in developing community planning arrangements as set out in paragraph
16. This will assist the Committee in understanding the need for the Bill and put
in context activities to date.

15. Given the statement in paragraph 20 that local authorities have greater
experience than other public authorities (of community empowerment) can you
explain in what ways this experience is to be shared, and in particular what role
What Works Scotland (paragraph 37) will play?

16. In relation to the examples in paragraph 25, please explain how community
groups are assisted by the Procurement Reform Bill.(3rd bullet)

17. In relation to the 4th bullet, why is the “right” not being given to communities?

18. On bullet 6 please indicate what work is being taken forward following the
Community Council Short Life Working Group reporting.

19. Please provide a link to the consultation analysis. (paragraph 27)

20. Could you indicate which stakeholders will be involved in development of
guidance?

21. Given the overarching policy objective of community empowerment, please
explain the extent to which the Bill supports delivery of the Scottish
Government’s Low Carbon Scotland: Behaviours Framework?

Part 1 National Outcomes

22. Towards the end of paragraph 30 there is a suggestion that the National
Performance Framework is “helping to change the way public services are
delivered” can you explain in what ways this is happening and point to
supporting evidence.

23. Please elaborate on the role of “National Wellbeing” as set out in paragraph 31
and how it links to Scotland Performs and the National Outcomes.

24. Section 1(6) refers to “any other person” carrying out functions of a “public
nature”. Please provide some examples of who this might include.

25. The Policy memorandum is silent on sections 2 and 3. Please provide the policy
thinking underpinning each of the review and reporting provisions.

26. What is the level of flexibility referred to in paragraph 32 and how might it be
used.
27. Who will be consulted under 2(5)?

28. What is this government's intention in relation to the timescales to review and report.

29. Given the government currently publishes information, in what way will the provisions set out in paragraph 33 “enhance accountability”?

30. Who is ultimately accountable for delivery of the national outcomes?

31. Is the parliament expected to contribute to the delivery of the national outcomes and if so where is the scrutiny function?

32. Can you explain why there is no requirement to consult with or report to the parliament?

**Part 2 Community Planning**

33. Can you indicate the status of the guidance referred to in paragraph 35, and also indicate what other legislation exists in this area to support the suggestion legislation is not currently clear.

34. The Scottish Government “expects CPPs to drive public service reform effectively at local level. Can you indicate the steps being taken by the government to promulgate this expectation?

35. Please indicate, or reference to, the work of the Auditor General and Accounts Commission which has provided the “assurance” referred to in paragraph 37.

36. Can you indicate what is intended to happen with the evaluation referred to in paragraph 37.

37. In paragraph 38 is it the first consultation paper being referenced?

38. Paragraph 35 indicates a need to replace guidance with legislation. But paragraph 38 suggests new guidance will be produced. Can you elaborate and indicate to address the seeming contradiction. What is to be contained in new guidance?

39. Paragraph 39 places communities at the “core”. However it would appear from paragraph 39 their role is restricted to consultees. Please explain the apparent conflict.

40. In paragraph 40 can you confirm the CPP is required to **publicly** publish (see for example paragraph 32 re the Government) and also confirm towards what progress they must report.
41. In paragraph 41 mention is made of “key partners”, please confirm that the reports they are required to make will all be publicly available, and in what time frame.

42. Paragraph 42 discusses duties placed by the Bill. Can you extend to indicate how this is to be done, the policy thinking behind the making of these provisions and what the sanctions are for non-compliance.

43. Section 4(8) defines community bodies. In 4(5)(a) how will the selection process work and what role will the bodies chosen be asked/expected/permitted to fulfil?

44. Can you explain the need for section 5(3) given the existence of section 4(5). Are there differences in approach to be taken and if so why.

45. Why does section 6(1) not also apply to section 5(2)(b)?

46. Can you indicate what steps are expected of a CPP under 5(4)(b), will that include full public consultation of those in the relevant area? If not can you indicate why the community are not being empowered here?

47. How long do the plans last for and when do they require to be revised? Please indicate why no mandatory period is specified?

48. What timescale applies to the completion of section 7 plans?

49. Can you indicate what is meant in practice by “facilitate” in section 8(1)(a)

50. Please provide some examples of “reasonable steps” under 8(1)(b).

51. In what circumstances might 9(1) apply?

52. What is to be covered in guidance under section 10?

53. Please explain what is envisaged under section 11 and in particular how it might impact communities, groups and public authorities.

54. Please explain the purpose of section 12 indicating the circumstances envisaged and the potential impacts on the whole process.

**Part 3 Participation Requests**

55. This part would benefit from a general explanation indicating what powers are given under it, and setting out the background to the need for these powers.
56. While the Scottish Government sets clear expectations as set out in paragraph 45, it has been the Committee’s experience during recent inquiry work that public sector organisations do not engage in any meaningful sense. Given Part 3 does not replace the current “expectation” what action is the Government proposing to empower communities in the areas set out in paragraph 45?

57. Please indicate the policy thinking behind requiring a community-controlled body to have a written constitution.

58. Paragraph 46 makes clear communities do not need to be of place. What will happen if a community of interest with virtually no local residents as members seeks to become involved.

59. Perhaps the above might be an example of a reasonable ground to refuse. Could you indicate what might be covered by that provision.

60. What types of bodies or organisations might be covered by section 15(2)

61. Are ALEOS included as part of section 16, if not why not?

62. Does section 16 include the Urban Regeneration Companies?

63. This Part proceeds on the basis the community require to opt in to participation. Earlier the Committee has suggested empowerment would be better enhanced by an opt-out provision with communities automatically eligible unless they decline to participate. Please indicate the policy thinking in favour of the approach adopted as opposed to the Committee’s preference.

64. Paragraph 48 suggests a possible role is to “discuss”. Why is legislation necessary to facilitate a discussion, what prevents this simply being a function of consultation, or a follow up to consultation responses?

65. Please also indicate how “discuss” meets the test at section 17(2)(a).

66. What is envisaged in regulations under section 18?

67. Can you explain the reasons for the list at section 19(3)(c), why were those aspects chosen and how will this operate in practice to avoid any risk they are set at a level which will potentially exclude community involvement?

68. Can you indicate why no provision is made for the application request to be published, which might attract other interested groups.

69. There is no information provided covering sections 19-25 in relation to the process to be followed. Please explain the thinking behind and any derivation of
each of these provisions. In so doing please indicate the benefits of the process at each stage for community participation.

70. What is the maximum period intended to be allowed for publication of a report under section 25?

71. The Financial memorandum is silent on the cost of handling a participation order. Please provide an estimated cost to local authorities for handling a request, including estimated costs for each scenario the Bill provides for.

**Part 4 Community Right to Buy**

72. The Committee has had no prior involvement in matters covered by this Part and consider the detail provided in this section of the Policy memorandum to be little more than a superficial overview. This does not at present provide the Committee with sufficient material to allow for this Part to be scrutinised in a timely manner as part of the Stage 1 process. Please provide detail of each section individually including the policy thinking behind any changes or reasons for keeping the right to buy provisions the same as the 2003 Act. The following paragraphs in addition to the detail requested here set out specific questions.

73. Please explain the rationale for the one million acres target referred to at paragraph 55.

74. Paragraph 56 refers to “These changes” please provide detail of each change including the reasoning behind making the change.

75. Please indicate who undertook the post-legislative scrutiny of the provisions in the 2003 Act, who was consulted, and provide detail of the findings of that work.

76. Paragraph 57 suggest the Bill provides a “framework”, please indicate where the detail is provided to enable the provisions to operate.

77. What are the “particular issues” referred to in paragraph 59?

78. Please detail the “substantial public benefit” referred in in paragraph 59.

79. Please indicate which consultation is being referred to in paragraph 59 and also provide detail around the position of the other 7% who did not support the extension of right to buy to urban areas. What are the other reasons for these provisions?

80. Please provide the detail surrounding paragraph 62, how many cases were over 80% and which ones were not. What were the views of the other respondents? Which changes have not been subject to consultation and please provide the reasons for not consulting in each case.
81. Paragraph 63 is a useful summary of the main amendments. However the Committee requires details of all amendments including the reasons for making each and the views of those who did not agree. Please also set out the benefits expected from each change.

82. The Committee requires detail of each of the new provisions providing right to buy abandoned or neglected land.

83. Please detail the “other options” referred to in paragraph 65.

84. Please set out the complexities highlighted by local government respondents referred to in paragraph 66.

85. In paragraph 66 please provide the reasons why government does not agree with the views of local government, and the expected benefits.

86. Given the earlier statement about the complexity of the legislation for consultees please amplify the summary provided in paragraphs 69 and 70.

87. The paragraphs covering alternative approaches (71-73) also require to provide detail of the level of support/opposition. What are the “appropriate circumstances” in paragraph 71?

88. Please provide detail of the “broader” rights sought by some stakeholders referred to in paragraph 72.

89. Who suggested the improvements referred to in paragraph 73 and to what extent etc. have they been subject to consultation.

90. Who undertook the “overall review” of the system and where can the details of findings be found.

**Part 5 Asset Transfer Requests**

91. Please provide detail of the provisions covered by this Part including in particular the policy thinking underlying the approach in each section. The following paragraphs in addition to the detail requested here set out specific questions.

92. Paragraph 77 and elsewhere in this Part use the phrase “Community bodies” as being the bodies who can apply. In fact the detail in the sections is much wider/narrower than the impression given by that phrase. Please provide full information on each class of body who can apply and the policy underpinning their inclusion. Please include reasons why they require to have a written constitution.

93. The basis of a decision is set out in section 55, please provide the policy thinking and linkage to the overall aims of the bill for each part, which we note also
includes regeneration and public health as well as a more wider “any other benefit”. For the latter please provide some indications of what this might cover.

94. What impact will the Asset Transfer Requests’ process have on the Community Ownership Support Service in terms of its role and its resources?

95. Please provide detail of the consultation responses, as requested for earlier Parts. In particular for this Part the detail should cover the views of other public authorities.

96. Please indicate the anticipated demand under this provision, and any goals the Scottish Government has set.

97. Please provide indicative costs for handling each part of the process.

**Part 6 Common Good Property**

98. Please provide brief details of the “special rules” referred to in paragraph 86 and in particular any impact the bill’s provisions will have on them.

99. Paragraph 87 refers to consultees agreeing, please indicate what the views of the other 25% were, and provide detail of any proposals they suggested which are not being taken forward together with the reasons for not doing.

100. Please indicate how many local authorities currently have registers?

101. How long will local authorities have to establish a register or, amend an existing register to comply with the provisions of the Bill?

102. It would be helpful to specify detail of what bodies are covered in this section by the term “community bodies” (see section 67 of the Bill).

103. Please indicate why consultation on disposal is restricted to those community bodies with a known interest and how this fits with the transparency and consultation approach set out in paragraph 93.

104. Please indicate details of what the ministerial guidance might cover and when this will be available to the Committee.

105. Can you give an example of what might be considered to be a “significant dispute” referred to in paragraph 91, and who will adjudicate on what constitutes a “significant dispute”, and how such an adjudication can be challenged (see question 98)?

106. Given existing requirements referred to (accounting and asset management for example) what is the policy thinking behind not requiring ownership to be legally verified?
107. Why are there no appeal or review provisions in this Part of the Bill?

108. We note in paragraph 93 the demand for communities to have more say in the management of common good property. Please indicate how these provisions meet that aspiration.

**Part 7 Allotments**

109. Please provide a link to the National Food and Drink Policy referred to in paragraph 95.

110. We note the link in paragraph 99, Can you confirm that link is to the Working Group and contains up to date information on their meetings and recommendations. (see also below)

111. Paragraph 96 refers to consultation, please confirm which of the three consultations later referred to this is intended to cover.

112. Paragraph 96 helpfully sets out an overview of this Part. Unfortunately that is as far as the detail goes in the memorandum. Please provide detail of each section individually including the policy thinking behind any changes or reasons for keeping them the same as the original. Please provide detail of the original provision. The following paragraphs in addition to the detail requested here set out specific questions.

113. Does section 70(6) also apply to joint request made under section 70(5)?

114. Will the list be made public, in some way accepting Data Protection issues, and if not will the Local Authority be under any duty to indicate publicly the length of the list and expected waiting period?

115. Please provide some details of what might be considered “reasonable steps” as set out in section 72.

116. To how many local authorities is this provision expected to apply at commencement?

117. Please indicate the policy thinking behind setting the trigger in section 72 at 15? To how many local authorities will this apply at commencement?

118. Given the earlier work of the working group and the consultations please indicate the reason for allowing a further 2 years from commencement for regulations to be made. Please provide the same details covering section 77.

119. How many local authorities currently have regulations in place?
120. Please indicate what consultation with allotment holders and other persons will be undertaken by Ministers under sections 75 and 76.

121. Please explain why there is no consultation required under section 77 and thereafter any reviews.

122. What period do the government consider is a “reasonably practicable” one under section 79 and why has no specific time limit been specified. Do any local authorities currently produce such a report?

123. Please indicate the extent of the current problem anticipated by section 80.

124. Are delegated schemes of management currently operating, if so please detail experiences to date.

125. Please indicate the policy thinking behind section 82.

126. Please indicate the extent to which section 84 requires prior consultation with tenants.

127. Please indicate the types of produce intended to be covered by section 87 and the policy thinking underpinning this provision.

128. What will happen to items not removed timeously under section 88?

129. Please confirm regulations under section 90 will require consultation with the tenant concerned.

130. Please indicate the detail of the progress being made by the Working Group (paragraph 99) including detail on the recommendations covered by this Part and detail of those not covered including reasons for them not being covered and detail of how they will be taken forward in the future.

131. Paragraph 100 should also provide detail of the consultation responses relating to those supporting the provisions and details of areas not being taken forward. Detail of why the approach taken was thought appropriate and why other options were not is also required.

Part 8 Non-Domestic rates

132. Paragraph 101 refers to the “needs of businesses and the local economy” please indicate what these needs are linking to the promotion of resilient communities and sustainable places.
133. Parts 4, 5, 6 and 7 of the Bill could lead to community groups generating profits for community uses, how does Part 8 support the policy objectives of these Parts?

134. Please indicate the extent of the scope local authorities currently have to vary reliefs locally (paragraph 102 refers).

135. Please provide some examples of the potential uses of the powers being granted by this section.

136. Paragraph 102 indicates powers are without restriction, please indicate how this is consistent with the restrictions set out in paragraph 103.

137. Please indicate the extent to which consultation responses provided examples and full details of the consultation carried out including details of any suggestions received which are not being implemented. Please elaborate on what constitutes “strong support” and indicate the extent of the opposition and details of those not supporting. Please provide policy details covering the provisions in sections 94(2) to (4).

**Effects on Equal Opportunities**

138. When will the assessment be published?

139. Please indicate what is required under the public sector duty.

140. We note in paragraph 108 the inclusion of the equality duty when considering asset transfer and participation requests. Please indicate why this is not also necessary for other parts of the Bill.

141. In relation to the final sentence in paragraph 108 can you confirm the Government’s position regarding the completion of an EQIA. In what circumstances might this not be appropriate?

142. We note the last line in paragraph 113, which states that right to buy abandoned land is “either compatible with Article 1 of Protocol 1 or capable of being exercised in a manner that is so compatible”. Please provide more information on this view and clarify the circumstances where the government believes there may be a doubt over the compatibility of the purchase of such land.

**Island Communities**

143. Given the subject matter of the Bill and the recent report “Empowering Scotland’s Island Communities” please indicate the extent to which the Bill has been “island proofed” as set out on page 24 of the report.
144. Please indicate which aspects of the Bill will produce a differential impact on the islands.

145. Please clarify whether paragraph 120 is suggesting the approach in the Islands to the provision of allotments to meet demand is to be different from that of other areas.

**Local Government**

146. It is not clear what purpose paragraph 122 is serving, can you clarify the impact the information provided is designed to have on the consideration the Committee is required to make of this aspect.

**Sustainable Development**

147. The terms “sustainable development” and “sustainability” appear in the policy memorandum in the context of: Communities (paras 3 and 59); Control of assets (para 53); Access to land and land use (paras 57, 65, 67, 72, 113); Place (para 101); and Economics (para 2, 36 and 104). This suggests the Bill is concerned with several social, economic and environmental aspects of Scotland’s sustainable development. However the sustainable development section of the Policy Memorandum includes only a limited consideration of the impacts of the Bill on the environment and land use. Please provide a more comprehensive assessment of the impact on sustainable development to enable the Committee to consider this aspect.
Dear Kevin

Re: Policy Memorandum on the Community Empowerment (Scotland) Bill

Thank you for your letter of 25 June seeking further information regarding the Community Empowerment (Scotland) Bill.

We recognise the issue you raise about making it easier for stakeholders to provide comment on the draft provisions and welcome the opportunity to provide clarification. One of the concerns raised to us through our extensive engagement with stakeholders was that people can be put off by lengthy documents with a great deal of detail. We aimed, therefore, in the Policy Memorandum to provide a succinct and broad overview of the policy underlying the Bill as a whole and each Part individually.

The Policy Memorandum is, of course, only one of the suite of documents that accompany the Bill. Taken with the additional detail in the Explanatory Notes, the Delegated Powers Memorandum and the Financial Memorandum, we hope that stakeholders have access to information that will help them understand the Bill’s policy aims and detailed provisions. These documents were highlighted to stakeholders when we circulated the link to the published Bill. Where we feel that the detail provided in those other documents answers your questions, we have referred to them in this response.

I am sorry that we omitted to inform the Committee of the publication of the analysis of responses to the Consultation on the Community Empowerment (Scotland) Bill, and we apologise for that. The link was belatedly sent to your team on 8 July. All relevant documents can be found on our website at:

http://www.scotland.gov.uk/Topics/People/engage

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We do not feel it is practicable to set out policy justifications or consultation responses for each section of the Bill individually. The provisions in each Part are intended to work as a whole to provide processes which will achieve the policy objectives. The Bill has developed from a long and inclusive process in which there has been extensive engagement with stakeholders. While specific consultation questions have been asked about some aspects, others have grown more organically from general comments made in the consultation, in evidence to the Committee and in wider engagement, as well as existing good practice. We welcome comment from the Committee and from stakeholders, during the process of Stage 1, on where they feel the provisions might be improved to achieve the policy objectives.

In relation to guidance or regulations, details of the purpose of secondary legislation is provided in the Delegated Powers Memorandum. We do not anticipate drafts of guidance or regulations being available during Stage 1. These will be developed with the participation of stakeholders following the passage of the Bill through Parliament. This will allow us to take account of comments made at Stage 1 and any amendments made to the Bill during Stages 2 and 3.

Your questions range over the whole of the Bill and are often linked in to each other. We have attempted to provide the information requested in as straightforward a format as possible, combining questions within a single response where we thought it appropriate.

Please do not hesitate to seek further clarification on any aspect of the Bill as you think necessary. As indicated previously, my officials are happy to provide informal oral briefing to the Committee and Clerks if that would be useful.

DEREK MACKAY
Introduction and Background Sections

1. In paragraph 5 reference is made to the bill increasing the “pace” and “scale” of Public Service Reform. Given this statement please indicate the ways in which the Bill delivers on these aspects.

As set out in *Empowering Scotland: the Government’s Programme for Scotland 2013-14*:

‘Empowering communities to work with local service providers to design and deliver innovations that improve outcomes for local people is at the heart of the Scottish Government’s approach to public service reform. It is the responsibility of those in the public, third and private sectors to work together to recognise and support those community assets.’

As the Policy Memorandum states in paragraphs 13 and 14, this follows from the *Report of the Commission on the Future Delivery of Public Services* and the Government’s response *Renewing Scotland’s Public Services: Priorities for reform in response to the Christie Commission* which is founded on four pillars: People; Partnership; Prevention; and Performance.

In this respect community planning has a key role to play in shaping and delivering change as outlined in paragraphs 15 to 17 of the Policy Memorandum. Paragraph 16 outlines the statement of ambition for Community Planning and SOAs, issued by the Scottish Government and COSLA in March 2012, says that

"Effective community planning arrangements will be at the core of public service reform. They will drive the pace of service integration, increase the focus on prevention and secure continuous improvement in public service delivery, in order to achieve better outcomes for communities."

Paragraph 17 of the Policy Memorandum outlines the work that is already underway to strengthen community planning. More detail on this is provided at Annex A. The Bill will underpin these developments by strengthening the legal base for community planning.

2. In the following line the bill cements the focus on achieving outcomes. Please indicate what parts of the Bill deliver this.

While the Scottish Government has implemented and promoted the outcomes approach since 2007, Parts 1 and 2 of the Bill give it a statutory basis to ensure that this approach will continue in future.

Part 1 of the Bill places a duty on the Scottish Ministers to develop, consult on, publish and report on a set of national outcomes for Scotland. It also places a statutory duty on public authorities and others carrying out public functions to have regard to those national outcomes in carrying out any devolved public functions. This places in statute the approach which has been taken by the Scottish Ministers since 2007.

Part 2 explicitly focuses community planning on “improving the achievement of outcomes”, again giving a statutory basis to the approach which has developed as best practice in recent years.

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Part 3 also requires participation requests to relate to an outcome resulting from a service, and the response to the request is the establishment of an outcome improvement process, thus maintaining the focus on outcomes rather than outputs or inputs.

3. **In paragraph 6 the bill will ensure people can “meaningfully participate”**. Could you explain how that differs from the current participation set out in various parts of the memorandum, see for instance paragraph 12 which suggests local authorities use a range of methods.

In paragraph 6 the Policy Memorandum states that the ‘...bill will help to ensure people can meaningfully participate in decisions that affect their lives’. While paragraph 12 identifies that a range of community engagement and participatory activities are used by local authorities and others, paragraph 20 notes that, as the Committee has identified, such approaches are by no means universal. By creating a number of statutory rights for community bodies, and corresponding duties on public authorities, the Bill will provide a degree of consistency and a supportive legal framework to underline the Scottish Government’s expectation that all public authorities will support community empowerment and participation. In addition, the processes established or improved under Parts 3, 4 and 5 are to be initiated by community bodies, thus enabling them to set the agenda for participation in line with their own wishes and concerns.

4. **Please provide examples of communities achieving “significant improvements” by doing things themselves as described in paragraph 7**

5. **In paragraph 7 the suggestion is made the bill will increase employment. Please indicate which parts of the Bill will contribute to that together with an indication of the respective levels anticipated.**

6. **Please indicate, preferably with prior examples, how the bill will reduce inequalities as set out in paragraph 7.**

7. **Paragraph 7 states “Communities can often achieve significant improvements by doing things for themselves because they know what will work for them”. Can you point to evidence in support of this?**

Questions 4 to 7 all relate to paragraph 7, which is part of setting the context to the Bill in terms of the value of community empowerment.

In preparing the Policy Memorandum we welcomed the Committee’s report into the Delivery of Regeneration in Scotland, and noted that in conducting that enquiry the Committee heard of many excellent examples of community projects delivering a range of benefits to local people. Community-led regeneration projects are aimed at reducing socio-economic inequalities between areas, and also often seek to bring together different groups in the community and foster a sense of cohesion. While we appreciate the Committee’s wish to provide clarity for stakeholders, we feel that the benefits of community empowerment are well attested, and the audience for this Policy Memorandum includes a large number of people and organisations from the community sector and those who support and engage with them.

The Bill is not prescriptive; it is intended to provide a framework to help communities realise the change they want to see. The precise type and level of benefits that may be achieved will depend entirely on the priorities that individual communities choose to address.
Examples of community activity and the benefits achieved can be found in many places. Websites include the Scottish Government’s “Our Great Ideas” [http://our-great-ideas.org/](http://our-great-ideas.org/), and the linked Communities Channel Scotland site, run by the Scottish Community Development Centre [http://www.communityscot.org.uk/](http://www.communityscot.org.uk/), as well as those of umbrella groups such as the Development Trusts Association Scotland [http://www.dtascot.org.uk/](http://www.dtascot.org.uk/).

Evidence of the economic benefits of community ownership, including increased employment, were published by Community Land Scotland in April 2014. A summary is provided at: [http://83.223.124.6/~communi1/images/uploads/FINAL_CLS_Economic_Data_Study_2_Pag e_Summary_140414_For_Release.pdf](http://83.223.124.6/~communi1/images/uploads/FINAL_CLS_Economic_Data_Study_2_Page_Summary_140414_For_Release.pdf), and the full report is available from info@communitylandscotland.org.uk.


The Big Lottery Fund is a significant funder of community projects, and carries out regular evaluations of its grant programmes. Research reports can be found on BIG’s website at [http://www.biglotteryfund.org.uk/research](http://www.biglotteryfund.org.uk/research). The evaluation of the Growing Community Assets (GCA) programme may be of particular interest – this can be found under “Related Documents” on the GCA page [http://www.biglotteryfund.org.uk/global-content/programmes/scotland/investing-in-communities-growing-community-assets](http://www.biglotteryfund.org.uk/global-content/programmes/scotland/investing-in-communities-growing-community-assets).

8. **Could you indicate where the “responsibility” on all public service providers set out in paragraph 11 can be found?**

The responsibility referred to in paragraph 11 is a general description of the need for all public service providers to consider capacity building and support in the way they engage with communities. This is not, for example, a role for local authorities alone. All public authorities are expected to take account of the national outcomes in the design and delivery of services, in this case with particular reference to the following:

‘We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.’

Information on that national outcome describes more fully how a range of public bodies can contribute to it: [http://www.scotland.gov.uk/About/Performance/scotPerforms/outcome/communities](http://www.scotland.gov.uk/About/Performance/scotPerforms/outcome/communities)

“Our public services are high quality, continually improving, efficient and responsive to local people’s needs”

[http://www.scotland.gov.uk/About/Performance/scotPerforms/outcome/pubServ](http://www.scotland.gov.uk/About/Performance/scotPerforms/outcome/pubServ)

This national outcome builds on the Scottish Government’s response to the Christie Commission, ‘Renewing Scotland’s Public Services’, which states, “The focus of public spending and action must build on the assets and potential of the individual, the family and the community rather than being dictated by organisational structures and boundaries. Public services must work harder to involve people everywhere in the redesign and reshaping of their activities ...”

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9. Paragraph 12 states that when people are engaged in community issues and come into contact with elected members, “they are more likely to become involved in the electoral process themselves”, please reference to evidence in support of this statement.

11. Please provide examples to justify the “inspire” suggestion in paragraph 12 and also examples of the evidence to support the statements in the second part of the paragraph.

In response to questions 9 and 11, there is evidence to show that social exclusion is strongly correlated with low turnout in elections and limited participation in other forms of democracy. This is also linked to whether people feel that they can influence political decisions. See http://www.electoralcommission.org.uk/__data/assets/pdf_file/0007/63835/Social-exclusion-and-political-engagement.pdf

Wider research shows that when people are empowered to participate in decisions about issues that affect them, this increases trust in the organisations that ultimately take those decisions, and a stronger sense of ownership in the outcome. http://www.pbnetwork.org.uk/wp-content/uploads/2014/04/DCLG-empowerment-research-2009.pdf

10. Towards the end of paragraph 12 there is a suggestion that being ‘heard’ is an insufficient form of engagement in contrast to other parts of the Bill where communities being ‘heard’ is deemed a sufficient form of community empowerment. Could you please clarify this?

We believe this may refer to paragraph 11 rather than paragraph 12. Paragraph 11 does not suggest that being ‘heard’ is an insufficient form of engagement. Rather it says that community engagement, by which we mean activity led by service providers with the aim of improving their services, differs from community empowerment, which is led by the community on their own terms. Engagement is important, but public service providers should also support communities to take action independently, and must be open to proposals that arise from outside their own consultative structures.

12. In paragraph 14, and elsewhere, “place” is used in quotations. Please explain the significance of the quotations.

Paragraph 14 relates to the Christie Commission’s report and the Scottish Government’s response. “Place”, in that form, is used in those documents in reference to the need for effective partnership and integrated service provision at a local level, building on the experiences of service users and frontline workers to tackle area-based disadvantage. The quotation marks indicate that in this context the word means more than simply a physical location.

13. Paragraph 15 refers to the current CPP process including the role of communities. Could you provide a brief description of how this currently operates as the Committee have been unable to identify any CPP’s which have direct community representation.

Public service providers work with communities in a number of ways as part of community planning.

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The recent CPP audit reports capture a range of methods through which CPPs and partners do this, such as household surveys, local citizens panels, and groups set up to involve local communities in tackling local issues (see Aberdeen, pp. 20-22; North Ayrshire, pp. 19-20 & 26-27; Scottish Borders, pp. 16-17; Glasgow, pp. 31-33; Falkirk, pp. 22-23; Moray, pp. 25-27).

14. Could you indicate the extent of progress since March 2012 to the introduction of the bill in developing community planning arrangements as set out in paragraph 16. This will assist the Committee in understanding the need for the Bill and put in context activities to date.

15. Given the statement in paragraph 20 that local authorities have greater experience than other public authorities (of community empowerment) can you explain in what ways this experience is to be shared, and in particular what role What Works Scotland (paragraph 37) will play?

In response to questions 14, 15, 34 and 35, we have provided a note at Annex A on the progress made on developing community planning arrangements since the publication of the Statement of Ambition in March 2012, including the steps taken to support CPPs in driving public service reform effectively at local level, and the external audit process.

16. In relation to the examples in paragraph 25, please explain how community groups are assisted by the Procurement Reform Bill. (3rd bullet)

Community groups will be assisted by the Procurement Reform (Scotland) Act 2014 particularly through the sustainable procurement duty, Procurement Strategies and community benefit requirements. The Act will help tackle unnecessary inconsistencies for suppliers doing business with the public sector and will help ensure that doing business with the public sector can be simple, transparent and more accessible to suppliers.

Under the sustainable procurement duty (section 9), before carrying out a regulated procurement a contracting authority must consider how in conducting the procurement process it can: improve the economic, social and environmental wellbeing of the authorities area; facilitate the involvement of SMEs, third sector bodies and supported business in the process; and promote innovation; and in carrying out the procurement it must act with a view to securing the identified economic, social and environmental improvements.

Contracting authorities with significant (£5m+) regulated procurement expenditure a year must produce a Procurement Strategy (section 15). This must set out, amongst other things, how the authority intends to ensure its regulated procurements are carried out in compliance with its duties, and include a statement on the authority’s policy on community benefit requirements and on consulting and engaging with those affected by its procurements.

1 http://www.audit-scotland.gov.uk/docs/central/2013/nr_130320_aberdeen_cpp.pdf
2 http://www.audit-scotland.gov.uk/docs/central/2013/nr_130320_north_ayrshire_cpp.pdf
6 http://www.audit-scotland.gov.uk/docs/central/2014/nr_140710_moray_cpp.pdf

Victoria Quay, Edinburgh EH6 6QQ
www.scotland.gov.uk
Under section 25, when a contracting authority proposes to carry out a regulated procurement valued at more than £4m, it must consider whether to impose community benefit requirements and, if it does not, state in the contract notice its reasons for not doing so.

17. In relation to the 4th bullet, why is the “right” not being given to communities?

As we indicate in paragraph 25 it was felt that not all issues needed to be addressed through legislation and other approaches might be more effective. The 4th bullet highlights that the Bill will strengthen the involvement of communities in setting priorities for public services, which is closely related to how budgets are spent. Part 2 will strengthen requirements for communities to be involved in community planning, which includes the determination of priority outcomes and planning how the achievement of those outcomes is to be improved. When community bodies exercise their right to make a participation request under Part 3 of the Bill, this may also address how budgets can be spent more effectively.

International experience shows that legislation is not necessary to make participatory budgeting (PB) effective, and in most of the places where it is used it is not required by statute. The international “Participatory Budgeting Project” states in its FAQs: http://www.participatorybudgeting.org/about-participatory-budgeting/faq/

“In order to be implemented, PB usually does not require legal changes to budgetary authority. The Mayor, City Council, or other authority retain legal power to approve budget decisions – but they make a political commitment to honor the PB vote. Once the process is established and the initial kinks are ironed out, some governments have sought to revise their charters to make PB legally binding.”

The Scottish Government is funding consultancy support to promote the development of PB in Scotland. We believe this is the most effective way to address this issue.

18. On bullet 6 please indicate what work is being taken forward following the Community Council Short Life Working Group reporting.

The Scottish Government, in collaboration with COSLA is working with the Improvement Service (IS) to further enhance the role of Community Councils. The IS is working with Scotland’s Community Council Liaison Officers (CCLO’s) based in each of the 32 local authority area to:

- provide web-based training and development opportunities for Community Councillors;
- improve communication by establishing a website for Community Councillors (a first of its kind);
- raise awareness by developing a national register of Community Councils and Councillors to be made publically available digitally;
- improve communications between CCLO’s by establishing a Communities of Practice website and by holding bi-annual networking events;
- open dialogue with national organisations, such as the Duke of Edinburgh Award and Young Scott to encourage young people to engage with community councils.

It is anticipated that this broad programme of work will help to stimulate greater participation in the work of community councils and encourage more people to stand for election as community councillors.
19. Please provide a link to the consultation analysis. (paragraph 27)

Please see link below:

http://www.scotland.gov.uk/Publications/2014/06/3535

20. Could you indicate which stakeholders will be involved in development of guidance?

We have sought the views of a wide range of stakeholders in the consultations leading up to development of the Bill, and received a large number of responses. We expect to establish groups of stakeholders to develop guidance on each topic, building on our engagement at earlier stages of the process, and to consult publically and widely on the drafts produced in this way. We will ensure a balance is obtained between the various interested sectors in the Bill, in particular between the public and community and voluntary sectors.

21. Given the overarching policy objective of community empowerment, please explain the extent to which the Bill supports delivery of the Scottish Government’s Low Carbon Scotland: Behaviours Framework?

As the Bill will help communities to acquire ownership of land and buildings, its provisions may very well support community action on climate change through, for example, the identification of land for community food growing or provision of more energy efficient community buildings. Such activities (though not actual land or building purchase) are currently supported by the Scottish Government’s Climate Challenge Fund. The provisions relating to allotments should also result in an increase in people growing their own food. Other actions taken under the Bill may also result in better access to services locally, reducing car use.

In addition, the Bill will support the delivery of actions in the Low Carbon Behaviours Framework which seek to influence the uptake of low carbon behaviours. The Framework sets out a commitment to use the Individual, Social and Material (ISM) approach (http://www.scotland.gov.uk/Publications/2013/06/8511) to improve the Scottish Government’s understanding of low carbon behaviours and support the successful take-up of these behaviours. The approach demonstrates that considering individual level factors in combination with the social and material factors is more likely to be successful in influencing behaviours. The Bill, in particular, will support community bodies to influence material factors (e.g. design and delivery of local services, use of land and buildings) which constrain and shape behaviour.

Part 1 National Outcomes

22. Towards the end of paragraph 30 there is a suggestion that the National Performance Framework is “helping to change the way public services are delivered” can you explain in what ways this is happening and point to supporting evidence.

The National Performance Framework (NPF) is part of a transformative shift in how policy is made, and is a key enabler of public service reform. By aligning the whole public sector around a common set of goals, we can deliver real collaboration and lasting partnership working. Different organisations are now working towards shared goals defined in terms of benefits to citizens, rather than simply efficient service delivery. For example, the Strategy
for Justice in Scotland is an outcomes-focused and ambitious plan, developed and committed to collectively by the Scottish Government, the Court Service, the Prosecution Service, the Prison Service and other agencies. It involved the joint identification of the key priorities for action, based upon sound evidence, and sets out a coordinated response, which requires working across boundaries, to deliver a wide range of financial and societal benefits.

23. Please elaborate on the role of “National Wellbeing” as set out in paragraph 31 and how it links to Scotland Performs and the National Outcomes.

The focus of the Scottish Government’s Purpose is on creating a more successful Scotland with opportunities for all to flourish. Within the NPF, national wellbeing is covered through a wide range of social and environmental indicators including mental wellbeing, income distribution and carbon emissions as well as economic growth. The Carnegie UK Trust has identified the NPF as a world-leading example in measuring National Wellbeing:

“We did not expect to find international innovation on our doorstep. But our work has repeatedly found that the Scottish National Performance Framework is an international leader in wellbeing measurement, a sentiment repeated by Professor Stiglitz in his address to the OECD World Forum in India, in 2012”.


24. Section 1(6) refers to “any other person” carrying out functions of a “public nature”. Please provide some examples of who this might include.

This is explained in paragraph 6 of the Explanatory Notes. In particular, it would include private or third sector bodies contracted to deliver public services.

25. The Policy memorandum is silent on sections 2 and 3. Please provide the policy thinking underpinning each of the review and reporting provisions.

Paragraphs 9 to 13 of the Explanatory Notes provide more detail on the review and reporting provisions.

26. What is the level of flexibility referred to in paragraph 32 and how might it be used.

As described in paragraph 32, and paragraph 13 of the Explanatory Notes, the flexibility referred to means that the Scottish Ministers must set national outcomes and must report progress against them, but the legislation does not specify what form the outcomes and the reporting should take. It does not, for example, require future governments to use the same format of purpose, targets, outcomes and indicators, and online reporting, as is used in the current NPF.

27. Who will be consulted under 2(5)?

We would anticipate that all governments would want to consult widely and inclusively on the national outcomes as a whole. However, if a review related only to individual outcomes on particular topics, it might be more appropriate to have a more focused consultation.
28. What is this government’s intention in relation to the timescales to review and report.

The intention behind a regular review period is to ensure that the national outcomes continue to reflect the kind of Scotland we want to see and that we have the best measures in place to show how well we are doing in relation to achieving these outcomes.

Putting the monitoring and reporting of progress on a statutory footing is consistent with the Government’s view that evidence, data and transparency are essential elements of improvement and delivery.

29. Given the government currently publishes information, in what way will the provisions set out in paragraph 33 “enhance accountability”?

Accountability will be enhanced due to the prominence of the national outcomes approach. There will be a clear line of sight between delivery and the national outcomes.

30. Who is ultimately accountable for delivery of the national outcomes?

The Scottish Ministers are ultimately accountable for delivery of the national outcomes.

31. Is the parliament expected to contribute to the delivery of the national outcomes and if so where is the scrutiny function?

The Parliament is not expected to contribute to the delivery of the national outcomes. We would expect that the Parliament will scrutinise Ministers’ delivery of their selected outcomes.

You will be aware of the correspondence between the Clerk/Chief Executive to the Scottish Parliament and the Permanent Secretary, in relation to whether the Scottish Parliament and the SPCB are included in the term “Scottish Public Authorities” in section 1(4). It is not our intention that the Parliament (or the Parliament’s corporate body) should be under any duty to have regard to the national outcomes in carrying out its functions, and we will review the wording of the Bill with this in mind.

32. Can you explain why there is no requirement to consult with or report to the parliament?

The Government is responsible for developing and implementing policy; the role of the Parliament is to scrutinise Ministers’ performance of their functions. The Bill will require the Scottish Ministers to publish both the national outcomes and reports about the extent to which they have been achieved. The Parliament will be able to hold Ministers to account in relation to that published information as they do at present, for example through the use of performance scorecards which were developed for the purposes of budget scrutiny last year and which are being produced again this year.
Part 2 Community Planning

33. Can you indicate the status of the guidance referred to in paragraph 35, and also indicate what other legislation exists in this area to support the suggestion legislation is not currently clear.

Part 2 of the Local Government in Scotland Act 2003 contains the current legislative framework for community planning. It places a duty on local authorities to initiate, facilitate and maintain a process called community planning by which public services are provided, after consultation with such community bodies and other bodies or persons as is appropriate.

The non-statutory SOA guidance referred to in paragraph 35 of the policy memorandum goes beyond those statutory requirements, by focusing the purpose of community planning (including engagement with community bodies) around the planning and achievement of better outcomes on local priority themes. Part 2 of the Bill reflects these expectations in legislation for the first time.

34. The Scottish Government “expects CPPs to drive public service reform effectively at local level. Can you indicate the steps being taken by the government to promulgate this expectation?

35. Please indicate, or reference to, the work of the Auditor General and Accounts Commission which has provided the “assurance” referred to in paragraph 37.

In response to questions 14, 15, 34 and 35, we have provided a note at Annex A on the progress made on developing community planning arrangements since the publication of the Statement of Ambition in March 2012, including the steps taken to support CPPs in driving public service reform effectively at local level, and the external audit process.

36. Can you indicate what is intended to happen with the evaluation referred to in paragraph 37.

This evaluation from What Works Scotland will evaluate evidence from approaches to public service delivery and reform at CPP, national and international levels. It will then utilise this evidence to promote and share best practice, by assessing the impact and effectiveness of emerging approaches to service delivery in CPPs. This initiative seeks to improve the way local areas in Scotland use evidence to make decisions about public service development and reform which can then be shared more widely across organisations, partnerships and localities.

37. In paragraph 38 is it the first consultation paper being referenced?

This refers to the 2013 Consultation on the Community Empowerment (Scotland) Bill.

38. Paragraph 35 indicates a need to replace guidance with legislation. But paragraph 38 suggests new guidance will be produced. Can you elaborate and indicate to address the seeming contradiction. What is to be contained in new guidance?

The proposals reflect the recognition by Scottish Government and COSLA that there is a need to replace the legislative framework in Part 2 of the 2003 Act with one which strengthens the roles and responsibilities of CPPs and partner bodies around the planning,
resourcing and delivery of local outcomes. This is described in more detail in paragraphs 140 – 147 of the 2013 consultation. In the same way as guidance adds detail to the legislative framework in the 2003 Act, so section 10 of the Bill provides that there should be scope to produce guidance to add detail to the new framework provided for in Part 2 of the Bill.

39. Paragraph 39 places communities at the “core”. However it would appear from paragraph 39 their role is restricted to consultees. Please explain the apparent conflict.

The role of communities goes well beyond that of consultees. The duties which sections 4, 5 and 9 of the Bill place on CPPs and partner bodies collectively provide a basis within which community bodies can engage closely in community planning.

Sections 4 and 5 include duties on CPPs around engaging communities. Section 4(5) places a general duty on CPPs to participate with community bodies in community planning – that is, planning that is carried out with a view to improving the achievement of outcomes. In complying with this duty, a CPP must make all reasonable efforts to secure the participation of whichever community bodies it considers can contribute to community planning. It should then take all reasonable steps to enable a community body which wishes to participate to do so. This provides community bodies with a role at the core of community planning activity, which can include understanding needs and circumstances, identifying priority outcomes, deciding how to respond to these priorities and reviewing progress made. Section 5(3) places an additional specific requirement on CPPs, to consult community bodies and such other persons as it considers appropriate in preparing a local outcomes improvement plan.

Section 9(3) places complementary duties on community planning partners. In particular, it requires partner bodies to contribute funds, staff and resources as the partnership consider appropriate to secure the participation of community bodies. This may therefore support community capacity building activity. Community planning partners may also resource community bodies to deliver services, as part of their related duty to provide resources to support the improvement of a local outcome.

40. In paragraph 40 can you confirm the CPP is required to publicly publish (see for example paragraph 32 re the Government) and also confirm towards what progress they must report.

Yes, the local outcomes improvement plan to be published in accordance with section 5(1) will be a public document.

Under section 7(2), CPPs are required to report on whether there has been any improvement in the achievement of each local outcome set out in the local outcomes improvement plan

41. In paragraph 41 mention is made of “key partners”, please confirm that the reports they are required to make will all be publicly available, and in what time frame.

The intention of section 9(4) is to ensure that the CPP has access to all the relevant information it requires to carry out its day to day duties. Each community planning partner must provide such information to the CPP about the local outcomes as requested by the
CPP (section 9(4) refers). This information might take a range of forms and serve a range of purposes, to inform and support the work of the CPP, and will be provided in different time frames. Information provided by community planning partners will contribute to the progress report which the CPP is required to prepare for each reporting year, setting out its assessment of whether there has been any improvement in the achievement of the local outcomes to which they have given priority. It will be for the CPP and partner bodies to decide which information to publish, having regard to freedom of information requirements for public sector bodies.

42. Paragraph 42 discusses duties placed by the Bill. Can you extend to indicate how this is to be done, the policy thinking behind the making of these provisions and what the sanctions are for non-compliance.

50. Please provide some examples of “reasonable steps” under 8(1)(b).

Paragraph 42 refers to duties which section 8 places on certain specified partners about governance for the CPP. For the avoidance of doubt, these are not the only duties placed by the Bill. Section 8 replaces a provision in the 2003 Act which placed a duty only on a local authority to initiate, maintain and facilitate community planning. The new provision both extends the onus of facilitating community planning to a wider range of partner bodies, and requires them to take reasonable steps to ensure the CPP operates effectively and efficiently. In this way, the provision reinforces the importance of shared leadership in community planning, a principle which attracted considerable support from respondents to the recent consultation. Like Part 2 of the 2003 Act, the Bill does not specify sanctions on CPPs and partner bodies for non-compliance. Partners can expect to be held to account for how they fulfil community planning duties as part of their existing formal lines of accountability (e.g. those of NHS Boards to Scottish Ministers, or a council to its electorate).

In addition, external CPP audit reports are recent additions to the scrutiny landscape. They have been valuable in identifying strengths and areas for improvement in CPP and partner performance, supporting ongoing improvement and providing assurance that expected progress is being made. Themes covered by these audits include clarity of vision leadership, governance, operational structures, performance management, how partners engage with local communities, how partners hold each other to account and the quality of public reporting. Hence, “reasonable steps” may include action by partners subject to this duty to review and reassure themselves that the CPP is operating effectively against these criteria.

43. Section 4(8) defines community bodies. In 4(5)(a) how will the selection process work and what role will the bodies chosen be asked/expected/permitted to fulfil?

Section 4 of the Bill does not prescribe a process which CPPs should adopt for engaging with community bodies. These are decisions for CPPs and partner bodies to take locally, as they are best placed to determine which approach is most suitable for the particular circumstances of each occasion.

44. Can you explain the need for section 5(3) given the existence of section 4(5). Are there differences in approach to be taken and if so why.

Section 4(5) imposes a general duty to involve community bodies in community planning. In complying with this duty, CPPs will decide for themselves which community bodies to involve because they are likely to be able to contribute to community planning, and how to do so.
Section 5(3) applies specifically to the preparation of a local outcomes improvement plan. The scope of this consultation may encompass community bodies and persons who are otherwise unable or do not wish to contribute to community planning.

45. Why does section 6(1) not also apply to section 5(2)(b)?

Section 5(2)(b) refers to the outcomes referred to in section 5(2)(a). The reference to "the outcome" in section 5(2)(b) is a reference to each local outcome referred to in section 5(2)(a).

46. Can you indicate what steps are expected of a CPP under 5(4)(b), will that include full public consultation of those in the relevant area? If not can you indicate why the community are not being empowered here?

CPPs use a range of sources to understand the needs and circumstances of people and communities in the CPP. This includes statistical information and feedback which partners receive from their own engagement with communities. The consultation with community bodies which a CPP will be required to conduct under section 5(3) will add to this understanding. A CPP may in addition undertake a public consultation if it considers this would be valuable for obtaining this understanding of local needs and circumstances. We consider it should be for CPPs to decide for themselves which methods they adopt to acquire this understanding.

47. How long do the plans last for and when do they require to be revised? Please indicate why no mandatory period is specified?

The relevant period may differ, depending on what the period relates to and other circumstances, which may be outwith the control of the CPP. Guidance can set out overarching principles about the periods which plans should cover.

48. What timescale applies to the completion of section 7 plans?

Section 7 deals with the progress report which each CPP is required to prepare for each reporting year. The Bill does not stipulate a timescale within which these reports should be published. If the Committee and stakeholders consider it would be helpful to set a deadline in statute, we would be happy to consider any suggestions.

49. Can you indicate what is meant in practice by “facilitate” in section 8(1)(a)

This duty to facilitate community planning already applies to local authorities under the Local Government in Scotland Act 2003. In community planning practice, “facilitate” may include taking appropriate improvement actions to ensure the efficient and effective functioning of the CPP (e.g. to support the work of chairs of CPP committees; prepare reports and advice; share papers and materials; organise meetings).

50. Please provide some examples of “reasonable steps” under 8(1)(b).

Please see response to question 42.
51. **In what circumstances might 9(1) apply?**

How the duties in section 9(2) to (5) apply to community planning partners will vary from one CPP to another, depending on the particular needs, circumstances and priorities of the area. An example of where section 9(1) might apply is a scenario where a partner and CPP agreed that the duties on the partner in that area can be waived because the duties on that partner under the rest of section 9 would contribute only modestly to the work of the CPP.

52. **What is to be covered in guidance under section 10?**

As explained in response to section 38, guidance will add detail to the new legislative framework as the current guidance does for the existing legislation. The guidance will be developed in consultation with stakeholders to ensure that it is relevant to the needs of the area and to what would be helpful. It may include, for instance, the purpose and content of new general outcomes improvement plans (under section 5) or how governance duties (section 8) should be applied.

53. **Please explain what is envisaged under section 11 and in particular how it might impact communities, groups and public authorities.**

This replaces the duty under section 16(8) of the 2003 Act. It reflects the recognition that the Scottish Government has for the importance of community planning in contributing towards public service delivery in Scotland and ensures that Ministers take account of this in carrying out their functions.

54. **Please explain the purpose of section 12 indicating the circumstances envisaged and the potential impacts on the whole process.**

Section 12 replaces section 19 of the 2003 Act, which gives the Scottish Ministers a power to establish corporate bodies with community planning functions. The purpose of the provision is to allow corporate bodies to be formed to co-ordinate or further community planning in an area. Community Planning Advice published in 2004 illustrated what incorporation could help achieve (e.g. it might enable local partners’ research, procurement or administrative resources to be pooled and used more effectively and efficiently). We do not expect that it would be used to establish a corporate body that substantially delivered services in itself.

While the Scottish Government is not aware of any current demand from CPPs to incorporate, we consider it appropriate to retain the power, bearing in mind incorporation would only occur on the application of at least two local partners, with the agreement of Scottish Ministers to make regulations to establish a body corporate and with the agreement of the Scottish Parliament to those regulations (see also references to section 12(1) and 12(2)(d) in the Delegated Powers Memorandum).

Ministers could not establish a community planning corporate body using Order-making powers under Part 2 of the Public Service Reform (Scotland) Act 2010, as this power is not exercisable in relation to local authorities, other than to transfer or delegate functions to local authorities.

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7 http://www.scotland.gov.uk/Publications/2004/04/19167/35258

Victoria Quay, Edinburgh EH6 6QQ
www.scotland.gov.uk
Part 3 Participation Requests

55. This part would benefit from a general explanation indicating what powers are given under it, and setting out the background to the need for these powers.

The power given under the Bill is outlined at the end of paragraph 45 and is set out in section 17(1) of the Bill:

‘A community participation body may make a request to a public service authority to permit the body to participate in an outcome improvement process.’

This is combined with the duty on public service authorities to decide whether to agree to or refuse the participation request (section 19(2)), to agree to the request unless there are reasonable grounds for refusing it (section 19(5)), and if it agrees to establish and maintain an outcome improvement process (section 23). A full description of the proposed process and the bodies engaged in it is provided in paragraphs 26 to 36 of the Explanatory Notes.

Paragraphs 44 and 45 of the Policy Memorandum provide some background to the need for this power, but it responds more generally to the call to strengthen the voices of communities in the decisions that matter to them. This need has been identified in a number of reports, including the Christie Commission and the Committee’s own report on the Delivery of Regeneration in Scotland. Participation requests provide community bodies with a statutory right to bring forward their own proposals about the outcomes which matter to them, on their own initiative, and to receive a proper hearing and a reasoned response.

56. While the Scottish Government sets clear expectations as set out in paragraph 45, it has been the Committee’s experience during recent inquiry work that public sector organisations do not engage in any meaningful sense. Given Part 3 does not replace the current “expectation” what action is the Government proposing to empower communities in the areas set out in paragraph 45?

We are interested in the Committee’s experience that public sector organisations do not engage in any meaningful sense, and are keen to understand the different perspectives on this issue.

As set out in response to question 8, the Scottish Government highlights the need for all public service providers to engage with and support communities through its response to the Christie Commission and through the national outcomes. Part 2 of the Bill will require CPPs to secure the participation of community bodies, and to consult with community bodies on their local outcomes improvement plans. Participation requests are intended to go beyond community engagement and provide a power for communities to initiate dialogue on their own terms and have a right to have their views properly considered.

57. Please indicate the policy thinking behind requiring a community-controlled body to have a written constitution.

As set out in paragraph 46 of the Policy Memorandum it was a concern of respondents to the consultations to ensure community bodies are open, inclusive, and truly represent their communities. Section 14 of the Bill identifies the key features of a body which meets those requirements. Requiring a written constitution is, we believe, the least onerous way in which a body can show that it has appropriate rules relating to membership, the purposes of the body and the use of its assets. The requirement for a written constitution was in the draft...
provisions which were consulted on in 2013 and was not raised as an issue by respondents (see paragraphs 4.2 to 4.18 of the analysis of responses).

58. Paragraph 46 makes clear communities do not need to be of place. What will happen if a community of interest with virtually no local residents as members seeks to become involved.

The Bill is designed to enable a wide selection of community bodies to be able to make participation requests. Section 17(2)(a) of the Bill requires that a participation request must specify an outcome of a service provided to the public, which may or may not have a local focus. Section 17(2)(b) also requires that the request must set out the reasons why the community participation body considers it should take part in the outcome improvement process. It will be for the public service authority to decide whether to agree to or refuse the request for dialogue, taking those issues into account. In determining whether to implement any changes to a service suggested through an outcome improvement process, the authority will also need to take into account the needs of all service users.

59. Perhaps the above might be an example of a reasonable ground to refuse. Could you indicate what might be covered by that provision.

As you suggest the circumstances suggested in question 58 might be an example of a reasonable ground to refuse a request but it will depend on the circumstances of the request. It is difficult to outline at this stage what other reasonable grounds for refusal might be. It is appropriate to allow public service authorities a degree of discretion, and they will need to explain the grounds for any refusal.

60. What types of bodies or organisations might be covered by section 15(2)

As set out in paragraph 26 of the Delegated Powers Memorandum

‘Community bodies come in many different forms. The intention of the policy is that as wide a range of community bodies as possible should be able to act as a community participation body and make a request to a public service authority to participate in an outcome improvement process. It is important that community participation bodies are open, inclusive and represent their community, and in most cases this should be demonstrated by meeting the criteria for a community-controlled body. However, there may be bodies which are established in a different way, especially those established before current approaches became standard, which Ministers still consider should be able to act as community participation bodies. The power will allow the Scottish Ministers to designate additional community bodies for this purpose.’

61. Are ALEOS included as part of section 16, if not why not?

There is no single definition of an arm’s length external organisation (ALEO). They are separate from local authorities and take a range of legal forms, such as companies, trusts or other bodies, and carry out a range of functions. The form in which they are controlled or influenced by local authorities also varies.

No ALEOs are currently listed in schedule 2 to the Bill. Subsections (4)(c) and (5) to (7) of section 16 allow for bodies to be designated as public service authorities if they are bodies corporate which are wholly owned by one or more public service authorities. It would therefore be possible to designate ALEOs which are wholly owned by one or more local authority, or local authorities and public bodies. It is not the Scottish Government’s intention
to place duties in terms of participation requests on bodies which include members from outwith the public sector.

62. Does section 16 include the Urban Regeneration Companies?

As with ALEOs, Urban Regeneration Companies could be designated as public service authorities if they are wholly owned by one or more public service authorities.

63. This Part proceeds on the basis the community require to opt in to participation. Earlier the Committee has suggested empowerment would be better enhanced by an opt-out provision with communities automatically eligible unless they decline to participate. Please indicate the policy thinking in favour of the approach adopted as opposed to the Committee’s preference.

As described in response to previous questions, the Scottish Government expects all public sector authorities to involve community bodies in decisions about the design and delivery of services, and Part 2 of the Bill places a statutory duty on community planning partnerships to secure the participation of community bodies. However, such activity is initiated by the public authority. Part 3 provides a statutory power for community bodies to initiate dialogue on their own terms and a right for them to have their views properly considered. All communities are equally eligible to take part in both provider-led and community-led approaches.

64. Paragraph 48 suggests a possible role is to “discuss”. Why is legislation necessary to facilitate a discussion, what prevents this simply being a function of consultation, or a follow up to consultation responses?

As the Committee is aware, many community bodies feel that when they approach service providers with suggestions for improvements, it can be difficult to establish a dialogue where views can be properly discussed. Participation requests address this by placing clear duties on public service authorities to respond to a request, or give reasons for any refusal.

The reference in paragraph 48 to a discussion of how a service provider could better meet the needs of users is contrasted with proposals for the community body to become involved in the delivery of a service. A number of responses to the consultation on the draft Bill appeared to view participation requests primarily in the context of community bodies wishing to take over delivery of services, but not all community bodies will wish to take on that role.

65. Please also indicate how “discuss” meets the test at section 17(2)(a).

Section 17(2)(a) requires a participation request to specify an outcome relating to a service provided by that public service authority, which will be the subject of the outcome improvement process resulting from the request. The examples given in paragraph 48 relate to the proposals which would be put forward in the outcome improvement process; the discussion mentioned would be about how to improve the specified outcome.

66. What is envisaged in regulations under section 18?

As set out in paragraphs 45 and 46 of the Delegated Powers Memorandum:

‘Under section 17(1) participation requests allow a community participation body to make a request to a public service authority to permit the body to participate in an outcome improvement process, which is a process established by the authority with a
view to improving an outcome that results from, or is contributed to by virtue of, the provision of a public service. Section 17(2) describes the information which must accompany the request.

The Scottish Government considers that section 18(1) is necessary to require that further information is provided and to make provision on the procedure for making requests and for handling them.’

The detail of the regulations will be subject to consultation following the passage of the Bill through the Parliamentary process.

67. Can you explain the reasons for the list at section 19(3)(c), why were those aspects chosen and how will this operate in practice to avoid any risk they are set at a level which will potentially exclude community involvement?

The list at section 19(3)(c) is intended to ensure that the public service authority considers the full range of benefits that community proposals might help to deliver, and to avoid requests being excluded because the benefits they refer to fail to fit limited criteria. (Equal opportunities are also included at section 19(4) in response to stakeholder requests, this does not fit directly into the list because of the structure of existing equality legislation.) There is no intention to set qualifying levels of benefits.

The trio of economic, social and environmental issues are often referred to in describing “wellbeing”; the Scottish Government’s guidance on the Power to Advance Well-Being in the Local Government (Scotland) Act 2003 also includes health (which might be considered part of social wellbeing); economic development and regeneration are linked, but are both specified for the avoidance of doubt.

68. Can you indicate why no provision is made for the application request to be published, which might attract other interested groups.

This was not included in the draft provisions and was not raised during consultation but we would of course be happy to consider it if the Committee feel it would be of benefit to the Bill. Different groups may, of course, have different concerns or proposals in relation to a service, and in some cases it may be more appropriate to have separate discussions with individual groups, although provision is clearly made in the Bill for community bodies to make requests jointly (section 17(3)), and for new bodies to join an existing outcome improvement process (section 20(2)).

69. There is no information provided covering sections 19-25 in relation to the process to be followed. Please explain the thinking behind and any derivation of each of these provisions. In so doing please indicate the benefits of the process at each stage for community participation.

Paragraphs 33 to 36 of the explanatory notes set out the process to be followed. The provisions in Part 3 are intended to work as a whole in order to enable communities to help shape the services which affect them.

70. What is the maximum period intended to be allowed for publication of a report under section 25?

There is no period set out in section 25 but we would expect all reports to be published timeously. As the report must summarise the outcomes of the process, including whether
the specified outcome to which the process relates has been improved, it would be difficult to specify a maximum time limit under section 25 as the time will be dependent on the process and the outcome to which it relates. We would be interested to hear whether stakeholders feel a time limit should be set, and what it should be, taking into account the wide range of circumstances which could be covered.

71. The Financial Memorandum is silent on the cost of handling a participation order. Please provide an estimated cost to local authorities for handling a request, including estimated costs for each scenario the Bill provides for.

As noted in paragraphs 22 and 23 of the Financial Memorandum, the costs of implementing this Part will depend on how often community participation bodies use the provisions, and the costs to an individual local authority of providing an outcome improvement process will vary according to circumstances. Costs ranging from £1,100 to £41,000 have been quoted by one local authority for a number of community engagement events it undertook.

**Part 4 Community Right to Buy**

Three major themes arise from the questions in this section. We cover those themes first, and then address the issues which fall outwith them.

Question 72 highlights that the Committee has had no prior involvement in matters covered by this Part. In addition to the principal legislation and its accompanying documents, the Committee may find it helpful to consult the information available on the Scottish Government’s “Rights to Buy Rural Land” website, [http://www.scotland.gov.uk/Topics/farmingrural/Rural/rural-land/right-to-buy](http://www.scotland.gov.uk/Topics/farmingrural/Rural/rural-land/right-to-buy), and particularly the guidance on the community right to buy, [http://www.scotland.gov.uk/Publications/2009/06/08101427/0](http://www.scotland.gov.uk/Publications/2009/06/08101427/0)

Should the Committee wish, the Community Right to Buy branch would be happy to meet with them to offer an overview of how the Community Right to Buy works and its progress throughout the past ten years since implementation began. Please let us know if you would like to arrange a meeting. We understand that key stakeholders have also offered to work closely with the Committee on these issues.

72. The Committee has had no prior involvement in matters covered by this Part and consider the detail provided in this section of the Policy memorandum to be little more than a superficial overview. This does not at present provide the Committee with sufficient material to allow for this Part to be scrutinised in a timely manner as part of the Stage 1 process. Please provide detail of each section individually including the policy thinking behind any changes or reasons for keeping the right to buy provisions the same as the 2003 Act. The following paragraphs in addition to the detail requested here set out specific questions.

74. Paragraph 56 refers to “These changes” please provide detail of each change including the reasoning behind making the change.

81. Paragraph 63 is a useful summary of the main amendments. However the Committee requires details of all amendments including the reasons for making each and the views of those who did not agree. Please also set out the benefits expected from each change.
82. The Committee requires detail of each of the new provisions providing right to buy abandoned or neglected land.

86. Given the earlier statement about the complexity of the legislation for consultees please amplify the summary provided in paragraphs 69 and 70.

Questions 72, 74, 81, 82 and 86 request details of each section or amendment individually, including the reasons behind each one.

The Policy Memorandum provides information on the policy underlying the major changes, ie, the extension of the community right to buy to the whole of Scotland and the introduction of a right for communities to buy neglected or abandoned land. It also explains that a number of changes are made to the detailed procedures and requirements of the community right to buy process, including streamlining and increasing flexibility.

The Explanatory Notes provide detail of the individual sections. Paragraphs 37 to 117 cover the amendments to Part 2 of the 2003 Act, explaining in each case the effect of the current provision and the change being made. Paragraphs 118 to 250 describe each section of the new Part 3A. Each Part is intended to work as a whole to provide an effective and efficient process for all parties involved.

75. Please indicate who undertook the post-legislative scrutiny of the provisions in the 2003 Act, who was consulted, and provide detail of the findings of that work.

89. Who suggested the improvements referred to in paragraph 73 and to what extent etc. have they been subject to consultation.

90. Who undertook the “overall review” of the system and where can the details of findings be found.

Questions 75, 89 and 90 ask about the post-legislative scrutiny and review of the 2003 Act.

The following reports have been carried out to scrutinise and evaluate the operation of the 2003 Act (most recent first):

- **Land Reform Review Group Interim Report, May 2013**
  This report was prepared by Alison Elliot and Sarah Skerratt, members of the LRRG, drawing on their work from August 2012 to April 2013, during which time James Hunter was also part of the LRRG.


- **Post Legislative Scrutiny of the Land Reform (Scotland) Act 2003, final report, September 2010,** Calum MacLeod, Centre for Mountain Studies, Perth College UHI; Tim Braunholtz-Speight, UHI Centre for Remote and Rural Studies; Issie Macphall, UHI Centre for Remote and Rural Studies; Derek Flyn; Sarah Allen; Rural Analysis Associates and Davie Macleod, Rural Analysis Associates.
This research was commissioned by the then Rural Affairs and Environment Committee of the Scottish Parliament between 2009 and 2011. Further information is available at:
http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/77795.asp


In addition, the Community Right to Buy Branch of the Scottish Government monitors the way the provisions are working and takes account of user feedback from community bodies, landowners and other stakeholders such as Highlands and Islands Enterprise, Development Trust Association Scotland (DTAS), among others. On the basis of this monitoring and feedback, amendments have been made to secondary legislation and additional guidance has been provided, for example through a comprehensive guidance document (June 2009).

During 2013, the Branch undertook an extensive analysis of the operation of the 2003 Act, to identify and seek remedy of issues that have arisen which require amendments to the primary legislation. This included a review of all the post-legislative scrutiny analysis set out above as well as working with stakeholders. The substantive issues that were identified in this way were included in the 2013 consultation on the Bill.

79. Please indicate which consultation is being referred to in paragraph 59 and also provide detail around the position of the other 7% who did not support the extension of right to buy to urban areas. What are the other reasons for these provisions?

80. Please provide the detail surrounding paragraph 62, how many cases were over 80% and which ones were not. What were the views of the other respondents? Which changes have not been subject to consultation and please provide the reasons for not consulting in each case.

81. Paragraph 63 is a useful summary of the main amendments. However the Committee requires details of all amendments including the reasons for making each and the views of those who did not agree. Please also set out the benefits expected from each change.

87. The paragraphs covering alternative approaches (71-73) also require to provide detail of the level of support/opposition. What are the “appropriate circumstances” in paragraph 71?

Questions 79, 80, 81, and 87 seek information on the consultation on this part of the Bill.

All references to consultation in this part of the Policy Memorandum are to the 2013 consultation, unless otherwise stated. Details of the questions asked in the consultation and the responses to them are covered in Chapter 7 of the consultation analysis. References to percentages in support of particular changes refer to yes/no responses, but respondents
may also have provided commentary either in addition to, or instead of, a yes/no answer. The analysis provides a summary of the comments on each question.

Those changes which were not explicitly covered in the consultation have been included to make the system work effectively as a whole. For example, the provisions in section 40 (ballot not conducted as prescribed) arise from consideration of how the ballot should be undertaken by an independent balloter.

73. Please explain the rationale for the one million acres target referred to at paragraph 55.

The target of one million acres of land in community ownership of land by 2020 was announced by the First Minister on 7 June 2013 (announcement at - http://www.scotland.gov.uk/News/Releases/2013/06/landreform07062013). This announcement was made to encourage the further transfer of land into community ownership. There is around 450,000 acres of land currently in community ownership.

76. Paragraph 57 suggest the Bill provides a “framework”, please indicate where the detail is provided to enable the provisions to operate.

Part 3A of the 2003 Act (inserted by section 48 of the Bill) is referred to as a “framework” as it creates a mechanism through which community bodies can seek to purchase abandoned or neglected land. Likewise, the community right to buy provision provides a framework for community bodies to secure a pre-emptive right to acquire land. The detail is provided by community bodies in terms of their proposals for the land or buildings they seek to acquire.

77. What are the “particular issues” referred to in paragraph 59?

The particular issues faced by rural communities in relation to the ownership and use of land include the concentration of ownership in relatively few hands, reliance on the land to deliver community-wide social, economic and environmental benefits, and having certain specific areas of land or buildings that are important to community development.

78. Please detail the “substantial public benefit” referred in in paragraph 59.

The benefits of community control of assets include

“...a sense of community identity and pride; the potential for increased social cohesion; increased confidence, skills and aspirations locally; improved access to services and activities – both those provided by local community organisations and those provided by external agencies; jobs, training and business opportunities; physical improvements to the area. Assets could help to make the organisations running them more financially viable and give them more leverage with external agencies, like the local authority. By changing stereotypes about the communities they served, some organisations reported that the asset had led to the locality becoming more attractive to outsiders, with people moving in rather than queuing to move out. Taken together, it could be argued that these benefits combined to produce a ‘social good’ of well-being and quality of life that was greater than the sum of the parts.”

83. Please detail the “other options” referred to in paragraph 65.

These “other options” include negotiation with the landowner or use of the community right to buy in Part 2 of the Land Reform (Scotland) Act 2003. There are also a range of mechanisms open to local authorities to require owners to remedy neglect, depending on the circumstances. The community body could also ask a local authority to compulsorily acquire the land.

84. Please set out the complexities highlighted by local government respondents referred to in paragraph 66.

8 local authorities responded negatively to this question. Some of them appeared to see the proposals as relating to the existing structure of Compulsory Purchase Orders, which are administered by local authorities. For example, comments included:

- “the use of compulsory purchase powers tends to be controversial, slow and expensive. This doesn’t appear to be the correct approach for applications for the community right to buy” (Renfrewshire Council)
- “The current compulsory purchase legislation is exceedingly complex and difficult to negotiate. It would be difficult for small community bodies to be able to follow through the use of compulsory powers without substantial technical and professional assistance” (Fife Council)

Others simply stated that the power should rest with local authorities, if the existing powers to deal with neglected or abandoned land were felt to be insufficient.

85. In paragraph 66 please provide the reasons why government does not agree with the views of local government, and the expected benefits.

The Scottish Government is mindful of the fact that local authorities have compulsory purchase powers. It wanted to create specific powers for communities to have their own compulsory purchase powers to address the problems caused by abandoned and neglected land in order to further the achievement of sustainable development of land in their community. In particular, Scottish Ministers are aware that abandoned and neglected land can be a barrier to the sustainable development of land, and as such this power will allow communities that choose to take the opportunity to use it to achieve the sustainable development of land in their community.

87. What are the “appropriate circumstances” in paragraph 71?

The consultation asked what the circumstances should be in which communities should have a compulsory power to buy neglected or abandoned land. Details of the responses are set out in paragraphs 7.18 to 7.24 of the analysis. The circumstances provided for in the Bill are that the purchase should be in the public interest and compatible with furthering the achievement of sustainable development of the land.

88. Please provide detail of the “broader” rights sought by some stakeholders referred to in paragraph 72.

A number of stakeholders consider that there should be a right to buy without a willing seller wherever this is in the public interest, without it being restricted to neglected or abandoned land. Community Land Scotland set out their views in detail in an annex to their consultation response, http://www.scotland.gov.uk/Resource/0044/00445331.pdf. Other responses to the question “in what circumstances should this be available” focused on the needs of or
benefits to the community rather than the existing condition of the land, for example where there is a need for land for housing, or where the community has clear plans which will support economic development.

**Part 5 - Asset Transfer Requests**

91. Please provide detail of the provisions covered by this Part including in particular the policy thinking underlying the approach in each section. The following paragraphs in addition to the detail requested here set out specific questions.

The provisions in this Part are intended to work as a whole to provide a process which will achieve the policy objectives described in paragraphs 53 to 55 and 74 to 79 of the Policy Memorandum. Paragraphs 251 to 275 of the Explanatory Notes set out how the process will operate, and paragraphs 155 to 201 of the Delegated Powers Memorandum describes the purpose of the secondary legislation involved. We welcome comment from the Committee and from stakeholders, during the process of Stage 1, on where they feel the provisions might be improved to better implement the policy objectives.

92. Paragraph 77 and elsewhere in this Part use the phrase “Community bodies” as being the bodies who can apply. In fact the detail in the sections is much wider/narrower than the impression given by that phrase. Please provide full information on each class of body who can apply and the policy underpinning their inclusion. Please include reasons why they require to have a written constitution.

As you have identified, the phrase ‘community body’ is used in a general sense to provide an indication in the Policy Memorandum of organisations that can make an asset transfer request. The definition of what constitutes a ‘community transfer body’ for the purposes of this Part is set out in section 50 of the Bill, referring to a “community-controlled body” as defined in section 14. The features of a community-controlled body are intended to address concerns raised about ensuring that community bodies are open, inclusive and representative, and that their assets are applied for the benefit of the community. They take account of the comments made in consultation about the draft definitions of community bodies for both asset transfer and participation requests, providing for a single core definition which aligns with existing good practice. The reasons for requiring a community-controlled body to have a written constitution are provided in response to question 57. In relation to bodies that might be designated as community transfer bodies, as noted in paragraph 157 of the Delegated Powers Memorandum:

“Community bodies come in many different forms. The intention of the policy is that as wide a range of community bodies as possible should be able to act as a community transfer body and make an asset transfer request. It is important that community transfer bodies are open, inclusive and represent their community, and in most cases this should be demonstrated by meeting the criteria for a community-controlled body. However, there may be bodies which are established in a different way, especially those established before current approaches became standard, which Ministers still consider should be able to act as community transfer bodies. The power will allow the Scottish Ministers to designate additional community bodies for this purpose.”

93. The basis of a decision is set out in section 55, please provide the policy thinking and linkage to the overall aims of the bill for each part, which we note also

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includes regeneration and public health as well as a more wider “any other benefit”. For the latter please provide some indications of what this might cover.

As set out in paragraph 262 of the Explanatory Notes, in deciding whether to agree to or refuse an asset transfer request, the relevant authority must compare the benefits that might arise if the request is agreed to with those that might arise from any other proposal for the land or building (section 55(3)(e) and (f)).

The list set out at section 55(3)(c) is intended to ensure that the public service authority considers the full range of benefits that community proposals might help to deliver, and to avoid requests being refused because the benefits they refer to fail to fit limited criteria. Equal opportunities are also included at 55(4) in response to stakeholder requests, this does not fit directly into the list because of the structure of existing equality legislation.

The trio of economic, social and environmental issues are often referred to in describing “wellbeing”; the Scottish Government’s guidance on the Power to Advance Well-Being in the Local Government (Scotland) Act 2003 also includes health (which might be considered part of social wellbeing); economic development and regeneration are linked, but are both specified for the avoidance of doubt. “Any other benefit” is included further to ensure that no benefits are excluded from consideration. We would welcome the views of the Committee and of stakeholders, during the process of Stage 1, on the range of benefits which are referred to in section 55(3) and (4).

The authority must also consider any obligations that may prevent or restrict its ability to agree to the request, and other matters the authority considers relevant, including how any benefits may relate to the functions and purposes of the authority. This would enable the authority to refuse a request if, for example, they are subject to restrictions on the use or disposal of the property, or if the proposed community transfer or use would hinder the authority in carrying out its own functions.

94. What impact will the Asset Transfer Requests’ process have on the Community Ownership Support Service in terms of its role and its resources?

The Community Ownership Support Service would be best placed to comment in detail on the impact of the Bill on the organisation. We would not expect its role to change significantly but we recognise that as more asset transfers may arise it will have an impact on the demand for its services. The Scottish Government will keep under review the level of need for support in relation to asset transfer.

95. Please provide detail of the consultation responses, as requested for earlier Parts. In particular for this Part the detail should cover the views of other public authorities.

Responses relating to the draft provisions on asset transfer can be found in Chapter 3 of the analysis of consultation responses (pages 16 to 28). The analysis includes a breakdown of responses by category, including local government responses.

96. Please indicate the anticipated demand under this provision, and any goals the Scottish Government has set.

The Scottish Government has not set any goals for this Part of the Bill and we cannot predict at this stage what additional demand the Bill will produce.
97. Please provide indicative costs for handling each part of the process.

As noted in paragraphs 77 and 78 of the Financial Memorandum, local authorities have not to date been able to provide estimates for any costs or savings that may arise from these provisions. This in part reflects the difficulty in predicting how many requests will be made, the wide variety in the types of request that could be made, and the complexity in predicting savings associated with better service provision and reductions in running costs associated with assets.

Part 6 Common Good Property

98. Please provide brief details of the “special rules” referred to in paragraph 86 and in particular any impact the bill’s provisions will have on them.


This requires that where a local authority desire to dispose of common good land and there is a question over the right of the authority to alienate, they should apply to the Court of Session or the sheriff to authorise the disposal. The Court or sheriff may, if they see fit, authorise the disposal and may also impose conditions.

The provisions of the Bill do not amend section 75 of the 1973 Act. However, the requirement to consult will ensure that information about local views will be available to the local authority, and if necessary to the court, to help inform decisions on disposals.

99. Paragraph 87 refers to consultees agreeing, please indicate what the views of the other 25% were, and provide detail of any proposals they suggested which are not being taken forward together with the reasons for not doing.

A single question was asked on this section of the consultation paper: “Do you think that the draft provisions will meet our goal to increase transparency about the existence, use and disposal of common good assets and to increase community involvement in decisions taken about their identification, use and disposal.” 75% of the respondents who answered this question directly said yes, but many provided commentary in addition to, or instead of, the yes / no response. A summary of the comments is provided in Chapter 5 of the analysis of consultation responses.

100. Please indicate how many local authorities currently have registers?

The Scottish Government does not require local authorities to provide this information. A few local authorities confirmed that they have a register in their response to the Bill consultation. Others stated that establishing a register would have considerable resource implications, which may imply they do not currently have a complete or current register.

101. How long will local authorities have to establish a register or, amend an existing register to comply with the provisions of the Bill?

We will consult with stakeholders over the schedule for commencement of the Bill’s provisions.
102. It would be helpful to specify detail of what bodies are covered in this section by the term “community bodies” (see section 67 of the Bill).

The definition of community bodies in relation to consultation on common good is intended to be as broad as possible and to cover any group whose purposes include promoting or improving the interests of any community in the area.

103. Please indicate why consultation on disposal is restricted to those community bodies with a known interest and how this fits with the transparency and consultation approach set out in paragraph 93.

When local authorities propose to dispose of or change the use of a particular common good asset, this is a more focused consultation than is required for establishing what common good property exists in the area. This approach will also help to address concerns that consultation on common good property should be restricted to residents of the area of the former burgh to which the property originally belonged (although we do not intend that community bodies from outwith that area should be excluded from expressing an interest).

104. Please indicate details of what the ministerial guidance might cover and when this will be available to the Committee.

Guidance issued under sections 64 and 66 is likely to set out the information to be included in common good registers and how they should be published. It may also provide advice on consultation in relation to drawing up the register and any proposed disposal or change of use. Ministers may also decide in future that it would be helpful to provide guidance on the management and use of common good property. All such guidance will be developed in consultation with stakeholders.

105. Can you give an example of what might be considered to be a “significant dispute” referred to in paragraph 91, and who will adjudicate on what constitutes a “significant dispute”, and how such an adjudication can be challenged (see question 98)?

106. Given existing requirements referred to (accounting and asset management for example) what is the policy thinking behind not requiring ownership to be legally verified?

107. Why are there no appeal or review provisions in this Part of the Bill?

The answers to these 3 questions are linked.

A “significant dispute” would be where the categorisation of the property would have a significant effect on a proposed land transaction. This is likely to be a case where, if the property were common good property, the council would require court agreement to a disposal or would be unable itself to appropriate the land. In such a situation any proposed disposal or appropriation could be challenged by a third party making an application to a court to prevent it.

This type of court action would be the mechanism for verifying the common good status (rather than ownership) of property. Given the costs involved, it would not be appropriate to require local authorities to take such action except in particular cases where a disposal or appropriation is in question. An application to the court would be the route available to any
individual who disputes the local authority’s assessment of whether a property is common
good or not, if the local authority is unwilling to reconsider that assessment.

108. We note in paragraph 93 the demand for communities to have more say in the
management of common good property. Please indicate how these provisions meet that aspiration.

The provisions of Part 6 of the Bill will ensure that communities are aware of what property in
their area forms part of the common good and will have a role in the process of establishing
that. This will make it easier for them to make representations to the local authority about
the management and use of that property, as well as allowing them to inform the local
authority of any property they believe is common good which is not listed. The Bill also
introduces a clear statutory requirement for communities to be consulted on any proposals to
dispose of or change the use of common good property.

Part 7 Allotments

109. Please provide a link to the National Food and Drink Policy referred to in
paragraph 95.

See the link below:

http://www.scotland.gov.uk/Publications/2009/06/25133322/11

110. We note the link in paragraph 99, Can you confirm that link is to the Working
Group and contains up to date information on their meetings and
recommendations. (see also below)

The link provided gives information about the Grow Your Own Working Group, and a link to
the Working Group’s own website, http://www.growyourownscotland.info/ . Minutes of the
Working Group’s meetings are available at
The Group has been asked to update this as soon as possible.

111. Paragraph 96 refers to consultation, please confirm which of the three
consultations later referred to this is intended to cover.

Agreement that the legislative framework for allotments should be updated has been shown
through all three consultations.

The separate Allotments Consultation is available at
http://www.scotland.gov.uk/Publications/2013/04/5940  The analysis of responses is at
http://www.scotland.gov.uk/Resource/0043/00437683.pdf and an overview of the responses
and the Scottish Government’s proposals is at
112. Paragraph 96 helpfully sets out an overview of this Part. Unfortunately that is as far as the detail goes in the memorandum. Please provide detail of each section individually including the policy thinking behind any changes or reasons for keeping them the same as the original. Please provide detail of the original provision. The following paragraphs in addition to the detail requested here set out specific questions.

Paragraph 96 of the Policy Memorandum identifies the existing legislation on allotments and the consultation which has been undertaken. Paragraphs 97 and 98 outline the main provisions in the Bill, which replace rather than amend the existing legislation. The detailed explanation of these provisions is set out in paragraphs 283 to 343 of the Explanatory Notes, and paragraphs 202 to 242 of the Delegated Powers Memorandum describes the purpose of the secondary legislation involved. The provisions in this Part are intended to work as a whole to provide a process which will achieve the policy objectives. We welcome comment from the Committee and from stakeholders, during the process of Stage 1, on where they feel the provisions might be improved to better implement the policy objectives.

113. Does section 70(6) also apply to joint request made under section 70(5)?

Yes. The request is still made under section 70(1), even if it is made jointly as permitted by section 70(5). The notice requirement in section 70(6) therefore applies whether the request is from one or more than one persons.

114. Will the list be made public, in some way accepting Data Protection issues, and if not will the Local Authority be under any duty to indicate publicly the length of the list and expected waiting period?

Section 79(2)(g) provides that the number of persons entered in the list must be published within the Annual Allotments Report.

115. Please provide some details of what might be considered “reasonable steps” as set out in section 72.

“Reasonable steps” might be that local authorities, in conjunction with residents and other landowners, have identified all available land suitable for allotment use and have progressed these sites where possible. Reasons sites may not be progressed include planning issues, contamination, local objections and disproportionate costs.

116. To how many local authorities is this provision expected to apply at commencement?

The Scottish Government does not hold up to date waiting list information for all local authorities. Of the 15 local authorities that provided information, 11 already hold waiting lists. 7 of these needed no more plots to meet the target while the remaining 4 would be required to increase provision substantially.

117. Please indicate the policy thinking behind setting the trigger in section 72 at 15? To how many local authorities will this apply at commencement?

Existing legislation sets out that local authorities must consider provision when 6 people express an interest in an allotment. This was increased to 15 in line with consultation responses. The Scottish Government does not hold up to date waiting list information for all
local authorities. Local authorities which do not currently have any allotments may not hold a waiting list.

118. Given the earlier work of the working group and the consultations please indicate the reason for allowing a further 2 years from commencement for regulations to be made. Please provide the same details covering section 77.

Under section 74 local authorities must consult interested persons before making regulations. Some local authorities do not currently have regulations in place and the new regulations may be site specific, requiring authorities to produce more than one document.

For section 77, local authorities will require time to identify demand, establish the steps they will take to provide allotments, identify suitable land and determine whether this could be used for allotments or other food growing before writing and publishing their report.

119. How many local authorities currently have regulations in place?

The Scottish Government does not hold up to date information on which local authorities currently have regulations in place. Of the 15 local authorities that provided information, 10 currently have regulations in place as a standalone document or within lease agreements.

120. Please indicate what consultation with allotment holders and other persons will be undertaken by Ministers under sections 75 and 76.

Allotment holders will be offered a lease of another allotment if required in terms of sections 75(4) and 76(5). No specific consultation requirement is set out, however Scottish Ministers would have to satisfy themselves that the conditions of sections 75(4) and 76(5) were met in deciding whether to grant consent.

121. Please explain why there is no consultation required under section 77 and thereafter any reviews.

The document is intended to set out the local authorities’ intention to provide allotments and detail their available land. Once published residents will be able to approach the local authority to discuss taking over the identified land for growing, or work together to provide a site. Local authorities may wish to consult with local residents and other land owners to help them to identify suitable land, but the Bill does not make this a statutory requirement.

122. What period do the government consider is a “reasonably practicable” one under section 79 and why has no specific time limit been specified. Do any local authorities currently produce such a report?

This period has been left open to allow local authorities flexibility to prepare their report.

Of the 15 local authorities that provided us with information, 2 currently produce a report showing details of tenancy, acreage and rent of let and unlet allotments, with an annual statement showing receipts and expenditure every year.

123. Please indicate the extent of the current problem anticipated by section 80.

Under existing legislation (section 7(5) of the Allotments (Scotland) Act 1892) local authorities already have the power to remove unauthorised buildings but this is out of date. It does not, for instance, provide procedural safeguards to be followed before the removal and

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disposal of an unauthorised building takes place. Section 80 is intended to provide local authorities with a clear process to remove unauthorised buildings, while protecting the rights of tenants. The Scottish Government does not hold any information on how many times this power has been used in the past, but consultation responses indicated that the power should be retained.

**124. Are delegated schemes of management currently operating, if so please detail experiences to date.**

There are many sites being run by allotment associations or other groups across the country but exact numbers are not known. For example Stirling Council currently manage one site and lease land to 3 allotment associations.

‘Finding Scotland’s Allotments’ produced by Scottish Allotments & Gardens Society in 2007 found that 69% of sites are in local authority ownership. Local authorities managed 68% of the sites they owned with the remainder devolved to site associations.

Consultation responses indicated local authorities were in favour of placing more responsibility on the users of allotments to provide and run them themselves whether in partnership with local authorities or with support from them.

**125. Please indicate the policy thinking behind section 82.**

Consultation responses indicated that appropriate training and promotion of allotments could lead to more appealing and environmentally friendly sites and would raise awareness of the benefits of allotments. Training could also reduce the turnover of allotment sites, reducing administrative burdens on the local authority and/or allotment association.

**126. Please indicate the extent to which section 84 requires prior consultation with tenants.**

Allotment holders will be offered a lease of another allotment if required in terms of section 84(5). No specific consultation requirement is set out, however the Scottish Ministers would have to satisfy themselves that the conditions of section 84(5) were met before granting consent.

**127. Please indicate the types of produce intended to be covered by section 87 and the policy thinking underpinning this provision.**

Produce to be sold would include those items intended to be grown on allotments, ie vegetables, fruit, herbs and flowers. Other items created from that produce, such as jams and chutneys, may be included where the local authority sees fit and other relevant legislation such as food safety and hygiene is complied with.

**128. What will happen to items not removed timeously under section 88?**

Items can remain on the allotment for use by the next tenant or can be removed by the local authority.
129. Please confirm regulations under section 90 will require consultation with the tenant concerned.

Before making regulations under section 90(4), consultation is required with (a) each local authority and (b) any other person appearing to the Scottish Ministers to have an interest (see section 90(6)). Such regulations must set out the procedural steps to be followed for determining liability and the amount of compensation.

130. Please indicate the detail of the progress being made by the Working Group (paragraph 99) including detail on the recommendations covered by this Part and detail of those not covered including reasons for them not being covered and detail of how they will be taken forward in the future.

The Working Group are currently writing a report on their activities in 2010-14 and plan to set out new recommendations for 2014-17. This report has not been published yet but currently two thirds of the original recommendations have been completed while the others still require some action. The original recommendations can be viewed at: http://www.scotland.gov.uk/Topics/Business-Industry/Food-Industry/own/qyorr

131. Paragraph 100 should also provide detail of the consultation responses relating to those supporting the provisions and details of areas not being taken forward. Detail of why the approach taken was thought appropriate and why other options were not is also required.

This information is set out in the Allotments Consultation Analysis Report and Consultation Report as referred to under question 111.

Part 8 Non-Domestic rates

132. Paragraph 101 refers to the “needs of businesses and the local economy” please indicate what these needs are linking to the promotion of resilient communities and sustainable places.

These needs will vary depending on local economies and communities. By reducing business rates taxation local authorities may, for example, reduce the overheads of community based groups, or owners/occupiers of properties that otherwise support vulnerable communities, or could incentivise such groups to occupy premises they could not otherwise afford.

133. Parts 4, 5, 6 and 7 of the Bill could lead to community groups generating profits for community uses, how does Part 8 support the policy objectives of these Parts?

Local authorities could use the power to give discounts to community groups who do not currently benefit from centrally set reliefs. Part 8 also supports the wider objective of enabling decisions to be made at a more local level to reflect local needs and circumstances.

134. Please indicate the extent of the scope local authorities currently have to vary reliefs locally (paragraph 102 refers).

Currently all reliefs are set centrally by Scottish Government and local authorities have only very limited powers to vary the percentages of certain reliefs from 80 to 100% provided centrally set criteria are met. They have no current powers to create bespoke relief schemes.
135. Please provide some examples of the potential uses of the powers being granted by this section.

Relief could be granted to a sole property, a street, a town centre or a particular type of business or sector. They could be used, for example, to support or create employment, or to encourage regeneration of a particular area.

136. Paragraph 102 indicates powers are without restriction, please indicate how this is consistent with the restrictions set out in paragraph 103.

There is no restriction on the circumstances in which local authorities may grant reliefs. Paragraph 103 clarifies that only a power to grant reliefs is being created, powers to make other changes to non-domestic rates, including creating supplements, are not being transferred, nor will any of the national reliefs funded by the Scottish Government change.

137. Please indicate the extent to which consultation responses provided examples and full details of the consultation carried out including details of any suggestions received which are not being implemented. Please elaborate on what constitutes “strong support” and indicate the extent of the opposition and details of those not supporting.

A full analysis of the consultation was published on 4 September 2013 and can be found at http://www.scotland.gov.uk/Publications/2013/09/1530/0. Responses to this particular question are covered in paragraphs 2.48 to 2.61.

Please provide policy details covering the provisions in sections 94(2) to (4).

As noted in paragraph 346 of the Explanatory Notes, section 94(2) amends schedule 12 to the Local Government Finance Act 1992 (payments to local authorities) to ensure that the arrangements for pooling of income from non-domestic rates and funding of rating authorities will accommodate and remain unaffected by the power to create relief schemes. Subsections (3) and (4) make consequential amendments to allow these changes to take effect.

**Effects on Equal Opportunities**

138. When will the assessment be published?

The Equality Impact Assessment will be published very shortly. We will inform the Committee and stakeholders when it is available.

139. Please indicate what is required under the public sector duty.

The Commission states:

“In summary, those subject to the equality duty must, in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

These are sometimes referred to as the three aims or arms of the general equality duty. The Act helpfully explains that having due regard for advancing equality involves:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.’’

140. We note in paragraph 108 the inclusion of the equality duty when considering asset transfer and participation requests. Please indicate why this is not also necessary for other parts of the Bill.

A public authority is required to have regard to the public sector equality duty in the exercise of all its functions. Stakeholders requested that equality should be explicitly included in the list of benefits to be considered when authorities are taking decisions on community proposals, and sections 19(4) and 55(4) reflect this, to the extent possible within devolved powers. Similar lists of benefits do not occur elsewhere in the Bill, and the issue has not been raised in relation to other Parts.

141. In relation to the final sentence in paragraph 108 can you confirm the Government’s position regarding the completion of an EQIA. In what circumstances might this not be appropriate?

The specific duties under the public sector equality duty require listed authorities to “where and to the extent required to fulfil the general equality duty, assess the impact of applying a proposed new or revised policy or practice against the needs of the general equality duty”. Authorities which are only subject to the general equality duty are also recommended to assess policies to help them to comply with the general duty.

It is for individual authorities to determine whether an assessment should be carried out in relation to any policy or practice, and the degree and depth of the process that may be required.
142. We note the last line in paragraph 113, which states that right to buy abandoned land is “either compatible with Article 1 of Protocol 1 or capable of being exercised in a manner that is so compatible”. Please provide more information on this view and clarify the circumstances where the government believes there may be a doubt over the compatibility of the purchase of such land.

The Scottish Government is content that section 48 concerning a right to buy neglected and abandoned land is compatible with Article 1 of Protocol 1 of the European Convention on Human Rights (ECHR). The provisions inserted into the 2003 Act by section 48 do not as such determine any person’s ECHR rights as the provisions provide a mechanism whereby a community body may apply to purchase abandoned and neglected land and give Ministers a power to consent to that such an application. The Scottish Government is content that the provisions inserted by section 48 are capable of being exercised in a way that is compatible with the ECHR. Ministers will be required to ensure that any decisions or secondary legislation they make under the provisions inserted by section 48 are compatible with the ECHR.

**Island Communities**

143. Given the subject matter of the Bill and the recent report “Empowering Scotland’s Island Communities” please indicate the extent to which the Bill has been “island proofed” as set out on page 24 of the report.

“Empowering Scotland’s Island Communities” sets out the Scottish Government’s commitment to the principle of island proofing, and intention to formalise this approach in statute through an Islands Act following independence (p. 23-24). The consideration given to the impact of the Community Empowerment (Scotland) Bill on island communities, reflected in paragraph 120 of the Policy Memorandum, demonstrates that the Scottish Government is already informed by the principle of island proofing when exercising its functions.

144. Please indicate which aspects of the Bill will produce a differential impact on the islands.

Having considered the allotments issue in more detail, we do not consider that any aspects of the Bill will produce a differential impact on the islands. All parts of the Bill allow flexibility to reflect local circumstances and to respond to the needs and ambitions of local communities.

145. Please clarify whether paragraph 120 is suggesting the approach in the Islands to the provision of allotments to meet demand is to be different from that of other areas.

Paragraph 120 does not indicate a different approach to the provision of allotments in island areas. Local authorities in any area could work with private landowners to lease land for allotments. Crofting (which is not confined to island communities) is one possible reason for shortage of land for allotments, but other types of areas may also face shortages for other reasons.
Local Government

146. It is not clear what purpose paragraph 122 is serving, can you clarify the impact the information provided is designed to have on the consideration the Committee is required to make of this aspect.

Paragraph 122 indicates the level of involvement which local government has had in developing the Bill, and therefore the opportunities it has had to consider and shape the impact of the provisions.

Sustainable Development

147. The terms “sustainable development” and “sustainability” appear in the policy memorandum in the context of: Communities (paras 3 and 59); Control of assets (para 53); Access to land and land use (paras 57, 65, 67, 72, 113); Place (para 101); and Economics (para 2, 36 and 104). This suggests the Bill is concerned with several social, economic and environmental aspects of Scotland’s sustainable development. However the sustainable development section of the Policy Memorandum includes only a limited consideration of the impacts of the Bill on the environment and land use. Please provide a more comprehensive assessment of the impact on sustainable development to enable the Committee to consider this aspect.

As noted in paragraph 5 of the Policy Memorandum, the Bill aims to support approaches that can contribute to improving outcomes in all aspects of people’s lives. By empowering community bodies to take action directly, and strengthening the focus on outcomes and the involvement of communities in shaping the design and delivery of public services, the Bill will support the achievement of improved outcomes on a wide range of issues, determined by the needs and ambitions of individual communities.

The Scottish Government’s Regeneration Strategy, “Achieving a Sustainable Future” 8 sets out in Annex A a series of outcomes supporting the strategy, relating to economically, physically and economically sustainable communities. While the particular actions taken will vary from place to place, it is clear that the Bill’s provisions have the potential to support many of these outcomes. In addition to the core aim that communities will be involved in designing and delivering the services that affect them, that involvement and the support for community-led action can also result in strong and effective community networks, positive identity and future aspirations (socially sustainable). The Bill will empower communities to improve their area and maximise local assets (socially sustainable); address vacant and derelict land and property and provide access to quality public space and appropriate greenspace (physically sustainable). Community projects or community input to public services can also provide access to effective local services (socially sustainable), learning and development opportunities and sustainable employment (economically sustainable).

8 http://www.scotland.gov.uk/Publications/2011/12/09110320/0

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ANNEX A: Development of Community Planning since 2012 (Questions 14, 15, 34, 35)

As the Committee knows, the Scottish Government and COSLA are committed to strengthening community planning in line with the clear vision in our shared Statement of Ambition, referred to in paragraph 16 of the policy memorandum. The Statement articulates how CPPs should drive public service reform at local level.

Since March 2012, when the Statement of Ambition was published, the Scottish Government and our partners have taken forward a range of actions to promulgate this expectation. Many of these activities are set out in paragraph 37 of the policy memorandum.

CPPs have produced and are now delivering on new Single Outcome Agreements (SOAs), developed in line with Guidance which the Scottish Government and COSLA issued in December 2012. Scottish Ministers and Council Leaders signed off these SOAs in July and August 2013, following a quality assurance process of the draft agreements. Development priorities for CPPs identified from this quality assurance are reflected in development plans which accompany their SOA. CPPs have since been taking action to address these development priorities. A paper which the National Community Planning Group considered at its October 2013 meeting summarised strengths and areas of development across CPPs which the quality assurance process identified.

For most CPPs, one development priority has been on joint resourcing. Key community planning partners are expected to give effect to the Agreement on Joint Working on Community Planning and Resourcing, which was signed by Scottish Ministers, the President of COSLA and the Chair of the National Community Planning Group and published in September 2013, alongside the draft Scottish Government Budget for 2014-15. This requires partners to work together through CPPs to deploy their collective resources towards jointly agreed priorities as set out in their SOA.

The National Community Planning Group was established in 2012 to provide national leadership and strategic direction to strengthen community planning. It has been working to provide national support for CPPs on joint resourcing and other development priorities it identified from CPPs' development priorities and key messages from the Accounts Commission and Auditor General’s report on Improving Community Planning in Scotland produced by Audit Scotland. These include prevention, tackling inequalities and community engagement and co-production.

The Scottish Government and our partners have worked in other ways to support efforts by CPPs and partner bodies to strengthen community planning. What Works Scotland was launched in June 2014. It is a centre which will support and share effective practice by evaluating evidence from emerging approaches to public service delivery and reform in Scotland. It will then use this evidence to promote and share best practice.

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9 http://www.scotland.gov.uk/Topics/Government/local-government/CP/soa
11 http://www.scotland.gov.uk/Topics/Government/PublicServiceReform/CP/communityplanningreview/October2013
13 http://www.scotland.gov.uk/Topics/Government/PublicServiceReform/CP/communityplanningreview
15 http://whatworksscotland.ac.uk/

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www.scotland.gov.uk
A national community planning conference in June 2014, entitled *Changing Lives, Celebrating Success* brought together 200 community planning practitioners from across the public and third sectors. The event showcased examples of innovative work taking place locally across Scotland involving public and voluntary sectors and communities themselves.

Scottish Government and the Improvement Service both support the work of the Improving Evidence and Data Group, which also includes a number of other public sector partners (including SOLACE, NHS National Services Scotland and Scottish Enterprise). This group is leading efforts to support CPPs in making better use of evidence and analysis in driving improved outcomes for their communities. The Scottish Government is also part-funding an Improvement Service-led project to develop a benchmarking framework for CPPs.

CPPs have been working with the Improvement Service to map the activities and resources which will help build local capacity. This includes the provision of support for self-assessment and improvement planning. 21 CPPs will have been through this process by the end of 2014.

Scottish Government Location Directors provide further support to CPPs by discussing progress with them and where necessary challenging them. They also act as liaison channels between CPPs and the Scottish Government.

CPP audits led by Audit Scotland both support efforts to strengthen community planning and provide the assurance to which question 35 refers. The Accounts Commission and Auditor General published their first set of three CPP audit reports (Aberdeen\(^{16}\), North Ayrshire\(^{17}\) and Scottish Borders\(^{18}\)) in March 2013. A further three reports have been published to date in 2014. Two more audit reports, together with a follow-up to *Improving Community Planning in Scotland*\(^{19}\), are due to be published later in 2014.

Recent audit reports (covering Glasgow\(^{20}\), Falkirk\(^{21}\) and Moray\(^{22}\) CPPs) show that, while there is more work to be done, CPPs are making progress. Examples of strengths and areas of recent improvement from these reports include clarity of purpose and direction, closer focus on preventative work and addressing inequality, and stronger partnership working towards shared priorities.

Despite this already broad programme of reform, Scottish Government, COSLA and wider community planning partners consider that legislative reform is also required, for reasons explained in paragraphs 38 to 43 of the policy memorandum. The key issues are placing the focus of community planning on the achievement of outcomes, the involvement of community bodies and placing statutory duties relating to this revised purpose for community planning on partner bodies. The 2013 Consultation on the Community Empowerment (Scotland) Bill revealed general support for the direction of change.

\(^{16}\) http://www.audit-scotland.gov.uk/docs/central/2013/nr_130320_aberdeen_cpp.pdf  
\(^{17}\) http://www.audit-scotland.gov.uk/docs/central/2013/nr_130320_north_ayrshire_cpp.pdf  
\(^{19}\) http://www.audit-scotland.gov.uk/docs/central/2013/nr_130320_improving_cpp.pdf  
\(^{22}\) http://www.audit-scotland.gov.uk/docs/central/2014/nr_140710_moray_cpp.pdf  

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Community Empowerment (Scotland) Bill (in private): The Committee considered and agreed its general approach to scrutiny of the Bill at Stage 1. The Committee also agreed to—

- write to the Scottish Government seeking further information on the Policy Memorandum on the Bill; seeking a written response by 1 August, 2014 and to consider this response, in private, at a future meeting;
- a timetable for the scrutiny of the Bill;
- issue a call for written evidence;
- issue a targeted call for written and oral evidence from specific key stakeholders;
Present:

Cameron Buchanan    Mark McDonald  
Stuart McMillan    Anne McTaggart  
Alex Rowley        Kevin Stewart (Convener)  
John Wilson (Deputy Convener)

Community Empowerment (Scotland) Bill: The Committee agreed its approach to the scrutiny of written and oral evidence on the Bill at Stage 1. As part of this approach, the Committee noted the written response received from the Minister from Local Government and Planning to various questions it had raised on the Policy Memorandum which accompanies the Bill.
**LOCAL GOVERNMENT AND REGENERATION COMMITTEE**

**EXTRACT FROM THE MINUTES**

23rd Meeting, 2014 (Session 4)

**WEDNESDAY 24 SEPTEMBER 2014**

**Present:**

- Cameron Buchanan
- Mark McDonald
- Stuart McMillan
- Anne McTaggart
- Alex Rowley
- Kevin Stewart (Convener)
- John Wilson (Deputy Convener)

**Community Empowerment (Scotland) Bill:** The Committee took evidence, in round table format, on the Bill at Stage 1 from—

- Elma Murray, Past Chair of SOLACE Scotland, and Chief Executive of North Ayrshire Council;
- Pauline Douglas, Head of Operations, Coalfields Regeneration Trust;
- Angus Hardie, Chief Executive, Scottish Community Alliance;
- Ian Cooke, Director, Development Trusts Association Scotland;
- Felix Spittal, Policy Officer, Scottish Council for Voluntary Organisations (SCVO);
- Calum Irving, Chief Executive, Voluntary Action Scotland;
- Professor Annette Hastings, Senior Lecturer in Urban Studies, University of Glasgow;
- Councillor David O'Neill, President of COSLA;
- Councillor Harry McGuigan, Spokesperson for Community Well-being and Safety, COSLA;
- Barry McCulloch, Senior Policy Advisor, Federation of Small Businesses;
- Eric Samuel, Senior Policy and Learning Manager, BIG Lottery Fund;

and then from—

- Ian Turner, Bill Team Leader, Alasdair McKinlay, Head of Community Planning and Community Empowerment Unit, Norman McLeod, Scottish Government Legal Directorate, Dave Thomson, Land Reform Tenancy Unit, Rachel Rayner, Scottish Government Legal Directorate, and Dr Amanda Fox, Food and Drink Policy Leader, Scottish Government.

**Community Empowerment (Scotland) Bill** The Committee considered the evidence received.

**Community Empowerment (Scotland) Bill (in private):** The Committee considered and agreed its approach to the scrutiny of the Bill at Stage 1, including the witnesses it wishes to invite to give oral evidence on the Bill. The Committee also agreed a digital engagement strategy to enhance its level of engagement with the public, and community groups, as part of its Stage 1 scrutiny. Finally, the
Committee noted the potential for a fact-finding exercise to support its scrutiny of Part 7 of the Bill on allotments.
Community Empowerment (Scotland) Bill: Stage 1

09:35

The Convener: Agenda item 3 is our first oral evidence session for stage 1 scrutiny of the Community Empowerment (Scotland) Bill. We have decided to start the process by having a round-table session with key stakeholders, to set the scene for the work.

As many of you may know, the committee has used its work programme over the past two years to examine key policy areas that are relevant to this very important piece of legislation. That has included examining public services reform, local elections, non-domestic rates, the community planning system, land use planning, public procurement, community regeneration policy and, most recently, flexibility and autonomy in local government.

We have also undertaken a wide programme of public and community engagement, in which we have visited all parts of Scotland. In the past three years, the committee has undertaken 10 visits and meetings outside Edinburgh, from Shetland to the Scottish Borders and from Ayrshire to Aberdeen.

I invite our witnesses to introduce themselves before we move to our discussion on the bill.

Eric Samuel (Big Lottery Fund): I am senior policy and learning manager with the Big Lottery Fund in Scotland.

Elma Murray (Society of Local Authority Chief Executives and Senior Managers): I am chief executive of North Ayrshire Council and I am representing the Society of Local Authority Chief Executives and Senior Managers.

Ian Cooke (Development Trusts Association Scotland): I am director of Development Trusts Association Scotland.

Councillor David O’Neill (Convention of Scottish Local Authorities): I am president of the Convention of Scottish Local Authorities.

Councillor Harry Mcguigan (Convention of Scottish Local Authorities): I am a North Lanarkshire councillor and COSLA spokesperson.

Professor Annette Hastings (University of Glasgow): I am professor of urban studies at the University of Glasgow.

Angus Hardie (Scottish Community Alliance): I am director of Scottish Community Alliance.

Pauline Douglas (Coalfields Regeneration Trust): I am head of operations in Scotland for the Coalfields Regeneration Trust.

Calum Irving (Voluntary Action Scotland): I am chief executive of Voluntary Action Scotland.

Felix Spittal (Scottish Council for Voluntary Organisations): I am policy officer at the Scottish Council for Voluntary Organisations.

Barry McCulloch (Federation of Small Businesses): I am senior policy adviser at the Federation of Small Businesses.

The Convener: Thank you; you are all very welcome.

I will start. The minister has said that legislation in itself will not be enough to deliver community empowerment. I have always been of the opinion that sometimes you cannot legislate for things and that sometimes a bit of gumption—a bit of common sense—is required.

We are keen to ensure that as many people as possible are engaged in processes. Professor Hastings, you have done a fair bit of work on disadvantaged communities and engagement. How can we ensure that the bill and the common sense that we hope is behind it will let disadvantaged communities have their say?

Professor Hastings: The first step is to recognise, through the bill, that there is a problem and to state explicitly that the bill should not have the unintended consequence of empowering those in society who are already advantaged and empowered. A symbolic statement in the bill would give an important steer by suggesting that that should not happen.

Our concern is that there are insufficient safeguards in what is proposed to ensure that additional support and positive discrimination are afforded to more disadvantaged groups.

There is a considerable body of research evidence, which is growing all the time, that more affluent social groups have the necessary skills and cultural and social capital to take advantage of opportunities that are put before them. There is a clear case for our taking deliberate strategic action to ensure that more disadvantaged groups can avail themselves of the opportunities that undoubtedly are present in the bill.

The Convener: So by a symbolic statement you mean a statement of intent rather than something that is symbolic.

Does anybody else have any comments on how we ensure that we engage folks from more disadvantaged communities?

Councillor O’Neill: The unprecedented turnout that we saw last Thursday was replicated in...
disadvantaged communities. The turnout was slightly lower in disadvantaged communities, but we still had a massive increase. We must take advantage of the fact that people engaged in that process. It would be a real shame if we let the engagement that we saw last week slip away.

**Calum Irving:** One of the reasons why we saw that big turnout and an increase in citizen activism was that people felt that they could influence the vote. Building on that is one of the key targets that should be written into the bill. There should be expectations in relation to not just outcomes but assessment of how people have been involved and whether the way in which the statutory sector has done that has led to greater involvement. We have said that the bill should not casually confute the third sector and the much more empowering, citizen-based processes. That would do a disservice to both communities and the third sector. Those need to be clarified and separated out in the bill, and capacity building should be focused on engagement and participation.

**Angus Hardie:** As the minister said, the bill itself will not be enough. In order to avoid the sharp-elbow syndrome, whereby the more able, higher capacity communities get most advantage from the bill, we will have to ensure that resources are allocated fairly soon to build capacity in communities.

The Government has invested a lot in capacity building in the past and, frankly, it has not worked. We have to look at how we can change our approach to building capacity in the most disadvantaged communities so that it makes an impact and changes the normal pattern of those communities being the last to benefit.

**Pauline Douglas:** The phrase that I used was that people don’t know what they don’t know. We have to help communities to understand that they can be involved and will be listened to, and point them in a direction and offer help and support. I am just reiterating what everybody has said. How can we help the more disadvantaged people in communities to become involved and take part?

**The Convener:** As David O'Neill has rightly said, over the past few weeks and months we have seen a rebirth of things such as town hall meetings and the establishment of grass-roots groups on both sides of the referendum debate. There might be some hope there. If we grasp that and continue with it, we might get somewhere.

**Stuart McMillan (West Scotland) (SNP):** My first point is for Councillor O’Neill. I am very much aware that in some of the more disadvantaged communities, turnout was a lot higher than in some of the more affluent or middle-class areas. Mr Hardie made some comments a moment ago. What would he or his organisation suggest to take the issues he mentioned forward?

**Angus Hardie:** This is a very complicated area. Our approach could do much more on peer support. In other words, communities that have already developed capacity could be harnessed much more effectively in supporting other communities. Traditionally, we come into communities from the top down and deliver capacity-building programmes, which generally miss their mark.

We should be looking for more peer support and mentoring, or at least we should begin to try that because it does not happen at the moment.

**Eric Samuel:** We attached to our submission to the committee details of the our place initiative, which I think the committee is aware of. We are into the second phase of that. In both phases, we put in support contractors. This time we are taking an asset-based development approach, so we are building on the assets. The support contractors are there to build on the assets that communities already have. In round one, although we thought that the process would take two years, it turned into a three-year process. In phase 2, we are leaving people in the communities for five years.

The first phase will be very much about working with communities rather than just leaving them, and in the second phase we will think about the vision that the communities have come up with and how we work towards it. It can be done, but it takes time and resources.

09:45

**Mark McDonald (Aberdeen Donside) (SNP):** Certainly in my constituency and in less deprived or regeneration communities a huge amount is going on. Sometimes when we talk about community capacity we mean the professional expertise that exists in the community. In more affluent areas, there are more likely to be solicitors and other professionals who can be called on, but such people are less likely to be available in more disadvantaged communities to support the organisations that exist there.

Is the issue how we get communities to build capacity through activism? In the areas that I represent, I detect that community activism is alive. Is it more to do with having a support base for existing community groups and organisations? If so, how do we get such a base into communities that do not have the people who would fill those roles?

**Professor Hastings:** I very much agree with suggestions about building capacity from the bottom up, but there is also a role for more top-
down solutions to the problem. Particularly in the years of austerity, when resources are tight, I am concerned that when community bodies come forward to request improvements to their service, outcomes can be improved for one community at the expense of another. The process that is developed for requesting participation should require public bodies to consider displacement effects on other communities as a result of improving the outcomes for a community.

Elma Murray: During the conversation I was reflecting on three or so examples, which might help the committee in its deliberations.

I agree with the comments about an asset-based approach. A lot of that is about building people’s confidence in their ability to step up, bring forward their ideas and solutions and articulate the case for getting support. As Professor Hastings said, if we are to get people in our communities to that position, we need to provide up-front support. I would not necessarily call that a top-down approach. It is about working with people and providing them with extra capacity. We have done that in a number of communities across Scotland, and it is very much an asset-based approach. That is an example that it might be helpful for the committee to consider.

We should take opportunities as they present themselves. The Commonwealth games in Scotland this year were a significant success and a number of communities got involved. For example, when the Queen’s baton relay went through their areas, communities organised local events and celebrations of local heroes, thinking about what the games meant for their area. That sense of community is hugely important in building empowerment and people’s confidence in what they can do for themselves.

A lot of work on parenting is going on across Scotland, which is not about bringing in people who have professional skills but about finding people who are prepared to come forward as local community champions, to work with people who might have a wee bit less confidence and help them to feel able to do things that a few months or a couple of years earlier they did not understand that they could achieve. Such an approach can completely change people’s aspirations and ambitions in their local community.

Felix Spittal: Over the past couple of years, we have had quite a few discussions with our members about capacity, and one of the comments that has stood out, which was made in one of the early sessions, is that communities need expertise on tap, not on top. Communities need a bit of technical expertise and organisational support at a specific time as well as different levels of support at different stages as they go through the process of empowering themselves.

There is a big argument to be made for building capacity directly into the organisations that communities have identified as those that should take forward their priorities and ambitions. The Scottish Government’s strengthening communities programme is piloting that approach well, but it needs to be widened and offered to many more communities to ensure that the organisations that they have chosen to take forward the priorities in their areas have capacity.

Angus Hardie: I absolutely support Felix Spittal’s comments. As for how we respond to communities that do not have the middle-class capacities and skill sets that other communities might have, I think that the distinction is that we should invest in local leadership and local activists and give them the confidence to bring in those skills on their own terms. That is significantly different from skills being delivered in a top-down or up-front fashion to a community. If they are brought in on the community’s terms, that is absolutely fine—indeed, that is what the communities need—but, as Felix Spittal has pointed out, that sort of thing should happen on communities’ own terms whenever they need it as they move along the pathway of empowerment.

Mark McDonald: Communities often find that the pathways for support—if you will—are complicated and that they have to overcome hurdles in accessing funding or developing business cases. Sometimes, that funding needs to be match funding, which is easier for some communities to achieve. Moreover, local authorities often put up barriers to support because they perceive that the asset that a community might wish to take over is a local authority one.

Because of a perceived conflict of interest, communities can find barriers being put up, some of which might be genuine but some of which might be artificial. Is there any means of simplifying and streamlining the landscape for communities—particularly those that do not know where to go—to ensure that they know exactly where they can get relevant support? Can we remove any barriers that prevent communities from accessing the support that is out there?

Councillor McGuigan: Perhaps it might help if I refer to an experience that I had a number of years ago and which I think that we can all learn from. I certainly did—I hope.

When major issues emerged in a housing estate in the area that I represented, I went about my business, talking to the police, community development officers, social work and all sorts of professionals who knew how to go about social
planning and social reconstruction. We looked at all the problems and held a major and well-attended public meeting in a local school. However, within five minutes of my standing up to introduce the meeting, I could see heads shaking; after 10 minutes or a quarter of an hour, I saw lots of heads going down and shaking. At that point, we invited people to discuss the matter, because of what was being expressed by the voice—if you like—that was coming from the audience.

We—or, at least, I—realised quite quickly that that had happened because, although we had consulted all the experts and some of the influential community groups that operated in the area, we had not consulted the real experts, who were the people who lived in the community and who were experiencing what life was really like there. There were people who had skills, understanding, knowledge and a desire to make a change in their community, but we had forgotten—I had forgotten—to include that important voice. That is what the empowerment bill should be about.

I was not surprised by the huge turnout for the referendum on Thursday, because I realise that some people wanted to make a fairly simple statement. There were people at the polling stations whom I had never seen before and who said that they were voting a particular way for a particular reason. They said, “I want things to change. I want to be involved. I want my voice to be heard.” They did not say that individually, but the collective statement that they made was, “We want our voice to be heard. We want people to help our voice to be heard and to understand where we are coming from.” We have the expertise to do that.

Somebody mentioned pathways. We have to be careful that we do not construct a set of pathways that look good to the experts but are not relevant to, appropriate to or consistent with what is being felt out there in our communities.

Ian Cooke: I will pick up some strands of the conversation. Community capacity building is a wide concept. It is critical that we are clear about whose capacity we are talking about building and for what purpose. That is the fundamental question, which often does not precede the discussion.

I link that back to what the bill is trying to achieve. DTA Scotland’s particular interest, which I understand to be part of the rationale for the bill, is in how we further community-led regeneration in Scotland. We are talking primarily about the idea of building community anchor organisations. We are talking about community capacity building that builds organisational capacity, which Felix Spittal touched on. We have examples of where that is happening.

There are great examples of disadvantaged communities that have strong community anchor organisations. Disadvantaged communities often have a plethora of small community organisations. The question is how we work with them and bring them together to create strategic community anchor organisations. That is the task at hand. We can use the peer support to which Angus Hardie referred.

To answer the original question, as well as capacity building, we have to look at the funding and resources that will help the activity that the bill promotes.

The Convener: The FSB has a huge role in helping businesses to become more empowered. Can we learn anything from the business community about empowerment?

Barry McCulloch: Yes. The FSB comes at the issue from a completely different perspective. Our general point is that we should not forget that small local businesses are a key part of their communities and that the skills and expertise that they have can help the wider efforts to regenerate communities.

Calum Irving: Third sector interfaces—whatever kind of third sector we mean—are trying to do the job of building the capacity of third sector organisations, connecting them to public policy and helping them to find a way into influencing local decision making, through local authorities, health and social care partnerships and so on. One of the challenges that the committee needs to consider is the variable accessibility of the system. It is possible to connect the disparate parts of the third sector, but we find that the influence that they can have on the system varies massively across the country.

The Convener: I will play devil’s advocate. We have heard the terms “community anchor organisations” and “third sector interfaces”. Over the years, there has been much different terminology. When I was the chair of a social inclusion partnership, I banned some of the gobbledygook phrases. Do the terminology and the kind of discussion that we are having here often put folk off becoming involved in their communities because sometimes they listen to us and think, “What the hell is that all about?”? I see people nodding.

Ian Cooke: Having used the term “community anchor organisation”, I accept that point. It is a convenient shorthand to describe the organisations that we are trying to create, without being too prescriptive about what they are.

In our experience, what helps local people to understand what the approach is about is visiting other communities that are doing things and speaking to them about the common issues and
problems and how they have been addressed—about what has and has not worked. To facilitate that cross-community learning does not cost a lot of money. We have a small grant fund for a development trust or an aspiring development trust to do that. Widening that out to include all sorts of community organisations would get round the problem.

10:00

Elma Murray: I agree with a lot of what Ian Cooke said and I accept the points that the convener made. It is easy for us to look at how we want to organise communities so that we can best engage with them. I think that that is part of the point that the convener is trying to make. However, that is probably not how communities would wish—

The Convener: Can I interrupt you? Do we maybe have a difficulty in that it might be others who want to organise communities rather than communities organising themselves in areas of work that they want to deal with, instead of being pushed into a box?

Elma Murray: For reasons of convenience, we probably try to organise communities so that we can marshal our resources. I am not saying that that is acceptable; I am saying just that I see that happening quite often.

There is without a doubt a requirement for us to marshal the resources that we can make available to assist, support and help communities. However, in my experience, a lot of that can be much better provided through a significant amount of building trust with communities. Even if we have in place the structures or organisation to help them or the pathways—we have used such words this morning—if communities trust us, they will ask questions and we will be able to help them to find their way through all that. A lot of the work is about how we engage with communities, build trust with them and are clear about what we are doing. We must also do a lot of regular and authentic consultation with them.

Councillor O’Neill: I have a number of points to make. If we are to deal with inequalities, particularly in our disadvantaged communities, we will have to disadvantage some other communities that are currently doing okay. I first became aware some years ago through the indices of multiple deprivation of the differences in life expectancy in North Ayrshire. At that time, the difference was 14 years between our most deprived and least deprived communities. In the intervening period, the community with the longest life expectancy has changed, but the community with the shortest life expectancy has remained the same, and instead of being 14 years, the difference is now 24 years. That is inequality going in the wrong direction, and we need to be willing to tackle that.

We also need to be willing to have a messy approach. We cannot have a one-size-fits-all approach to finding solutions in our communities. In many instances, different communities have the same problems, but in other instances, each community has unique problems. We therefore cannot have a one-size-fits-all approach. As Harry McGuigan said, the best folk to tell us what the solution is are probably the people who live in the community. We can help a wee bit and put some structure into finding solutions, but by and large it is the people in the communities who know what the solutions are.

The convener is absolutely right about language, because we use language that excludes people from the discussion. As part of the work of the commission on strengthening local democracy, we undertook a poll. Polls are very popular, as members know. One thing that the poll told us was that government is remote from communities. What the people polled meant by government was national and local government. That situation is partly down to the language that we use.

Cameron Buchanan (Lothian) (Con): Good morning. Following on from what the convener and Mr McGuigan said, I want to say that we should not use fancy words, because that disadvantages people. My question is: how would you prioritise Scotland’s poorest communities? That is the key, and I would like your suggestions on it. We should not use fancy words.

Professor Hastings: I will augment points that I have already made. The bill is trying to deliver two distinctive things. It is trying to strengthen what is already there on community engagement and to make community anchor organisations more substantial. Making it easier to transfer assets would, for example, be an indicator of that. The bill falls short on the agenda of strengthening what is already there by not committing to more substantial resources for capacity building in the communities whose voices are heard to an extent but which could do with more support to have them heard more effectively. That is one intention of the bill.

A separate intention is to open up new routes and possibilities for people who do not have their voices heard. I guess that that is Councillor McGuigan’s point—that there is a pent-up demand in disadvantaged areas for routes to enable voices to be heard. I am not sure that the bill delivers on that at all. It delivers on providing additional routes for some groups to have their voices heard, which could be at the expense of more disadvantaged groups.
Pauline Douglas: The Coalfields Regeneration Trust has been involved in the our place programme that Eric Samuel mentioned and in the Ayrshire 21 initiative. In addition, we have a programme of our own that is all about the asset-based approach, which we have found to be a fabulous way of working in communities.

The key area of our work is to be a facilitator. I do not live in all the communities concerned and nor do my staff, so it is a case of getting the people who live in those communities to take forward their ideas and do the work. We need to facilitate that and to ensure that they know where to go and know about all the different ways of making things happen in their community.

Alex Rowley (Cowdenbeath) (Lab): I will raise an additional point. Highland Council has raised the omission of community councils from the bill. We are talking about government being remote. The committee recently did a piece of work on local government across Europe. In many parts of Europe, local government is far closer to communities than the 32 authorities in Scotland are. One might argue that, regardless of whether community councils in their current form are successful—some are more successful than others—they might offer the structure for a fourth tier of government and, if real powers and budgets were devolved to community councils, that would generate interest across communities. I throw that in. If community councils cannot perform that role, what could? How else could we deal with remoteness?

I will pick up on consultation. People talk about the turnout last week, but many people have gone along to local authority consultation meetings, thought that they were a waste of time and been put off ever going back to such meetings again. The Scottish Community Development Centre raised the issue of the difference between engagement and empowerment. Engagement can happen in all sorts of ways. Sometimes it can be hollow, but other times it can be fruitful. However, the empowerment part is the difficult bit. Getting into those communities will be tough, but we should not shy away from that. I think that we can find ways of improving engagement.

I represent COSLA at the Council of Europe Congress of Local and Regional Authorities and have been appointed as a rapporteur to look at and learn from what is happening in Scotland, in the United Kingdom and across Europe with regard to further devolution of power and communitarianism. I will be reporting on the first stage of that work on 17 November. I hope that that will be fruitful and helpful. We can learn from what works in other places, and we should not be afraid of small areas having some power and control over the factors that affect their lives.

David O'Neill made a valid point about prioritisation. Of course, we always have to make probably interfaces with some of what Alex Rowley said.

Sometimes we assume that the well-intending organisations in our communities are reaching the communities that they speak for and are meeting their aspirations. Sadly, however, that is not always the case. I see the same faces at the meetings of three local organisations that I attend. They are good people, but if you were to ask people in some areas in my constituency who those people are, you would find that they are not known to the wider community at all.

That touches on what might be the hard business that we face. As Alex Rowley says, it is important to differentiate between engagement and empowerment. Engagement can happen in all sorts of ways. Sometimes it can be hollow, but other times it can be fruitful. However, the empowerment part is the difficult bit. Getting into the communities and connecting with people in those communities will be tough, but we should not shy away from that. I think that we can find ways of improving engagement.

My final comment goes back to the point about substantial resources that Annette Hastings made and the failure to provide them in poorer communities. All the evidence suggests that poverty and social deprivation are a major barrier to people being able to engage. Could we build more into the bill to address that?

I do not apologise for shifting resources to the areas of greatest need. Not doing that is the reason why inequality has continued to increase over the past years.

I am just throwing those points into the discussion.

The Convener: I will let Harry McGuigan speak next. Anyone may respond to the points that have just been made.

Councillor McGuigan: The point that I want to make probably interfaces with some of what Alex Rowley said.

The majority of people tell me that the issue needs to be dealt with. That seems to be common sense, but the tree surgeon says that the trees are perfectly healthy and council policy is that such trees are not cut down. For the life of me, I do not understand why that is the case. If we were truly empowering the people on that estate, we would enable them to deal with the issue. The danger is that the bill is full of rhetoric but has few teeth to empower anyone to do anything about the issues that bother them in their communities.

David O'Neill made a valid point about prioritisation. Of course, we always have to
 prioritise. However, we must remember that in every community there will be opportunities to enable that community to feel more satisfied because it is being listened to. We need to try to get to that point.

Angus Hardie: I support what Councillor O’Neill said about the nature of community empowerment and about communities in general being messy. We cannot take a one-size-fits-all approach to the notion of community empowerment. That is why, in our evidence, we suggested that we should try to frame the bill around some first principles concerning subsidiarity, local people being in control, assets and so on that we could use almost as a framework to examine the impact of the bill once it is on the statute book. If we did that, we would begin to see community empowerment in the round, rather than as some prescription that we can use to sort out the most disadvantaged communities.

The other point is about the remoteness of government, or the fact that that is how government is perceived by communities. You could argue that the bill is, in some ways, a compensatory measure for the absence of real localised government. The bill fits within that vacuum of local democracy, which is a risk that it is running. As was touched on by the report of the commission on strengthening local democracy, if we had real local democracy the bill might still be needed, but it might contain different measures. We need to see the bill in that context. It is landing in a sort of vacuum of local democracy.

10:15

Felix Spittal: The question of prioritising powers links up with the engagement route. One aspect that is missing from the bill concerns participatory budgeting and other participatory approaches such as citizen juries. Such approaches can potentially solve a lot of the problems by involving people in poor communities in meaningful consultation and participatory events. That would help to address the disadvantage that those communities experience and make engagement more meaningful. It would begin to get to the heart of the Christie commission’s recommendations on building public services around people and communities and giving them a real say in decisions about how public services are delivered and where the money is spent.

The commission on strengthening local democracy recommended a much greater increase in participation and the establishment of a participation unit in Scotland. The bill could assist that process by legislating for participatory approaches and for participatory budgeting in particular.

Stuart McMillan: I have a question for Mr McCulloch with regard to his earlier comments on the FSB. I accept that there are many small businesses in the communities that we are discussing. Do you see a greater role for FSB members, and for larger companies, to facilitate and help communities, rather than just being based in a community that the workforce does not necessarily come from?

Barry McCulloch: Business can play a greater role in local communities, but we cannot be prescriptive about that. The level of influence and involvement that businesses may choose is defined by scale, size, sector and geography, and it is difficult to say that a particular business will choose to get involved. However, I agree that businesses could, through their skills and expertise, contribute to the community approach that is outlined in the bill.

Anne McTaggart (Glasgow) (Lab): I will move on to the national performance framework and the national outcomes. I am intrigued by Councillor O’Neill’s earlier comment that there was an increase, rather than a decrease, in poverty after the work had been done. In what ways do the Scotland performs strategy and the national performance framework currently inform your work? We can go round the table so each of you can answer.

The Convener: Who wants to have a crack at that first? I realise that it is a pretty complex question.

Elma Murray: At the local authority and community planning partnership levels, the national performance framework and the outcomes from it feed directly into single outcome agreements, so there is something there. I accept that it is still quite removed from individual communities in the way that we have discussed this morning, but there is a link to community planning partnerships.

The links between what we do at community planning partnership level and our local communities need to improve, although they are starting to do so. Most community planning partnerships now have a clear and well-defined view of each of the neighbourhoods and localities in their area, and of the needs of those localities. We know where our most disadvantaged areas are, whether they are geographical areas or areas of need that might be linked not specifically in terms of geography but to the particular vulnerabilities of individuals in our communities. We understand that clearly, or more clearly than we used to.

Every area in Scotland is implementing a new integrated health and social care partnership, and we are doing a great deal of locality planning to
ensure, again, that the needs of specific communities—particularly the health needs—are properly reflected in the way in which we prioritise our financial and people resources to target individuals in communities.

I hope that that is helpful, convener.

Councillor O'Neill: In support of what Elma Murray says, I note that, over the years, we have had a focus on national targets. It is not something that any one political party has been guilty of—we have all done it. That has meant that we have tried a one-size-fits-all approach for communities, but communities are different. As we sit here today, local government and the health service are focused on targets that may not be appropriate for certain communities. We need to get away from the national approach to targeting and make the approach very specific to what communities actually need.

Anne McTaggart: Under the bill, can we do that through CPPs?

Councillor O'Neill: I do not believe that the bill goes far enough on that, but it is going in the right direction. Perhaps your committee would like to make a suggestion on that.

Anne McTaggart: Okay. Thank you.

Councillor McGuigan: Community planning partnerships have a long way to go in some areas. Some are better than others. I believe that they represent one of the brightest opportunities to really make a difference by using the strengths and competences and the institutions in their areas to the very best effect. However, the approach cannot be driven by local government alone. There has to be a realisation that the rest of the public sector also has an important role and important sets of responsibilities. People do not always realise that to the extent that they should. However, we have the right direction of travel.

The Convener: So we still require some cultural change in public bodies and community bodies in order to make the processes work a little better than they currently do. Will the bill help to address that?

Councillor McGuigan: I certainly hope so, although I am not sure that it will. I would like to see in the bill a realisation that local government has an important and crucial role to play in all of this, yet it does not have any statutory status in terms of what would be considered required status under the European Charter of Local Self-Government.

We are moving in the right direction, but local government has to learn that it has to ensure that the voices are being heard at every level. I hear people talk about the failure to listen to the third sector or the voluntary sector, and the mechanisms for representation at CPPs so that messages get through to them are not as good as they should be. That has to change.

Councillor O'Neill: Today, within the public sector and the third sector, no one has experienced anything other than a centralisation project. I emphasise again that no one political party is guilty, as this goes way beyond the lifetime of the Parliament and the involvement of any one party. All the parties have been guilty. There is a culture and a mindset that it is better to centralise things. We saw that most recently with the fire and police services. Three of the four major political parties had that in their manifestos, so this is not a criticism of any one party.

There is a culture that says that we get more efficiency if we centralise. We may get more financial efficiency, but we get poorer results within our communities by doing it that way. Let us get back down to communities and into the heart of communities. If that looks messy, so be it—if we get better results for our communities, that is a good thing.

I thank Harry McGuigan for mentioning the European Charter of Local Self-Government. If I had gone back to COSLA without that having been mentioned, I would have been kicked up and down Princes Street. We asked the minister to include the issue in the bill and his response at the time was that, subject to a yes vote, there would be a written constitution and local government would be protected within that. We now know the result of the referendum, so an opportunity exists to revisit the issue and put it in the bill.

I say that because, within living memory, a whole system of local government was effectively abolished at the whim of a Prime Minister because of Strathclyde region’s temerity in stopping the privatisation of Scottish Water. There is no suggestion in what I am saying that anyone is thinking of doing that now—indeed, there has not been a single hint of that—but it could happen if local government is not enshrined in law.

The Convener: I have three committee members on my list to speak next, but if anyone wishes to intervene, please do so.

John Wilson (Central Scotland) (Ind): On Ms Murray’s comments about health inequalities and the joint work with health boards and, indeed, Councillor McGuigan’s comments about institutions, what work is being done with communities to develop services? I picked up from Ms Murray’s comments that health boards, local authorities and other agencies are still taking a top-down approach to developing strategies, but our hope is that the bill will allow us to develop inclusive strategies that listen to and act on communities’ wishes and aspirations. If, even as
the bill is going through its parliamentary process, we are still talking about the top-down development of strategies for delivering services, we are stuck in a groove that we need to jump out of.

As someone who has a number of years’ experience of working in deprived communities, I believe that we need to engage fully with communities and ask them what they need instead of giving them what we think they deserve or should get. It is all about giving them what they want and interacting with them. I realise that that gives rise to issues of accountability with regard to the people we are engaging with, but those issues can be taken on board by local authorities, CPPs and other agencies as they develop strategies. Can anyone assure me that things are moving forward and that we are not stuck in the groove of continuing to make policy at the top and expecting people at grass-roots level simply to accept it?

Elma Murray: I apologise to Mr Wilson for perhaps leaving him with the wrong impression; I will give him a wee bit more of an explanation.

What we are doing with communities—not, I should stress, to communities—is not new; what is new is how we are doing it. The local authority will always have worked with a range of local stakeholders, local interest groups and particular representative individuals from certain groups to define and identify the provision of services in their areas. Depending on their needs, that will happen either with or for those communities. The health board will do the same.

What is new and different is that we are doing that work together. As has been pointed out, communities can be messy because everyone is coming from a different place and has different needs and different representatives, and we sometimes try to organise them a bit to make it easier for us to help them. What I am trying to say is that, through the integrated health and social care partnerships, we, too, have organised ourselves a bit to work with our communities. We have accepted that they would welcome a more structured approach to ensure that they do not need to deal separately with health boards and councils and can work jointly with us.

I cannot say what is happening across Scotland with regard to integrated health and social care partnerships, but the legislation prescribes the establishment of integration boards that take into account a range of interests from our local area. In North Ayrshire, the integrated health and social care partnership board is made up of 24 members. Eight members are from the council and the health board and the other 16 members are a range of representatives from across the community, including staff who provide services. Our staff often understand exactly what people need and want, because they work with them day in and day out.

I hope that that gives some clarification.

10:30

The Convener: I will stop you there—I am sorry if I am cutting in on John Wilson.

I hark back to a number of years ago, when a community that I represented on the council put mental health as its number 1 health priority. The main priority of the health board and the council was stopping smoking, but the reality was that many people would have found it difficult to stop smoking unless some of their mental health problems were gone.

I think that John Wilson was driving at this: how can communities get across their priority in the face of priorities of the local authority, the health board or well-meaning front-line staff, who sometimes cannot quite get to grips with what the difficulties are? What are the ins for communities?

Elma Murray: I hear those issues as well. Are we determining our priorities through a top-down or a bottom-up approach? I guess that that links back to some of the comments that were made about the performance management framework that we have in Scotland and the provision of more local flexibility to enable us to take into account what communities say their priorities are.

The communities that we work with tell us what they want and we listen to that. We work with them to make decisions about what we prioritise.

John Wilson: The end of that response—the point about working with communities to prioritise—was interesting. Surely through the bill we are trying to get communities’ priorities to be at the top of the agenda. The convener highlighted the issue of mental health vis-à-vis smoking. I understand that argument: if we tackled the mental health issue, people would have less need to smoke.

The bill has come around as a consequence of the failure of agencies—which may be the Scottish Government, the UK Government, health boards or others—to listen to and act on communities’ priorities. Many deprived communities might not have running a community facility as their priority; their priority might be to ensure that every house in the area is at a tolerable standard and that people’s next-door neighbours are behaving themselves and not engaging in antisocial behaviour.

How do we get that turnaround in the thinking of agencies, authorities and Governments to ensure that they address communities’ issues rather than the issues that they think that communities have?
How do we stop them working towards their priorities rather than communities’ priorities?

**Councillor McGuigan:** John Wilson makes a good point. There has been a frustration, certainly in the early days of CPPs. CPPs did not always have the solidarity of purpose that they should have had and that there needs to be. The bill will at least insist that members of CPPs—health boards and the Scottish Prison Service, which will have a role to play in relation to safe communities—come together and be required to undertake the same type of consultation, listening and learning that local authorities try to undertake.

There is a greater insistence that we will and can work together better, and that the agenda that we are setting and the outcomes that we are working towards—which the bill proposes will be set nationally—will be properly addressed by all, not just one or two, of the partners. There has to be a real insistence on that.

I think that the situation will improve as a consequence of the bill. If it does not improve, questions will need to be asked.

**The Convener:** I return to Elma Murray’s point—[Interruption.]

10:35

Meeting suspended.

10:59

On resuming—

**The Convener:** Welcome back. I apologise to our witnesses and to our thousands of viewers at home for the breakdown of the broadcasting system. I always say that there are thousands of viewers at home—around the world.

I was in the middle of asking Elma Murray a question about integrated health and social care boards. You were saying that since their establishment the way things have been done has changed. My question is this: why has it taken the establishment of the integrated health and social care boards to make that change rather than it having come from community planning partnerships since their inception?

**Elma Murray:** First, I would like to emphasise that in some places integration of health and social care took place prior to the new legislation; the change had happened in some areas of Scotland that had already decided that that was right for them. The new legislation has put a requirement on everyone to do that, and that is now being progressed, certainly in relation to adult services. However, in a lot of areas it is being done on a voluntary basis for both adults’ and children’s health services.

I could not say exactly why such integration has not happened before. The issue for me is that it is now starting to happen on a much more widespread basis, which is to be welcomed.

**The Convener:** Maybe the lesson for the committee, when it comes to dealing with the Community Empowerment (Scotland) Bill, is that rather than hope that certain things will happen voluntarily, we should put down a legislative marker at the very beginning. Is that a fair suggestion?

**Elma Murray:** Professor Hastings made a point at the start of the meeting about the bill’s intent and what we want to see as its outcome. It will be very important to make sure that that is clear.

**The Convener:** So, the statement of intent is probably important. Before the break, Annette Hastings wanted to come in. Do you still wish to do so?

**Professor Hastings:** I will do so quickly, if that is all right. I want to say a word in defence of strategic overviews. I am not suggesting that people who are advocates of community empowerment do not think that strategic action is important, but I think that it is worth having a reminder. Learning takes place at the level of the individual public body or community partnership, so that it is seen that it is not smoking, but mental health that is the issue, and that the issue is not the community centre, but housing. That learning can take place at the level of the institution so that mistakes are not replicated.

There is therefore the issue of how we aggregate the learning from the various community empowerment activities and institutionalise it within public bodies. Thinking about the need for strategic co-ordination and action around avoiding perverse outcomes as a result of participation is also needed.

In my written evidence I used the example of street sweeping and how the processes of participation can inadvertently lead to more services being provided in more affluent areas, and their having better outcomes. The local authority that we did our research with took action and said that that was not what it was trying to do, so it has prioritised poor areas in a deliberate strategy. It is important to think about the sum of the parts and about maintaining capacity at the centre—dare I say it?—to undo some wrongs that might be done.

**The Convener:** What is needed is a combination of legislation, culture change and good old gumption.
Professor Hastings: Recognition that sometimes decisions will be made that appear to be anti-participatory is also needed.

Councillor O'Neill: Perhaps the legislation needs to focus more on what the outcomes should be. It is absolutely right that central Government decides that it wants, for example, a reduction in differences in life expectancy or a reduction in the number of children who live in poverty. The Government setting out the outcomes for legislation is probably a good thing, but it should not necessarily get into the nitty-gritty. As I said earlier, one size does not fit all; the same model will not necessarily apply everywhere.

Ian Cooke: The challenge for the bill is how we empower communities from the top down, which is quite difficult. I think that there is agreement around the room that there is no one blueprint, that communities are very different in nature and that this sort of activity can be quite messy. In trying to do it from the top down, there is a real danger that we crush the sort of creativity and enterprise that have contributed to much community-led regeneration, which has been largely organic and has happened in communities all over Scotland.

It seems to me that the bill builds on experience. It is not just about middle-class or rural communities; I am talking about working-class and disadvantaged communities. The task at hand is to inspire, encourage, nurture and support communities to engage in the process. By introducing new duties and powers, the bill offers a framework that will make it a bit easier for communities to engage in activities, which we hope will encourage more communities to take part. However, it cannot be imposed on communities.

It is crucial that there is culture change. I hope that the bill will influence the culture, but the process really has to go two ways. That culture change needs to take place in the public sector because a lot of the activity involves some risk, and public organisations can—understandably—be quite risk averse. Equally, a culture change is required in the community sector.

In going around Scotland, what has struck me is that the challenged and disadvantaged communities are very dependent on grants and the public sector. We have to begin to change that. There are opportunities with the bill to do that through encouraging people to take a more enterprising approach through looking at ownership of assets, at community enterprises and so on.

Different sorts of interventions and approaches will be required to support implementation of the legislation.

The Convener: It is interesting that you used the word “cajole”, which can sometimes be understood as forcing something.

Voluntary Action Scotland has been vocal about the issue of forcing folk into voluntary positions. Is there a danger that there will be a backlash if we try to force people into participation?

Calum Irving: I am not sure that there would be a backlash per se, but there is the principle that supports what Ian Cooke said about not forcing participation. However, the point is that the legislation could be an opportunity to create the best possible environment for participation. I encourage the committee to look at how we can drive into the system much more of a duty to involve that can be measured. That is not imposing something from the top down; we are not saying exactly how that should happen, but we would be able to test whether there were processes and means by which involvement and participation were supported. Not for one second do I suggest that we want to do anything to take away from the creativity of grass-roots activity. We are trying to get to a system in which that creativity can flourish even more than it does now.

The Convener: Ian Cooke.

Ian Cooke: I do not know that I would use the word “cajole”. This is about encouraging and inspiring, not forcing. If I gave that impression, I would like to correct it.

The Convener: Thank you.

Stuart McMillan: I have a question for Ian Cooke, first. A moment ago, you mentioned culture change and dependency on grants and the public sector. Earlier I asked Mr McCulloch a question about FSB and other business organisations assisting in communities. Are you aware of DTAS organisations being in contact with local branches of the FSB and other business organisations to see what joint working could be done to help communities to help themselves?

Ian Cooke: We have a lot of examples of that kind of partnership. Part of the development trust approach is about encouraging partnerships while redefining what we mean by partnership. Partners aim to achieve whatever the community is trying to achieve.

A lot of the partners are private sector partners—often small and medium-sized businesses. Sometimes arrangements are informal, but they can range right up to joint ventures. I can give the committee lots of examples. If we are trying to encourage a more enterprising approach, there are many lessons and much experience to draw on in the private sector.
The Convener: The Big Lottery Fund has previously put funding into community capacity building. What more can you do to help disadvantaged communities to participate?

Eric Samuel: We can do various things; we are involved at many levels. As you know, I am interested in community asset transfer. It started in rural communities, but has developed over the 13 or 14 years in which we have been involved in it, and many more urban and deprived communities are now involved. It is not only the well-to-do communities that are doing that sort of stuff.

We try to help communities from the early stages all the way through. We provide £10,000 for a feasibility study that allows them to consult their communities and visit other projects. It is a two-stage process. If they get through stage 1, we can give them more development funding to do the technical stuff that they need to do. As I have said to the committee before, we have a social enterprise that is available to help communities with the financial side of things. That kicks in between stages 1 and 2, but we do not just leave it there. If the community gets an award, that social enterprise will work with it after it has got the award. That is one example of how we deal with the matter in one investment area. I am sorry that I am getting into jargon again.

I have talked to you this morning about the our place initiative, which is a different approach. We are trying lots of different things and trying to learn lessons from them. We are taking an asset-based approach and fitting that to a community of learning. We had the first meeting of the initiative about three weeks ago. We brought people together to learn from each other's experience, pass on the lessons and find out where the wider community—not just the Big Lottery Fund—can go with it.

Felix Spittal: In answer to Stuart McMillan's question about grant dependency, it is worth highlighting a recent report from Community Land Scotland that considered the role of community land trusts and compared their grant funding to their business income. It showed a lot of economic development through, for example, community energy, and it punctured the myth about community land trusts and development trusts being grant dependent. It is well worth looking at that piece of research.

Barry McCulloch: The business improvement district model is a good example of joint working between business organisations and the community sector. In Carluke, it is development-trust led but involves small business owners. There is a slight omission in the bill and the accompanying documents in that the BID model brings people together in a specific locality to deliver additional services for the business community, which also benefits the wider community.

Eric Samuel: The Big Lottery Fund is a grant giver, but we are not in the business of trying to create grant dependency. Often, our grants kick things off. We are looking a lot more at social investment now and asking projects to take a much more enterprising approach. Projects often cannot get off the ground unless they have some grant funding. We are not talking about grant dependency, but about injecting grant to let projects get started, then making them enterprising.

Stuart McMillan: Mr McCulloch gave the example of Carluke. Do you have any examples of that type of activity in places such as Easterhouse, Craigmillar or other schemes throughout the country?

Barry McCulloch: There are no such examples, to my knowledge. There is an urban regeneration company in Craigmillar but, to be completely honest, in many areas where there is deprivation, such activity is local-authority led because the capacity for it has not existed in the past.

As the bill demonstrates, community empowerment and involvement require a step change. From our perspective, the question is how small businesses play a part in that and contribute to the process.

Mark McDonald: We need to think about the outcomes that we were speaking about and how we would measure the success, or otherwise, of the bill. Empowering communities is one thing, but those communities then using that empowerment is something different, as is how they go about using it. Different communities will have different ideas about what they want to do. Sometimes, ambition will not tally with what can be achieved, which will be the case whatever legislation is put in place.

When the legislation has been passed and we come to look at how it operates in practice, how will we correctly assess what is happening, so that we do not say that it has been a runaway success when that does not match what communities are saying, and so that, if some communities have not been able to realise their ambitions for perfectly valid reasons, we do not fall into the trap of suggesting that the legislation is failing or is not doing what it is supposed to do?

The Convener: Does anyone want to comment on that?

Calum Irving: I will make a suggestion. I talked about a duty to involve; the guidance could talk about citizens juries, which the commission on strengthening local democracy in Scotland
considered. Why not drive into the community planning system an annual citizens jury process, to set the agenda for community planning and to test what has been delivered? It is possible to make enabling legislation and then, in guidance, to consider suggestions about how to test it.

The Convener: If no one else wants to comment, I thank the witnesses for their evidence, which has been extremely useful. I apologise for the breakdown in the broadcasting system.

I would be interested in your feedback—through the clerks—on whether the round-table approach to taking evidence suits you. Many of you have given formal evidence in different ways. A number of members of the committee like round-table sessions, but I am keen to hear your feedback, too. I am empowering you in that regard.

I suspend the meeting to allow for a changeover of witnesses.

11:16

Meeting suspended.

11:25

On resuming—

The Convener: I welcome our second panel. I understand that Alasdair McKinlay, who is head of the community planning and community empowerment unit, will introduce his colleagues and tell us what their remit is when it comes to the bill.

Alasdair McKinlay (Scottish Government): Thank you, convener. In fact, I will ask them to introduce themselves, if that is okay. There are quite a few of us, and we all have different responsibilities.

Norman MacLeod (Scottish Government): I am from the Scottish Government legal directorate.

Ian Turner (Scottish Government): I am the bill team leader.

Dr Amanda Fox (Scottish Government): I am from the food and drink team, and I have a responsibility for the part 4 elements of the bill on allotments.

Dave Thomson (Scottish Government): I am from the land reform and tenancy unit. I am responsible for the part 4 elements of the bill on the right to buy.

Rachel Rayner (Scottish Government): I am from the Scottish Government legal directorate. I am dealing with the provisions on allotments and the right to buy.

The Convener: Do you wish to make an opening statement, Alasdair?

Alasdair McKinlay: No, thanks.

The Convener: You heard the evidence from our previous panel. Annette Hastings said that the bill should make a statement of intent about empowering disadvantaged communities. Have you given any thought to that?

Alasdair McKinlay: We have been very conscious of that in the wide-ranging engagement that we have done on the bill. The first thing to say is that the bill provides opportunities for all communities in Scotland on asset transfer and participation requests. We certainly recognise that the capacity to benefit from those opportunities will not be evenly spread across the country, although I was particularly heartened by the recognition during the discussion with the first panel that, just because people are in disadvantaged communities, that does not mean that they cannot do many things for themselves.

The Scottish Government already invests in a range of things, some of which were mentioned earlier. The community ownership support service, which provides some of the technical expertise that was mentioned, is important. It is focused on asset ownership in disadvantaged areas. The strengthening communities programme, which was also mentioned, is involved in direct investment in community anchor organisations—to use the shorthand jargon—in disadvantaged areas. We are conscious of the issue that you raise, convener. As you said at the outset, the bill will not do everything. Those are policy responses to address that issue.

We are conscious that, as well as fulfilling the duties in the bill, the public authorities must fulfil their equalities duties, which are set out in other legislation.

The Convener: Thank you.

We heard a lot about culture change and common sense. Although it is sometimes possible to legislate for culture change, it is less easy to legislate for gumption. How do we ensure that, as we go through the process, we get the maximum amount of gumption out there? Beyond the bill, what do we need to do to ensure that logicality comes into play?

Alasdair McKinlay: Again, it came up in the discussions, which was helpful, that the bill tries, in the way that any legislation can, to found itself on some gumption. It tries to reflect some of the things that we know were already happening. Beyond that, we will have a very important job to do in promoting the bill in adopting the approach that we have taken in its development of being inclusive and in recognising that, as it is a piece of
legislation, some people will struggle with some of the language and the concepts in it. We have a big job to do in promoting—in the clearest possible language that we can, in the way that we did with the easy-read version of our policy memorandum—what the bill is about and what opportunity it provides, and in explaining to people the committee’s interest in the fact that a lot of what we are talking about is common sense.

The Convener: In framing the bill, how much attention has been paid to stakeholders? Let us consider the allotments scenario, Ms Fox. We have had a number of responses from folks who are involved in allotments and the various allotment societies. How much attention has been paid to what stakeholders have said?

11:30

Dr Fox: We have undertaken a substantial amount of consultation on the specific issue of allotments, first, through the consultation on the community empowerment and renewal bill back in June 2012. In April 2013, we had a consultation that looked solely at the potential duties and powers relating to allotments, and in November 2013, individual provisions in different areas were consulted on through the consultation on this bill. In addition to those written exercises, we have gone out to stakeholders and had a lot of meetings with the growing community and our colleagues in local authorities and COSLA.

The Convener: One of the bill’s more complicated aspects is the issue of common good. Given the forthright opinions that are out there about what should and should not be done with common good funds, what consultation has been carried out with stakeholders on that part of the bill?

Alasdair McKinlay: The issue was not addressed separately, but it formed part of the exploratory and secondary consultations. It is important to point out that, because the bill is about community empowerment, our focus has been on participation, transparency and helping to establish what common good is in local authority areas and how it is being used.

Anne McTaggart: Staying on the subject of allotments, I note that, according to the Scottish Allotments and Gardens Society, the bill “repeals the existing legislation and in doing so some of the protections for plot-holder and allotment sites contained in the provisions of the old legislation appear to have been lost.”

Dr Fox: The bill updates quite a lot of provisions, but a number of powers and duties have been removed. Would it be helpful if I briefly went over them?

The Convener: That would be useful.

Dr Fox: The duties and powers that have been omitted from the current draft of the bill include the duty to provide access to allotments, which was not restated in the bill because it is already provided for under the general law of landlord and tenant, and the use of local authority rooms for discussions about allotment-related business. The latter came about after consultation with local authorities, which indicated that buildings could be made available for that purpose but that there should be a requirement to pay, as is the case with other community groups.

The power of entry on to unoccupied land for the purpose of providing allotments and the power of compulsory purchase of land have also been removed. The first power, which was introduced to drive an increase in food production, reflected the post-war era in which it was drafted, and it is viewed as being unnecessary at present. Local authorities have indicated that they are unaware of any situation in which these powers have been used to provide allotments, and they consider that using them would be a last resort because of the financial costs involved. The Scottish Government views the powers as being draconian and rather difficult to justify because of the costs. Additionally, such actions would deprive a person of their right to the peaceful enjoyment of their property and could not be justified in the wider public interest on the basis of the provision of allotments.

The power for a local authority to charge a fair rent has also been removed because the Government believes that land values and the costs of managing allotment sites are likely to vary between sites depending on where they are in Scotland and that, consequently, decisions on rents are best made at local level. Indeed, the bill requires local authorities to make regulations that specifically relate to rent.

The power for a local authority to purchase plants, seeds and fertilisers to sell to tenants has also been removed. It was a rather outdated duty, which reflected the post-war era in which it was drafted. It came into force when there were not very many garden centres or agricultural suppliers around. It has been excluded from the bill, but that does not prevent local authorities from continuing that practice if they so wish and if there is a need for it.

The next power that has been removed is on the improvement and adaptation of land for allotments. It was considered unnecessary to restate that as it is part of a local authority’s general powers under subsequent legislation. On the rating of allotments, the power allows a local authority to deem itself the occupier of land despite it being let for allotments. It was considered unnecessary to restate that provision,
as subsequent legislation has excluded allotments from the ratings regime. The provisions relating to land leased for allotments have been updated and are reflected in the bill.

The provisions in the bill that relate specifically to private landowners, which ultimately deal with the termination of leases and compensation, have also been removed from the bill. The rationale behind that—bear with me while I refer to my notes—was that the Government believes that those arrangements are better dealt with under individual lease arrangements. It was difficult to see what justification there was for interfering with such private arrangements. In addition, general law on landlords and tenants would apply to those arrangements.

To support private landowners with lease negotiations, in 2013 the Government supported the production of a guide for landowners, which was developed in liaison with the community land advisory service. That guide, which applies to both private and public landowners, encourages landowners to make sites available for growing food. It provides comprehensive information and makes suggestions about background details to try to equip landowners to play their part in making more land available to local communities in Scotland for growing food. I am happy to provide the detail of that to the committee if you would find it helpful.

The Convener: That would be useful, Dr Fox. Anne, did you want to come back in?

Anne McTaggart: Yes, I have another small point—in fact, it is a huge point. Some sector bodies have highlighted a difference of opinion, shall we say, in relation to the financial memorandum attached to the bill.

Dr Fox: Given the different ways in which allotments are managed across Scotland, it was very difficult to get definite costs for the individual duties and powers in the bill and to see the implications for local authorities. We have made estimates, but obviously they are only estimates. It was very difficult to get tangible information relating to the different impacts. However, we have tried to identify the areas that might incur costs.

The Convener: John Wilson has a supplementary.

John Wilson: I am glad that you will provide us with the briefing that you have just referred to, Dr Fox. You will be aware that there was a major campaign in Glasgow in which residents of the tenemental properties in particular tried to take over vacant and derelict land to create small areas where residents could grow their own food. How would the changes that you have outlined in the post-war legislation and the proposals before us today change the actions of individuals or groups who want to take over vacant land to put it back into productive use for food in those areas?

Dr Fox: Under the wider provisions of the bill—on asset transfer and the community right to buy—there is scope for communities such as the ones in Glasgow to approach the relevant authority to take over that land. I will defer to my colleagues, who might want to add to that. The allotments provisions will not necessarily help those people per se, but the wider provisions of the bill will.

Alasdair McKinlay: Yes indeed. That is one of the examples that we heard a lot, Mr Wilson, which strongly influenced part 5, on asset transfer. On the question of engaging with stakeholders, some community growing colleagues took us from a place where we focused very much on community bodies owning assets to the broader provisions in the bill around lease management and indeed land use. Some people said that they did not necessarily want to own a piece of land that is in the public sector but that they would love to be able to grow on it. Part 5 provides a process for making the case for the benefits of community growing and places a duty on an authority to respond to that, if the vacant and derelict land is owned in the public sector. As Amanda Fox said, the extension of the community right to buy across the country will be another tool for communities to use in such circumstances.

Stuart McMillan: In the consultation, what activity took place to get as many consultees and responses as possible from schemes across Scotland? We heard in the previous session that there are challenges in getting information and feedback from various parts of the country. The bill is about community empowerment. What activity did you undertake to get information from people in schemes?

Alasdair McKinlay: We relied a lot on some of the people whom the committee heard from earlier. We worked through intermediaries such as the Development Trusts Association Scotland, the Scottish Community Alliance and the Scottish Community Development Centre. Community Land Scotland ran a conference to which a number of community activists were invited.

We would always like to do more. For example, we did not go out and visit a range of our most disadvantaged communities specifically to discuss the bill. That is partly a resource issue, because we are a small team. However, we tried extremely hard to ensure that a wide range of voices was heard. During the second stage of consultation, ministers and officials had 40 meetings. We also had the first stage of consultation. We did not write out our ideas, send them out, put them on the website and wait for people to reply; we were proactive and we went out to speak to people face to face.
Stuart McMillan: I assume that you spoke to the community councils across Scotland.

Alasdair McKinlay: Community councillors participated in a number of sessions that we were involved with. It might be better if we provided you with a fuller report on the consultation, rather than me trying to remember the 40 meetings. Would that be helpful?

Stuart McMillan: Yes.

The Convener: That would be extremely useful. In other work that we have done in the lead-up to the bill, we have heard from community councils that feel that some local authorities are not adhering to the existing legislation and guidance. It would be interesting to get an idea of the feedback that you guys had in your consultation.

Alasdair McKinlay: Absolutely. We also surveyed local authorities about community councils, so we have details of the number of community councils that have had contested elections and which are active. That came up in the earlier conversation, so we can provide that information, too, if you would like it.

The Convener: That would be extremely useful. If that could be provided, we would be grateful.

Mark McDonald: We discussed earlier how the bill’s success could be measured and the outcomes that will be sought. Alongside that sits expectation management. In your discussions and soundings with communities, do you get the feeling that people understand that, although the bill will have a significant impact on communities and their empowerment, expectation management is needed from communities and legislators about what can be achieved?

Alasdair McKinlay: I think so, but my experience from working on policy with communities for a number of years is that it does not take too long for communities to understand the issues with expectations. Community activists are some of the most reasonable and sensible people to speak to, as long as the conversation happens in a respectful, open and trusting way.

Through all our consultation, we have worked hard to explain to people that the bill is only one element of how we might empower communities. As the convener said, the minister has made that point repeatedly—Mr Mackay brings up culture and resources all the time.

It is important that we do that, while not seeking to underplay the role that the bill can play in empowering communities in culture change and so on. I expect that it will be a fairly straightforward thing to do, as I said.

11:45

Mark McDonald: The reason why I raised the matter is that there have also been discussions about how community capacity is developed. I made the point that there is a feeling out there that development of community capacity is required in some of our most deprived areas, but those are some of the areas where we see the most activism within communities. It is just a question of the support that community organisations are given and have available to them.

We cannot legislate for everything, but there will be a role for legislative guidance in relation to setting parameters and expectations for public bodies as to how they work with community organisations that want to take forward some of the elements of community empowerment. Do you envisage guidance that will spell out to local authorities, for example, what is expected of them? If a deprived community does not have ready access to the expertise that might be required to enable the drafting of a business case, for example, or the handling of a transfer of an asset, public bodies will be expected to provide that support. Will that be spelled out clearly in the guidance that follows the legislation?

Alasdair McKinlay: An important principle is that we will develop all the guidance in close partnership with the people you listened to earlier this morning—colleagues in COSLA and the community sector—because we want the guidance to reflect the best possible practice. We are already in a positive position with things such as the statutory instrument that now exists on community learning and development, which places obligations on local authorities to assess capacity in communities and to do things about that.

There are other things that we can discuss with people. A specific example is participation requests, which is a new aspect in the bill that has been warmly welcomed because it puts communities on the front foot and enables them to raise the issues that are on their agenda. In the guidance, we could talk about the quality of engagement and the requirement to use existing tools that promote good-quality engagement, for example.

The guidance is another opportunity to lift people’s game in relation to participation and empowerment.

Mark McDonald: Thank you.

Anne McTaggart: On lifting people’s game, many community groups in my area meet around the medium of sport. Have you spoken to and consulted people in sport?
Alasdair McKinlay: Again, I would need to refer to the detail on the kinds of people who came to the events that we ran. I have certainly come across people such as those at Beith Community Development Trust, who have a close interest in sport. I would need to look at the detail of who we have spoken to about that, but we certainly recognise that an interest in sport is often a positive thing in terms of empowerment.

Anne McTaggart: Sport should be a viable partner as it involves huge parts of our community, for very good reasons.

The Convener: If we could get that information, it would be useful and helpful to us. It may well be that the committee will write to you after today and ask for other pieces of information, too.

HIV Scotland and Inclusion Scotland highlight possible unintended negative impacts on those who are currently marginalised from engagement. Inclusion Scotland states:

“Community should not be defined by a narrow definition based on location and residence. Disabled people are often excluded from traditional communities, or have specific needs and interests that are best addressed by their own community.”

How do we ensure that communities of interest are best served by the bill? What does it do to ensure that they are included?

Alasdair McKinlay: Interestingly—this also relates to your earlier question about consultation—we have half a dozen little examples of things that we believe we changed quite significantly following the consultation, and one of them concerns improving the definition of “community body” in the elements around participation to do two things.

One is that, in the draft bill, we defined “community body” in different ways and people felt that it was confusing, so we simplified it so that the definition is the same in different parts of the bill. Secondly, the definition is now drafted in such a way that it could include communities of interest. We have had a discussion about top-down and bottom-up approaches and the challenges of empowering from above, which in a sense some aspects of legislation will always do. However, interestingly, the definition of “community body” leaves the community to define itself. A community body will have to be certain things, but how it defines itself is left to the community.

The Convener: Do members have any more questions?

John Wilson: Yes, convener. Sorry, but I want to make good use of the witnesses’ time while they are here.

One pertinent issue is the community asset transfer debate. In some areas, communities are being actively encouraged to take on buildings, particularly sports facilities. We had a discussion earlier about the long-term financial viability of such assets. What thought has been given to ensuring that, when communities take on assets, they get the required financial support? When any organisation, not just a community organisation, takes on an asset, it sometimes takes several years to build it up so that it is financially sustainable.

What support will be given to communities that take on sports facilities in the longer term? One local authority suggested that we can give a community an asset and the community can get the grants to do it up but, if the asset is not viable after two or three years, it will transfer back to the local authority at the value for which it was transferred, despite the fact that a couple of million pounds-worth of improvements might have been carried out. How do we ensure that communities are given the time and opportunity to develop an asset’s economic viability so that it can be sustained?

Alasdair McKinlay: If I may, I will first make a broader point, on which I am sure Ian Cooke would support me. When we developed the provision, there was anxiety that it would somehow signal that we want all communities to take on assets. We have to be very careful about that, because it just will not be the right way for some communities to develop. We have heard and fully understand that what might look like an asset on the face of it can be a liability. We have therefore tried to build that into the process in the bill, so it is all about a business case and ensuring from the outset, before an asset is transferred, that questions about sustainability and viability have been asked and that a really clear view is being taken.

On existing support, Eric Samuel mentioned the growing community assets fund. There is also the Scottish land fund in rural communities. On revenue funding, which is often raised with us as an issue, Ian Cooke raised an interesting point about community organisations being enterprising. That is a fundamental part of the approach. People might be able to access other funding streams such as the climate challenge fund, which is popular among many communities.

That business of actually looking at the hard sums is a critical part of the process.

John Wilson: To follow up on that, Eric Samuel said that funding had been extended from two to three years for some organisations. I declare a vested interest in the issue, because I am actively involved in my local community and we are going to take on a community asset. The long-term planning for that community asset and its financial viability is tied to proposed major housing
developments in the area. The difficulty is that, if those developments do not take place within the timescale in which the community asset is developed—if, say, three or five years pass before the housing developments finally come to fruition—the financial viability plans could fall apart. Can you envisage any fallback position so that, if a financial viability strategy is predicated on certain things happening at certain times but, due to other circumstances, those do not happen, the community can ask for an extension to the funding process to allow the asset to continue to operate until everything is in place to make it sustainable in the long term? We are not talking about sustainability in five years—we are talking about sustainability over 25, 30 or 50 years for some of these assets. Can we look at that?

The other issue is that the Big Lottery has indicated that it will give funding only if the premises are seen to be viable in the long term.

How do we ensure that we support communities when they take on assets so that they can be safeguarded and, if other factors do not come into play, they can turn to someone for help to ensure that a project comes to fruition and that they are on track with the investment strategy and the sustainability strategy?

The Convener: Although we cannot legislate for changing factors, I ask Alasdair McKinlay to attempt to answer that point.

Alasdair McKinlay: Mr Wilson’s point is incredibly helpful because it is a reminder of just how complex the matter is sometimes and that each case is different. This is a good point for me to say that I welcome the committee’s involvement and interest in the bill. It has been incredibly helpful to us that the committee has unearthed a whole range of such examples through its regeneration inquiry and so on.

We have to continue to listen and to ensure that, whether they are legislative issues or policy issues, the community ownership support service, for example—which can at least help with learning and advice—is picking up on those issues. I am sure that Ian Cooke will do that in relation to cost.

However, it is one of those things where we will just have to keep listening and ensuring that the issues are picked up. Fundamentally, this is not about owning an asset simply for its own sake, although that can have huge benefits in relation to a sense of ownership and a positive view for the future; rather, it is about achieving outcomes.

If the outcomes are going to be so fantastic for communities in Scotland, we must have a culture that looks to overcome those barriers in order to achieve the outcomes that people want.

The Convener: Grand. Cameron Buchanan is next.

Cameron Buchanan: Can alienable and inalienable common good land be used for allotments if it is purchased? Is that possible? It seems that we need clarification on what common good land is, and it seems very unclear to most of us what it could be used for.

Alasdair McKinlay: I am afraid that we will have to get back to you on that specific point because although there are six of us here, the common good policy specialist is not among us. I reiterate that the bill really only deals with involving local people. I should say that it includes community councils because I know that some community councillors felt that community councils were absent from the legislation. Community councils are specifically mentioned in relation to common good and in relation to participation requests, so there is a recognition of the important role that many community councils play. However, we will have to get back to you on that specific point.

Cameron Buchanan: Thank you.

The Convener: Finally, a lot of the submissions from local authorities and community planning bodies have been very positive—we often find that that is the case. How do we ensure that local authorities and community planning partnerships do not end up taking a narrow interpretation of the bill?

Alasdair McKinlay: The parts of the bill that I mentioned in relation to asset transfer and participation requests shift the landscape significantly because there is a duty for those bodies to respond to rights that community organisations have.

In my view, people have not quite seen the potential of participation requests yet. They will mean that groups of community bodies in our more disadvantaged areas that work with young people and have really good ideas about how to make the lives of those young people better will not have to wait until they are consulted by children’s services. They will put their case together, and the authority will have to respond. When I spoke to local government colleagues during the consultation, I heard that they feel that that will make them up their game. They can see it coming—they can see that communities will approach them—so they are thinking that they have to get their own processes in order.

Once we get into the detail of the community planning provisions, we can see that community bodies are now a more significant player. They will participate in community planning, not just be consulted on a plan.
Community planning partners are now required to properly resource community bodies—if the lawyer present will forgive me for saying that, as the legislation obviously does not say "properly". However, the fact that the law now recognises that there should be an obligation to resource the involvement of community bodies is another significant change.

The Convener: I told a fib. That was not the final question.

Part 3 of the bill says:

“In this Part, a ‘community-controlled body’ means a body (whether corporate or unincorporated) having a written constitution”.

Why does a body have to have a written constitution in order to participate?

Alasdair McKinlay: Ian Turner is better placed than me to deal with the detail of that.

Ian Turner: That comes from the consultation. People expressed a view about what “community” means. It was felt that, given that we were going into a legislative process, some sort of structure was required in that regard. It is not that a huge amount is required in order to get involved in the process; a written constitution is the minimum requirement. It is the same with regard to asset transfer requests.

The Convener: It would be interesting to see the responses to the consultation in that regard.

Ian Turner: Okay.

The Convener: I thank our witnesses for their evidence. We now move into private session.

12:01

Meeting continued in private until 12:26.
Present:

Cameron Buchanan  Mark McDonald
Anne McTaggart  Alex Rowley
Stewart Stevenson (Committee Substitute)  Kevin Stewart (Convener)
John Wilson (Deputy Convener)

Apologies were received from Stuart McMillan.

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

Danny Logue, Director of Operations, Skills Development Scotland;
Stephen Kerr, Interim Head of North CHP, NHS Lanarkshire;
Linda McDowall, Executive Director, Scottish Enterprise;
Superintendent Alick Irvine, Licensing and Violence Reduction Division, Police Scotland;
Jim McCafferty, Junior Vice President, Institute of Revenues and Rating Valuation;
Garry Clark, Head of Policy, Scottish Chamber of Commerce;
John Mundell, Chief Executive, Inverclyde Council.

Community Empowerment (Scotland) Bill (in private): The Committee considered the evidence received.

Community Empowerment (Scotland) Bill (in private): The Committee consider and agreed details for its proposed external meeting in Dumfries on Monday 27 October as part of its Stage 1 scrutiny of the Bill.
Scottish Parliament  
Local Government and Regeneration Committee  
Wednesday 1 October 2014

[The Convener opened the meeting at 10:00]

Community Empowerment (Scotland) Bill: Stage 1

The Convener (Kevin Stewart): Good morning and welcome to the 24th meeting in 2014 of the Local Government and Regeneration Committee. I ask everyone to switch off mobile phones and other electronic equipment as they affect the broadcasting system. Some committee members may consult tablets during the meeting; that is because we provide the relevant papers in a digital format.

We have apologies from Stuart McMillan; Stewart Stevenson is attending as a substitute member and I welcome him to the committee.

Agenda item 1 is our second oral evidence session on the Community Empowerment (Scotland) Bill. We have two panels giving evidence this morning. I welcome our first panel: Danny Logue, director of operations, Skills Development Scotland; Stephen Kerr, interim head of North Lanarkshire community health partnership, NHS Lanarkshire; Linda McDowall, executive director, Scottish Enterprise; and Superintendent Alick Irvine, licensing and violence reduction division, Police Scotland.

It appears that no one wants to make any opening remarks, so we will crack on with the first question. The written submission from Community Planning Aberdeen states:

“The Bill provides an opportunity to ensure genuine community engagement, consultation and active participation by citizens in identifying local needs and involvement in setting priority outcomes and how they should be addressed.”

Do you agree with that statement and what do you think of the proposals in the bill for community engagement?

Superintendent Alick Irvine (Police Scotland): From a policing perspective, the Police and Fire Reform (Scotland) Act 2012 articulates the principles that establish that, as an organisation, we need to engage with communities across Scotland in order to develop and drive services that meet community needs. We have already established a national consultation process to seek the views of more than 31,000 people in Scotland at local community level. The 2012 act and the proposals within the Community Empowerment (Scotland) Bill fit extremely well with regard to our intention to consult, engage and drive forward local service.

The Convener: In terms of police involvement in community planning partnerships, previously the police presence and involvement was greater in some areas than in others. Do you intend to ensure that there is uniformity in participation across the country?

Superintendent Irvine: Absolutely, convener. One of the things that we would rightly see across Scotland is the integration of policing services at community planning level. There is a long and positive history of community involvement and engagement in community planning, but I agree that there were different levels of that commitment and engagement across the country. That is at the forefront of our minds in considering how we engage appropriately with community planning partnerships and drive towards common outcomes through the single outcome agreement.

The Convener: Ms McDowall, what do you think of the Aberdeen community planning partnership’s statement?

Linda McDowall (Scottish Enterprise): I welcome that statement and the bill. Scottish Enterprise is committed to supporting community planning and we already sit on all 27 CPPs—our most senior people are allocated to each one of those partnerships within the Scottish Enterprise geographic region.

I welcome the focus on the evidence-based approach and tangible outcomes that can be agreed by partnerships working together to reach a common goal. That will be welcome at both a local and regional level. There are lots of examples of areas in which we have already engaged at that level. We can clearly see the opportunities when we all bring our own strengths to the table and can consider a single agreement with business community, local community, key partner and stakeholder involvement in order to deliver tangible outcomes. That is very welcome.

Danny Logue (Skills Development Scotland): I echo Linda McDowall’s comments: we welcome the bill. We also recognise the comments made by Community Planning Aberdeen.

As a national organisation, we have been actively engaged with all the community planning partnerships and the associated sub-groups. We want to ensure that our focus on service delivery of the outcomes mentioned is reflected in our local planning, that local needs are addressed and that we are flexible across all 32 local authorities. As has been mentioned, that involves engagement at community and stakeholder level across all areas.
The Convener: Your written submission says that SDS is extremely happy that

"the Bill recognises the valuable contribution we can make to community planning by being proposed as a statutory community planning partner".

Will you expand on that and say what difference that will make?

Danny Logue: When community planning partnerships were first established, SDS had just been formed as a result of the previous organisations that we came from joining together. Therefore, there was no reference or recognition to SDS’s creation. As I said, we have since worked with all 32 local authorities about how to input into community planning partnerships.

Formal recognition of SDS as a key stakeholder would give us a formal involvement and consistency across all 32 authorities. To date, we are on 24 of the CPP strategic boards and 32 of the local employability economic development sub-groups. The bill gives us more formal recognition as a strategic partner, and we can play a role in referring the outcomes from our local planning in the CPP arrangements.

Stephen Kerr (NHS Lanarkshire): Perhaps I can bring a local perspective as I am here on behalf of NHS Lanarkshire and the North Lanarkshire partnership. We welcome the opportunity to strengthen community planning and to make it an issue on which people have a clear focus.

All the partners are very keen to work in that way. At times, I suppose that other priorities get in the way but, if we are serious about our aims to improve health and tackle inequality, we need the full input from all partners and a much more rigorous look at the single outcome agreement and how that reflects priorities in the localities and sub-localities in our area.

Anne McTaggart (Glasgow) (Lab): Good morning, panel. CPPs have been around for a while and you have all been involved in them, particularly Ms MacDowall, who has involvement in 27 CPPs. Why do we need to make that participation statutory? What difference will that make?

Stephen Kerr: Perhaps in many situations where things are not necessarily done voluntarily, there is an expectation that people will participate. Across the country, you might see variability in participation and in the success of the community planning partnerships. Putting that participation on a more solid base will help to reduce the variability and improve outcomes across the country.

Anne McTaggart: How will participation change?

Stephen Kerr: We have a very strong community planning partnership. However, we do not have complete connectivity between the aims of all the organisations. Even though that is a high priority, the bill would make it an even higher priority, and that could be linked more clearly into those organisations’ objectives and the single outcome agreement made more reflective of the communities’ needs.

In some areas, the tendency is to have outcomes in the single outcome agreement that reflect existing requirements, targets, standards and so on and perhaps not so much the specific local priorities relating to inequalities and health.

Anne McTaggart: Will the new CPP structures that are set out in the bill make a difference to community involvement?

Stephen Kerr: There is an opportunity for that involvement to be strengthened.

The Convener: How will you do that?

Stephen Kerr: We are reviewing the partnership agreement in our area. We are reviewing our structures and how we link with local communities, and we are beginning to focus much more on finding sub-localities—smaller geographical areas and populations where we think the greatest need is. That focus is proving to be very helpful. If there was a statutory framework for community planning work, all the partners would be more likely to be engaged in a stronger way. It is hard to express it, but that is what I am trying to say.

The Convener: Superintendent Irvine is itching to come in.

Superintendent Irvine: I agree that the legislation needs to be strengthened to make it more effective. In my experience at a national level, effective partnership working and collaboration depend on the individual rather than the process. If the individual understands the beneficial outcomes for communities that working collaboratively can deliver, it works pretty effectively. It is less effective where there is an absence of legislation because of the demands that are placed on individuals by their own organisations.

Strengthening the legislation to reflect a more collaborative approach and to articulate the benefits of more effective partnership working would be useful. In doing that, you would strengthen the link with communities, and their engagement in consultation is critical to agreeing what local action should be pursued to achieve which outcomes. There are some good examples at the national level of consultation and engagement shaping some of the outcomes, but there is also an absence of such engagement in
other places. A consistent approach would be exceptionally beneficial.

**Linda McDowall:** Making such engagement statutory would also give people a collective responsibility for making things happen. I am a great believer that it is people, not structures, who make things happen. The bill provides an opportunity for people to rally around the local outcome plans and to see some tangible outcomes from them after agreeing—genuinely collectively—to deliver those outcomes. For me, that is where you will get the greatest involvement of both the business community and the local community.

**The Convener:** I will play the devil’s advocate. You said that it is people, not structures, who make things happen, yet we are having to produce legislation to improve the situation. Some folk have said previously that some of the bodies that are involved in community planning partnerships try to push all the responsibility on to the local authorities, saying that they are the lead bodies and that it is up to them to do this, that and the other. Is that fair? Why do we need the changes, and why have people thus far not managed to make community planning partnerships work to the degree that they should in many areas?

**Linda McDowall:** I can speak only of my own involvement in the community planning partnership in Perth and Kinross. That is not how it operates. We have agreed that each partner will map out the assets of the area, looking at it both locally and regionally in the wider Tayside area, and will then agree where it can help to deliver the outcomes that have been identified as providing the greatest opportunity. I genuinely believe that we sometimes need that structure to get people around the table and to appreciate what each partner brings to the table and how it can play a part in delivering those outcomes while involving the local community.

We have lots of examples of working with team North Ayrshire, and we have done some work in the south of Scotland and Renfrewshire, where partners have genuinely worked together to deliver specific, tangible outcomes at very little cost apart from people’s time. People can see the benefit of pooling the collective resource to make a difference locally that then makes a difference to the Scottish economy overall.

**The Convener:** You said that you have agreed to map assets. I was involved in a community planning partnership that agreed to map assets but failed to do that. Did you achieve that?

**Linda McDowall:** We are still in the process of doing that. We have a number of workshops planned in Perth and Kinross, and we are looking at the wider Tayside region.

**The Convener:** When did that process start?

**Linda McDowall:** It has been going on for about three or four months, and we are beginning to see real benefits to being aware of the asset base and how it builds into the collective picture of sustainable growth in Scotland.

10:15

**Danny Logue:** I want to pick up on the earlier question about the difference that the legislation will make. As I mentioned, we are on 24 of the 32 local authorities’ CPP strategic boards. However, when SDS was created we were on very few of those boards and we ended up creating a parallel structure called a service delivery agreement. That was our attempt to align ourselves with single outcome agreements, which have been mentioned. We are now members of a large majority of the boards. In fact our chair, John McLelland, has written to the boards on which we are not represented to ask for SDS representation. We have had early feedback on that.

Formalising arrangements helps to achieve consistency and it helps collaboration to have the key partners there. I am personally involved in quite a few CPPs and I have not experienced any notion of partners offloading any of the responsibilities on to local authorities. There has been collaboration on assets, resources, services and priorities. Our local plans are very much aligned to the single outcome agreements. That is about the accountability of partners. That is why we have been able to have local resources devolved to local partners in each of the CPP areas.

**Alex Rowley (Cowdenbeath) (Lab):** People listening to the evidence this morning might be forgiven for thinking that the bill is about forcing public bodies to work together because they are not doing so currently. What is your view on that? It sounds as though you are saying that we need to legislate to get public bodies in a given geographical area to work together.

**Superintendent Irvine:** It goes back to the point that was made about consistency across the country. There are strong examples of areas in which effective collaboration functions very well. I would question whether that is consistent across the country. In some places, for a variety of reasons, people do not see any inherent value in the process. The examples of good practice are patchy. We in the public sector need to capture that good practice and try to promote it more effectively across Scotland. The bill provides a framework to enable us to do that.

**Linda McDowall:** There are lots of examples of this working really well. I mentioned team North Ayrshire. We work with North Ayrshire Council to
look at the challenges that the area faces. We have been building business capacity there and looking to get further investment into the area. We have been looking at town centre improvements. North Ayrshire formed an economic regeneration strategy and a board for the area. Team North Ayrshire, which was established in December 2013, looked to create a one-stop shop for the community and the business community in considering the outcomes, assets and opportunities in Ayrshire. That is a great example of partnership working at community planning level achieving results.

I could give you other examples from the south of Scotland and Renfrewshire, where we looked at exporting opportunities. There was more signposting to partners’ services to make it clearer to local people, including local business people, where to get help and support. Collectively, we achieved results. We also had joint, collective responsibility to deliver and we knew that we had the expertise around the table to make things happen.

Danny Logue: The point about having consistency across all areas has been made. The picture varies, so there is a need for greater consistency. Linked to that is a need for genuine collaboration from all the key partners around the table. In many of the CPPs that I am involved in, the membership differs—different organisations and individuals are involved.

To add to what Linda McDowall said, it is about genuine engagement of partners whereby everyone feels that they are making an equal contribution to the discussion around the table and no one feels that they are there as an afterthought.

Two years ago, we introduced co-commissioning in establishing skills pipelines for young people across each of the 32 local authorities. We did co-commissioning in relation to the employability fund and some of the services that we deliver. There is genuine involvement of local stakeholders in defining what services we provide within the local community.

Stephen Kerr: I agree with the points that were made about variation and trying to bring all the partnerships up to a standard. As others have said, there are many examples of areas where it works well, and in my own area, Shotts, we have a healthy living centre to which all the partners contribute. It tackles lots of related issues, such as physical activity, with activities for young people and help for them to access services and leisure. Crime and youth disorder in the area have gone down, and the community transport that is in place helps people with employability. We have a lot of input into health promotion in the area, and there are lots of activities and social opportunities for older people. Early years work is going on and we have a food co-op where people can not only access food but learn cooking skills, and that helps to tackle issues such as obesity.

The Convener: I do not want to stop you, Mr Kerr, but you have given us a flavour of what there is.

Alex Rowley: Some of the criticism that has been levelled at community planning partnerships has focused on the fact that having a lot of projects does not necessarily show joined-up public services. That is not a view that I hold—the living well project in my area involved all the different partners and was often used—but I wonder what can make partnerships more transparent. Should every budget, whether in a local authority or health authority, clearly reference where that budget fits within the community plan and the strategic outcomes that are being suggested? How do you demonstrate and make transparent the fact that those public bodies are working to a common agenda, whatever that may be?

Stephen Kerr: You would expect the single outcome agreements to do that to a certain extent, in identifying the common priorities that we are working towards. I agree that there may be other ways of doing that, and linking the objectives of each organisation to the community plan and single outcome agreement would be a good way of doing that. The same could be true of finances and of identifying where contributions are being made.

Alex Rowley: Could you reach a stage at which each organisation has to bring its budget to the CPP board and demonstrate how that budget is delivering for the area?

Stephen Kerr: Our partnership is beginning to do work around joint resourcing. It would be perfectly reasonable to expect each organisation to report to the CPP on how it is spending its budget or how its activity contributes to community planning.

The Convener: This is an extremely important line of questioning. One of the things that the committee has previously been told about outcomes—and let us stick to health—is that although a community planning partnership may have agreed a health outcome, the national health service health improvement, efficiency and governance, access and treatment targets will differ from that outcome.

Mr Rowley is right to ask where the budgeting emphasis of the NHS will be in that regard. Will it be to achieve that HEAT target or to achieve the outcome in the single outcome agreement?

Stephen Kerr: The resources and attention of the organisation should be on achieving what is in
the single outcome agreement for improving health and reducing inequalities, but I agree that resources and activity tend to be targeted towards HEAT targets rather than towards an outcomes-based approach.

The Convener: I do not quite get what you are saying, because you are saying both things at the same time—that the priority should be achieving the single outcome agreement aim but also the HEAT target.

Stephen Kerr: I suppose that what I am trying to say is that from a purely NHS perspective, our resources are sometimes targeted specifically at achieving HEAT targets, when in fact the outcomes for individuals might be improved more by taking an outcomes-based approach linked to the single outcome agreement. For example, it is quite possible that in trying to achieve a target for delayed discharges, people might be discharged from hospital to a care home, whereas if they had had a period of further assessment they might have been able to return home. I am not saying that that happens universally or in any specific location, but it is something that we are working on in Lanarkshire. Some HEAT targets can drive resources and expertise towards a focused point in a person’s journey through the healthcare system.

Alex Rowley: That is an excellent example relating to delayed discharges.

I want to ask about the involvement of the community. I do not know whether you are aware of the model that was set up by Fife Constabulary under its chief executive Norma Graham. Every two months they would go to a community meeting and pick up three priorities of that community. Two months later, they would report back on the progress that they had made. They led the way on that; the local authority and others followed behind. Obviously, the Police Scotland change then came about, but that was a model for engaging the community and for taking on board community priorities. When we are talking about single outcome agreements and high-level outcomes, I wonder whether we are, in the same breath, talking about engaging the community and about the role of the community in all of this.

Superintendent Irvine: The example from Fife is an exceptionally good example of effective policing, in which good community engagement drives local priorities in order to make safer communities. Other examples use a similar model. As organisations working in the public sector, we have to deliver that type of model in order to deliver sustainable solutions.

At strategic level within community planning partnerships, there are examples of investment decisions being taken that build projects and programmes. My experience is that there is a bit of a disconnect between the type of local service in policing that we are saying is really effective—where we speak to people about what they want at community level—and programmes that are driven strategically. The challenge for us all is to join that up. Unless we deliver an on-the-ground service that is visible to people, and unless it is understood how we are driving our business through community engagement and shaping what we are trying to achieve, there will always be a disjoint between what community planning is seen as, through communities, and what we are actually doing in terms of working on the ground.

Alex Rowley: Does anyone else want to comment on that? We talk about community planning, and the word “community” suggests people, but is planning actually done at a much higher level? Are we kidding ourselves that this is somehow about the community setting the agenda?

Danny Logue: It is both—planning is done at the strategic level and at the community level. Skills Development Scotland has been heavily focused on local delivery. National organisations can be criticised for having a national focus that does not really reflect local priorities and we have very much been at pains to address that. That has been done through a number of areas. We have on-going customer evaluation and local stakeholder engagement with partners and individuals about the services that we provide. One good example of that is the local employability partnerships—the third sector is heavily involved in those and in what is delivered locally. The same goes for other community organisations. It goes back to my earlier example about the co-commissioning of services, particularly employability funds, and how we deliver them locally. It is really important that we do that.

Finally, it is important that we reflect two things. One is local performance, and how we deliver our services to local areas. Also, we have a very detailed communications strategy and plan that reflects SDS as a national organisation, but more important is that it also reflects what we are doing locally. That forms the basis of partnership agreements with local schools and parent-teacher councils and so on—the Department for Work and Pensions is also involved—to ensure that we get communications out to local partners and stakeholders.

10:30

Linda McDowall: Scottish Enterprise’s main engagement has been with the business community, and we will continue to have that focus. Until now, the business community has
found it quite difficult to engage with community planning partnerships, perhaps because they have been very high level. With the evidence-based local outcome plans, it will be easier for the business community to engage. We hope that we can work with communities to create jobs locally, to build business capacity and to compete for other opportunities. We can even escalate the approach up to regional level, where we can look at travel to work patterns and the various skills assessments that SDS delivers for industry. We have industry advisory boards and regional advisory boards, which also involve the business community. All that presents an opportunity to allow the business community much greater involvement and a bigger role in delivery of tangible outcomes.

The Convener: Superintendent Irvine talked about the strategic level of a community planning partnership. During that, I expected to hear how local ward policing plans form the basis of the outcomes that community planning partnerships are after. There is proactive community engagement in coming up with those plans, but you did not talk about them at all at CPP level.

Superintendent Irvine: That is an important part of how we deliver our business. The 353 local ward plans for Scotland are based on the consultation process that I spoke about. In turn, those plans feed into the local police plans for each authority area, so we should see a link between the local police plans and the single outcome agreements. That structure gives us a degree of confidence in how we are shaping the service, and it helps us to inform our partners at community planning level and to collaborate more effectively with them in the delivery of the local service.

The issue comes back to the different accountabilities and how the local police plans link into the Scottish Police Authority plan and the national police plan. Although I think that the plans are positive, I come back to the dilemma—there is a similar one in the health sector—about what takes precedence when we pursue outcomes at local level. All those plans add to the jigsaw and enrich the picture, but the question, which is not unusual, is how, in operational decision making, we balance the need to deal with national priorities against the need to deal with the local priorities that are driven through that process.

The Convener: Are we saying that the bill will have to make all the organisations that are represented here rethink governance structures, possibly, and certainly some of your priorities, as you see them, in order to fit into the priorities of communities and community planning partnerships? Is that a fair statement?

Superintendent Irvine: Yes, I think that that is fair.

The Convener: How will your organisations look at all of this after the bill is enacted?

Superintendent Irvine: One inherent challenge relates to funding challenges. The policing budget goes to the Scottish Police Authority, which makes investment decisions based on that. However, if we give more power to community planning partnerships to require investment from local partners, there will be a dilemma for local police commanders, who do not control the purse strings or how much money comes down to the local level. How can they support the community planning agenda locally, given the degree of control that they have? That will create a challenge within the organisation, although it is probably a positive challenge.

The Convener: Community planning partnerships were supposed to end some of the duplication that goes on. Mr Rowley talked about pooling budgets. Why do you think that you will need extra resource when, in some cases, you could actually save quite a bit of money?

Superintendent Irvine: I am sorry, convener, I did not mean that we need additional resourcing; I am saying that the investment model for the organisation is that the money goes to the SPA, which then determines how that money is used. The local police commander in Fife, for example, is the key component in our engagement at community planning level, but they do not control the amount that they get to invest or the resourcing level, which means, by and large, the people who are involved rather than the financial contribution. If the expectation from a community planning partnership is that we will invest money in it, that will create a difficulty, because the commander does not control the purse strings or how much he has to spend at local level.

The Convener: So, we will have to consider a situation in which the budgets are devolved to local commander level, which some folk would be quite in favour of.

Stephen Kerr: We have community planning structures that are replicated in localities. Each of those areas has a locality action plan that is reported back to the partnerships, so I suppose that there is a link with what is important in communities. However, there is a new player in town—the integrated health and social care partnerships. It will be important that the strategic needs analysis for all the communities and the strategic plans of the health and social care partnership, the community planning partnership, the NHS board and the local authority are reflective of one another’s priorities and actions.
The Convener: Will there have to be governance changes to make that work?

Stephen Kerr: Yes.

Linda McDowall: I do not see the priorities of Scottish Enterprise changing as a result of the bill. We are an opportunity-driven organisation. We are an economic development agency, and our main aim is to—

The Convener: I am sorry to interrupt, but I am not talking about priorities. I am talking about governance arrangements that will make it easier for you to focus on co-operating with CPPs and getting the outcomes that they want, rather than on meeting other targets elsewhere.

Linda McDowall: We are already involved in 27 CPPs, and I think that our involvement will continue at that level.

The Convener: Okay. Let me ask you a simple question about your involvement in those 27 CPPs. How much money has Scottish Enterprise put into individual partnerships?

Linda McDowall: I cannot answer that specific question, although I could find that out for you. Our resource is very flexible and is based on our being an opportunity-driven organisation. We need to understand better the assets and the opportunities in each community areas to ensure that, collectively, they contribute to Scotland’s economic growth. Much of our contribution around the CPP table is in staff resources. I would not like to think that it revolved around a percentage of a budget. As I said earlier, it is a question of people bringing expertise to the table to make things happen. I would be disappointed if our role was budget led.

The Convener: Let me change the question slightly. How much money has Scottish Enterprise given to CPPs to fulfil their priorities rather than Scottish Enterprise priorities?

Linda McDowall: I cannot answer that specific question, because I do not know the exact value of our input and I would not like to guess it.

The Convener: It would be interesting for us to get a flavour of that.

Linda McDowall: I would be happy to provide that information.

Danny Logue: We do not envisage any change in governance arrangements being necessary, because although we are a national organisation, our focus has been on delivering locally. Our structures are local, we have local teams and planning is done at CPP level. As I mentioned earlier, we are involved in a large number of CPPs at strategic level and our chair has written to those that we are not involved in with a view to getting membership of them.
Danny Logue: When I was talking about consistency, I had two things in mind. First, we are not involved in all CPPs, and there was a plea in there about that. Secondly, CPPs vary in terms of the make-up of the membership and the maturity of the partnership in terms of outcomes.

Another point that is worth making is the fact that, rather than various organisations having different plans, we are all keen that there is a common line of sight with regard to the single outcome agreement. With regard to priorities and resources, we can work with partners to reflect local priorities and local needs, whether we are dealing with Castle Douglas or Castlemilk. We would, along with our community planning partners, build into that a number of factors, in order for us to deploy resources in terms of skills or careers advice.

Stewart Stevenson: I do not want to let you off the hook on this. Should the CPP decide what should happen before the single outcome agreement, or is it in the business of implementing the single outcome agreement? Which comes first?

Danny Logue: The CPP comes first in terms of identifying priorities. There are national priorities, but the issue is how to deploy resources to address local needs and issues. It is necessary to gather and ring fence all the various resources of the partners that operate in an area. We also deploy resources in terms of needs and we must ensure that they are aligned with all the other partners in terms of what they are doing in that local outcomes focus.

Stewart Stevenson: We can pick up other people’s views later, but I will press you on that at the moment. Does the bill’s creation of a national framework carry with it the danger that the decision making will be elevated upwards rather than being driven from the bottom? If so, how do we manage that danger?

Danny Logue: I do not think that that danger exists. I think that the focus of the CPPs and the single outcome agreements over the past number of years has established that framework in the local areas. We just need to address some of the issues that we have all talked about in terms of consistency, the focus on local outcome agreements and how we deploy resources locally. There is the required degree of maturity and involvement on the part of the local partners within each of the CPP areas to enable the local issues to be addressed. I do not see a danger of decision making coming down from on high.

For example, Skills Development Scotland gets a letter of guidance from the Scottish Government that says, “We are asking SDS to deliver X.” We deliver that X through local frameworks. We know what the priorities are. In the development of our annual operating plan, we would discuss those priorities with local CPP partners to ensure that they fit in with local needs, local priorities and the other plans and resources in that area.

Linda McDowall: That is a similar approach to the one that we take. The variability question is based on where the assets and the opportunities lie. If we can use that evidence-based approach and local knowledge to see where the tangible outcomes lie, that can complement and enhance the single outcome agreement. That is a win-win situation.

Stewart Stevenson: In fairness, I say that you were the only member of the panel whose words I did not write down.

Linda McDowall: Thank you.

Superintendent Irvine: I think the positive way is to introduce, as soon as you start engaging with communities, a degree of variability because different communities want and expect different things from public services. I do not think that we should shy away from that.

10:45

Stewart Stevenson: Do you agree that the evidence of variability is likely to support the argument that there is good local engagement?

Superintendent Irvine: Absolutely. Variability is not a negative thing. As soon as we start engaging with and consulting communities, it drives services in a different way. The challenge is in how the consultation and engagement drive the single outcome agreement. I have seen good examples in which a lot of the outcomes that have been identified in single outcome agreements were driven by consultation. On the other hand, others have simply been driven by a set of strategic priorities that organisations have put on the table. We need to make sure that that is the right way round and that the outcomes are community driven.

John Wilson (Central Scotland) (Ind): I wonder why we are here and, if things are working so well with the CPPs, why we need legislation to improve things. Mr Logue’s case is the exception, because the SDS gets a seat at the table in the community planning partnerships. That is not what we hear when we take evidence from communities, whose experience clearly contradicts what we have heard today.

Mr Stevenson referred to the top-down approach and the bottom-up approach, and three members of the panel belong to national organisations that have national priorities for the work that they do. Mr Logue said that his organisation gets a letter from the Cabinet
Secretary for Finance, Employment and Sustainable Growth that tells him what priority X is.

Where is the conflict that we are picking up between communities and the direction taken by the CPPs on single outcome agreements and the other work that the CPPs are doing? We have picked up that such conflict apparently exists. The communities feel that they are being ignored in the decision-making process and that they have very little control or say over the priorities of the community planning partnerships.

**Stephen Kerr:** I find it difficult to answer that other than from a local perspective. We have local community planning arrangements in each of our six localities in North Lanarkshire, each of which engages in the community forum and has a local action plan that reflects the local priorities that have been agreed with the local population.

I am not saying for one minute that we are a perfect example—far from it. We appreciate that we could make many improvements to how we organise ourselves, how we engage with communities and how we focus on some of our more deprived areas. However, I guess that the answer to the question lies in each of the partnerships.

**The Convener:** Let us look at North Lanarkshire. One of the points that Mr Wilson is making came out most clearly during a committee visit to Cumbernauld where folks said that they did not feel that they were involved in the process. A lot of folks did not know about the local community planning arrangements, and they certainly did not know anything at all about the community planning partnership. Where does the failure lie?

I have to say that most of the folks we talked to were very heavily involved in their communities in one way or another, and many of them were involved in many organisations.

**Stephen Kerr:** As I said, the arrangements are by no means perfect. I will take that information and look at it very carefully. We engage with the community forums in that area as part of the community planning process specifically in relation to the NHS. If there is still the perception that there is not enough engagement, perhaps we need to improve on that.

**Danny Logue:** One of the issues is the level of the engagement that Stephen Kerr mentioned, particularly with community forums. I am involved in a number of CPPs in West Dunbartonshire and elsewhere, and community forums and representatives are indeed involved with CPPs. I have also seen some interesting developments around some of the substructures to which I alluded, particularly around employability and other issues. There are local community representatives on local employability partnerships, and they come to the CPP to discuss services that will be delivered locally.

The issue partly comes down to the need for the community engagement that Stephen Kerr spoke about, but we also need people to get involved through membership of community planning groups—not just strategic bodies, but the subgroups that address local outcomes and are there to ensure that there is a certain level of stakeholder engagement.

I mentioned third sector involvement. There are some really good examples of the third sector being heavily involved in addressing local priorities and taking a local focus.

**Linda McDowall:** We are an evidence-led organisation, and we are involved mainly with the business community. We have a strong track record of involving that community in various forums to look at the services that we provide. Given our remit, we do not engage with the local community as such, but we hope that our engagement with the business community will benefit the local community by way of job creation, business capacity building and so on.

I am not sure that there will be a huge volume of participation requests to Scottish Enterprise from the community as a result of the bill, but we would be happy to look at ways in which we could involve the local business community if its members felt that they could participate in our work.

**Superintendent Irvine:** Another North Lanarkshire example is Gowkthrapple, just outside Motherwell, where there is an exceptionally effective model in which joined-up public sector delivery is linked to community engagement. That example meets the aims of all the principles and intentions in the bill with regard to strengthening community links, public service and the community planning process.

Therein lies the challenge for us all in public sector delivery. There are some exceptional examples. If there is a difference between what that delivery looks like in Cumbernauld and in north Motherwell, why is that the case? It is the same local authority area, and the same policing partners are engaged in the same process. There is certainly a communication issue with regard to how we articulate our intentions. That highlights the need for us all to ensure that our community engagement process is fit for purpose and tailored to meet the needs of the local community.

**John Wilson:** My follow-up question is on whether the implied issues arising from the bill will mean that CPPs will look to national bodies to contribute funding for the delivery of services in their own areas. Given Superintendent Irvine’s
comments about the budgetary constraints on local commanders and Ms McDowall’s comment that a financial contribution from Scottish Enterprise would involve devoting staff time to working with CPPPs, would it generally be viewed as favourable if CPP partners asked national bodies to contribute more to local funding initiatives so that the CPPPs could direct the work of such organisations or work around them, or would there be concerns with regard to organisations’ existing tight budgets and CPPPs’ demands on those budgets as they currently stand?

Danny Logue: I mentioned the letter of guidance that we received from the Scottish Government. It lays out the priorities for SDS in any given year with regard to careers advice, modern apprenticeships, the employability fund, regional skills assessments, skills investment plans and so on. We take those asks and look at our resources, which cover staff, support for businesses that are running modern apprenticeship programmes and the employability fund.

Any flexible resources for local deployment are already committed to our current priorities. We have flexibility on the ground in terms of how we deliver careers services, the employability fund, regional skills assessments and skills investment plans. The budget and the resources are important, but the focus on local outcomes is even more important. The focus is on what we are trying to achieve with all those pooled resources, rather than discussions about pounds, shillings and pence. If everyone is signed up to a local single outcome agreement that specified and detailed the outcomes and how we should achieve them, SDS can say, “Here are the resources that we can deploy within that geographical area to deliver those local outcomes.”

Linda McDowall: If we in Scottish Enterprise are trying to achieve sustainable economic growth for Scotland, we need to understand where the assets and opportunities lie locally. I would be disappointed if we put a percentage of a budget against trying to deliver on a local outcome improvement plan. If we get the right people in and identify assets and opportunities, the challenge should be to make the most of our resources, regardless of where they lie, so that collectively we have the benefit of growth in the Scottish economy. However, there would be a danger if we said that, for example, 10 per cent of the budget had to be spent on that. What would happen if the opportunity demanded 50 per cent of the budget? We are an opportunity-driven organisation, and I like to think that our resources are fed in to where the greatest opportunities lie for the growth of the Scottish economy.

The Convener: There is a little supplementary question from Stewart Stevenson.

Stewart Stevenson: I am someone who does not believe that we should restrict ourselves to everything that we already know will succeed. What proportion of your budget are you knowingly putting aside for high risks in support of community needs?

Linda McDowall: I cannot answer that question. I would have to find out the exact figure, as I do not know it.

Stewart Stevenson: Let me phrase it more broadly. Do you think that there is a figure?

Linda McDowall: Sorry, but can you say that again?

Stewart Stevenson: You do not know the specific amount, but do you think that that is something that you are prepared to do?

Linda McDowall: We look at where the assets and opportunities lie and are driven by where the greatest opportunities are for the growth of the Scottish economy. Clearly, the public purse is best spent on achieving growth and creating jobs, and hopefully the benefits will return to local communities.

The Convener: You have opened up a can of worms.

Alex Rowley: If the key economic opportunities sit in the central belt and the key economic drivers of the Scottish economy are the city region areas of Glasgow and Edinburgh, is that not where Scottish Enterprise’s priorities will be?

Linda McDowall: No, definitely not. If we look at what is happening in the seven cities in Scotland, we can see that there are opportunities to drive the growth of the entire Scottish economy.

Earlier, I talked about what was happening in the south of Scotland. People have been looking at pulling together the work of the south of Scotland alliance and the south of Scotland economic forum and driving work through the M74 corridor. They are looking at various economic development projects around that area, such as opening up Stranraer as a sailing gateway.

It is about looking at where the assets lie in total for Scotland because everywhere is different. There are certainly assets around the cities, but there are also assets around various regions from which communities across Scotland can benefit.

The Convener: We will go back to Mr Wilson’s original question.

Superintendent Irvine: I do not feel qualified to answer the question, which I think should be put to the Scottish Police Authority. However, I note that
the policing principles in the Police and Fire Reform (Scotland) Act 2012 drive us towards delivering services at a local level. That should be absolutely integral to policing and so it is a challenge that the organisation should be up for.

Stephen Kerr: Whether or not a percentage or number is identified is perhaps immaterial. If community planning partnerships identify the correct needs in the correct communities, it is about the partners identifying and bringing whatever assets they can and harnessing them in the communities themselves.

Mark McDonald (Aberdeen Donside) (SNP): Most of the ground has been covered, but I am interested mainly in what CPPs can do to drive down inequalities in and between communities. I will ask three questions in one. Are CPPs doing enough to reduce inequalities, what more can be done, and how can that be done?

11:00

Stephen Kerr: The simple answer to the first part of your question is no, because we still see health inequalities in our communities. We have done a significant amount of work to improve some of the issues. We are beginning to see—certainly in our partnership—the need to do much more focused work that highlights specific areas and small populations where the inequalities are at their highest levels. We need to make our attempts in those areas much more focused to increase community engagement to bring about improvements and help people to engage in those activities.

Mark McDonald: Is work done to make sure that the outcomes that CPPs are drawing up are linked to the inequalities agenda and reducing inequalities? Where that is not happening, should every outcome be tested against what impact it will have on inequalities in communities?

Stephen Kerr: Yes, we do that, in the sense that we have locality health and wellbeing profiles that identify a range of indicators that show which areas are less equal than others, and we focus our attention on those. You should be able to drill down into our plans to see the focus on the inequalities agenda.

The Convener: I gave an example at last week’s meeting regarding the priorities of local people versus those of organisations. In that example, the priority for the people in one of the deprived areas that Mr McDonald represents was tackling mental health issues, but the priority for the health service was getting folk to stop smoking. The community said that it would be easier for people to stop smoking if some of their mental health problems were addressed. How much cognisance do you take of communities and the folk in them when coming up with local health priorities?

Stephen Kerr: We do so partly by looking at the evidence in the wellbeing profiles, which gives specific information, but work is definitely going on with communities to identify their priorities. We have an initiative in the Craigneuk area where all the agencies are very much working with the community—there is a lot of community engagement. We are hoping that that might be a model that we can use in other North Lanarkshire localities.

The Convener: Okay. I want us to return to Mr McDonald’s original question about tackling inequalities.

Danny Logue: I recognise that there is more that we can do to tackle inequalities. First, an inequalities impact assessment should be undertaken for all outcomes, rather than being seen in a number of areas as a separate bolt-on activity. It would help if that permeated right across all the outcome agreements.

Secondly, it is worth mentioning that, as organisations, we all have inequality action plans and priorities. However, we need to make sure that those are aligned into one objective for the community in the single outcome agreement process.

Thirdly, I return to my point about resource deployment. We need to ensure that equality issues are tackled when we prioritise resources for areas. I mentioned the employability fund as an example that relates to the careers advice that we deliver. We must ensure that resources are weighted according to local issues and challenges.

Linda McDowall: On whether enough is being done to address inequalities, there is always more that we could do. We have talked about health inequalities and Danny Logue has mentioned other issues. Testing every outcome would be one way to make sure that we address inequalities as much as we possibly can. I would welcome equality impact assessments being carried out on all local improvement plan outcomes.

Superintendent Irvine: How community planning partnerships tackle inequality is a critical and fundamental challenge. Inequality is a motivator for crime, criminality and antisocial behaviour. If we could tackle the underlying causes, that would make a significant difference to communities.

As for what more we can do, I would like there to be a shift away from the drive towards annual targets on the part of some organisations. Tackling inequality requires a longer-term, more sustained, approach. The question is how we measure what we do and hold ourselves to account against that
type of approach, rather than having short-term targets.

Mark McDonald: This follows on from the question that my colleague Stewart Stevenson posed about Castle Douglas versus Castlemilk. We hear a lot of complaints about postcode lotteries. The postcode lottery that concerns me the most involves people who are born in a certain postcode area, whose life chances are dramatically different from what they would be if they had been born in another postcode area.

Is there perhaps a need to move from considering postcode lotteries to considering postcode priorities? Is there the nerve in community planning partnerships to focus on where resources go and where the priorities are in the postcode areas where people have dramatically worse life chances than people in other areas have?

Superintendent Irvine: Considering the single outcome agreements in their current iteration, with their focus on place, I think that we are already starting to see that shift.

There is a more robust discussion around where the levels of demand are and how we invest in resourcing. There are already examples at a national level: discussions are taking place in community planning partnerships in Fraserburgh, Edinburgh and Renfrewshire about how people drive forward their business based on the level of demand.

There is inequality, so what can we collectively do to deal with it?

Linda McDowall: I agree about moving from a postcode lottery to postcode priorities. It goes back to understanding where the assets and opportunities lie. From our point of view, the issue is about being able to help with job creation, which can hopefully improve the quality of life of communities in the local areas concerned.

Danny Logue: I echo that. On postcode priorities, one big area that we examine is school leaver destinations. Approximately 54,000 school leavers every year go to a positive destination: university, college, a modern apprenticeship, training and so on. How do we address the inequalities and pursue the priority issues, employing our resources to meet needs locally? That does not just involve one single organisation. That is the benefit of having community planning partnerships and a single outcome agreement. How do we collectively pool that focus and the priorities to deal with the issues in the postcode areas that Mark McDonald mentioned?

Stephen Kerr: Absolutely: we need to focus on the areas of greatest need and the areas where the greatest inequalities are. That is starting to happen more now.

Mark McDonald: We all recognise that, and we all accept that there is a difference between those in the most need and those who are most capable of expressing their community’s desires and needs. The question was not whether we recognise those needs, but whether there is the collective will in community planning partnerships to make that step change as regards where resources go.

Stephen Kerr: There is that will locally, and that is why we are beginning to focus much more on the communities where people have the greatest needs and there are the greatest inequalities—where people are perhaps the least vocal about their needs at times.

The Convener: Does everybody else agree that there is that collective will? I see nodding heads.

Cameron Buchanan (Lothian) (Con): Somebody said earlier that people, not structures, make things happen. I have been very conscious of the question whether the community planning partnership is perceived as an extension of the local authority. It needs not to be perceived in that way. That point has partly been answered by my colleague Mr Rowley, but I ask the witnesses to comment on whether the CPP is perceived, a bit, as an extension of the local authority, and whether it is about people, rather than structures.

Danny Logue: I referred to that point in relation to our involvement. In the community planning partnerships that we have been involved with, there has been genuine engagement by the local authority and other partners to ensure that each organisation plays its contributing role in the local area concerned. That is not about being given outcomes from the CPP, but about helping to shape the outcomes in each community planning partnership area. There is a high degree of involvement by other partners and other organisations within the CPP infrastructure.

Superintendent Irvine: There needs to be leadership in the community planning partnership. The Local Government Act 1966 and the whole structure drives the local authority towards being that leader. Without leadership, there is no governance, and without governance, there is no activity. Leadership is a critical part of what we need to strengthen at local level.

Linda McDowall: If all the partners are explicit about what they bring to the table, it will be people who will make things happen, as they will agree to have collective responsibility for delivering the local outcome improvement plans and the tangible outcomes that will be of the greatest benefit.
Stephen Kerr: Aside from the local community planning arrangements, we work very hard to ensure that our front-line staff are very much aware of community planning. For example, when a district nurse puts a dressing on someone’s leg, they will talk to them about employability; they will do a financial assessment; they will identify whether the household is in fuel poverty; or they will refer people for community safety checks by the fire service. The list goes on. We are trying to embed that approach among all staff groups in the organisation.

Cameron Buchanan: The issue is the perception, not the reality. I think that that is what has been said. Do you agree that leadership is key?

The Convener: There is a lot of nodding of heads.

Do the witnesses think that the bill includes all the right partners in CPPs? Should any additional bodies be included round the table? Are there any bodies that should be removed from the bill?

Superintendent Irvine: What is included in the bill is entirely relevant. There should also be a degree of flexibility, which the bill includes, to allow local authority partners to identify the relevant people to sit round the table.

Linda McDowall: I agree that the relevant partners are there. However, I would like to see a stronger emphasis on involving the business community.

Danny Logue: I mentioned the involvement of the third sector, and that point has been addressed. Another issue is the involvement of the DWP, given the resources that it brings to the table in relation to its priorities. It is very much involved in partnership with other bodies, including ourselves. That is welcome.

Cameron Buchanan: What exactly do you mean by more involvement of the business community, Ms McDowall? In what respect is that missing?

Linda McDowall: Although the local community is involved in community planning partnerships, because of the high-level nature of the partnerships, members of the business community generally find it difficult to find a way in which they personally can engage. If the bill made much more explicit a mechanism that they could use, many more people in the local business community would want to participate in discussions, including on how they could help implement the outcomes from plans.

Stephen Kerr: I do not think that there is any need to specify any other people in the bill, but we would generally welcome any local partners who are relevant to the agenda that we are trying to address.

The Convener: Thank you all very much for your evidence.

11:12

Meeting suspended.

11:25

On resuming—

The Convener: I welcome our second panel of witnesses, who are Jim McCafferty, junior vice-president of the Institute of Revenues, Rating and Valuation; Garry Clark, head of policy at Scottish Chambers of Commerce; and John Mundell, chief executive of Inverclyde Council.

Would anyone like to make an opening statement?

John Mundell (Inverclyde Council): Good morning. I thank the committee for inviting me here to give evidence. I fully support the principles of the bill. It is trying to achieve a lot for local people and the whole thing is about our services being community driven and designed to meet users’ needs. However, the bill will bring certain challenges, especially in this time of austerity.

Not all communities have the capability to take advantage of the bill. That is particularly true for marginalised and disadvantaged communities and could lead to an increase in inequality if the partners do not succeed in delivering the aspirations of the bill. Resources are required to ensure the bill’s effectiveness, and funding is key to building increased capacity in communities, especially the disadvantaged ones. There are also resource implications for councils and local partners in terms of officers responding to participation requests, as well as providing money to set up allotments and support other aspects of the bill.

Of particular concern is the ability of community groups to take full financial responsibility for the assets passed to them and the sustainability of the project. When costs arise for repairs and maintenance for buildings or where key participants no longer want to contribute to the project, local authorities will be expected to provide financial and professional support throughout. That is quite a challenge given that we are reducing resources over the next two or three years. Nonetheless, I support the aspirations of the bill.

Garry Clark (Scottish Chambers of Commerce): I thank the committee for the opportunity to comment on the bill. Our primary
interest in the bill regards the effects on non-domestic rating, but we are also very interested in those aspects of the bill that potentially allow the business community to take a more active role in local democracy.

Jim McCafferty (Institute of Revenues, Rating and Valuation): I thank the committee for inviting the IRRV. As you would expect, my interest is in part 8 of the bill. It would be interesting to compare and contrast the views among us.

The Convener: This session is mainly about considering part 8, although I am aware that members may have questions on part 2, particularly for Mr Mundell. I will not stop members asking those questions.

What potential advantages could result from the proposed power in part 8?

Garry Clark: We have looked at the response of the Scottish Government to last year’s consultation on the future of non-domestic rating in Scotland and one of the key aspects to come out of that was the power of local authorities to implement local reliefs and exemptions, potentially to assist businesses in their area and to incentivise business at a local level. That is to be welcomed. It must be considered in conjunction with the business rates incentivisation scheme, which has had a bit of a bumpy ride since its introduction a couple of years ago. If local authorities are going to take full advantage of the proposed powers and pass on potential benefits to local businesses as a result, they will need to be sure that there is an incentive for them to do that—they will be looking for potential financial incentives in particular.

I think that many local authorities will look to apply reliefs and exemptions to encourage more businesses to set up in their areas, which could increase authorities’ resources. However, that would happen only if the business rates incentivisation scheme operates effectively. Progress has been made this year, but the scheme has had a bumpy start.

However, there are drawbacks, which I am sure we will come to later.

John Mundell: The proposal to increase local government’s fiscal power is a good thing. However, mechanisms are in place to support businesses, and I wonder whether the proposal will add an advantage. I say that because there are other opportunities to incentivise businesses in our area, through business grants and so on. At the moment, the revenue goes back to central Government, so I am not sure whether the proposal would be a major advantage to local government. However, anything that helps businesses to start up in the area is a good thing.

Another point that is in the back of my mind is that, if all councils started giving free incentives or alleviating business rates to attract businesses to their areas, that would increase competition. That could be good, but there is a risk of a downward spiral.

The Convener: In many of our poorer areas across the country, there are empty business premises, some of which have been empty for a long time. The fact that premises are empty or that there are no local shops often stops folk moving to and thriving in such areas. Does the power offer a particular advantage to disadvantaged communities?

John Mundell: Yes. I support any incentive to help people in disadvantaged communities to develop skills and build small or medium-sized enterprises. We need to do much more for small and medium-sized enterprises and to encourage people from disadvantaged backgrounds to set up in business. Anything that will help them to do that is good, but I am not sure that the measure is the only way to do that, especially as councils already have powers to help people through grants or whatever. I am not sure of the proposal’s specific advantages; I do not want to say no to it, because it will increase flexibility, but I am not sure that it is the only way to do what we are trying to achieve.

Garry Clark: The proposal will be a useful tool in the box but, as others have said, other methods can be used to incentivise business conduct in an area or a sector. The power will allow a local authority to fine tune the non-domestic rating system in its area, perhaps to target an area or a type of business that it wants to encourage. It could target streets or communities in an area. That is a definite advantage of the measure, but it must be seen in the context of the wider non-domestic rating environment and other incentives that are available to businesses for different reasons, which have been mentioned.

Jim McCafferty: On the other incentives and reliefs, I wonder about the relief that is given for partially empty properties in a reduction of rateable...
value via section 24A of the Local Government (Scotland) Act 1966. In some ways, that will be in
direct competition to the possibility of relief of the
type that the convener suggests. Local
government might be drawn towards such reliefs
and away from the section 24A relief, because the
latter might impact on business rate incentives.
The two things might be in conflict. However, we
welcome the idea of having a relief that can be
targeted to specific areas and gives councils much
more flexibility for individual, one-off events,
provided that they do not tie themselves up too
tightly in setting their schemes.

Stewart Stevenson: Perhaps Mr Mundell might
care to address my question first and then Mr
Clark. How many businesses in Inverclyde did not
proceed with business developments because of
business rates in the past five years?

John Mundell: I could not give you that detail
just now.

Stewart Stevenson: That suggests that it is not
such a big problem that it has assumed any
prominence in your in-tray. Is that a fair comment?

John Mundell: It has not assumed any
prominence in my personal in-tray, but one of my
colleagues deals with such matters all the time.
Generally, the amount of business development in
our area is not good enough and it probably never
will be. We need to ensure that we do much more,
and any tool that we can add to the toolbox will
help.

Stewart Stevenson: I am trying to test whether
the tool that we are discussing addresses a
problem that you experience. Although I accept
and understand that the coalface experience does
not lie on the chief executive’s desk, I take from
the fact that the matter is not in the list of priorities
in which you interest yourself that it does not seem
to be a particularly big problem for Inverclyde
Council. I am asking only about Inverclyde
Council.

John Mundell: You are asking about the
specifics. There is a range of issues that come to
my desk and in which I am particularly interested.
It comes down to employment, especially
employment for disadvantaged communities.
Anything that we can do through our community
planning partnership we are doing. We are having
a degree of success in that respect but, as I said,
it is nowhere near enough.

I have already mentioned that I am not sure
whether the power in the bill is necessarily the
silver bullet that we need. Other mechanisms that
we use with partners through our community
planning partnership, such as grants, are helping.
In the backdrop, we must always bear in mind the
state aid rules, depending on the scale of the
businesses that we are trying to attract to the area,
and the level of grant that we can give businesses.

At the moment, the specifics of business
incentives through business rates are not on my
desk all the time, but they are in the mix of
ingredients that we need to resolve to help
businesses to come to our area.

Stewart Stevenson: Let me reposition the
question for Scottish Chambers of Commerce. If
we were to ask businesses whether they would
benefit from a reduction in business rates, we
would get a 100 per cent positive response, so let
us accept that and not go there. I do not expect
the committee to hear any specific business
names—for commercial confidentiality reasons,
obviously—but is Scottish Chambers of
Commerce aware of any specific developments
that have been kiboshed by the current level of
business rates whether in general or in specific
areas?

Garry Clark: It is difficult to put any decision not
to proceed with a project at the foot of any one
particular cost pressure but the fact is that cost
pressures continually affect businesses strongly in
the current environment. Cash flow is also a major
issue for businesses.

In that context, business rates are usually the
number 2 or 3 cost for many businesses. For
businesses that benefit from the small business
bonus scheme, they are not an issue at the
moment, but many businesses out there face cost
pressures and cash flow issues, and their number
2 or 3 cost—after staffing and sometimes rental—
is business rates. Therefore, any measure that
tackles that number 2 or 3 cost to a business will
free up resources for that business to invest.

Stewart Stevenson: Let me test what you are
saying. I got the sense that you were leading the
committee to the idea of using the mechanism to
support businesses that already exist. Instinctively,
I feel uncomfortable about that, although I might
be persuadable. It seems to me that, were this
support to have a value, it would be much more
related to making something new happen and to
enabling the cost benefit analysis to cross the
boundary and create a sustainable business. Are
you hearing of specific examples where that ability
to nudge across the boundary would mean that
more businesses would start up? I am not
proposing this; I am merely pursuing a line of
questioning so that we can get a case on the

Garry Clark: There are two aspects. It is
important both to support the creation of new
businesses and to sustain existing businesses. I
am not sure that we should prioritise one over the
other—both need to be a high priority. Existing
businesses have the potential to grow and employ
Stewart Stevenson: You appear to be suggesting that there is an argument for existing businesses getting this support when there is an intention to create new employment. I take it that you are not making the case for supporting continuity of employment.

Garry Clark: Continuity of employment, the creation of new employment and investment in extending premises to open up new areas of operation for a business all require investment by that business and they all, therefore, impact on the costs to the business. Anything that would reduce those costs could incentivise any of those activities.

Stewart Stevenson: But they are the costs of making changes.

Garry Clark: Whether those costs are for new services, new products, new staff or securing existing employment, they all require investment by the business. Business rates are one of the greatest cost pressures on many businesses, so if we attack that cost, we can assist businesses in doing any of those other things.

Stewart Stevenson: Does the Institute of Revenues, Rating and Valuation have anything to say on that?

Jim McCafferty: I have just one thing to add. The situation is the same as for any rates relief. Given the high number of rented commercial properties, it must be ensured that the relief goes to the businesses that it is intended to reach instead of seeping into the landlords’ side of things. There is plenty of evidence—particularly from the 1980s—of how the enterprise zones in England did not bring as much to the table to promote businesses as they did to help landlords to let their properties. That is no bad thing in itself, but you should consider what the aim of any rates relief is.

Stewart Stevenson: If the measure is adopted by councils, is it more likely to help businesses than to help landlords, who are rarely anybody’s favourite people?

Jim McCafferty: With any business rates relief, there is a true danger that some of it will—if not initially, then at rent review times—end up with the landlords rather than the businesses. That is an inherent danger with the proposed relief as well.

Stewart Stevenson: I do not know whether this would be legally competent, but could the bill prohibit the relief being a consideration in rent reviews? Am I making that up and stretching things too far?

Jim McCafferty: That would take us into rent legislation and I do not feel that I am competent to cover that.

Stewart Stevenson: I most certainly am not. That is for sure.

Jim McCafferty: It is a hard one to deal with.

11:45

Alex Rowley: The Federation of Small Businesses has drawn a comparison with England, where these powers already exist, and makes the point that the effect of the powers is fairly neutral because they are rarely used. In the current financial climate, it is difficult to see where local authorities would have the resources to be able to finance such measures, so is the bill not just a toothless piece of legislation that has been introduced by a Government that would not have any of the costs to bear, in the knowledge that local government would probably not be able to finance it?

Garry Clark: As I said in my opening remarks, it is difficult to see what incentive local authorities would have simply to spend money to no end other than to benefit a number of businesses in their community. They would want to see some return from that. The business rates incentivisation scheme, which the Scottish Government has put forward, could allow local authorities to benefit if they choose to reduce rates for particular businesses in their area. If more businesses are attracted to that area, or if new businesses are created there, and they are paying more in rates as a result, the BRIS would allow the local authority to retain a proportion of that.

There have been teething problems in setting that up because of the levels of appeals expected in the first year of operation but, as the scheme progresses and as local authorities become more able to benefit from the proceeds of additional economic activity in their areas, the additional flexibility to allow a local authority to incentivise business in its area could result in a positive return for that local authority, and that is when it would become more attractive to local authorities.

John Mundell: I support what has been said. I do not have anything to add to that point, but any grant or support given by the community planning partnership, or indeed by the council, would have to be tied to some performance measure so that we get some transformational change through that process to help business to grow or to attract them to the area.

Jim McCafferty: It could feed into the single outcome agreements at some point in the future.
Alex Rowley: If we were looking at the issue in terms of community empowerment, would the logical inclusion not be to allow local authorities to set their own non-domestic rates in their own areas, given that they are the local elected bodies in those areas? What is your view on that?

John Mundell: To return to my earlier statement, it is my view that increasing fiscal powers for local authorities so that resources can be applied more effectively to the most disadvantaged would be a good thing, and the rate poundage issue is obviously important to that.

Garry Clark: Scottish Chambers of Commerce believes that having the uniform business rate applied throughout Scotland has strong advantages, but the ability for local authorities to make adjustments to incentivise business in their area would be a definite improvement on the current system.

Jim McCafferty: Although it is an attractive option to go for localisation of business rates, it would have to go hand in hand with some equalisation policy on local government funding; otherwise the central belt might very well prosper to the detriment of the rest of the country.

The Convener: Following up on that, I note that North Lanarkshire Council has suggested that the proposal in the bill “may create ‘a race to the bottom’”. Might allowing local authorities to set non-domestic rates in their own areas lead to a race to the bottom, as North Lanarkshire Council has suggested?

John Mundell: As I said at the start of the session, increasing cross-boundary competition, no matter whether we are talking local authority boundaries or community planning partnership boundaries, creates the risk that areas will compete to attract businesses, which might have a regional impact. That would have to be done in the right way.

My view is that the bill is focused on the most disadvantaged communities, and I think that local government and the public services are all about equalising disadvantage. We need to focus on trying to get the long-term unemployed in the most disadvantaged communities into some form of employment. If we can help them generate their own business to start with by upskilling them, that will be excellent, but there is a risk of a downward spiral, in which we are all competing against one another to get the same businesses to come to our respective areas.

Garry Clark: This race to the bottom is one of the reasons why we would be prepared to stick with the current uniform business rate, but giving local authorities the power to take measures to address specific issues in their areas, which the bill could do, is an attractive idea.

As well as sustaining existing businesses and helping them to grow, we need, as Mr Stevenson mentioned, to encourage the creation of new businesses. As a combination of those circumstances will give Scotland the best economic opportunity. I think that the most sensible route is to allow a degree of local incentivisation to meet particular local needs while maintaining the broad spectrum of the uniform business rate.

Jim McCafferty: Although the race to the bottom is part of the issue, and I can see it as a real danger, there is something that happens after that brings me back to the strong connection between rates and rents. If rates in a certain area are reduced for a period of time and it is not possible to contain the behaviour of landlords, rents might well increase, which will be picked up in the next general revaluation, and the rateable value base in that area will increase. I agree with Mr Clark and Mr Mundell about the dangers, but there is also a phase 2 in the long term.

The Convener: In 2011, thanks to the policies that were put in place, 57 per cent of businesses in Scotland paid zero or reduced business rates, which is a fairly significant number. Have rents risen because of the rate reductions that followed the introduction of the small business bonus scheme and other incentivisation schemes? Is there any evidence of that?

Jim McCafferty: There is only anecdotal evidence in relation to some types of property. The absence of evidence might well have something to do with the overriding impact of the recession, but evidence exists of the perverse effect of relief on rents in the charitable retail sector, in which 80 per cent relief is mandatory, prior to the recession. There is sufficient evidence of the private sector landlords not being able to compete in rental bids for retail outlets in certain areas because they were outbid by charities that knew that they would get a cushion on the rates side.

Anne McTaggart: Good morning, panel. Could any changes be made to the provisions to enhance the power and make it more likely to be used? Could anything be done to make it more user friendly, accessible and transparent?

John Mundell: I cannot think of anything at this time. If you are talking specifically about business rates, I am not in a position to give you an answer to that.

Garry Clark: The bill is fairly wide ranging in its possibilities and gives local authorities a fair amount of leeway. I have no specific worries about its scope at present.
Jim McCafferty: I go back to my earlier point that instead of seeing a business community and a non-business community we need to see both as a single community in a particular locality. Can we bring the two communities together? We already have mechanisms for consulting the business community and in a broader sense there is a wider consultation with the community every time there is an election. How do we get people together to recognise the interest of a single community in an area?

Cameron Buchanan: Mr Mundell, you mentioned monitoring businesses for performance. How does one do that?

John Mundell: My comments related specifically to a council or a partnership providing some form of grant to a business that would be tied to a particular outcome such as expansion. The money might well be invested in equipment, an extension to a property or assistance with moving to a different property. We would like the proposed outcomes in the business plan to be met; if we offer a grant, we would like some return on that investment.

Cameron Buchanan: You talked about authorities being able to grant relief to any type of ratepayer, including businesses, as they see fit. Would that include employment in silicon valleys, business parks and things like that? I am just concerned about the notion of a race to the bottom. How does one grant relief to businesses? The overriding condition rather worries me.

John Mundell: I can understand why. Going back to what I said about disadvantaged communities and the need to focus help and support on a particular location, I think that what you have highlighted is important in the context of the bill. On the one hand, it will help us as partnerships develop a particular community area. On the other hand, the usual processes would be adopted for big business, although Scottish Enterprise, which gave evidence earlier, would adopt for big business, although Scottish Enterprise, which gave evidence earlier, would take certain approaches and use certain mechanisms to help attract businesses to different areas.

We have just had a success with a new business—an American firm—coming to our area with the prospect of 500 jobs. That has happened through support from Scottish Enterprise and grants through that mechanism rather than through the council.

Cameron Buchanan: If you had a business park and you found that a business park in another area had lower rates, would you try to match those lower rates? That is the disadvantage because business rates represent a very high percentage of business costs, people might well move.

John Mundell: That is the concern that attaches to the race to the bottom, and I am not quite sure how one squares the circle. You might succeed for a period of time, but then after a few years somebody else will adopt a different approach and business will get attracted to a different area. That happens at present for different reasons.

Cameron Buchanan: But it is the council that should be deciding the relief. It should be empowered to decide what it wants to do with business rates.

John Mundell: That is basically what the bill proposes.

John Wilson: Good morning, gentlemen. I will put my question in context so that you know where it is coming from. The Public Petitions Committee received a petition from a local resident in the west end of Glasgow that raised issues about the growth of the large retail sector, such as the Tesco Metro and Sainsbury’s Local shops that are being created to the detriment of some of the smaller traders in high streets and town centres. We examined the petition and the planning aspects to find out whether the issues could be dealt with through planning legislation. One argument that has come back to the Public Petitions Committee is that the encroachment of such stores on town centres and high streets might be better dealt with under part 8 of this bill. Could that part of the bill take on board communities’ concerns about the number of Tesco Metros, Sainsbury’s Locals or whatever else that are coming into an area and potentially decimating local high street traders?

12:00

John Mundell: There are different stages to consider. For example, the big focus on out-of-town-centre developments that the bigger stores had in the past has had more of an impact on town centres more than the Tesco Metros, Scotmid and other such companies that are developing a different product.

That can have an impact on small businesses. To be honest, I see in my mind’s eye using the powers proposed in the bill to assist not necessarily the Tesco Metros but, say, a local butcher to develop in a town centre or on the high streets of our small towns. I would rather use the powers in a selective and focused way to attract smaller businesses instead of the national networks such as Tesco that you mentioned.

Garry Clark: The bill contains potentially wide powers for local authorities that could be used to incentivise specific business activities in a specific area. That is where it fits into the overall business rates agenda; we have national reliefs at a national level, and as I mentioned earlier, we have
the enterprise areas. What the bill provides is a lot more local and a lot more specific to local circumstances, and it can be fine tuned a lot better at the local level. That is its attraction.

On the retail side of our membership, we have certainly found that independent stores have fared reasonably well over the past couple of years and in many circumstances have been growing fairly strongly. There are various reasons for that extremely welcome situation. For a start, people are moving away from supermarkets, particularly to buy meat or whatever in the wake of various scandals that have blown up over the piece, and that has been to the benefit of smaller, independent retailers.

That is the advantage of the powers in the bill. They will allow a local authority to take notice of specific local conditions, possibly right down to an individual street or particular community in a local authority area, and to target that area to help incentivise and support businesses.

Jim McCafferty: I agree with much of what Mr Clark has said. My only rider to those comments is that I question whether the amount of rates involved would be sufficient to dissuade a truly determined larger organisation.

The Convener: Mr Wilson?

John Wilson: I have no further questions, convener.

Mark McDonald: Some of the submissions express concern about the application of local rates reliefs having to be fully funded by authorities. It strikes me that if we want to encourage local flexibility, that should come with local responsibility. Does the panel accept that?

John Mundell: I do not think that there would be any issue with Inverclyde Council or our local Inverclyde alliance taking responsibility for or being accountable for doing precisely what you have outlined. I said earlier that other mechanisms, such as grants to particular communities, can be used. As you know, part of the bill deals with assets, which can be dealt with in different ways through grants, but there is no issue with accountability with regard to Inverclyde alliance or I am sure any other community planning partnership.

Garry Clark: The power to reduce business rates in a local authority area could be a cost to a local authority. That is only right, but the business rates incentivisation scheme ought to be geared to allow that local authority to benefit at least in part from the encouragement of enterprise in its area.

Jim McCafferty: Because they are relatively convinced that the current settlement might come under threat over the next few years, local authorities are becoming concerned about the overall funding picture and about anything that they see as an additional cost. That is one of the drivers for that particular response. Moreover, because of the partition of the two communities that, as I have said, has happened in some areas—not, as we have heard, in Inverclyde—the local authority might lose focus on the fact that, if the approach worked, there would be a direct benefit.

John Mundell: Perhaps I have misunderstood the question. On the issue of increased costs or whatever, I have concerns about a number of areas in the bill. As I indicated in my opening comments, authorities and, indeed, community planning partnerships might well have to meet significant costs associated with delivering on the bill once it is passed. That brings us back to issues such as building capacity, the hand holding that will be required, the development of skills in communities and the assets that will have to be dealt with or transferred and then transferred back again if a community group fails. Those significant potential costs, which are yet to be determined, are of serious concern, certainly from my perspective.

Mark McDonald: I am by no means an expert on Inverclyde—were Stuart McMillan here, he might drill down into this more—but I know that the area is not too far away from one of Scotland’s very large population centres. Although I represent a constituency in the city of Aberdeen, I do not represent the city centre itself, and I know that there is local flexibility in local authority areas in the application of rates relief and that it need not happen on a full local authority basis but can be targeted at specific areas. If there was a feeling in Inverclyde, for example, that investment needed to be attracted at a specific area, a rates relief approach could be taken for that specific area rather than for the whole local authority area. I take on board the point that an authority-wide application of rates relief could lead to a significant shortfall in rates, but surely the targeted approach provides some attractions for an authority such as yours.

John Mundell: Yes. I have already said that it is a tool that could be used to our advantage. However, I have also said that different methods could be employed.

As for our proximity to Glasgow, this morning I was supposed to have been at a meeting with chief executives and leaders from the Glasgow city region; that is an altogether different level on which all the councils in the Clyde valley are working closely together. Obviously, £1 billion-worth of investment over a number of years is tied to that, and all of these business incentives issues will have to be examined to ensure that one
council area is not disadvantaged more than another.

In this case, the whole concept of the city deal is to look at the region and improve its economic vitality and gross-value-added outcomes. This is happening not just at local council level or indeed down to local community level; we have to consider these things and do the joined-up bit, which involves ensuring that all the partners join up and work more closely together. Over the past few years, since the previous legislation was introduced, we have made big strides forward, but there is always more that can be done.

**The Convener:** Is there any advantage in councils that intend to use this power consulting business improvement districts?

**John Mundell:** The bill’s main thrust is consultation and engagement with different communities. In our area, we have the chamber of commerce, we honour the community planning partnership and we engage with the Federation of Small Businesses. Different engagement mechanisms are used.

Another issue is that local authorities are required to engage and consult on a range of fronts. In the literature that I read before the meeting, I saw references to community learning and development consultation and children’s services consultation. There is a myriad of levels of consultation. The bill talks about consultation with “community bodies”, but I am keen to ensure that we consult with the communities themselves rather than just the bodies.

I will take—or perhaps steal—this opportunity to raise another point. We are, quite properly, being challenged through the bill to improve community engagement, but I wonder how the Scottish Government engages with communities on, for example, the national outcomes to ensure that it develops the most appropriate outcomes at that level. Obviously, we have to engage to ensure that we come up with the right outcomes and performance measures at local level. However, there are different levels, and we are potentially missing a trick in relation to the national outcomes.

**Garry Clark:** This is an interesting question. One of the premises of BIDs is that a small supplement on business rates is payable to fund the scheme. The number of BIDs in Scotland is growing, and I certainly see no reason why they should not be part and parcel of the consultations in relation to the application of any of the powers in the bill.

**Jim McCafferty:** Consultation with BIDs works well at the moment but, with regard to Mr Clark’s point about the supplement, one issue with it is that not everybody in an area is able to participate. Therefore, I believe that the power to introduce reliefs provides an opportunity.

**Alex Rowley:** Mr Mundell’s submission raises a number of issues that will be useful to the committee. Obviously, we are focusing on part 8 of the bill today, but I thank him for his useful submission in general.

**The Convener:** I think that it was Mr Mundell who said that the power will not be a silver bullet, but that it can be used as part of the basket of other local authority powers. What changes could be made to the power that would make it more likely to be used as part of the basket of opportunities for incentivisation?

**John Mundell:** Do you mean specifically in relation to business rates?

**The Convener:** Yes.

**John Mundell:** The only thing that really concerns me is how meeting 100 per cent of the cost of any relief for businesses would impact on a council financially. I would like that particular issue to be addressed in one way or another, but I cannot give a specific answer. We are working more closely with our partners to apply existing resources and remove duplication, which was mentioned earlier. That absolutely needs to be developed further, but at the moment we do not necessarily have the cash to deal with business rates relief and the other additional cost burdens in the bill. I cannot suggest a specific improvement, but I point out that particular concern.

**Garry Clark:** As I have said, the key is to ensure that the business rate incentivisation scheme is working correctly at national level. However, I see the powers in the bill as being used at a very local level. The Scottish Government controls other ways of applying reliefs nationally and across rated properties in Scotland, and the advantage of the scheme in the bill is that it can operate at a very local level to address specific needs. It does not need to be hugely expensive for a local authority, although it would certainly help if the business rate incentivisation scheme was set up to allow local authorities to benefit from increased economic activity in their areas.

**Jim McCafferty:** There is every possibility that there will be low take-up in year 1. After that, if it is made more transparent in the budgetary setting process that the power is available and that councils will consider it and perhaps even take petitions on it, that will at least give a transparency that might help with take-up in future years.
The Convener: I thank our witnesses for their evidence. We now move into private session.

Meeting continued in private until 12:59.
Present:
Cameron Buchanan  Mark McDonald  
Stuart McMillan  Anne McTaggart  
Alex Rowley  Kevin Stewart (Convener)  
John Wilson (Deputy Convener)  

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

Andy Brown, Secretary, Scottish Woodlot Association;  
David Coulter, Chief Executive, Dumfries Third Sector Interface;  
Amanda Macaulay, Dalbeattie Community First Responders;  
Jeff Ace, Chief Executive, NHS Dumfries and Galloway;  
Geraldine McCann, Head of Administration and Legal Services, South Lanarkshire Council;  
Douglas Scott, Senior Policy Advisor, Scottish Borders Council;  
Kay Gilmour, Head of Community Support, Department of Education, East Ayrshire Council;  
Louise Matheson, Senior Manager Property & Architectural Services, Dumfries and Galloway Council.
Scottish Parliament
Local Government and Regeneration Committee
Wednesday 8 October 2014

[The Convener opened the meeting at 09:32]

Community Empowerment (Scotland) Bill: Stage 1

The Convener (Kevin Stewart): Good morning and welcome to the 25th meeting in 2014 of the Local Government and Regeneration Committee. I ask everyone present to switch off mobile phones and other electronic equipment, as they may affect the broadcasting system. Some committee members will refer to tablets during the meeting; that is because we provide papers in a digital format.

Our first item of business is our third oral evidence session on the Community Empowerment (Scotland) Bill. Three panels will give evidence. I welcome the first panel. Archie MacGregor is land and property development manager at Scottish Water; Alan Thomson is head of corporate relations at Scottish Water; John Hosie is community regeneration and health manager at Dundee City Council; and Judith Proctor is corporate lead integration and general manager in Moray community health partnership, NHS Grampian.

A representative from North Lanarkshire Council was supposed to be here but, unfortunately, that representative pulled out of the session at the last minute. I am extremely disappointed by that.

Do the witnesses have any opening remarks that they would like to relay to the committee? As they are shaking their heads, we will move on.

I will start with a simple question. Why are the proposed new powers necessary? Do you think that there will be changes in current practice? Ms Proctor, would you like to start, please?


NHS Grampian very much welcomes the proposals in the Community Empowerment (Scotland) Bill, in particular the opportunities that we see in the provisions for us to engage deeply with communities and co-create sustainable services for the future. However, in common with some of the other submissions that the committee has received, we note that engagement goes so far, and we see a lot of the opportunities through, for example, the locality working that is allowed through the Public Bodies (Joint Working) (Scotland) Act 2104 to really co-produce services with people. We had hoped for further clarity on that.

We think that the opportunities in the bill are significant. We recognise some of the potential challenges for us in delivering on them, but the potential in the proposals for communities and people across Scotland to really engage with public services and help to co-produce them is significant.

Archie MacGregor (Scottish Water): Scottish Water is also very supportive of the bill, and of giving communities the opportunity to submit asset transfer requests in particular. One of the reasons why the bill is needed is that the existing framework in which public bodies operate is a very formal process in which asset transfers can happen only at market value. There is no existing guidance as regards leases or arrangements in which communities can come forward and make use of assets or apply for their transfer. The only other thing in operation is the community right to buy, which, of course, applies to rural areas at the moment. A broadening of the principle for communities to get involved is to be welcomed.

The Convener: I am not fully aware of the rules and regulations that would apply to Scottish Water, but obviously an asset can be sold for less than its market value from other public bodies if there is ministerial approval for that sale. Would that apply to Scottish Water, too?

Archie MacGregor: That is correct, but the bill will provide much more of a framework that will give confidence to officers to deal with requests from communities.

The Convener: I wanted to clarify whether the rules that currently apply to other public bodies apply to Scottish Water, too. That is useful. Thank you.

John Hosie (Dundee City Council): The bill is welcome, because it endorses many people’s aspirations to see more empowered communities. That is positive. There are many diverse opportunities. There are challenges particularly in some areas of greatest deprivation in the support levels that are required to help groups to evidence need and consult within their communities, and the support role of others to help them to go through the process, acquire an asset and sustain it. Those challenges should not be underestimated.

The Convener: Okay. Out of general interest, Mr Hosie, your job title is community regeneration and health manager. Are you funded jointly by the council and NHS Tayside?

John Hosie: No. I am funded fully by Dundee City Council.
The Convener: Okay. That is also useful.

Anne McTaggart (Glasgow) (Lab): I thank Mr Hosie for what he said, which leads me on to the next question.

You have illustrated the fact that some of our communities do not have the capacity to take advantage of the provisions in the bill. What will your organisation do to assist those communities?

John Hosie: In Dundee, we have a well-established structure for the co-ordination of local community planning. In the eight multimember wards, we have local community planning partnerships, which are chaired by a first to third-tier officer of the council and involve elected members, council departments, the national health service, the police, fire and rescue, and up to six local people who are representatives of key community organisations. Therefore, we have a strategic mechanism in the city that will assist when we are raising awareness of matters to do with asset transfer.

In the area of work for which I am responsible—community regeneration—there is a direct link with the staff who are under my management and who have roles in capacity building across a diverse range of community groups. A multi-agency approach that reflects our partnerships is probably key to that. However, we do not see ourselves doing anything different in principle from what we currently do. The bill just gives that a very different dimension.

The Convener: Does Scottish Water want to comment?

Alan Thomson (Scottish Water): Support for communities would be wide ranging. An example could be fisheries groups and reservoirs. Some community groups would like to buy a reservoir, but the on-going maintenance of the reservoir might not be defined as being in those groups' best interest. We would look to work and negotiate with them. If the reservoirs are redundant—one in particular is used for unemployed people, wellbeing and a number of other initiatives—we would need to enter into a longer-term lease, so that if the reservoir was sold, the lease would go with it.

There is a range of things that we can do to work with communities.

Anne McTaggart: What would you do proactively to encourage community members?

Alan Thomson: In the example that I gave, we have an involvement with the fisheries group. We have dialogue with it and there are on-going leases. If something was going to happen with the reservoir, we would look at the longer term.

We have community managers across the country who liaise with property colleagues.

Judith Proctor: I will build on some of the comments from my colleagues on the panel. The bill's provisions will enable us to make more of an impact with the work that we do to engage with communities and build capacity. NHS Grampian has responsibility for layers of public health through the organisation and, within community health partnerships, we have responsibility for community wellbeing and health improvement at that level. Those are the resources that we would apply—and are already applying—to building capacity in communities to participate in our work and co-create services in the future.

NHS Grampian has a duty as a partner in local community planning partnerships, of which there are three in the north-east and Grampian, to engage with communities.

The committee will be well aware of the key elements in the Public Bodies (Joint Working) (Scotland) Act 2014, including the creation of bodies corporate—the integrated joint boards. We will have to set out in our integration schemes how we will engage with and encourage communities to participate. In our submission to the committee, we pointed out the need to ensure that we are aligned with those things, rather than working in two parallel processes, so that we can maximise our input.

Strategic plans are significant vehicles for engaging and working with communities, particularly at local level. They can begin to address some of the challenges that we see around some communities of interest being better able than others to take part. The opportunities in the 2014 act for us to focus on localities might enable us to target some of that work at deprived or disadvantaged communities.

As a public body, we have been undertaking a lot of work under policies such as reshaping care for older people. There are opportunities in that work to build on the engagement and continue dialogues that we have with our communities on shaping services.

The Convener: I am going back to yesteryear, Ms Proctor, in a deprived community in Aberdeen. NHS Grampian came out to consult on local health priorities. The folks there—surprisingly, for me—said that their main priority was mental health. NHS Grampian's priority was to get folk off smoking. A fair number of members of the community gave their view, but mental health did not feature in NHS Grampian's priority list.

Have things changed since then, or do some organisations pay lip service to consultation and forget the views that are expressed by communities?
09:45

Judith Proctor: That is a good question. There could be tension between engagement with communities and the statutory obligations and targets to which some public bodies are subject. The challenge for us all—for policy makers and public bodies—is to balance the rights, responsibilities and opportunities in communities with the other priorities.

In our response to the consultation on the bill, we pointed out the challenge that arises when some of the tensions become apparent, such as when there are requirements for major service change. A community might have given a clear signal on services and change, but tension might arise because that is seen as a major service change, which might be a political challenge locally and nationally.

The task is challenging, and engaging with communities can be challenging. There can be more than one view, so we must balance that by being clear in our approaches and in our way of working that we are listening to all voices.

The Convener: The committee has in recent times gone round the country to talk to folks about various issues. I understand that engagement can be challenging, but I feel that common sense sometimes does not come into play. To return to my example, if folks have a lot of mental health problems that are not being addressed, they are hardly likely to be able to give up smoking. Smoking might be the only thing that is keeping them going.

I know that others set targets and priorities, but going out and speaking to folk to get their opinions should not be a pointless exercise. Common sense dictates that targets will not be met unless other issues are addressed. Participation requests will give folks more ability to influence decisions. How will that make a difference? How do we bring common sense into play?

Judith Proctor: Common sense involves understanding what our communities want. Engagement involves having a genuine dialogue. As an NHS board, we must be clear with our communities about the elements of service that we can provide and the resources that we have to do that. There are examples of participatory budget setting that get us into that productive dialogue.

No public body can do everything that it might want to do or everything that a community or individuals in a community might want to do, but we can genuinely discuss what people want, what their priorities are and what our challenges, targets and statutory duties are. We can find a pragmatic way forward to deliver on all those aspects as far as we can.

That approach involves a shift in how we work and how we all think. Such dialogue does not happen quickly; it takes time to build trust in communities where we might not have done that before. It is important to take time to do that.

Alex Rowley (Cowdenbeath) (Lab): Given that everyone on the panel welcomes the bill, I will ask about participation requests, which I am trying to get my head round. What is your understanding of them? Do you have practical examples of when community organisations could come along with a participation request? If we are trying to explain the term to community groups, what does it mean?

John Hosie: In Dundee, we are in the early stages of the journey. We will accommodate and incorporate participation requests in the future. We will help groups to see their right to make such requests.

We have had no requests yet, but we are prepared to refine our strategy once the bill is implemented. We will make local groups aware of the opportunities.

The Convener: Will you expand on what happens now, without the bill in place, if a community comes to you and says, “We don’t think this service is being delivered right. We want to know the thinking behind the delivery and the budget that has gone in”? If a community wants to influence something, how does it do that at present, without the bill? It would be interesting for the committee to hear your views on that.

John Hosie: We have a part-time asset transfer co-ordinator post. It has only been in place since December last year and it is only 10 hours a week, but it is the first point of contact for most groups and organisations. We have tried to raise awareness, and that person has done a lot of groundwork to help groups to see what is coming. We have our information posted online and we are increasing that information and directing community groups to it.

In short, if we are approached by a community group, we will sit down with it, talk through the issues that it sees as local priorities and work out ways of taking them forward. Things can come to nothing, or they may go through a process. I do not know whether that answers the question.

The Convener: Okay. I ask Scottish Water to comment, please.

Alan Thomson: We deal extensively with communities across the country. A lot of that is to do with our capital programme and the delivery of services for customers. We have a structure within our business whereby we have regional community managers and they work with our capital and delivery teams, but we also issue contact details to local councillors and MSPs and
we have a public affairs department. We try to have as many open channels as we can for customers to approach us. We will engage with them in the community because we want to do something, but equally there is engagement back into Scottish Water.

When we get requests, we liaise across the business with our land and property departments to move them forward and we enter dialogue and negotiation with people to see what can be done.

Judith Proctor: I do not think that NHS Grampian has a formal process of the sort that the bill supports for dealing with such requests. However, working alongside communities happens through our community health partnership structures and direct requests to the board, particularly related to specific services.

I can certainly imagine requests for participation where service change is proposed, and there will be examples of that throughout the NHS in Scotland. When we remodel or redesign services, patient groups will want to be involved in the design of those services and we will seek to involve them in that. The same potentially applies where we are looking to remodel or change building-based services.

I can certainly see where requests for participation in those things would come through, and there is an opportunity to have a formal process around that. Such a process would hopefully make it much easier for communities to understand how they can engage. I imagine that, at present, it feels quite complicated and people may not know where to approach a board in order to participate in service change.

Alex Rowley: I am trying to get at whether organisations have properly thought through the participation request process. My reading of it is that a local organisation could look at, for example, the community planning partnership in its area. If it has an outcome to improve health and wellbeing through healthy eating and exercise but a local body thinks that it is not doing that too well, it could come along and say, “We want to get involved in the delivery of this service. We could have healthy eating classes and engage people better than you are doing. The local football team can get involved in running sport and leisure to increase people’s fitness, and the outcomes will be that people will eat more healthily and be fitter. That’s in line with the strategic plan. We want to deliver that, and we’re placing a request.”

How will you deal with that? That is my understanding of what could happen if the bill that you have just welcomed is passed.

Judith Proctor: Yes. That is a really good example of how the formal participation requests would operate. From a board and community health perspective, that is exactly the sort of partnership working that we have been looking to develop in CHPs and will look to develop even further through public bodies work and the integration work in which we are involved.

We will also look to develop it with localities by getting community groups to take part in those processes and take on those services to help us to achieve the outcomes. That must be the ideal for all of us so, as public bodies, we will need to create the formal routes through which we can make known to our communities how they can avail themselves of those opportunities.

Alex Rowley: One of the criticisms of the community planning partnerships is that the third sector and others feel excluded. The partnerships are basically run by the local authorities and the next big partner is the NHS. The idea of the participation request is that community organisations could come forward and demonstrate that they could achieve certain outcomes. Therefore, the relationship would have to change. It would not simply be about them being in there to do something; they would have to demonstrate it.

How geared up are you for that? Would it mean significant change within your organisation if community organisations took a greater role in the delivery of services? What would it mean for your organisation? Are you equipped for that right now?

The bill says that, if the community organisations can demonstrate that they will achieve the outcomes, “The authority”—

the local authority, health authority or whoever it is—

“must agree … unless there are reasonable grounds”

not to do so. What is the definition of “reasonable grounds” and should there be an appeals process for that?

How geared up are you to make the shift if a community group comes along and says that it could achieve certain outcomes? That would be a significant shift.

Judith Proctor: It involves a shift in the way that we think, but it builds on work that we have been trying to achieve through community health partnerships and local work that has been happening under the umbrella of community planning for a number of years. The third sector—the private sector, too, but particularly the third sector—is key to us being able to deliver that. The roles of the developing third sector interfaces are really important and, although we need to build capacity in communities for participation requests,
we also need to support our emerging third sector interfaces to build some of that capacity locally.

My focus on health and social care integration leads to my response to your question about getting geared up for participation requests. The gearing up will be the work that we, under the legislation on integration, will do in defining our localities and how we engage with them and encourage them to participate. It will give us a clear approach to working with the resources and assets that are in a local community to shape services.

I am not sure whether that answers all your points.

Alex Rowley: I noticed that Scottish Water did not say much about outcomes. How good are public bodies at clearly defining outcomes and organising services and budgets based on the outcomes that they are trying to achieve? How good are they at measuring outcomes and how do they report them?

Alan Thomson: Scottish Water’s outcomes are heavily measured. They are based on ministerial objectives. The business plan for 2015 to 2021 that has just been announced was formed after extensive consultation with customers, the customer forum and our regulators—the Scottish Environment Protection Agency and the drinking water quality regulator for Scotland. However, that business plan included what customers want on a range of things—water quality, waste water and flooding—more than it has ever done. That was balanced against what customers want to pay for those services.

I am delighted to say that the plan has just been agreed. It will provide considerable benefits for our customers. We are the only utility in the United Kingdom to agree that our prices will be fixed at 1.6 per cent until 2018, so we are giving customers price stability with a range of outcomes that we need to achieve throughout the country. Those are measured and targeted by regulators and they are agreed in a package of measures. That is, broadly speaking, how the water industry works.

10:00

On your point about how we engage communities in our business plan, I think that every organisation always has to be open to new opportunities and should not close things down. The point that was made about common sense is very apt. We have to remain alert to opportunities to work with communities, partly because of what we want to get out of that. At the end of the day, we need to do certain things in our capital programme and we need to engage with communities. It is not just a case of dig, dig, build, build and everybody should be grateful. We have to engage meaningfully with our communities to ensure that, when we arrive to make improvements, we do that in a collaborative way. When we work with sensitive communities where we have gone in before, we try to learn from the experience and get a better outcome for our customers.

The Convener: Let us look at an apt example for Scottish Water. You have talked about all the engagement that you do with the regulators and Government, the ministerial targets and all the rest. Let us look at Aberdeen, where there have been flooding difficulties in the merchant quarter and the area of the city known as the Green. Businesses and residents there have had real difficulty in understanding what Scottish Water has been doing to resolve the difficulty. If, after the bill is enacted, those folks decide that they have had enough and they put in a participation request to try to influence change—maybe in the capital plan or in what you are doing to resolve their difficulty—how do you deal with that? How do you cope with that?

Alan Thomson: In the merchant quarter in Aberdeen, we have been engaging with local businesses and groups. We have also engaged with the local authorities. The key for us in such situations is to understand the root cause of the problem.

Internal flooding is a terrible thing to happen to any customer, and our capital programme focuses on reducing the number of customers who are at risk of internal flooding. A lot of good work has been done on that over the years. Our next programme involves looking at external flooding in order to understand and define which areas of Scotland are most at risk and what interventions we can put in place to alleviate the flooding for our customers.

We would look at it—

The Convener: Can I stop you, Mr Thomson? You have Scotland-wide priorities, Ms Proctor has priorities right across Grampian and Mr Hosie has priorities throughout the city of Dundee. However, the folks who have businesses in or who live in the Green area of Aberdeen are interested in their little bit. You have talked about communication. A lot of those folks would say that they dinna feel that they are being communicated with particularly well. They feel that they have been unable to influence what you are doing, and the bill will give them the right to do that. Frankly, if you talk to them as you are talking to us about your Scotland-wide priorities, they will say that that communication is of no value to them. How will you ensure that you gain their involvement and ensure that the communication is right for the
difficulty that they have instead of talking about your Scotland-wide priorities?

Alan Thomson: We have specific hotspot problems in Aberdeen and we do not yet know what the solution is or how best to resolve them—the issue might be not sewer incapacity but a surface water problem. The key, as with all communities, is to make sure that we give the community named contacts so that they do not have to go through the whole organisation and tell everybody the background to their issue. We try to enable ease of contact so that we can engage with customers. When the fix is not yet known, we always try to put in place interim measures to help customers where we can.

You mentioned Aberdeen, convener, so forgive me for mentioning Glasgow—

The Convener: I am happy—I am not trying to be parochial.

Alan Thomson: It is a good example of our approach, which we are rolling out to other areas. A lot of areas in Glasgow suffered from flooding. Some people said that it was the sewers, others said that it was the surface water and others said that it was the watercourses. The reality was that nobody knew what the problem was. Everybody wanted to pour concrete and come up with a solution, even though it might not have been the best and most sustainable solution. In partnership with Glasgow City Council, SEPA, Clyde Gateway and the then Scottish Enterprise Glasgow, we decided that we would spend money on actually understanding the problem. We created integrated catchment models to understand what happens with certain rainfall events.

The upshot is that we now have that information in Glasgow, and Clyde Gateway is spending £7 million on regional SUDS—sustainable urban drainage system—ponds; we have just announced £250 million to improve the infrastructure in the city of Glasgow; and Glasgow City Council has spent money on flood prevention. Without that information, we would all have been spending money in our own capital programmes. Now that we have the knowledge from the models, we find that the issue is not about putting water in pipes; it is about how we manage the water above the system.

That is a great example, which applies to many communities across Glasgow and in other areas. It shows that, when we get that type of understanding, the solution will be far better for communities and will not just be a patch and repair solution.

The Convener: Mr Hosie, please.

John Hosie: Was the question about outcomes?

The Convener: Yes.

John Hosie: I guess that our guides are the single outcome agreement and the delivery plan, which include matters relating to asset transfer, capacity building and improvement in service delivery. That framework is complementary to our local community planning process. A few years ago, we developed an impact assessment for our local community plans. The next time that we will carry out the assessment will be halfway through our current plans, which run from 2012 to 2017.

We have developed a triangulation system, in which we engage with service planners and providers, the active and engaged community—people who are already involved in their community through community councils, housing groups or other representative structures—and the general public. That is one measure. The last time that we did the assessment, we looked for and could not find any other examples in Scotland of an impact assessment being undertaken of local community plans. The local plans are rolling plans so, as matters relating to asset transfer emerge, they will be incorporated. That system will allow us to measure how effective we are in meeting the objectives and outcomes.

I should say that the plans are based on engagement with local people and do not contain top-down actions. Across the city of Dundee, there are about 900 actions that are based on consultation with local people. We have an obligation to report to those people on the progress that is being made.

John Wilson (Central Scotland) (Ind): I draw attention to my entry in the register of members’ interests. I need to express my disappointment that North Lanarkshire Council could not send a representative along to speak to the written submission that it made. It will become clear later in the meeting why I am expressing my disappointment in that way.

Is Scottish Water involved in any community planning partnerships or any sub-groups or working groups of community planning partnerships?

Alan Thomson: Yes, we are involved in some but not all of the community planning partnerships. We have written to all 32 council chief executives to indicate our willingness to participate, where appropriate, in community planning partnerships, on water-related issues, anything to do with Scottish Water’s activities, the capital programme or integration. We do not want to go along to meetings just for meetings’ sake and if we are not going to add value. Some local authorities have taken up our offer, but some have not. We are willing to participate, but we must ensure that we
have meaningful input in the areas in which we attend.

John Wilson: The reason I ask is that Scottish Water is, as far as I am concerned, crucial, particularly to some of the economic development work that is being done throughout Scotland. It is unfortunate that Scottish Water is not involved in many more community planning partnerships.

However, the question for Ms Proctor and Mr Hosie is whether you see community planning partnerships having an increased role in ensuring that we get greater community empowerment. Should CPPs be assisting communities to identify where community asset transfers should take place, where appropriate? The CPP has an overarching role that brings together a number of different bodies. Do you think that it is the appropriate body to assist communities to take forward community asset transfers, where appropriate?

Judith Proctor: To really support the empowerment of communities, we need to look at the opportunities for leadership that exist at all the different levels that are available to us. Community planning partnerships are a good vehicle for having oversight of an area and a place, and for providing direction and support for better engagement and participation with communities. The leadership role of all the organisations that sit around the CPP table should ensure that all partners are engaged in building capacity and encouraging and supporting engagement.

We should see that in all the layers—again, I bring up integration—from the SOA down to the locality plans that we have to develop. We should see that sort of engagement with communities on service co-production expressed in all the layers, from community planning downwards.

The Convener: When you talk to communities, do you use terms such as “service co-production”?

Judith Proctor: No.

The Convener: No.

Judith Proctor: Well, I do. Although “co-production” is quite a jargonistic term, I think that it is a really good one, and it is one that I use. I acknowledge that it is a jargonistic word, but I think that the sentiment and philosophy underneath it are really sound, because co-production is not about consulting people on a redesign or tweak that we have decided on; when we get underneath it, it is about genuine—

The Convener: I think that the very interesting thing, Ms Proctor—I said this the other week and it was the same last week—is that, if you were to go out into communities and talk in the language that is being used here today and elsewhere, that would be a huge turn-off straight away.

Judith Proctor: Of course.

The Convener: So, in reaching communities and getting the level of engagement that is required, we will have to rethink the terminology and get back to basics in the use of language.

Judith Proctor: Of course.

John Hosie: I agree with that point. When we did the consultation in 2012 to create our most recent local community plans, some issues were raised that were specific to communities in multimember wards and some issues were city wide, such as tackling drug misuse and mental health and wellbeing. The other point that came up was that we should keep things simple and not send out hundreds of leaflets full of text and jargon. We need to do things differently.

To return to Mr Wilson’s question, engaging with communities through community planning partnerships is definitely part of our core business. The way in which the structure has evolved in Dundee means that we have the Dundee partnership, which is the complete community planning partnership, and eight local community planning partnerships, which have local people sitting on them and are well placed to support groups to find a way through the maze. In addition, we have theme groups such as the building stronger communities group, which is one of the places where community asset transfer would be located. The chairs of each of the six regeneration forums in Dundee sit on the building stronger communities group, so we cannot get away with using jargon; the information has to be pretty much factual, straight and understandable. We consistently receive that message.

10:15

John Wilson: An issue that is coming out in the bill involves the right of communities to make an asset transfer request. The bill says that the organisations that currently own the assets or the land have to have “reasonable grounds” not to accept that request. What would be seen as reasonable, from the point of view of members of the panel, with regard to refusing an asset transfer to communities?

Archie MacGregor: Any request would be considered fully. Obviously, to reiterate, we are supportive of the bill. However, in terms of the framework that we consider issues in, we have operational sites that are, in effect, industrial sites where water and waste water are treated. If they are part of our operational infrastructure, they might be serving not just the immediate local community but a vast tract of Scotland. If a community was looking to take over that asset, that would be quite a consideration for us, and we would ask whether that was really appropriate.
We can foresee situations involving not only Scottish Water but any public body in which a community asks whether it can lease or take over areas of ground within a site that are lying unused but which, in asset management plans or business plans, are earmarked for expansion and are simply being kept on hold for future use. Of course, we would approach the request with a flexible mind. If the community was willing to take on the site for only, say, five years and was happy for us to take back the land once we were ready to progress our investment and our expansion plan, there is no reason why we could not come to some arrangement.

Another good example would be assets that carry risks with them. I am thinking of our impounding reservoirs, some of which are close to large built-up areas. In the past 12 months, Scottish Water has taken a decision not to dispose of what we call category A reservoirs, which are those in relation to which, if there were a serious structural failure of the dam, considerable risk would be posed to the communities downstream. We think that we should retain them, as we have expertise in managing reservoirs and in the relevant legislation.

Those are examples of assets in relation to which we would not be minded to grant either a long-term lease or an outright disposal, and something more short term would perhaps be appropriate.

The Convener: I do not want to go into what a category A reservoir is in any great depth at the moment, but perhaps you could send us some details of what that means.

Archie MacGregor: Sure.

Judith Proctor: I echo my colleague's view. From the perspective of NHS Grampian, I believe that every request would be considered. Within the broad range of services that the board delivers, it might be that some services in relation to which there is a request for a transfer are not actually owned by the board—I am thinking about some primary care premises that are owned by general practitioners or independent contractors. Obviously, they would not be included in the ambit of the legislation.

The risk-based approach that Mr MacGregor mentioned is important, as is the need to focus on outcomes when we consider requests—is the request going to deliver good outcomes for the community?

John Hosie: The question was about when we would refuse or defer a request. A starting point would be to offer support to the group. The way in which we have developed our outline framework for assessment means that 50 per cent weighting is given to community benefit. As a starting point, we would help groups that were making requests to see what that entailed, how they could evidence need and how they could consult their communities to ensure that there was collective ownership.

Our starting point would be positive rather than negative, and support would be built into that approach in a range of ways. However, by the time the request came to the community asset transfer steering group, which we have in place with different council departments, we would need to risk assess it from the point of view of governance capacity, community benefit and financial planning. Support would have been built in before that, but I guess that there may be circumstances in which a starting point would be a short lease rather than outright ownership, depending on the capacity of the group. We would see the starting point as being very different, though.

Stuart McMillan (West Scotland) (SNP): Good morning, panel.

I have a few questions following on from Alex Rowley's a few moments ago, and the previous question. What discussions about the bill have you had, or are you aware have taken place in your organisations, with trade unions?

Judith Proctor: I am not aware that we have had any discussions yet with our staff-side representatives. In NHS Grampian, in common with other boards in Scotland, there is a range of guidance and statutory relationships with our unions. There will be opportunities through our partnership forums to have those discussions. I am not aware of any discussions, although that is not to say that they are not taking place.

Alan Thomson: I am unaware of any specific discussions about the bill.

John Hosie: Sorry, could you repeat the question?

Stuart McMillan: Are you aware of any discussions that have taken place between your organisation and trade unions regarding the bill?

John Hosie: Not to my knowledge.

Stuart McMillan: We have received evidence a number of times from local groups that have had something to contribute but have felt as if they have been stonewalled, which makes it quite difficult for them to get involved. I have heard that in the region that I represent, too. Although the bill is designed to open that up, a discussion that I had with a senior public representative a couple of years ago indicated that, if there was a more open approach, it would have staffing implications for that public body.
Section 19(3)(c) contains various points to open up discussions, such as economic development and regeneration. Section 19(5) says:

“The authority must agree to the request unless there are reasonable grounds for refusing it.”

Returning to the initial question about trade unions, if trade union representatives said to you that a more open approach could lead to a public authority losing staff, would you consider that to be a reasonable ground for refusing to enter into discussions?

John Hosie: No. We live in tough economic times and how we utilise resources needs to be carefully measured. If something is a community priority, we need to shift our priorities to support it. I guess that, if they are effective, support and engagement do not come cheap. They are time and staff intensive, and there are implications for how we manage staff workloads. However, that is not to say that they are not a priority and that we cannot look at what the priorities are and match the resources accordingly.

Alan Thomson: We remain open to any approach from communities. Certainly the requests that I am aware of to date tend to be about specific pieces of land or about assets that people may want to buy or lease. The requests have not tended to veer into any form of consequences for staff or internally to Scottish Water. However, we certainly remain open to engaging with third sector or other community groups.

A few community groups have thought about the possibility of training people to become water ambassadors at some of our more historic assets. We remain open to that possibility and we want to engage, because if it leads to a better outcome for communities and for assets that we utilise or no longer utilise, it is in everybody’s interests. It goes back to the point that, if it is common sense for us and for our customers to do it, why would we not do it? However, to date, requests have tended to be site specific.

Judith Proctor: The panel will be aware that NHS staff terms and conditions are nationally negotiated and we are governed by a whole range of regulations that would come into effect if a significant change was expected through the transfer of a service or an asset that would have an impact on staff.

Our well-established partnership working with trade unions would be a key focus and they would have to be partners in such situations. However, I echo what my colleagues on the panel have said. We need to start with a positive view of what a community group is trying to achieve through the asset transfer and how we could support the outcomes that it is trying to achieve, and then our staff-side partners need to be key partners in those discussions.

I can envisage the service change and asset transfer that might lead to those discussions. If we take a positive perspective that we are trying to achieve outcomes, perhaps the opportunity for a board or a public body is to ensure that within the parameters of the staff terms and conditions, we are able to deliver that service in a publicly owned building. It is about that partnership work, with that positive focus on better outcomes for people.

Mark McDonald (Aberdeen Donside) (SNP): Returning to the issue of capacity within communities, I note that a number of examples have been given. However, what springs most readily to mind for me is the two save our school campaigns against school closures in my constituency—one in a regeneration community and one in an affluent area—and the contrast between the approaches that were taken.

One campaign was able to call on parents and individuals in the community who had strong professional backgrounds such as doctors and planners; people in the other community required a level of intensive support to put together their campaign and marshal their arguments. That strikes me as being the kind of approach that will be commonplace as the community empowerment agenda moves forward. What role will your organisation play in those communities of most need, where the activism and enthusiasm are undoubtedly there but perhaps that professional expertise to do things such as putting together a business case does not exist? What will the role of your organisation be in supporting those communities to ensure that they can take full advantage of the legislation?

John Hosie: It fits neatly because our resources are deployed in areas of greatest need to try to plug the inequalities gap, which is a long-term aspiration. Where we concentrate our resources, it is a natural role for us to support community groups. When groups have a single issue to do with a school, we need to be careful because our employer is the city council and we are talking about the education department. We can go only so far in the level of support that we give, but we can certainly support groups to campaign and point them in the right direction.

It is our core business to build capacity among groups of people who happen to reside in the areas of greatest deprivation. That is negotiated, and sometimes it involves a balance between challenge and support. Sometimes we have to challenge groups to see things slightly differently, while supporting them on their journey. That is our core business.
10:30

**Judith Proctor**: That area has been noted as one of risk and concern in many of the responses that the committee has received. There are well-placed communities, with a lot of natural resources, that become very much involved and seize the opportunities, and there are those that do not have the capacity or capability and which lose the opportunity if not encouraged.

There is a role for community planning partnerships, with their place-shaping and identification work. Their boards’ role is to support an understanding of where communities of deprivation are. Sometimes, they will be geographically placed, but boards and public bodies have a role in understanding deprived communities of interest and groups, as well as communities, that are disadvantaged, and in ensuring that they are able to participate. There is a focus on locality working down at the level of general practices, teams, social workers and third sector partners, which builds on work that has already been happening in the communities concerned.

**Archie MacGregor**: My area of expertise is asset disposals and transfers. Scottish Water has been very proactive in working, in particular, with groups with aspirations to take over some of our underused or unused assets. There is an example in Dundee, where a group has had aspirations for several years to take over a historic building. That group has had capacity and capability issues. We could have walked away and ignored the group, pointing out that it did not have a business plan—obviously, this was before the bill was introduced. In fact, we have engaged proactively with Dundee City Council, which has experience of working with community groups. The group will rely on some lottery funding. It was struggling to put together some of the business case requirements to support a lottery bid, but the council used its experience of similar community projects.

We acted as a facilitator as well as the asset owner, producing the right package of information to help with the project. I am pleased to say that it looks as if the outcome will be in keeping with what we, as asset owner, hope the project will do, as well as with the community group’s aspirations.

**Mark McDonald**: There are examples, including in my constituency, of community empowerment occurring without legislation being in place. I think that the bill is necessary, because such cases can often be exceptions rather than the rule.

Where your organisations have had positive experiences, with communities taking on assets or becoming more involved in how things operate, is there a role in connecting up communities, so that the ones that have had positive experiences and are doing good things can be put in easy contact with others? We are often bad at sharing best practice across Scotland. We are also bad at making small local authority or community jumps between areas. Is there a role for your organisations in ensuring that communities are better connected in that way?

**The Convener**: We are now against the clock, so I ask for brief answers if possible, please.

**Judith Proctor**: On that notion of sharing best practice, communities that are experiencing something that is difficult and challenging and new for them can work with places that have been through the process and have experienced some of the pitfalls and challenges, so that they do not get repeated. That means having a network where communities can be supported. Organisations such as the one that I represent can also be supported in this regard. That would be welcome.

**Alan Thomson**: I firmly agree with that. We can learn to exchange best practice and share some of the things that went right—or did not go right. For example, we took a lot of learning from the major planning application for the Katrine water treatment plant in Glasgow. It was a big application, which involved a lot of consideration of the community, planning gain and all sorts of things. When it came to the application for the major Glencorse water treatment works outside Edinburgh, we thought about what we had learned and encouraged community groups and councillors to exchange the information so that we could get a better outcome. We got planning for Glencorse in 10 months, partly because we had learned from what had not gone well in the earlier application.

I go round the country and speak to communities. Early engagement is important and people can come forward with good ideas, but if we do not think that what they have suggested will happen, it is as well to say that to the community right from the beginning. If people’s expectations are raised and they form groups and so on, but then the answer is a no, there can be a lot of negativity. There are benefits in giving good, concise information to communities at an early stage about what is likely to happen in the longer term. It is about being open and honest with people right from the start.

**John Hosie**: I will give two examples. We have regeneration forums in six of the eight most deprived wards in Dundee. The forums elect 15 local people to make decisions about funding allocations. The chairs meet every month with a common agenda, and they find the meeting valuable.

We get feedback from people throughout the city who want us to create opportunities for them
to meet people in other parts of the city. As a result of that, the Dundee partnership runs a community conference every six months. It is not for professionals and elected members; it is for local people who sit on community councils, housing groups, youth groups and whatever. The agenda is theirs, not ours. We have had successful conferences in the centre of Dundee on Saturday mornings, which suits people, and people have talked about welfare reform, asset transfer, tackling poverty and so on. We have had positive feedback about the connections that have been made.

Cameron Buchanan (Lothian) (Con): I am interested in asset transfer. Do you have a register of your assets? Is it available to the public? Is there an appeals process if someone does not agree with a transfer? For example, you talked about people taking on property on a short lease. Is there an appeals process in that regard?

The Convener: Let me add to that question. Do you have a full and comprehensive asset register?

John Hosie: Yes. It is online on Dundee City Council’s website. We have just agreed to share it through the local community planning partnerships. We are doing as much as we can do to raise awareness of the opportunities that are available.

We do not have an appeals process. We are in the early stages of implementing the strategy, and we would seek advice on the matter, as appropriate.

Archie MacGregor: We have a register of all our operational and non-operational assets.

The Convener: Is it full and comprehensive?

Archie MacGregor: I do not think that any organisation, particularly a nationwide one such as Scottish Water, could be absolutely sure of having everything on its register. We have inherited assets from predecessor organisations—

The Convener: That always amazes me. I ken everything that I own. [Laughter.]

Archie MacGregor: Certainly all our key assets are listed. There are thousands and thousands of assets on the asset register.

Judith Proctor: The board is required to compile and publish a property and asset management strategy, so that is available. I understand that the strategy includes the physical assets and their condition—

The Convener: The board has a strategy, but does it have a full and comprehensive register?

Judith Proctor: Yes, it does, and it is required to be published. All boards have one.
Thank you for the opportunity to make a presentation to the committee. Our organisation welcomes the fact that a bill dealing with community empowerment is on the table. We know from our work that more connected and empowered communities are more in control of their future and destiny and that they experience better outcomes, and that is why we should have this bill. Although we see some merit in each of its parts, we will judge it not only on how it further empowers already empowered communities but how it tips the balance towards the most disempowered communities—those that experience the most significant inequalities—to ensure that every community benefits from its measures.

As matters stand, the bill can be strengthened, and we have worked with a number of organisations to that end. If some of our issues can be picked up and the bill itself can be strengthened, it will do more to tackle some of the deep inequalities.

Martin Doherty (Volunteer Scotland): I, too, thank the committee for the opportunity to give evidence. One of our gravest concerns is the lack of reference in the bill to the individual—the volunteer—who seeks to empower both thematic and geographic communities.

We are looking for the opportunity to promote the idea of improving the national performance framework. There should be some recognition of the impact of volunteering across the framework to ensure that outcomes related to volunteering can be properly measured and that our knowledge and, critically, the role of volunteering in our communities can be enhanced.

Linda Gillespie (Development Trusts Association Scotland): On a point of clarification, convener, you referred to me as the programme manager of the Development Trusts Association Scotland. In fact, I am the programme manager for the community ownership support service, which operates out of the association.

The Convener: Thank you—that is indeed very useful for us to know.

Thank you for those opening statements. Mr Parker gave us a brief overview of why he thinks the powers in the bill are necessary. What do the other witnesses think? Are public authorities ready for the powers? We welcome the bill as it will help to reduce that inconsistency.

John Glover (Community Land Advisory Service): Thank you for the invitation to speak to the committee. The powers in the bill are useful and necessary. Given that I am involved as much in brokering temporary community use of assets as I am in brokering permanent transfers of assets, I very much welcome the fact that the asset transfer requests provisions talk about not only ownership or leases but management and use. That is important. For that matter, I also agree with the Government's policy memorandum that not all communities are ready to take on ownership.

I am also in favour of the approach taken in the bill because it could bring in a lot more land. After all, the issue is not just the nature of the communities but the nature of the land. As the previous panel touched on, even land that is earmarked for a different use in the long term should be made available to the community in the short term. There are good practice examples of that going on; however, it is also very evident that a lot of land that could be used by communities has had a fence put around it and is lying vacant. I therefore very much support how the provisions will encourage meanwhile use of land.

Are public authorities ready for the powers? I think not. Again, I can highlight good practice examples such as Glasgow City Council's stalled spaces scheme, which is being promoted across Scotland, and I know of successful community interactions with various landowners, but my impression is that more work needs to be done to get public authorities into a mindset where it becomes second nature to make land available to communities.

Maggie Paterson (Community Learning and Development Managers Scotland): Good morning. Community Learning and Development Managers Scotland welcomes both the opportunity to give evidence this morning and the bill itself.

We have members from all 32 local authorities, and I agree with the statement in the policy memorandum that the experience of and progress towards community engagement and empowerment vary considerably across Scotland. We welcome the bill as it will help to reduce that inconsistency.

Readiness for the bill also varies. A number of communities are very strong; they are aware of themselves as assets and aware that they can make an important contribution. Others will need support to be able to take advantage of the rights that are being offered through the bill.

The same applies to public authorities. Some have experience and practice that is in line with the bill and already empowers and engages...
communities. However, practice varies; it is not consistent.

Robin Parker: I will add to what I said in my opening remarks and comment particularly on part 3 of the bill.

The bill will enable us to realise much more that participation and involvement in decision making are a right of communities. As things stand, such involvement is understood as best practice and it is something that most public bodies endeavour to achieve. Part 3 or something like it can help to create a situation in which a community can turn round and say, “No, it’s our right to be involved in this decision. We think we’ve got something to bring to it, and we want to be involved in the decision-making process.”

Given our point of view as a children’s organisation, I should mention in particular that involvement in decisions that are relevant to a young person is one of the rights established in the United Nations Convention on the Rights of the Child, which ministers now have a duty to take into account as a result of the Children and Young People (Scotland) Act 2014.

I have another point about why the bill is needed. Some people have said that legislation cannot do it all; that is absolutely right, and an element of capacity building and so on needs to go alongside the provisions in the bill. However, there are certain things that the bill can bring. First, as we have outlined in our written submission, strengthening the community planning part will ensure that community empowerment is seen as one of the purposes of public bodies.

Secondly, the reality is that public bodies hold a lot of power in Scotland, and it is quite right that they should. After all, local authorities have elected members and so on as a result of democratic processes. However, the bill can ensure that we hand over some of that power and involve communities day to day in the decision making of public bodies. After all, the people who use public services are above all others the experts in how they can be improved.

The Convener: You mentioned participation requests, Mr Parker. The bill states that, for an organisation to make a participation request, it has to be a constituted body. Let me throw something at you. We know that there have been difficulties around care leavers, and we legislated recently to improve that situation. How do you see a group of care leavers, for example, getting together to challenge a public body and put forward a participation request to improve the services that they get?

Robin Parker: I am pleased that you have used that example, first because we work closely with care leavers and secondly because it is one of the examples that we have been thinking through. The Scottish Government consulted a number of times before the bill reached the Parliament, and thinking about examples such as the one you have mentioned, I note that in one of the first instances of consultation we said strongly that we were keen for the bill to support communities of interest as well as geographic communities. We are pleased that the bill reflects that.

As for the fact that a community body has to be constituted, we would very much welcome clarification from the Government—perhaps the committee can help with this—on how constituted it thinks that a body has to be and whether that needs to be brought out more either on the face of the bill or through guidance. We would like that condition to be applied flexibly so that a group would not need to be constituted formally.

11:00

The Convener: Thanks. The definition in the bill as introduced seems to be pretty loose, so clarification is probably required in that respect.

Mr Doherty, you talked about individuals. Given that volunteers often work on an individual basis, the constitutional aspect might, as with the issue that I raised with Mr Parker, pose some difficulties. Might there be opportunities for volunteers to get together to try to increase their influence in terms of participation?

Martin Doherty: There would be such an opportunity if formal volunteering levels were not flattening, which is what, as the Scottish household survey substantiates, they have been doing for nearly a decade in this country. I can give the committee some instances of that in areas that members might cover as MSPs.

Volunteering levels in Aberdeen city, which you and Mr McDonald cover, have dropped from 33 to 27 per cent since 2007. Although that might not seem substantial, it can be, given the relative figures for volunteering and the inequality in the area. In East Lothian, the formal volunteering rate went down from 37 to 32 per cent. Fife is one of the areas where the rate went up, rising from 22 to 28 per cent. The rate in Glasgow follows many of the city’s own indicators and has fallen from 25 to 24 per cent. In Inverclyde, the rate fell from 29 to 24 per cent; in North Lanarkshire, from 24 to 21 per cent; and in West Lothian, from 29 to 26 per cent.

I mention those figures because the challenge for us, as a national body for volunteering, and for policy makers is to stop them falling. If there is not at least some stabilisation or increase in the number of people identifying as volunteers, we will not have an empowered community. For us, that rings alarm bells for not only this bill but a range of
policy agendas, including the integration of health and social care, areas of which rely heavily on volunteering activity.

We therefore have grave concerns. We think that there are opportunities, but there needs to be a wee bit of clarity.

**The Convener:** You have opened up a can of worms there.

**Martin Doherty:** That was my intention.

**The Convener:** Before taking supplementary questions from Mark McDonald and Alex Rowley, I want to ask a question of my own. One of the things that the committee heard on its recent visit to the Western Isles—

**Martin Doherty:** Thankfully, no one from the Western Isles is here.

**The Convener:** Almost all the people in that community do some form of volunteering, but they do not see it in those terms. With some of the statistics that you have given us, which as you have rightly pointed out are from the Scottish household survey, might it be the case that some folks who answered the survey’s questions did not actually realise that they were volunteers?

**Martin Doherty:** There is an element of that. Around 30,000 people participated in the survey in 2007. The number who participate now has fallen slightly but, on the other hand, the methodology has greatly improved, and I am certainly not calling into question the SHS, which I think is a very robust piece of work. Indeed, at this moment, it is also the only piece of work that we have on this issue. We in Volunteer Scotland are trying to work with the Scottish household survey team to try to improve the questions, and we would certainly like to debate with them the idea of informal volunteering.

The recognised figure for formal volunteering in Eilean Siar—the Western Isles—is 57 per cent. The area has pockets of deprivation but it is very rural—indeed, more so than the Highlands—and an island community. That volunteering figure speaks volumes about the opportunities. If someone lives, say, at the top of the Western Isles and the NHS needs someone to clip their toenails because they cannot reach their toes—please forgive the example—they will get a volunteer from Stornoway to go and do it.

**Mark McDonald:** I am interested in the statistics. As you have said, the SHS is all that we have to go on. From your experiences and discussions with voluntary sector partners around Scotland, can you tell us whether what you have just described is replicated in communities in other areas? Many local authorities have areas of deprivation and areas of affluence, and it would be interesting to find out whether people in areas of affluence are more likely to volunteer than people in areas of deprivation, or vice versa.

**Martin Doherty:** The link between deprivation and low levels of volunteering is very clear: areas with high levels of deprivation have low levels of volunteering. There are issues around social capacity and social networking—and I use that term in its broadest sense. However, going back to Mr McDonald’s earlier comments about communities sharing skills, I think that you will find a lot of skilled people in communities of high deprivation, but what is lacking are the opportunities to use that skill and to be listened to.

Over the past 10 years, there has been substantial investment in the third sector, but for Volunteer Scotland it is not about just the third sector but all sectors—both private and public—that use volunteers. You have just heard from witnesses from the NHS, but I did not hear them mention volunteers. You also heard from witnesses from Scottish Water, which uses volunteers at some of its reservoirs. Local authorities talk about asset portfolios, and I would be interested to know whether they list the volunteers that they all use. Some local authorities do not even know how many volunteers they have in their asset portfolios.

**Alex Rowley:** I am pleased to hear the figures for Fife. The only criticism that I have made—and I have made it over a number of years now—is that Fife Council is pretty poor at engaging with third sector organisations. We tend to associate volunteering with the third sector when, as you have pointed out, that is perhaps not the right approach.

How do you see the bill supporting the involvement of more people at a voluntary level? What aspects of the bill are good? More important, what do you think needs to be added to it?

**Martin Doherty:** For us, as a national body, the bill is a step forward. We were told that the bill is very much a formal bill about the practicalities. As we recommend in our submission, one of the major things that we would have liked to see in it is early involvement. You spoke earlier to the public bodies about community bodies, and you should get the community bodies in before you decide what an appeals process is. You need to get them to help you design the process of applying for an asset transfer, and you need to involve individual volunteering organisations in the design of local approaches to community asset transfer. That would be a practical step forward.

**The Convener:** I do not want to stay on the subject of volunteering the whole time, but there is one key thing that we need to know from you, Mr Doherty, before I bring in other members. It seems that, in some places, folk are feart to volunteer in...
case they lose benefits as a result of the UK Government's welfare reform policies. Has that had an effect on the number of volunteers, particularly in our more deprived communities?

**Martin Doherty:** There is anecdotal evidence from third sector interfaces—I am aware that you do not like jargon, convener; I am talking about the old councils for voluntary services, volunteer centres and social enterprises—that they are seeing increased numbers of volunteers. However, we would need to get the numbers from them directly, as they are difficult to get hold of.

We are starting to work closely with not just Voluntary Action Scotland but the Department for Work and Pensions on mitigating as much as possible the impact on potential volunteers. We want to ensure that they are being given the right resources and that they are being signposted in the right direction rather than its being a case of, “I’m here because I’ve been told to be.”

**Robin Parker:** I want to chip in briefly on Mr Rowley’s question. On section 17 of the bill, which deals with participatory requests, we would hope that, if a group of people who were not yet constituted were to come forward, most local authorities would provide them with support and assistance to become constituted and fulfil all the requirements. However, something in the bill that proofed that and ensured that there was some duty on the public body to support such a group in coming together and making something like a participation request would be a beneficial addition.

**Anne McTaggart:** Welcome, panel. I have a few questions. I might dot all over the place. My first question is for Maggie Paterson. In your submission to the committee, you said that the bill’s provisions “do not directly facilitate community empowerment.” Throughout your submission you talk about national standards. Can you tell me how they could co-relate and work together?

**Maggie Paterson:** I assume that you are talking about the national standards for community engagement and how all that works.

**Anne McTaggart:** Yes.

**Maggie Paterson:** The bill does not, in and of itself, facilitate community empowerment. With regard to sharing power, the bill still puts the community planning partnership or the public authority in the position of responding to a request, rather than its being something in which it participates. I agree with Martin Doherty that the process for participation is decided by the public body.

The standards for community engagement talk about communities being involved at the outset, and it should be clear what the process of engagement is and what is there for discussion. That is the kind of thing that we mean when we talk about progressing empowerment and standards.

Does that answer your question?

**Anne McTaggart:** Yes. We have heard a lot that less-deprived communities will suffer as a result of the bill. What will your organisation do to combat that?

**The Convener:** I will add to Anne McTaggart’s question. You represent a national body: Community Learning and Development Managers Scotland. The committee has visited many places and we know that in some areas there is good practice and that there are interventions in deprived communities that help to build capacity, but in other areas that is flat. How do your organisation and the folks whom you represent ensure that best practice is exported across the country?

**Maggie Paterson:** A key purpose of Community Learning and Development Managers Scotland is to bring together the community learning and development workforce to share best practice, so that in my area I become aware of the good practice in someone else’s area and become aware of the issues that people face. It helps people to learn from others’ experience of overcoming barriers. That is how we do it.

The committee will be aware of the Requirements for Community Learning and Development (Scotland) Regulations 2013. A key aspect of that is about identifying communities’ needs for community learning and development. Across our membership that is a key focus, at the moment. We will support our partners and encourage our membership to use the regulations as a way of identifying need in a range of communities.

The need for support in one community might differ from that in another, but the regulations require authorities to identify need and to explain why certain needs are not being met. As an organisation, we will encourage our membership to be aware of the bill’s implications and of where we can play a role in supporting identification of need for community learning and development—for capacity, in this case—so that people can access their rights under the bill.

As an organisation, our purpose is to share practice and to support the implementation of legislation such as the CLD regulations and the Community Empowerment (Scotland) Bill, when it is enacted.
11:15

Mark McDonald: I asked the previous panel about community capacity and the difference between affluent and deprived communities and the level of support that are likely to require. I do not think that any community is without capacity or ability, but the issue is how that is channelled, harnessed and supported. Do we need to identify somebody whose job it is to support communities? There is a risk that if we do not do that, it will become nobody’s job.

Linda Gillespie: Our community ownership support service has just under 400 inquiries coming through. Mark McDonald’s point about affluent and less affluent communities is well made. Affluent communities get through quickly and have access to mixed skills in their communities. They speak the language of the public sector and of funders.

In general, we find that communities react to threat and opportunity—when there is the threat of closure or when an opportunity emerges. In less affluent communities, exactly the same applies. Through our work with local authorities, we have costed the asset transfer strategies. That is an internal document but, broadly, if a body was to access grant funding to help it through the process, the amount would be in the region of £20,000 to £25,000. If a body has access to skills in its community, it can go through an asset transfer process, just accessing the professional services that it needs, for about £12,000 or £13,000. So, there is a financial element. Straight support is needed for less affluent communities, whereas more affluent communities just get through the process.

John Glover: I agree with everything that Linda Gillespie has just said. The message from the previous panel—that more disadvantaged communities need more support—is one that I hear from the network that I am in. I agree with Linda Gillespie’s point about language. That applies to officialdom and to trying to understand the bill, which is not an easy read for someone who is not used to dealing with legislation.

A lot of groups have difficulty with just finding the right person to speak to in a local authority. Therefore, I am very much an enthusiast for the idea of having a named officer in local authorities with whom communities can engage. All local authorities have an allotments officer, who is often the person that the groups that I deal with are interested in, but there is no consistency across the 32 local authorities on which department deals with the issue—sometimes it is the estates department and sometimes the parks department. There is no consistency among councils on whom a community should speak to if it wants to take on a bit of land.

The Convener: You are concentrating on councils, but the bill covers other public bodies. Should other public bodies have named officers?

John Glover: Certainly the major landholder bodies should. For instance, I would support the proposal for named contacts for Scottish Water and NHS bodies. However, I am not sure that having such a person would be appropriate for some of the more minor bodies.

Maggie Paterson: On participation requests, the bill is quite difficult to assess, and it would be particularly difficult for less affluent communities. The process itself creates another barrier for less affluent communities, if that is what we are calling them. The participation request provisions give me the right to say, “Can I participate in your process?”, but if that process is complicated and inaccessible, having the right to participate in it is only one step forward. I might also need support to access the process and take advantage of it.

That is particularly difficult for less affluent communities. For example, if I had a concern about the process that had been outlined for me to participate in, I would have to put that concern in writing. That is a barrier for me from the start. It is a barrier for some communities, and there is a disadvantage there.

The Convener: Is not that where your members come in to help folk? I am keen to stress that, although we are talking about affluent communities and less affluent communities, there are some folks in those less affluent communities who are as articulate and capable as folks in affluent communities, if not more so.

Maggie Paterson: That is why I said what I said about the terminology that is being used, although what the convener says is certainly the case. The capacities of communities vary not only in relation to their affluence. Nonetheless, there are communities that would find it difficult to access their rights and which need support. The purpose of our organisation is to support our membership to give the best-quality and best-informed directed support that it can. It is clear that resources are limited across our membership and across other public authorities to do that.

Robin Parker: I absolutely agree with the convener’s point. When we looked at the Scottish Government’s last consultation on the bill last Christmas, we put together—with some of our front-line staff—things that, from our experience, matter in community empowerment. One of those things is always to take a strengths-based approach and to recognise the assets that already exist in a community.

I think that Mr McDonald said to the previous panel that specific expertise is sometimes needed, especially perhaps for some of the later provisions.
in the bill, such as those on asset transfer, which Barnardo’s is probably less familiar with. Such expertise is needed to allow take-up of the provisions.

We feel that we have expertise, from our experience, in respect of participation requests. There is something missing from the bill in terms of there being a duty placed on public bodies to support groups that come forward to go through the process. I am caricaturing the relevant section a bit, but it currently reads a little bit as though there is an opportunity for community groups to come forward to ask for things and say what they would like to do, but all the decision making is still on the public body side. In the work that we did with Oxfam and the Poverty Alliance, we thought that that section absolutely needs an appeal mechanism that would ensure that it is not just public bodies that that will decide on how the process will happen.

Finally, it is perhaps a bit more difficult to build the need for a named person into a bill, but something could certainly make it clear to public bodies that community empowerment is part of their purpose. That would be really beneficial. It could be made clear which organisation does that.

Maggie Paterson mentioned the national standards for community engagement. Their being put on a statutory basis in the bill would really help. A lot of really good consultation by public bodies takes place, but putting the national standards on a statutory basis would make it clear that high-quality and genuine involvement should always take place.

Martin Doherty: I back up what Maggie Paterson and Robin Parker said. A named person really should be a strategic element of every local authority, community planning partnership and NHS board as part of their vision for how they will involve either individuals through volunteering, or community volunteering that involves organisations. Having another named person on top of 32 local authorities, 15 health boards, our local authorities—I cannot remember how many of those we have—and all the other public bodies would not be of benefit to anybody, but all public bodies should be fully cognisant of the powers in the bill, what it means for them, and how it will be implemented in their physical day-to-day activity. When someone picks up the phone and receives a request about an asset transfer, they should know what that involves, and they should know that it relates to them, because their organisation wants to empower communities and to make them healthier, more sustainable and more resilient. That means ensuring that that is in the culture of organisations; it is not necessarily about naming specific individuals.

I would back up Maggie Paterson with regard to the participation request. If communities and individuals are not involved at the beginning, you might as well not bother. If the aim is to design a participation request, my advice is that it be designed around the people who need it, if you are proceeding with any element of that. The more you do to empower people at that early stage, the fewer problems you will have down the line with governance processes, and the more tangible your outcomes will be. That is why we would really like to see a national performance framework in terms of volunteering.

Mark McDonald: Perhaps I can crystallise that with an example. Before I got involved in elected politics, I was involved with a group of sports clubs, which had come together with a view to taking on an area of land and developing a sporting facility there. The convener will be familiar with it.

The Convener: All too familiar.

Mark McDonald: Because the land was held by the local authority, there was a view from council officers that they did not want to be seen to be too involved with giving support for a business-case grant application and so on, because they would then have a role to play in asset disposal and asset transfer. That led the group to fall into the trap that many groups fall into, with self-proclaimed experts in how to get funding and how to approach things attaching themselves to the group and offering what was, in fact, poor advice. That, in turn, led to things not really moving forward at all. Lo and behold—nothing has happened.

Situations in which there is such a vacuum undoubtedly exist. There might be a conflict of interests if a body gets too involved in providing support for community initiatives, because of its role in the transfer of an asset. Should we therefore have more robust guidance about whom communities can approach, and guidance for public bodies so that they can advise communities that, although they cannot be the organisation to provide the support that they need, there are others that they can approach for that advice and support? That would prevent scenarios such as the one that I described.

The Convener: That was a very long question. I would appreciate briefer answers if possible, please.

Martin Doherty: Talk about me opening up a can of worms! That question opens up various issues for community groups and, I recognise, for public bodies, including cost implications. Nevertheless, there has been substantial investment, both under the present Administration
and under previous Administrations, in third sector support for that type of approach.

My approach would be more about how we collaborate. How are we working together in the 32 community planning partnerships to ensure that groups are supported? A substantial amount of work is being undertaken by the community planning partnerships. They need to adopt a more collaborative approach in order to ensure that communities are involved and supported and that there is less duplication.

For public bodies that might feel put off about being involved in providing support during a community transfer, openness and transparency might be the way to tackle that. If bodies are open and transparent, I cannot imagine there being any reason why they would not want to support a community group of which they are supportive.

The Convener: So, is there a certain amount of risk aversion and duplication?

Martin Doherty: I would say so.

Linda Gillespie: The example that Mark McDonald gave is interesting. Over the past year, there has been quite a shift. I know that most of my examples are based on local authorities, but more than half of Scotland’s local authorities now have asset transfer strategies in place, with decision making by different groups.

There is some very good practice. East Ayrshire Council, for instance, has brought together teams of officers to support community groups through asset transfer. That is quite different from the decision making within the council. The South Lanarkshire Council approach brings together external bodies to support community groups as they go through asset transfer. The situation is beginning to improve.

As regards the bodies that do not have the required range of skills available to them compared with local authorities, their approach to the asset transfer process—when they are not necessarily in a position to assess various aspects of it—remains to be developed.

11:30

Maggie Paterson: The bulk of the members of Community Learning and Development Managers Scotland are local authority employees. The conflict of interests that was mentioned has, historically, been a potential issue for our capacity building workers and community workers, but it has probably declined over time.

As an organisation, our role is to support community capacity building staff, to affirm that their role is supporting the community to take actions and to progress issues that are theirs, rather than those of the worker, and to try to create a division or wall between their role as local authority employees and the wishes of the community group, which go in a direction that affects other parts of the local authority. Professional practice has developed along those lines.

To respond to Mark McDonald’s question about capacity building for asset transfer requests, our workforce would recognise that we do not necessarily have all the skills to support community groups to progress such requests and would call in and facilitate a range of support for those community groups by other local organisations, such as the CVS. Indeed, Linda Gillespie’s organisation—the Development Trusts Association Scotland—came and spoke to our membership so that we would be aware of the support and services that are available nationally to groups that want to go down the asset transfer route.

John Glover: I agree with what other witnesses have said about conflict of interests. The reality is that, if local authority or other public body officials are trying to support a community group, they may find themselves having a conflict of interests. In almost every case of asset transfer, there will be a degree of negotiation, but one cannot really negotiate with oneself. If we are negotiating the terms of a lease, we need two informed parties to have a dialogue about that.

There is a need for support services for communities outwith the public sector landowners. The service that Linda Gillespie and her colleagues supply and, within its limited remit, the service that I supply are needed and will need to be developed. Once the bill is passed and as we work towards commencement, we will need to work up the third sector support services to ensure that we are ready to hit the ground running on asset transfer and participation requests.

Robin Parker: One thing that always matters in any type of community empowerment right across the board and across all the provisions in the bill is that we are clear about the agendas of the parties to a discussion. That is always important. All the cards have to be on the table: otherwise, it is not an empowering engagement for either side.

Other witnesses probably have more expertise to bring to the discussion on the asset transfer measures in the bill. Conflicts of interests are much more of an issue with such matters, because they are much more of a legal dialogue and outcome. It is a little bit less of an issue with the participation request provisions, which are much more about co-production and look towards organisations getting alongside each other and taking decisions together.
Cameron Buchanan: Mr Glover, you say in your submission:

“Nothing in the Bill as introduced does anything to promote meanwhile community use of privately owned land.”

Are you advocating that communities should be allowed to purchase or lease privately owned land? I did not quite understand your point.

John Glover: I used the expression “meanwhile ... use” in the context of temporary use. I was talking about privately owned land that might be land banked for future housing but which is not being built on at the moment. Although the bill extends the right to buy, if land is intended for housing, it will probably not be in the public interest for the community to buy it. The bill allows participation requests and asset transfer requests to be made to devolved public sector authorities, but there is nothing in it that will increase the chances of a private sector landowner agreeing to lease or to license land temporarily to the community.

Although there are a few shining examples of good practice, my general experience is that there is a reluctance on the part of landowners to let communities use their land temporarily. There are various reasons for that. There are issues to do with the planning system: landowners may be concerned that they will prejudice their long-term planning use for the land. There are certainly valid concerns about whether a landowner will get their land back if they let a community group on to it. If they agree on a three-year lease, for example, will the community group leave voluntarily at the end of the three years? If not, what reputational damage will the landowner suffer if they have to go through legal processes to regain possession?

There are issues to do with the law of leases that scare people off—in particular, the processes for terminating leases are really quite obscure. Also, there is the issue of risk aversion—land professionals such as surveyors and lawyers may well say to their employers, “Don’t let the community on to your land because it will just cause you problems.” Another issue is contamination—people have concerns about where liabilities for remediation may lie. A range of things could be done through legislation—not necessarily in this bill—to promote more community use of privately owned land.

The Convener: Many of those issues are outwith the scope of the bill, so could you restrict your next question to the bill, please, Cameron?

Cameron Buchanan: Certainly.

There appears to be no appeal mechanism. Are you in favour of an appeal mechanism if requests are denied?

John Glover: If you will permit me to give a fairly technical answer to that, I thought that the bill was satisfactory because, although there is no appeal provision on the face of the bill, normal administrative law will still apply. We are looking at discretionary decisions by councils, so if a council makes an irrational decision, that will be challengeable under normal administrative law, without the need for a special appeal process. In considering that point during the last Government consultation on the bill, I could not think of a way of improving on what the common law already provides in terms of an appeal process.

Alex Rowley: My question is about participation requests and how seriously local government, for example, will take the process and what priority it will have. I suspect that if we went into a lot of communities right now and talked about outcomes, even many of the community groups would not be that up on what the outcomes are—

John Glover: if, indeed, there are any local outcomes. Local authorities are under immense pressure and their social work and education budgets are overspent—Fife Council is projecting that it will have to make £70 million in service cuts over the next wee while, for example—so CLD might be seen as one of the Cinderella services. Given that, does the bill need to go further and force community planning partners to engage more with communities, particularly in looking at local outcomes plans?

Martin Doherty: Collaboration differs among community planning partnerships and it involves the relationships with NHS boards and other public bodies. The sooner individuals or groups are involved in the planning process, the better the process will become and the easier it will be to design services that meet the community’s needs—not the needs of the public sector, the third sector or the private sector. If a service is designed around a community, it will meet the community’s need, which is a good thing.

Alex Rowley: I do not disagree; I am totally committed to the principle. However, the current financial climate and difficulties mean that local authorities have scarce resources, so does the bill need to go further and force local authorities to engage properly on outcomes plans?

Martin Doherty: My answer might go back to what I said about culture change. If bodies are unwilling to change the culture of engagement with communities and individuals, engagement will not improve, no matter how legislation is changed. People—individuals in organisations, community groups and the third sector—need to be willing to work together. In no shape or form can legislation force people to do that; I would find that difficult to see.
Robin Parker: Legislation cannot do everything on its own, but it can help to stimulate culture change and can play an important role. One of the first principles is that the people who use public services are the greatest experts in those services. That principle always applies, no matter whether public spending is increasing or decreasing or whether the decisions that are to be made are difficult or happy. I am interested in how the minister and the Scottish Government see that fitting in with everything that is in the bill.

I see the participation request as a backstop; when other things have been exhausted, communities can say that it is their right to be involved in such decision making. The bill could be strengthened to ensure that participation is not just for Christmas or when it is requested, because participation should take place throughout.

There is no magic bullet for community empowerment, but the national community engagement standards are a shiny projectile. We should apply those standards and ensure that engagement is always done well and genuinely, as happens in the vast majority of cases.

The bill requires community planning partnerships to draw up a local outcomes improvement plan—it will no longer be called a single outcome agreement. When they do so, they need to have much more of a balance. Their main purpose has been joint planning by public services—to be fair, they have been driven to do that. That purpose is good and it delivers better outcomes, but it is fair to say that CPPs have done less well at involving communities in their local public services and in how those services are planned. When CPPs draw up outcomes improvement plans, they must do so through a participative process that involves all members of the community in the area. That is important and should be built into the bill.

Maggie Paterson: I agree that it is possible to go further by strengthening the bill and perhaps by using regulations to implement the bill in a way that is more in the spirit of what is intended. Examples of participation have been given—I also gave one. What matters is the process as much as anything else. The extent to which the process can be legislated for is limited, but perhaps the process can be set out in regulations a bit more. As has been said, terms such as “local outcomes improvement plan” do not necessarily trip off the tongues of our community members.

We need to ensure that the processes are clear enough and that the jargon is translated so that people know what the bill means for them and why they as a community may want to engage with it. That needs to happen on a number of levels. We need to make those concepts more explicit in the bill and in the supporting regulations, but we would also expect the support to be put in place to enable communities to access their rights. The processes must be inclusive and transparent, and they should involve communities from the outset.

11:45

The Convener: I will play devil’s advocate. You talked about strengthening regulation. Many of us, particularly those of us who have served in local authorities, have faced comments such as, “Sorry, we can’t do that because the regulations don’t allow us to.” Should there not be a level of flexibility?

Maggie Paterson: That may be the case. My most recent experience concerns the CLD regulation, which quite explicitly puts the onus on local authorities to identify needs in the community, and outlines the process by which the three-year plan that we are obliged to produce should be drawn up and what it should contain.

We at Community Learning and Development Managers Scotland see the benefits of that approach in enabling us to do what we do. It will, we hope, be possible to have the benefits of the bill without the constraints, and with the flexibility that you mentioned.

John Glover: I am slightly concerned about Alex Rowley’s suggestion. If one requires public authorities to be more proactive, one could end up with a situation in which the public authority imposes its will on the community rather than the community deciding what it wants to do.

Rather than strengthen the bill in this area, my preference would be to treat the matter as an implementation issue. We need to ensure that the mechanisms are in place for sharing good practice so that successful community engagement in one part of the country can be shared throughout the whole country.

Linda Gillespie: I am here to offer an asset transfer point of view, but I work in the Development Trusts Association Scotland. The bulk of our members deliver services in their communities, and I agree with John Glover that the guidance rather than the legislation could be used to encourage wider communication and consultation.

Stuart McMillan: Do you have any views about the assumption that requests will be accepted unless there are any reasonable grounds for refusal?

Linda Gillespie: That assumption is most welcome and it puts a very positive spin on the bill, which will make it considerably easier for communities to move forward with asset acquisition.
John Glover: I agree—the bill is quite a brave, innovative piece of drafting, but that is the right way to do it.

Maggie Paterson: That assumption is helpful in relation to participation requests and asset transfer requests.

Robin Parker: It is positive for participation requests, but that does not negate the need for some sort of appeal process.

Secondly, the section of the bill on the decision process mentions the basis on which the decision must be made, but one thing that is missing from that is any mention of social inequality and poverty.

Martin Doherty: I agree with what the rest of the panel have said, and I agree specifically with Robin Parker’s point about an appeal process. I do not think that any new community group that was starting up, which would have limited resources, would have the ability to challenge any public body in the courts if it had to. It is quite unreasonable to expect the very small voluntary organisations that will be leading on the process to challenge any public body in the courts, so an appeal process would be most welcome.

Stuart McMillan: Section 19(5) says:

“The authority must agree to the request unless there are reasonable grounds for refusing it.”

What would be an unreasonable ground for refusing a request?

The Convener: That is a very difficult question for the panellists to answer, Mr McMillan.

Stuart McMillan: It was worth a try.

The Convener: Does anyone want to have a stab at that? I would not be keen to do so.

John Glover: A plainly unreasonable ground would be if a member of the public body wanted to use the asset for their own benefit.

Maggie Paterson: The bill talks about a participation request theoretically lasting for about two years—that is, another request cannot be made on the same subject during that period. An issue that concerns us relates to the fact that community engagement and empowerment is an on-going process—it tends not to end once it starts. If the area in which the engagement or empowerment had been requested was an on-going issue, it does not seem unreasonable for a community group to say, “Well, actually, that thing that we were involved in last year still seems to be an issue. We would like to continue to be involved.”

I can see why such a provision might be included in the asset transfer element of the bill because there might be vexatious requests, as the policy memorandum says, but in the case of community engagement and empowerment, we would like to think that outcomes could be transformed and that we could achieve health and wellbeing improvements in a short period, although that tends not to be the case. Therefore, it could be unreasonable to end the participation prematurely or, if there was a reason to continue to engage, to withhold continued participation.

John Wilson: Good morning. My first question is for Ms Gillespie, although it is open to the rest of the panel to answer. You gave two local authority examples of what you considered to be good practice in community engagement. Will you give or hint at some of the areas where there is less than good practice?

Linda Gillespie: We are seeing a much more nuanced approach from smaller local authorities that have smaller and more clearly defined communities. In the East Ayrshire example, the nuanced approach was about seeing the issue as a sustainable asset transfer. Larger local authorities in a metropolitan area can find it difficult to articulate how to define their communities and how they would transfer an asset. The value of assets is also an element; indeed, that is more challenging for local authorities in cities. The more metropolitan local authorities are taking a more cautious approach to the development of their strategies.

Robin Parker: I will make generalisations rather than give specific examples.

An issue that came up in discussion with the previous panel was about what point in the process the engagement takes place. It is important that that happens at the start of the process; otherwise a community could be left with a problem. For example, a community might be told that one of two schools should be shut and asked what they think. That would not be a genuine engagement. The authority needs to start at the beginning of the process and, in that example, work through it by asking, “This is a difficult decision that we have to make; how can we best make this together?” That would be a much more positive engagement.

If the start of the whole process is to be the outcomes plan for the community planning partnerships, that is where the participative process in which folk get involved must happen.

My second general point is there are groups that are often described as “hard to reach”, but Barnardo’s much prefers the term “easy to ignore”. It is important to build in ways in which public bodies can be made to think about who those groups are and make a particular effort to involve them.
My final comment relates to the previous point. We talk about community engagement, but what is a community? We have not really thought about that. It can be easy to think that the whole of a local authority area is a coherent community, when that is clearly not the case. Barnardo’s works a lot with families, and for families the sense of community is about something that is much more the size of the school catchment area, for example. There are also communities of interest, which often provide people with a strong sense of community. We talked about them earlier.

This is not in the bill, but some thinking about much smaller-scale things should be reflected in the whole process. The Public Bodies (Joint Working) (Scotland) Act 2014 made organisations think about not just the whole local authority planning area but much smaller levels of community. That should happen more widely; it happens in some community planning partnerships.

John Wilson: Mr Glover mentioned the public interest test, which is important in the context of community applications for asset transfer. Who should apply the public interest test? Mr Glover referred to land that has been set aside or banked by a housing developer or large retail supermarket. Who is the final arbiter of whether it is in the public interest to transfer such an asset to the community or retain the right of the housing developer or other entity to bank the land?

The Convener: May I stop you there? That is outwith the scope of the bill, because you are talking about land that is owned by private authorities. The witnesses could answer the question while forgetting the bit about land banking by private developers.

John Wilson: May I turn the question round, then? If a local authority has decided that land that it owns would be better used for a private housing development, who should decide what is in the public interest?

The Convener: You turned the question round well.

Linda Gillespie: The decision should be made by the elected members of the local authority.

John Glover: I agree with Linda Gillespie.

I hope that I am not going out with the scope of the bill when I say that it is worth considering the question in the context of what are sometimes called arm’s-length companies, which are wholly owned by a public authority. Such companies are called “publicly-owned companies” in the bill.

I have been speaking with one of my stakeholders about a site in Edinburgh that is in that situation, and we have come to the view that the bill is perhaps wrong in its treatment of publicly owned companies. As the bill stands, parts 3 and 5 will apply to such a company only if it has been specified in a statutory instrument. Our consideration has led us to think that it should be the other way round. The default position should be that parts 3 and 5 apply to publicly owned companies unless they have been excepted by statutory instrument, because it is not possible for communities to identify all the right companies, whereas it is possible for companies to put their hands up and explain why they should not be subject to the provisions of the bill.

Maggie Paterson: The role of our organisation is to support community bodies to seek whatever recourse is available to them, so we would not comment on that.

Robin Parker: I do not think that I have a view on that point about parts 3 and 5.

Martin Doherty: If the process has been designed with the assistance of the local community, I agree with Linda Gillespie that the fundamental decision should lie with the elected members of the local authority.

The Convener: Thank you for your evidence, folks. It has been extremely useful.

11:59

Meeting suspended.

12:07

On resuming—

The Convener: We move on to our final panel—my notes say “this morning”, but it is now the afternoon.

I welcome Dewi Morgan, chair of old Aberdeen community council; Ryan Currie, project manager at Reeltime Music; Teresa Aitken from Glenboig Neighbourhood House; Alice Bovill from St Mary’s centre in Dundee; and Yvonne Tosh from Douglas community open spaces group in Dundee.

I understand that some of you said to the clerks that there was a lot of gobbledegook earlier. That is a big bugbear of mine, so I agree with you. If we move into that sphere, feel free to intervene and slap our fingers for it.

Would any of you like to make an opening statement?

Dewi Morgan (Old Aberdeen Community Council): First, I am not the chair of old Aberdeen community council but the web administrator and newsletter and general letter writer.

The Convener: I beg your pardon.
Dewi Morgan: We applaud the Scottish Government’s wish to encourage subsidiarity and local decision making, but although the bill could open up new avenues for community involvement, there is a real fear at community council level that it might simply be used and abused by local authorities to offload their costly facilities and services to an unpaid and largely unwilling community group on the basis of local authorities saying, “Take this over or we’re going to close it.”

With particular reference to the participation opportunity, will local authorities or development bodies really be prepared to consider the basically parochial opinions and desires of local communities? The record so far is pretty abysmal.

Teresa Aitken (Glenboig Neighbourhood House): I am really disappointed that there is no representative from North Lanarkshire Council here today. This is a really important time for us in North Lanarkshire because we are just about to develop the community asset transfer policy, and it was really important for someone to be here to represent us.

The Convener: Thank you for that comment. It is on the record, and we will write to North Lanarkshire Council about the situation today.

Does anybody else want to contribute at this time?

Alice Bovill (St Mary’s Centre Dundee): I will give a quick introduction. I am here today representing an organisation that has already worked with the community to have a community facility built in an area where the council was refusing to build one. I can talk about the tried-and-tested community engagement that we had to go through for that to take place, and also other community engagement for other services in the area.

The Convener: Thank you for your comments, which are much appreciated. Some of us had an opportunity to hear more about that engagement when we visited Dundee, but we will be grateful for anything that you wish to add.

I start with a question on the existing powers. Do public bodies adhere to what they should be doing at present, without the provisions in the Community Empowerment (Scotland) Bill being in place? Mr Morgan, I turn to you first because you previously wrote to the committee about issues that you felt the local authority was not addressing properly.

Dewi Morgan: I think that the local authority adheres to the rules of what it has to do, and that is it—it will not go a step further. On planning applications, it will send out the weekly form because that is what legislation says it shall do, but it will do no more. We have to do all the running.

The Convener: Ms Aitken, do you have a view on that?

Teresa Aitken: I think that authorities do just what they have to do. There is no consistency, and I totally agree that we have to do all the running. We can meet officers and there can be deadlines for information to come back, but the community has to do the running and the deadlines are not met. There is no consistency or accountability.

The Convener: Is common sense shown?

Teresa Aitken: From the community, yes.

[Laughter.]

Ryan Currie (Reeltime Music): I have limited experience in the area, but I echo my colleagues. Public bodies do just enough to get by, and it does not always seem to be joined up to anything greater. The work is very much done on a piecemeal basis.

Yvonne Tosh (Douglas Community Open Spaces Group): We are different in Dundee. We are quite lucky in that we get a lot of help. Sometimes we have to fight to get the right people to help, but in the long run we usually get help quite easily and it is sustained, so that is a big help.

Alice Bovill: I feel that local bodies should be led by communities. If communities are inundated with lots of information that they have not asked for or training that they do not require, they can drown in it, and in that way they lose their volunteers. We want to keep volunteers and treat them as responsible people who can make decisions. They should not be bombarded with education from those bodies, although it can be great to have more information.

As my colleague Yvonne Tosh said, we are quite lucky in Dundee as we can access people, through communities officers, who will help us with every individual aspect of what we are trying to do.

The Convener: Those of us who visited Dundee heard about certain things that go on there. Earlier, Mr Hosie mentioned the forum that meets every three months, I think, which seems to be pretty community driven. That clearly leads to the exporting of good ideas and probably creates camaraderie so that you can get what you want for your communities. Does that work well? Would it work well in other parts of the country?

Alice Bovill: It could, but communities have to do some work on the issue themselves and make their voices heard. They cannot just go along to a forum and not speak up for themselves. They have to speak up and say what they require. If it is
something to do with the environment, they need to tackle that with the relevant person who is there. If it is to do with education, social work or the NHS, they should tackle that with the people who are sitting round the table. They should take a note of the person's name so that, outwith the three-monthly meetings, they can contact them and say, "You said at the meeting that you'd do this for us, so we're keeping you to that." That is a good way of contacting people.

**The Convener:** You have talked before about the importance of names, so that accountability continues.

**Alice Bovill:** Yes.

**Yvonne Tosh:** I totally agree with that. In the local partnership, if we have a problem in our community, we go to the committee and we will speak directly to the people who are in post in the different departments. As Alice Bovill says, we get a note of their names and then we get back to them if they do not get back to us in a reasonable time. We say, "You were meant to come back to us—why haven't you?" If there is a good reason, that is fair enough but, if they have just forgotten, we will phone them again, and we keep going.

**The Convener:** Good. Mr Currie, do you have a view on that? It seems that Dundee does things slightly differently from other areas.

**Ryan Currie:** What specifically are you referring to?

**The Convener:** I am talking about bringing communities together and having the level of accountability that has been talked about. If you feel that you cannot answer the question, that is fine.

12:15

**Ryan Currie:** In the papers for a previous committee meeting, I read comments about sharp-elbow syndrome. That really struck home because, in my experience, over time, the same faces are usually involved in the processes.

In some cases, the wrong thing is perhaps being incentivised. For example—again, this is just my opinion—with community learning and development partnership meetings, the incentive is just to have the meeting and not to be accountable for the results of actions that are set in those meetings. We tend to find that organisations are asked to go along to certain meetings just for the sake of it. Nobody who works for a public sector body thinks how much that costs. The difference is that those who work in the voluntary sector or other areas, such as everybody here, could say how much that costs and how much it impacts on an organisation to go along to such meetings.

**Teresa Aitken:** Dundee has a great thing going. When I heard the evidence earlier, I thought that the forums are a good idea.

We find that there are too many layers and that people do not know about all the layers that they have to go through to get to the partnership. Some community groups maybe do not have the knowledge and understanding to take them up to the level and find the person whom they have to speak to. Because we have been around for a long time, if we do not get a reply and people do not come back to us, we keep going back to them and, if we do not get that accountability, we probably eventually use our elected members. Community groups that have not been around for a long time do not know what the platforms are and what stages they have to go through. That has to be made clearer at community level.

**Dewi Morgan:** I agree with Ms Aitken on that.

**Mark McDonald:** I spoke to both the previous panels of witnesses about the fact that some communities can work out, for example, who they need to speak to and how to go through grant applications, whereas other communities might need a bit of support to do that. What are your experiences of the need for support to get grant applications or to transfer assets? Where did you look for that support, and was it readily available from public bodies?

**The Convener:** Ms Bovill, as you have gone through the process of establishing something new, do you want to go first?

**Alice Bovill:** For grant funding, we first thought that we would try the lottery. The need for a community facility in St Mary's was identified through community plans. Before that, flats and houses had been offered, but that was not sufficient for an area as big as St Mary's. We went to the lottery board but, because we were getting help from the council, we were too close to it. Eventually, we got to the judging table, and we expected a yes, but we got a phone call to say that our application had been refused.

We invited some of the people up to Dundee and asked why they had refused the application but, as Yvonne Tosh put it, we got a lot of gobbledygook. However, we pulled them up and said, "It's all right, because we are going to build the centre anyway—we will look elsewhere for funding." That is what we did, and we got European regeneration funding. That is the funding part.

From the very start, however, you have to get volunteers on board and ask the local community, from young people to old people, what shape they see the community facility being. You have to do that before you can apply for funding, because you do not know what size they would want, what is
affordable, what they would like for it and what opening hours they would like. You have to get your community on board immediately for something that they want to get their teeth into.

You must also keep the momentum going with your community rather than just sit back and expect the community to ride along with you. My knowledge of communities, whether they are poor or not, is that they are very interested in things that are going on in their area and that they have very community-based people.

The Convener: Did you get help from the local authority in trying to access the European funding in particular? It is not an easy process.

Alice Bovill: Yes, we did. It was applied for in conjunction with applying for lottery funding, a lot of which was to be for employing administrative workers and advisers. We did not get that funding, so everything is now community run: led by the community, worked on by the community and the community facility opened by the community. Basically, we do everything, including cleaning.

We worked in tandem with European funding. However, I think that we are fortunate in that we are perhaps one of the only places in Scotland that has the Territorial Army on board as well. It has given us a donation of money, and it has the whole top section of the community facility. We can gain access to it but we do not do that, because it is the Territorial Army's property. We would access it only if there was a problem with a power failure, for example.

Not having lottery funding was a loss at the time, but Dundee City Council was very supportive. I remember the very first meeting that I had with a certain person in the council because she said to me, “I don’t agree with the community centre and I don’t want any more community centres in Dundee to manage, but I’ll support you and I’ll give you all the help that you need to get it.” We therefore had support right from day 1 from the council. I cannot complain about the support that we have had from the council.

The Convener: Thank you. Does anybody else want to pick up on Mr McDonald’s question?

Yvonne Tosh: We are the opposite of Alice Bovill in that she has already gone through the process but we are at the very beginning of it. Getting funding has been quite hard for us. We would keep getting told that we fitted the criteria, but when we put in an application we were told that the words were too official. We took it back and wrote it in our language, but it came back to us because we did not fit the criteria. What is that about? That does not make sense.

Getting funding is quite hard. It is said that it is meant to be easier as soon as you get charitable status, but I think that it is still a fight to get funding.

The Convener: Do you think that the bill might help you get the help that is required to get through the bureaucracy of being told, “Oh, that’s too official,” or, “That’s not enough”?

Yvonne Tosh: It is possible. We have workers from the council who help us with funding, and they are brilliant. We just keep getting funding application forms, filling them out and sending them back, but they keep sending them back to us saying, “No”. That is one of the grumbles. As well as the funding, though, you have to get the community on board, as Alice Bovill said. If you do not have the support of the community, you will never get things moving.

The Convener: Okay. Thank you.

Teresa Aitken: I will speak about the support first. We have been involved in trying to gain a community asset for over seven years now. It started with us being asked by the local council to take over the local community centre, which we were quite keen to do. Being based in a small building made up of two old police cottages, with no space basically, we were quite happy to do what the council asked.

We got a feasibility study done, looked at it, went back to the council and discovered that there was not enough parking space planned, so the proposal was blown out of the water. We then identified a piece of land in our area that we could take over, so we went to the lottery and got substantial funding from it to carry out site investigations. We did that and found that we needed £250,000-worth of remediation on the site before we could build on it.

We have gone from fitting the criteria for the vacant and derelict land fund to not fitting it. The council said that it had spent its money for the year but would put us forward for funding the next year, but when the next year came it had already spent its money.

Also, the cost of the land was prohibitive and we had to reduce the scale of the building that we were building. We had to go back to the council and say that we needed a building of that scale to get the car park in, and the council decided that it would lease us a part and sell us a part, which the Big Lottery Fund would not have been interested in.

We have been having that fight for years. We are up against officers, and when we take the matter up to the top of the council we get sent back down to the same officer again. We feel that we are running up against a brick wall. The elected members cannot seem to get through, either.
The Convener: Let me stop you there for a second. Do you think that it would be helpful to have participation requests and the community being able to influence and ask for the reasoning behind decisions about, for example, the derelict land fund?

Teresa Aitken: Yes, I do. The participation will give us a stronger voice and enable us to ask questions that we cannot ask just now. It will make people accountable.

The Convener: That will happen instead of you being sent from pillar to post and back to the original officer.

Teresa Aitken: Yes, I think that it will. That is only part of my story, but I will let somebody else speak now.

Dewi Morgan: We do not have as much experience of seeking grants, but we recently created the friends of Seaton park group, because the park was falling into heavy disrepair. There seemed to be no drive at all to help us with grants, which may be partly because the group did not have the skills to go banging on the doors of either the grants company or Aberdeen City Council. Things may change now that there has been a change in the management group.

It seemed as though the council was happy to have the group because the park looked good for the Britain in bloom competition—there was a little rubber stamp for it—but nobody said, "It’s great that you’ve started; now, here are all the tools you can have." There was no outward giving, really. It was a pat on the head and, "Off you go."

The Convener: I apologise for being a bit parochial again, but a local group was formed around a park in Sunnybank and much more help seems to have been given to that group. Do you think that participation requests would be helpful if they enabled you to find out what that group got, why you have not got that and the reasoning why you have not received the same level of service?

Dewi Morgan: The Sunnybank park group was led by a council officer who had the inside track—he knew the systems and the people to talk to, and he knew how to do it.

The Convener: We should make it clear that it was a council officer not acting as a council officer but doing it in his spare time.

Dewi Morgan: Yes. The Seaton park group has no council officers on it. Although I was instrumental in getting the group started, it was important to me that, as a member of the community council, I did not run the friends group because it would have become almost a one-man band. I thought that if the group of friends who said that they wanted us to save the park were not prepared to stand up and run it, so be it. The issue is what people are available to run and what their skills are, and those things can be limited.

Mark McDonald: That builds on my earlier point about who the best people are to give that support. Have you found, on occasion, not a lack of willingness by the local authority but a view that the local authority cannot be seen to be supporting a group while, at the same time, negotiating with a group? Has that issue come up, or do you see that becoming a pitfall if the support is not available?

Dewi Morgan: My experience is that it feels as though the council is trying to control the group. It is saying, "We want you to do this amount and that's all. Go and paint this. Go and weed this. We'll put your name on this." It is the opposite of providing support.

Teresa Aitken: Sometimes, if people are after a piece of land or an asset but they are not managing to progress the matter, they wonder whether the council plans to use the land or the asset for something else. If the council has other ideas, we would ask it please to tell us, so that we are not wasting our time. That is what we have come up against.

12:30

Alice Bovill: In Dundee, the council has community officers working in regeneration areas city-wide. The officers are designated specific areas—mine is Strathmartine. All the officers meet—monthly, I think—and they meet the chief executive regularly, too. They take forward the needs and wants of the volunteers whom they speak to in the area. Support for each area is evenly divided; one area is not preferred to another.

The Convener: You have all those forums and you have community officers. Those officers feed up to the very top, to the chief executive, who has a major role to play in the community planning organisation. Is that right?

Alice Bovill: Yes.

The Convener: It would be interesting for the committee to write to the other community planning partnerships to find out whether they are at that level.

Does Yvonne or Ryan want to respond to Mark McDonald’s question?

Yvonne Tosh: All that I can talk about is the land that we hope to get successfully, which is sited where an old school was knocked down. The council wanted to use the site for housing, but the community wanted it for its own use. In the beginning, the council was very adamant but we got the land because we stuck up for ourselves.
Ryan Currie: We are at quite an interesting stage—the very early stages of asset transfer. For a period of perhaps seven or eight years, we as a small charity knew that we had outgrown our physical resources. However, whenever we inquired about possible consultation with North Lanarkshire Council about asset transfer, the result was a dead-end meeting with someone in property who said, “You’re not getting that, because we would make too much money from selling it.” We were at cross-purposes—it was clear that their department’s purpose was completely different from what we were looking for.

The Convener: Aye.

Ryan Currie: That is a fundamental point. In the past, no individual was directly responsible for community asset transfer and that was a problem. How does someone access an entire authority? At what level do they go in and what phone number do they call? Also, the person who made the approach was almost seen to be disrupting the local authority’s activity, whereas the new process is systematic and they are no longer seen to be a peculiar case.

The Convener: That is very useful.

Stuart McMillan: Good afternoon, panel. We heard evidence from the previous panel about having an allocated person to deal with asset transfer. The evidence was conflicting, because some said that there should be no single person and that, rather, the matter should be part of the organisation’s culture. For the future, and with the bill in mind, would it be useful to have such a responsible person in the short or medium term—say for five years or so—and during that time to try to increase the culture in local authorities so that more people are aware of asset transfer, and then for the job to disappear?

Yvonne Tosh: Yes.

Teresa Aitken: I would also say yes—it is vital. We need one person whom we can go and speak to. As Ryan Currie said, we are speaking to a whole authority, and we do not know which person we should speak to. Within the authority and its various departments, people do not communicate with one another, so we have to communicate with all the different departments.

We are at the stage of a pilot for developing a community asset transfer. We have just taken over an asset. We were supposed to take it over in December 2013, but we did not do so until March this year. We got the first management fees in July, only after fighting for them. We do not have a service level agreement, and we still have a draft lease. There needs to be someone who can help us through the process, probably for the longer term.

The Convener: Does the fact that all those things have not fallen into place affect the original business plan that you submitted?

Teresa Aitken: Yes—it affects everything that we are trying to do. We took over a building, and one of the stipulations was that we required the management fees to enable us to run the building, to provide the services that were already being provided there, and to expand and build more services. If the management fees had not been in place, we would have fallen at the first hurdle. That is where we feel we are—we keep getting knocked down at the first hurdle.

Dewi Morgan: I agree that, in a business or engineering sense, if two organisations are working together on a project, there is always an interface engineer. People need to know who to go to, and there needs to be somebody who can disseminate thoughts to the other organisation.

Stuart McMillan: Those comments have been very useful.

Thinking about the bill, has each of your organisations had an increase in interest among people wanting to volunteer and get involved? If so, are they bringing with them additional skills that you do not currently have, which could help with implementation once the bill completes its parliamentary process?

The Convener: In responding, you can be brutally honest and say whether folk actually know about the bill at all. We have tried to disseminate information about it, but there are always difficulties with that.

You are shaking your heads—so, most folk do not know about the bill. The simple answer to Stuart McMillan’s question is that there’s nae been onie additional volunteers, cos nae many folk ken about the bill.

Alice Bovill: Additional volunteers have come forward through word of mouth. There are people who have read the bill and who have taken part in conferences, such the one in Dundee, and they can impart their knowledge.

We are encouraging some young volunteers now—that is the future. They might work for only a couple of hours a week, but there are always new volunteers coming on board. It is good when we talk to them and ask them their opinion about what they would like to see. We explain things to them—we do not just suddenly go into talking about the bill being published and so on. Young people have been at school for all those years, and they do not want all this thrown at them right away. They just want to come in, do their bit for the community, know what is going on and say what they want to do. It is up to people such as me to sit and read what I dare say is boring stuff, and
to impart anything that I pick up from it that is of direct benefit to the community.

The Convener: I make an appeal and put out a wee advert as far as the boring stuff is concerned. It would be really good if you all went back to your respective communities, told them about the bill and asked them to write in and let us know any views that they have. We are still looking for folks’ views on the bill, so we would be immensely grateful if you could do that.

Stuart McMillan: I have a final question for Teresa Aitken. You spoke about the frustrations that you had experienced, and you said that you use elected members “eventually”. That was an interesting comment. Why do you do that only eventually? Why would you not approach them sooner in the process?

Teresa Aitken: There are processes that we have to follow. If we were to jump right to elected members—well, we are not popular anyway. [Laughter.]

I have written down things about co-production, participation and empowerment. We are empowered people in our communities, and we have been doing co-production for many years.

The Convener: Would you use the word “co-production” when you are yapping to folk in your community about what you are doing?

Teresa Aitken: Certainly not.

Before we take an issue to the elected members, we have to allow the person in the post to do their job and provide us with the information. We use the elected members a lot, because we have come up against a lot of barriers over the years in trying to take on land and assets. We have got through the brick wall eventually only because of the elected members, but we do not use them immediately because we like to follow the process. If nothing comes from that, we certainly go to an elected member.

John Wilson: Good afternoon, panel. I am an elected member and have been the chair of Glenboig neighbourhood house for a couple of years, so I am not included in the elected members who Teresa Aitken refers to. She is referring to our local councilors, who we tend to involve if we are having particular problems.

Having made that declaration, I have a question for the panel. Having read the bill, would you add anything to it? Would you like to see anything strengthened in the bill to make it easier for communities to take forward what is proposed in the bill?

Alice Bovill: Maybe the only thing that I would encourage is communities having a stronger voice and being included in other committees. I am fortunate in being on the Dundee partnership management group, so I can go to the top on issues. I am also on other regeneration committees and I have worked in the tenants movement and on a children’s panel. I have gained knowledge from all that. However, community members need encouragement and training on public speaking, if necessary, so that it is not always left to two or three people to give evidence to a committee such as this, for example.

Apart from that, I think that we get all the support we need. We have contacts with the right people. If we have a problem, we are not slow in going to them and saying, “This is breaking down.” If something has not been done after it has gone to the local community planning partnership meetings, we can follow it through and say, “This has not been done. Your LCPP meetings are not working. What are we going to do about it? We have to do something.” We have to get the person concerned to go back to his or her seniors and ask whether he or she can make a decision. Sometimes their hands are tied, too, when it comes to making a decision on something important that we are asking them to do.

The Convener: So even without the bill, things seem to be working pretty well.

Alice Bovill: They are working pretty well, but unfortunately because these things are not in legislation they do not have to be done. The bill will let councils know that they have to do certain things. As I said, we are fortunate in Dundee because the council supports us, but it does not have to. A new council could come in and decide that it did not want to work so closely with the communities and did not want to give them the voice that they have now. We must watch our backs and we must look to the future.

The Convener: Thank you. Teresa, do you want to comment? Things are working in Dundee without the bill. Will the bill help you?

Teresa Aitken: I think that the bill will help. We do not have a community asset transfer policy, but we need that. Greater participation and having a voice will make communities stronger. I think that the bill will definitely help communities to go forward.

The Convener: Does anyone else want to have a crack at John Wilson’s question?

Yvonne Tosh: I think that the bill will help. Like Alice Bovill, I wear lots of hats, but the bill can allow someone who does not have so many contacts to help their community. It is good that I have contacts, but the bill will help someone who does not have them.

The Convener: Would you add anything to the bill?
Yvonne Tosh: I would make it shorter. [Laughter.]

The Convener: Less gobbledygook.

Yvonne Tosh: I was going to say that. Put it in plain English.

The Convener: Okey-doke. Does anyone else want to comment?

Dewi Morgan: Yes. I think that there is a problem because the bill is such a portmanteau one. It covers so many issues that it is very difficult for anyone to work out what is going on. It took me several goes at the bill to realise what was there. With the supporting documents, there are about 300 sides of A4 to read through to work out what it all means and which bits are relevant to the community, whatever it is. That is not easy. That is why there is the idiot’s guide; that is a bit embarrassing really, so we need something between the idiot’s guide and the rest of it.

12:45

The problem is not that we cannot understand the bill. After two or three readings and making notes we all understand what is in the bill, but people in communities do not have time for that. If someone wants to make a planning application, they have to get the documents and find what is needed. If it is a piece of law, they have to find it. They have to find out whether the community council is part of it; they have to dig, dig, dig to find the right route. You do not make it easy for us to understand this stuff.

Could the bill help Aberdeen or our community council? I think that it could, but it depends on how the local authority uses it. It could use it as a tool to give us a harder task.

The Convener: I understand that. The bill is pretty tough going, which is why we have divided it up. I have been told to do another advert and mention a wee video that has been produced for communities. We will send it to you and you can pass it on to others. Unfortunately it means that folk will have to look at my face.

John Wilson: We heard evidence earlier from Barnardo’s and other organisations. Barnardo’s indicated in its written submission that the community planning partnerships should set aside 1 per cent of the overall CPP budget for community engagement. Are there enough resources to allow communities to participate fully in the decision-making processes that they want to be engaged in? With the exception of Alice Bovill and Yvonne Tosh, who seem to be quite steadfast in their engagement—they might want to comment, too—do the panel members think that there are enough resources to allow them to participate fully? I am not talking about participating on the edges, but about participating fully in the issues that you want to participate in and in the decision-making structures that are out there making decisions for communities.

Alice Bovill: The resources are there. They are not necessarily money resources, but assistance is available. We identify the internal and external training that we need to take, such as the disclosure and food and hygiene certificate training, for example. We have all those extra things to do. Policies have to be kept up to date every year, so we have to go through training for that.

We could not do all that by ourselves—we need support from community officers. We get support in kind, not in cash, because all our income is grant funded. We get lots of support in kind from other people so that we can bring on our volunteers. I know I said that our volunteers would not all read the bill, but they get involved and they know the policies for a management group running an individual centre with a community-led body.

Teresa Aitken: We are members of DTA Scotland, and resources in kind that are available through DTA have given us a great voice in decision making. What we have learned as part of DTA Scotland over the years has really taken us forward, and other training is available through CLD and different partners.

If we were to really take part in decision making, have a voice and free up a lot more time, we would need financial support that is not there at the moment. However, a lot of DTA Scotland’s expertise has been valuable to us.

John Wilson: People who have read the bill will see that there are issues around the definition of community organisations that local authorities and public bodies should engage with. Should there be some tightening up of that community body aspect? I am trying to get a definition of who should be able to participate and who should engage in the decision-making policy structures of the council or CPP.

Alice Bovill: In the area that I come from, we have a group that deals with community safety so we know that that is where we direct questions to the police. We have a group that deals with the planning partnership, which is the management board in the centre. We have other groups that deal with churches, so we can get in touch with local churches. We have a group that deals with schools. We identify the different areas that we are working with. If we are working on an issue to do with antisocial behaviour in housing, we know who to go to.

It is a matter of identifying the right person with the right information and getting them to come along to the meeting. I might ask the police to
come along to a meeting about antisocial behaviour, but I might not ask them to come to a meeting on housing improvement; I would do better not to waste their time, because the police are strapped for time, and to invite the right person at the initial stages.

**Alex Rowley:** Dundee has local community plans and area plans. How engaged are the Dundee groups in them? Are the other organisations that are represented here aware of their local community planning partnerships and engaged in local plans?

**The Convener:** Let us start with Dundee.

**Alice Bovill:** I used to live in Ardler, which became a regeneration area, and I did not move up to St Mary's until 2000. I had said that I would not get involved in anything again, but I got involved in getting tenants' and residents' views on their aspirations for the area—a wish list, basically. We were saying to the community, “You write down on a post-it note what you’d like to see and put it up on the board, and we’ll write a community plan.”

Way, way back in the early 2000s we wrote the first community plan, which is where the idea for a community facility came from. People wanted lots of other things. Believe it or not, the children wanted tidier gardens in the area; they did not like hanging about in an area that had untidy gardens and insufficient lighting. They were coming out with simple things like that.

We have to consult before we even think about a community plan; the community plan has to be led by the community. I cannot go along and say, “I represent the community and I think people need this and that.” I cannot impose my view of what people want; I have to hear everybody’s views.

As I said, our community plan was drawn up way back in the 2000s, before we had LCPPs. LCPPs are quite new—we had regeneration forums before we had LCPPs. Every so often, we take a day to review what has been done, what is still to do and what has not been touched yet, and we create another list of aspirations.

**The Convener:** Are the other areas that are represented here aware of community planning partnerships and the levels below them? How are you involved?

**Teresa Aitken:** I am aware of those bodies and I am involved. I can go to the local area partnership meeting once a month and feed in through North Lanarkshire Council community learning and development; there is a partnership through CLD, and a lot of local organisations sit on that. We have a great network in the Coatbridge area. There is a steering group, which involves the NHS, the council, the police and everyone, and we work well at local level. The reshaping care agenda, which came up earlier, is a great avenue for participation, and North Lanarkshire Council has taken it forward in a good way. The bill builds on that. The progress on reshaping care shows what communities can do to build on structures and develop good projects in their areas.

I am also aware of the community improvement plan and how it works locally.

**Dewi Morgan:** I do not know of a community plan that is in operation in our area. We get involved in the formal ones—the local area plans, and so on—and go through the formal process of putting comments into those fairly torturous documents, but I have heard at the community council forum that there is no community council involvement in the central Aberdeen master plan consultation, which is a plan to rejuvenate the whole centre. They have managed to pull that together without any community council input.

**Ryan Currie:** I am aware of CPPs, outcome agreements and things like that in the North Lanarkshire area. I have seen all the diagrams and the fancy reports, but Reeltime is not involved. While the other witnesses were talking, I was thinking about why that is the case. There is probably a variety of reasons. We are a small charity and, like everyone else, we are just trying to keep our heads above water trying to get funding for our own plans. I can speak only for myself, but it is sometimes quite hard for small organisations to see where they would fit in to a big, complex diagram, or to decide which meetings to go to and at what level they should be discussing things.

**Yvonne Tosh:** For me, it started off when I went for a nosey, and my involvement just grew. Now, I fit in and I can put my point forward and say, “Right, this is what the community wants, not what the council wants.” If the community wants something, you have got to fight for it. We have been fighting for a long time for our green space. We did a lot of consultations and the matter went to the LCP, which said that it was a good idea.

Our consultation included five-year-old kids. One wee boy said, “I know what I’d love—a swimming pool.” I said that I did not think we would get a swimming pool in Douglas, but he said, “Yes, but in winter it freezes and we’ll get a skating park.” What do you say to a five-year-old in response to that? If you empower children from the beginning, they will go forward.

**The Convener:** Absolutely. I probably ended up here because I went for a nosey once upon a time.

**Cameron Buchanan:** Do the witnesses think that the new powers in the bill will make a real difference to communities?
Teresa Aitken: I do not know. I think that they will be of benefit to us, because of the work that we have been doing in North Lanarkshire and Glenboig over the years. We need something that will make our council accountable, and we definitely need the council to make our communities stronger and to make not only councils but all public bodies accountable. It will help people who are setting up, and it will help us to help them. If there is a proper document, it makes the council, the NHS or any other body accountable.

We could then go to other small groups that are setting up. It is a big thing to set up a group and take on land, or to start projects and look for funding. We have been there for a long time and we still find it quite scary at times. I think that the bill will help to empower other communities and enable them to go forward.

The Convener: You said to begin with, "I don't know," and then you were pretty positive about it.

Teresa Aitken: Well, I kind of thought about it.

The Convener: Sometimes there is a don't-know factor. Should we revisit the issue as a committee after the act is in place to make sure that it is working as it should for communities?

Teresa Aitken: Yes, because acts come in and are supposed to be operational, but often they just get put in a filing cabinet, so you should revisit it.

The Convener: That is grand. Thank you very much.

Dewi Morgan: I think that the bill will make a fantastic difference for one or two specific cases. In the Western Isles, for instance, there have been situations in which people have been desperate to buy land. It could make a difference for smaller community organisations, but I will have to wait and see how it actually works, because it is in the local authorities’ remit to decide whether they deliver or go to the letter. If they go to the letter, not much will happen.

The Convener: Will participation requests deal with some of the difficulties that you have faced? If the facility for participation requests is in place, you might not have to go through the rigmarole of making a participation request, because the council will know that you have that ability. Will councils give you answers sooner?

13:00

Dewi Morgan: We do not want to participate by sitting in committee meetings day after day. There is a lot of that, which is a desperate problem. We do not want to get involved in that way.

At this week’s community council forum, someone made the good point that we seem to be moving from a representative democracy to a participatory democracy. However, we do not want to participate to the ends of the earth, because some of us have day jobs and domestic commitments. We just want the support that we need; we do not want to have to sit on committees unnecessarily. Our forum was asked to sit on a committee for two years to talk about the community council boundaries. That is ridiculous.

Alice Bovill: The bill is useful in advising groups that are starting. I am often asked to talk to people who are trying to set up similar groups to ours, outside my local area, but still in Dundee. It has been handy to take along the bill and refer to it when talking about problems that people might have. What is proposed is down in writing and will become an act, as the convener said. That can be revisited if people do not get the access to officers that we get.

Anne McTaggart: I will reiterate what the convener said. Given how prominent your organisations are in your communities and how hard you work, what plans—if any—did you put in place to gather information for the consultation?

Dewi Morgan: I barely knew that the bill was being considered until the letter to invite us to the committee arrived. I did a little bit of information gathering before, and then an awful lot yesterday. I looked at videos of previous committee meetings, for instance.

Anne McTaggart: Has that made you think about how to inform your communities about the bill?

Dewi Morgan: Yes.

Alice Bovill: I knew what was going on, because I sometimes look at the Scottish Government web pages. I am quite interested in water and sewerage charges, which are our main bugbear at the St Mary’s centre. We are £5,000 in debt because of those charges, but we had Alex Salmond up to the centre and he hopes that we will get charitable status. I tend to check on the bills that are going through Parliament and on whether they have become acts, so I knew about the consultation.

Teresa Aitken: I knew about the bill through DTA Scotland, which asked us to comment on it.

Dewi Morgan: Anne McTaggart asked whether we would pass on information to the community. Given what I now know about the bill, I certainly will talk about it. I have already made a note to mention it in the next newsletter for our area. The information and videos all help.

Until when does the committee want feedback? Newsletters are not issued weekly; the process is slow.
The Convener: It would help to have any feedback by 12 November, which is when the minister will appear before us. However, the process is on-going and you have the right at any time to let your elected representatives know what is right or wrong.

We are at stage 1 of the bill process, so there is room for the committee to look at the bill again. Beyond that, the whole Parliament will have the final look at the bill. Do not feel bound to 12 November—if a flash of brilliance comes from somebody in your communities, as often happens, tell them to let us know about it.

I thank the witnesses for their evidence. I know that you are all volunteers; we are grateful to you for giving up your time to speak to us. I hope that we spoke without too much gobbledygook.

13:04

Meeting continued in private until 13:05.
Present:

Cameron Buchanan
Mark McDonald
Stuart McMillan Kevin Stewart (Convener)
John Wilson (Deputy Convener)

Apologies were received from Anne McTaggart and Alex Rowley.

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

Andy Brown, Secretary, Scottish Woodlot Association;
David Coulter, Chief Executive, Dumfries Third Sector Interface;
Amanda Macaulay, Dalbeattie Community First Responders;
Jeff Ace, Chief Executive, NHS Dumfries and Galloway;
Geraldine McCann, Head of Administration and Legal Services, South Lanarkshire Council;
Douglas Scott, Senior Policy Advisor, Scottish Borders Council;
Kay Gilmour, Head of Community Support, Department of Education, East Ayrshire Council;
Louise Matheson, Senior Manager Property & Architectural Services, Dumfries and Galloway Council.

Following the end of the meeting the Committee undertook a question and answer session with members of the public in attendance at the meeting on the issues raised during the oral evidence session on the Community Empowerment (Scotland) Bill.
Community Empowerment (Scotland) Bill: Stage 1

14:33

The Convener: Item 4, our final item of business, is our fourth oral evidence session on the Community Empowerment (Scotland) Bill. Two panels will give evidence this afternoon. I welcome the first panel: Andy Brown, secretary of the Scottish Woodlot Association; David Coulter, chief executive of Dumfries third sector interface; and Amanda Macaulay of the Dalbeattie community first responders. I apologise to Amanda Macaulay, whose name was spelled wrongly on the agenda; that will be corrected on all the formal papers that will follow.

I invite you all to make an opening statement.

Amanda Macaulay (Dalbeattie Community First Responders): I am the local co-ordinator of the Dalbeattie community first responders. I do not know how much you know about us. We are a group that was set up through the Scottish Ambulance Service and we assist local crews on what are termed time-critical calls. We are sent to things such as cardiac arrests, breathing difficulties and medical collapse. We went live on 12 February and since then, although we do not operate 24/7, we have assisted on 133 calls.

We were originally set up to assist with calls in Dalbeattie, but we decided that we would go where we are needed and we have been to almost all the smaller communities in our area, as well as up to Castle Douglas, where the ambulance station is based. A group of us have also now trained as heart start instructors, and in the new year we will be taking our new skill out into the community to train people in cardiopulmonary resuscitation. We are totally self-funding and, with the exception of six jackets and a bag with some oxygen and a couple of masks, we have bought all our own training equipment and our own defibrillator. We have also taken possession of two public access defibrillators, which we will maintain, again adding to our running costs.

The group is quite expensive to run. Medical equipment costs a tremendous amount of money and we need to use quite a bit, but we are proud of our financial independence, as we are aware of the pressures that the national health service faces. That has predetermined us to be as independent as we can be, not a drain on valuable resources.

Andy Brown (Scottish Woodlot Association): I would like to thank you, on behalf of the Scottish Woodlot Association, for inviting us along to the committee. We are a co-operative of forestry workers who lease forest land from landowners in Scotland. Scotland has the most concentrated land ownership in Europe, and we are offering working people a chance to achieve forest tenure. We think that the Community Empowerment (Scotland) Bill is an excellent opportunity to take our work to the next level and to offer a lot more people the opportunity to achieve forest tenure in Scotland.

David Coulter (Dumfries Third Sector Interface): I head up the local interface, which is one of 32 in Scotland. The issues that interfaces across Scotland deal with have been presented to the committee in evidence by Voluntary Action Scotland, and I would like to make reference to a couple of points that VAS has already made. One of the most important points is that the guidance that follows the bill must give clarity on the role of third sector interfaces. My specific concern is that, if we are to improve the capacity of community bodies, however defined, to respond to some of the opportunities that will be provided when the bill becomes law, we must address how those organisations and community bodies can take up those opportunities and build their capacity in a way that involves sound governance and financial management, so that our public sector partners have confidence that we as a sector can deliver.

It is interesting that the witnesses on either side of me represent two very different examples of the third sector. Members know the diversity that exists out there and I think—I would say this, would I not?—that there is a huge opportunity in the bill for that diversity to come to the fore and help us find solutions to some of Scotland’s bigger problems.

The Convener: Thank you very much.

Why are the powers for participation requests and asset transfer requests necessary? Do you think that public bodies are ready to deal with those?

David Coulter: On Thursday morning, your colleague John Swinney asked, “Why do we need a community empowerment bill to empower communities?” It was a good question, because the answer from my perspective is that we should be ensuring the empowering of communities as a matter of course. However, the reality is that that does not happen without some catalyst, and I regard what is proposed in the bill as a catalyst for change.

The power for asset transfer requests brings greater clarity to the process and greater opportunity. Is the public sector ready to respond to that? Well, I have my doubts, some of which I expressed in private conversations with members this morning and in the earlier group discussion. I think that there needs to be a long-term change in
culture around the way in which public authorities view assets.

My sense is that there is often a culture working within public bodies such that they regard assets as being owned by them. That might be the legal position, but the reality is that we as a community in Scotland own them. There are issues around that which we will need to address. At my table earlier, people described the frustration that they have felt when going through the process of acquiring an asset, whether they were leasing or purchasing it. That is a tangible issue that can be addressed by a change in culture.

I am not sure that either the third sector or the public sector is prepared for participation requests. It will be very interesting to see how participation requests will operate in practice. I think that that is where some of the guidance around the bill will have its impact. In a sense, I am asking the committee a question about that, for which I apologise. What do you expect participation requests to lead to? I would hope that they would lead to very profitable conversations about how we address some of our big issues around, for example, our growing elderly population and youth unemployment. If participation requests are used simply to address parish-pump politics, I think that we will all miss the point. I have some questions about how that will operate, but the answer to whether it is welcome is yes.

The Convener: Before I bring in the other two panellists, I want to ask you about what you said about the ownership of assets. Earlier, we discussed whether there is difficulty in identifying who owns an asset. For example, is it held as part of the common good, or does it belong to the council? Is there a lack of asset registers in this neck of the woods that say who owns what?

David Coulter: I do not know of a register of publicly held assets in Dumfries and Galloway, although there is probably something like that out there. A more publicly available asset register would be of benefit to the third sector and to local communities, provided that it was known about and publicised. There is an awful lot of stuff out there that communities do not know about and therefore cannot access.

Having an asset register is a great idea, but I might go one step further and suggest that we add to such a register those bits of derelict and unused land that we do not know who the heck owns them or whether they are publicly or privately held. Such land should be part of an asset register so that we have a clearer picture across our communities about what is not being used for the greatest benefit of communities. There are bits and pieces of land in our communities that are way underused and could be much better used. However, I cannot say whether that land is held in public or in private ownership.

There is a second part to my answer that makes a cultural point. The issue is not legal ownership but the sense that much of our land and buildings in Scotland needs to be held for the commonweal or common good. It is welcome that the bill addresses those areas of land, too. I would therefore extend the register to include those bits of land too, wherever possible.

The Convener: We are likely to return to that.

I invite Ms Macaulay and Mr Brown to comment on participation requests and whether public bodies are ready to deal with them.

Amanda Macaulay: We deal with the Scottish Ambulance Service and we do not really have any big problems. With regard to ensuring that public bodies do not view people who want to help as more of a hindrance than a help sometimes, we volunteer but we are not always given the help that we need to volunteer. The problem is that the help is inconsistent. When we are asked to do something, we must think about how we can sustain what we are being asked to do. When we volunteer, we run up against the problem that the public body is enthusiastic when it starts us off but its enthusiasm wanes before ours does.

We are in a slightly unusual situation, because we are controlled and run by the Ambulance Service and we just do exactly as we are told. We do not have the freedom to decide what we want to do, or to ask the Ambulance Service whether we can use different bits of equipment and so on. I am afraid that the question on participation requests is a fairly hard one for me to answer. We have had no problems at all in dealing with the Ambulance Service so far. However, I believe that the service is underresourced.

14:45

Andy Brown: We certainly see an opportunity in the bill as it is drafted for a non-profit co-operative such as ours to lease land from the state, from either Government or local authorities. However, we have identified one key issue. The biggest forest landowner in Scotland is the state and Government ministers, with the land being managed by the Forestry Commission Scotland. The Public Services Reform (Scotland) Act 2010 is very specific on the bodies that can lease land. While the bill that is before us could in theory enable a non-profit co-operative to lease land from the Forestry Commission, the 2010 act says that only companies limited by guarantee can do so, which would exclude us. One key solution would be to amend the bill to enable such co-operatives to take advantage of its provisions.
The Convener: One issue that has come up quite a lot today is that organisations find it very difficult to get the right person to deal with their request, particularly with regard to asset transfer and leasing or buying a particular property or piece of land. Would you support having a named officer as a point of contact for all community groups to deal with participation requests or asset transfer requests?

Amanda Macaulay: Yes, I would.

David Coulter: Yes, but with the caveat that such a person would need to be appropriately qualified and understand what we are trying to achieve. The obstacle is not necessarily the named person but how that named person operates. The frustration that has been reported to the committee is not necessarily about the individual; it is about how an individual functions in the role. That is often a barrier.

Andy Brown: Yes, there is a great opportunity from a land point of view. The land reform review group was looking at setting up a land commission of some sort. I think that that could also operate with community empowerment and look at local state-owned assets. An officer working on that would be very helpful.

The Convener: Could any elements of the bill be improved on? That is a very difficult question, but Mr Coulter is about to have a go.

David Coulter: Yes. On the role of the third sector interfaces, we do not want to be on the face of the bill, because we want to retain our independence and not be considered in any shape or form as a statutory body. Our role is perhaps not for the bill but for the elements that will underpin the legislation when it becomes an act. Given the investment in setting up the 32 interfaces, we need to be clear about what the role of those interfaces should be not just in asset transfer but in capacity building in communities, assisting in participation requests and providing support to organisations.

If I was answering the named person question from the other side of the fence, I would say that that person should be the third sector interface. We need that strategic input and that one point of contact to which groups can come for advice. Obviously, that will have resource implications for third sector interfaces as we move forward.

I am not sure that it is clear exactly what the bill is trying to achieve in relation to the third sector or in what it says about community planning.

Amanda Macaulay: On the whole, you need to simplify the way in which you do things. I am reasonably intelligent and I had to read the bill about four or five times before I got a grasp of it. It was not until I found the easy-read version that I suddenly realised what it is about. Members of the Scottish Parliament do this kind of thing all the time, because that is your job, so it is probably easier for you to understand these things—

The Convener: Don’t bet on it.

Amanda Macaulay: I work full time—I am self-employed—and this week I have done more than 60 hours of volunteering, so I do not really have time. A lot of people have time constraints, and reading bills and so on is quite threatening. Even minor things are challenging; we want to become a charity so that we can claim back VAT, because everything that we buy costs a fortune, but the process is unbelievably complex.

It would be good if things could be streamlined so that it was easier for the man or woman in the street to become a volunteer. Sometimes the processes seem a little difficult and threatening for someone who wants to volunteer or run a group. I have used third sector first a lot, and it has been brilliant, but it can only take you so far and then you hit a brick wall and think, “Oh, what do I do next?”

The Convener: So we should cut the gobbledygook.

Amanda Macaulay: Yes. I understood the easy-read bill.

Andy Brown: I agree that the bill is complex, because it covers complex issues to do with land ownership and asset transfer and it refers to numerous other acts. We really welcome the gist of the bill, in that it is about asset transfer. On what would improve the bill, the issue from a forestry perspective is that Scotland’s largest forest owner will not be able to lease woodland, and leasing is a key element of the bill.

Mark McDonald (Aberdeen Donside) (SNP): Mr Coulter touched on a point that I wanted to raise. The third sector comprises a multitude of organisations, which range from charities that have large amounts of money in reserve to small organisations that can be one or two-person operations. Do you envisage the role of third sector interfaces as being to provide support to much smaller third sector organisations, which might not have the human and financial resources to enable them to take forward opportunities that the bill will open up for them?

David Coulter: The short answer is yes, but let me expand on that. My organisation has not yet reached a point at which we are able to distinguish need from demand. I would not necessarily portray some of the larger organisations as well resourced in the context of their capacity to respond to what is in the bill. I would not assume that a large charity necessarily had that capacity. As I said, the answer is yes, but I have not yet got my head
round how support would be provided, and I would not make assumptions about some of the big organisations.

For interest, the income of charities in Dumfries and Galloway—not the whole range of organisations to which you referred but the charitable organisations that have a registered address in the region—is about £100 million. However, only a handful of those charities have a turnover of more than £1 million; for the rest, turnover is substantially below that level. We are talking about a significant number of organisations that are in need, so how we address need is a complex question.

**Mark McDonald:** We talked about the need for a single point of contact. Is there a disparity in how different public bodies in Dumfries and Galloway deal with community organisations and third sector groups? Is there good and bad practice? How do we ensure that good practice is shared and bad practice is dealt with appropriately?

**David Coulter:** Let me pause and be careful how I answer your question. There is good practice, but there is also a lot of bad practice. I will frame my answer slightly differently. We have embarked on a cultural journey in Scotland, but I seriously believe that we have a long way to go in our approach to community empowerment and development.

I sit on an executive group of chief officers—I am conscious that the chief executive of NHS Dumfries and Galloway is sitting behind me. Over the 18 months that I have been involved in that group, we have developed a strong strategic view of what the relationship between public bodies and the third sector should be. However, that is not necessarily filtering all the way down to individual third sector organisations. I cannot really speak specifically for local communities and for community councils per se. However, I can tell you that many community-based third sector organisations are often very frustrated by their relationships with public bodies. That is a cultural problem, not a structural one.

**Mark McDonald:** I have a final question for all the panel members. Something that has come up on numerous occasions is the difference between communities that are active and engaged, and communities that have a lot going on—there is no doubt about that—but may not have the capacity within them to go to the next level of taking on some of the responsibilities that the bill would enable them to take on, such as leasing or owning an asset. Does the responsibility for creating that capacity in communities fall to public bodies, or is there a role for the third sector as well in empowering communities to take that next step?

**Andy Brown:** That is pretty much exactly what we have done. We were a grass-roots group of forestry workers who formed a co-operative, literally on the forest floor, and took it forward to try to lease land from landowners. We are a voluntary group—it is a non-profit co-op. In some ways, although the top-down approach that you mentioned is probably better resourced, a ground-up approach such as the one that we have taken is perhaps more effective in engaging local folk.

**Mark McDonald:** Were you given any support to help you get established in the first instance? We find that, in some communities, there is already the capacity within the community for it to go to that next step. Other communities may need a bit more support at the initial stage to get them to that level.

**Andy Brown:** We got support from Scottish Enterprise locally and from Co-operative Development Scotland, which helped us get established.

**Amanda Macaulay:** We did not have a problem with getting established. We were set up by the Scottish Ambulance Service, we are used by it and we have a good system in place with it. We train every month and it has been very supportive.

I wanted us to be completely self-funded, which not all units are, because I think that it is important that, if communities want extra, add-on things that are not already supplied, they should supply those things themselves. I know that it sounds minor, but buying our own defib meant that I had to ask my community for not shy of £2,000. It feels to me that it is less likely that we will fail because that money has not just been handed to us by a public body—by some faceless people. It is from people I know in the street. It will keep a lot of community organisations running if they have to depend on themselves, rather than just turning to the public sector every time they want something.

**David Coulter:** The answer to your question is relatively simple but needs to be qualified. The third sector is quite capable of taking on an awful lot of what the public sector currently takes responsibility for. Our public sector in Scotland—particularly local authorities—is now delivering services in areas where it was never intended in statute that it should deliver them. The sector that has suffered as a result of that is the third sector—self-help and doing things for ourselves in communities.

It comes back to the culture question. I would argue that the third sector can and should do more and we need the support of our public sector partners to make that change. That support needs to come from across the piece, not just from chief officers and elected members but right down to staff on the ground.
The Convener: You have mentioned culture a number of times now. Is a lot of that to do with a lack of common sense and a lack of joined-up thinking at times?

15:00

David Coulter: No. There is a bit of that—it exists in all parts of life—but there is something else in play. We need to recognise that not all parts of the third sector have necessarily had the right governance and financial scrutiny of their affairs. People in the public sector have significant concerns about whether they are being diligent and making the right decision in putting something out to the third sector and relying on it to deliver. Although I am saying that public sector partners need to be more confident that the third sector can deliver, I am in no doubt at the same time that our job as an interface is to work with the third sector to improve its governance, to improve the way in which it manages its finances and—I would go one step further—to make it more enterprising. You will hear from my colleagues on either side of me about the co-operative approach and a more enterprising way of doing things, and about the community-based approach and an independent, self-reliant way of doing things, which is equally enterprising.

It is not all about people not applying common sense, although that happens; it is also about there being an issue for us as a sector to address. It is a two-sided coin.

The Convener: I do not want to put words in your mouth, but are you saying that there is a certain amount of risk aversion out there?

David Coulter: Yes. We had this conversation this morning, so I am not going to give you a different answer this afternoon.

The Convener: It is now on the record, Mr Coulter. We are grateful for that.

Cameron Buchanan (Lothian) (Con): Mr Brown, referring to section 53, you say in your submission that you would "like to see the inclusion of Industrial & Provident Societies (IPS) – with appropriate rules – in this section."

Can you expand on that for us, please?

Andy Brown: Yes. When we set up our industrial and provident society, which is a co-op, we were very careful about the terms that were in our rules. We set up our IPS with the help of Co-operative Development Scotland and Co-operatives UK. Basically, we put in many of the key terms that would be looked for in a company limited by guarantee—for example, an asset lock so that the assets could not be sold off—and the co-op is non-profit distributing. Those are two of the key things that we put into our rules when we set up the co-op. That is really what we were referring to in our submission.

Cameron Buchanan: You also said that small woodlot licences could be similar to the requirements for allotments. Would that not be a bit complicated? You ask us to consider it, but it would seem to be rather a complicated thing to administer or to define. Do you agree?

Andy Brown: Not really. A woodlot is basically a forest allotment and it has been called allotment forestry. What we are saying in the part of our submission that you refer to is that the bill's key reference to allotments is about their being non-profit. The small-scale woodlot would have to be just for domestic firewood use. We think that there would be a big demand from rural people for small pieces of woodland that they could get their domestic firewood from. A system that included woodland allotments would probably be no more complicated than our current system—it would just mean that there would be, hopefully, a lot more allotments.

Cameron Buchanan: So you would not define an area for a woodland allotment—for example, so many square metres or a hectare?

Andy Brown: It would depend on the productivity of the wood.

Cameron Buchanan: Right. Thank you.

John Wilson (Central Scotland) (Ind): Good afternoon. First, I want to concentrate on Mr Coulter's comments about scrutiny of the governance of third sector organisations. Mr Coulter, you said that you would want the public sector to be confident about the organisations that it deals with. I think that that goes to the heart of the bill. The question is how the third sector gives confidence to the various agencies that it wants to engage with that it is capable of carrying out its tasks in relation to community asset transfers. How far would you take that in relation to scrutiny, and who would carry out the scrutiny?

David Coulter: If there is a tender, I think that the scrutiny still has to rest with the commissioning or tendering body. If there is an asset transfer, the scrutiny needs to be done, again, by the public body that starts the transfer and should be done at the stage of analysing the business plan.

I suggest—I hope not too controversially—that communities are often attached to an asset, usually a building, and want to keep it when it is under threat but have not built the plan to bring it back into productive use and maintain it in productive use to ensure that they do not constantly go back to their local authority for a grant. That is where the interfaces come in. Our job is to build the capacity of third sector organisations to be more enterprising, to use the
Scottish Government’s language. I apologise for the jargon, but it is really important that we understand that the era of grants is nearly over and that the third sector, such as Amanda Macaulay’s organisation, has to make sure that it is self-sufficient.

That is where the scrutiny must lie on asset transfer. We must not transfer assets simply because someone is attached to a building. If an asset has no future life in it, the community should not go anywhere near it, to be frank. However, that scrutiny role must rest with the public body. The confidence comes from those organisations being supported by 32 competent interfaces.

John Wilson: One of the issues that is raised in the bill is what happens if a public body refuses to transfer an asset. I take on board your comments about the need for a business plan to be in place before a community group makes an application for the transfer of an asset. I hope that the majority of community organisations or third sector organisations that request an asset transfer would have viable business plans in place before they make the request.

If a community organisation has what it considers to be a viable, sustainable business plan in place and the public body refuses to transfer the asset, should there be a right of appeal? In effect, you have just said that it would be up to the public body to determine whether the plan was sustainable and viable and whether the organisation could take on the public asset. Should the decision on whether to transfer a public asset rest only with the public body?

David Coulter: I am reluctant to suggest that we create an industry out of asset transfers and a planning-like system of applications and appeals so, almost instinctively, I am about to say no. I am also aware that public bodies are capable of making what appear on the face of it to be unjust decisions. How do we challenge that? I am not giving you a full answer because I am asking myself questions as I provide you with an answer. I would have thought that, if the business plan or the sustainability of the project was sufficiently well thought through, it is unlikely that we would find ourselves in the position that you describe, unless you can suggest evidence to the contrary.

John Wilson: At the moment, we cannot provide evidence because we do not know because the legislation is not in place.

David Coulter: Yes, we do not know.

John Wilson: I am trying to presuppose what could happen. Mr Brown has given an example. The Scottish Woodlot Association has had numerous discussions with the Forestry Commission Scotland about co-operatives taking over small parcels of land to allow them to carry out their functions, but the Forestry Commission keeps on citing the 2010 act to say that it cannot lease land that could come into productive use to a co-operative of workers.

I am trying to tease out what we could put into the bill that would safeguard the interests of a community organisation that has worked to put together a sustainable business plan but, when it takes it to the public body, has its request refused because the public body does not think that it is viable. Who determines the viability of the plan?

David Coulter: The example that you have just given me is not about viability but about the conflict between bits of legislation, as I read it, so it is in your or the United Kingdom Government’s hands, not our sector’s hands.

The deeper question is around our confidence in our public bodies to assess something fairly. If the decision becomes a quasi-judicial one, there should be a right of appeal, but are we entering into a quasi-judicial decision? I am not sure. We are entering into a contract to exchange land and buildings, and the decision that the public authority has to make is a due diligence one, in the same way as it would make a decision on entering into any other contract.

I genuinely do not want to give a yes answer and say that there should be a right of appeal, because I have not thought the question through, and I have many doubts in my head about creating an industry around those things. As a town planner by profession, I have seen the planning appeal system in operation, and it is abused. If an appeal system is set up, which would, I guess, have to be with an executive branch of the Scottish Government, people who could not take no for an answer would be at the doorstep with umpteen appeals.

Part of what is in my head is the fairness and the route. If the public authorities adopt what is genuinely an engagement process, they will be able to reach a decision that both parties will see as just and fair. If that is what we achieve, we do not need a right of appeal.

John Wilson: As I said, we are not just dealing with local authorities in the bill; potentially we are talking about public bodies. Mr Brown referred to the Forestry Commission Scotland, which is, in effect, a public body. It is run by and on behalf of the Scottish Government.

Mr Brown, in the written evidence that you submitted to the committee, you referred to how the Forestry Commission has dealt with requests for leases to be given for Forestry Commission land. Where have the successes been in taking on board Forestry Commission land? In the private sector, has there been greater success in acquiring leases on private land than there has
been in respect of Forestry Commission land? Currently, the bill does not make any reference to private land as part of community asset transfers. We are talking about only public assets.

Andy Brown: Many tens of thousands of hectares of small woodlands across Scotland are currently unmanaged and have not been managed for the best part of 20 years, if not longer. That land is currently not being used to produce timber. Some of it is in the private sector and some of it is on state land.

The woodlot licences that we have already set up and the landowners with whom we are currently working are all in the private sector. They are all on small or larger estates that have unmanaged areas of woodland. Because we cannot currently set up licences on state land, we have had to pursue the private sector. Woodlot licences are based on what happens in British Columbia, where they are all put on state land because the public benefit to rural areas can be seen. To achieve real benefits in Scotland, we need to get woodlot licences on state land.

The Convener: Before Mr Wilson comes back in, it is important to get something on the record. We probably require more information. The Forestry Commission has a somewhat special status in that it is a cross-border public body that is not entirely governed by Scottish Parliament legislation; it is also governed by Westminster Parliament legislation. I do not know how knowledgeable you are, but we probably require more information on what the logjam—if you excuse the expression—is.

Andy Brown: Yes. I can illustrate that. We have just made a submission on that very topic to the Smith commission. The solution that we gave is an amendment to Scottish legislation, so it could be achieved by the Scottish Government through an amendment to the bill. We think that the most opportune time to achieve it is through this bill.

The Convener: I think that we will get more information on that. You are right to make the point and the cross-border aspect has been highlighted. Sorry, John, on you go.

John Wilson: I do not have another question, convener.

15:15

Stuart McMillan (West Scotland) (SNP): Should there be a national asset register? Would that be useful?

David Coulter: The point that immediately comes to mind is that if everyone contributes to a national register, public awareness will be greater than it would be if there were registers for all 32 local authorities and however many NHS boards and other public bodies we have—we could have a plethora of registers. If we had a single national register, there would be a greater chance of communities knowing about it and being able to search it.

The Convener: It was the ambition of community planning partnerships to produce an asset register for the public bodies in each partnership. How did that go in Dumfries and Galloway?

David Coulter: I do not know the answer to that. I do not know whether—

The Convener: You are looking at our next panel of witnesses; we can ask them later.

If such registers had already been produced, would life be much easier? We have heard about folk disagreeing about what is common-good land and not knowing who owns land, which is a barrier to the creation of an asset register.

David Coulter: We need to be careful when we try to distinguish between common-good and publicly owned land. I find the issue frustrating. In whose good is the land held? It is held for the good of the community—the public—and I imagine that the legal position is that a public body is the guardian of such land.

The issue for me is not whether we have registers but whether communities make the best use of assets. If we do not know what our assets are, the likelihood is that we are not making the best use of them.

The Convener: Sorry I interrupted you, Stuart. On you go.

Stuart McMillan: If a public body has a plethora of buildings and land but is not fully aware that it owns those assets, how can a small community or community organisation, particularly in a largely rural area such as Dumfries and Galloway, be aware of the assets?

David Coulter: That is some question. If the public authorities do not know what they own—and there is a chance of that; I have had that experience, wearing another hat in another place and at another time—then that is to do with how we record ownership of land in Scotland over time, and we are into a set of questions that I cannot possibly answer here.

Stuart McMillan: It was worth a try.

David Coulter: It was. I come back to the point that I made earlier. I like the idea of a national register, with publicity around it so that people know that it is there. We should be adding to that register bits of underused and unloved private land, and we should make all the people of Scotland aware that those are potential community assets that communities could tap into.
Stuart McMillan: That is helpful, because it takes me to my next question. Section 48 will insert new section 97F, “Register of Community Interests in Abandoned or Neglected Land”, into the Land Reform (Scotland) Act 2003. Do you have a clear understanding of what constitutes abandoned land?

David Coulter: At some point, the bill will need to be made more specific in its definitions—good luck with that, by the way. If there is not a tighter definition, it is inevitable that we will end up in endless debate about whether or not land has been abandoned. As you know, landowning interests in Scotland take the view that it is not for any arm of Government or for the community to decide whether something is abandoned—the view is, “I own it and I will decide how I use it.” We will come up against that element, and a clearer definition would help in that regard.

I can think of examples of specific areas of land, buildings and harbours where the landlord has become absent. The land has not necessarily been abandoned, but the use of the particular asset has not necessarily been in the community interest. The question of abandonment, in my view, therefore does not arise. The question on the best use of a particular asset in the community is a political one, and I think that the committee should address it.

As I mentioned in the earlier discussion session, there are other aspects missing, such as the impact of second homes on some rural communities. One could say, to get to the strings of the argument, that a second home that is occupied for two weeks of the year has been abandoned. How is that for one?

The Convener: That opens up cans of worms I am keen to hear Mr Brown’s comments on the issue of abandonment.

Andy Brown: The land registry is a key element, and it should be developed as soon as possible. As David Coulter mentioned, the issue is partly that communities often do not know what assets they own. There is often a lot of cloudiness around who owns what, which has led in the past to a lot of common land being lost. It is high time that we addressed that. The land reform review group is looking at a land registry for the whole of Scotland, which will take some time to set up, but we should look first at common land, and it should perhaps be registered first.

Stuart McMillan: Another question about the bill concerns the right to buy, which also touches on the issue of allotments. Should there be a closer tie between the right to buy and allotments? Should there be a preferential system to benefit a group in the community that wants to take on a piece of land to establish allotments?

The Convener: I realise, folks, that you are not allotment experts, but do you want to have a bash at that?

David Coulter: Absolutely—I would not mind having a bash at that at all. Public authorities own a lot of open land, predominantly in urban areas, and they face great problems in how the land is maintained. There are usually large tracts of land that require the grass to be cut and no more. It is common sense that, if we want to increase the number of allotments, we should encourage third sector groups. A lot of allotment societies, going back to the 1920s, would have accessed land because they were granted it, so why should they not be able to exercise a community right to buy?

I can think of tracts of land not too far from here where public authorities have significant problems with upkeep. Why should those tracts not be turned into allotments and used for a much greater community benefit in growing food? There are other agendas in Scotland in that respect, and we need to join them up.

The Convener: Do you want to have a crack at that, Mr Brown?

Andy Brown: Our association’s model is based on leasing rather than buying, so we would not look for a right to buy. From our perspective, if forest land is already owned by the state, we do not necessarily see an advantage in the ownership as such being passed to our association. We can offer rental income and get the land managed, so we would not necessarily pursue the right to buy.

The Convener: Mr Coulter, you mentioned definitions in your previous answer. What do the witnesses think of the definitions of organisations that can become community participation and community transfer bodies? Are they appropriate?

David Coulter: Without going into a lot of detail, I think that you have more work to do in that area. I refer you to Voluntary Action Scotland’s previous response on that issue, from which I would not dissent.

The Convener: So we need to go back and look at Martin Docherty’s evidence again.

David Coulter: I have it here, but you do not want me to start repeating it, given that it has already been submitted.

The Convener: No.
David Coulter: I simply say that the issues that it raises in addressing that question are the same ones that I would raise.

The Convener: Grand—that is very useful. Ms Macaulay, do you have a view on the issue?

Amanda Macaulay: Not really—I do not quite understand the question, to be honest, so I will not answer.

The Convener: Mr Brown, do you have anything to add?

Andy Brown: As I said earlier, the definition is one of the key things that I wanted to talk about today. We believe that industrial and provident societies should be treated similarly to other bodies across the piece, because we can deliver the same advantages and the same community opportunities as other bodies.

The Convener: I thank you for your evidence today. I hope that the experience was not too painful—I am sure that it was not. I will suspend the meeting for five minutes for a change of witnesses.

15:26

Meeting suspended.

15:31

On resuming—

The Convener: Apparently some folk in the public gallery are having difficulty in hearing us, so I ask members to go nearer the mics. Can people hear me okay? Yes—thank you.

Dr Elaine Murray, the MSP for Dumfriesshire, has joined us in the public gallery. After the meeting, if anyone wants to relay anything else to us about the bill, they can do so through her office. I am sure that she will be glad to hear from you.

I welcome the second panel of witnesses: Jeff Ace, chief executive of NHS Dumfries and Galloway; Geraldine McCann, head of administration and legal services at South Lanarkshire Council; Douglas Scott, senior policy adviser at Scottish Borders Council; Kay Gilmour, head of community support in the department of education at East Ayrshire Council; and Louise Matheson, senior manager in property and architectural services at Dumfries and Galloway Council. Would anyone like to make an opening statement?

Douglas Scott (Scottish Borders Council): Yes. Thank you for inviting me along today. Scottish Borders Council welcomes the thrust of the Community Empowerment (Scotland) Bill and its various intentions to engage and empower communities, make the most of communities’ talents and look at how that can support service delivery.

Working with communities is crucial. In a rural area such as the Scottish Borders, we are fortunate to still have strong communities not only in our towns but in our villages and more rural areas. That is a huge opportunity and potential for us.

We have many examples in the Scottish Borders of excellent community engagement and community development work, which involves having strong economic, social and environmental outputs across the range of services concerning older people, welfare reform, transport, children and young people, community safety, culture and sport, economic development and regeneration, and community resilience. That work has a particular focus on supporting disadvantaged communities and groups.

The council submitted a detailed response when the Scottish Government had its main consultation on community empowerment.

The Convener: Does anyone else want to make an opening statement?

Louise Matheson (Dumfries and Galloway Council): Yes, thank you. Dumfries and Galloway Council very much welcomes the bill.

We have a reasonable track record on empowering communities to take over assets. There are a number of good examples of that—the committee heard about one this morning when it heard about the Usual Place. Just in the past month, the council has in preparing its new commitments and priorities explicitly recognised the need to be an inclusive council and has made a commitment to empowering our communities to make the most of their assets. As I said, we welcome the bill, and we thank the committee for the opportunity to give evidence.

The Convener: You mentioned the Usual Place. The committee that runs the project gave us a good presentation this morning about its endeavours. It has had difficulties with lease arrangements, which is not unusual, as we have found that in other places, too. How can such difficulties be overcome? Will the bill when enacted bring about a change in practice to ensure that some difficulties are ironed out long before crisis point is reached?

Louise Matheson: To take your second question first, I am not convinced that the bill will in itself change that. The critical thing is the guidance and so forth that will underpin the bill—it needs to be simplified and streamlined and it should endeavour to make it straightforward for
communities to take ownership of or manage their assets.

As for your point about the complexity of finalising leases, we are constantly learning on that issue. Obviously, each lease has different circumstances, which depend on the asset. As was discussed earlier, a number of parties at the council are involved. Usually, there are colleagues from the estate section and from the legal section. Often, the pressures on them and their priorities dictate how quickly something is addressed, despite their best intentions to resolve things as quickly as possible. As I said, the issue also depends on the specific asset.

There was a discussion with the previous panel about an asset register. Although it was not the case with the premises for the Usual Place, quite a number of title checks sometimes have to be done to be clear about the delineation of the asset or the property’s exact boundary. Each case is a learning experience. I was not directly involved in the lease for the Usual Place’s premises, but I am certainly happy to give more written information on that, if it would help the committee.

**The Convener:** That would be extremely useful.

My next question is for all the panel members. In current practice, are local authorities and other public bodies a little risk averse in dealing with some of these issues?

**Louise Matheson:** There are always concerns about the various practicalities that might arise in taking on an asset, especially if it is an existing building that involves a number of practical considerations. When a community group or body seeks to take on an asset, it needs to do so on the basis of a business plan for using the asset. However, the council or organisation that has to assess that will not necessarily be well versed in what the community group might need to do. There are practicalities, such as how the group will manage the building and take on the premises, what it will do in relation to building safety and maintenance and what capital work might be done at the outset.

Understanding all that can be complex. Some things are very set, regardless of the specific asset involved, while other things depend on specific circumstances, and there is probably quite a bit of work to do to make things more straightforward for communities and council officers in dealing with practicalities. Dumfries and Galloway Council has a disposal policy, which will need to be revisited in light of the bill, as well as a community asset transfer process, which was set up earlier this year to make it easier and more straightforward for communities to take on their assets, come up with practical proposals and make clear how they will look after assets.

Especially when there is not just a desire but a definite need on the part of public bodies and local authorities to make savings, many organisations—including Dumfries and Galloway Council, which owns numerous properties and assets—are under pressure to make better use of their assets, to rationalise and potentially to release assets for sale. The council has had to do just that over the past number of years, and with certain properties that it has marketed people have, as Mr Coulter mentioned, had a desire to save the building instead of having a use for the building in mind. Often the starting point is people saying, "We want to keep that building," and a piece of work needs to be carried out to come up with a use for it.

**The Convener:** We might come back to that policy in a little while. Does Mr Ace think that we are risk averse in our current practice?

**Jeff Ace (NHS Dumfries and Galloway):** Yes. We need to give a bit more thought to what that means. In accepting the need not to be risk averse, we also have to accept the potential for and the consequences of failure and to be comfortable with dealing with them. A risk-taking organisation will not call it correctly every time; if it did, no risk would be involved. We still have some way to go if we are to be tolerant of the consequences of taking an ill-judged risk.

**The Convener:** Are the audit bodies tolerant of that?

**Jeff Ace:** Their mechanisms for assessing us are clear, well defined and easy to understand. Throughout my career, external auditors have stated that in order to be a more dynamic organisation we have to take more risks, but I have seen less tolerance of failure that results from ill-judged risks. That is why public bodies edge towards a rather staid and conservative approach to risk taking.

**Geraldine McCann (South Lanarkshire Council):** I agree, although I would describe the approach to risk taking as cautious. After all, we have a duty to follow the public pound, a duty to achieve best value in the use of our resources and a duty to our community. It would be wrong to allow an asset to be transferred if by doing so we were setting someone up to fail.

It is important to work with the community body to ensure that a proposal is viable and sustainable and that the people involved have a hope of achieving it, and that is what South Lanarkshire Council is attempting to do in the community asset transfer process that it has put in place. The bill’s design will assist that process by enhancing it, and that will help us to achieve our aim.
15:45

My concern relates to timescales. From my experience, when a community body first approaches the council, it does not have a business plan; it has an idea. It needs assistance to pull together the business plan. It needs to talk to the appropriate people to get guidance on how to develop a business plan, how to engage the rest of its community—it might have spoken only to a small proportion of its community—and how to access funding. It then needs to come back to the council with a viable proposal that allows us to take the request to a committee for a decision.

It can take anything up to six months before we get to the committee stage. Afterwards, there will be people who are unhappy because the request was not granted, but that might be because, after the due diligence was done on the proposals, the council was not satisfied that the business plan was robust enough to deliver the asset and make it workable for the community.

Kay Gilmour (East Ayrshire Council): I would describe the approach as having the right checks and balances in place. Some time ago, we recognised that we faced many challenges in relation to the number of properties that we had. One of our workstreams in what we called our transformation strategy was linked to our properties and facilities, and we established a dedicated community asset transfer team. It comprises a surveyor, a lawyer, somebody from our property services and, importantly, two community workers. For us, that has been critical to building capacity in our communities and finding what I describe as community solutions to something that was undoubtedly a challenge to us in the local authority.

We are now experienced in our process, which probably takes six months from an expression of interest to a stage 2 application coming in from the community group. That is very much about ensuring that the group’s business plan is sustainable and founded on strong business principles and that the asset will be used and retained for the community. Thereafter, it probably takes about six months to get to our committee decision-making process.

Douglas Scott: Scottish Borders Council is committed to the transfer of assets. It feeds into our outcomes, as I said. It also links into the pressures that we face on council budgets and the need to consider how we support services in that context.

We have an asset transfer policy. In transferring assets, we must be mindful of best value and there is a major responsibility on us from the public and communities to do that correctly.

We work with a range of community bodies on a range of asset transfers. It is important to be cautious, because taking over an asset puts a big responsibility on a community, as we look for the community to be sustainable and to get a sustainable asset and revenue stream. Business plans are therefore important, as are the robustness and sustainability of the community group and how it goes about its organisational work.

All those matters need to be considered before an asset is transferred. It is also necessary to build in conditions with regard to the asset to ensure that the community does not take on too much. That safeguards the community as well as the local authority.

The Convener: I have a couple of quick questions and would like brief answers, if possible.

Ms Gilmour mentioned the community asset transfer team in East Ayrshire Council. Do the other councils have similar transfer teams?

Ms McCann and Ms Gilmour indicated timelines from the beginning of a transfer request to committee stage. Do the other councils and NHS Dumfries and Galloway have timelines in that regard?

Douglas Scott: I will have to come back to you with information on timelines.

Scottish Borders Council has an asset transfer group that is led by our property manager, who is supported by a person who looks after external funding. It provides strong advice to communities. We are working very closely with communities.

The Convener: Are community workers involved in that, as they are in East Ayrshire?

Douglas Scott: We have community work involvement in that group.

Louise Matheson: Dumfries and Galloway Council has a process that allows a maximum period of 18 months for the community group to bring forward its proposals and for the transfer to happen. That is divided into two clear stages: stage 1 is the application, which involves discussion between the council and the relevant group, and the second stage involves detailed assessment so that the proposal can be taken to committee with a recommendation. The council has no dedicated team, as such. Officers in different departments work collectively, as required. There is an initial point of contact in the community officer and the council’s community and customer services department. There is a very proactive process to engage with communities for them to take on particular assets, or to set up service level agreements if they are not taking on the asset fully but are maximising their management of it.
Jeff Ace: NHS Dumfries and Galloway has no dedicated team. It is interesting that at the same time as the bill is progressing, we are going through the process of health and social care integration. In Dumfries and Galloway that will mean the creation, between us and the council, of four joint localities with one manager. We will need to look at whether in each of those localities we have a pathway to enable such requests to be dealt with effectively. Clearly, the bulk of our community assets, from a health point of view, will rest in those localities and will be under the stewardship of the integrated joint board, rather than the health board.

The Convener: Does South Lanarkshire Council have a team?

Geraldine McCann: We do not have a team, as such, but our property manager in housing and technical resources is heavily involved, as are our planning and regeneration teams. There has been a great deal of involvement within the council over the past three years and a number of assets have been transferred successfully to community groups.

The Convener: Ms Gilmour has already given an answer, but is there anything else that you wish to add?

Kay Gilmour: Through our transformation fund we established resources that are available for community groups to bring buildings up to an appropriate standard. We recognised that some buildings needed work on their physical infrastructure and we wanted to support organisations before transferring anything to a lease, so we established a dedicated fund to allow us to do that. That has been helpful to, and supportive of, the overall process.

The Convener: Ms Matheson mentioned 18 months. My understanding is that the Usual Place had a draft lease in April 2013, but still has no lease. I know that it is probably not possible for you to say today why that is the case, but the committee would be extremely grateful if we could have the reason why that lease has taken so long and has fallen outwith your timelines. If you could get that in writing to the clerks, it would be extremely useful.

Louise Matheson: Yes.

John Wilson: Good afternoon. Following Ms McCann’s response to the convener, I ask how many community asset transfers have been requested to date in South Lanarkshire Council and how many have been granted.

Geraldine McCann: I do not have the figures with me today, but I will be happy to supply them in writing, once I return to the office.

The Convener: That would be very useful.

Folk do not need to touch the microphones; they come on and off themselves. It is hard to get used to, particularly when you are used to council chambers, where you are constantly pressing buttons.

John Wilson: I would like answers from the rest of the panel.

Jeff Ace: I am not aware of any requests to the health board, but I will check formally and let the clerks know.

Kay Gilmour: If we, too, could get back to you on that, that would be helpful.

The Convener: That would be grand.

Louise Matheson: We will need to get back to you on the number of requests that have been made.

Douglas Scott: I will do that, too.

John Wilson: I look forward to the responses. Do you have an asset transfer policy in place and what is your appeals process when an asset transfer has been refused?

The Convener: Does anybody want to have a crack at that? Have you had any cases in which there have been refusals? If we could get responses about that in the same letter, that would be useful.

John Wilson: This is my final question. I hope that I can get an answer to it. What is your authorities’ current thinking on the demand that might be generated by the legislation?

Jeff Ace: That is a very difficult question. The big change that is going on in parallel for us at the moment is the integration of health and social care. If we can get that right, one of the offshoots should be a greater localisation of decision making back into our former natural localities in the region.

That should generate a debate about the nature of health and social care at a very local level that perhaps we have been struggling to get going so far. You could take an optimistic view that that greater engagement—if we can pull that off—and that greater empowerment of real, very local and very community-based decision making could generate a substantial amount of requests in both those fields.

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At the moment, I am not aware of a single request, so we will be going from a very low base to—I hope—a much higher one.

Geraldine McCann: I anticipate a much higher level of requests from the community, based on communication about the bill and anticipation and awareness raising within the community. Many organisations are ready for greater participation in their communities because they know that
councils and other public sector bodies’ resources are stretched, and feel that they could add something to their communities and deliver on behalf of them. I expect an increased number of requests to come to South Lanarkshire Council.

Kay Gilmour: Originally, I was a bit reticent about giving a number in response to Mr Wilson’s question because I can give you the number of initial expressions of interest that we have had—133 in the past nine to 12 months—but I cannot give you the rest of the figures. That gives you some context with regard to what increase we might anticipate from the legislation.

We also have locality planning in our area, and we have established nine community-led action plans, which have been genuinely led by the local community. We intend to roll that out to all communities in East Ayrshire. Perhaps with that, coupled with the implementation of the legislation, we may start to see more requests coming through, but for us just now, 133 is quite a significant number. I cannot tell you what will be the knock-on impact.

Louise Matheson: At the moment, it is difficult to judge properly, but because of the amount of engagement that we have had with communities in this regard, it is hard to believe that there will be a hugely greater volume of requests than we have at present. The vast majority of requests tend to be in relation to community halls, community centres and so on. There could be more expressions of interest in other types of council buildings, but it is a difficult one to call.

Douglas Scott: We are seeing a change with the community empowerment bill and other things that are happening; we are seeing from communities increased interest in and demand for asset transfer. The big issue, thinking ahead, is how we can get specialist support into community groups: helping disadvantaged groups, for example, so that they are able to take over assets, which can be quite intensive work. Even groups with high capacity need specialist support to take forward aspects of community transfer and to think through their sustainability in the longer term. A big investment is required in that, because there are gaps even in councils and the voluntary sector.

People also look to business gateway to get support. We have to look at how public bodies and local authorities can get organised, and at how we give communities good support to move forward.

16:00

John Wilson: I am grateful for Ms Gilmour’s figure of 133 expressions of interest. Has East Ayrshire Council done any analysis of the nature of the asset transfer requests? Ms Matheson said that the biggest demand for community asset transfers in Dumfries and Galloway related to community halls and village halls. Is the picture in East Ayrshire similar?

Kay Gilmour: Yes. We also include football pavilions in the figure that I gave. However, interest is mainly in community halls and facilities.

John Wilson: Thank you very much.

Mark McDonald: In various evidence sessions we have touched on the difference between communities that have capacity and those that do not. Kay Gilmour talked about the council assessing business plans that are submitted. Some communities will have the expertise to take from the idea stage to the stage of presenting a business plan to a local authority a proposal to take on the running of an asset, be that owning it or leasing it, but many do not have that capacity. Do you see a role for your public body in giving those communities the required assistance to get them to that stage? I get the impression that many councils see offering that support as a conflict of interests, rather than as being in the mutual interest of the council and the community.

Kay Gilmour: We have two community workers on our dedicated team to support organisations in building their confidence and capacity. We also work closely with the Development Trusts Association Scotland, which has done quite a lot of work in East Ayrshire in supporting organisations, and which is absolutely expert in that. We also work with the third sector interface. We have lawyers and quantity surveyors on our dedicated team in order that we can offer their professional advice without compromising our overall legal services department. We are taking quite a holistic approach with community groups in order to enable them to get to the stage at which they can submit plans.

Although to date our experience is that it has taken six months to get from expression of interest to committee, it took longer than that when we supported a group in carrying out feasibility studies on facilities that it is interested in taking on. That was not about us; it was very much about enabling that organisation to carry out feasibility studies on the facilities in question. Six months is the average, but the process can take longer.

Geraldine McCann: It is not for the council to develop the capacity, but to give advice, assistance and pointers as to where to get advice from; there could be a conflict of interests if the council was to deliver some advice. Perhaps I am being risk averse, but if an organisation’s bid was unsuccessful, having acted wholly on the council’s advice, I could see there being a challenge to the council.
However, we have packs that give organisations guidance on the sorts of things that they should include in their business plans, and directions to where support can be found.

**The Convener:** When you said “packs”, was that an acronym?

**Geraldine McCann:** I was talking about our guidance pack on community transfer, which has been prepared through our community planning team, with our estates advisers. It gives pointers and direction, but we do not assist people in preparing plans.

**Jeff Ace:** Mark McDonald asked a key question. If we look at the issue strategically, we can see that the future of viable health and social care depends on community capacity and communities’ ability to work with us to solve their problems. If we are identifying communities that do not have that capacity, that is not neutral—it is a real problem for us, because such communities will not have the resilience that is required in the context of the big changes in health and social care that will come over the next decade or so.

We simply have to enable and support such communities. Who is best placed to do that is a tricky question; I take you back to David Coulter’s evidence about the role of organisations such as Dumfries third sector interface, which might be more appropriate than organisations such as mine, in that we will almost certainly get it wrong, because we are coming at it from a top-down perspective, which is the wrong perspective. We need to engage with partnerships such as David Coulter’s, which can tell us how to help communities.

My organisation can offer good public health support; our workers can put things in terms of building healthy communities. However, we are not skilled in developing the sort of capacity that Mark McDonald talked about, and we need help from organisations such as David Coulter’s and the Scottish Health Council, so that we form a coalition of support to work with the community. As I said, not supporting communities is not a neutral option; there is a real risk to us.

**Douglas Scott:** The reality is that the groups that are looking to transfer assets such as village halls and community facilities often represent the wider community and have the support of elected members. We are all in it together, and it is in our best interests to ensure that business plans are as strong as possible. As I said, we do not want the asset back—the high street building or whatever. We want to ensure that communities can sustain the facilities that they take on into the future.

That is why it is important that we are all in this together. The council has people, of course, as does the voluntary sector, and we must look at how we share work so that we get the greatest benefit. There is a gap in specialist support, and we must strengthen specialist support on various aspects of taking on an asset and making it work in the long term.

**Louise Matheson:** We provide guidance and support to groups that are interested in taking on assets, and we direct people to the likes of DTA Scotland for more specific advice.

It is not appropriate for the local authority to do everything, for a number of reasons—conflicts of interests being one of them. I argue that it is crucial that there is a central point for guidance and support, rather than having each public body or local authority provide support. The issues are similar up and down the land, regardless of the public body or local authority in question. For instance, in every case in which a building is transferred, the body that takes it on must consider the safety issues that it will have to manage. It would be better if there were a central place to which people could go—that includes the likes of DTA Scotland. That would also provide the opportunity for those bodies to network and to learn from one another’s experience.

**Mark McDonald:** If a community organisation wants to take on an asset, how easy is it for it to know who to go to?

**Jeff Ace:** We have not publicised information on how an organisation would go about that—we would work closely with the council to use its greater expertise—so we have a way to go to publicise the bill’s implications for health services.

**Geraldine McCann:** We have a section on the council website that directs individuals who are interested in community asset transfer to the appropriate people. The main source of contact in the first instance tends to be the council’s property services team. It then calls in other professionals as required to give advice.

**Kay Gilmour:** We also have information on a dedicated part of our website. We try to identify a named person for each of our communities. That has been important for us not just in relation to community asset transfer, but in relation to some of our other work in communities.

We have issued two newsletters, which have gone out to as many groups as possible, including community councils.

**Louise Matheson:** Because we have actively gone out to speak to communities over the past couple of years to see whether there is an interest in taking on particular assets, it is currently straightforward for people to identify who to speak to. Whether that would be the case ordinarily, I could not say.
There are also opportunities when there are surplus properties. People can approach the estates team if they have an interest in a property. At that point, if the community group is interested, the property will be taken off or not put on the market until the group has had an opportunity to go through the process.

**Douglas Scott:** We also have a clearly defined asset transfer process that people are directed to, so that matters can progress.

**Mark McDonald:** I have one last question on an issue that came up during our earlier round-table discussion. Is it fair to say that community asset transfers can sometimes be stifled by a lack of appreciation of what best value means? Best value is often viewed through a monetary prism, so it is about getting the best monetary value and not necessarily the best community value for the asset.

**Douglas Scott:** A number of factors must be taken into account with asset transfer. A local authority has responsibility to ensure that the process is, as I have said, viable and sustainable. It must also consider where a community body is coming from. For example, where we are looking to develop assets—that could be a health facility, a school or a public building—and a group is looking to delay that development for other reasons, we must consider its views and take those into account. Therefore, the local authority needs to consider the wider issues.

Another example is the potential capital receipts for selling a site viable for a commercial development. We must think about those wider aspects when we are considering whether to accept a community asset transfer request.

**The Convener:** I will add to Mark McDonald’s question. Mark asked about monetary value. With all due respect, we probably did not get the whole answer there, Mr Scott. There is the power of wellbeing. How often has your local authority used the power to advance wellbeing and perhaps put to one side the monetary aspects when it comes to community asset transfers?

**Douglas Scott:** I think that, as an example of the broader expression of that power, the support that we are giving to a lot of these communities for asset transfers is all about wellbeing. We are also providing facilities on long-term leases and at what is sometimes quite a low rental. All of that is being factored into our asset transfer process. My point is that local authorities have to take a wider view of asset transfers.

**The Convener:** So no asset transfer has taken place in the Scottish Borders on the recommendation to councillors that it should happen under the power to advance wellbeing.

**Douglas Scott:** I would have to check and come back to you on that.

16:15

**Louise Matheson:** I know of such instances. I cannot give you the exact number off the top of my head but, if it helps the committee, I can come back with more examples in writing.

I am not sure, convener, whether the initial question referred to a lack of appreciation by public organisations, the communities they might engage with or both.

**Mark McDonald:** It is all about how public organisations perceive best value, and it is fair to say that the landscape in that respect is very mixed. The committee always hears evidence that best value is perfectly understood but, when I have dealt with these things, best value has been viewed purely through the monetary prism, not necessarily through the prism of the wider community benefits that are supposed to be attached to it.

**Louise Matheson:** Our council very much recognises the need to take that into account in considering best value; indeed, we have a number of examples of recent transfers that have happened for those very reasons and which have taken place for a nominal sum as a lease or an outright purchase. In such cases, the council will be presented with the considerations in relation to the overall picture instead of just the monetary aspects. That said, I certainly know of a property for which there were competing offers, one of which was less than best consideration and the other much closer to the market value; both cases were presented to the council to consider which of them to accept.

**The Convener:** And which one did it accept?

**Louise Matheson:** It accepted the higher offer, but it agreed to support the party that made the other offer—in that case, it was a charitable organisation—in finding a suitable alternative property.

**Kay Gilmour:** Taking the second question first, I am not aware of any cases in which we have sought authorisation through committees specifically in relation to the power of wellbeing. I should point out that, in all of our committee papers, we always give consideration to community planning implications, although I recognise that that is not the same thing.

As for the question of best value, we are working with two communities just now on three or four community buildings, none of which is very well used. We have had detailed discussions with those communities and have said that, if we close the other two or three buildings, we will invest in
the one remaining building that the community, which has said that it wants ownership, can take on. That approach has been very successful for us, and it shows that we genuinely try to take a whole-community perspective on what is needed in a particular community. It would have cost between £300,000 and £500,000 to bring one of those buildings up to scratch and put it at the heart of the community. Although we might not have taken that proposal to the committee under the specific power to advance community wellbeing, I think that it is nevertheless an example of where we have worked with the community, looked at its wellbeing and come up with a community solution.

Geraldine McCann: In community transfer applications, we always not only assess best value in monetary terms but assess the community value and benefit that might be achieved by transferring the asset to a particular community group. There have been occasions on which an asset has been transferred or leased at low value because the impact in terms of community benefit was believed to be greater. In the past 18 months, we have used the power to advance wellbeing to aid a charity that wished to improve a facility. The charity was already using it but wished to take ownership. However, although it wanted to invest in the facility for the benefit of the community, it could not afford to pay the market value for the land and the building.

The application was assessed fully, and the council decided that the proposed ownership would benefit the wider South Lanarkshire area rather than just the locality in which the facility was situated. The council accepted that there was a lack of provision elsewhere of the type of facility that the charity offered, and that overall it was better for the benefit of the wider community to use the power to advance wellbeing to give the charity the asset.

Jeff Ace: There is a slight peculiarity with regard to health assets. When we declare an asset as surplus to requirements, we need to inform the Scottish Government that the receipt is likely to come into the pot. The receipt itself will then be used to add to the overall capital that is available to the Scottish national health service. There is therefore a macro complication in that respect. If we were to forgo a capital receipt, that money would not flow back to the Scottish Government and would not be available for projects elsewhere or locally.

Having said that, we are under the same best value obligations as our local government colleagues. We attempt to look at the wider implications of our decisions on assets, and we are audited accordingly on those best value principles.

Cameron Buchanan: We heard today, and we have heard from other councillors, that there should be a regular opportunity for the public to address their councillors in public en masse. Do you agree with that?

The Convener: That is slightly outwith the scope of the bill—

Cameron Buchanan: It is, but it was mentioned earlier today.

The Convener: Okay—fair play. Mr Scott can go first. It is a difficult question for an officer to answer, I have to say.

Douglas Scott: We have area forums in which there are open questions from the public and communities. There are five forums across the Scottish Borders in which councillors and community planning partners are involved, and they meet regularly.

Louise Matheson: We do not have such an opportunity as set up in the exact manner that has been described, to the best of my knowledge. We have area committees and so on, which the public can attend, but they are not set up in the way that the question suggests.

Kay Gilmour: We do not have such things as set up in the way that the question suggests.

Geraldine McCann: We are the same as the other councils. We have area forums, citizens panels and tenants panels, all of which councillors attend. There are always public meetings on large issues, and planning issues in particular, which council officers and councillors within and outwith the planning process will attend.

Cameron Buchanan: The real question was about whether you can get all the councillors together so that issues can be discussed, even at the end of a council meeting. Does Mr Ace want to say anything?

The Convener: As Mr Ace is from the NHS, I do not think that he can say very much about councils.

Jeff Ace: I will tread carefully. We need to push the issue from a Dumfries and Galloway point of view. We have an area of 2,500 square miles, so for us the area committee structure, in which we have four locality meetings, works pretty well. I am frequently invited to attend those meetings, and they are very well attended by elected members. There is a full and frank exchange with members of the local public at those meetings. For a dispersed rural population, our model is probably more appropriate than the combined model that has been suggested.

Stuart McMillan: Good afternoon. The bill requires public bodies to consider how requests are
"likely to promote or improve—
(i) economic development,
(ii) regeneration,
(iii) public health,
(iv) social wellbeing, or
(v) environmental wellbeing"

However, it does not say how those decisions should be prioritised or balanced. How would your individual organisations approach that aspect?

**Jeff Ace:** We have a performance committee governance structure that is well used to looking at multifaceted business cases and assessing, on the balance of the risks and opportunities that are presented, what is the best way forward, so I do not see the bill presenting a particular challenge in that regard. The public health benefits would be easily assessed by us; equally, we are very experienced at working with community planning partners on the wider assessment. I do not think that we would have a particular problem in engaging in case evaluation through our existing governance structures.

**Geraldine McCann:** Likewise, I do not foresee any difficulty with that. Our current structure is such that an options appraisal and an analysis of risk are included in every paper that goes to committee.

**The Convener:** Does anyone have a different view? No one does.

**Stuart McMillan:** The Development Trusts Association Scotland has suggested that there should be negotiated settlements—in other words, that any conditions that are attached should be negotiated with the community group. Do the witnesses support that proposal?

**Douglas Scott:** I would have to come back to you on that. I need to consider the suggestion more.

**Louise Matheson:** If one side is not happy with the conditions that are attached, it will not be possible to proceed. Therefore, if the community says that it cannot accept a condition, that must be discussed, and some other alternative should be agreed if possible.

**Kay Gilmour:** I am probably in the same position of not having the necessary technical detail on leases to answer the question. We have established a model lease. One would expect some negotiation to take place if there were issues with that, but I do not have a technical background, so I do not feel able to give a full answer.

**Geraldine McCann:** I would expect a period of negotiation before the decision stage was reached, so that both parties were comfortable with any conditions that were to be attached.

**Jeff Ace:** I agree entirely with that point.

**Stuart McMillan:** How many allotments are there in each of your local authority areas? I will ask Mr Ace a separate question in a moment, so he is not getting off lightly.

**The Convener:** If I allow you to ask it.

Are there any allotment experts who can answer Mr McMillan’s question? Ms Matheson looks keen to answer.

**Louise Matheson:** I am not an allotment expert, but I can tell you that Dumfries and Galloway Council has 95 allotment plots in the Nithsdale area and 16 in the Annandale and Eskdale area. From the information that I have in front of me, I believe that that is it.

**Douglas Scott:** I would have to get that information for you.

**The Convener:** What is your question for Mr Ace, Mr McMillan?

**Stuart McMillan:** Funnily enough, it is also on allotments. It goes back to something that Mr Ace said about capital receipts. The money would go back to the Scottish Government, but if you had an asset that you no longer required, would it be feasible for you to turn some of the land into allotments, particularly if that would have a mental health and wellbeing benefit?

**Jeff Ace:** That would certainly be possible, but it would depend on discussions taking place with the Scottish Government’s capital division to ensure that it had not earmarked an anticipated revenue from us. We would have to negotiate with it to allow local flexibility. We have numerous examples of that.

There is not a uniform position whereby, once a property has been disposed of, the money automatically flows to the Scottish Government. We constantly discuss the best use of that with the Government, and the process tends to work well. We have flexibility when it comes to the sort of negotiation that you are talking about.

**Stuart McMillan:** Do you work in tandem with mental health organisations such as the Scottish Association for Mental Health, whereby services are provided that involve people with mental health issues receiving training in, for example, gardening techniques?

**Jeff Ace:** We have been involved in a number of community gardening projects. Moreover, as committee members might be aware, we are on the cusp of starting work on a new acute hospital, where we plan to set aside land for gardening and allotments and to work with community groups on
growing food for the hospital. That is a big departure for us and is in Scottish terms quite radical.

16:30

**The Convener:** I note that we have not really touched on participation requests. What issues are you preparing to deal with as part of such requests?

**Jeff Ace:** As I have said, we are on the cusp of implementing the health and social care integration proposals and establishing our integrated joint board, which will create an impetus to change service provision at a locality level. I expect that there will be—and we will desperately encourage—community participation in the process with regard to the future shape and sustainability of services, and we would expect and encourage requests for involvement in service change from each of the four localities.

**Douglas Scott:** There is a range of issues to address. Although the whole process has been logically set out, more thinking needs to be done about the numbers. For example, it is difficult to predict what will come forward in the process; there could be a large number of requests, but we just do not know. The proposal needs to be piloted. The freedom of information process, for example, has grown over time, and we could find quite an increase in numbers as a result of the measure.

We have other concerns. For a start, we will all have to make changes to our budgets as we move through the financial perspective that has been put in place for the next five years. Communities will be concerned about that, and we must ensure that the process contains certain safeguards. I know that the bill contains a provision on repeat requests, but it needs to be a bit stronger and to reflect the fact that, at the end of the day, local authorities as public bodies will have to make certain decisions that affect communities. We will do our best, but the issue needs to be considered.

Not all communities are in the same position on participation. Some communities are strong on it, but others are not, which brings us back to the need for support for capacity building. We are already doing that for disadvantaged groups, but perhaps we need more of that approach to ensure that the process works.

**The Convener:** So you see budgetary matters as the main issue that will be raised in participation requests.

**Douglas Scott:** Other matters will be raised, but the budget will certainly be one of them. After all, it will be quite a focus for communities. Perhaps the approach should be piloted in two or three areas to find out whether it is effective.

**The Convener:** We have been told that “Communities can be considered experts in their own needs and by enabling greater input into service planning and delivery, the public sector may uncover innovative delivery mechanisms which more effectively meet their service users’ requirements”, but you seem to see all this as a threat.

**Douglas Scott:** No, I do not. I recognise that, as you have just said, ideas could come forward that might result in more savings and efficiencies. I am not disputing the statement; all that I am saying is that we need to consider other aspects of the participation process.

**Geraldine McCann:** I expect to see more requests and suggestions for innovation as a result of greater involvement in community planning partnerships. I am glad that the role of the partnerships will be enhanced, as that will give them more structure than might have been there before and will open them up to the community.

However, I agree that certain communities will be more able than others to participate, particularly in an area such as South Lanarkshire, where we have a bit of everything. For example, we have a new town, disadvantaged areas and very rural communities. Communities are quite widespread, and the issue is how we reach them all and give them all—not just those in the central belt such as Rutherglen and Hamilton—the opportunity to participate.

**Louise Matheson:** I agree with Mr Scott. It is difficult to anticipate anything outside of what we have seen over the past few years, but I expect that there will be more requests, perhaps on completely left-of-field issues that might reap benefits in terms of efficiencies and cost savings and which might provide a better overall deal. However, I also agree with Mr Scott that complexities and conflicts might arise in certain circumstances that will need to be worked through, which will take time and resources.

**Kay Gilmour:** Public bodies need to go on a journey that is all about a culture of improvement. I am by no manner of means saying that that culture is not there at the moment, but this is a journey and some are further along it than others. If we have a culture of improvement, we do not get anxious if communities, individuals in the community or community groups make suggestions about how to innovate or do things differently and better.

In East Ayrshire, we have public-social partnerships in which the third sector and the public sector—it is the public sector, as the health board and the local authority are involved—are...
working together on different ways of delivering services. Of course, that raises questions about strategic commissioning and procurement, but our building blocks are the groups that have developed their own community-led action plans. We are already seeing an indication from those groups, some of which are in very deprived areas in East Ayrshire, that their confidence has increased tenfold; they are comfortable with talking with us—on what I should say is a very level playing field now in some of our communities—and challenging us, and we need to be open to that challenge. However, we would be concerned if a bureaucratic process were to be put in place and if we started to receive a number of repeat requests, because that is where things become resource intensive.

The Convener: I thank everyone for their extremely useful evidence.

The next committee meeting will be held at 9.30 am on Wednesday 5 November in the Mary Fairfax Somerville room. I close the formal part of this meeting.

Meeting closed at 16:37.
Present:

Cameron Buchanan  Mark McDonald
Stuart McMillan    Anne McTaggart
Kevin Stewart (Convener) John Wilson (Deputy Convener)

Apologies were received from Alex Rowley.

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

Anil Gupta, Chief Officer, Communities, and Rhona Welsh, Policy Officer, COSLA;
Jim Gray, Head of Democratic Services, Glasgow City Council;
Andrew Ferguson, Society of Local Authority Lawyers and Administrators in Scotland (SOLAR);
Dr Lindsay Neil, Selkirk Regeneration Company;
Ian Welsh, President, Scottish Allotments and Garden Society;
Pete Ritchie, Director, Nourish Scotland;
Roz Corbett, Scotland Development Worker, Federation of City Farms and Community Gardens;
John Hancox, Petitioner PE01433;

Community Empowerment (Scotland) Bill (in private): The Committee considered the evidence received at today’s meeting.
Scottish Parliament

Local Government and Regeneration Committee

Wednesday 5 November 2014

[The Convener opened the meeting at 09:34]

Community Empowerment (Scotland) Bill: Stage 1

The Convener (Kevin Stewart): Good morning and welcome to the 27th meeting in 2014 of the Local Government and Regeneration Committee. I ask everyone present to switch off mobile phones and other electronic equipment, as they affect the broadcasting system. Some committee members might consult tablets during the meeting, but that is because our meeting papers are provided in digital format.

Agenda item 1 is a series of oral evidence-taking sessions on the Community Empowerment (Scotland) Bill. This morning, we will take evidence from three panels of witnesses, the first of which will give evidence on part 6 of the bill, which relates to common good assets.

First of all, I should point out that there is a change to the published agenda: Councillor Harry McGuigan has given his apologies for not being able to attend. I welcome to the meeting Anil Gupta and Rhona Welsh, community wellbeing policy officers at the Convention of Scottish Local Authorities; Jim Gray, head of democratic services at Glasgow City Council; Andrew Ferguson from the Society of Local Authority Lawyers and Administrators in Scotland; and Dr Lindsay Neil from the Selkirk Regeneration Company.

Good morning. Would any of you like to make some opening remarks?

Anil Gupta (Convention of Scottish Local Authorities): I just want briefly to say what I think Councillor McGuigan would have said, had he been here.

COSLA supports the common good element of the bill. Although we recognise that establishing a register of common good properties will create a burden on local authorities, we hope that it will be of only short duration. One issue that it will clearly be up to us to resolve is the extent to which properties that might be assumed to be common good are or are not, and we will be looking for advice on that judgment call from our legal advisers. Moreover, COSLA welcomes the idea that the bill can help to address tricky issues such as the Portobello high school situation, and we are very supportive of SOLAR’s views on the provisions in the bill.

I am not sure whether we have previously done so, but we also want to draw the committee’s attention to the Improvement Service’s 2008 report, which, in its comments on a common good assets register, on funding arrangements and on the particular notion that after a period of time—the suggestion in the report was 50 years—properties that have been seen as common good should be treated as such, might have influenced the bill’s shape.

Dr Lindsay Neil (Selkirk Regeneration Company): I want to pay tribute on the record to Miss Mary Mackenzie of Peebles, who died about two years ago and devoted the latter half of her life to pursuing the common good much along the lines that the bill, I hope, is going to achieve. You have a posthumous word of support from her.

Most of the issues will come out during the questioning, but an important point that arises in, I think, everyone’s submissions is the need to define the ownership of common good. There is a simple way of doing that, which I will not go into unless asked. A second issue is alienability, which also requires to be defined and, again, there is a way of doing that.

Thirdly, local people need to have more input in the administration of common good funds, and I have made a suggestion in that respect.

The fourth thing that I want to cover is that there should be some control over the money that local authorities take out of common good funds for whatever reason—and some of those reasons are quite elaborate.

The Convener: If our witnesses have no other comments, we will move to questions.

What do you believe to be the main problems with the current management of common good assets in Scotland, and will the bill help to solve them? I start with Mr Ferguson.

Andrew Ferguson (Society of Local Authority Lawyers and Administrators in Scotland): As I see it, the main problem is uncertainty about the law. Although the bill is not in any sense all about common good—it is about something much broader than that—it gives an opportunity to clarify that situation.

In our submission, we have focused in particular on the Portobello park situation and the appropriation of common good land for another public use. However—this is where we are in broad agreement with Dr Neil—there are difficulties in defining what is alienable and what is inalienable common good. In fact, it is hard even to say the words, never mind define them. Having those two definitions in the legislation will be
important with regard to what councils can do with common good land.

Indeed, a definition of common good land would also be useful. At the moment, the situation relies on lawyers interpreting some very old case law, and it would be far better if we had modern legislation that anyone could read and make a decent stab at understanding.

**The Convener:** We obviously have lots of different types of common good, and common good accounts are governed by a number of bodies. The Highland Council submission talks about 10 different common good funds. How would you go about defining what is common good, when each of the funds is set up so differently?

**Andrew Ferguson:** Common good is a local thing; former burghs are often quite small villages, although some go up to city size, and people have particular views on very local issues and particular bits of property. To me, however, defining common good is not terribly difficult. It is generally accepted that common good property was only property that was part of a burgh’s property. The cases that I referred to are fairly clearly now. In particular, the 1944 case of the Magistrates of Banff v Ruthin Castle Ltd defines common good against two exceptions: the first is to do with property acquired using rates money, rather than common good money, for statutory purposes such as housing; and the other is trust property. I would not like to second guess what legislators would put down, but I would have thought that a basic definition would not be too hard to produce. Essentially, all burgh property would become common good unless it fell under those two exceptions.

**The Convener:** What about property that was gifted and never belonged to a burgh, or property that was bought from common good accounts? On my home turf in Aberdeen, the common good account has bought quite a lot of property so that the rents could be used to boost that account. How do we deal with such situations?

**Andrew Ferguson:** If property had been held on the common good account or had been acquired and put on the common good account, it would be difficult for a council, even now, to claim that it was not common good. I do not really see that as a difficulty. I suppose that you could expand the definition to talk about the common good account, so that if property had been acquired after the burgh days it would be included in that definition, but I just do not see it being too difficult.

**The Convener:** I am playing devil’s advocate, because I do not think that there could be a catch-all definition, given the way in which some accounts have been handled. You obviously think differently.

**Andrew Ferguson:** I am not saying that there would not still be hard cases. I am saying that the hard cases could be tested against a clear set of legislative principles. At the moment, they are tested against sometimes conflicting judgments in a case from the 1940s, and it seems to me that it would be better if there was at least an attempt at definition. I know that in other submissions people have argued that there is a risk that doing that could exclude something that people have always thought was common good, but, with a bit of thought, that need not necessarily be the case.

**The Convener:** Dr Neil, I return to my original question. What do you think are the main problems with the current management of common good, and will the bill solve those problems?

**Dr Neil:** The bill should aim to restore to communities their control and influence over what happens to their common good fund. It should also act as a referee in relation to the management by local authorities of common good funds, because we have had experience—and new examples are still cropping up—of failures by local authorities to observe the existing regulations, never mind any change in regulation.

The main thing is to involve local people, because the best guardians of property are its owners. A fine distinction avoided by many people is that the Local Government (Scotland) Act 1973 did not confer on local authorities the entire ownership of common good funds. It transferred the title, not the beneficial ownership. The beneficial ownership remains with the citizens of the former burgh, and, in the present day and age, they have very little say indeed in what happens to their common good fund.

09:45

**The Convener:** Anne McTaggart has a supplementary question.

**Anne McTaggart (Glasgow) (Lab):** Dr Neil mentioned the involvement of local people—I fully appreciate your point. How best can we involve local people?

**Dr Neil:** As I said in my submission, the best thing would be to have the counterweight of an equal number of local volunteers to the number of local authority people appointed to common good working groups, which is the way that most local authorities organise the management of a common good fund on a democratic level, although it is officers who are involved and who generally attend such meetings. If there were an equal number of volunteers, the local authority
would not have the option of steamrollering through any changes in a locality’s common good fund.

I would add to that a limited veto power. The phrase that appears in the 1973 act and in the Community Empowerment (Scotland) Bill is “have regard to”. My Queen’s counsel friend, who has taken me by the hand all the way through the business of common good, says that “have regard to” is legally meaningless, because local authorities can have regard to something and simply disregard it. Therefore, some more teeth in that area would be very helpful. I know that the bill says “must have regard to”, but even that is legally questionable.

The words “must” or “will” instead of “have regard to” would apply an imperative.

**The Convener:** How do you envisage those community representatives being appointed or elected? How would you ensure that they reflected the people’s views?

**Dr Neil:** Community councils have been mentioned, and they are a good source from which people can be appointed or volunteer.

**The Convener:** A lot of people who have given evidence to the committee during our consideration of not only this bill but others say that, in many cases, community councils do not reflect the views of the communities that they represent.

**Dr Neil:** I have another finger up. The other community bodies that have evolved to meet needs in a community—Selkirk Regeneration Company is one such example, although, even in Selkirk, there are others—could put up a candidate to sit on the management committees. Depending on the numbers, they could be approved by the community council. There could be a limited number for the community council itself. For example, there could be one for the community council and two spread around the community. Different people could come in at different times.

The approval thing is a bit of a problem. Can you ask one potential candidate for such a position to approve another potential candidate? A better idea would be to divorce such approval and give it to some arbitrator, if you can.

**The Convener:** I can see that causing quite a few difficulties, based on evidence that others have given us.

**Jim Gray (Glasgow City Council):** I endorse my colleague Andrew Ferguson’s submission. In our written submission on the bill, we strongly put forward the view that a statutory definition would be helpful.

Rather than repeat what Andrew Ferguson has said, I will speak in general terms. We are genuinely trying—we are committed to this—to make the common good fund more transparent and accessible to local communities.

In general, I suggest that it would be helpful to have a statutory definition that is more easily explicable to the general public, rather than have to rely on a number of cases from the past and varying interpretations of what those cases mean. Without overstating it, we strongly feel that the opportunity may have been missed to consolidate the existing definitions from case law and put them into statute.

A degree of confusion arises. Before we came into the meeting, I had the benefit of talking to Dr Neil, who knows a great deal more about the common good than I ever will. However, perhaps understandably, the general public are unclear about what common good funds are. There might be a perception—clearly not on the part of Dr Neil, but among some people—that in some way the common good is unique. However, it is clear that local authorities have a number of restrictions on what they can do with certain categories of property, whether that is restrictions on the title, burdens or contractual obligations that restrict use or disposal. Also, as Andrew Ferguson flagged up, the bill does not take us much further forward on the distinction in the common good between alienable and inalienable—I struggle to say those words, too.

In general, we support the idea of opening up and making more transparent the common good. We are already reviewing our policy on it and our existing register of assets. It might be more appropriate to say this in response to a later question, but we think that the policy memorandum and the financial memorandum have somewhat understated the resource implications for local authorities in implementing the provisions. However, we are committed to making more transparent the operation of the common good fund in Glasgow.

**The Convener:** Who wants to speak for COSLA?

**Anil Gupta:** As I said, we are in agreement with SOLAR and Mr Gray on the issue. Clarity is probably the biggest issue for us, as well as the potential burdens that arise from putting in place the register.

I want to briefly make the point that, when local government is required to have regard to various provisions and legal duties, it takes them seriously and, more often than not, that is followed up by examples of good practice being shared between members about how best to manage those things.
The Convener: Part 5 of the bill deals with asset transfers. How do you feel about asset transfer requests to common good accounts? How will that play out and what can be done on that?

Andrew Ferguson: That is a good question. As I mentioned earlier, there is really no opposition to the broad sweep of the bill that communities should be more empowered. Clearly, there are situations in which a local authority is not the best-placed body to take forward the future of a particular building—[Interuption.]

The Convener: Can I stop you there for a second, Mr Ferguson? There seems to be a very strange noise in the room. I do not know whether it is affecting broadcasting. Could it be someone’s hearing aid, by any chance? Sorry, Mr Ferguson, but I am worried that it is upsetting broadcasting.

Andrew Ferguson: That is okay—it seems to have stopped now.

The Convener: Yes.

Andrew Ferguson: As I was saying, the bill tries to cover situations in which a local authority is not best placed to be the guardian of a particular asset and a community-based organisation would be better placed. It would be disingenuous to say that that never happens—of course there are such situations; there are shining examples of that. One of the reasons why we want the clarity that we are asking for on common good law is so that, when an asset transfer is proposed, the somewhat byzantine provisions of common good law do not get in the way.

Essentially, it should not matter terribly much whether something is common good. I know that it matters deeply to the community that something is common good, but regardless of whether a particular asset is common good, if the community has a plan for it, why should it not be able to take on that asset without there being blocks standing in the way? At the moment, it is not quite clear from the wording of the bill whether it would be necessary to go to court if there was an inalienable building that everyone agreed would be better looked after by a community organisation. Under the provisions of the 1973 act, in such circumstances—even though everyone was in agreement—it was still necessary to go to court. It is really a matter of stitching common good property into the overall sweep of the bill and linking it to things such as asset transfer.

Dr Neil: I agree with that, except—I am sorry; I have lost my train of thought.

If a local democratic group that assessed whether an asset should be transferred from the common good to another agency agreed that the purpose of the transfer was for the community good, it would probably offer no opposition. By democratising the management of common good at a local level, some asset transfers will be facilitated.

Jim Gray: I endorse the view that we must be careful that we are not inadvertently making it harder for groups to take on community assets, which is a big enough challenge. Groups need a great deal of support to do that, and it can take a lot of time. There is a great deal of capacity building involved, as well as many issues to do with sustainability. I endorse the view that we need to be clear that we would not want any changes to the operation of the common good system to make it harder for such groups to take on common good properties.

I know that the committee is to hear later from the Federation of City Farms and Community Gardens, but at page 50 of the committee’s papers, it touches on the issue in its submission. It mentions the situation whereby the bill could have the perverse outcome of making it harder for groups to take on common good property, for example for use as allotments.

The Convener: Do you wish to comment, Mr Gupta?

Anil Gupta: I have nothing to add to what is in our submission.

John Wilson (Central Scotland) (Ind): I welcome Mr Ferguson’s request for a clearer definition to be provided in the bill. One of the issues with the transfer of land, whether common good land, which we are concentrating on, or land that is held in trust by a local authority for a community, relates to the role of the keeper of the registers of Scotland. SOLAR’s submission indicates that the keeper will not give title to such land. What can we do in the bill to ensure that, when there is a transfer of a common good asset or an asset that is held in trust by a local authority to a community organisation, that will be recognised in the land title deeds? For many communities, ownership of the land is a requirement if they are to attract funding. If communities cannot get titles that demonstrate their ownership, some of the funding that they wish to apply for might not be forthcoming.

Andrew Ferguson: Thank you for picking up on that point.

There appears to have been a difficulty recently with the keeper accepting applications for registration. It was another local authority that was involved, so I am not completely conversant with the difficulty, but the keeper seemed to take the position that some sort of proof of court authority was needed if it was inalienable common good land. I suppose that the solution lies in the bill providing definitions of what is alienable and what is inalienable so that the position is quite clear.
If the acquisition had been carried out under the Community Empowerment (Scotland) Bill, that would give the keeper a little bit of extra comfort that it had been done properly and that he could record the circumstances clearly in the land certificate. The clarity of definition that we are asking for would help that situation and help the keeper to be able to give the land certificate that a community body would need.

I do not know whether Mr Gray has anything to add to that.

10:00

Jim Gray: I do not have anything to add on the technical aspect, but it occurs to me that we could have a potentially anomalous situation.

I am currently involved in a long-running piece of work that is to do with transferring a major facility in Glasgow into community management. We will have a service agreement with the voluntary organisation. Where there is a transfer of ownership, if we are staying true to the spirit of the common good, do we need a device to ensure that the common good, or the community as a whole, has safeguards built in if something happened to the group to which the asset has been transferred? The group could, unfortunately, go out of business or fail to deliver. There is an issue quite apart from the legal issue. In what way can we safeguard the longer-term community interest? Obviously, we would need to think about that and look at various agreements that we could enter into with the transferee.

The Convener: Let us go to alienable and inalienable rights. Many folks—our thousands of viewers at home—will find it very difficult to understand what those are. How do we explain them to folks? How do we ensure that the definitions of those things that you want are right?

Andrew Ferguson: You are absolutely right. Explaining those things to anybody who is not deeply steeped in common good traditions is slightly difficult.

Essentially, not all common good property can be sold. That has always been the case. Historically, the courts have held that there has always been a class of common good property that cannot be disposed of. One such class of property is things that were necessary for the administration of the burgh, such as the burgh chambers and the jail. I am going back through historic cases now.

The other main area is where there was a dedication in the title. Philanthropists in the 19th and 20th centuries gave land to towns, but on the condition that it was to be used for ever for the town, usually for a recreational purpose.

A third category relates to the burgh having dedicated an area, usually to recreational purposes. We are usually talking about land in that particular situation.

I appreciate that is quite a long explanation to translate into legislation, but it would not be beyond the wit of the legislators to create a definition. The key issue is that those categories of property could be sold with the consent of the court. Perhaps the question to be asked is whether the right place to make that decision is the sheriff court or the Court of Session, but at least if the case goes before a court, the judge will weigh up the benefits and disbenefits of the sale.

Those properties could be sold under the 1973 act in certain situations. As a result of the Portobello case, in which the local authority wanted to use the common good property for another public purpose, there is now clear case law that says that it could not do that. There is an absolute brick wall against local authorities doing that in any situation other than by taking legislation through the Parliament. One might wonder whether that is the best use of the Parliament’s time.

It would be tricky to define such categories of common good because, certainly in the case of old burgh chambers, for instance, the question whether they are still inalienable changes over time. I do not think that it would be impossible to do that, however. Indeed, it would be helpful to have definitions set down. Rather than having them in a string of 19th and 20th century cases and obscure law books, it would be better to have those set down in legislation that everybody can access on the internet. That would never be a perfect solution, but it would be a better solution than what we have at the moment.

Dr Neil: As regards alienability and non-alienability, a mechanism existed in section 75(3) of the 1973 act, which permitted the Court of Session or a sheriff court to make compensation for anything whose use was proposed to be changed. In other words, if the aim was to build a school in a park, if some other park facility was provided, the court could quite easily decide on the matter. That seems to be a mechanism for transferring something that is inalienable into something that can be used for the public good.

The point about defining alienability and non-alienability was first mentioned in 1937. A report in the Scots Law Times refers to “a Commission appointed to enquire into the state of Municipal Corporations in Scotland” back in 1835. That was the only place where we found a clear definition of what was alienable and what was not alienable. If a definition is included in the bill, that would be a good place to start.
Jim Gray: I do not have a lot to add to that. However, it has occurred to me that, if there is a feeling that it would be too difficult to capture all that in the bill, there might be a case for statutory guidance which, while not being prescriptive, could at least provide examples of what would be regarded as inalienable or alienable, and that could allow for an easier dialogue between local authorities and other interested parties. Where something is alienable, there could be examples of overriding benefit to the community from the land being disposed of, based on case law and good practice.

John Wilson: I wish to follow up on one of the issues that have come out of the evidence from local authorities in particular: the compilation of the register of common good. If there is a difficulty in compiling a register of common good assets, how do we know what assets are held in common good and what criteria are assigned to those assets?

Mr Ferguson made a comment about the philanthropists of the 19th and 20th centuries. The Carnegie Trust gave, purchased and built property for many local authorities in Scotland to provide public libraries, mainly. In the town that I live next to, the public library has been closed and transferred to a new-build facility. The original facility is up for sale. How would the local community determine or find out whether the local authority is entitled to sell that property, if the property was gifted to the people of the burgh of Coatbridge?

Rhona Welsh (Convention of Scottish Local Authorities): We have been contacted by a number of members who have recognised that holding a register of common good property is good practice. In fact, it is cited as good practice under Chartered Institute of Public Finance and Accountancy guidelines. A lot of local authorities know about the proposed legislation and have started this process already. That is why we have been emphasising today the need for clarity around what is considered to be common good. A number of authorities are currently compiling their registers and are coming up against some of the issues that you raised. At their heart, local authorities are keen to make sure that communities have access to that information. In the process of building the register, they welcome the opportunity to consult community councils and others in the area. They are always open to answering those questions. We have certainly never had any negative feedback on these proposals in the bill.

Jim Gray: On the scale of the task, my colleagues who are working on this tell me that they estimate—I stress the word “estimate”—that Glasgow City Council might have in the region of 20,000 title deeds to look at. I am not commenting on what proportion of those could fall within the common good definition, but if you want to do an exhaustive analysis, you will require to look at them.

We are giving priority to the assets that have been queried in the past or cases where there is a proposal to dispose of or sell the asset—in other words, the parts of the potential register that are most likely to be contentious in the near future. We have run a programme of paid graduate internships, through which we have managed to get some assistance, and we will do the same again next summer.

If we are going to have a meaningful and comprehensive register, that will require a large-scale exercise. It goes back to the issue of having a definitive definition. Once we have the register, we are required to publicise it and community organisations as defined in the legislation will have the right to query some of the entries and to be consulted if and when there is any intention to dispose of assets. I am at risk of repeating myself by saying this, but the more we can improve public knowledge of what is common good, the less likely we are to have unnecessary disputes.

The Convener: From my humble perspective, I think that members of the public out there find it very difficult to believe that all this is not registered anyway. I know what I own. Folks get quite upset at points when they try to find out who owns something and the local authority then spends years trying to find out for them—if it can find out at all. Folks find that quite hard to comprehend. What do you have at the moment by way of a register of Glasgow’s common good assets?

Jim Gray: We have a register, but we regard it as imperfect. We are trying to perfect it and to make it as comprehensive as possible. I understand your point, convener. The problem is that we cannot rewrite history. The fact is that we are the successor body to other local authorities and the register has built up over a long period of time. It is many years since I did conveyancing—and, frankly, I was not very good at it when I did it—but I know that it is not always simple and straightforward, as those who know more about it than I do would confirm. We are where we are. It is regrettable, but the matter is very complex and over years and decades local authorities have perhaps not given it the priority that they might have.

The Convener: On the point about being the successor body, I have to say that I have inherited very few things in my life, but I know what I own.

Dr Neil: I will give you an example of where the local authority is almost blind to the existence of moveable assets. In a Borders town that I will not identify, there is a room full of pictures that say
underneath, “Dedicated to the Burgh of” or “Given to the Burgh of”, but the local authority refuses to believe that there are any moveable assets. Its argument is that because it did not receive a list of moveable assets from the previous administration, it has no obligation to continue to keep a list.

10:15

Andrew Ferguson: I was going to make one point, but now I want to make two.

Mr Wilson’s point is very well made. Even if we had a common good register, dividing it into assets that are alienable and those that are non-alienable—I am adopting Dr Neil’s word, because it seems easier to pronounce—would be an extra step and would involve another quite big exercise. At the end of the day, having a statutory definition will allow communities to challenge the local authority and say, “Well, you have said that this is common good, but do you consider it to be alienable or non-alienable?”

Dr Neil has made a good point about moveable common good assets. We have never really inherited a list of such assets and, although in Fife we have made some efforts to create some sort of register, I am quite sure that it is very imperfect. I point out, however, that we have tried to involve the local communities in what we have created.

Coming back to another point that we have made in our submission, I want to give the committee a concrete—or, I should say, wooden—example. With the sale of Lochgelly town house, we now have sitting in storage in Glenrothes a huge table that once belonged to Lochgelly burgh and which was where the members had their meetings. We do not know what to do with it, and I have advised my colleagues that there is nothing that says that we can legally dispose of it. As there seems to be no community use for it at the moment, the situation has become difficult.

The Convener: At this moment in time, then, the table is a liability rather than an asset.

Andrew Ferguson: It is a liability, because all we can do is store it. Obviously, there are lots of other assets such as paintings and so on, but it is a question of what we do with the table now.

The Convener: It sounds like another case where we ask, “Do we legislate to deal with this or does common sense come into play?”

Mark McDonald (Aberdeen Donside) (SNP): I hesitate to ask this question, given that unitary authorities were established 18 years ago and some of them—perhaps all of them—still do not have a comprehensive common good register. However, should we have an expectation of some deadline being set for the completion of such registers? Given that we still do not have common good registers 18 years after unitary authorities came into being, can we afford to sit around and wait for local authorities to get their act together without such a deadline?

Rhona Welsh: A number of local authorities have fed back to us that their main problem is that when they themselves are uncertain whether an asset should be included in the common good fund, they have to take legal advice, which might be that they have to go to court for a determination. Obviously, that takes time and incurs costs, and I am not sure whether it is for us as a member body to indicate what deadline, if any, should be set.

Mark McDonald: I presume that authorities are seeking that advice from their external solicitors. If it were internally sourced legal advice from their own legal departments, would that not give rise to conflicts of interest?

Rhona Welsh: I can think of one particular local authority that has taken external legal advice on the matter, but I cannot speak for all 32.

Jim Gray: Where such a situation arose, we would seek external legal advice; indeed, we have done so. It is, to some extent, a judgment call as to whether we get the opinion of a QC or whether we go to court, but going to court clearly costs more money and takes longer. For that very reason, I can only endorse COSLA’s comments that it is very difficult for us to give a timescale for completing a common good register. I can understand—

The Convener: I want to stop you there, Mr Gray. We are hearing all this talk of seeking external legal advice when in many local authorities there are perfectly good lawyers being paid quite substantial sums. Are we being overly risk averse in dealing with this situation?

Jim Gray: We take that course of action to minimise disputes. Other parties and stakeholders might not agree with the legal advice that we receive from our own solicitors; we will want to create a degree of independence; and such a move stops just short of our going to court. That is the only reason why we would do that, because in general we rely on our own legal advice.

Dr Neil: I suggest that each local authority be written to and asked for its assessment of how long it will take to compile its list of moveable and fixed assets. A judgment could be made after that, perhaps by the minister.

The Convener: That is not a bad idea.

Andrew Ferguson: I do not see why the timescale for producing a common good asset register should not be fairly short. As colleagues have said, most local authorities have a common good asset register of some sort. The first step, in
terms of the legislation, is to publish those registers, which will lead to a discussion. There is no doubt that community interests will have local knowledge; I know that because we have been through the process in Fife. That local knowledge will feed in and help to create a robust common good register.

I see no reason why the timescale for initial publication, as proposed by the bill, should not be short. However, getting to the end of having a common good asset register that is absolutely 100 percent accurate is a bit like painting the Forth bridge.

Mark McDonald: I think that you are right that there would be an initial process, but my concern is that if we leave it open ended, it is a licence for heel dragging. Although some local authorities will be further down the road than others, there will be some authorities—picking up from the inferences made by Dr Neil—that are engaged in a process of heel dragging on the issue. Rather than just leaving it up to individual local authorities to get their act together, should there be a co-ordinated approach? Does COSLA have a view on whether there should be co-ordination or should local authorities be left to plough their own furrows?

Rhona Welsh: In general, COSLA’s position would be to ask that local authorities have the local flexibility to deal with the issues as they see fit. I am not sure that taking a co-ordinated one-size-fits-all approach would necessarily solve the problem. I appreciate the point that you have raised.

Mark McDonald: Perhaps I can clarify my point. I am not suggesting that one size fits all; rather, I am suggesting that we can ensure that local authorities are taking the right steps and moving in the right direction, and that no authority is being “allowed” to drag its heels.

The Convener: Dr Neil suggested that local authorities could be approached for timescales. Has COSLA ever approached local authorities and asked them how long it would take them to complete that kind of task?

Anil Gupta: We have not yet done so, but if the minister is to ask local authorities about the timeframes for producing a list of both moveable and non-moveable assets, it would be useful also to ask about the costs attached to developing those registers in given timeframes, because of the points that Mr Gray has already raised.

Stuart McMillan (West Scotland) (SNP): Good morning, panel. I would like clarification on one point.

Mr Gray, in your comments a few moments ago, you used two phrases. The first was, “We are where we are.” I will paraphrase the second phrase; you said that in the past, local authorities have possibly not given common good the attention that it should have received. We should also bear in mind the discussion that we have just had. Given some of the controversy that there has been over the years regarding common good the length and breadth of the country, why have local authorities not grasped this particular thistle to ensure that registers are up to date?

Jim Gray: I am not sure that I am best placed to answer that. I have worked in local authorities twice in my career—latterly, for about six years and for Strathclyde Regional Council in the 1980s. I understand why members may think that I have spent a long time in local authorities, but I have not.

I was responding to the understandable concern or frustration that the convener expressed about why it has taken so long to get clarity about what local authorities own. In that context, I was expressing a personal view that, given the other pressures on local authorities over the decades, they may not in some cases have been definitive in maintaining an absolutely comprehensive register. I presume that they have been more concerned about the individual conveyancing transactions that they have been engaged in. I am purely speculating that, if they had treated that register as a high priority, we would not be where we are.

However, that is not easily undone. Land transfers are complex. Andrew Ferguson has given some examples, and this is not necessarily just about land; it is also about assets. Local authorities have taken on a range of functions over the years involving not just component parts of the local authorities but other organisations that have merged with or demerged from them. A series of complex transactions has taken place. I speculate that the lack of clarity about what is and is not in the common good may well have compounded the problem. However, that is purely a personal view.

Andrew Ferguson: In Fife—I am not really speaking for SOLAR overall here—we have been involved in an exercise of that nature, and it is massively resource intensive. It takes a lot of time to read back through titles, some of which go back to the 1600s or 1700s, and try to make sense of them in the modern-day context. However, it can be done, and I stress again that with community involvement we can often get information about particular properties that local authority officials sitting in a central office may not have. There is also a generational thing, in that many colleagues who maybe had that information in-house have now retired.

The local nature of the work is important. Fife has 26 former burghs within its boundaries, so there are 26 different sets of problems and 26
different communities to engage with. Although, as I say, we have tried to go through that in Fife and I think that we are in the final stages of the work, it has not been without difficulties—of communication and otherwise.

**Stuart McMillan:** We received a submission from Highland Council, which is not here today, and one of its suggestions regarding consultation with the community is that there should be a requirement to “consult only with Community Councils that represent the inhabitants of the areas to which the Common Good related prior to 16 May 1975.”

Do you have views on that suggestion?

**Anil Gupta:** We are aware of that view, which relates specifically to Highland Council’s large geography. It would probably also be taken by other local authorities with similarly broad, dispersed populations. To Highland Council, it seems odd that a community council in Wick would have a view about what is going on in Skye.

**Anne McTaggart:** I have three small questions about the appeals process. As we discussed earlier, the bill requires local authorities to consult community councils and other community bodies about their common good registers. However, there is no appeals mechanism if the community disagrees with the local authority’s decision. Should the bill define an appeals mechanism?

10:30

**Andrew Ferguson:** Ideally it would, but I struggle to think what a good appeals mechanism would be that did not involve an expensive process and, essentially, paying lawyers to come to a decision. I understand the desire for an appeals process. As we discussed earlier, the bill requires local authorities to consult community councils and other community bodies about their common good registers. However, there is no appeals mechanism if the community disagrees with the local authority’s decision. Should the bill define an appeals mechanism?

**Dr Neil:** One of Audit Scotland’s functions is to review the local authorities’ management of common good, including their asset registers, on an annual basis, but over the years I have been impressed by the inadequacy of its comments on the compilation of asset registers by various local authorities, particularly in the Borders. Audit Scotland is in a position to judge an appeal, in so far as it is supposedly totally disinterested and arbitrary, but I have had reason to doubt its effectiveness in certain respects.

**Jim Gray:** I do not have much to add, except to say that I think it would certainly be preferable if we had some form of dispute resolution that did not require our going to the Court of Session, with all the costs and the length of time that that entails.

**The Convener:** What does COSLA think?

**Anil Gupta:** COSLA would agree with Mr Gray’s comments.

**Anne McTaggart:** Could Mr Gray give us an example of good practice in respect of the dispute resolution that he mentioned?

**Jim Gray:** A variety of alternative dispute resolution methodologies can be explored but, generally speaking and as members will be aware, both parties have to come to an agreement. The question is whether there is provision for an independent person to be appointed, whether there is mediation or whether there is something else.

We would not want a community to feel completely disaffected because of a certain outcome, but there could be economic reasons why a particular piece of land had to be disposed of; for example, jobs or investment could be at risk. We would certainly be looking for speed and certainty. I do not have anything specific to offer, other than to say that we should try to avoid disputes and that any disputes that arise should be resolved without people having to go to court, if that is possible.

**Anne McTaggart:** And—

**The Convener:** Could you be quite brief, please?

**Anne McTaggart:** Yes, convener. This might require just a yes or a no, but do you support the rules that require local authorities to have regard to the views of community councils and bodies when disposing or changing the use of common good property?

**The Convener:** I ask the witnesses to be very brief.

**Dr Neil:** I have already said that the phrase “have regard to” does not have a great deal of legal strength. If some phraseology could be used to make it clear that, if the community were consulted, its opinion carried weight, that would smooth out the decision making and avoid conflict. There are conflicts all over the place—lawyers thrive on them.

**The Convener:** Do any of the lawyers wish to comment?

**Andrew Ferguson:** I agree with the proposals in the bill.
Anne McTaggart: Thank you. My other question has been answered, convener.

The Convener: I thank the witnesses very much for their evidence, and I suspend the meeting very briefly for a change of witnesses.

10:33

Meeting suspended.

10:37

On resuming—

The Convener: We will now consider part 7 of the bill, on allotments and food-growing strategy.

Before we move to the witnesses, I would like to say that the committee is working hard to engage with as many people as possible on this bill. We launched a short video on the participation aspect of the bill a few weeks ago. I am delighted to say that it has been watched nearly 1,300 times on YouTube and has led to more evidence being received. Later this week, we will launch a second video, on part 7, on allotments and food-growing strategy. We are keen to hear from folks on the provision for food growing, and we will be taking further evidence on the topic at our meeting in Fort William on 24 November. I hope that the video will encourage more people to engage with us on those issues.

In our second panel, I welcome Ian Welsh, president of the Scottish Allotments and Gardens Society; Pete Ritchie, director of Nourish Scotland; Roz Corbett, Scotland development worker, the Federation of City Farms and Community Gardens; and John Hancox, who lodged petition PE1433. Would you like to make any brief opening remarks?

Ian Welsh (Scottish Allotments and Gardens Society): Yes. I represent the Scottish Allotments and Gardens Society, which represents most of the allotments in Scotland, of which there are currently 8,000. When we carried out a survey in 2007, there were 6,400, which was about 10 per cent of the number left at the end of the war. We are therefore left with a low level of allotment provision. We hope that the new legislation will facilitate turning that situation around.

We have a number of concerns about the bill. It may take up too much time, but I can outline them now if you want.

The Convener: They will come out in questioning.

Pete Ritchie (Nourish Scotland): Nourish Scotland has around 2,000 supporters. It campaigns for a fairer and more sustainable food system in Scotland. We welcome the bill in general terms. We want much greater community participation not just in food growing but in a community food economy, because we think that sustainable food is one of the defining challenges of the 21st century and that communities have to be part of the solution.

John Hancox: I am chair of Scottish Orchards and director of a network of orchards called the commonwealth orchard. We lodged the petition, which was about making land available to people who have not got land, and I am pleased that it has been referred to the Local Government and Regeneration Committee. The petition is about far more than just digging holes and planting things. It is very much the essence of what community empowerment is about.

I am interested in the concept of developing a right to grow, which is a little bit akin to the access laws that have been brought in. Basically, land should be made available for growing if it is not being used for anything better. It is the use of assets that is important, rather than ownership. Without going back to what Andrew Ferguson was saying earlier, I think that assets should generally be available for people to use unless there is a good reason why not.

Roz Corbett (Federation of City Farms and Community Gardens): Thank you for the chance to speak today. The Federation of City Farms and Community Gardens has more than 70 members and supports a number of other community gardens that are not members. We welcome the update to the allotments legislation, although we would like to see broader recognition of community gardening and other community growing in legislation. We also welcome the measures for local authorities to prepare food-growing strategies, although we would like a recognition that community growing is about much more than just food and that it has many other impacts and benefits. Following on from what Mr Hancox said, I would also like to say that the meanwhile use of land should be more readily supported for communities.

The Convener: To what extent do you think that the bill will deliver on the Government’s commitment to strategically support allotments and community growing spaces?

Ian Welsh: We have some concerns about whether the bill, as it is framed, will do that. One of our major concerns is that the bill removes any reference to plot size from the legislation, and we would like reference to a standard of 250m² to remain in the legislation. The existing acts progressively reduced down the size of what was defined as an allotment, and the new bill appears to be removing it. A 250m² plot is sufficient for someone to feed a family of four. Plots that are...
smaller than that will not have that capability. We feel that that sort of allotment is what defines us a community, so you would be removing the definition of the allotment community by not providing a reference to the standard size.

The Convener: I attended the Scottish older people’s assembly on Friday to talk about the bill, and the discussion focused on certain aspects, including allotments. Some of the folk I spoke to informally said that they could not manage a big allotment any more but that they still wanted to carry on, perhaps with a smaller plot. Do you not think that they should have some rights too?

Ian Welsh: I take your point about flexibility. We want the 250m² there as a reference standard, not as an obligatory standard that has to be applied in all instances. Part of the response that we have had to our concerns about the removal of any reference standards is that, if it appeared that the majority of plots provided through local authorities in future were reducing in size, action could be taken but, if there is no reference standard, what would that action be based on?

We recognise that the number of allotments in Scotland has declined so greatly that many people may have their own definition of an allotment, which may differ from the one that was defined in law, and their own ideas about what it should be capable of doing. We recognise that there is a lack of skill and that people have different time commitments. We recommend that other sizes of allotment, such as half plots or quarter plots, can be provided in agreement with the users and the providers.

10:45

Pete Ritchie: The answer to your question is no, the bill will not address the strategy of ensuring a significant increase in allotments, because we do not yet take the business of food growing seriously enough. We need a much wider cultural change to start addressing that.

We welcome the part of the bill that focuses on outcomes being part of community planning. We want to see an outcome related to food squarely in the middle of the new set of outcomes that are agreed with local authorities post-2016. We would want them to draw on the new, post-2015 United Nations sustainable development goals, which are being published next year and which include the strategic goal to end hunger, improve nutrition and promote sustainable agriculture. Once those UN goals are in place, they will frame a lot of the single outcome agreements.

Once an outcome relating to food is part of the national performance framework, we will see a much greater focus by local authorities on food-growing strategies. The work that Nourish has been doing with others such as the Soil Association on sustainable food cities is moving food up the agenda of our cities.

A strategic approach to supporting allotments and community gardens and, as John Hancox said, using land that is not being used for other purposes will form part of a much more strategic approach by local authorities to promoting local food growing and more sustainable food consumption and reducing food inequalities. We have to see food as part of a much more strategic approach.

We also expect that the new land reform legislation will broaden our approach to looking at the use of land in the public interest and for the common good. Those other things will build on the work of the bill and help create a more strategic approach. However, I do not think that the bill in and of itself will produce a strategic change.

John Hancox: I am very encouraged and pleased by the bill. It has the potential to change the culture in local authorities and institutions such as the Forestry Commission, so that they can use their considerable landholdings and financial clout to enable community engagement and develop growing. The legacy of the bill could be to help transform the amount of food growing that is done locally. I would be very encouraged if that happened, because it is what I have been working towards.

It is important that we do not get too caught up in the issues of land ownership. Although I am very much in favour of increasing allotment provision, I think that it is essential that we allow considerable flexibility, whereby local authorities and other agencies can allow land to be used for a period of time without getting too bogged down in legal hurdles. There ought to be a culture in which people are able to identify bits of ground that are not being used and can then dig holes and get on with it. The essence of community empowerment is that people are able to get on with it. The onus should be put on to local authorities and others to be supportive and to enable that process to happen, rather than to create onerous frameworks that put a lot of responsibilities around public liability on to the local groups, which can be difficult for groups that are not terribly powerfully constituted to deal with.

The Convener: You have said that folks should just be allowed to go and dig holes on land. Does that include private land, as well as public land? How do folk ensure that the land that might have the hole dug in it is fit for growing? Many areas in certain parts of the country are contaminated sites.

John Hancox: There has to be a partnership approach with landowners. That is critical. My petition looks at publicly owned land—health
board land, local authority land and so forth—so I am not aiming it at private landowners. That said, quite a number of private landowners were at a meeting yesterday with a farmer who is happy for his land to be used but who is worried that, after he says yes to something, it could get out of control, and he would not be able to change the land use decisions further down the line. That is not true with the particular person I met yesterday but, in general, if we can have an agreement whereby people can use land according to a commonsense arrangement, which can be changed, that could be a very positive thing.

Roz Corbett: There is potential for the bill to support allotments strategically. It could do more, however, towards community gardening and other community growing initiatives. Potentially, more thought needs to be given to strategically addressing the skills and resources of community groups. There is a massive skills gap in horticulture at the moment, and the food-growing strategy seems to be an opportunity to address that at a local authority level.

On the contaminated land issue, several groups and organisations already use their resources to support other groups. The grow your own working group recently launched a contaminated land guide for groups wishing to assess whether their land is contaminated. There could be more support for organisations that are doing that kind of work.

Anne McTaggart: I thank and welcome the panel members. I will stick to the issue of size, although I know that you have just discussed it, convener.

Before that, I make people aware of the visit that I went on with Stuart McMillan. We are very grateful to Ian Welsh and to Judy Wilkinson, who is in the public gallery, for the extensive knowledge that they shared with us on the day when they took us around some allotments in Glasgow.

The biggest item from that day was the size of allotments. I did not meet any allotmenteers—is that a word?

The Convener: Allotment holders, perhaps.

Anne McTaggart: I did not meet any allotment holders who were not concerned about what would happen if the size of allotments was not in the bill, in that local authorities could well take shortcuts and cut sizes. I heard what Mr Welsh said earlier: if people do not have a statutory size to begin with, how can that be cut down and how can it be defined later? I would like to hear a wee bit more about some of those concerns—I certainly heard them on the day of our visit.

Ian Welsh: There were ordinary plot holders on that visit. Some of them are on my site, and they took on their plots relatively recently, within the past five to eight years. Our plots are at least 200m². The square meterage thing is simply the updated metric equivalent of 300 square yards, which was recognised as a suitable size to achieve the aim of feeding a family-size group. Many of the new people who come to our site and look at the plots think that they are big and wonder how they can handle them. Anne McTaggart heard from two people who both said exactly that and have now reached the stage that they do not have enough ground to do all that they want to do, because of the range of produce that they realise they can grow.

That touches on something that was referred to earlier, which is the lack of knowledge and skill out there. The allotment world has shrunk so much that it is not something that features in many people’s experience any longer. When I was a child being carried around, I was taken to the allotment in Glasgow that my parents had looked after during the war. That experience stuck with me and there were many people like that, but now things are changing and people have a different perception of what an allotment might be about as opposed to what it actually is.

One of the other concerns, which is linked to that, is how waiting lists will trigger the creation of plots. The current recommendation is that, when a waiting list in any area reaches 50 per cent of the existing plot provision, the local authority will be required to take action. I think that the most likely action would be simply to take plots when they become available and halve them. That would enable the authority to reduce the waiting list to below the 50 per cent threshold without necessarily creating any new growing land.

We are at a very low ebb. The total number of allotments in the United Kingdom is 300,000, so our increase from 6,400 to 8,000 allotments from 2007 to now is poor by comparison. Things have declined very badly in Scotland. Not only must we protect what we have got, we must create a suitable framework to achieve the things that the others are talking about. The community gardens and the other smaller growing initiatives all have a part to play. That is where people will learn, so there is undoubtedly a value to all that, but there needs to be a mechanism to allow for people who learn and then want more.

Roz Corbett: I agree with Ian Welsh.

Pete Ritchie: We need far more allotments and community gardens in Scotland. My concern is that the bill does not have any levers to require that to happen. The framework of single outcome agreements is the lever that we need. The intentions of the bill are fine, but the lever is not
there to enable us to get from 8,000 to 30,000 allotments in the next five or 10 years. As Ian Welsh said, that is where we need to be.

As Roz Corbett says, we need a significant investment in skills, both for allotmenteers and for community growers.

**John Hancox:** Picking up on the issue of skills, I would say that the best way of increasing the skill base is to work with young people. I have worked with a lot of schools, developing school allotments—to use the term loosely—and school orchards. Working with children is a very good way of working with the whole community, because if children get involved and interested, they drag their parents, grandparents and wider community into it. Providing opportunities for people at a community level to take small steps will lead to bigger steps. I see the number of children in schools throughout Scotland having experience of food growing feeding through to an ever-greater demand for growing spaces further down the line.

The Convener: You say “small steps”, but do you not think that small-size growing might lead to folk moving on—if that is possible—or sticking to that smaller size if that is all that they are fit for doing at that time? I am talking about the flexibility that I mentioned earlier.

**John Hancox:** I do not want to be controversial, but I think that small-size growing, which can be growing in a square metre, a barrel or in a flower pot on a windowsill, is all great and I would encourage all of it.

11:00

**Anne McTaggart:** Yes, but the size matters. The concern from the community groups and people that I have met is that, if we do not define the size, local authorities might well take shortcuts and make half and quarter allotments, which would then get them up to the number that they should be at. That is the major concern.

Another point that I took from our visit to allotments was the importance of wellbeing and the community aspect. Roz Corbett touched on that. It is not just about growing and gardening; it is about sharing and caring and about other people’s knowledge and experience. Allotments are hugely family orientated and provide benefits for people’s general health.

**Pete Ritchie:** I support that. To give some context, all the allotments in Scotland would fit into 200 hectares, which is one small farm’s worth—that is all the allotments that we have in Scotland. We put hundreds of millions of pounds into single farm payments through the common agricultural policy to support farming; we should put more money into providing more hectares for more growers. There should absolutely be flexibility on plot size, but Ian Welsh is right that we need more ground under community cultivation, whether that is allotments or community gardens.

There is 300 hectares of derelict land in Edinburgh alone, and that is before we get to parks, golf courses and back gardens. Less ground is being used for allotments in Scotland than there is derelict land in Edinburgh. We need to acknowledge the scale of that. The bill, or the follow-up to it, needs to be much more assertive and say that we just need more ground being grown on.

**John Hancox:** I will touch on a similar point, which is that, in Glasgow, there is around 3,000 hectares of vacant and derelict land. There are vast areas of what is known in the trade as green desert—great areas of grass where nothing happens. I have done a bit of work with a local food operation on the south side of Glasgow called Locavore, which has a pig on a bit of ground. It is worth mentioning that there should be flexibility and that chickens, goats and pigs should be included in the discussion—it is not all about fruit trees or vegetables. People like growing food in all shapes and forms.

**Roz Corbett:** On the size of allotment plots, currently, if a person feels that they cannot manage an allotment, they can share it with someone else they know, or they can talk to the allotments officer and take someone on. That should not mean that the size of the plot is watered down, because the standard size should be maintained. There needs to be provision for allotments of that size. Community gardens play a role in making available smaller spaces for people to grow and for people to meet local community members. Community gardens should be seen not as an alternative to allotments but as complementing them in that sense.

**Ian Welsh:** I am glad that other panel members have cited issues to do with land. When I first became involved in the issue at this level, I was a volunteer mentor for the allotments regeneration initiative, which was a project managed by the Federation of City Farms and Community Gardens. That involved me following up on contacts that had been made by groups or sometimes individuals—it often started with individuals—throughout Scotland who wanted an allotment.

I have quoted some figures from the survey that we did in 2007. More than half of those allotments were in our four main cities, and the rest—fewer than 3,000 of the 6,500—were scattered across the rest of Scotland. They are still there. No one wanted the land for anything else in the years since the war, so they remained there. The land
has not always been of the best quality or in the best location, which is probably why no one wanted it for anything else.

The issue then became that groups were competing with whoever had an interest in the land and saw its potential for building and private housing development. That interest has receded, but there obviously will, in the years ahead, be a need for social housing. I certainly would not want to argue the case for depriving people of that housing, but there is a misperception of the amount of land that is involved in allotments.

If we were to add another 40,000 allotments to what we currently have, it would take 1,000 hectares of land to provide the standard size of 250m². It is difficult to envisage 1,000 hectares. The area that is defined by the red line in the map that I am holding up, which lies between the roads, is approximately 3.2km by 3.2km, which is 1,000 hectares. It is the greater Holyrood park area, which we are sitting on the edge of.

In other words, the amount of land that would be needed to provide 40,000 allotments throughout Scotland would be no more than that.

Stuart McMillan: Good morning, panel. As Anne McTaggart said, I was on the visit in Glasgow. As someone who had no knowledge of allotments beforehand, I took a lot from the day, and I thank the people who were there.

I have a few questions. I know that there are waiting lists for people who want to have an allotment. Is there enough demand to reach the Scottish Allotments and Gardens Society’s suggested target of 50,000 plots in 10 years’ time?

Ian Welsh: That would be our aim—

The Convener: Mr Welsh, I ask you to wait to be called, please.

Ian Welsh: Sorry—I beg your pardon.

The Convener: Ms Corbett can go first.

Roz Corbett: Mr Welsh probably has better statistics on allotment waiting lists. From my community gardening experience, a lot of the people who come to community gardens do not bother to put their names on waiting lists, because they perceive that they will not get an allotment in the next 10 years. The accuracy of waiting lists at present is probably questionable, but I imagine that the demand is more than the lists would suggest.

John Hancox: Allotments are partly about provision and partly about demand. I work with a lot of people who are interested in community food growing. One example would be students who are in Edinburgh or Glasgow for a three-year period. They are not particularly interested in taking on a plot, but they are interested in doing some practical work for the time in which they are resident in the city. They can get involved and do some useful work, with the understanding that they will be moving on at some point.

I have an allotment, and I have experience of the issues. Allotments tend to be more appropriate for people who are quite settled and who want to develop their allotment and grow food for a reasonable length of time. There is a need for provision for people who arrive in town and want to just get on with things rather than putting their name on a waiting list in the expectation that they will still be living in Glasgow in five years’ time. An awful lot of people do not live like that. They are in town for a period of time and they want to do the work, but they accept that they will be moving on.

There is also a demographic issue here. A lot of the allotment people are a bit older and quite a lot of the community garden people are a bit younger. There is a throughput whereby the people who have experience of community gardens often want to get an allotment eventually. A range of provision is needed.

Pete Ritchie: There is a demand, and I do not think it is all pent up and contained within allotment waiting lists. I just want to share some vignettes. First, there is Tom Kirby’s work with the Granton community gardeners. He set up two or three community gardens in Granton in a short space of time and brought lots of people in who were new to gardening, who never had their name on an allotment waiting list but who have now become involved in community growing. The second is our farm at home out near Penicuik. About 40 households in a very sparsely populated area, where we thought that everybody already had gardens, have taken plots on the farm. We also teach teachers. We have teachers from Edinburgh schools on a course with us at the moment. They are all involved in community growing and school growing activities. As John Hancox said, if those kids have that experience, they will be looking to grow more when they grow up.

We should not focus our allotments policy on the existence of waiting lists. We should have a clear public policy that we want to see more people growing more of their own food. It is part of community empowerment and part of a resilient food strategy. It should be a public policy objective to increase allotments, not simply to ask whether there is pent-up public demand. We should encourage demand for allotments and support it through growing skills and, as John Hancox said, through taking an open approach to people getting access to growing space when they want it, rather than telling people that if they wait five years, they might get something.
Ian Welsh: I agree with everything that the other panel members said. The statistics show that there are currently about 4,500 people on waiting lists in our four main cities. The other groups out in rural areas tend to be self-starting—people have empowered themselves, if you like. More than 100 such groups have emerged since about 2005. About half of them have managed to get new allotment sites—hence the reason why the numbers rose—but probably around half are still waiting. On the basis that each of those new sites has averaged about 30 plots, that amounts to another 1,500. That could take the total up to between 14,000 and 15,000. We have the aim of getting back to the numbers that were there after the war, but that has to be demand led.

As others have outlined, the profile of a plot holder has changed. When I took on my plot in 1976, plot holders tended to be people who looked a bit like me. There are many more families and younger people involved now. Some of them move on because of career progression and so they have the allotment for a shorter period than would have happened in the past. However, the change in profile reflects the general interest that a new generation has in growing things.

The Convener: I call Stuart McMillan. Stuart, could you be brief in asking questions—and could panel members be brief in answering them—because a lot of other folk have to come in?

Stuart McMillan: Sure. One of the issues that has been raised today is the availability of land. When I was in Glasgow it was suggested that instead of land banking, whereby land just lies dormant, land that might be used for a specific purpose at some future point could be utilised in the interim. There would be cost implications of that for people who wanted to take on an allotment on that land. Would taking over some of that land for community garden projects. The Grove community garden in Fountainbridge in Edinburgh is an interesting example of that. In the short term, there is a cost benefit argument in terms of maintaining the site, reducing vandalism and so on.

The Convener: I think that that site featured in our video.

Pete Ritchie: We think that the food-growing strategy should include clear provision for traditional allotments, for the use of meanwhile land for community growing, and also for more ambitious larger-scale programmes. There are some very attractive sites, both in Edinburgh and Glasgow, that could be used for larger-scale community growing and we think that part of the food-growing strategy should be about properly run social enterprises growing at scale, not simply community volunteers or people growing for their individual consumption. We think that there should be an emphasis on a community food economy in and around our cities and that food-growing strategies should contribute to developing that.

Cameron Buchanan (Lothian) (Con): What is your solution to the problem of wasteland that you cited in both Edinburgh and Glasgow? I read about guerrilla gardening in somebody’s submission. Is that the answer?

Roz Corbett: It follows up on the previous question. There is a potential to use a lot of derelict and underused land at the moment. In Glasgow, the stalled spaces programme has been quite successful in using such land. Guerrilla gardening is but one type of community gardening that people can do to make use of that kind of land.

Cameron Buchanan: My question is, what would you do with the wasteland? Would you...
legislate for the vast acreage of wasteland to be used for allotments?

Roz Corbett: There could be a lot more encouragement in the bill for use of that land. I would not necessarily restrict that to allotments. The land might not be suitable for allotment growing, but a view would have to be taken as part of an assessment of the land.

The Convener: I want to turn Cameron Buchanan’s question around. Legislation may not be the key here. For example, should allotments and garden spaces feature in councils’ local development plans?

Roz Corbett: I will leave that to Ian Welsh.

The Convener: Mr Welsh, you have been pointed to.

Ian Welsh: I say yes. The social housing issue will be important in the coming years because of the situation that many people find themselves in—they will never be able to afford to buy houses at the prices they are now going for. It is important that people get decent affordable housing, but it is equally important that land is set aside for some type of growing activity or whatever type of green space activity that people want.

I would hate to think that it looks as though we want people to be forced to have allotments. We do not. We want the circumstances to exist so that, if someone wants an allotment, they can have one.

Pete Ritchie: There are good examples of growing on derelict contaminated land using raised beds, such as in Fairlie. Local authorities need to assess the costs of remediating land. The pace of land remediation has been very slow, mainly because we are trying to pay for it out of the current account. We should look at financial mechanisms to invest in the remediation of land for which the payback would be over 30 or 40 years, as a result of the upgrading of land for social housing, allotments and other purposes. We are a bit stuck at the moment. A lot of derelict land is not being remediated because there is no financial mechanism to make it worth while. Although that is perhaps outwith the scope of the bill, it is an area that we need to look at.

John Hancox: I have two comments. First, I love guerrilla gardening. Anything that makes gardening sexy and attractive to young people is great. Guerrilla gardening has a frisson, because you go out in the middle of the night and plant things.

More seriously, there is a lot of good-quality land that is not derelict and which is the legacy of Victorian times. Victorian parks were laid out only with amenity trees. When the Victorians laid out parks, they deliberately planted things that were not productive—the exotics of the time. It is worth considering getting food growing back into mainstream open spaces. Access to bits of ground in parks should perhaps be part of the bill’s considerations. We basically want open space to reflect what the populace wants, and people love picking apples off trees. We can as easily plant productive trees—nuts, fruit or whatever—as we can any kind of amenity tree. Such trees would produce food at the same time as having an amenity value.

John Wilson: Good morning. I will be slightly controversial and ask whether allotments should be used only for food production. A number of allotment holders—particularly the ones who are associated with the horticultural shows around Scotland—also grow plants such as dahlias and chrysanthemums. I am concerned that we could end up with rules and regulations that say that, when additional allotments are allocated, they can be used only to produce food for consumption by allotment holders or the community. Are there any views?

Roz Corbett: To encourage biodiversity in a garden, good organic gardening principles include planting other things and not strictly plants that produce food. That should be encouraged.

John Hancox: I take a very liberal view of these things. As long as people are planting things and enjoying doing it, and as long as they are getting exercise and the community and health benefits, what they are growing does not matter that much. I have an enthusiasm for fruit but I am tolerant of people’s enthusiasm for flowers.

Pete Ritchie: The bill gives local authorities responsibility for regulation of those issues.

Ian Welsh: I suppose that I should own up, in that the site that I am on is an independent one, and growing flowers has always been part of it. Indeed, when I took my plot on in 1976, there was a significant number of chrysanthemum and dahlia growers. Unfortunately, that has declined a bit.

The trend among most people newly coming in seems to be to grow fruit and vegetables, but our site rules do not prohibit the growing of flowers, and I do not see why any site regulations should be so restrictive as to not let people grow flowers. They are perhaps just a bit more expensive to grow than vegetables, depending on what someone wants to grow.

John Wilson: It is interesting that Mr Welsh is involved in allotments that are independently owned. One issue for us is community ownership, which is also covered in the bill. Could we create more allotments through communities making bids to take on the ownership of land to turn it into allotments or to produce food? As others have mentioned, there is lots of green space around...
towns and villages that is just lying there, and the council comes along once every couple of months and cuts the grass. How would you view communities taking on land for productive use, either for allotments or community food-growing projects?

**Pete Ritchie:** In general, we welcome growth in community ownership of land full stop, whether it is in the Highlands and Islands or on the outskirts of Edinburgh.

We have to recognise, though, that new financing mechanisms are needed. We point to the success of organisations such as Terre de Liens in France, which issues community shares on a national scale to invest in community-owned land. There are benefits to a national-scale issue, because for any community to raise the hundreds of thousands of pounds that may be involved in purchasing high-value peri-urban land is a big ask and it can distract the community from the real job, which, as John Hancox says, is to use the land productively. If a local authority has maintenance costs for a piece of land, it is unlikely that the community will have lower maintenance costs, so it will need an alternative business plan that generates an income to meet those costs.

We would welcome the extension of community ownership, but we caution that it is not simply a question of raising a few bob, buying a bit of ground and then seeing how it goes. Communities need support to put proper sustainable business plans together if they are going to take on significant bits of land as owners.

**Ian Welsh:** I am on an independent site, and it has been independent for 50 years.

I see the bill as creating a process by which community takeovers could happen for groups that want to do it. I think that the way to that will be through local authorities, simply because the likely economic circumstances over the foreseeable future will mean that self-managing on sites will become a desirable option. It would provide cost savings to the plot holders and, potentially, to the local authority, depending on how much of the management of the site the group takes on. It is a road to ultimate ownership, which might appeal to some people.

Our main concern with that aspect of the bill is about the kind of legal entities that such bodies would be. There are problems with aspects of the unincorporated association, which is what allotment associations are commonly classed as. We are hoping to see something in the bill that might improve the situation.

**The Convener:** You have to be very brief, Mr Welsh, because we are really pushed for time now.

**Ian Welsh:** There is a marked difference between what has been happening in most rural areas and what has been happening, to a much lesser extent, in the post-industrial areas, around Glasgow in particular. That difference will be reflected in many aspects of community empowerment beyond allotments and growing activities.

**Roz Corbett:** I agree with the previous comments from the panel.

**John Hancox:** The petition that I put forward was aimed at public bodies—the Forestry Commission, local authorities, housing associations, health boards and so forth. In my non-legal head, that land is already in public ownership. It seems to me that it should be there for people to use, and that issues about transferring land from one body to another are not where the efforts should be focused. To my mind, it should be about making land that is already in public ownership more productive. We need a presumption in favour of people being able to use underused land unless there is any good reason why not, and that should particularly be so when it is in public ownership.

11:30

**Mark McDonald:** Part of the first question that I was going to ask has been dealt with by John Wilson. It is worth noting that the bill does not just provide for communities to own land. Transfers do not have to be about ownership; they can be about leasing. There is also the opportunity for participation requests, which might deal with some of the concerns around the absence of a duty, which is mentioned in the submissions.

The big question, though, is something that Mr Hancox has touched on. For almost the entirety of this session, we have been talking about local authorities, although Mr Hancox has mentioned other public bodies. The national health service holds large amounts of land, as do universities, and perhaps we should be looking at how such bodies could play their part in providing more land and making it available for allotments, given that it would have an added benefit for some of the work that they are engaged in. What are the panel’s views on that?

**The Convener:** Maybe you could give us yes or no answers. Should other public bodies be involved as well as local authorities?

**Pete Ritchie:** Yes, and the Forestry Commission is doing some good work on that.
Ian Welsh: Yes. In fact, that has already happened in some instances.

The Convener: Could you give us an example of where that is happening?

Ian Welsh: In Fort William, some Forestry Commission land has been made available for allotments. It is mainly in the rural areas.

The Convener: We are going to Fort William, so we can find out more about that example.

John Hancox: I definitely agree. There are a lot of different bodies that could make land available. The Crown Estate is an interesting case, as it has a lot of assets, as do health boards and public trusts of one sort or another. My view is that private landowners are often enlightened and can see the benefits of making land available, so I would not want to come across as controversial or coercive, but I would not want them ruled out of the picture. Private landowners may well be amenable to that use of their land.

The Convener: That was a long yes or no answer, Mr Hancox.

John Hancox: I am sorry.

Roz Corbett: We have examples of groups working on NHS land. There is a question about land that remains within Westminster powers, such as land owned by the Ministry of Defence and Network Rail, and how those bodies can support that effort in Scotland.

The Convener: I have one final question that it is important to ask. Is there enough provision in the bill to ensure that folk with a physical impairment can access allotments? Mr Ritchie talked about raised beds at Fairlie. Are we doing enough of that sort of thing to help people with a physical impairment to take part?

Pete Ritchie: My understanding of the equalities legislation is that all public bodies are required within the existing framework to make provision for people with specific needs. As in lots of other areas of local authority policy, I think that authorities would ensure that people whom they support follow similar provisions, but that should certainly be made explicit, if not in the bill then certainly in guidance and implementation advice. People should definitely pay attention to that.

Ian Welsh: We mention in our submission the need to take account of the fact that people suffering from mental health issues or conditions such as Alzheimer’s disease may have their own special needs. I have seen a site in Bristol where the association decided to create allotments that would suit people with disability access issues, but it turned out that there was not a demand for them and they were not used. Identifying a clear demand would have to be part of it.

John Hancox: We have worked with a number of nursing homes, prisons, secure accommodation facilities and secure hospitals. Having some food growing in areas such as prison grounds—

The Convener: That is really outwith the scope of the bill.

John Hancox: I am talking about access. Having stuff close to where people are is highly relevant. Having food growing close to where people live, especially if they are elderly or disabled, is something that should be considered, rather than making people go out and use an allotment site elsewhere.

The Convener: Ms Corbett, do you have anything to add?

Roz Corbett: I have no further comments.

The Convener: I thank all the witnesses for their evidence today. It has been extremely useful.

11:35

Meeting suspended.

11:43

On resuming—

The Convener: Welcome back. I introduce our final panel for this morning. I welcome Douglas Sinclair, chair of the Accounts Commission for Scotland, and Caroline Gardner, Auditor General for Scotland. I understand that this is your second committee of the morning, Ms Gardner.

Caroline Gardner (Audit Scotland): It is indeed.

The Convener: I invite the witnesses to make some opening remarks.

Douglas Sinclair (Accounts Commission): Thank you very much for this opportunity to give evidence in relation to our joint submission to the committee. I will say a few words on behalf of the Auditor General and the Accounts Commission.

We remind the committee of its potential interest in our report, “Community Planning: Turning ambition into actions”, which we will publish on 27 November. We will provide the committee with that report when it is published. It draws on the findings of the five local audits that we have undertaken this year. Of those, audit reports for Glasgow, Falkirk, Moray and West Lothian have already been published, and the one for Orkney will be published tomorrow. We will draw on the findings of those audits in the evidence that we give today.
Our submission notes that the bill presents opportunities for local communities and public authorities to work differently together to create new models for the delivery of public services. That fits with the core theme that we have consistently touched on in our work, which was articulated in our briefing to the committee last year during its inquiry into public sector reform. We noted the “growing consensus that significant change is needed in the design and delivery of public services” in order to respond to rising demand due to the pressure on resources, demographic change and ever-increasing public expectations.

Part of the process of change must include thinking carefully about the important role that communities can play in redesigning—and, in some cases, providing—public services.

As I have already stated, we will provide the committee with more reflections on the progress of community planning through our forthcoming report on community planning. In the meantime, we are happy to take any questions that the committee may have on our submission.

The Convener: Ms Gardner, do you want to add anything?

Caroline Gardner: No. As Douglas Sinclair said, he speaks for both of us on this occasion.

The Convener: We have caught sight of the reports from Glasgow, Falkirk, Moray and West Lothian, which are a mixed bag. Do you think that putting some of the duties on a statutory basis will help to improve community planning?

Douglas Sinclair: It will certainly make it more of a shared enterprise. In placing a parallel duty on all the bodies concerned, along with the council, the bill is saying that community planning is not just the responsibility of the council.

However, there are some issues in relation to the section of the bill that deals with governance. A more appropriate title for section 8 might be “Organisation of community planning”. It says that each partner must contribute the necessary resources by way of money, staff and information to ensure that community planning works effectively, but there does not seem to be anything in the bill that deals with the issue that could arise whereby one of the partners is not contributing effectively towards the local improvement plan. That is quite an important issue. What is the sanction? There will be ministerial guidance, but there do not seem to be any dispute resolution provisions.

That touches on an interesting point about the bill. In the past, the role of the local authority has been to initiate, facilitate and maintain community planning. That is being repealed. That raises an interesting point: what is the future role of the council in community planning? In my view, that role has always been one of facilitation rather than dictation.

If we think about what a local authority does and what distinguishes a local authority, it is not the fact that it provides services, because many other bodies provide services, including in the private and voluntary sectors. It is not distinguished by virtue of its role as a regulator, as there are other regulators, including the Scottish Environment Protection Agency and the Care Inspectorate. What distinguishes local government is its capacity for community leadership, which is a result of its democratic legitimacy.

There needs to be some articulation of what the continuing role of the council might be in community planning. Perhaps it needs to move away from a role that is enshrined in statute towards one that is accepted around the table as being an appropriate one. We need a leader of community planning, not least to resolve some of the disputes that could arise, which I mentioned earlier.

Caroline Gardner: I agree entirely with Douglas Sinclair that the definitions and responsibilities that are set out in the bill are useful improvements. One of the themes that came through from our individual audits of community planning partnerships and from our previous national report is the sense that, where community planning works well, those things help, but where partnerships are struggling, they are probably not the answer. The questions about governance and accountability are important in helping the local community to hold its partnership to account and in helping the Scottish Government to hold partnerships to account for their contribution to national outcomes.

There are no easy answers to those things, because community planning partnerships are not formal, incorporated bodies. That may not provide the best solution, but on the question of what support community planning partnerships might need and what mechanisms might be required to encourage partners that are not taking part or that are not statutory partners to play their full part and to increase transparency, so that local communities and the Government have a clearer picture of what is happening locally and what contribution is being made to the national picture, those seem to be important things that are not apparent in the bill as introduced.

The Convener: Do you think that the bill will be helpful when it comes to sharing best practice and exporting that from one partnership to another? It seems that in some places we do certain things
very well, yet, not that far away, we fail dismally when doing the same things.

Douglas Sinclair: As I mentioned, the extent to which the bill makes community planning more of a shared endeavour, so that there is an equality of participation, will hopefully help people to share best practice. I have made the point before that a report on public services in Wales contains the interesting phrase that good practice is a bad traveller.

An interesting point is whether the commission, the Auditor General and, indeed, other scrutiny bodies can do more collectively to identify good practice, perhaps in an annual good practice manual or guide. That would encourage people to move away from the view that if something is not invented in their area, they will not do it. There is a lot to be said for an initiative of that nature. That is one of the things that we are thinking about in terms of the future role that we might play in our work in relation to community planning.

Caroline Gardner: You are right about the challenges of spreading good practice and learning from one another, whether through good practice or by learning from things that have not worked so well and the difficulties involved. That is an area in which the greater transparency that I mentioned earlier might help. Giving a clearer picture of what people are trying to achieve, how they plan to go about it and the linkage between what each of the individual partners is doing could let people follow up with questions about why they are trying that, how it worked in practice and why they may have stopped doing something that did not have the impact that was hoped for.

The Convener: Will the publication of an annual report help with the export of best practice? Will that make the process much more transparent, particularly for members of the public? Is what is envisaged for the annual report enough, or should it be beefed up in any shape or form?

Douglas Sinclair: I would like to think that an annual digest or report—call it what you will—that is signed off by all the scrutiny and inspection bodies would have considerable impact and influence on community planning partners. In addition to that, there is the potential to produce good practice guides. If we consider a community planning partnership in which the exercise of joint leadership is particularly effective, it would be interesting to analyse that in a bit more detail and provide a good practice note that could be disseminated to the other 32 community planning partnerships.

The leadership of CPPs is incredibly complex, as Caroline Gardner has suggested. We are talking about plural accountability: the council is accountable to the local community; the health board is accountable to ministers and, ultimately, the Parliament; the police commander is responsible to the chief constable; and the fire officer is responsible to the chief fire officer. All those people are trying to work together with different accountability arrangements. We have found that it is important to build a relationship of trust that can bring about change because people want to make a difference rather than because of formal accountability mechanisms.

Analysing some community planning partnerships in which the leadership role has been extremely successful and effective, finding out why and sharing that knowledge with other community planning partners would be very useful.

The Convener: At the end of the day, though, everybody is accountable to the public.

Douglas Sinclair: Ultimately, yes.

Caroline Gardner: As we said in our submission, the proposed regular national reports by Scottish ministers on community planning and empowerment would be an important step forward. There are still questions for us about the accountability arrangements for that, what will happen with the reports and to what extent there will be independent scrutiny of them—whether by the Parliament or by us as auditors. It feels to us important to make sure that they are prepared in a fair and balanced way in which people have confidence.

There is a growing sense that integrated reporting is a big theme in the corporate world. The matching of performance on services and outcomes with the finances and other resources that are available lets us get a much stronger picture of what is working well and where there may be choices to be made. I would be keen to see the development of such national reporting happening in tandem with the Government’s developing thinking about the way in which its financial reporting needs to develop under the Scotland Act 2012 and as further powers are devolved in the future to keep both things moving in parallel.

The Convener: Before I bring in colleagues, I will change topic ever so slightly. Our first panel discussed the common good aspects of the bill. In particular, there was a lot of discussion about registers of common good assets. One of the witnesses, Dr Neil, said that there was some inadequacy on the part of Audit Scotland in holding councils to account for the lack of registers in some cases, or the existence of poor registers in others. Do you have any comment on that?

Caroline Gardner: I am happy to comment on that as a former controller of audit, and Douglas Sinclair may well wish to come in. The issue is clearly a contentious one, which has been
important for communities throughout Scotland, and for some particular communities, for a long time. Councils have made significant strides in registering common good land, buildings and other assets. Different choices have been made in different parts of Scotland about the priority that should be attached to reconstructing historical records—which, in some instances, are very old and incomplete—rather than the other priorities that councils have to meet.

You will not be surprised to hear that I do not think that Audit Scotland has necessarily been deficient in following that up, but I recognise that there are differences in the quality of the information and that, in some cases, making it complete would be a very expensive and possibly impossible task.

**Douglas Sinclair:** I would not disagree with any of that. It is a complex issue, which, as Caroline Gardner has indicated, has been one of priorities and finance. I would be interested to see the evidence that Dr Neil has for his view that the Accounts Commission or Audit Scotland has been deficient in relation to the issue.

**Cameron Buchanan:** I have read your submission, and I notice a bit of criticism in it. It includes phrases such as “a long way to go ... work effectively ... holding Ministers to account for their achievement ... being clearer about the frequency of such reporting”.

The bill appears to be silent on the extent to which the resourcing of the administration of the community planning process should be seen as a partnership task. Could you comment on that? Is that the main point that worries you?

**Caroline Gardner:** It is not a major worry, but it is one that we felt we should jointly register with the committee. At the moment, the duty to lead community planning clearly sits with local authorities, and our audit evidence shows that it has mainly been councils that have provided the resources required to administer it, to keep partnerships running and to do lots of the background work that is essential for partnerships to be effective.

Our sense is that, if the leadership responsibility is shared more equally, there is a risk that the resource that is needed to underpin the processes of community planning might be less easy to identify and protect, given the budget pressures that face all public bodies as well as the third sector and other partners involved. It is not a major concern for us, but we do not underestimate the importance of getting that support right for effective community planning, and it seems that a risk could arise with the proposed changes in the responsibilities for leadership.

**Cameron Buchanan:** There seems to be a significant gap when it comes to how such partnerships can work effectively. You commented on that in your “Improving Community Planning in Scotland” report. You did not think that the reporting bit was accurate enough.

12:00

**Douglas Sinclair:** There is a lot of good will. The difficulty that community planning partnerships have lies in translating that good will into tangible action, because there are so many other priorities to deliver.

Community planning was established in 2003. In a sense, it has taken off and made progress only since the joint statement of ambition between the Scottish Government and COSLA. The ambition is there, but it is not easy for bodies to build relationships of trust, to show willingness to share resources and to recognise that, by working together, they can achieve more. That is complicated by the fact that some bodies have separate targets. For example, health boards have national targets. In a sense, those national targets are their priority, rather than the priorities of the community planning partnerships.

It is a slow but maturing process. As I mentioned, we found that when CPPs have managed to build a relationship of trust, that has led to a willingness to share, to experiment and to find the areas in which they can add demonstrable value by working together. A key priority for CPPs is the agenda of reducing inequality. That does not mean that everything will be on the table when it comes to reducing inequality, but they should make a difference where they can.

The statement of ambition was perhaps overambitious in some areas. For example, it suggested that CPPs should have all the attributes of a governance board. That was perhaps overambitious because, as Caroline Gardener has indicated, they are voluntary partnerships. They depend, to a large extent, on good will and a willingness to work together. Because they are voluntary, it takes time to build up the relationship of trust and good will that adds value and makes a difference in terms of outcomes for communities.

It is a maturing process—progress continues to be made—but because of all the competing priorities and other demands on public bodies, moving community planning from being the Saturday job to a seven-day job will continue to take time.

**Mark McDonald:** If you were to ask community representatives—we have spoken to community representatives—you would find that there is a perception that community planning is too often something that is done to communities rather than
with communities. They would probably identify a disconnect between the community planning process and the turning of what priorities the process comes up with into deliverable outcomes—the delivery of what has been discussed. From your work, do you see that that is just a perception, or is there a fair chunk of reality in it? How might the bill address such concerns?

Douglas Sinclair: We have found in our audits some good examples of CPPs listening much more effectively and engaging with communities. For example, in Falkirk there was a redesign of social work services in Bo’ness and Blackness to allow older people to live in their homes for longer. In an interesting piece of work called empowering communities, Orkney Islands Council is consulting communities about the potential transfer to the communities of responsibilities for running minor services.

It is fair to say that although CPPs are getting better at consultation and participation, there is still a way to go with the transfer of power to communities. One point that the Accounts Commission regularly makes in our overview reports is that councils should make better use of options appraisals in order to identify the best way to deliver services. That must include the possibility of transferring a service to communities.

One problem is that communities are not homogeneous. Community planning implies a single community, but in any area there are different interests. It is not easy for a CPP to balance those interests.

There is a need for CPPs to consult together rather than separately and there is a best-value issue in respect of how CPPs engage with communities. Too often in the past they have tended to consult separately rather than collectively. There may be a case for both—if a council wants to consult on a school closure, that is a matter for the council—but where there are opportunities to consult together, there is scope for CPPs to do that better.

Caroline Gardner: I agree entirely. We have seen more consultation: public bodies and partnerships are getting better at consulting. We are not seeing much of a shift towards making communities and people partners in deciding what the priorities are or in redesigning services and delivering them. I believe that the real sense of participation and the true sense of empowerment will become much more important.

The convener referred to my meeting with the Public Audit Committee, at which we spent some time talking about the choices that we need to make between short-term targets in the health service and social care versus the longer-term changes that are needed to meet the 2020 vision for an ageing population. We cannot do that to people; everyone must have the chance to take part in the conversation about the relative priorities of shorter waiting times versus the longer-term priorities of services that are based near people’s homes and which help all of us to live longer and healthier lives at home.

That sense of the conversation with people being at the heart of resolving the challenges around prevention-type finances and growing inequalities is more important than it has ever been.

Douglas Sinclair: The bill is focused very much on community empowerment. There is a debate to be had on the point that the Christie commission made about the need for services to be designed around not just communities but individuals, because the individual interest is not necessarily the same as the community interest. A patient’s relationship with the health service is quite different from the community’s relationship with it. An interesting question is whether we can empower communities without first empowering individuals.

Mark McDonald: That is an interesting question, which will probably come up in our deliberations.

You raised the point that local authorities are perhaps being given the burden of taking forward community planning in many places. Are there many places where public sector organisations or community planning partners are not pulling their weight, or does the situation vary from area to area?

Douglas Sinclair: The situation varies from area to area. I would not like to call community planning a burden—as I tried to express earlier, community leadership is arguably the most important role for local government.

As I have said, there is a way to go on getting a joint commitment, but the bill may well help that process in placing a parallel duty with regard to the contribution that is made through resources, staff and information in order to fulfil the local improvement plan. It will be interesting to see how that works in practice—I think that it will be an interesting issue for Audit Scotland, the Accounts Commission and the Auditor General to keep an eye on in order to see how well the duty is implemented and what the difficulties are in that regard.

As Caroline Gardner indicated, the resource in supporting community planning has, to date, come largely from local authorities. It will be interesting to see whether other partners are prepared to put their money on the table to help to bring that about.
Community planning will not just happen—it needs a dedicated resource to make it work and to implement the decisions of the community planning board. If the board wants to deliver a joint initiative, it needs somebody to ensure that that is managed and delivered, and that the results are reported back.

**Caroline Gardner:** We were trying to convey the point that, at present, councils formally have that leadership role, and the broadening of responsibility to include the other partners and make community planning more of a shared endeavour is welcomed by local authorities as well as by others.

In practical terms, we see variation across Scotland. That is partly to do with local circumstances but—as Douglas Sinclair mentioned earlier—we see the effect of having different accountability regimes and performance targets for other partners. That is the case in particular with the health service, where there is a strong and understandable focus on the HEAT—health improvement, efficiency and governance, access and treatment—targets for each individual health board, which may be more or less consistent with the priorities of the community planning partnership and other public bodies that are involved and engaged to different degrees in setting the local priorities.

The shared endeavour will help, but the point that we have previously made with regard to aligning the Scottish Government’s policies to make them as consistent as they can be on the ground is also important.

**Mark McDonald:** I have one final brief question. I appreciate that “burden” may have been the wrong term to use. I did not mean it in the sense that was perhaps picked up.

Do you think that community planning partnerships are as accessible as they could be for our most deprived communities? Do they focus enough on prioritising investment, resources and services for communities that are most in need, rather than on communities that have the loudest voices? Those are not always the same communities.

**Douglas Sinclair:** That is a very fair question. Looking at the definition of community empowerment, we can say that we know it when we see it. First, however, we need to build the confidence and the skills of communities to enable them to tackle the council and the health board. There is a huge resource issue in making that happen.

The other side of the equation is the need to ensure that public bodies increase their openness and their culture of listening, that they respond to their users and that they aim to think of other ways to deliver services. Again, that is a big culture change and a big resource issue. The danger is that sufficient resources are not being devoted to that, which comes back to the point that the articulate middle class, rather than the communities that are most in need, will make further progress.

We have been encouraged by the fact that a number of community planning partnerships see reducing inequalities as their number 1 priority. There is a lot to be said about that, and an argument to be made that it is a very important role for community planning partnerships to enable them to continue to make a difference.

There is another difficulty in engaging communities with community planning partnerships. The bill mentions the duty on a community planning partnership to “consult ... such ... bodies as it considers appropriate”.

It does not use the word “engage” or refer to the national standards for community engagement. Some of the wording could be tightened up—some local authorities have, to their credit, said that in their evidence to the committee. There is a long way to go.

**The Convener:** Does Ms Gardner want to come in?

**Douglas Sinclair:** I will make just one final point, first. We found in all the community planning partnership areas that at local level—sometimes irrespective of the local CPP—there are a lot of good examples of partnership working. We could capture some of that work more effectively as part of our annual digest of partnership working. We could look at how local partners engage with disadvantaged communities and disadvantaged service users. We should not forget those people. That would be really helpful.

**Caroline Gardner:** It is clearly a perpetual problem that the most deprived communities are the hardest to reach, and the least likely to have the time and resources to speak up and to have access to the support that other groups may have. Community planning partnerships need to be aware of that and work to counter it.

There are some very good examples in that regard, as Douglas Sinclair said. One of the examples in the reports that we have published so far this year comes from Glasgow, in which partnerships have, as part of their priority of reducing the harm that is caused by alcohol, focused on communities in which there are particular problems with alcohol misuse. It is important to build in the support that is needed so that we can understand what is going on in those communities in order to help people to speak up
and to participate in the process. That bottom-up approach has a lot of potential.

Stuart McMillan: I was struck by Mr Sinclair’s comments. In addition to the annual digest of good practice, is there potentially a role for the benchmarking tool?

Douglas Sinclair: Yes. That is a good point. It is fair to say that the Accounts Commission has strongly welcomed the work by the Society of Local Authority Chief Executives and Senior Managers and COSLA in developing benchmarking for local government. Those bodies are now embarking on a new piece of work to develop benchmarking for community planning partnerships, which is good to see. We would not want that work to be carried out to the detriment of the work that they are doing in councils, which still has a long way to go. However, we strongly welcome the provision of a baseline to enable community planning partnerships to compare their performance with that of others.

John Wilson: Good afternoon. I have a number of questions, but I will focus on two or three. Ms Gardner mentioned in response to Mark McDonald that the communities that are the most difficult to engage have the least resources spent on them. If you are able to identify that as an issue, why are the community planning partnerships, local authorities, health boards and other agencies in the community planning process not applying resources to ensure that we get some of the most deprived communities and individuals to engage in the process?

Caroline Gardner: It is important to say that we have found some great examples of where people are doing that. However, there are not nearly as many as we would like to see or as many as are needed to address the challenges that we are facing. One reason is that such work is hard to do, because it needs to be done over a long period of time and requires investment not only of money, but of time, attention and thought. In many ways, it requires a complete change of mindset among the people who are responsible for public services. It means their letting go of the idea that they know what the problem is or what the right answer is, and instead going out and listening and seeking to understand what is going on.

I mentioned “The Ripple Effect”, which is about alcohol misuse in Glasgow. What is interesting about that is the way in which it seeks to understand what is causing the problem, rather than jumping to an answer. That can feel as if it is time consuming, and it can be hard for professionals who have worked in the area for a long time, particularly at a time when public services’ budgets are under pressure for all sorts of reasons.

One of the tricks to turning that on its head is to recognise that to carry on as we are will keep on throwing up the problems that exist now, with particular communities being excluded from services and the risk that inequality may actually increase as more affluent communities benefit from the initiatives that community planning partnerships and others are undertaking. I do not want to leave you with the impression that it is an easy thing for them to do.

12:15

John Wilson: Prior to local government reorganisation in 1995, Strathclyde Regional Council had a number of community workers in deprived areas around Glasgow and did a lot of good work, but their focus was changed after the reorganisation. We seem to be reinventing the wheel in relation to what we want to do in engaging communities. I leave that comment with you.

Mr Sinclair said something in response to a question from the convener about the accountability of community planning partnerships. Part of the bill is about accountability for what is being delivered in communities. If I picked you up correctly, your comment was that local authorities, as democratically elected bodies, can hold community planning partnerships to account for what they are delivering in their areas. My understanding is that, for the majority of community planning partnerships, the only elected member who sits on the partnership is the leader of the council and that the majority of community planning partnerships have no other elected members sitting on them. How do local authority elected members—I mean the 1,223 local government elected members—hold the community planning partnerships to account for delivery of services in the local authority area if the local authority has the lead role in delivering services?

Douglas Sinclair: I am sorry if I gave the impression that local authorities can hold the community planning partnerships to account. They are participants in community planning. What councils can do is hold to account the performance and contribution of the representatives that they have on community planning partnerships. I am interested in the example that you gave of a community planning partnership on which there is only one elected member. The work that we have undertaken shows that that is not the case in many community planning partnerships. In some cases, there is an argument that the local authority is overrepresented. It is worth making that point.

John Wilson: To clarify, do you mean that more councillors are involved at strategic level with the
community planning partnerships, or are you referring to the number of sub-groups that have been established by local authorities? For example, Glasgow has five area partnerships and North Lanarkshire has four or five. The councillors are involved at that level and they feed into the community planning partnership, but they do not actually sit on the strategic partnership.

**Douglas Sinclair:** My point is that, in the audits that we have done, we have found councillors both at strategic level and at the thematic partnership level. There is a balance to be struck. If you want to engage effectively with all the partners in a common endeavour, although the council has the lead role it should not dominate, or create the perception that it is dominating, by virtue of the size of its membership on the community planning partnership. If it does, there is a danger that the other partners will feel that they are second-class citizens and that they do not have equality of contribution or representation.

I do not think that there is a simple template that can be followed by all of them; there are 32 different community planning partnerships. You will find, for example, not only the chair of the health board sitting on some partnerships, but the chief executive, because he is an executive member of the health board, whereas the chief executive of the council does not have that status and may not be represented on the same basis. It is a complex model of governance—if you can call it that—and many such issues are in the process of being worked through and resolved. However, it is fair to say that some community planning partnerships still have a way to go in understanding the nature of representation and the different roles that people play.

For example, there is a difference between a non-executive member of a health board and a councillor who is an executive; they sit round the table with different roles and different responsibilities in the back-office organisation, yet we expect them to work together in a different way in a CPP. Some of those issues are still to be unpicked and unravelled and worked through.

**John Wilson:** That is despite 11 years of community planning partnerships.

**Caroline Gardner:** My sense is that the situation reflects the complexity of the accountability that we are talking about. Douglas Sinclair touched on the fact that CPPs are voluntary partnerships. How we are able to audit them highlights that we can go a long way with those voluntary arrangements, but that there are limits to them.

Between us, we audit all the statutory bodies that make up the partnerships. We can use our audit responsibilities to audit how they work together and to produce reports on them. Where normally my reports would go to the Public Audit Committee, the commission has powers to consider reports from the controller of audit and to engage with councils on the back of those reports. For CPPs, there are no similar powers because CPPs do not have formal status. That need not be an enormous problem when things are going well, in the same way that the non-incorporated status of CPPs is not a problem, but it can leave a gap when there are problems. That is what we have tried to draw out in our submission.

**John Wilson:** Given that comment about the voluntary nature of CPP engagement by other bodies, would it not be preferable—particularly given the earlier comment about the accountability of some of the agencies for their spend or for the effectiveness of the work that they do in CPP areas—to bring CPPs on to a statutory footing? We could then be quite clear about their role and responsibilities, especially in terms of delivery of services within the CPP areas. Instead of those voluntary arrangements, do they need to be put on a formal footing whereby we bring them on board and say that there is an expectation about delivery of services in line with the identified CPP strategy?

**Douglas Sinclair:** It is worth making the point that the power has existed since 2003 for a CPP to apply to the Scottish ministers to become an incorporated body—in fact, it is reiterated in the bill—and none of the CPPs has exercised that opportunity. That says something about their appetite to become incorporated bodies, recognising—as Caroline Gardner has indicated—the separate nature of their accountability.

The other point is—

**The Convener:** Before you go on to the other point, are you aware of any CPP that has discussed in any depth whether it should become an incorporated body?

**Douglas Sinclair:** Not to my knowledge, convener. I do not know the answer to that.

The second point is that it is interesting that the Scottish Government has decided that health and social care partnerships should be statutory bodies. I think that they will be accountable for about 40 per cent of the Scottish budget and the relationship between the HSCPs and the CPPs is going to be an interesting one. HSCPs will be represented in future on the CPPs, but the nature of the oversight relationship between a CPP and a statutory body—an HSCP—is still to be developed and clarified.

**Caroline Gardner:** I do not think that putting the partnerships on to a statutory basis is necessarily the answer. There can be strengths in the sorts of voluntary arrangements that are underpinned by the bill provisions that we are seeing. However, as
we pointed out in our submission, that arrangement brings with it a gap in accountability between the partnerships and the individual partners. Given the importance that is placed on them in public service reform and in meeting both the challenges in Scottish society and the financial pressures that we are facing for the foreseeable future, those questions about accountability and governance are important ones to work through.

**John Wilson:** I have one last, quick question. It goes back to your submission. In relation to community asset transfer, you highlighted that “it would be necessary to be clear about what would happen in case of failure by the community to make effective use of the asset.”

Which organisation do you see determining whether a community is making effective use of an asset that has been transferred? What is your evaluation of the use of assets at present by the local authorities that hold them?

**Douglas Sinclair:** Some criteria will have to be developed to enable evaluation of whether the community body is making effective use of the asset. That might be something for ministers to develop in guidance. If a view is taken, say by a council, that a body is not making appropriate use of an asset, there should be an appeals mechanism whereby the body concerned has a right of appeal so that natural justice is observed.

**Caroline Gardner:** At the point when the asset is transferred, it will be important to have an agreement between the body that is transferring it and the community organisation that is taking it over about the purposes and how success will be measured. That will provide a basis for some reasonably objective assessment of whether there is failure and, as Douglas Sinclair said, natural justice demands that there be an appeals mechanism linked to that.

**Anne McTaggart:** Good afternoon, panel. We will forgive you if you think that I should be saying, “Good evening,” as we have been here for a while.

How will the bill assist with the measurement of achievements and value for money by public bodies? Will you incorporate in your answer some of the benchmarking that you mentioned earlier?

**Caroline Gardner:** We already have the requirement that community planning partnerships produce reports on progress against their single outcome agreements, and we have reported previously that there is room for those to develop further. They should be better based on clear objectives in the first place, with clear milestones for progress on issues that will sometimes take a generation to change—we cannot wait 20 years to see whether we are making a difference to children in the early years. They should also make better use of the data that is available to show some of the linkages in that.

We know that there is scope for improvements at the local level, and some of the same considerations are likely to apply to the proposed regular reports from the Scottish ministers on the national picture. In particular, it is not simple to make linkages between the long-term, high-level outcomes that people are trying to achieve and the actions that they are taking right now—this year and this month—to move towards them, but it seems to us to be really important in helping people to make choices about the best way of improving the life chances of children across Scotland or developing sustainable economic growth.

That seems important to us both because it demonstrates the thinking process about the policy choices that are being made and because it helps people to think about whether progress is meeting expectations and, if not, what should be done to correct that. That would make a real difference to our ability to assess value for money and the overall way in which outcomes are delivered.

**Douglas Sinclair:** The bill is silent on who the report by the Scottish ministers on the national outcomes will go to. There is a question mark over whether there is a role for the Parliament in holding ministers to account for their performance in relation to the delivery of national outcomes.

Also, the bill leaves it to the Scottish ministers to decide the frequency of reports on national outcomes. Is there a role for the Parliament to determine that? There is an argument that reports should not be too frequent, because we want to allow a reasonable time to see improvements in national outcomes, but they should not be too infrequent either. We should consider what the Parliament’s role is in relation to both the frequency of reports and who they go to.

As we state in our evidence, it is important that the reports on national outcomes do not mask inequalities and that they cover performance in different parts of Scotland, so that the issues, particularly those that relate to deprivation and poverty, are not lost.

**Anne McTaggart:** Given what Ms Gardner said in her answer, do you believe that there is enough in the bill that links local improvement plans, strategic priorities, partner bodies and single outcome agreements?

**Caroline Gardner:** I think that we make the point in our submission that those linkages could be clearer. It does not all need to be in the bill. You might want to keep some flexibility as Governments and circumstances change over time, but it is important to make the link between
national and local. We have found through our audit work in the past that, particularly at a local level, community planning partnerships are not always clear about the relationship between their local priorities and the national priorities, or about the weight that each should take.

12:30

Anne McTaggart: I have a tiny final question—I thank the convener for his patience.

Should any community planning partners be removed from or added to the current set-up?

Douglas Sinclair: The bill proposes—it is in schedule 1, I think—to add a fair number of additional bodies to the community planning partnership. That raises the issue of the effectiveness of a community planning partnership, given that it is a big body. Community planning partnerships need to think through how they work effectively with an increased membership.

Anne McTaggart: Thank you.

The Convener: I have one final question. We have the bill and the new legislative proposals, but how much of getting this right is down to common sense and a change of culture in organisations rather than legislation?

Douglas Sinclair: That is a very good point. A lot of this is about developing a culture of trust and joint working—that is what community planning is about. Community planning is about the willingness of a community planning partner to give up some of its power to work for the common good. That is a challenge for every public body, because giving up power is not something that comes easily. However, that is what community planning requires, as there needs to be sharing of power, recognition that we are here to provide joined-up services and recognition that solutions to people’s problems are seldom within the gift of one organisation. You are right to put the emphasis on what you call common sense and what I would call a culture of being absolutely focused on the user and on the community.

Caroline Gardner: We have reported repeatedly that where community planning and other forms of partnership work, it tends to be because there is a culture of putting the user at the centre, putting communities at the centre and doing what is needed to get on with it. The question for the bill is how far it can set the conditions for that to happen and put in place mechanisms that will help when things are not working as well as they need to. That is the test that we suggest you apply to it.

The Convener: Thank you very much for your evidence.

12:32

Meeting continued in private until 13:19.
Present:

Cameron Buchanan     Mark McDonald
Stuart McMillan      Anne McTaggart
Alex Rowley          Kevin Stewart (Convener)
John Wilson (Deputy Convener)

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

Derek Mackay, Minister for Local Government and Planning, Alasdair McKinlay, Head of Community Planning and Community Empowerment Unit, Jean Waddie, Bill Manager, and Dr Amanda Fox, Food and Drink Policy Leader, Scottish Government.

Community Empowerment (Scotland) Bill (in private): The Committee considered the evidence received.
Scottish Parliament
Local Government and Regeneration Committee

Wednesday 12 November 2014

[The Convener opened the meeting at 09:31]

Community Empowerment (Scotland) Bill: Stage 1

The Convener (Kevin Stewart): Good morning and welcome to the 28th meeting in 2014 of the Local Government and Regeneration Committee. Everyone present is asked to switch off mobile phones and other pieces of electronic equipment as they affect the broadcasting system. Some committee members might consult tablets during the meeting because we provide meeting papers in a digital format.

Agenda item 1 is an oral evidence session on the Community Empowerment (Scotland) Bill. We have one panel of witnesses giving evidence this morning. I welcome Derek Mackay MSP, the Minister for Local Government and Planning, and from the Scottish Government Alasdair McKinlay, the head of community planning and community empowerment; Jean Waddie, the bill manager; and Dr Amanda Fox, the food and drink policy leader. Would you like to make any opening remarks, minister?

The Minister for Local Government and Planning (Derek Mackay): Yes, thank you, convener. It is helpful that the committee has endeavoured to be proactive in its research and study of the bill. I know that people appreciate that. Just this week, I was in Dumfries and heard about the committee’s visit there. New ways of working are helpful in exploring the potential of the bill.

The bill creates new rights for community bodies and new duties on public authorities, providing a legal framework that will promote and encourage community empowerment and participation. Of course, there are differences between engagement, consultation, participation and community ownership and leadership. The new rights will empower communities through the use and ownership of land and buildings. Strengthened involvement and participation will be very healthy for democracy, too.

The bill cannot come a moment too soon, and people have an appetite to take it forward. It is also timely, given the referendum. We might disagree about what decision we sought from the referendum, but surely it is a further clarion call for action and for people to be empowered and engaged in public services in their communities. I hope that the bill will help to create the conditions in which that enthusiasm and engagement can prosper.

The Convener: Thank you, minister. Would you like to comment on the Finance Committee’s somewhat critical comments about the financial memorandum?

Derek Mackay: Of course. We understand and take very seriously the work of the Finance Committee—and this committee—in looking at the financial assumptions and the provision of best estimates for any piece of legislation. The committee will be well aware that it is difficult to quantify with a cash figure the cost of an empowering piece of legislation because there are so many variables. Those include who might come forward to make an asset transfer request; what the value of the property might be; what value it will be transferred at; how many people are involved and where; how the transfer happens; and the costs involved for each local authority. There is great variability, and I would rather not offer the committee a flawed figure. However, we have been able to showcase in evidence the nature and the wide range across the country of the costs of, for example, asset transfers and other matters.

The Parliament is expected to understand the potential cost of a bill, within which there are checks and balances. Any public authority, in considering the transfer of an asset, would have to consider the economic impact and the wider benefits of that transfer. As I said, we have endeavoured to give the best possible information. On this occasion, I simply agree with the Convention of Scottish Local Authorities that the bill will not be overly onerous on public sector finances.

On participation requests and how local authorities engage their communities, because they should be engaging anyway the bill will not add a particularly cumbersome new burden; rather, it will create consistency, remove barriers and strengthen people’s rights. The infrastructure for engagement already exists.

We are not going to make up a figure, as a nicety, for something that we cannot quantify, but we have set out the type of costs that would be involved in an asset transfer.

I am happy to go on if the committee requires me to do so. The position on costs is not the result of a lack of effort or any difficulties with local authorities. Indeed, just yesterday I spoke to the relevant spokesperson about the bill. It is not a matter of conflict; it is simply a matter of our having put on the table the evidence on what the
costs may look like. It would not be appropriate to come up with a false figure—that would be misleading and would give communities the false impression that we have set a floor, a ceiling or an arbitrary target. We are not doing that. The bill is about empowerment; it is not an accountancy exercise. We believe that we have fulfilled the requirements placed on us by the Finance Committee, but it is quite right that you are probing me further on what costs may be involved and what ramifications the bill may have.

The Convener: A few years ago, there was great concern about the implementation of freedom of information legislation and how that would affect local authorities financially, but it transpired that the legislation was not as onerous as was originally thought. Was any analysis done when the FOI legislation had been passed to look at those differences? Is something similar likely to happen with participation requests?

Derek Mackay: Although the freedom of information legislation brought about some pressures, that was proportionate and public authorities were able to deny requests that were too costly. That legislation has generated extra costs to the public sector, but the Community Empowerment (Scotland) Bill is about encouraging best practice. It will focus public servants’ minds in considering how they engage communities in the decisions that they make and, when requests to be involved are made, that involvement will be proportionate. Some may argue that that will be too costly, that the decision makers should be left to get on with it and that they should not engage. However, that is entirely not in the spirit of the legislation, the guidance on good consultation or community planning partnerships, for example—it could remove some of the costs of duplicating the consultation by consulting just once, properly and more effectively.

The question is then about how we engage with communities. If the public sector engaged more collaboratively—through community planning partnerships, for example—it could remove some of the costs of duplicating the consultation by consulting just once, properly and more effectively.

The Convener: That is very useful, and it is good to have your assurance that the situation will be monitored. The list of the assets that have been transferred in Dumfries and Galloway, for example, is quite extensive thus far, and it would be interesting to hear from the local authorities whether some of the assets that have been transferred were really assets or were actually liabilities on their books. I am glad to hear that you will continue to monitor the situation, as will we.

Cameron Buchanan (Lothian) (Con): Good morning, minister. The Finance Committee report states that

“best estimates have not been ... provided.”

Should there not be some sort of estimate of cost? I heard what you said, but there should be some costing in the financial memorandum. In two paragraphs in its report, the Finance Committee was pretty critical of the lack of estimates.

Derek Mackay: I understand the rules of the Parliament, and I understand the desire of the Finance Committee to have a full understanding of cost. If Mr Buchanan and this committee want me to make up a figure I will do that, but it would be
utterly flawed. It would send the wrong message on what the bill is about to provide floor or ceiling targets.

It is fairly easy for local authorities to produce a figure for how much it costs an official to do something—that is quantifiable. What is not quantifiable are the community engagement and empowerment that the bill will release, which groups will come forward to acquire public sector assets and from where those assets will come and at what value. Those things are impossible to predict. We could make up a figure as an accountancy nicety, but it would be utterly misleading because it would be a figure for the sake of having a figure.

We believe that we have provided the best estimates in that we can show that the costs of the bureaucracy arising from the bill can be absorbed. In COSLA’s words, they are not “overly onerous”—and I can tell you, from negotiating with COSLA, that if it thought that those costs were overly onerous it would say so, and if it thought that there were substantial new costs it would state that.

We will continue our negotiations with COSLA, of course. However, we believe that, by setting out what we have set out in relation to current practice, current asset transfers and the type of burdens that would be added to public authorities, we have provided the most reasonable estimate of the cost that we can provide. It is not possible to say that the bill will cost a figure in a range between A and B because we cannot predict what the demand from the community will be, but we will continue to monitor the situation. That is not about a lack of effort; it is about the falseness of providing an arbitrary figure. I would rather not mislead Parliament or the committee by fabricating a figure.

Cameron Buchanan: I do not think that you are being accused of a lack of effort; it is just that the Finance Committee needs some sort of estimate of before-and-after and top-and-bottom costs.

Derek Mackay: I understand why you may wish to have such an estimate. However, if I said that our prediction was that a certain number of groups would come forward at a certain level to engage in transfers to a value of £10 million and that that was the value of assets that communities may want to transfer, it would be a completely false figure because no one knows what will happen.

The bill unlocks the potential locally to have asset transfers, more participation requests and a greater understanding of common good. It is easier to quantify the bureaucracy involved in servicing the machine—the state—and understanding asset registers, but we cannot predict, in all reasonableness, which communities will come forward to acquire what assets at what value.

09:45

Of course, the committee will want to be reassured that the bill will not wipe off the capital assets of the public sector in one fell swoop. That would be incredibly empowering but not particularly affordable. That affordability, that public benefit test and those checks and balances are built into every asset transfer decision as well as the wider considerations of local authorities and, indeed, all public authorities—we are mindful that this goes beyond local councils into all parts of the public sector—to ensure that they deal with requests and make decisions in view of their financial outlook and the assets that they hold.

Again, I say to the committee that if it were to recommend that a figure be produced for its own sake I could do that but it would be utterly false, and I therefore encourage members not to do so. It is not for me to ask you not to do something, but it would be more credible if I provided an analysis of the asset transfers that were happening across the country and how public finances looked as a consequence of the bill and then took any necessary action. That is what we and the public authorities would do anyway. Any figure that we would produce would contain too many variables for it to be credible.

The Convener: As you know, minister, the committee continues to look at things after the event, and I think that we would monitor the situation.

Do you have another question, Cameron?

Cameron Buchanan: I am okay, convener.

The Convener: I want to stick with the financial situation at the moment. Anne, is your question about finance?

Anne McTaggart (Glasgow) (Lab): Yes, convener. It is just a wee supplementary.

The Convener: On you go.

Anne McTaggart: Good morning, minister. I have loads of other questions, but I will ask them later. I have listened to everything that you have said so far, but I seek some reassurance on allotments. Councils are worried about what is contained in the financial memorandum about the requirement to meet the duty to provide additional allotments. What words of wisdom, advice and reassurance can you give them in that respect?

Derek Mackay: I am not sure that I can offer local authorities any words of wisdom, but I can try to offer them some words of reassurance. The bill updates and simplifies what was there before, and the new trigger point with regard to the demand for
and provision of allotments contains a reasonableness test—in other words, councils must take all reasonable steps to satisfy demand. We are not talking about some absolute trigger point whereby, when a certain level is reached, allotments must be produced within said time in said place for said people, because that would take away from the flexibility of local authorities to adapt to circumstances. It is about taking all reasonable steps to meet the demand.

We are also being quite flexible in leaving it to local authorities to decide the size and nature of allotments. We are not being too prescriptive. As I have said, much of the bill only simplifies the legislation that was already there. I hope that local authorities will be reassured that the bill will not place a huge new burden on them, but it will certainly move things along more proactive lines.

Anne McTaggart: I welcome those comments, but can you give reassurance to allotmenteers, who are concerned that local government might halve, quarter or otherwise reduce the size of allotments in order to meet its duties and requirements? Some people think that that is fine and only fair dos; in fact, they want that to happen because they want smaller allotments. Would it not be easy for local authorities to halve or quarter the size of allotments to get the figures they need in order to fulfil their duties?

Derek Mackay: That is a fair point. Anne McTaggart is skilfully playing both sides of the same argument to ensure that I get a complete grilling.

The Convener: I also like the word “allotmenteers”. We might use that from now on.

Derek Mackay: Incidentally, those with an interest in allotments should not be confused with the growing lobby. My officials have advised me—for my own protection—that they are two different sets of enthusiasts.

As I have said, Anne McTaggart makes a fair point. However, the spirit of the legislation is that the trigger point encourages a local authority to meet demand, which might simply be for a space to grow things in, not necessarily for an allotment of a set size. We want local authorities to be able to define that for themselves. It would send the wrong message about empowerment and localism if I determined everything centrally in Edinburgh, including the size of an allotment, when, for good reason, local variations might be required in relation to things such as the size and nature of a site or the size of allotment that local people want. People have different needs and demands, and it might be that not everyone would want a full-scale allotment with all the work that goes along with it.

I would like to put a bit of faith in local authorities, which would generally try to meet demand and get the size of allotments and spaces that would be required for communities in view of the circumstances. If established allotments are in place, I do not think that the council would try to reduce the size of them to meet the need, as that would be changing what people had already. The provision will be about new sites. My experience over the past few years, not just as a minister but as a constituency member and, before that, as a ward councillor, is that some people will want a full-scale allotment on which to do a variety of things and other people will just want some space in which to grow some basic vegetables. People’s needs are different. If councils did go down the road of being so minimalist and meagre in their approach—I do not think that they will—we would have powers under the bill to prescribe the size of allotments, if necessary.

Anne McTaggart: Thank you, minister.

Alex Rowley (Cowdenbeath) (Lab): As a keen allotment grower, I would not disagree with what the minister had to say. However, I would say that if we are serious about driving the agenda of people growing food for health, wellbeing and fitness reasons, that will have a resource implication. This part of the questioning is about resources.

East Lothian Council states:

“Local government will incur extra cost as a result of these provisions … and it is not possible to allocate money to these costs from within our budgets without taking it from other activities. We would expect central Government to add to our settlement any money necessary to fulfil the provisions of the Bill.”

I suppose that that is the Finance Committee’s concern. In its submission, Glasgow City Council states that it will be

“challenging to meet these costs from existing resources.”

Inverclyde Council, North Ayrshire Council and North Lanarkshire Council all say that they believe that the bill will have significant financial implications.

I get what you say about not being able to quantify the costs, but do you intend to ensure that any costs that come through as a result of the bill will be in the settlement?

Derek Mackay: Yes. It has been custom and practice with this Scottish Government that if we place a new burden on local authorities, we will fund that burden. As Mr Rowley well knows, the figure that we arrive at is a matter of negotiation with COSLA and local government. On-going monitoring will assist us. It has been the case that if, as a consequence of the Government’s work, a burden is imposed on local authorities, we fund that. That is the commitment, bearing in mind of course that the provisions of the bill extend beyond local authorities. Allotments are specific to
local authorities, but participation requests, asset transfer requests and the wider duties in community planning extend beyond local authorities, so there will be costs to Government and Government agencies, such as health, police, justice and other departments that have not necessarily had the same exposure to that level of community engagement, or to participation and asset transfer requests.

What we are trying to do is to empower local communities through participation, public ownership and community-led regeneration. There will be a cost to various parts of the public sector. We will continue to discuss that with local authorities. It would be remiss of me not to make the main, general point about finance in Scotland, which is that roughly two thirds of the Government’s block grant goes to health and local government and one third goes to everything else. Within that, the budget will increase in terms of grant support to local authorities from £10.6 billion to £10.8 billion, which is a cash increase. Of course, new responsibilities go along with that, but the budget protection that we have been able to provide to local authorities—proportionate as it is—compares very well with what has happened south of the border.

We see the transfer of assets not as a disposing of liabilities to communities but as something that empowers them. That will come at a price, and we will continue to discuss with local authorities and all parts of the public sector how it may affect them.

Alex Rowley: From the evidence that the committee has taken and the evidence from my area, the loss of capital assets is not the issue. In Fife, where the new administration has been doing a major review for the past two and a half years, the council has been quite happy for community organisations to take over buildings. It is actually trying to get rid of a load of buildings and to pull services together in one building. For example, in my constituency, three or four council buildings are being pulled into one and a new community centre is being built as a result. A lot of that has been successful—in Wellwood, for example, the local churches have taken over a building and are running it as a community facility. That is being encouraged. However, what has come up in the context of the bill is the issue of allotments, for which resourcing is needed if a serious strategy is to be rolled out.

Another issue that has come up continually in the evidence that we have taken is the capacity that exists in communities. We say that the purpose of the bill is to empower communities, but when we look at areas of high social deprivation, often the capacity is not there. One exception is Dundee, where we have heard that some excellent work is being done on community capacity building and community organisation. In many communities, however, concerns are being expressed about whether sufficient capacity exists in those communities, where the support to build capacity will come from and how it will be resourced.

Derek Mackay: Those are all fair points. One of the motivating factors of the bill is revealed by what Mr Rowley says. He describes an asset transfer approach that many local authorities are currently undertaking, some of them quite successfully. That goes to show that allowing the community to have access to buildings that are—let us face it—sometimes underused or unused does not involve a huge financial burden. If a building is sitting empty, 90 per cent of the non-domestic rate is probably being paid, thanks to the changes that I made through the Local Government Finance (Unoccupied Properties etc) (Scotland) Act 2012. If a community group were to take over the building and it received charitable relief, it would probably pay nothing. That is an example of how better use of buildings can sometimes save money.

Mr Rowley said that some authorities are getting rid of a load of buildings. I know what he meant, but that is part of the problem. The local authorities choose what they want to dispose of, instead of the community being able to say, “We could do better with that.” I am sure that I have said in previous evidence that, when I was a council leader, I took the approach that the council and I would decide what was to be transferred and the nature of it, rather than the community being able to request a transfer in a way that was proportionate, fair and reasonable. That is where the bill can make a big difference.

Mr Rowley is right. Co-location is absolutely the way forward in our public service reform agenda. As far as capacity and support are concerned, the billions of pounds that are in the system should be aligned to support that agenda. Community planning partnerships should be made to work to have a full plan for place—that is a requirement at the moment. We must genuinely share out the planning of resources and assets, which requires a recalibration of some of the bureaucratic support that is there now.

On Government funding, even in these times of austerity and financial reduction, we propose an increase in the relevant budgets. I will give some examples. We are recommending an increase from £7.9 million this year to £9.4 million in 2015-16 for the people in communities fund, which is for community-led regeneration work. We have allocated an additional £900,000 over three years to the community ownership support service, which will support people on the ground who are
taking on land and buildings and helping to develop their communities.

Specifically on capacity, through a £3 million strengthening communities programme, we will support 150 community-led organisations to build their capacity. That will have a great multiplier effect at local level. On the right to buy and community land ownership, we are increasing the Scottish land fund budget by another £3 million on top of the £6 million for 2015-16 to show that there will be more financial support for community ownership of land. That is just what the Scottish Government is providing as well as the budget increase—admittedly, it is a cash-terms increase—to local authorities. We are also making other public authorities aware of their duties in this regard. That is why we have rewritten the much-read Scottish public finance manual to reflect the nature of community transfers, asset disposal and other priorities.

It is fair to say that we need to expand our communities’ capacity, but we need to make the approach more consistent and to build in legislative provision to tackle inequality. In the guidance, we are very mindful of the inequalities that exist and of the fact that there is not a level playing field. If we legislate for asset transfer without added support, the better-off communities will acquire the better facilities and the less well-off communities will not have the skills, support and professionals to make best use of the legislation. That is why we are tooling up groups that will support the agenda nationally and locally.

However, I agree that we have to ensure that all parts of the public sector consider the bill and, to make it even more powerful, the support that they provide to communities.

10:00

Alex Rowley: I noticed that Lesley Riddoch described the bill as toothless and said that it was a missed opportunity. When we talk about communities, we could be talking about villages, towns or neighbourhoods. Indeed, it has been pointed out in evidence that we could be talking about other sorts of communities.

How far does the bill go in empowering communities? I think that it makes no more than a mention of community councils. In my constituency, three or four community councils are having elections for the first time in some 20 years. Why would people stand for election to a body that has no powers? Are we satisfied that having 32 local authorities is empowering for communities? Should we not be much bolder and consider putting real resources into community councils or similar bodies? Should we not consider something on community plans that communities draw up for the types of services that they can expect?

Is the bill bold enough? Should we not go much further if we are serious about empowering communities to be able to take charge of their services and the environments in which they operate?

Derek Mackay: I disagree absolutely that the bill is toothless. From the evidence that the committee has received and that I have received through, for instance, the reference group, the bill is broadly welcomed. When people are asked specifically whether it will make a difference, the answer is almost universally that it will. I think that it will, but I am not removing the democratic authority of locally elected members who, like the Government and the Parliament, have a mandate.

We could go further in disempowering local authorities and transferring more to communities and we will see whether such amendments are proposed. However, the bill is about swinging the balance of power towards communities. It does that through participation requests, which will empower groups and communities to initiate decisions and consultations that affect them on their terms. It also does it through asset transfers and extending community ownership to urban Scotland and making it more flexible. It does it by introducing compulsion where there is no willing seller of abandoned and neglected land.

There are a range of provisions that will be empowering for local communities, especially given how we have defined communities in the bill. I take heart from the evidence that the committee has received that it will make a difference to people’s lives.

I have said to Opposition spokespeople and the groups with which I have engaged that if they want to toughen up the bill through further amendments and to do things differently, I am all ears. That is why, as the bill has gone on, we have built in a presumption in favour of transfer to the community that was not there at the start. That presumption is very important. We are not changing who gets to make the decisions on, for example, asset transfers, but we are absolutely changing how the decisions are made and where the balance of power lies. We are strengthening the hand of communities by doing that, in terms of participation requests and new rights to initiate that dialogue.

Alex Rowley is right. If we were to design local authorities today, we would not design them to be the way that they are now—I am sorry, Mr Buchanan, but the 32 councils are a consequence of Tory gerrymandering. If we tried to reorder local authorities’ structures at this point, I would be concerned that it would consume our energy and
we would end up in boundary disputes and court battles. It would be a bit of a power struggle, with people vying for senior jobs in the new organisations. Instead, we should focus on outcomes, which, in essence, is what the bill and the wider work of Government are trying to do. We have been encouraging people to work across boundaries—geographic, institutional and organisational—to focus on those outcomes, which is why we do not propose any changes to the number of local authorities or their boundaries. However, we expect new ways of working.

That takes me to Alex Rowley’s final point on accountability, on which I agree with him. Community planning partnerships and all parts of the public sector must be accountable through community planning. The committee has heard evidence on the accountability of community planning partnerships, as have I, and Audit Scotland has made statements on the issue—indeed, I met Audit Scotland recently to discuss it. Even if we establish an equal duty to contribute to CPPs, we must still do more about their accountability. There is an issue about who holds CPPs to account other than just the audit agencies. How can communities hold CPPs to account? How can they access that? If Alex Rowley wants to pursue that, I am happy to give consideration to how we can produce a stage 2 amendment to strengthen the accountability of CPPs to their communities. That is a very fair point.

However, I disagree utterly that the bill is not empowering: it is. We are not trying to empower people in a patronising way, by suggesting that they are not living their lives properly. We are removing barriers, creating consistency and giving people access to resources that are, in essence, already theirs through public ownership. That is empowering and it builds on the momentum that we have experienced this year.

If Alex Rowley wants to lodge amendments that would make the bill stronger or radical, I would happily consider them. That is the challenge that I have put to other commentators who may have views on what we should do.

Paul Wheelhouse has made it clear that, in response to the land reform review group, the Government will set out a timetable that includes a land reform bill, which will capture some elements of land reform and other areas. I do not want to impede the Community Empowerment (Scotland) Bill’s ability to get on with what we have committed to do.

John Wilson (Central Scotland) (Ind): Good morning, minister. I go back to the financial memorandum and the fears that COSLA has expressed about additional costs that local authorities might incur. Has the minister considered discussing with his ministerial colleagues some of the financial benefits that might be accrued as a result of the community asset transfer proposals, particularly in terms of health and wellbeing, the economic and employment opportunities that may be created in communities, and the benefits that will accrue to health boards and other Government agencies that are currently spending money to tackle issues such as obesity? If we are asking communities to be responsible when drawing up business plans and looking at financial sustainability, surely we should ask other agencies to indicate what benefits could accrue to their budgets as a result of asset transfers to communities. It should not be a one-way street.

Derek Mackay: Mr Wilson makes the very fair point that some benefits will derive from the bill and the actions around it that are not yet quantifiable; indeed, they may never be quantifiable. The importance of the prevention agenda is front and centre in the minds of all ministers and in the Government’s approach, and it is a key pillar of our response to the Christie commission on public service reform. On the point about wellbeing and health more widely, part 1 of the bill is about national outcomes for Scotland and embedding the Scotland performs approach in legislation. The Government will have to consult on and produce the outcomes, and there will be that outcomes focus going forward. That approach goes way beyond gross domestic product or economic growth; it is about a wider understanding of wellbeing.

To relate that to projects on the ground, one of the first projects that I visited was Lambhill Stables in Glasgow, which has a great community base and great community activity, with a range of organisations meeting at the site. There is some allotment space and growing space and a nice community garden. The organisation wanted to expand into a piece of land but, “Computer says no,”—the council said no, if my memory serves me correctly. There was no reason why it could not expand and no understanding of that. The bill will put in place a process for that organisation to request a transfer, with a presumption in favour of transfer. That would be a transparent process and, crucially, there would be an appeals mechanism if the answer was still no, so the council would have to produce solid grounds for a no.

I use that project in Glasgow as an example because it is the kind of project that provides benefits by encouraging more active lifestyles. If the organisation had access to the land, that would expand the options available to it. It is a great example of a project that encourages wider health and wellbeing and getting out in the environment, so we should encourage the facility to expand its resources.
That was one organisation that was key in convincing me that the bill is the right thing to do. The organisation understands how the bill could make a difference to its agenda and objectives—the connection is well made. The Government is focused on the wider measurement of wellbeing and the preventative approach, and we want to allow communities to lead for themselves the kind of projects that will make a difference.

When I was a council leader, I represented Ferguslie Park. I found that the best champions for life-changing actions were sometimes not the social workers or council-employed development workers, as worthy as they are, but the community champions who lead and deliver the projects. Let us free them up to do more of the good work that they do rather than have them mired in bureaucracy and refusals from the state. The point is well made.

Mark McDonald (Aberdeen Donside) (SNP): I want to touch on a few areas, if possible.

In response to Alex Rowley, the minister referred to the difficulties that some communities might have in taking advantage of the bill. I am thinking particularly about deprived communities, where there are undoubtedly a lot of active groups and organisations, but they perhaps do not have some of the skills that are required, for example, on drafting business plans. At our evidence session in Dumfries, some local authorities said that they would be reluctant to assist groups in that process, because of potential conflicts of interest. How can we ensure that support is provided so that we do not find that communities that have the required skills base take advantage of the bill while other communities are left behind?

Derek Mackay: I have to say, in all reasonableness, that it sounds like an excuse to me if a local authority thinks that it cannot support a community group in compiling a solid and robust business plan for the benefit of a community that leads to an asset transfer. Conflicts of interests arise when a local authority could be compromised, but I see no reason why a local authority cannot support local groups to produce such a case. Local authorities and other public sector authorities might frustrate community groups by not providing the information that is required, which is why there will be a requirement in legislation to produce the information that is needed to understand the nature of the assets and buildings.

If we need to produce guidance to inform local authorities of their responsibility on the matter, we will do that. If local authorities or other organisations that Government supports cannot support community groups in building the business case for transfer, who will? I think that the local authorities are more at liberty to do that than they suggested to you.

10:15

Mark McDonald: Let us move on to the role—or otherwise—of community councils and community planning partnerships. Both have statutory functions and underpinnings, but there is a view abroad that they are often not representative of the communities that they serve. Some deprived communities find it difficult to be involved in community planning partnerships, and some community councils cover geographical communities that are not represented by anybody on those community councils. Are you concerned that those groups with that statutory underpinning may be looked on more favourably or be given more support than groups and community organisations that do not have that backing?

Derek Mackay: It is correct to say that community councils have a statutory function. They are statutory consultees in the planning process and go-to organisations for most local authorities and other organisations that are seeking the opinion of local communities. However, it is also fair to say—that relates to Alex Rowley’s point about the variability of community councils—that, although some are very good and provide services or run things, others are more mid range, some are talking shops and some are, frankly, barely legitimate. That is why we will not pick one group over another as a key community anchor organisation and say that that group is more important than another. The situation will differ from one community to another. The key organisation might be the housing association, the community council or the parent and toddler group. A range of community-led organisations is carrying out a range of work.

Under their statutory responsibility, community councils have to abide by the regulations. Nevertheless, we must improve the health and vibrancy of our community councils, which is why we continue to work with the Improvement Service and COSLA to support them. It would be wrong to say that the bill does not touch on community councils—it does. For example, when disposal or change of common good assets is being considered, there should be consultation with community councils. There is some reference to community councils. However, their performance continues to be variable across the country.

It is telling that, in this year of empowerment and engagement, irrespective of how we might have voted in the referendum, so many people registered to vote, voted and are now involved in political parties, I would like to think that we can harness some of that energy for community action and activism as well, although that may not involve
community councils. The committee will remember
that, before the referendum, I launched a
consultation on turnout in elections, and look what
it achieved in the referendum. In all seriousness, it
was not about how easy it is to vote, where people
vote or on which day elections are held; it was
about whether the subject of an election or,
indeed, the referendum is meaningful enough to
motivate people to vote—and, in the case of the
referendum, it was. Is the business of community
councils meaningful enough to motivate people to
participate in it? That is the question.

I do not propose a transfer of powers from local
authorities to community councils, but by
unlocking the potential of communities through the
bill we can allow a range of groups to come
forward to participate in the process, initiate
dialogue or consultation, challenge the running of
a service or take over assets and property for the
benefit of a local community. All that will assist,
but—you are right—I am not being prescriptive
about community councils. No action plan has
been presented to me that proposes to shift the
power radically towards community councils. I am
sorry to say that, were I to do that, the general
competence of many community councils would
have to improve drastically.

**Mark McDonald:** I appreciate that point. The
committee has received evidence from Scottish
Enterprise that it does not currently set locally
based targets for community planning partnerships
or share resources with them. Are you concerned
that Scottish Enterprise may not be fulfilling its
duties as a CPP partner under the terms of the
bill?

**Derek Mackay:** No, I am not. To reassure
myself further about that, I met Scottish Enterprise
just a few weeks ago. The Scottish Government
has a location director—a very senior civil service
official who represents the Government and
supports the agenda—at every community
planning partnership. Every area also has a
Scottish Enterprise location director who is
employed at a very senior level within Scottish
Enterprise.

Mr McDonald makes a fair point. Scottish
Enterprise does not commit specific budgets or
targets at the most local level, although some
community planning partnerships, through their
single outcome agreements, have targets on
economic growth. Some councils have set out how
many organisations they aspire to have account
managed by Scottish Enterprise.

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

The bill deals with what is agreed at community
planning partnership level. Scottish Enterprise can
bring its business expertise. Economy is one of
the key themes in community planning, and
Scottish Enterprise is of course well placed in that
regard. I hope that that reassures the member.
Scottish Enterprise’s functions and remit are very
clear. Its growth areas are equally clear.

Sometimes, town centres—a very important part
of my portfolio—can be pressure points for
community planning partnerships or indeed for
councils. Scottish Enterprise would not ordinarily
associate itself with that, but that is not to say that
business support and contacts cannot be
provided, or that the right connections to support
that agenda at the most local level cannot be
made.

I believe that Scottish Enterprise will be far more
engaged with community planning partnerships
than it was before. To assist with that, the chief
executive of Scottish Enterprise now sits on the
national community planning group.

**Mark McDonald:** On the issue around
participation requests and asset transfers, we
heard evidence in Dumfries about local difficulties
with the timescales for asset transfers. Whether
they are provided for under the bill or in the
guidance, should reasonable timescales be
established for those processes? For many
community groups and organisations, the funding
to which they have access is often time limited. If a
local authority drags its heels, the funding that
groups have acquired can be lost.

**The Convener:** I will give you some examples
of that, minister. At our evidence session in
Dumfries, two of the local authority representatives
stated that they hoped to have proposals in front
of elected members within six months. Dumfries
and Galloway Council hoped to have things done
within 18 months, and it seems that the council
has not kept to that in at least one case, which we
are now involved in. Mr McDonald said that there
should be a general rule about how long those
processes should take.

**Derek Mackay:** Mr McDonald is right to identify
that point. There is some provision in the bill
around timescales. Orders could be made
regarding specific timescales. Is that correct,
Jean?

**Jean Waddie (Scottish Government):** Yes.

**Derek Mackay:** We do not wish to create an
overly bureaucratic process that sets arbitrary
deadlines. However, that might be required, with
responsibility sometimes lying with the planning system. An applicant can make a challenge if they think that the planning authority is taking too long. In essence, they can go for a decision to be taken elsewhere—by ministers, through an appeal.

We can consider the timescales issue more closely, but I would rather that authorities acted in good faith and considered and responded timeously to any requests that are made of them. I would be slightly fearful if an arbitrary timescale were set whereby they might simply say no. Fortunately, however, because of the provisions in the bill and the presumption, there would be an appeals mechanism that would ensure that the organisation would be heard.

I am happy to give more consideration to the matter of timescales if, given the evidence that the committee has gathered, you feel that to be necessary. It feels ever so slightly centralising for me to set timescales rather than leaving it to the local authority, but if you have specific cases and it is felt that the process has dragged on, that is clearly unreasonable. We would expect local authorities and other authorities to be reasonable.

The Convener: From the evidence we have heard, it seems that timescales are critical for some organisations. We understand that circumstances can be different in different places and that there may be funding issues—the Big Lottery Fund has been mentioned as something that can cause delay—but we have not seen any penalty written into the bill for a council that may be intransigently holding things up. Will you comment on that? There seems to be no stick to deal with a local authority that is stalling for no apparent reason.

Derek Mackay: Again, I have listened carefully to what the committee has said. I have to do two things. First, as I said to the committee before when we discussed the draft bill, we must ensure that we better calibrate and organise the various funding streams to support community groups, rather than going through the process time and time again. There is something in that around the timing and alignment of resources to support worthy projects.

Secondly, in terms of the provision, we were looking at prescribing in regulations to be made by ministers how long it should take for such a request to be considered; I can be specific on that period. I would not want that to be in primary legislation; it feels more proportionate and relevant to include it in the regulations.

There may be reasons why a community group wants to take longer—perhaps because of funding or another reason—so that even within that specific timeframe, because there may be exceptional circumstances, we propose in the bill: “such longer period as may be agreed between the authority and the community transfer body”.

I will take on board the committee’s evidence and reflect on that in the regulations.

The Convener: In addition to the evidence, we will send you a communication that we have received from a council, which you will find of interest.

Mark McDonald: The minister makes a fair point. I was keen to ensure that we were not setting an absolute timescale, but were looking at how one could be reasonably reflected. The minister has said that he is willing to consider that.

To stay on the subject of timescale, but in respect of common good, I note that in your correspondence to the committee, minister, you discuss the “benefit in requiring relevant authorities to publish their registers of assets”.

I know that that will apply in terms of common good assets.

We have heard evidence that suggests that for some local authorities the identification of common good assets is proving to be difficult—that is a significant understatement, given some of the evidence that we have heard. There will be some local authorities for whom this will be a much simpler exercise than it will be for others, so I wonder whether there will be an issue around timescales. The evidence that we took suggests that without some kind of defined timescale in putting together a register of common good assets, some local authorities could drag their heels in perpetuity.

Derek Mackay: Mr McDonald makes a valid criticism when he says that some local authorities may take their time. However, current CIPFA guidelines are clear that the best professional practice is that local authorities should maintain a separate register of their common good assets, so it should not be a significant cost or bureaucratic exercise to fulfil the bill’s requirements. I fear that the understanding of some local authorities might be that they have to clarify title deeds and have them registered, but that is a different interpretation. I am looking for an understanding of what common good assets there are, so that communities can understand and then have a say over how they are constructed and disposed of—essentially, I am pursuing a register.

Of course, we could dedicate a whole bill to the history of common good, and I do not propose to go through every complication relating to common good. I simply seek greater participation and identification of common good assets in a register that the public can understand.
On the timescale issue, I believe that we will produce guidance. In a similar vein to Mr McDonald’s point on the timescales for consideration of asset transfer requests, I will also consider whether we should set that out in regulations. I am mindful that the land reform review group considered common good matters, so that may well be something that could come under a future land reform bill, alongside the provisions that I have outlined in the Community Empowerment (Scotland) Bill.

10:30

Mark McDonald: I am aware that I am testing your patience, convener—this will be my final question.

Should a broader approach be taken to the public bodies that have a duty in relation to allotments, given that there are a number of public bodies other than local authorities that own large areas of land that could perhaps make a significant contribution with regard to both allotments and the food-growing strategy?

Derek Mackay: That is a very helpful suggestion. I have to place the responsibility somewhere and, as it currently rests with local authorities, they seem the most appropriate bodies for it to lie with. However, in taking all the reasonable steps that I mentioned earlier to address provision, I would expect a local authority to be able to work with other public sector—or even private sector—partners to identify suitable sites. For example, it might be in the interests of a private sector project to address provision in a stalled space. Although the absolute duty rests with local authorities, I would expect them to work with other public sector partners, whether the police service, the fire service or the health service, to meet that demand. That would be an example of the true joint planning and resource management that we intend to take place in community planning partnerships.

Stuart McMillan (West Scotland) (SNP): Good morning, minister.

I have a couple of quick questions on the part of the bill on allotments. In its written submission for last week’s meeting, the Scottish Allotments and Gardens Society suggested that 250m² should be the defined size of an allotment. In evidence, Ian Welsh from the society said:

“We want the 250m² there as a reference standard, not as an obligatory standard that has to be applied in all instances.”—[Official Report, Local Government and Regeneration Committee, 5 November 2014; c 21.]

I heard what you said earlier, but do you think that the proposal that Mr Welsh made last week that the size of an allotment should be defined is a fair option?

Derek Mackay: Yes. I gave the reasons why we did not want to legislate immediately on the size of an allotment. That would be inflexible. However, we will produce guidance, which will state what we believe is a good size for an allotment. That will be provided for in legislation. The bill includes provision for the Scottish ministers to prescribe the size of an allotment, should the need for that arise in the future. If the scenario that Anne McTaggart mentioned were to arise, whereby local authorities gave folk tiny sites to meet their needs, we could legislate, although I hope that that would not be required. We will produce guidance along the lines that you indicated in your question, which will offer the necessary flexibility. I hope that we will be able to meet everyone’s needs in the balanced way that you suggest.

Stuart McMillan: Would putting a defined size in the bill avoid ministers having to prescribe the size of an allotment at some point in the future? That would save time and public resources further down the line.

Derek Mackay: No, because if we sought to change that prescribed size for whatever reason, we would have to produce a bill dedicated to the size of an allotment, which would incur the wrath of the population of Scotland, who might wonder why the Parliament could not be a bit more adept and flexible. I realise that you are sitting beside the member who was in charge of the High Hedges (Scotland) Bill. I am not saying that such matters are not important, but if we are not flexible and we do not take account of local need and local geography, the approach that we take will be far too centralist.

We will provide the guidance and will expect people to apply it. The provision is available for us to make changes through regulation, if that is required. That is a far swifter way of effecting change than primary legislation on the size of an allotment, which seems utterly disproportionate. The provision is there, if it requires to be used. Other committees might accuse me of being a centralising minister, but I am trying to allow for local flexibility while reserving the right to prescribe the size of an allotment if we are required so to do.

Stuart McMillan: I have a question on part 3, which concerns participation requests, and part 5, which concerns asset transfer requests.

Representatives from Dundee suggested that having a named officer from that local authority was beneficial with regard to their ability to do the work that they wanted to do. I am keen to find out the Government’s opinion on that. Do you support the idea of having a named officer in public bodies to support groups that make requests under part 3 and part 5?
Derek Mackay: It is for local authorities to consider how they will approach the matter. It might be that there is a procedural function in relation to purposes of contact that might be helpful. However, we want to ensure that there is a shared understanding of community participation. Having clarity on who community groups go to is a good thing, but we are not passing all the responsibility for community engagement or communication in a full public authority to one named person. It might be good practice for that person to be a co-ordinator who can oversee the sharing of information, but that is a matter for that authority. As long as there is a clear channel of who to go to, how to get information and how to initiate the process, that is fine. We will not specify that there must be a named officer.

In the exploratory consultation, some people expressed a concern that, although having a named person might bring some clarity, it might also just shift responsibility from every other officer to that one person.

With regard to liaison with community councils, it is good that, normally, a council has a community council liaison officer, but that person is not the only person who is responsible for engagement with community councils. It has to be much wider than that.

The idea is good practice, but we see no need to legislate for it, particularly because it might make community participation the responsibility of just one person in an organisation, even though it should be the responsibility of everyone in the organisation.

Stuart McMillan: I have a question relating to the report by the Delegated Powers and Law Reform Committee, which I also sit on. The report says that no specification has been provided about why the power in section 10 has been taken, nor the circumstances in which it could be exercised. How do you propose to address those concerns?

Derek Mackay: Do not ask me such unspecific questions.

It is my understanding that ministers have agreed a general power to issue guidance, which does not have to be covered in the delegated powers memorandum. The Delegated Powers and Law Reform Committee’s concern was that community planning partnerships must comply with the guidance, rather than having regard to it, but that there would be no parliamentary scrutiny of that binding requirement. The committee has proposed that the concerns would not apply if CPPs only had to have regard to the guidance, rather than having regard to it, but that there would be no parliamentary scrutiny with the guidance, rather than having regard to it, but that there would be no parliamentary scrutiny with the guidance, rather than having regard to it.

The Convener: You said that you do not think that there is a need to legislate in relation to named officers. There has been some discussion about a definition of common good, and the committee has debated how it might be defined. Why has the Government chosen not to include a definition of common good in the bill?

Derek Mackay: It chose not to do that because there is an understanding of what common good is at the moment. If people are carrying out their duties with the CIPFA guidance in mind, they should already have an understanding of what common good is.

There is a range of definitions in legislation because the issue is historical. However, if we were to define it in new legislation, we would be certain to miss a bit. That is invariably an unintended consequence of writing legislation on historical matters.

The Convener: Is it possible that having a definition on the face of the bill could lead to circumstances that would disempower communities rather than empower them?

Derek Mackay: Essentially, yes, because assets would be lost. People would interpret the new definition when reassessing what was common good, and we could lose assets that people previously understood to be common good. It is a legal minefield, and I do not think that the approach would empower communities. Frankly, I think that it would be a feast for lawyers, and I do not see the need for that. That said, I am well aware of the committee’s concerns about how some common good battles have had to be progressed through the courts. However, as I said, I think that a definition would impede any progress brought about by the bill.

The Convener: I am sure that we do not want to see a feast for lawyers.

Do the same reasons apply to there being no definitions of alienable and non-alienable common good? You will notice that I said “non-alienable” because nobody can say the other word. [Laughter.]

Derek Mackay: Essentially, yes, the same reasons apply because of how common good has been constructed over the years. Some approaches are centuries old and some are the construct of changes to local authority structures. It would be complex and bureaucratic to define the terms, and I do not think that the benefit of doing so would be proportionate. That said, the land reform review group has covered some of the same issues, so the question of definitions might be picked up in future legislation. However, I do not believe that definitions are necessary for the Community Empowerment (Scotland) Bill.

The Convener: I was very interested in your response on common good registers. The experience of many of us around the table who
have been in local government, supported by the evidence that we have received, is that there seems to be a need for people to go back through what can sometimes be centuries of paperwork to ensure that something belongs to the local authority. Some of us might argue that an asset should go on the register until somebody challenges that. Do you think that common sense needs to come into play on the construction of common good registers? Beyond that, do you think that it would be helpful if Audit Scotland, which, according to its evidence, seems to have a light touch on common good, looked at the issue a bit more than it does?

Derek Mackay: Your reflection on the need to apply common sense is very helpful. We should bear in mind that not all common good assets are land—some might be artefacts, investments or other resources—so not everything will have a title. The register is a collection of what we believe to be common good—for example, it could include a provost’s chain of office from a former burgh. When constructing a register, would it not be good practice to consult communities on how common good assets were used or disposed of? Where there is doubt about an asset, it would not do any harm to put it on such a register. That would mean that there would be greater community engagement and participation with regard to the disposal of such assets.

I am not requiring all common good assets to be registered with the keeper of the registers of Scotland or with the land register. The common good register should be a user-friendly register that people can understand and which can trigger their involvement when decisions are being taken about the disposal of assets. I agree that, as you suggest, common sense should be applied.

The Convener: Some witnesses have suggested that there should be a national register. Do you think a difficulty of creating such a register is that it might give an opportunity to folks who have tried to gain title to land and might make their job easier? Do you think that a national common good register would be workable?

Derek Mackay: Not particularly. I suppose that a live update of the 32 councils’ registers could be produced, but I do not see what purpose that would serve. As this is about local empowerment and participation, I do not see how a national picture would help us. We know the value of the assets and the investments, as reported by local authorities, and I do not think that a national register would help.

10:45

We need to understand that common good assets, which are important to local communities, might be paintings or other artefacts, such as provosts’ chains. Some are investments, the value of which changes daily; and, of course, some are land. They are different in each local community. Some people in local authorities, particularly those in the accountancy and legal worlds, would have us wind up common good funds and put the money into mainstream budgets for local authorities to distribute as they see fit. This Government’s position has been to protect the common good portfolio because the assets reflect local communities’ inheritance. We do not propose winding up the funds and putting them in general funding.

The Convener: Finally on this subject, how do you see the asset transfer provisions in part 5 of the bill operating if land or a building is deemed to be common good?

Derek Mackay: There are specific provisions on that. That is where the inalienable—

The Convener: Non-alienable.

Derek Mackay: That is where the non-alienable provision comes into play. If an asset is inalienable—I will go for that word—the local authority’s ability to transfer it is restricted. The restriction is just like any other condition or burden in the title deeds. The local authority can seek court approval for disposal in the usual way. However, that is because it is a common good asset. I do not think that there would be any problem with how common good land could be used—depending on its use. My point is that there would be no restriction on a community body using, managing or leasing such an asset—transfer of ownership or disposal is the issue—as long as that fits with the use for which the property was acquired.

John Wilson: Convener, I should have made the declaration earlier that I am the chair of a community organisation that is currently going through negotiations with a local authority on community asset transfer. I want to bring up some issues around that topic.

Stuart McMillan asked about the named person. Minister, you will be aware of some evidence to the committee in which community organisations claim that they have been sent round council departments, trying to pin down the responsible council officers who can deal with and answer questions about community asset transfer. Although you said that you are not in favour of having a named person, would you be minded to review your position if we found that many community organisations were being blocked, as they would put it, from requesting a community asset transfer because they could not identify—or the council was not prepared to identify—officers to deal with such requests?
Derek Mackay: If there was legal provision and a presumption in favour of either a participation request or an asset transfer request, I would think that procedures would be in place to take account of that. Just as with freedom of information requests, which were mentioned earlier, there is a responsibility for such requests to be processed. The legal requirements should encourage authorities to put good processes in place. If they do not and a request is not handled competently and effectively, I suspect that the Scottish Public Services Ombudsman will have something to say about that.

That takes us back to the timing question. If an authority messes around with a bid or a request, the clock is ticking for that authority. It will be at greater risk of not being seen as handling requests competently if it does not even get the right person involved.

To answer your question, I do not want be too specific about how local authorities should conduct themselves—I say “local authorities”, but this will apply to all parts of the public sector—although they will have to show that they have seriously considered any bid timeously and effectively. If they refuse, there will be a burden on them to show on what ground. Leaving that to the last minute would seem careless on their part and they would risk challenge if they did not carry out the process properly.

John Wilson: Thank you for that response. I am glad that you have put on record the legal requirement for local authorities to engage actively with communities on such issues.

My next question goes back to the convener’s point about the value of land or property involved in asset transfer. From discussions with community organisations, I know that some local authorities put a market value on the land or property that is to be transferred. That can be a disincentive, particularly when organisations are drawing down funding from bodies such as the Big Lottery Fund so that they can carry out major improvements to or building works on the land or property that is being transferred. What advice would you give local authorities when community organisations request asset transfer at either zero or low-cost value?

Derek Mackay: I would first like to make a point on the previous question about the named officer. There is an important point of emphasis. Previously, the ombudsman or the courts would not have had any legislation to point to—only good or bad practice—to say that a local authority did not handle a bid for an asset transfer competently. However, given the presumption in the bill, the courts and the ombudsman will be able to point to what councils should have done. That is a game changer for community rights.

On the value of asset transfer requests, local authorities can already transfer assets without realising the full commercial value. They have been able to do that for some time, so long as they do transparently.

The Scottish Government could not do that, because the Scottish public finance manual made no mention of it—in fact, it expected market value to be realised. I have already changed the situation—in advance of the bill—so that, right now, if an asset is transferred to a local community, not just the realisation of commercial value but the wider social benefit can be considered. That change has already happened; it required a change not in law but in our accountancy practice. The change also extends to the Government.

The bill will raise expectations and deliver the culture change that is required, although it will be for each local body to determine the proportionate and relevant level of transfer or contribution. It could be zero: if the public benefit justifies it, the local authority may not want any cash value for a property transfer. Some groups may choose leasing, or use of rental, rather than ownership, but we do not say specifically that it should be a zero-sum game. We are keeping local flexibility. The council has to show reasonableness around that, and if the refusal of a request is challenged, it can go to appeal at the local level.

To be clear, right now, local authorities do not have to realise the commercial valuation of a property. It will be made very clear in the guidance on the bill that that is already the case. That is something that local authorities should already know.

Alex Rowley: I will focus on outcomes, which I have a couple of questions about.

The Scottish ministers will have a duty to develop, consult on and publish a set of national outcomes for Scotland. What currency or value will those outcomes have and where will they sit alongside the work of national organisations that are working to a set of national targets? For example, community planning partnerships often say that some of the targets to which the national health service is working can conflict with the outcomes that they are trying to achieve. Will that be joined up? Will the national outcomes supersede targets or will organisations still have conflicting and competing interests?

Derek Mackay: We should all operate as team Scotland at a national level. The 16 national outcomes feed into the local outcomes through the single outcome agreements. Therefore, there should already be alignment. That will be put on a statutory footing.
The way in which the Government conducts its business by aligning its agencies and departments with the national outcomes and our purpose is recognised internationally as good practice. That approach works all the way through in partnership, down to community planning partnerships.

There are indicators beneath each of the national outcomes. The national outcomes are difficult to argue with, but they give clarity on what the Government is trying to achieve.

I would expect even closer alignment, because the approach will be on a statutory footing. Agencies that are currently aware of the approach will be even more aware of it when the bill makes it a duty on ministers.

**Alex Rowley:** People in the NHS commonly refer to health improvement, efficiency and governance, access and treatment—HEAT—targets. I have attended meetings at which the minister and the Cabinet Secretary for Finance, Employment and Sustainable Growth have also been present when NHS chairs have said that there is sometimes a conflict between the targets that they are trying to meet and the outcomes that the NHS has agreed.

Can the minister explain a bit more his thinking about how those national outcomes will relate to community planning partnership outcomes, given that communities need to have a more proactive role in how services are planned and delivered?

I repeat an example that the convener gave from his constituency during an earlier evidence session. A local community argued that mental health was one of its key priorities, but was told that one of partnership’s key priorities was smoking cessation, as that was in its health and wellbeing outcomes. The priorities seemed to conflict a bit.

How can things operate in a joined-up way so that we have joined-up government and joined-up services and so that that approach filters through into community planning and somehow filters up from the community’s views on its priorities?

**The Convener:** I should clarify that that example was not from my constituency; it was from my previous council ward and happened before the integration that we are now going through. I am sorry, minister, but I had to clarify that.

**Derek Mackay:** Most of the Community Empowerment (Scotland) Bill is about people, empowerment and the preventative approach, but integration is another pillar of public service reform, of course. At the national level, the outcomes are straightforward things that we can all agree on. They are not in conflict at all with the accountability of local community planning partnerships, departments or agencies.

For example, one national outcome is:

“Our children have the best start in life and are ready to succeed.”

Alex Rowley mentioned health, and another national outcome is:

“We live longer, healthier lives.”

Another is:

“We have tackled the significant inequalities in Scottish society.”

I could go on. The national outcomes are all quite clear, and public bodies should align themselves to support them. The Cabinet, ministers and departments certainly do that, and local community planning partnerships have a range of indicators and a menu of options so that they can align themselves to the most appropriate at the local level.

11:00

Alex Rowley raised a critical issue. The health service is driven by the HEAT targets, which are very specific. Local authorities are sometimes driven by other statutory targets and, increasingly, by their own benchmarking. Everyone involved has a sense of responsibility to their own organisations, but at community planning partnership level they should be sharing the responsibility and accountability for one another’s actions in delivering the plan for place and the single outcome agreement.

Most of those outcomes cannot be resolved nationally or locally in isolation—children will not have healthier lives if public bodies do not work together. The targets all matter because we are accountable, as the Government and as MSPs, for meeting those targets, just as councillors are accountable for meeting their local obligations. The bill expects public sector partners to work together in focusing on the outcomes that are delivered by the process, but there will still be room for localism. It is about sharing the goals and targets and having a greater sense of shared responsibility. The Accounts Commission has identified the need for people not to be too departmentalised but to think more as a partnership about how to provide local services.

We have heard some examples of great partnership projects happening in spite of community planning partnership boards rather than because of them, so the boards have to create the right culture of partnership and be mindful of their own targets. I am sure that, if we abandoned the HEAT targets or other input measures, the Labour Party would be first to
criticise us. We have to keep the targets in place, and they are not in conflict with one another. In working in partnership to focus on outcomes, the Parliament must increasingly move away from a focus on outputs. The process is recognised as world-leading practice in that respect.

**Alex Rowley:** I am not saying that there are any easy answers, but I suppose that it is a question of getting a tangible outcome that you can measure and can say has made a difference as a result of the organisations coming together and planning. You referred to the Christie commission, which was clear that we could not go on in the way that we were going and that much more preventative work needed to happen.

You mentioned children. The number of children who are being taken into the care of local authorities across Scotland continues to rise, although community planning partnerships have had a strategic outcome on that. At what point does that become real and measurable for people and communities so that we can say what community planning means, what community planning partners are signing up for, what role the third sector plays and where funding is being driven? Is there a point at which that can happen, or are we simply talking at a high level, while the reality is what is happening on the ground and the two never meet?

**Derek Mackay:** The issue is difficult, and your question identifies that it is difficult to legislate for. We already say, “Thou shalt work in partnership to focus on outcomes.” That will certainly be strengthened by the bill, because local community planning partnerships have to be consistent with the national outcomes, although there is flexibility about how to operate locally.

The analysis is right; we need to take a more preventative approach, but it cannot be done through legislation unless we are amending the structures of health and social care. The best interventions are coming from projects, partnerships and joint working. The positive parenting programme and partnership nurseries are examples of projects delivered in partnership between health boards and local authorities—that involves not just one part of the public sector but a partnership aligning resources, sharing good practice and co-locating, which we should not have to legislate for. That should happen through the statement of ambition, the preventative approach and the general approach to public service reform.

The change funds of more than £500 million were intended to achieve some of the transformational change, and health and social care integration should achieve more of that. We are doing what we can within our existing resources and I do not think that we need a further legislative basis to achieve that. The issue is about leadership and practice on the ground.

**Alex Rowley:** I do not disagree with you about legislation, which is why we should be careful about what the bill can achieve. We will need something more fundamental if we are to tackle some of the national outcomes out there.

I will focus on another example: Scottish Enterprise’s role. Scottish Enterprise gave evidence to the committee about its role as a community planning partner. I assume that it has national outcomes. It is focused on inward investment, large companies and jobs that come from those things. However, at the local community planning level, there are two key issues. The first issue is targeting and supporting the growth of small and medium-sized enterprises, which is where job creation comes from. The second issue concerns people having skills, holding to account education authorities and colleges, and working together.

At the local level, Scottish Enterprise’s input to community planning partnerships is fairly limited. We need to engage local employers to play a leading role. At a meeting that you attended with COSLA, one of the criticisms from the third sector was that it believes that CPPs are dominated by local authorities and health authorities. What is the third sector’s role? What is the role for business and industry at local level? Should we look again at that, at what measurable outcomes are put in place and at who is in charge of driving the agenda?

**Derek Mackay:** Mr Rowley will be aware that local economic development is the responsibility of local councils. The function was transferred post the 2007 concordat. Business gateway provides some of the interface for smaller businesses and new business start-ups.

Scottish Enterprise still has a role to play in bringing its expertise to the table, as I mentioned. It has a clear remit, which it is very good at fulfilling. Bringing hundreds of jobs to a specific site, or sustaining or expanding the number of jobs is, on scale, as important to a local community as small and medium-sized enterprises are. That is all about balance.

There is a point to make about greater engagement of the private sector—be it the chambers of commerce or key local employers—in understanding what CPPs are doing. That connects to the employment agenda, to preparing young folk for vocational opportunities and to understanding the local population. There is some benefit to that. We do not want to create a new bureaucracy, but there is a greater role for the private sector to be party to CPPs, although
engagement must first be with the community, to establish what it wants.

I do not disagree that we have to make the right connections with the business and industrial world to ensure that our young people have skills and opportunities for the future. Someone from Scottish Enterprise might attend a CPP board meeting and listen for hours to discussions about inequality, health inequality, deprivation and housing and think, “Why does that matter to me—to Scottish Enterprise?”, but it would help them to understand the local workforce and some of the challenges that it faces, including those that result from geographic inequality and deprivation. Then, in partnership, Scottish Enterprise could work out how to support the workforce and produce strategies.

I do not object to greater private sector exposure to community planning. The sector does not have just a seat at the table; the participation must go much wider and deeper than that.

Cameron Buchanan: As common good land—inalienable and alienable common good—is such a minefield and we do not have a definition of it, would you consider leaving it out of the bill?

Derek Mackay: I could do that for an easy life, but I propose to include it because, in all our work, including exploratory work, people have said that they want a greater say in how their taxes and resources are spent and used in their area. That is even more the case with common good, because much of the population understands that common good land is for the benefit of an area’s inhabitants. There has been criticism that there is not enough engagement in, understanding of, transparency about and community involvement in that. The bill will redress that with the register, participation, transparency and involvement.

I am not trying to undo hundreds of years of legislation and accumulation of common good disputes but, as a principle, we want communities to have greater involvement in how their common good is used and recorded. That has been welcomed.

Cameron Buchanan: Common good property cannot be defined, so the bill will be very loose. Surely that is the problem. Will we get hung up on common good land and concentrate on it rather than on the rest of the bill? I am concerned about that.

Derek Mackay: No. My time has been consumed by common good only in relation to one act of Parliament, which concerned Portobello high school. In that case, the City of Edinburgh Council made a specific request through a private bill to use land for a different function. Other than that, the issue does not dominate my mailbag—or inbox, as it is in modern times.

My fear is that, if we try to define common good, we will leave something out and we will disempower the community through an omission rather than empower it. I do not see an urgent need to define it, but I see a need to give communities greater involvement in our current understanding.

CIPFA and accountants in local authorities largely know what common good assets there are. All that we are asking is that the assets are put on a register so that the public can understand them and be involved in how they are used. That is not a huge new burden.

Cameron Buchanan: Does that include moveable assets such as pictures?

Derek Mackay: Yes. I do not think that we can exclude those elements. The approach should not be too bureaucratic. There should be an inventory.

Cameron Buchanan: There probably is in most cases, but not necessarily in some cases. I was just trying to clarify that.

Anne McTaggart: I share with the minister that, on one of our fact-finding visits, I met a plot-holder who is a single parent, who told us:

“my allotment is my garden, my kitchen, my dining room, my gym and my social worker.”

Their allotment is an enriching thing for them, and their comments showed how the allotment community supports itself and the impact that allotments have on the lives of people who are involved.

How will the bill further help those with mental and physical disabilities? What help will they receive to run allotment plots?

Derek Mackay: I do not think that the bill says anything specific about that. Anne McTaggart has identified some of the benefits of having an allotment and participating in a healthy lifestyle, which many of us could benefit from. I propose to lodge an amendment that talks a bit more about inequalities. That is necessary so that, when people are weighing up decisions on asset transfers and so on, they think about inequalities. Local authorities might well want to consider that more fully in relation to allotments.

The benefits are well understood, and those who can benefit most may pursue allotments, but I would not put anything specific in the bill about who benefits. [Intercession.] I am being corrected.

The Convener: If Dr Fox wants to comment, that is fine.

Derek Mackay: Okay—because the other two officials are silent. [Laughter.]

The Convener: You might pay for that, minister.
Alasdair McKinlay (Scottish Government): We know when we are supposed to speak. [Laughter.]

Dr Amanda Fox (Scottish Government): The provisions in the bill apply only to physical disability. We have had discussions with stakeholders since the bill was drafted and we recognise that an extension is needed, so we suggest that an amendment be made at stage 2 to broaden the definition in relation to disability.

Derek Mackay: There you go. You heard it here first.

The Convener: Does Anne McTaggart want to come back in?

Anne McTaggart: No, that is fine.

Derek Mackay: Go for something else while you are on a roll. [Laughter.]

11:15

The Convener: The bill talks of annual reports on local outcomes improvement plans. How important will those annual reports be, and how will they encapsulate the involvement that there has been with communities and the CPPs?

Derek Mackay: The improvement plans will identify what needs to be done and how, particularly in partnership. Given the extended and expanded duties to consult people, we will expect local communities to be involved. The plan for place is important. I said that I wanted to strengthen accountability in community planning partnerships, so reference needs to be made to the national standards on engagement, which are in place, although not everyone keeps to them. That legislative provision, which I should be able to introduce at stage 2, will sharpen and refine that, although of course we will expect people to take the local improvement plans seriously. There will also be proportionate inspection and auditing of community planning partnerships and local authorities through the quality assurance programme that we have undertaken.

The Convener: We heard from the Accounts Commission and the Auditor General for Scotland on various auditing points. How can the Government and Parliament hold CPPs to account for the delivery of their local outcomes?

Derek Mackay: We look at the national picture, and you will see reports, as I will, about the Government’s role. We will have a location director in every community planning partnership and we will see the indicators.

I am not sure that the committee and the Parliament should have a specific role in probing individual community planning partnerships, because it would feel slightly centralist if we were to pick on a community planning partnership. We should understand the national strategy, the national themes and the legislative framework, and the committee should hold the Government, ministers and local authorities to account collectively on our performance.

More energy has to be spent on how communities hold their community planning partnerships to account, and that is fair criticism. We cannot just wait for the rolling programme of audit agencies to reach a community planning partnership. Something more specific to local communities has to hold them to account, rather than us in Edinburgh holding each of the 32 community planning partnerships to account. That does not feel proportionate. How can we know better than a community what is right for it? It is the community, not Parliament, that needs to be empowered, although I am sure that we will execute our national duties adequately. I look forward to the committee’s recommendations if it thinks that a further process should be considered.

The Convener: If we take all that together, consultation with communities is the key. People must be involved at various levels in their communities and in the local outcomes improvement plans. How do communities deal with the national outcomes? Will communities be consulted on the formulation of national outcomes?

Derek Mackay: We expect to consult widely and to publish and review that set of outcomes. If something is about the people of Scotland, we should engage with them. I would not want to specify in primary legislation how that should be done, but it absolutely should be done.

The Convener: We have been out and about and we often hear a lot of negative stories about things that are not working, but there are also a huge number of positives. I know that it is difficult to legislate to ensure that common sense goes across the board, but how do we ensure that best practice is exported throughout the country?

Derek Mackay: I am loth to say that we should have a website, because we tried that and it did not really work, but new social media are showcasing great community projects and third sector projects. We will work closely with the what works Scotland initiative, which has conducted research into what is working well in community planning partnerships, and with the national community planning group and third sector organisations nationally and locally to showcase what can work. However, the best projects speak for themselves, whether they are transformative or life changing, and we can replicate much of those projects’ work around the country.
It is worth looking at projects that have received funding. I mentioned the funds that we are expanding, and I hope that they will have a domino effect on other projects, whether they are for land acquisition or the transfer of assets, to make a difference for local communities and empower them. Notwithstanding some criticism, we need to raise expectations of the bill so that people take advantage of it when it is enacted.

The Convener: Thank you for your evidence.
Present:

Cameron Buchanan  
Mark McDonald  
Anne McTaggart  
Kevin Stewart (Convener)  
John Wilson (Deputy Convener)

Apologies were received from Stuart McMillan and Alex Rowley.

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

Councillor David Alston, Deputy Leader, Highland Council;  
Rachael McCormack, Director - Strengthening Communities, and Sandra Holmes, Head of Community Assets, Highlands and Islands Enterprise;  
Sarah-Jane Laing, Director of Policy & Parliamentary Affairs, Scottish Land and Estates;  
Steve MacFarlane, Member, Lochaber Chamber of Commerce;  
Duncan Martin, Secretary, Oban Community Council;  
Alasdair Nicholson, Chief Executive, Voluntary Action Lochaber;  
Patricia Jordan, Chairman, The Nevis Partnership.
Scottish Parliament

Local Government and Regeneration Committee

Monday 24 November 2014

[The Convener opened the meeting at 17:13]

Community Empowerment (Scotland) Bill: Stage 1

The Convener (Kevin Stewart): Good evening and welcome to the 30th meeting in 2014 of the Local Government and Regeneration Committee, at Lochaber high school in Fort William. I ask everyone present to switch off mobile phones and other electronic equipment as they affect the broadcasting system. Some committee members might consult tablets during the meeting because we provide meeting papers in a digital format.

I thank the organisations and individuals who have helped the committee to organise today's event. I particularly thank the staff at Highland Council and the staff and students at Lochaber high school, including the principal, Jim Sutherland. I also express my gratitude to the folks from the Sunny Lochaber United Gardeners who kindly talked to the committee about their work earlier today.

At the end of today's formal meeting, we will have a short, informal question-and-answer session for those of you who are watching from the public gallery. That will be an opportunity for you to question the committee on what has been discussed today. I will speak more about that later on in the evening.

We have received apologies from Alex Rowley MSP and Stuart McMillan MSP, who are unable to attend the meeting today.

Agenda item 1 is our final oral evidence session on the Community Empowerment (Scotland) Bill. We have two panels of witnesses giving evidence this evening. In the first panel, I welcome Councillor David Alston, the deputy leader of Highland Council; Steve Macfarlane, a board member of Lochaber Chamber of Commerce; Sarah-Jane Laing, the director of policy and parliamentary affairs at Scottish Land & Estates; Rachael McCormack, the director of strengthening communities at Highlands and Islands Enterprise; and Sandra Holmes, the head of community assets at Highlands and Islands Enterprise. You are all very welcome. Would any of you like to make an opening statement?

Councillor David Alston (Highland Council): I hope that it is clear from our written evidence that we support the direction of travel and spirit of the bill, and that we hope that our comments are seen as constructive and show ways in which the bill could be improved in detail.

I draw attention to the general comments section at the end of our submission. We have added something about community councils, which are not in the bill. Highland Council operates across a wide geographical area with 140-plus community councils. We see community councils as one of the building blocks of community empowerment. What those community councils do varies a lot. The best are very much part of their communities and of the empowering of the community.

The comments that we have made in our submission are comments that we have made at every opportunity when there has been a consultation on community councils over the past 12 years. It would be nice to see some movement on them. Our main concern is that community councils are not corporate bodies. That means that when the community wants to do something that involves large sums of money and when it wants to take control, it has a choice. Either it forms another organisation and the same people become members of it, which means additional bureaucracy, hassle and expense, or it runs the risk and acts as an unincorporated body that owns assets and employs people but is not given the protection that people who are giving something to their community should be able to expect. If community councils were made into corporate bodies, it would help to solve the problem.

I know that part of the issue is that these bodies operate quite differently in different parts of Scotland, but we hope that our comments can be taken on board as part of the solution for the Highlands.

The Convener: Thank you. As nobody else wants to make opening comments, we will move on.

To what extent will placing community planning partnerships on a statutory basis be helpful?

Rachael McCormack (Highlands and Islands Enterprise): The provisions in the bill on CPPs are positive. Our written evidence highlights the fact that there could be benefit in having a degree of flexibility about the composition of CPPs. Statutory provision is powerful, but a further positive step would be to have local flexibility and the ability for partners to identify the most appropriate composition of CPPs and, within that, the most appropriate form of representation of communities and the third sector.
Sarah-Jane Laing (Scottish Land & Estates): We support the provisions on community planning. We are slightly concerned that they do not go far enough but, to be honest, that is not to do with community planning. Community planning is not just about the statutory framework. It is about relationships, dialogue and involving all members of the community. The bill is a good starting point, but we have to have commitment to guidance, support and assistance that will give us a properly functioning community planning process. Lots of things in the policy memorandum probably cannot be put in statute and we would like to see how those are going to be implemented in future.

Councillor Alston: We believe that there should be a defined core membership, with the flexibility to add members to it. The defined core membership is important because, although it does not matter when everybody is willing, and although we have a very good community planning partnership in Highland, it is important for everybody to be at the table and to take on the responsibilities, including the responsibility to put something into the pot of resources.

The Convener: We will find out from community representatives later whether they think that the CPP works well or not.

Steve Macfarlane, do you think that business has a good enough input into the community planning partnership and the formulation of the single outcome agreement?

Steve Macfarlane (Lochaber Chamber of Commerce): I have no comment on that, unfortunately, as that is not an area in which I have got involved.

Sarah-Jane Laing: I could comment on that from a land-based business point of view. There are some very good examples, and we referred to one in a previous consultation response. The Scottish Borders Council’s working countryside group proactively encouraged businesses to be involved. That included changing the whole format of the dialogue and having meetings at different times and in different locations.

There are businesses of all sorts that are not involved in community planning. I support the need for a core group, but we have to consider what other people can bring to the party when it comes to community planning. Core groups still seem to be very public agency focused and organisationally focused.

The Convener: The bill lists those folks who will be involved on a statutory basis. David Alston mentioned that that should be the core group, and that others could be added. Should any other groups be added to the community planning partnership framework on a statutory basis?

Councillor Alston: We value the involvement of the third sector interface at the core level.

We are working across a very big geography in Highland, and there has been a discussion about the community planning partnership as a Highland-wide body. There are different questions about how things operate at a local level. That needs to be cashed out, considering the different methods and subject matters at local level. At the core level, the involvement of the voluntary sector is important.

I can understand that point about the involvement of the business sector. Perhaps that is part of the flexibility that we need in considering how we expand from the core membership.

The Convener: Does anyone else wish to comment on that? Should there be any expansion?

We have heard today from a number of folks from the Lochaber area. We have also heard from folks from Argyll and Bute, but I will concentrate on Highland. Highland has a large landmass, and you have already explained about the 140 community councils that you have. How does Highland Council ensure that community voices are heard and that what they view as being the most important priorities fit into your single outcome agreement?

Councillor Alston: To be honest, we struggle with that. At the moment, we are trying to get the community planning partnership to be more effective at a local level.

In the past, in some areas such as community safety, there have been some very good working practices at local level. As part of our integration with the national health service, we created bodies called district partnerships, where people could come together—not as part of the governance but as solution-focused local groups where people could bring things that were causing problems. We are now in the process of adding the Scottish Fire and Rescue Service and Police Scotland to the district partnerships. The meetings are held in public, with opportunities for the public to get things on to the agenda, to have them discussed and, at the end of meetings, to be part of the public discussion.

We are trying different things with different bits of the community planning partnership. The council has an area committee structure. Ward forums have been important, although they work better in some areas than in others. We are finding slightly different solutions in different parts of the Highlands to the question of how the community gets a voice. It is by no means perfect, and we have a long way to go.
Mark McDonald (Aberdeen Donside) (SNP): The convener has touched on where I was going to go, but perhaps you could expand on this point. The committee has taken evidence in different places, including the Western Isles. When people talk about a centralisation agenda or a centralisation of power, it is not Edinburgh or London that they talk about but Stornoway. Here, we have found that it is not Edinburgh or London but Inverness. Is that a criticism that Highland Council and the other agencies here acknowledge and accept? If so, do the provisions in the bill allow for some of that to be addressed and altered?

Councillor Alston: The answer is yes to both questions. We would accept it as a criticism and we think that the provisions in the bill can help. It is fundamentally when communities find the opportunities to take control themselves that their voice becomes more powerful and it plays a part in the system.

It is still in the very early days, but we have created something that we have called the community challenge fund. We have said to communities that, if there is a council service that they feel they could run better at a local level, we will look at transferring the budget to them, and we have a capital sum that we can put in to ease the transition. We are looking at what we hope are creative ways of empowering communities, and I think that the provisions in the bill will be of great assistance.

Rachael McCormack: We absolutely understand the suggestion that things are Inverness centric. The structure of Highlands and Islands Enterprise has, over time, consciously rooted a significant number of offices and a significant number of staff within the communities and close to the businesses that we support, and we are committed to that. We recognise that, across the region, we have diverse local economies and communities with wide-ranging ambitions and aspirations, and it is imperative that we are close to them and accessible.

In addition to our area teams, we have other locally based teams, so, wherever someone is in the Highlands and Islands, they are not terribly far from HIE staff. The majority of those teams have strengthening communities teams based within them, as well as economic development teams. The reach of our agency in terms of our dual remit of economic and social development is very much spread across the region.

We measure, record and feed back our investment to the Government annually, and part of the reporting that we do looks at the split between our investment in our urban or built-up areas and our investment in our fragile areas. Although about 13 per cent of our population stay within our fragile, most remote and socially and economically challenged areas, about 20 per cent of HIE investment over the past three years has been targeted to those areas. That disproportionate per capita investment recognises the over-and-above challenges that are faced by some of our most rural communities.

Sarah-Jane Laing: One problem that we have had in the past and have at the moment is that local flexibility and local priorities are seen as costly complicating factors. I hope that the bill will allow us to move to a stance where they are seen as solutions and not as problems. As soon as we move to that, communities understand the part that they can play.

The biggest thing—again, it is not statutory—is communication. Lots of communities across Scotland have felt that their engagement and feedback have not been recognised and valued. They probably have been taken on board, but the communication by local authorities and nationwide agencies has possibly not been that effective, so people have got to a stage where they are not sure whether there is any value in being involved in community engagement or feedback to Highland Council or other organisations.

17:30

We have to encourage people to understand that, when it comes to policy setting and priorities at the regional level, you have to do the hard yards. I know that that is a bit of a hard sell, but people can have much more of an impact if they are involved in setting policies than when they get down to individual decisions. If people are involved in setting the policy for new housing or new enterprise in Highland Council, they will have much more of a say than they will if they are just dealing with one application from someone who wants to build a house at the end of their garden. Making people understand how their voice can make a difference in rural Scotland is something that we all have to play a part in.

Mark McDonald: Mr Macfarlane, do you have anything to say on that?

Steve Macfarlane: The opportunity for business to be involved in some of the discussions here seems to be distinctly lacking.

Mark McDonald: That feeds into my next point. Some of the discussions at the events that we had earlier were about who is at the table in community planning partnerships. Councillor Alston talked about business, but community bodies and community groups would like to be much more embedded in the process. The bill talks about “appropriate” community bodies, but the difficulty is how we define what an appropriate community body is.
Councillor Alston spoke about the 140 community councils in the area, which presumably operate at various levels of functionality. Some communities do not have a community council, but they have other groups or organisations that, in effect, fulfil that role and function. How does Highland Council determine who are the best people to be either at the table or engaged with as part of the community planning process?

Councillor Alston: At the high level of the community planning partnership which, at the end of the day, directs the work of the chief officers of all the public agencies, we use the third sector interface. It is extremely difficult to find a mechanism at that level to involve somebody who can claim to represent communities. Therefore, the more direct involvement with communities is at a lower level.

We have community councils throughout Highland. If they are given more responsibilities, they will have more chance of becoming the bodies that we can count on as the first port of call for community representation. That happens within the community, at ward level, where we hold ward forums, and by feeding into the district partnerships that I mentioned. It also happens through things such as the ability to petition the council through our petitions committee and the ability to input into the overall umbrella of the community planning partnership through the third sector interface.

Mark McDonald: Is there anything to prevent local authorities from taking a more empowering approach to community councils at present? Is legislation required for that to happen, or could local authorities do that anyway within their current powers?

Councillor Alston: Legislation is required to give community councils corporate body status so that the individual members have protection. In the community where I live, the community council employs people and owns assets, and it has taken a conscious decision to do that rather than set up separate bodies. That is for a whole bundle of reasons, but one is about keeping things simple and allowing the effort to go into the activity rather than into the creation of the infrastructure of organisations. Community councils deserve the protection of corporate body status, which protects the individual members, and that requires legislation.

Mark McDonald: There is obviously more to empowering community councils than the issue of corporate body status. Is there anything to hold back a local authority from, for example, changing the way in which it allocates funding to community councils to give them a bit more flexibility and to empower them a little more at local level?

Councillor Alston: We do that in two ways. We have ward discretionary budgets, and community councils are one of the main groups that bid into those for local projects. We also have the community challenge fund, which involves asking communities whether they think they could take over a service, which could be grass cutting or grounds maintenance, although some communities are looking at bigger things. I do not want to give the wrong impression. We are on a journey, and we are aligned with what the bill is trying to achieve. There are things that we can do at our own hand, but the bill will help us.

Mark McDonald: You mentioned that you ask community councils whether they can take on X, Y or Z. The bill will allow for participation requests, which are less about a council asking communities whether they can take on X, Y or Z and more about communities saying that they want to be involved in X, Y or Z or they would like the council to deliver something that is not currently delivered. That strikes me as the flip-side of what you suggested, because it is more about the community being empowered in relation to what is happening than the council shovelling things towards the community councils or communities that they might not wish to take on but which they may have to take on as hostages to fortune.

Councillor Alston: No—we are certainly not shovelling things towards the community. The process is very much that, when a community feels that it can do something better and more effectively, we will consider transferring control of the budget to that community.

The Convener: The ward budgets, which you mentioned, also came up earlier today. In Highland, they are controlled by councillors, whereas in places such as Dundee we have found that budgets go to the communities, which are then allowed to spend the money, with some restrictions but not a huge amount. Why did you decide that local elected members, rather than communities, should be able to decide where the discretionary moneys go?

Councillor Alston: Actually, the budget holder is the ward manager, although they take advice from local members. We decided to take that approach partly because we wanted to make the ward budgets work. They are a new creation and, in some ways, a building block. At the moment, if we simply divvied up the money among the 143 community councils, some would find it easy to deal with that and others would not. I cannot speak for the council in this regard, because we do not have a policy on the issue, but personally I am certainly keen on finding a way of devolving budgets further to community councils. I am sorry to go on about this, but corporate body status is important in that regard. If we are to push down
budgets to a lower level, people will be taking on more responsibility, so they will need the protection of corporate body status.

The Convener: It seems, however, that other local authorities can deal with the issue at present without community councils becoming corporate bodies. Perhaps we can pass you the information from Dundee, which you might want to consider.

Councillor Alston: I am sorry—do you mean incorporating the community planning partnerships?

Cameron Buchanan: It is community councils, really, and community planning partnerships.

The Convener: I think that it is both.

Cameron Buchanan: Yes, I meant both. I am sorry. They are two different things, but I meant both.

Councillor Alston: I think that I have made the point about community councils.

On community planning partnerships, the important issue is the core membership and ensuring that everybody is not just at the table but is there with an obligation to deliver outcomes at the end of the day. When I said that I thought that we had a good community planning partnership in Highland, I meant that it is good at that level. By and large, we have excellent commitment from across the public sector. There is no feeling in the community planning partnership that its becoming a corporate body would have any particular advantages or disadvantages. That has not been on our horizon.

Cameron Buchanan: Would the situation vary among regions, or would each have the same sort of membership and structure?

Councillor Alston: Do you mean within the Highland Council area?

Cameron Buchanan: Yes—within Highland.

Councillor Alston: We work with one umbrella community planning partnership, and we are trying to get it to operate according to the themes that relate to the key outcomes, such as community safety. We are trying to get that down to local level. There has to be flexibility at local level to get the right people at the table, because places differ. It is not just the geography that is different; there are different cultures and different key players in each community, so we have to keep flexibility when we get down to the organisations that are nearer the community.

The Convener: Does business have an input at local level? Does business manage to get its say on community planning in Lochaber?

Steve Macfarlane: It is hard for me to comment on some things without having knowledge of the background, which unfortunately I do not have. All I will say is that in the last wee while we have formed a new chamber of commerce and are in the stages of bringing it together, and it will build in strength. I have no way of commenting on that today, but rest assured that the next time we meet I will have more to say.

The Convener: I look forward to that.

Steve Macfarlane: That is probably the safest way I can put it at the moment.

The Convener: From an HIE perspective, what is the situation at local level? Let us take Lochaber, since we are here. Is there enough business input in formulation of the local plans that feed into the SOA?

Rachael McCormack: There could always be more business input, and the same is true of the community and social enterprise sides. One of the things that we did internally as the bill was being produced was consider its implications for HIE and our role as a community planning partner. We often lead across our local authority area partnerships on the economy and employment subgroups or strands, but we recognise that we can make a greater contribution to CPPs from the point of view of our community and social enterprise input. However, more real-time economic intelligence and information from businesses is required as well.

As one of my colleagues here remarked, though, it is incumbent on us to ensure that information comes back out of that process as well, and that it is not just linear input from businesses into the CPP, so that information is more complete.

Sarah-Jane Laing: There is input from businesses, but it is limited to feeding in views on what HIE, Highland Council or other agencies are doing. There is a failure to recognise that businesses can be the delivery mechanisms for much that is in the single outcome agreements or for localised priorities. That is where the frustration tends to come from in community planning: it still feels like something that is done to communities.

Anne McTaggart (Glasgow) (Lab): I thank the panel for having us along here tonight and I also thank the audience.

The bill requires that
“A community planning partnership must ... make all reasonable efforts to secure the participation of ... community bodies”

that it considers

“are likely to be able to contribute to community planning”.

To what extent will the bill’s proposals allow meaningful participation by communities in the community planning process? Does more need to be done in that regard? Can you give examples to show what meaningful participation by communities looks like?

The Convener: Who will have a crack at that first? I am going to pick on somebody if nobody puts their hand up. Councillor Alston, do you want to have a go first?

Councillor Alston: Right. It is a very big question.

The Convener: It is.

Councillor Alston: But it is a very important question. My observation is that community ownership of land and other assets is very often the key step that a community takes that gets people involved in the running of something. For example, we had examples of communities that owned and ran their village halls while the council owned and ran other village halls. We decided some years ago—it was not popular with some communities, but it was the right decision—that all village halls had to be taken over by communities.

That was a good move and it is a very small example, but if communities can move from that to extending what they have control over, that is when they get involved and take power. Empowerment can sometimes sound as if it is about the council sitting in Inverness handing out power. Of course we have to be willing to let go, but it has to be about the communities taking control themselves. It is about communities owning assets, running projects and seeing the outcomes of what they do, and getting the hunger to do more.

17:45

The Convener: Okay.

Sarah-Jane Laing: Anne McTaggart’s first point was that the provision is limited to community bodies that

“are likely to be able to contribute to community planning”.

For me, a decision on that will still be subjective, and it will be taken by the CPP perhaps without it having real knowledge of what the community body is capable of and can achieve. I am therefore not sure that the wording is right in that provision in the bill. I do not have a suggestion as to how it might be changed, though.

To pick up on Anne McTaggart’s other point about community participation, as David Alston said, community ownership is only one part of that. Opportunities for participation are limited if people feel that it is just about ownership and transfer of assets. There are community bodies out there that want to get involved in running services and activities but do not want to go down the route of community ownership. We must ensure that their views and aspirations are as valid as those of people who want to pursue full community ownership.

Rachael McCormack: What is key to participation by not only communities but social enterprises and businesses is the mechanics of community planning partnerships. A chief executive in the fire service, police service or health service has a clear remit to be the conduit for all things within their ambit that come in and go out, but community bodies by definition focus on what is local. They might be communities of interest and have a broader geographic reach, but they focus on specific areas and interests.

There is a dichotomy in terms of the nature of the entities that we are trying to bring round the table. The key will be in designing a mechanism through which the community voice can be heard, and which will be a powerful conduit between communities and social enterprises and businesses that can be, as Sarah-Jane Laing said, at the heart of delivering the objectives in single outcome agreements. However, we must draw together the macrostrategic public bodies and the need for businesses, communities and social enterprises to contribute.

Anne McTaggart: I thank you for your comments.

Transport is significant in this area of the Highlands. How would you get the community to participate in discussion on that issue? Would you ask for their views? For example, would you ask a community if it would be harmed by a change to a particular transport link? What would you view as meaningful participation in that regard?

Rachael McCormack: In our experience, meaningful participation is when communities identify an issue in, for example, transport, healthcare or elderly care, and talk to partners about ways in which they can take on the responsibilities themselves or take over services that are centralised in order to decentralise them back to communities, with support and investment by agencies for capacity building.

Our community body—as an HIE account-managed body—in Helmsdale on the other side of the Highlands prioritised care for elderly people who would otherwise have to be transported to Inverness. The community body also prioritised
community transport because it was not happy with a service being lost, it prioritised local social housing because it understood that it was needed, and it prioritised activities for young people.

True engagement is not about a conversation; it is about creating the conditions that enable a community to be supported and truly empowered to take on things that it has prioritised for itself.

Councillor Alston: There is a very exciting initiative in Lochaber at the moment. Alasdair Nicholson from Voluntary Action Lochaber is on the next panel and he is probably better placed to give you the detail. There is an awful lot of transport about: school minibuses, ambulances, patient transport and so on. That project is looking at how all that transport from across the public sector and the community sector can be pulled together and used much more effectively. That is a very good example of what can happen at tactical level.

Right down at community level, I am aware of quite an interesting example from my ward, where the community council was concerned about the bus service. There were issues with the frequency of the buses and with buses not keeping to the timetable. The timetable was not really working. Instead of just complaining about it, the council got together with the bus company. It said to the bus company, “Look, we’re on the ground. We can monitor your service and we can promote it if we know that it is going to be reliable.” The community council entered into an agreement with the company. The local community monitored the service and let the company know when the buses were not running to time, so the company was not just reliant on a driver filling in a sheet. The bus company offered to use a mystery shopper. It gave a member of the community who was travelling on the bus anyway free tickets for a number of weeks so that they could check on the service.

The company accepted the community’s suggestions about how the timetable could be altered and the community council then went out to people and said, “We’ve got the timetable altered to suit what you wanted—you’ve got to use the bus if you want to keep the service.” It was an interesting example of a business being involved at local level; it was good for the business, but it was also about trying to make things better for the community.

The Convener: Anne—do you want to come back in?

Anne McTaggart: I think Sarah-Jane wants to add something.

Sarah-Jane Laing: One thing that we probably have to do quite early on is change the language that is used in community participation. People are often put off because we tend to use policy speak or agency speak. We need to move that dialogue; the recent Scottish Rural Parliament event in Oban was an excellent example of moving away from policy wonk speak to having real conversations.

Some tangible things came out of the workshop on transport. It did not just call for sustainable transport strategies; it also called for a change in how bus passes are allocated, and said that young people should get them, as well as old people. It talked about the need to change significant parts of our approach.

We also need to ensure that we involve not just the people who use the service or who have an interest in it but those who do not use the service. There was a project in Ballater, called Ballater one voice our future, which brought in everyone who might have a stake in the future of Ballater to ask them why they were not using the buses. It was not just about speaking to the people who already used the buses. It was very resource intensive but it was valuable.

The Convener: Anne, do you want to come in now?

Anne McTaggart: I think David wants to come back in first.

Councillor Alston: I gave the example of the community council working with the bus company—that community council now has email addresses for getting on for 40 per cent of its community. There is full compliance with data protection and it uses the addresses only for community council purposes. If an issue comes up and the question is, “What does the community want?” at the touch of a button, the council can reach 40 per cent of the community to ask them.

Anne McTaggart: What happens, though, if the community council then disagrees with the bus company? Where is your role within that, given that you subsidise transport?

Councillor Alston: The services were all non-subsidised services, so what happened was purely on top of what we might be able to lever out through subsidising services. That example was about a direct link between a community and a business. They identified the mutual interest of improving services to the community.

John Wilson (Central Scotland) (Ind): Good evening. Councillor Alston made reference on a couple of occasions to the 140 community councils that exist in the Highlands. Can you give us an idea of how those community councils are established, how the boundaries are set and how many hold annual elections? Are there more nominations than there are places on the community councils?
Councillor Alston: We reviewed the community councils scheme about two years ago. The boundaries are set in that scheme. They vary a lot across Highland—some community councils cover large areas. Wick has one community council, while Nairn has three. It is sometimes to do with the history of the area. If community councils are given more power, we might need to look in more detail at having a bit more uniformity so that they are treated equally.

The scheme now has a system in which elections happen all at the same time. Election is for a four-year term. That gives us the opportunity to promote community councils and election to community councils. You asked about how many councils have contested elections; I am sorry, but I do not have that figure. We can get it.

The Convener: That would be useful.

Councillor Alston: The number is not nearly as high as we would like, but there are contested elections. Obviously, where there are hot local issues, there tends to be contested elections.

John Wilson: Who drew up the boundaries for the community councils? Was there dialogue with the existing community councils and existing communities? You mentioned that having three community councils in Nairn is part of a historical situation. However, what type of dialogue took place two years ago with the communities and the community councils to ensure that the community councils that were recognised by the council were set up around a community’s agenda and not the council’s agenda?

Councillor Alston: We consulted widely. We asked the community councils themselves to identify anomalies. Since community councils were first set up, places have moved on and in some cases have themselves identified some redrawing of boundaries that would make sense.

As far as I recall, we did not go beyond accepting the suggestions that came from the community councils themselves. We did not try to impose on them a geography that we thought might make more sense.

John Wilson: We might hear more about that later on this evening.

How does HIE interact with communities and how often does HIE interact with community councils? Does HIE see community councils as the main community forum to engage with if it is dealing with potential economic or social investment in a particular area?

Rachael McCormack: From a strengthening communities perspective, community councils are very often part of the mix within a community. We account manage about 50 communities across the region at the moment; those are long-term relationships. Although community councils are very often part of the mix, we always talk to the community about it setting its own defined boundary that best describes its community. It does not lean towards an administrative boundary unless the community itself brings that forward as a sensible boundary for its community.

I was reminded, in talking about communities and businesses and social enterprises, that sometimes—perhaps more so in more remote and rural areas—you can be talking to a person one day from a community perspective, you can be talking to them the next day about a business growth agenda and you could be talking to them the next day because they sit on the board of a social enterprise.

Across our region, the range of the remit of HIE cannot be subdivided. It would be completely artificial to say that we transact with businesses in a particular way and with communities and social enterprises in a different way because, as I said, it is very often that same person who is involved and there is a bit of a revolving-door scenario.

18:00

The important thing for us is that communities define themselves; they define their interests, and they come to us with their ambitions and their growth plans. We look for where we can support them and where partners can support them, but it is very much the community’s choice as to whether to be a community council or another form of incorporated body. That is entirely for the community to determine, and we will support them in pursuing the most appropriate route towards the form that they choose. That would involve consideration of the type of business transaction on which they want to embark, the assets that they want to acquire and the purpose that they want to serve in their community.

John Wilson: On incorporated bodies—Councillor Alston referred to this issue earlier—if there was a community council in a particular village but another organisation or group of individuals in the community were to approach either the local authority or HIE regarding proposals for the area, would any dialogue take place between the community council and the local authority or HIE on those discussions? A question that has come up relates to who the bodies and agencies are engaging with at a local level. Is there any potential conflict if the community council has one agenda while another, smaller group of individuals has a different agenda that they want the local authority or HIE to support or buy into? How would you solve such potential conflicts?
Councillor Alston: I certainly hope that there would be dialogue in that situation. If the council was involved in funding or supporting such a proposal, we would be talking to everybody. Such a situation, in which different groups want to go different ways, can arise in communities.

Community councils are important partly because of the important role of representative democracy and participation at the community level. However, the process works only—as you indicated earlier—if it reaches the point at which people are contesting elections and we can genuinely say that those who are on the community council have stood in front of their community and been elected.

That is the case in some communities, and in such situations it is right to give particular weight to the community council. However, if such a conflict arises, we have to help the community to work through it. If there is still a conflict, the funders have to make the decision at the end of the day about where the funding goes, but we should do all that is possible to overcome conflicts.

Sandra Holmes (Highlands and Islands Enterprise): Within HIE, we respond to whoever makes contact with us. We often engage strongly with community councils, usually at the start of a project.

We have encountered situations in which a community council has not, for whatever reason, completely bought into the idea of a wider development trust as part of its overall priorities. In such a case, we would engage with both parties, and we respond to whoever contacts us. The process is very much community led.

In one particular situation, it was decided—through dialogue that was led by members of the community—to offer the community council a place on the development trust board. In our experience, communities seek to find solutions themselves: they do not look to carry on with conflict.

I reiterate that community councils are often the starting point. We have been invited to many meetings hosted by the community council to get dialogue going, although it does not necessarily see itself as the right organisation to take a project forward.

We will provide support—and often funding—in the early stages, until the direction of the project is clear. If the project goes ahead, the body in question—a community company or whatever—can then work out the right way forward. We certainly treat and respond to community councils in the same way that we would treat other community organisations and businesses.

John Wilson: Councillor Alston, you said in response to my previous question that it would be up to the funders to make the ultimate decision on whether to go ahead with a project and which projects would be funded.

The bill is aimed partly at ensuring that communities are fully engaged in the decision-making process with regard to funding. You said that ultimately the funders would make the decision, but how would you deal with the demand from many communities to be more closely involved in decision making where funding is being spent by the local authority in a particular area, without bodies—the community council, for example—having to become incorporated? Is there no other way in which the council could actively involve the community council or other community groups in making decisions about where funding should go and which developments should go ahead?

Councillor Alston: The issue regarding incorporated bodies relates very much to the question whether a community council wants to take something forward at its own hand. If it is concerned with helping to form the decisions that are being made, it would need to have incorporated body status.

I think that all the bodies that are represented here today have experience of working with communities and of trying as far as possible to get to a consensus. That often takes time, and it is a lot of hard work.

It is important that we can rely on one another and work together as partners. That is one aspect of community planning: it is about all elements of the public sector trying to pool their resources so that where there is something to be worked through, we are not all pulling against one another.

There are many techniques to be used in trying to make a judgment in such a situation. I gave the example of a community council that can now instantly contact 40 per cent of the community. That is a really good start in terms of finding out the community’s view on something, but different techniques are needed if the community is trying to work up the solution to a problem itself.

Steve Macfarlane: I am following the list of things that we are going through. We have talked about community ownership, ownership of assets and managing and running services, but I think that I am right in saying that we skipped over the phrase “community right to buy”, although we have been talking about that general area in our discussions. Perhaps I could say a few words on it.

There are some fundamental flaws in part 2 of the Land Reform (Scotland) Act 2003 that I have yet to see corrected in part 4 of the Community...
Empowerment (Scotland) Bill. They are not addressed in there yet.

The Convener: Can you indicate what you think those flaws are?

Steve Macfarlane: Certainly. The proposal is for the community—that is if it is defined, because a community can define itself—to be able to go through the community right-to-buy process and acquire an asset that can be developed and improved to provide community benefit. As I see it, that is the basis of and reason for that proposal.

Where that falls down is that there is no protection from people using that particular provision as an aggressive mechanism, and no way to stop it being used against a fully functioning business. There is no mechanism to enable a business to defend itself, other than just waiting and waiting for what may never come. It might come via an inhibition—an inhibition can be put on as a result of an application—which then sits there for five years.

If the asset in question is purely redundant, unused or underutilised, or if it is a relatively small part of the whole and can be used for the betterment of the community but needs some improvement, such a process is understandable. However, it is not understandable where the asset is already fully functioning and operating as a business—it can still be on the receiving end of an aggressive application. There is a fundamental problem in that respect.

The Convener: Okay. We will pass that on to the Rural Affairs, Climate Change and Environment Committee, which is looking at part 4 of the bill for us. We will ensure that it is aware of your comments.

Steve Macfarlane: Can I come back on that? I am with you on the rural affairs issue but, as part 2 of the Land Reform (Scotland) Act 2003 stands, all assets in all areas are affected by that law and are currently at risk.

The Convener: I understand that. The Rural Affairs, Climate Change and Environment Committee is looking at all aspects of part 4. We will pass on your remarks to that committee, and they will feature in what it feeds back to us for the final report. I assure you that that will be done.

Steve Macfarlane: Thank you.

John Wilson: I have a final question. One of the issues that I picked up in the discussions that we had this afternoon related to local planning and strategic planning. There is a feeling at the local level that people are being excluded or bypassed, particularly when community planning partners and community planning partnerships draw up strategic plans. Can you assure me that every endeavour is made to consult communities and that what communities propose or ask for is fully considered in the strategic planning process? Some communities feel that, despite the engagement that takes place, their voice just gets lost when it comes to the strategic planning process, and that decisions are made regardless of what they might think.

Councillor Alston: Do you have any examples of specific areas of strategic planning in which that is happening, or are you describing a general feeling?

John Wilson: It is a general view. Communities feel that they are excluded from the decisions that are made. Even though they might have concerns, the plans of the various agencies seem to go ahead anyway.

Councillor Alston: That can sometimes happen because it is only when something happens on the ground that the issue emerges and people realise that the point at which they could have had an influence was a bit earlier in the process. All parts of the public sector need to stress the importance of getting in early. The process is not perfect, but an example of the progress that has been made recently is the fact that the Scottish Fire and Rescue Service and Police Scotland plans are all consulted on at ward level. There is a process of reporting back on and renewing those plans. The policing priorities are being set at that level.

John Wilson: You say that the plans are being consulted on at ward level. Who is being consulted—the communities, the elected members or the officers?

Councillor Alston: The plans are consulted on at open public meetings, to which all the councillors in a ward and all the community councils are invited. Those are open public sessions at which the public can speak.

The Convener: Does anyone else want to comment on that?

Sarah-Jane Laing: I commented on consultation earlier. I think that there needs to be a cultural change on the part of those who are consulted. Communities of interest and communities of geography have to understand that they cannot always get what they want when it comes to the consultation process, but they should at least be given a reason why they are not getting what they want. That is what is missing from the dialogue.

The other problem is that we often get plans that are presented as being fully formed. People are simply asked whether they agree with those plans, rather than having any role in their evolution. The fact that people can be involved only at a relatively
late stage means that, realistically, they have little chance of changing anything significantly.

18:15

**Mark McDonald:** When we were in Dumfries recently, we took evidence on a community asset transfer. The process had been going on for some 18 months without reaching a resolution. When it initially made contact, the organisation concerned had to make about 14 or 15 phone calls to different individuals to find the person who it should have been talking to.

Should public bodies be required to have an identified contact whose duty it is to draw together the various people in the organisation who have responsibility for such matters? Should there be a time limit for dealing with an asset transfer request, at which point a report should be submitted to the board or, in a local authority context, elected members, explaining why the transfer has not been concluded within the required period?

**Sandra Holmes:** In HIE, we have a community assets team. Our job is to support communities in asset purchases, whether they are purchasing an asset from HIE, an asset that is privately owned and on the open market or an asset that is owned by a local authority. We have not one person but many people throughout all our offices, and it would not take somebody long to find the right person; certainly, they would not require to make 14 phone calls. I cannot speak for what is appropriate for other organisations, but we have that covered.

What was the second part to your question?

**Mark McDonald:** It was about the length of time that an asset transfer should take and whether there should be a time limit by which a report should go to the board or, in a local authority, elected members.

**Sandra Holmes:** The reality is that asset transfer, through whatever route, is often measured in years rather than months, and there are often good reasons for that. Having a defined time limit might be difficult, although a target timescale would be helpful.

We managed to do a transfer to a community body in months, but we are also involved in other purchases that are happening over years. There are often good reasons that are external to the community and the organisation why a purchase might take time.

**Mark McDonald:** That is fine and, in individual cases, years might be required. However, community bodies and organisations are often sitting on time-limited funding from trusts and other organisations that will disappear if the asset transfer does not take place, with the whole thing falling apart. That is why having some mechanism to ensure that asset transfers do not drag out might be appropriate. I would be interested in views from other witnesses.

**Councillor Alston:** If a council asset was being transferred, our ward manager would be the key point of contact. I would hope that people would not be bounced around between different officers.

If an asset that had been declared surplus to requirements was being transferred, there would be regular reporting and a clear categorisation of the stage reached. Such transfers are subject to monitoring, so it should be possible to see what is happening.

We often find that the issue is the other way round: people express an interest and then need time to form the body to seek the funds. However, once they know that they can acquire an asset, the transfer needs to move quickly. We would expect it to be reported to ward members at ward business meetings and to be monitored through our resources committee, which monitors all asset transfers.

**Sarah-Jane Laing:** When it comes to planning and other matters, there is some evidence that, once we introduce an arbitrary timescale for decision making, the likelihood is that the decision will be no. We have to be careful that we do not create a position that prevents Sandra Holmes and others from having the required flexibility.

**Mark McDonald:** To be clear, I propose not a time limit within which a decision must be made but a deadline by which, if a decision has not been reached, a report should be made on why it has not been reached.

**Sarah-Jane Laing:** I would fully support that approach.

**Cameron Buchanan:** The Scottish Land & Estates submission has an awful lot of stuff about "abandoned and neglected land". I did not follow your line on that. It is a very long submission on that point and full of legalese. Do you approve of the bill's provisions? The submission was difficult to follow.

**The Convener:** Again, that concerns part 4, which we are not considering. If you could be brief, Ms Laing, we will feed your response to the Rural Affairs, Climate Change and Environment Committee.

**Sarah-Jane Laing:** I will have a session with the Rural Affairs, Climate Change and Environment Committee about that next week. We have a number of concerns about the issue, the main one being that we want to see an explicit definition of "abandoned or neglected" in primary legislation.
Cameron Buchanan: Okay, thank you.

The Convener: You will discuss that with the Rural Affairs, Climate Change and Environment Committee next week.

Sarah-Jane Laing: I will.

The Convener: The Highlands and Islands transport partnership has come up on a number of occasions today. How does it fit in with your community planning partnership? Is there a good relationship between the various bodies and HITRANS in the delivery of what local communities want and need?

Councillor Alston: The council and HITRANS have a good relationship but I am not aware of HITRANS being mentioned at the community planning board.

The Convener: It does not take part in your community planning partnership.

Councillor Alston: No, not at the board—or senior—level.

The Convener: What about at lower levels? Does the CPP have a transport committee?

Councillor Alston: HITRANS would work closely with the council. There are a number of situations in which we rely on one partner to feed in views from another organisation. For example, the Forestry Commission does not sit at the table in our community planning partnership, but we expect Scottish Natural Heritage to co-ordinate the expression of views. If we were looking at an economic development issue in which transport was important, we would look to HIE to feed in from the consultation.

The Convener: Should regional transport partnerships have a more prominent role in community planning partnerships? I will ask HIE the same question in a second.

Councillor Alston: I do not know what the right answer is. We have to have a mechanism by which views can be fed in, to help the partnership to work. The approach applies in other areas as well.

The Convener: Does HIE have an opinion?

Rachael McCormack: Physical connectivity and digital connectivity are two long-standing challenges facing our remote and rural areas. Any step towards greater engagement and bringing agencies, whatever their focus, closer to communities’ needs is positive.

The Convener: Thank you. I thank you all very much for your attendance and your evidence.

Meeting suspended.

On resuming—

The Convener: I welcome our second panel. We have with us Duncan Martin, secretary of Oban community council; Alasdair Nicholson, chief executive of Voluntary Action Lochaber; and Patricia Jordan, chairman, the Nevis Partnership. Would you like to make opening statements before we move to questions?

Alasdair Nicholson (Voluntary Action Lochaber): I would like to, if I may.

The Convener: On you go.

Alasdair Nicholson: I have given your staff a written submission, some of which might be pertinent to the other committees that you mentioned earlier; I hope that the comments might be passed on where they are relevant to other discussions. If I may, I will highlight one or two particular points.

Overall, we do not believe that legislation empowers communities. We believe that communities empower themselves. However, legislation is important in facilitating and enabling communities to do more, particularly taking into account asset transfer and the extension of the right to buy. All of those are important.

Earlier on, you heard evidence about changing the culture of how things are done, and that is important if we want to maximise community benefit in the longer term as these things play out.

We draw attention to the role of third sector interfaces. They should be named bodies in community planning.

Empowerment must be about more than consultation, particularly in tackling rural poverty, marginalisation and regeneration. We welcome the idea of participation requests to enable communities to have a say in the design and delivery of public services, but that should have participatory budgeting as a follow-up requirement to help to give that participation teeth.

I also draw the committee’s attention to some of our current activities in Lochaber in partnership with the British Council. That is establishing a cohort of people who have gone through a programme that is about capacity building, helping people to identify need in their area and having dialogue and discussion that enables the participants to look at the development of social action plans. That is a way of delivering real community empowerment to individuals. There is
We believe that empowerment begins with people, their education and their organisation.

Patricia Jordan (The Nevis Partnership): I thank the committee for giving me the opportunity to speak today. As well as being the chair of the Nevis Partnership, I am a community councillor.

Part 2 of the bill places community planning partnerships on a statutory footing. I welcome that, but I feel slightly uneasy at the size of the partnerships being formally defined. I would like some scope for smaller community planning units. In that respect, the committee might be interested to know that around eight years ago the Lochaber area was commended by Audit Scotland for its handling of community planning. We took the plans of all the public bodies, extracted the Lochaber elements, ran a series of community meetings, rewrote the plan and submitted it back to the public bodies. That was real community engagement. At that time, each of the main public bodies had senior staff based here who, as part of the Lochaber partnership, could sit around the table with community activists, and we had a good chance of knowing what was going on and could play our part.

I am therefore disappointed and surprised to find that no community bodies appear in either part 2 or schedule 1, which lists the community planning partners. If you were serious about community empowerment, it would be perfectly possible to include in the bill something along the lines of “any regional association of community councils which is situated in the area of the local authority”, or something similar. In the Highland Council area, that is likely to refer to no more than six or eight community bodies, and given that there is three times that number of public bodies, we could easily be accommodated. That would also give some legitimacy to the creation of the sort of smaller community planning units that I have just suggested. The planning of public services with the community should be the norm, not an add-on.

Overall, it is disappointing that the bill contains no specific proposals to change the status of community councils. We need to invigorate community councils, which after all are the first link with the community. At the moment—as I think we have heard—community councils are a mix of the good, the bad and the thoroughly indifferent. [Interruption.] Excuse me, convener—I do not have too much more to say.

Although we have statutory status, we do not have statutory powers, and that is a major reason for our disenchantment. As I am sure you are aware, Scottish community councils are not eligible for lottery funding. When the United Kingdom lottery legislation was brought in, parish councils in England and Wales were debarred from lottery funding because they were able to raise money through the rates; Scottish community councils were simply swept along with that, even though we were unable to do the same. That injustice needs to be corrected. That is just an example, but I think that having tangible assets and powers would re-energise community councils.

Part 3 of the bill encourages communities to play a stronger part in their communities. Of course, I welcome that, but I would welcome even more some way of recompensing activists—or, indeed, their employers—for having to take time off work, in the same way that jurors are recompensed. As for part 4, which extends community right to buy to all of Scotland, you will be aware of excellent examples of community ownership in Lochaber, and all communities need that kind of encouragement and opportunity.

As I am representing my own community council and the association of Lochaber community councils today, I cannot speak for others but as one of the 200 delegates from community councils, community groups, grass-roots activities and public bodies from the north, south, east and west of rural Scotland who attended the inaugural meeting of the Scottish Rural Parliament from 6 to 8 November in Oban, I can quote from many of those activists who I met over those three days. Their comments included:

“No power to exercise local rights”,
“Funding criteria doesn’t always fully fit local needs and timescales are often problematic”,
“Growing distrust of solutions/answers”,
“Lack of meaningful local democracy”,
“No control or influence”,
“Communities need to decide and deliver more for themselves”,
“Please stop using political terms and speak in plain language. No need to use words such as charrette”,
“Are we strengthening or weakening local democracy”,
“Huge disparity among CCs and no young people joining”, and
“Communities need to express their concerns and ambitions.”

Over the past year, the Scottish rural action group has been engaged in advisory meetings throughout rural Scotland, culminating in the inaugural meeting of the Scottish Rural Parliament in Oban, which was felt by all to be a really important step forward for rural groups. On the Saturday morning, delegates gave a very positive and resounding vote for the action group to go
ahead to create an assembly, recruiting members early in 2015, and to arrange the next Scottish Rural Parliament meeting in 2016. The overarching view was the need to safeguard rural communities.

I have just one more bit to say, convener.

The Convener: I am telling you, Patricia—this is longer than the average MSP speech. On you go, though.

Patricia Jordan: I do not get this kind of opportunity often.

There was overwhelming agreement on our shared concerns for the future and our need for engagement and interaction, strengthened by a single voice. There was also whole-hearted agreement that it is time for a national conversation on local democratic renewal as a first step towards a radical reform of local government that will bring power much closer to local communities. If there is a serious commitment to a radical strengthening of democracy—I believe that there is—I think that that can be achieved only by considering community councils, community associations and community groups as planning partners. May I be so bold as to add that although the Scottish Rural Parliament is only in its early days it, too, should be given consideration.

Thank you very much.

The Convener: Thank you. We will hear from Duncan Martin next.

Duncan Martin (Oban Community Council): We seem to be sticking to a very short agenda, which—if I have understood you correctly, convener—is all about part 4. Is that right?

The Convener: I would prefer it if we did not touch on part 4 to a huge degree.

Duncan Martin: I think that our submission to the committee reflects the fact that our community council is fortunate to have a lawyer and an accountant who is a director of Community Land Scotland. If I move away from what has been written here, I make it clear that I am speaking for myself rather than for my democratically elected community council, which is having by-elections at the moment. I should add that those by-elections are being contested and that most of the candidates are young people, which will substantially reduce the average age of the community council. We are moving forward in that respect.

I found the contributions in the previous session very interesting. As Alasdair Nicholson made clear, empowerment is not something to be given out by those at the top but something that communities need to take. In a democracy, individuals and communities cede powers to the centre, and they can recall them at any time. The powers are ours to take back if we feel that they are not being used properly.

I note that Argyll and Bute has a community planning partnership, but Argyll and Bute itself is not a community but an administrative area. The same is true of Highland. Technically speaking, Argyll and Bute would have, I think, 67 community councils, if they all existed, but it has more communities than that; some communities share a council. It is very convenient for bureaucrats—if that is the right word—to think about services on Mull. The people of Mull might share a community council, but they do not consider themselves a whole community; the Ross of Mull, for example, is quite separate from Tobermory. The people on the Ross of Mull never go to Tobermory; if they want to go shopping, they come to Oban.

As has been said, communities are self-defined. Sarah-Jane Laing made it clear in the previous session that it appears to people that community planning and community planning partnerships come from the top down, not from the bottom up. That is the crucial part of the empowerment agenda. In some ways, things are easier in the small communities, where a few activists can start something small; it is probably more difficult in slightly larger settlements such as Oban, where you have to ensure that everyone is on board or that the whole town is enthusiastic about whatever it is. However, it is really the way we have to go.

Solutions to almost every problem lie within the community rather than outside it. As was mentioned earlier, consultation tends to take place after officials have put together options to be appraised and this, that and the next, and they are most unlikely to accept that they have wasted their time creating those options and to start from scratch again with what the community actually wants, needs and feels would deliver a service. We have to get back to basics and grass roots.

18:45

The Convener: Thank you. You have certainly taken up the opportunity with your opening remarks, folks—I give you that. [Laughter.]

I am interested in what Patricia Jordan said about the Lochaber partnership plan. Am I right in saying that you said that Audit Scotland praised that plan?

Patricia Jordan: Yes.

The Convener: How long ago was that?

Patricia Jordan: It was eight years ago. It was when we had the—

The Convener: Was it a full Audit Scotland appraisal?
Patricia Jordan: Yes. We had excellent local partnership working with the community. There was—dare I say it?—an element of trust, because everyone was round the table and everyone was talking. There was a real feeling that it was bottom-up working. At present, we are looking at the Scottish Government and the local authority being involved, and by the time it comes down to the community there is an element of “also”.

I think it was stated earlier that organisations and public bodies sit round the table and it is a fait accompli. People feel that they are presented with plans that have already been agreed and decided on and it is just a tick-box exercise to get the community to agree.

The Convener: Can I ask you—maybe you are not a boring anorak like I am—whether you have read any of the Audit Scotland reports on community planning partnerships?

Patricia Jordan: I have to answer that honestly. No.

The Convener: Well, you are a wise woman in some regards. [Laughter.] I think that the committee may have to look at the report on Lochaber and compare it with some of the recent reports on community planning partnerships, because there may be some lessons to be learned there.

Patricia Jordan: Yes.

The Convener: John Wilson has a supplementary question.

John Wilson: What has happened in the eight years since the Audit Scotland report? Has the plan been enacted or have things just fallen apart? Do communities feel that they are no longer actively engaged?

Patricia Jordan: Over the years, we have had changes in the ways in which local authorities work. I cannot remember when it was, but there was a change in the way that local areas are run, and that made a big difference.

I think that everyone—the local authority, the councillors and the community councillors—wants to work together and is looking to do that, but somehow the system is broken. That is the best way I can explain it. The communications are lost and we are not having the same meaningful discussions that we had before about community needs.

The Convener: What has changed? Highland Council was in existence eight years ago. Were the area committees in place then?

Patricia Jordan: Lochaber has two wards and we have seven local councillors. They go to meetings in Inverness, where there are 70-odd councillors. The planning structure has changed—

The Convener: But that was happening eight years ago. What has happened in the meantime?

Patricia Jordan: When was the change? I think that it was in 2007. That was—

John Wilson: The change in 2007 was just to transfer from wards with individual members to multimember wards. Was that such a significant change?

Patricia Jordan: I can speak only for Lochaber, but it was a significant change locally. It was almost as if we lost local democracy at that point. Partnership working may have worked for the agencies, public bodies and services, but the community became disengaged from the process. Whether it was because of disenchantment, a feeling of loss of control, a feeling of loss of empowerment or whatever, communities have become disengaged.

At the end of last week, I sat at the table at the district partnership meeting. All the public bodies were there. I think that there were two representatives from the community—me and Alasdair Nicholson. I feel that we are questioning everything that is being said and everything that is being agreed, asking where it has come from, what the reason is for it and why it is being done. It is top down rather than bottom up. That is not always the case, but that is the feeling. That is the perception.

John Wilson: Yes, and you are expressing that perception today. The committee is trying to understand the move away from what the Audit Scotland report said was an excellent example of partnership working with the community. You highlighted that the change in the electoral system changed that partnership regime.

I am trying to understand the difference between the situation before 2007, when you had seven members who went to Inverness and participated in the decision-making process, and the situation in May 2007, when you had seven members who were elected in a multimember ward system who went to Inverness to make decisions. I am trying to fathom how that drastically—in your opinion and your perception—changed the partnership working that Audit Scotland saw as excellent prior to 2007 such that it is now seen as being broken, dysfunctional and not working in the way the communities would wish it to work.

Patricia Jordan: I would not say that it was drastic. Seven years is a long time, and in that time we have had budget cuts, changes in administration, changes in staff and changes in the agency. The community does not change. Everything changes round about it.

John Wilson: So it is about more than just the elections that took place.
Patricia Jordan: Oh, yes.

John Wilson: It is about the budget cuts, the changes in administration and the way it works now compared with eight years ago.

As I said, we are just trying to understand the change from a situation in which you had an excellent report that said that things were working, to a situation now in which the community feels that it is disengaged from the process. Does Alasdair Nicholson or Duncan Martin have a view on that?

The Convener: Can we go to Duncan Martin first? Do you think that the multimember ward system changed things in Argyll and Bute?

Duncan Martin: The Boundary Commission for Scotland, in its wisdom, decided to cut Oban in two. Part of Oban is in one ward and part of it is in another. As I think you are hinting, the issue is not so much multimember wards but that the thinning out of local government structures has meant that there is less empowerment of staff locally, such as in Oban, than there was before. More decisions are being taken at the centre and there is less empowerment of staff locally because there has been a thinning out of the number of layers of management. That may be the issue.

Argyll and Bute is a peculiar place. Highland at least has Inverness as a centre—the black hole into which everything goes. In Argyll and Bute, we have no single centre. Indeed, the council is run from Lochgilphead, which is one of the smaller places. The settlements of Oban, Helensburgh, Dunoon, Rothesay and Campbeltown are scattered round the periphery, and we have no centre. There is an issue to do with local empowerment of council staff.

Alasdair Nicholson: I cannot say what the position was eight years ago because I was elsewhere at that time, but since I have been here, in the past year, my impression has been that the partnership work in Lochaber is probably better than that in other parts of the Highlands. There is quite a strong partnership, certainly on health and wellbeing, and the chamber of commerce, which my organisation is a member of, has been involved in economic development workshops that feed into the local plan—there is a local Lochaber plan.

Of course, all those things can be improved. Apart from the mechanisms, one element on which progress needs to be made is the culture of the interaction between the agencies, the community and other organisations. A lot more work is required to get that right. The engagement of community organisations and—

The Convener: Can I stop you there for a second? Do you think that legislation will change the culture?

Alasdair Nicholson: It will not by itself, but it helps to create the framework. Where it places obligations and duties is part of the change of culture that is required. It takes a long time to make some of those changes. The support that is needed to enable the kind of participation that we require will take a lot more effort and a longer timeframe. We have to move beyond consultation to the bit about participation, public social partnerships and designing and building alternatives with communities. That is even more important in times of austerity.

To pick up on a point from the earlier panel, the transport initiative that was mentioned—

The Convener: Can we come back to transport? I would like to stick to one issue at a time.


John Wilson: I have no further questions, convener.

Mark McDonald: Based on the evidence that the witnesses have given so far, would it be fair to say that your view is that we need a flexible approach to community planning that takes greater cognisance of rural and remote areas? Although community planning partnerships in fairly compact urban areas such as Aberdeen or Glasgow might be able to incorporate the views of the communities there, in places such as Highland that are extremely sparsely populated and where there are great distances between communities, a more flexible approach to community planning should be taken.

Alasdair Nicholson: Some members of the public who have participated at the Lochaber partnership come from Strontian, Lochaline and other areas that involve journeys of 30 or 40 miles, including using the Corran ferry, which is one of the most expensive sea crossings in Scotland, if not Europe. Those individuals are trying to participate and they are making a big effort.

In my view, the work that needs to go on is below community planning and below the level of the Lochaber plans, so that things are not just jammed in at one level. One of the best ways to encourage and develop community involvement is through some of the other measures in the bill, such as those on asset transfer and the right to buy. A range of things need to be done to enable communities to do more themselves and to have the resources to do that. That requires a lot more capacity building and a lot more support for communities.
Some communities might have people who know the system and who can do things, but others are weaker in that regard and might be less well equipped for that, so they will need to go on a longer journey. Some of the effort and support need to be targeted to ensure that smaller communities that do not have the mix of skills that other places have do not fall behind but are encouraged to become active and engaged, so that they can empower themselves and do more.

If we want to combat poverty and tackle all the other issues that exist, we need not just the efforts of one agency but the combined efforts of all the agencies, so we need to get everything pointing in the right direction. Community planning is supposed to do that but, as a whole, it has been far too top down.

Mark McDonald: I am interested in hearing the views of Patricia Jordan and Duncan Martin on that point.

Patricia Jordan: At the end of the day, community planning comes down from Inverness, which is difficult. There is an element of fragmentation in this area. Lochaber was one area with seven councillors, but we are now split into two areas, as there are two wards, which means that we cannot go forward with the united voice that we had in the past.

Mark McDonald: You say that Lochaber was united in the past, but I presume that there were individual council wards in the area, each with its own councillor. You now have two multimember council wards and seven councillors representing them. You have the same number of councillors, but you just have fewer council wards. Hypothetically, that ought to make it easier to present a united front because, rather than seven wards, you have two.

19:00

Patricia Jordan: No, we had one council ward with, I think, eight councillors. We now have two wards with seven councillors. Is that right?

Mark McDonald: No.

Patricia Jordan: How am I putting it wrongly?

Mark McDonald: Pre 2007, there would have been individual council wards with one member for each ward. Since 2007 we have multimember wards.

Patricia Jordan: Okay—I know what you are saying now. Sorry.

Mark McDonald: Let us take councillors out of the equation—to be honest, most people would be happy with that. I am talking about how the community is represented and how community planning relates to communities. Leaving aside the elected member layer, does community planning as it is done at present take enough cognisance of sparsely populated areas such as Highland, where a huge area is covered by one community planning partnership? Should community planning be more flexible in such areas compared to the approach in places such as Aberdeen, which I represent?

Patricia Jordan: Highland Council covers a massive area with huge diversity in culture and geography, and that needs to be considered. That is one reason why I said that we need to bring back local planning into local areas. In an area as wide as Highland, decisions for the local areas cannot be made from Inverness. We have huge diversity even within Lochaber—we have Fort William, which is urban, as well as islands and remote rural areas. That creates a massive problem with regard to services across the board, such as transport and health. That is one of our difficulties.

One of the most shocking things that I have heard today is that HITRANS is not a member of the community planning partnership.

The Convener: We will come back to HITRANS.

Mr Martin, do you want to comment?

Duncan Martin: I do not have anything to add. Alasdair Nicholson made a lot of points for me, so I will leave it there for the moment.

Mark McDonald: I am aware that we have a lot to get through before we conclude, so I will ask a final question that I posed to the previous panel on points of contact and the time that is taken for community asset transfers. If a community organisation seeks to take on an asset from a council or a health board, should it have an identified officer to contact rather than having to go round the houses? Should there be an expected time that an asset transfer should take, with a report going to the board or to councillors if the process goes beyond that time, to explain why it is taking so long?

Duncan Martin: I have not had any experience of that, but we have one person in the council whom we speak to. I do not know whether there would be a problem if we were to try to negotiate assets from the health board or other organisations such as Scottish Water. I do not have any experience of that, so I cannot say whether it is a problem.

Patricia Jordan: If there is to be meaningful strengthening of community voices and empowerment of communities, it is important to ensure that communities have a contact and know where to go. There has to be clarity about how they are to be empowered. I talked about looking
at the system and the structures that are broken. Having a contact is a big part of the issue. I know that, at times, community councils and the Nevis Partnership need a contact in Highland Council. If we can go immediately to that person and either be directed to somebody else or advised where to go or what to do, that saves time and energy and prevents the frustration and anger that often come from going round the houses. It is important that there is a contact in place and that community activists and groups or community councils are aware of that.

**Alasdair Nicholson:** As has been mentioned, time and communication and dialogue are important factors. One thing that is missing is identification of assets that might be available for disposal by public bodies such as local authorities and health boards. People should be enabled to get that information. That should be a two-way process. Communities need to be able to inquire about assets that they have already identified an interest in and they need to be able to get a response.

Another issue is that a council that wishes to dispose of a building or a piece of land might communicate with only a very narrow section of the community, and that communication might not be transparent to everybody. I would argue for an accessible online public register. There should be an obligation on public authorities to log or register assets—buildings, land or whatever—that might be available for community use so that communities could get more forewarning and could begin to think at an early stage about whether they could use any of those assets to further their ambitions. At the moment, that is missing from the equation. That would go a long way towards stopping people being dependent on the views and assumptions of one particular officer. That element needs to be given substantially more thought. That could link in to things such as the right to buy.

The way in which the asset transfer process works at the moment is inadequate. I have been discussing with Highland Council a building that is not being used. It might take a considerable time to come up with a business plan for such an asset, particularly if a lot of technical data is required, so I think that there needs to be some flexibility. If I had not noticed that that building was already on sale in the public arena, I would not have known about it. A duty needs to be placed on public bodies such as local authorities to get that information online as early as possible so that the community has access to it, in addition to individuals being able to write to inquire about particular assets. At present, such inquiries may or may not be ignored.

**The Convener:** The minister has already indicated to us that he is likely to favour a register, so you might get your way.

**Cameron Buchanan:** At a meeting earlier, we heard that HITRANS is not represented in community planning in the region and that, in many instances, it does not co-operate. Could you comment on that? As far as its role in the integrated transport system is concerned, HITRANS does not seem to be functioning very well and is being criticised.

**Alasdair Nicholson:** My organisation has been involved—along with HITRANS, Highland Council, NHS Highland and the Scottish Ambulance Service—in a partnership in Lochaber that is aimed at providing more co-ordination, support and advice to people who need transport, who are often people with health needs.

**The Convener:** What is HITRANS's involvement in that?

**Alasdair Nicholson:** It is one of the partners on the top-level board. I have represented Voluntary Action Lochaber, and HITRANS has been a partner along with the other agencies that I mentioned. The Inverness board has also discussed transport issues that relate to other initiatives. In a sense, that is a partial public-social partnership. HITRANS has certainly been involved at that level, even if it has not been involved in other community planning initiatives.

**Cameron Buchanan:** Is HITRANS represented in other planning activities?

**Alasdair Nicholson:** I can answer only from my knowledge and experience. I know that HITRANS is involved in that piece of collaborative work, so I cannot criticise it on that side of things.

**The Convener:** I think I know the answer to this question. Do you think that regional transport partnerships should be involved formally in community planning partnerships?

**Patricia Jordan:** Very definitely, I do—especially when we consider the problems that we have had on the A82 and the work that local groups and the A82 campaign group have done over the past 10 years. There has been single-line traffic on that road for decades.

**Duncan Martin:** Yes—regional transport partnerships should be involved. In Oban, we are—technically—part of the Strathclyde partnership for transport area, although the A82 falls within the Tayside and central Scotland transport partnership area, in Stirling Council's area. We wander from one transport partnership to another. Admittedly, I have seen Frank Roach from HITRANS in Oban far more often than I have ever seen anyone from SPT. We are a very minor
fish in SPT’s pool, so HITRANS is of more relevance to us.

The Convener: The former chair of HITRANS was from Argyll and Bute Council and also sat on the SPT executive, which was an extremely strange situation.

Duncan Martin: Yes. I am not quite sure how Councillor MacIntyre ended up on HITRANS.

We are right at the boundaries, and we do not see much of any of the regional transport partnerships. It is clear that they ought to be involved in community planning partnerships.

Alasdair Nicholson: I am just thinking about the principle of subsidiarity. If that was strengthened and applied, some of the answers would probably follow.

The Convener: I thank the witnesses very much for their evidence, which has been extremely useful.

The next committee meeting will be held at 9.30 am on Wednesday in the Parliament’s committee room 1.

Meeting closed at 19:12.
LOCAL GOVERNMENT AND REGENERATION COMMITTEE

EXTRACT FROM THE MINUTES

1st Meeting, 2015 (Session 4)

WEDNESDAY 7 JANUARY 2015

Present:

Cameron Buchanan         Willie Coffey
Anne McTaggart           Alex Rowley
Stewart Stevenson (Committee Substitute)  Kevin Stewart (Convener)

Apologies were received from Clare Adamson and John Wilson (Deputy Convener).

Community Empowerment (Scotland) Bill (in private): The Committee considered a draft Stage 1 report, and agreed to continue consideration of its draft report, in private, at its next meeting.
Present:

Cameron Buchanan        Willie Coffey
Cara Hilton             Alex Rowley
Stewart Stevenson (Committee Substitute)
John Wilson (Deputy Convener)

Also present: Sandra White

Apologies were received from Clare Adamson.

**Community Empowerment (Scotland) Bill (in private):** The Committee considered its draft Stage 1 report and agreed to consider a revised draft, in private, at its next meeting.
Present:

Clare Adamson  Cameron Buchanan
Willie Coffey  Cara Hilton
Alex Rowley  Kevin Stewart (Convener)
John Wilson (Deputy Convener)

Community Empowerment (Scotland) Bill (in private): The Committee considered a draft Stage 1 report. A change was proposed and disagreed to, (by division). The Committee agreed the report for publication.
WRITTEN SUBMISSIONS TO THE LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Upper Tweed Community Council
Currie Community Council
NHS Grampian
Community Resource Network Scotland
Selkirk Regeneration Company
Dr Michael Pugh and Dr John Connolly
Love Milton
Maybole Community Council
Ron Smith
Care Inspectorate
Nourish Scotland
Michael Gallagher
John Randall
Selkirk Regeneration Company (Supplementary)
Carnegie UK Trust
Friends of Midmar Inn Community Company
Dollar Community Council
Joint Submission from Barnardo's Scotland, Oxfam Scotland and Poverty Alliance
Argyll and Bute Council
Scottish Retail Consortium
Midlothian Voluntary Action
Alison Johnstone MSP on behalf of the Green MSPs
Portmoak Community Council
Scottish Enterprise
Equality and Human Rights Commission
Voluntary Health Scotland
Scottish Natural Heritage
Oban Community Council
Scottish Health Council
Mike Vickers
Scottish Ambulance Service
Reform Scotland
Children 1st
Malcolm Combe
Meldrum Bourtie and Daviot Community Council
Scottish Council for Development and Industry
North Ayrshire Council
Steve Rolfe
The Royal Incorporation of Architects in Scotland
Pollockshaws and Eastwood Community Council
The Coalfields Regeneration Trust
Leslie Howson
Helensburgh Community Woodland Group
Polmont Community Council
NHS Tayside
Scottish Community Development Centre
Community Health Exchange
Scotland's Rural College
Anonymous
Pinsent Masons LLP
Glasgow Life
Unison Scotland
Lynne Palmer
Kincardine & Mearns Community Planning Group
Scottish Council for Voluntary Organisations
Fife Partnership
Cronberry, Logan and Lugar Community Council
Homlehill Community Buyout
Community Land Scotland
SEPA
Community Justice Authorities
NHS Health Scotland
Scottish Community Alliance
Edinburgh compact partnership and Edinburgh’s third sector strategy group
Ardrishga Community Council
Community Learning and Development Managers Scotland
Professor Annette Hastings
Plunkett Foundation
Community Woodlands Association
Centre for Scottish Public Policy
Assemble Collective Self Build
Health and Social Care Alliance Scotland
South Lanarkshire Council
CLD Standards Council for Scotland
The Poverty Alliance
Museums Galleries Scotland
Children in Scotland
Historic Houses Association for Scotland
Voluntary Action Scotland
Linlithgow and Linlithgow Bridge Community Council
Fossoway and District Community Council
The National Trust for Scotland
The Church of Scotland General Trustees
Development Trusts Association Scotland
ERS Scotland
Highland Council
Barnardo’s Scotland
HIV Scotland
Community Planning Aberdeen
Scottish Federation of Housing Associations
Inverclyde Council
Grow Your Own Working Group
Glasgow and West of Scotland Forum of Housing Associations
Scottish Woodlot Association
Inclusion Scotland
Glasgow Third Sector Forum
Volunteer Scotland
Keep Scotland Beautiful
Social Enterprise Scotland
Scottish Allotments and Gardens Society
sportscotland
Highlands and Islands Enterprise
Regional Transport Partnerships
Fortrose & Rosemarkie Community Council
Church & Society Council of the Church of Scotland
East Ayrshire Council
Scottish Land & Estates
Maryhill and Summerston Community Council
Big Lottery Fund
SOLAR
Scottish Fire and Rescue Service
NHS Ayrshire and Arran
Co-Cheangal Innse Gall
Lynne OKeefe
Glasgow City Council
West Dunbartonshire Council
Scottish Youth Parliament
Federation of Small Businesses Scotland
Cairngorms National Park Authority
NFU Scotland
Aberdeenshire Community Planning Partnership
Angus Community Planning Partnership
Scottish Property Federation
Skills Development Scotland
Comhairle nan Eilean Siar
Federation of City Farms and Community Gardens
Oxfam Scotland
Chartered Institute of Logistics and Transport
Brodies LLP
Engage Renfrewshire
Community Land Advisory Service
Moray College UHI
Police Scotland (Aberdeenshire and Moray Division)
Moray Council
tsiMORAY
Co-Operatives UK
Evangelical Alliance Scotland
Cathy Vincent
Forest Policy Group
Scottish Sports Association
Orkney Islands Council
Perth and Kinross Council
Strathblane Community Council
Faith in Community Scotland
Summerhill Community Centre
RTPI Scotland
North Lanarkshire Council
The Childrens Wood
Planning aid for Scotland
Dumfries and Galloway Strategic Partnership
Scottish Disability Equality Forum
Commission on Strengthening Local Democracy
The Law Society of Scotland
Accounts Commission for Scotland and Auditor General
Scottish Wildlife Trust
COSLA
Stromeferry and Achmore Community Council
Aberdeenshire Council
Kousar Javaid
Chartered Institute of Housing Scotland
Permaculture Scotland
Scottish Water
Registers of Scotland
Environment LINK Marine Taskforce
Dear Sirs,

I should like to draw your attention to the need for the Bill to require local authorities to give local organisations which are backed by their Community Council an opportunity to exchange views face to face with the relevant committee members before decisions are made.

Earlier this year the Scottish Borders Council (SBC) was faced with the necessity of making repairs to the historic Carlowse Bridge, Tweedsmuir, which has been damaged by timber traffic. The Tweedsmuir Bridge Action Group and the Upper Tweed Community Council favoured a particular option, which would have installed an alternative bridge for timber traffic, leaving the historic bridge needing less extensive repairs and providing a much safer access on to the main road for timber lorries. Delegates from the two organisations offered to meet the SBC’s councillors before the meeting where they took the decision, but this was refused. The councillors making the decision also declined to visit the site, even though a site visit had been recommended by another council committee. The decision was then made to adopt a different option from the one favoured by the local community. It has subsequently transpired that the option adopted will cost the SBC much more than they estimated at the time the decision was made, but they have decided to proceed regardless.

Whether or not the decision made was the best one - and there are increasing doubts about it - the process followed by the SBC has left the local community with a strong feeling that the very significant amount of work which they did on their preferred option was undervalued and not properly understood. A face to face meeting would have cleared up any misunderstandings, on either side. As it is, the local community believes that it is not worth working hard to help the SBC to reach the best decisions on any important matter in future, unless the decision processes are changed.

Yours faithfully,

C.G. Lewin

Chairman, Upper Tweed Community Council
As Chair of Currie Community Council I welcome the direction you are taking but, there is always a but, one main concern remains. Community engagement is very patchy at best with lots of councils withering on the vine with an increasingly elderly pool of the SAME faces. We all need to get better at engaging other generations. In Currie we are incredibly lucky and have a very diverse and lively group of people but this is not necessarily the norm. We are very focused in helping our community and with mostly new members there is, at least at present, no internal politics or cliques.

However my concern remains..... at most meetings I attend it is generally the same faces saying the same things. For this to be a legitimate platform we must first engage a larger audience an inclusive voice not exclusive

Allister
Chair
CCC
NHS GRAMPIAN CONSULTATION RESPONSE

The Scottish Parliament has issued a call for evidence to inform its consideration of the new Community Empowerment (Scotland) Bill. The five areas they are focusing on are:

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

NHS Grampian believes that the Bill will support the empowerment of communities in its provisions which support:

- Community ownership of land and assets;
- Removal of barriers that prevent communities taking on more responsibility for assets;
- Potential for communities and community groups to own and deliver key local services to that population, close to home, and based on clear knowledge and understanding of what communities want;
- Enablement of community capacity building, resilience and wellbeing and the ability to support focused change in disadvantaged communities or areas of deprivation;
- Direct engagement of communities with Public Sector organisations and Community Planning Partnerships and ability to directly influence and suggest improvement and change in services; and
- Potential for innovation and sustainability of local services through local ownership.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

Potential Benefits to Public Sector Organisations

- Empowered, enabled communities with ambitions to take more responsibility for local assets and potentially service provision;
- Public Sector organisations being able to target, through the provisions in the Public Bodies (Joint Working)(Scotland) Act, community empowerment at some of our more disadvantaged communities, supporting their development, capacity and resilience;
- Ability to engage in more productive dialogue with communities on the potential innovative use of assets to deliver and drive modern, 21st century models of health and care;
- Supporting development under Self Directed Support Act and ambitions for local people to develop and manage their own care and support and also support social entrepreneurship;
- Strengthening the role of the Community Planning Partnership and potential, through that for innovation through partnership working and with input from communities

Disadvantages / Challenges to Public Sector Organisations

While welcoming the policy intention of the draft Bill NHS Grampian would note its concerns regarding potential disadvantages and challenges for Public Sector organisations and for NHS Boards in particular:
Significant capacity will be required of NHS Boards and other public sector organisations in relation to supporting the processes enabled by the Bill. For example, organisations will be required to put in place processes to manage community requests to improve outcomes of services. The parameters for such requests has not been set out in detail in the Bill and we would welcome more guidance on what constitutes an ‘appropriate’ community body and what is ‘reasonable’ in terms of refusal of such a request. Similarly, the provisions of the Bill enable community organisations to request and receive ‘detailed’ information about a property that they are interested in. This may include detailed information about the energy efficiency and maintenance costs. This would again require a process to be put in place and for current NHS Board Estates capacity to be directed at providing such information, at a potential cost to maintenance and delivery of Board outcomes and target. Finally, in relation to this section—capacity and processes will also be required in relation to Public Bodies having to assess community bodies’ proposals. As set out in the policy memo, this work would include: ‘economic, social and environmental benefits of different proposals.’ and goes on to conclude: ‘The authority must agree to the request unless there are reasonable grounds for refusal.’ NHS Grampian would note concern of the untested nature of this Bill and concern that the extent of work required by Public Sector organisations, with no additional resources to manage it, would place significant additional pressure upon them and challenge their ability to deliver core work and statutory targets. We would reiterate the need for guidance on what would constitute ‘reasonable grounds for refusal’;

This is a time of far reaching change in Public Sector organisations, especially as we move to implement Integration under the Public Bodies (Joint Working)(Scotland) Act and it would be imperative to ensure that there was no duplication of effort and reporting. The Public Bodies Act prescribes actions around locality work, prescribes groups that must be engaged with in the development of Integration Schemes and Strategic Plans and there is a risk that this sits in parallel to, rather integrated with, the intention of the Community Empowerment Bill. Public Sector organisations will need guidance on how these aligned policies are intended to interact to ensure best outcomes.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

All communities are different and have different capacities and capabilities. One challenge will be to ensure that all communities, especially those that are disadvantaged and which don’t have the confidence or capability to engage with the policy and local Public Sector organisations are supported and enabled to do so. NHS Grampian recognises that a lot of work in this area is already being done, both in NHS Boards, within Councils and across other areas of the Public Sector. Community Planning Partnerships are potentially well placed to support this agenda, as are the emerging Integration Joint Boards which have a duty to engage with local communities. The Bill, and associated guidance can support this work and focus through sharing good practice and research in relation to what organisations can do to maximise community capacity and capability.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?
See responses at section 3 and 4.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

NHS Grampian has no specific response to these sections.
COMMUNITY EMPOWERMENT (SCOTLAND) BILL

Call for written evidence as part of Stage 1 consideration of the Community Empowerment (Scotland) Bill.

A. Background to CRNS

1. **Community Resources Network Scotland (CRNS)** represents reuse, recycling and repair organisations across Scotland on issues of sustainable community resource management.

2. The majority of members of CRNS are social enterprises managing waste resources at a local level through recycling, re-use, composting, waste reduction and waste education activities.

3. Members prevent tonnes of valuable product and materials from ending up in landfill, create local jobs and other economic opportunities, and typically work to help those on low incomes or who are disadvantaged.

4. The CRNS State of the Sector survey for 2014 shows that:

   a) Third Sector re-use and recycling activity was reported in all 32 local authority areas. The greatest concentration of activity was in Edinburgh and Glasgow.

   b) The Third Sector diverts in excess of 46,000 tonnes per year from landfill or other final disposal routes. Recycling tonnage is the largest proportion of that figure at 31,575 tonnes (68%) followed by re-use tonnage at 13,695 tonnes (29%) and community composting at 427 tonnes (1%).

   c) Third Sector re-use and recycling activity generates in excess of £24 million turnover per year. There is an uneven distribution of turnover across the third sector: Five organisations (4%) reported a turnover of over £1 million whilst 21 organisations (19%) reported a turnover of less than £250,000.

   d) Fifteen organisations reported that they had experience in winning tenders to deliver re-use and recycling activities with 41 organisations reporting they had not considered tendering at all. Twenty three organisations reported that they currently had at least one service level agreement in place to provide re-use and recycling services.

   e) The finance data shows a trend towards more earned income and less grant income for Third Sector re-use and recycling organisations: 51% of gross income was reported as earned income for 2010-11 and this figure had risen to 64% for 2012-13. CRNS has seen an increase in diversification among members as a matter of necessity and views this as an opportunity for the sector seeing diversification into recycling bike, jewellery and other such items. This shift appears to be driven by economic necessity for the sustainability of member organisations.
f) Third Sector re-use and recycling organisations reported employing 685 full-time equivalent staff, involved 3,448 volunteers and supported 682 placements annually. Twelve organisations employed over 50% of the total staff numbers reported and 75 organisations reported having five or fewer full-time equivalent staff.

In response to the invitation to give evidence to the Scottish Parliament’s Local Government and Regeneration Committee’s call for written evidence on the above Bill, CRNS has consulted members and provides a summary of collated responses below.

Specifically the call for evidence focuses on the following questions.

1. To what extent do you consider the Bill will empower communities, please give a reason for your answer.
2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions of the Bill?
3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions of the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?
4. Are you content with the specific provisions in the Bill, if not why what changes would you like to see, to which part of the Bill and why?
5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the policy memorandum?

CRNS Responses

1. To what extent do you consider the Bill will empower communities, please give a reason for your answer?

CRNS Response

CRNS welcomes the provisions in the Bill and agrees that these will empower communities in Scotland. In particular the removal of barriers to make it easier for communities to achieve their goals by giving ‘clear rights’ to play a more proactive role and placing ‘clear duties’ on public sector bodies to engage with communities is welcomed.

a. CRNS would welcome transparent guidance on the duties and responsibilities of public sector bodies and the requirement for these bodies to publish their approach to community engagement, the timescales attached to each stage and the arbitration process applied where a community feels it has not been given sufficient opportunity to respond.

b. CRNS would also propose that the ‘clear rights’ for communities to play a more proactive role in their community is clearly publicised and distilled into easy to understand, plain English guides.
c. The Bill clearly extends community participation in planning and this is welcomed, however CRNS is concerned that many communities will still be disadvantaged by the ‘weight’ of public bodies over smaller less resource rich community groups. CRNS would advocate for support for such groups to have access to funding to enable them to engage, where appropriate, professional support to represent their views without incurring major expense.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

CRNS Response

CRNS welcomes the Bill placing statutory duties on Community Planning Partnership to engage with the community will, in the view of CRNS provide a more robust methodology for engaging communities across Scotland. However focusing the definition of communities by geography, with passing reference to areas of mutual interest may disadvantage like-minded groups forming alliances to work together over a wider area. The Christie Commission stated that Scotland’s public services is founded on four pillars: People, Partnership, Prevention and Performance. Applying these principles with the Empowerment Bill will enable a wider definition of Community and allow for greater engagement across Scotland where communities of interest can participate alongside local (geographic) communities to greatest advantage.

a. Reference is made to community in terms of geography, common interest and/or characteristics of its membership, however it is up to the public body to determine the validity of the community body corporate structure. Reference to corporate structure suggests bureaucracy and has the potential to put off small community groups with little secure funding. CRNS would welcome clarification on this point and would suggest that public bodies should engage with communities of all sizes and types, regardless of corporate structure. Over prescription of structural requirements of community bodies will disadvantage small groups.

b. CRNS’ view is that public sector bodies planning processes will be greatly enhanced by engaging with the wider community if the process applied is equitable and fair. Public bodies by their nature tend to be large, run by professionals and have well defined administrative systems. While this is appropriate and reassuring for the wider public to know that public funds are well managed it also may be that the very structure of large public bodies creates an immediate barrier for engagement.

c. CRNS would advocate that engagement with community groups is held at community level – in community environments where the symbols and structures of public services are less in evidence and so removing what could be viewed as an intimidating consultative process. While this approach may cause an extended timeframe for public bodies it would have the advantage of overtly showing willing in true engagement and should lead to better quality decision making.
3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

CRNS Response

As previously stated, CRNS’ view is that many community groups will be capable of self-representation where they are of scale, however smaller groups may be disadvantaged through lack of resource. Resource in this context is viewed as time, expertise and/or finances. Where this situation occurs CRNS would advocate for intermediary bodies to support such representation as may be required. This in itself is not a wholly perfect solution as many intermediary bodies are also cash or time poor. Specifically CRNS determines intermediary bodies in this context as membership and other representational bodies and not the more widely understood definition of government intermediary agencies.

a. CRNS would support simplified methodologies for engagement with communities to ensure that they are able to participate in the new provisions. Such methodologies could make use of technology – on-line survey, facilitated discussion, local newspaper or television articles, Facebook and other social media streams that can allow for fast and effective interaction across a wide range of people.

b. CRNS’ view is that too often changes in the community are seen to be ‘under the radar’ and only when a change is made do communities who would have engaged react. A proactive approach to engagement is needed to ensure that the flow of change is and is seen to be open and transparent, allowing for decisions to be taken collectively.

c. CRNS accept that no matter how extensive a consultation not all views will be capable of being addressed, however it should be possible to extend the process of local governance to incorporate the widest community if effective methods are applied. The cost of non-engagement is surely higher than an extended timescale to bring as many views to the table as possible.

d. A CRNS concern is the weighting given to small groups in terms of their ability to lobby. Size of a group is not necessarily a representation of its importance and CRNS does not find in the Bill anything that reassures that the minority view can be heard or credited as easily as that of larger, resource rich and/or more organised groups.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

CRNS Response

CRNS welcomes the Bill and its provisions, with the proviso of comments above. In relation to changes CRNS considers the following improvements could be included:

a. Clarity of the rights of community groups
b. Stronger emphasis of community definitions to support communities of interest and collective working

c. Clear methodologies for promoting engagement with timescales and remedies for review of challenged decisions

d. Clarity on the weighting given to small group responses

e. Clarity on what constitutes ‘corporate’ structures and how small groups can accommodate such requirements

f. Clarity on the use of intermediaries in responding to community planning

g. Clarity on the availability of funds for small groups to engage professionals to support them in effective engagement on their behalf.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

CRNS Response

CRNS’ view is that the application of the Equalities Act in relation to the rights and impacts of island communities and sustainable development is fair and welcomes the inclusion of the need to consider this issue when determining asset transfers or participation requests.

1 State of the Sector Report 2013. A study into the activities of the Scottish Third Sector re-use and recycling organisations. CRNS; March 2014
Comment on published Community Empowerment Bill from Dr L D Neil, Selkirk. 18/8/2014

I am resident in a Borders town which possesses a Common Good Fund (CGF) and have been a Community (CC) Councillor since 1980, chairing it twice. As a founding member of Selkirk Regeneration Company (SRC) which started as a group in 2005, I am nevertheless no longer a CC member and have ceased temporarily to be a director of the SRC.

Over many years I have studied and been engaged in all matters to do with CGFs, both our own and those elsewhere. Many dialogues with regard to Selkirk’s CGF have taken place over these years with Scottish Borders Council but have had largely unsuccessful outcomes. The Section of this bill dealing with CGFs will play a major part in restoring the local status and community relevance of CGFs, largely address the legal shortcomings and sloppiness of previous legislation and will markedly improve hitherto unsatisfactory outcomes in LA administration of CGFs.

However, there are still some items that could be modified or added to the bill which, I suggest, will help avoid dubiety and circumvent potential future conflict.

In general terms, the greatest risk to the integrity of CGFs arises from the activities or inactivity of local authorities (LAs). Insufficient time and effort has been spent in the past to administer CGFs in most Scottish LA areas in order to carry out the duties imposed on them since the Local Government (Scotland) Act 1973. In addition, councillors elected to an LA area are beset by the conflict of interest between their duty to the local authority and the duty of trusteeship of SGFs prescribed by the act.

I shall not comment other than superficially on the implications of the proposed bill with respect to matters outwith the Common Good but I will add my wholehearted approval to measures to enable the return to Scots people of control and ownership of the land that was originally theirs in common ownership.

I hope my comments will be perused and endorsed, at least in part, by both the Selkirk Community Council and the SRC who will be circulated with these comments.

Comments on Part 6 ‘Common Good’

Para 63:
Sub-sections 1 – 8 are clear and commendable.
However (ref note 276 & 277) it would be unfortunate to miss an opportunity to define and clarify that LAs own only the ‘title’ to CGFs, and that burgh inhabitants are the ‘beneficial’ owners as in Trust Law. I have had 2 QC
opinions, one endorsing the other, that the distinction is important and efforts should be made to undo the damage of the wrong assertion, often quoted by LAs, on p1 of Ferguson’s book ‘Common Good Law’ that LAs own CGFs “outright”. They don’t.

Para 64:
Sub-sections 1 & 2 are good.

Para 65:
Sub sections are commendable except 3 and 6; under 3, LAs should be held to publish widely, not “at their discretion” and under 6, there should be wider representation of communities on bodies administering CGFs¹ with voting powers and a limited veto power². (ref paras 17& 18 of sect. 14 of Part 3, Land Reform Review Group Report)

Para 66:
Disposal is still governed by the limitations imposed by Section 75 of the 1973 act which along with observations in notes 281 & 282 should safeguard CGFs from depredation. This continued legal safeguard could be clearly stated in the act to avoid confusion and reassure CGF ‘owning’ communities.

It is noted that it is anticipated (Financial Memo.) that the costs to LAs of bringing the currently inadequate CGF registers up-to-date will not generate an additional cost to LAs. That is unrealistic given the work that will be involved in correcting the neglect of decades of LA failure to compile adequate and accurate registers.

¹ The rationale of having local community representation equal to that of the LA on the management of CGFs is to restore local involvement and awareness of CGFs, which is one of the main aims of the act - and:
   a) to secure protection of CGFs for the future;
   b) to compensate for the proprietorial ineligibility and lack of knowledge of some LA councillors on the administration of local CGFs;
   c) to improve management efficiency and financial viability of CGFs;
   d) to re-create an attractive receptacle for bequests;
   e) to reduce some of the administrative burden on LAs by voluntary work.

² A simple measure to help restore some control to local CGF ‘owners’ over their CGF would be to institute a limited veto – say 2 years bar on proposed change of use or disposal of GCF property. A veto operated by a majority of the community representatives on the CGF management group, reversible at any time during the 2
year period by the veto being withdrawn by those who exercised it, if discussions led to a proposal that was satisfactory to the community.

One final point is that there should be much tighter scrutiny on how LAs spend CGF money. We have several examples of profligacy here in Selkirk eg. £718.00 spent by the LA in fruitlessly trying to draw up a simple lease for £50.00 pa. Such incompetence is intolerable and local CGF beneficiaries have had no say in the matter and no powers to prevent such occurrences of CGF raiding. For this reason, a clause/amendment subjecting charges proposed by LAs on CGFs to independent assessment, before they are debited, would stop this nefarious practice.

As far as Section 6 of the Act is concerned generally, the suggestions in ¹ & ² above would go a long way to restoring community empowerment to the local CGF administration consequent upon its removal in 1975. The same principle is embodied in the referendum.

Dr Lindsay D Neil MB ChB DA

Ref: responses (attached) 31/1/2013 & 21/1/2014 (2)
Consultation on the Community Empowerment (Scotland) Bill

Response Questionnaire

Chapter 3 - Proposals with draft legislation

Please read the draft Bill provisions before you answer these questions. You do not need to answer all the questions in this questionnaire, only answer the questions that you have an interest in. Separate questionnaires are provided for each chapter of the consultation paper.

Please make sure you also return the Respondent Information Form with your response, so that we know how to handle it.

3.1 Community Right to Request Rights in Relation to Property

Please read Part 1 of the draft Bill (Annex C pages 1 to 9) before you answer these questions:

Q1 Do you agree with the definition of community body at section 1? Yes

Do you have any changes to suggest?

CG= Common Good; LA= Local Authority; CGF= Common Good Fund; CB= Community Body; CC=Community Council, CRTB=Community Right to Buy

Yes;
There are other community bodies besides Community Councils which fulfil the criteria of LA (S) Act 2003, Annex C Part 2, 15,4 ; Draft CE(S) Bill, Ch 3, Part1,1,5 a-f or Part 2, 11,2.
There is no clear indication as to how such bodies can play a part, apply to play a part or be approved to play a part. The mechanism for this should be made clear.

Q2 Do you agree with the list of public bodies to be covered in this Part at Schedule 1 (Annex C page 21)?
What other bodies should be added, or removed?

Any representative body which fulfils the criteria as above. Most Community Councils do not fulfil all the criteria eg enabling them to submit a CRTB request. Some CBs in the same locality do. This needs clarification.

Q3 What do you think would be reasonable timescales for dealing with requests, making an offer and concluding a contract, in relation to sections 5(6), 6(2)(c) and 6(6)?

The ones proposed seem reasonable and conform with the CRTB regulations.

Q4 Do you agree that community bodies should have a right of appeal to Ministers as set out in section 8?

Yes

Are there other appeal or review procedures that you feel would be more appropriate?

Under Annex C, Part 1, 8, 2 (b);

It appears that a body wishing to appeal a decision by a Local Authority is debarred from doing so. The reason given is that LAs are democratically accountable. However it is wrong to say that (para 30) a Local Authority is democratically accountable to the (local) electorate in this context for 3 reasons:

a) Since the imposition of arrangements for unitary authorities in the LA etc (S) Act 1994, the majority of councillors responsible for eg. the common Good are from outwith the constituency area pertaining to the Common Good Fund. Thus the beneficial owners of the CG have no opportunity to exercise democracy if they can’t vote on the councillors taking decisions on their CG property.

b) In practice, most of the decisions pertaining to Common Good are made by unelected officers of the Local Authority, endorsed by councillors but not
acting under direct scrutiny of elected councillors.
c) There is an inevitable conflict of interest where councillors try to balance local community interests with their Local Authority duties. This conflict is irreconcilable so Local Authorities should remain answerable by appeal by local bodies where disputes arise.
Therefore, 8 2 (b) should be deleted as most appeals would result from a dispute between a spuriously democratic Local Authority and a community body. A sheriff court would be unbiased and acceptable route to resolving disputes and the result of its determination could be made binding on all parties.

Under Annex C, Ch 3, Part 1, 10;2
It would be fairer if a ‘decline’ to consider a new request were treated as a refusal thus allowing an appeal. Why should a public authority have the discretion to refuse to consider an appeal simply because they refused a previous one? (Accepted that the grounds for appeal must be materially different from those of the original appeal)

Q5 What form of appeal or review processes, internal or external, would be appropriate in relation to decisions made by local authorities and by Scottish Ministers?

The reinstatement of judicial requirements as laid down in LA (S) Act 1973, Part 4, 75, 2.
As regards the disposal of Common Good assets, the removal in the draft bill of a requirement to seek judicial approval for alienation of inalienable assets is a seriously retrograde step. Decades of legislation to protect Common Good property, while in need of improvement, is still essential in giving Common Good owning communities protection against overbearing local authorities and ensuring the conservation of the Common good assets.

Q6 Do you have any other comments about the wording of the draft provisions?

No, pretty clear what is proposed.
Q7 What costs and savings do you think would come about as a result of these draft provisions? Please be as specific as you can.

Delegation of powers and budgets to local bodies to administer some local services would:
- a) allow some limited new local employment;
- b) avoid some wasteful practices;
- c) be more responsive to local needs; better cost-targeting.
- d) diminish costly administration and tortuous routes to effective action;
- e) involve local people in better control of their own environment and avoid the cost of some area supervision.

3.2 Community Right to Request to Participate in Processes to Improve Outcomes of Service Delivery

Please read Part 2 of the draft Bill (Annex C pages 9 to 14) before you answer these questions:

Q8 Do you agree with the definition of community body at section 11?

Yes +/-

Do you have any changes to suggest?

Same comment as answer to Q1. But in addition, some CBs, not necessarily CCs, have a wide range of expertise to draw on which under the present LA arrangements is wasted. It would be fair enough to establish the qualifications/expertise of individuals within it when assessing a PB for eligibility, and try to recognise and enlist this expertise in devolving some tasks presently undertaken by LAs.
Q9 Do you agree with the list of public bodies to be covered in this Part at Schedule 2 (Annex C page 21)?

Yes +/-

What other bodies should be added, or removed?

Same as Q 2.
Q10  Do you agree with the description at section 13 of what a participation request by a community body to a public service authority should cover?  

Yes  

Is there anything you would add or remove?

Couldn’t a ‘Community Body’ be recognised as such in advance, reviewable at prescribed intervals, and save applying for recognition to each public service authority? It would save time/admin costs and be far easier. It would also put the CB on an address list where matters affecting them are proposed.

Q11  Do you agree with the criteria at section 15 that a public service authority should use when deciding whether to agree or refuse a participation request?  

No  

Are there any other criteria that should be considered?

A body with particular expertise in a certain area could be recognised for participation in that area of expertise alone. The system of recognition could be streamlined by recognising such a body in advance. eg local renewable energy groups.

Q12  Do you have any other comments about the wording of the draft provisions?

No
Q13 What costs and savings do you think would come about as a result of these draft provisions? Please be as specific as you can.

As in Q 11, a lot of toing and froing could be avoided by what we propose – admin costs reduced if the CB was already seen as ‘kosher’.

3.3 Increasing Transparency about Common Good

Please read Part 3 of the draft Bill (Annex C pages 14 to 16) before you answer this question:

Q14 Do you think the draft provisions will meet our goal to increase transparency about the existence, use and disposal of common good assets and to increase community involvement in decisions taken about their identification, use and disposal?
Yes, up to a point but largely No ☐
What other measures would help to achieve that?

CG= Common Good; LA= Local Authority; CGF= Common Good Fund.

The main thrust of the declaration (paras 45 -47) that defining what constitutes CGF property is likely to result in unintended outcomes is a failure to address the question. An Inner House judgement by 3 judges in the Court of Session in 2003 established clearly what the CG is.

Therefore:
1. Better definition and understanding of who owns the Common Good. Counsel opinion we have obtained is that the title alone is LA owned, the beneficial owners are the populace of the burgh. Councils do not own CG outright despite being misled by p1 of Andrew Ferguson’s book. (Common Good Law, Avizandum Press)
2. Restoration in the bill of the requirement to seek judicial approval for all proposals to change the use of inalienable CG assets.
3. The discarding of the legally meaningless phrase “having regard to the interests“ of the CG beneficial owners. Substitution with a more democratic, legally tight local decision-taking method involving a local referendum if indicated. At present, LAs can do what they want, ‘have regard’ to local interests and simply disregard them.
4. Removal of the unlimited and unscrutinised charges put on CG Funds by Local Authorities, largely for services that LAs are obliged to provide under the LA(S) Act 1973 such as legal services. What they do is quite wrong and can cost a CG dear, and is a way for Local Authorities to subsidise their staff costs at a CGF’s expense. Over £20,000 has been deducted by Scottish Borders Council from Selkirk’s CGF for administration, most of it for ‘Legal Services’ in the 2 years 2011/12 & 2012/13.

5. An enforceable requirement on LAs to compile accurate and complete CG asset registers. Despite their legal obligation and the March 2007 encouragement by Scottish Government to LAs to do this, the advice has been largely ignored. This is a small area of Audit Scotland’s monitoring responsibilities but continually neglected by them.

6. The restoration of the two categories of CG assets, (heritable and moveable) and the requirement to account for each separately.

7. Inclusion of representative bodies, other than Community Councils, in decision taking of the CG fund. (see 10 below)

8. The establishment of business plans to exploit CG assets is sadly neglected by LAs. No attempt is made by LAs to enhance the assets of a CGF. The neglect should be corrected.

9. Where a LA uses CG property or any part of CG property for any purpose, a formal written lease should be mandatory even if no leasing charge is involved. The costs of drawing up such a lease should be borne by the LA, not the CGF. This would put the repair and maintenance obligation on a formal footing and avoid unnecessary charges on the CGF. (eg £728.00 legal charges to Selkirk CGF to secure a £50.00 pa lease – not yet even concluded after 5 years)

A clause to regulate this should be fitted into the bill somewhere.

10. A mechanism whereby the beneficial owners of a CGF have decision-taking rights over their own CGF is needed. This is a fundamental quality of democracy which is sadly lacking under present legislation. Local people should have a defined veto power over decisions taken by non-owners acting on behalf of the beneficial owners. There should be an equal number of local citizens, beneficiaries of the CGF, to balance elected Local Authority Councillors. They could be CC members or nominated from a local body, voted on by CC members.

11. Greater transparency is a modern expectation. Any steps to achieve this are to be welcomed. The proposed bill must include more democracy and devolved control over CGFs, giving CGFs the protection they need, or else it will fail to fulfil its intentions and will be a continual source of contention until it is improved.
3.4 Defective and Dangerous Buildings – Recovery of Expenses

Please read Part 4 of the draft Bill (Annex C pages 17 to 19) before you answer these questions:

Q15 Do you agree that the cost recovery powers in relation to dangerous and defective buildings should be improved as set out in the draft Bill? Yes ☐

Q16 Do you agree that the same improvements should apply to sections 25, 26 and 27 of the Building (Scotland) Act 2003? Yes ☐

However, where buildings or parts of them belonging to the Common Good but occupied by a local Authority are in need of repair, the local authority should be obliged to conduct the repair on a ‘repair and maintenance’ basis. This should apply whether a formal lease is in operation or not. That should be embodied in the proposed bill. Some necessary repairs are deliberately delayed by LAs resulting in much greater costs. There should be included a mechanism for an independent assessor to evaluate timescales for repairs to CG property.

The Royal Burgh of Selkirk Community Council submitted a response to the Sept. 2012 consultation on this proposed Bill. Owing to a failure on our part, the response was out of time. It is still relevant however and as we are in close liaison with the Community Council we ask that it is considered alongside this submission although neither of the authors are currently members of the Community Council having resigned in May 2013. (att. Response Jan 2013)
Consultation on the Community Empowerment (Scotland) Bill

Response Questionnaire

Chapter 4 - Detailed Policy Proposals

Please read the draft Bill provisions before you answer these questions. You do not need to answer all the questions in this questionnaire, only answer the questions that you have an interest in. Separate questionnaires are provided for each chapter of the consultation paper.

Please make sure you also return the Respondent Information Form with your response, so that we know how to handle it.

4.1 Improve and extend Community Right to Buy

Q17 The Scottish Government proposes to extend right to buy to communities in all parts of Scotland, where the Scottish Government is satisfied that it is in the public interest. Do you agree with this proposal?

Yes ☐

Are there any additional measures that would help our proposals for a streamlined community right to buy to apply across Scotland?

1. Pre-recognition of Community bodies already with CRTB status.
2. Some straightforward mechanism whereby community bodies such as Community Councils, not presently in a position to entertain a CRTB, can rapidly fulfil the criteria along a smooth pathway with minimum admin. That would enable these groups to respond rapidly to emergent opportunities when they arise to the benefit of the local community and its economy.

Q18 Do you think that Ministers should have the power to extend “registrable” land to cover land that is currently not included as “registrable land”?

Yes ☐

What other land should also be considered as being “registrable”?

All sporting estates.
Any land with agricultural potential whose use is currently being squandered or its potential stifled by landowners for other purposes where national interest is involved eg food production, green energy generation.

Community responsibility could be considered for defined coastal areas to safeguard fishing stocks and conserve a community’s fishing livelihood. (Remember, the coastal shelf administered by the Crown Estates is actually the property of the Scottish people, not like England/Wales. The Crown Estate is simply an administrative convenience. There is no apparent reason why coastal areas should not be considered for CRTB)

It could be in parallel to or within the existing EU legislative framework which gives protection in some areas.
Q19 Do you think that there should be a compulsory power for communities to buy neglected or abandoned land in certain circumstances?  

Yes ☐

What should these circumstances be?

Land sterilised by an owner/developer through not being developed within a reasonable timescale eg If building is not started within 1 year after planning permission is granted and not completed within 3 years, that development should automatically be targeted and identified as eligible for CRTB. If no plan for development is submitted by an owner, he/she should be given 18 months to submit one or the land becomes eligible for CRTB and a compulsory sale arranged. This would clear the blight of undeveloped brownfield sites.

Q20 How do you think this should work in practice? How do you think that the terms “neglected” and “abandoned” should be defined?

Common sense, but disinterested (unbiased) valuation on derelict or abandoned sites/buildings should be undertaken at the owner’s expense, the property then advertised for auction at the valuation and any unrecovered expenses incurred recovered from the buyer’s payment, the remainder paid to the original owner. Barren unsightly sites would certainly diminish in number. Abandoned or derelict – apply Q19 criteria.

Q21 Do you think that the criteria to be met by a community body in section 38(1) of the Act are appropriate?  

Yes ☐

Do you think that there should be additional criteria? Please set out what changes or additions should be made to the criteria.
However, it is unlikely that there will be a need as stated in the 2003 Land Reform (Scotland) Act 38 (1) (c) to acquire the ownership of contiguous land to allow access to fishing as this is covered under the same act in Part 1, Chapter 1 allowing access to your ‘property’ in pursuit of a sport such as fishing. The DDA may also apply allowing vehicular access to disabled fishermen to access and exercise rights in a fishing lease.
Q22 Do you think that the information that is included in the Register of Community Interests in Land is appropriate? Yes ☐

If not, what should that information include?

Q23 How could the application form to register a community interest in land be altered to make it easier to complete (eg, should there be a word limit on the answers to particular questions)?

No other suggestions

Should the questions be more specifically directed to the requirements of sections 36(2) and 38(1) of the Act? No ☐

Do you have any other suggestions?

None

Q24 Do you agree that communities should be able to apply to register an interest in land in cases where land unexpectedly comes on the market and they have not considered using the community right to buy? Yes ☐
If so, what changes should be made to section 39 to ensure that such communities can apply to register a community interest in land?

See Q 17

Q25 Do you agree that the process to re-register a community interest should be a re-confirmation of a community interest in land?  
Yes □

Q26 Do you think that the community body should be asked to show that its application is (1) still relevant, (2) has the support of its “community”, and that (3) granting it is in the public interest?  
Yes □

Q27 What do you think should be the length of the statutory period for completing the right to buy, taking into account both the interests of the landowner and the community body? Please explain the reasons for your proposal.

The existing statutory periods seem reasonable but if both parties, landowner and community body have said after consultation that it should be longer, we would agree. Communities may need more time to secure financing and that should be made possible also.

Q28 Do you think that some of the tasks within the right to buy (such as valuation, ballot etc) should be rearranged and the timescales for their completion changed in order to make the best use of the time available within the right to buy? Please set out what changes you think should be made and why.

6 months should be the guideline, but extension of the time limit should be possible where it is outwith either a community’s or landowner’s power to complete proceedings within the time limit.
Q29  Do you agree that Scottish Ministers should organise the undertaking of a community body’s ballot and pay its costs?

Yes ☐

If you disagree, please provide your reasons.

That would be desirable because most community bodies have very little money. Provided that outside scrutiny of the process is built in, any ballot could be undertaken locally more cheaply using volunteers than hiring commercial enterprises to do it.

Q30  Should Scottish Ministers notify the ballot result to the landowner?

Yes ☐

Please explain your reasons.

He has a right to know local feeling, but it should contain only the barest of detail.

Q31  Do you think Ministers should develop a pro-forma for community bodies to set out their plans for the sustainable development of land and community?

Yes ☐

Please give reasons for your view.

That would be helpful as many local community bodies do not inherently have that expertise to do so themselves and it would shorten the time factor. We agree paras 92, 93 & 94.
Q32  Do you agree that community bodies should be able to define their “community” in a more flexible way by the use of either postcodes, settlement areas, localities of settlements, and electoral wards, or a mixture of these, as appropriate?

Yes and other criteria at the minister’s discretion.

Q33  Are there any other ways that a “community” could be defined?

Probably! eg particular varieties of wildlife preservation associations.

LAs could hold lists of eligible CBs using criteria defined under the proposed act but the Minister should retain the power to allow some flexibility in definition.

Q34  Do you agree that other legal entities in addition to the company limited by guarantee should be able to apply to use the community right to buy provisions?

Yes  No

Q35  Do you agree that SCIOs should be able to apply under the provisions?

Simply being a charity is not enough in itself.

Q36  What other legal entities should be able to apply under the community right to buy provisions – and why?

Other organisations can be considered on their merits but only if they can demonstrate sustainability, viability, transparency and manifest community benefit. Some charities are not subject to rigorous enough scrutiny. (See 33)
Q37  Do you agree that Ministers should only have to “approve” the changes to Articles of Association for community bodies that are actively seeking to use or are using the community right to buy?  

Yes ☐

Q38  Do you think that the length of a registered interest in land should remain as five years or be changed? If it should be changed, how long should it be – and what are your reasons for making that change?

5 Years is not long enough; an increase to 10 years would be better, thus lessening the paperwork but without reducing the strength of the regulations.

Q39  Do you agree that the valuation procedure should include counter representations by the landowner and community body?  

No ☐

If you disagree, please give your reasons for your decision.

It is too easy to persuade valuers to err on the side if the paymaster. A disinterested valuer is mandatory but agreed in advance and agreed by both parties to be binding. Having competing valuations is simply going to prolong the process.

Q40  Do you think that there should be a provision to deter landowners from taking the land off the market after they have triggered the right to buy?  

Yes ☐

Please explain your reasons.

If embarked upon, it should be carried through otherwise communities are going to expend time and money and lose confidence in the capacity of the Act significantly to achieve its stated aims.
Q41 Do you think that there should be greater flexibility in a community body’s level of support for a right to buy in the ballot result than is currently permitted?  
Yes □

Q42 Do you think that the ballot result should focus on a sufficient amount of support to justify the community support to proceed with the right to buy the land?  
Yes □

If yes, please explain how secured community support should be measured

Local ballot, overseen by LA electoral officers.

Q43 Do you agree that community bodies should be able to submit evidence to Ministers in support of their ballot result where they believe that their ballot has been affected by circumstances outwith their control?  
Yes □

Q44 Do you think that Scottish Ministers should be able to ask community bodies for additional information relating to their right to buy “application” which Ministers would then take into account in considering their right to buy “application”?  
Yes □

Please explain your reasons.

In a CRTB submission, communities may have left out important details which would amplify their intentions and means to succeed. It is fair enough to find out significant further information. Also, if the voting turnout was low, an opportunity to expand the application could be helpful.

Q45 Do you think that Ministers should be able to accept an application to register a community interest in land which is subject to an option agreement (on part or all of the land)?  
Yes □
Q46 If there is an option agreement in place, do you think that the landowner should be able to transfer the land as an exempt transfer while there is a registered interest over that land?

No ☐

Please explain your answer.

While the system should be flexible, no option should exist for landowners to manipulate the system to their unfair advantage. If the observance of the option makes the CRTB unviable, the whole point of a CRTB is compromised. If permissible, landowners would simply put options in place over their land to make CRTB unattractive.

Q47 Do you think that the prohibition on the landowner from taking steps to market or transfer the land to another party should apply from the day after the day on which Ministers issue the prohibition letter rather than the day when the owner/heritable creditor receives the notice?

Yes, but see below ☐

Please explain your answer.

Again it diminishes the landowner’s ability to manipulate the system to his/her unfair advantage. Why not make it from the day and hour on which the decision is taken? That would preclude fiddling.

Q48 Do you agree that public holidays should be excluded from the statutory timescales to register a community interest in land and the right to buy?

Yes ☐

Q49 Do you agree that where a landowner makes an “exempt” transfer, this should be notified to Scottish Ministers?

Yes ☐

If you disagree, please provide reasons for your decision.
Q50  Do you agree that community bodies and landowners should notify Scottish Ministers of any changes to their contact details (including any registered office)?

Yes  [ ]

Q51  Do you think that Ministers should monitor the impact of the community right to buy?

Yes  [ ]

How do you think that monitoring should be undertaken and what information should Ministers seek?

A yearly assessment of viability in years 1 – 3. This would give an insight into the success or otherwise of the Act and permit adjustments as necessary.

Should the monitoring process be a statutory requirement, including provisions for reporting?

Yes  [ ]
Questions 52 to 60 are being submitted by a member of the Royal Burgh of Selkirk & District Community Council in a separate submission. He is also a director of the Selkirk Regeneration Company (SRC) and the answers he has given apply equally to the SRC.

4.2 Strengthening Community Planning

Q52 What are your views on our proposals for requiring a CPP to be established in each local authority area, and for amending the core statutory underpinning for community planning to place stronger emphasis on delivering better outcomes?

See Selkirk CC answers

Q53 What are your views on the core duties for CPPs set out above, and in particular the proposal that CPPs must develop and ensure delivery of a shared plan for outcomes (i.e., something similar to a Single Outcome Agreement) in the CPP area?
Q54  Do the proposed duties of the CPP support effective community engagement and the involvement of the third and business sectors?

☐ Yes  ☐ No

What other changes may be required to make this more effective?

Q55  How can we ensure that all relevant partners play a full role in community planning and the delivery of improved outcomes in each CPP area? Do the proposed core duties achieve that?

☐ Yes  ☐ No

What else might be required?

Q56  What are the respective roles of local elected politicians, non-executive board members and officers in community planning and should this be clarified through the legislation?
Q57 Should the duty on individual bodies apply to a defined list of public bodies – if so, which ones? Or should we seek to take a more expansive approach which covers the public sector more generally?

Q58 Local authorities are currently responsible for initiating, facilitating and maintaining community planning. How might the legislation best capture the community leadership role of Councils without the CPP being perceived as an extension of the local authority?

Q59 How can the external scrutiny regime and the roles of organisations such as the Accounts Commission and Auditor General support the proposed changes? Does this require changes to their powers or functions?

Q60 What other legislative changes are needed to strengthen community planning?
4.3 Allotments

Q61 Do you agree with the proposed definition of an allotment site and allotment plot? [Yes] How else would you suggest they be defined?

Q62 In order to include all existing allotments in the new legislation they must fit within the size range. What is the minimum and maximum size of one allotment plot in your area/site?

Don’t know. The allotments in Selkirk were sold off for housing. 10 poles is a good number

Q63 Do you agree with the proposed duty to provide allotments? [Yes] Are there any changes you would make?

Local (non-council) initiative has produced a small number of allotments. There is a waiting list and more allotments are needed. If it is necessary to provide allotments to a set scale, compulsory purchase should be considered.
Do you agree with the level of the trigger point, ie that a local authority must make provision for allotments once the waiting list reaches 15 people?

No ☐

It should be much less.
Q64 Do you prefer the target Option A, B or C and why? Are there any other target options you wish to be considered here? Do you agree with the level of the targets?

C
Allotments should be encouraged by every means. The future need will be for food production. Individuals/communities should be encouraged wherever possible.

Q65 Do you agree with the proposed list of local authority duties and powers? Yes ☐
Would you make any changes to the list?
No

Q66 Do you think the areas regarding termination of allotment tenancies listed should be set out in legislation or determined by the local authority at a local level?
Legislation Yes ☐
Determined by local authority

Q67 Are there any other areas you feel should apply to private allotments?
No
Q68  Do you agree that surplus produce may be sold?  
Yes ☐
If you disagree, what are your reasons?

Q69  Do you agree with the proposed list of subjects to be governed by Regulations?  
Yes ☐
Would you make any changes to the lists?
Add excessive noise generation to Table 4 list.
Written Submission on Draft Community Empowerment Bill
Dr Michael Pugh and Dr John Connolly, University of the West of Scotland

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

This Bill’s inspiration by principles of subsidiarity, community empowerment and improving outcomes, and its intention to make for harmonious practical links between these so that they become more of a lived reality for citizens throughout Scotland, is admirable. The need for more local devolution downwards and the ceding of controls by local councils to their communities and community groups was a key finding of the recent Enquiry into the Flexibility and Autonomy of Local Government. Nevertheless this Bill’s intentions to promote community empowerment and partnership between groups of citizens and public bodies serving communities might be more fully and effectively realised through the establishment of a more user-friendly and accessible set of procedures for specific forms of community empowerment and partnership (which could be part of a wider public communications strategy on the content of the Bill and its implications for individuals and community groups). For example, there could be clearer steps for community groups taking control of common good property - and in what circumstances - than is currently available within the present wording of the bill. An accessible appendix could provide a general overview of such processes for citizens and groups who relatively lack resources and politico-legal expertise, absence of which might otherwise present a barrier to non-professional groups and inadvertently favour more established interest groups.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

To the extent that public sector organisations’ raison d’etre is to serve citizens and communities, it might be argued that this question places public bodies’ corporate interests ahead of these. Still, there are risks that the enshrinement in statute of community empowerment in principle without clear practical and accessible procedures and processes for achieving this could prove unnecessarily bureaucratic and burdensome for public bodies, ironically drawing resources away from citizens and communities. In this context, it is important to be clear about procedures, criteria (particularly for refusing requests) and routes to appeal. Transparency about these issues should benefit citizens in their communities, alongside the public bodies that serve them, rather than hindering the latter in their work.

The Bill solidifies and legally enshrines the role of CPPs and the ‘outcomes agenda’ to local service provision which, in theory, should generate efficiencies as a result of the cross-fertilisation of functions and services (and this is in the spirit of the Christie report recommendations). The development of local improvement plans is a helpful step forward in this regard. However there are significant assumptions here in terms of the ability of local...
authorities to take an outcomes-focused and partnership approach with a view to monitoring and evaluating their work to demonstrate impact. There are considerable capacity problems in local contexts in terms of how to take a outcomes-based approach to their programmes and how to evaluate against outcomes. This requires certain skills-sets which are not always available in local areas (e.g. specialisms in research methodologies, evaluation design, facilitation, and evaluation practice). This means that although outcomes-based approaches to community planning have major benefits - in that partners can understand and communicate their contribution to CPP outcomes - there is a risk that this process will be conducted ineffectively (due to deficits in skills and knowledge) and, in short, this could be to the detriment of local improvement plans (with the plan being something which will be expected by local areas as a result of the Bill).

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

In line with the above observations, for this Bill to achieve its desired aims, it is important to ensure that the procedures and processes deriving from it are accessible and user-friendly for all community groups, rather than inadvertently privileging established organisations with inbuilt resource and expertise advantages. It is therefore important that the Bill, assuming it is passed, be accompanied by plain language guidelines for community groups who might wish to take advantage of its provisions. Likewise, there needs to be serious attention given to publicising these in order that all citizens and groups, not just established interest groups, are aware of the opportunities it offers.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

In relation to Part 1, consideration could be given to strengthening ministers’ and / or local authorities and public bodies to develop national outcomes in genuine partnership with local community representatives, such as through participatory budget-setting, consulting citizens’ juries on policy priorities or holding online referendums in relation to these matters. In relation to Parts 3, 4, 5 and 6, it would be very helpful if consideration could be given to providing a more accessible summary and / or step-by-step guide for community groups wishing to take advantage of these sections. This could form an appendix to the bill itself, but also form the basis of guidance notes for all interested parties, which needs to be widely publicised in the event of an Act being passed.

In light of the response provided to question 2 above there could be clarity within the provisions of the Bill (or on supporting information/guidance) in terms of the nature and availability of national/central support by government and agencies when it comes to helping to enable CPPs to undertake
outcomes planning and evaluation activity. Are there resources in the Scottish public sector that will be made available to CPPs? Examples include the expertise of NHS Health Scotland, Analytical Services Division of Scottish Government when it comes to monitoring and evaluation. There are also questions about the role of the government’s Improvement Service? In short, there are key gaps in the Bill in terms of the nature, availability and provision of national level support.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

Whilst we have no specific response to these points, we would suggest that our thoughts under points 1, 3 and 4 relate to equal rights promotion, and would help to ensure that the Bill results in a real and vibrant framework for community activities throughout Scotland.
I write as the chairperson of LoveMilton, a Scottish Charity and Company Ltd by Guarantee, operating according to the principles of a Development Trust according to the Development Trusts Association Scotland, for the Milton housing scheme in the north of Glasgow. Milton sits within the bottom 5% of parishes on the SIMD, with its poorest 3 datazones ranked 16, 18, & 50 on the 2012 SIMD.

We were founded by local people wanting to improve our community in 2009, and have received financial support from the Climate Challenge Fund. We have grown from nothing, to 283 members, from a catchment population of 6659 according to the 2012 census, just over 4% of the population. We aim to increase our membership so that all of the population of Milton become members of LoveMilton.

We think we are just the kind of community organisation that the Community Empowerment Bill is designed to assist.

Since our creation we have sought to create our own community self-build community centre, from reclaimed and natural materials, owned and run by the community, for the benefit of the community. We have identified a piece of derelict and vacant land, which used to have tenement housing on it about 15 years ago. Within Milton there are many areas of derelict and vacant land which are now within the remit of Glasgow City Council’s arms length company City Property.

City Property are willing to sell LoveMilton the land to build our community centre, at the full market value for a residential development of £350,000, on the basis that the site had housing on it and is zoned for housing. If we choose to ‘underutilise’ the space, that is our problem.

So while I am interested in the right to buy being extended to local communities, I wonder if there will be any provision to low cost or no cost right, when the land is already in theory in community ownership via a council or its agent, but who are intending to maximise financial return as they are duty bound to do?
I am responding to the request for evidence on the Bill on behalf of Maybole Community Council.

Firstly we would like to say that the concept is very good and will provide a standard for all to follow and to allow for the appropriate levels of accountability and transparency.

We would however point out some concerns we as a Community Council have, with specific regard to the “Easy Read” document.

1) On Page 2 it states that “Local councils also understand the needs of their communities”. This is highly debateable as there is a distinct lack of consultation and an even greater lack of communication between the local council and ourselves. We have had occasion to write to the Chief Executive pointing out these deficiencies and advising our intention to lodge complaints with the Local Authority Ombudsman, as we are not alone in situation. Such circumstances make it extremely difficult to function as prescribed in the Community Council Handbook and represent our Community.

2) Page 5 states “….. But some places in Scotland have done well and some places have not done so well. We want to find out what has worked well and make it happen for all parts of Scotland”. We agree that ‘best practice’ is imperative, but surely this should be established prior to establishing of a Bill. It is accepted that changes can still be made to the Bill, but will all the ‘best practice’ be established prior to the Bill being finalised? Unless this is done, the existence of “some places have not done so well” will not be eradicated. Maybole does not want to be seen as being unprofessional despite all CC members being volunteers. The basic question is “How do you stop things ‘not working’”?

There is also a need for all parties to fully understand the nuances of the Bill to ensure that all parties interpret it in a uniform manner – removing the instances of individual interpretation. It is assumed that there will be a need for training – the Bill cannot be managed without it.

As highlighted in Point 1, communication (both timely and pertinent) is imperative to the success of the Bill and this has to be instilled to all parties as failure will lead to the Bill falling into disrepute.

I trust this feedback is appropriate and relevant.

Regards

Michael Connell
Maybole CC (Vice Chair/Secretary)
Community Empowerment (Scotland) Bill
RESPONSE TO CALL FOR EVIDENCE BY LOCAL GOVERNMENT & REGENERATION COMMITTEE

A LOST OPPORTUNITY

Personal Introduction
I am active in the community of Linlithgow, being the chairman of Burgh Beautiful Linlithgow, one of the town’s leading environmental groups. I have been involved with Linlithgow Civic Trust for over twenty years, am a member of the town’s community council and am a director of a trust aiming to redevelop the site of a prominent derelict building for a community-owned performance venue. In my professional life, until my recent early retirement, I had nearly thirty years’ experience of planning and regeneration experience with Glasgow City Council. I have a particular interest in Scottish local history, including the past organisation of local government.

General View on Community Empowerment
In my submission to the Scottish Government’s initial consultation on community empowerment, I expressed the view that community councils were ineffective, that ‘community planning’ (in itself a misnomer) was a top-down bureaucratic process and that true empowerment of local communities could only come through devolution of power to localities through re-establishment of bodies akin to the old town and district councils which were abolished in 1975.

Since 1975, Scotland has not had any proper form of ‘local’ government; there has been a mistaken belief that larger authorities are somehow more ‘efficient’ in the use of resources when in fact money is squandered on unnecessary activities and staff, unseen by the local populace. Matters were made worse in 1996 when the present, fairly irrational, distribution of unitary councils were created. It is often quoted that the average population served by a ‘local’ authority in Scotland is 163,000, around 30 times that of the European average (5,620). The Community Empowerment Bill could have been regarded as a golden opportunity to restore local democracy and accountability to Scotland and it is very disappointing that no steps have been taken towards remedying the lack of community empowerment in this country. Of course it
is not surprising that leading councillors and officials in the unitary authorities wish to maintain their power and prestige and thus will not have made representations supporting devolution of their power to a more 'local' form of government.

Two examples from my own experience of how devolved local power could become manifest for the benefit of local people are social housing and the operation of local parks and gardens. Here in Linlithgow, not a single mainstream house for social renting has been built since the Town Council was abolished in 1975. This for a population now over 13,000 and during a time when most properties have been sold and several have been demolished to make way for private flats! It is hard to imagine that a local authority with a direct and focussed interest in the town would have allowed such a lack of provision over such a long period.

With regard to parks and floral displays, I have personal knowledge through the Britain in Bloom competition that most entries competing against Linlithgow have been submitted by town or parish councils south of the border. These communities are able to coordinate grass-roots action without the need to worry about the level of support from a more remote 'local' authority. These councils raise their funding from a supplement to the Council tax charged by the larger authorities; equally, if local town or burgh councils were re-established in Scotland, they could collect the Council tax and pass on the relevant share to the larger authorities as was the practice in Scotland before 1975.

With regard to the Community Empowerment Bill, I must confess that I am somewhat bemused by the constant repetition of the word 'outcomes', a meaningless term without any reference to standards or quality. Are we looking for the best standards or fulfilment of objectives, or will any result suffice?

The Committee’s Five Questions

My response to questions 1, 3 and 4 is as follows.

1. I do not believe that the Bill, as proposed, will ‘empower’ communities except in regard to their assuming ownership of property assets. It has to be said that disposal of property is not really ‘empowerment’, it is transfer of responsibility, generally to volunteers who are not renumerated for such responsibility and cannot afford to pay staff.

3. The capacity of communities, or rather local volunteers, to take on responsibilities varies from place to place. ‘Middle-class’ towns and villages, or parts of cities, can
provide a greater range of professional skills than more disadvantaged communities. This disparity can be addressed by the proposals below.

4. I would like to see the bill making provision for, or at least paving the way towards, the proposals set out below.

My Proposals for Community Empowerment

All communities in Scotland over a certain population size should have the right to apply to the Scottish Government for devolved local government in the form of burgh councils, whether urban or rural. Any such application would require to be accompanied by a petition signed by at least, say, 10% of the local electorate. It is suggested that the minimum qualifying population might be 5,000 (close to the European average), perhaps less for islands and remoter rural areas.

The general spatial pattern of these towns or areas would have to form a logical subdivision of the current ‘local’ authority areas, laid down at the initial stages, although there would have to be provision for appropriate boundary amendments, sub-divisions or amalgamations. The ‘new burghs’ might be termed ‘royal burghs’ where historical precedent existed. Any relevant community councils within the new burghal areas would be entirely superseded by the new, empowered, truly ‘local’ authorities.

The devolved responsibilities could include parks, cleansing, maintenance/lighting of minor roads and car parking, tourism, housing (akin to the idea of community-based housing associations) and determination of building warrants, minor planning applications, etc. The finance would come from a relevant share of Council tax, collection options for which have already been mentioned. In order to attract a better cross-section of the communities to stand for election, the new burgh councils would be strictly non-political.

The new system might be accompanied by the revision of the existing unitary authority boundaries in certain areas – for example extending Glasgow’s boundaries to take in truly suburban areas might be more palatable if accompanied by opportunities for burgh councils to be established in places like Bearsden, Giffnock, Clarkston and Newton Mearns.

Overall, the devolution of certain powers to local burgh councils would give true local empowerment, increase local accountability and foster the sort of civic pride that is much lacking in many towns and villages. At the same time, the more strategic
services would continue to be provided by the current (or perhaps slightly amended) unitary councils.
A response to the Scottish Parliament's Local Government and Regeneration Committee's call for evidence as part of its Stage 1 consideration of the Community Empowerment (Scotland) Bill

1.0 Introduction

The Care Inspectorate is the official body responsible for inspecting standards of care in Scotland. That means we regulate and inspect care services to make sure they meet the right standards. We also carry out joint inspections with other regulators to check how well different organisations in local areas are working to support both adults and children. We help ensure social work, including criminal justice social work, meets high standards.

We welcome the opportunity to provide evidence about the Community Empowerment (Scotland) Bill. We have particular interest in Parts 1, 2 and 3 of the Bill, as introduced, and this response is centred about these parts.

We welcome the Bill and believes it affords the opportunity for public services to be designed and delivered in ways which have a positive impact on people. We believe that the subsidiarity inherent in the Bill is welcome because it offers the opportunity for services to be designed in ways which can reflect local circumstances, strengths and opportunities.

2.0 The Care Inspectorate’s locus in the Bill

Our interest in the national outcomes, community planning and participation in decision-making derives from both our statutory responsibility and our corporate plan. The Public Services Reform (Scotland) Act 2010 places the general duty on the Care Inspectorate “of furthering improvement in the quality of social services”. This includes both care services and social work services. This duty is undertaken by providing scrutiny of such services in order to protect and enhance the safety and wellbeing of people using them, ensuring that people using such services have their personal independence promoted, that diversity of provision affords choice, and that good practice is promoted.

In 2012/13 we began a programme of joint inspections of services for children and young people in each part of Scotland. These models of joint inspection provide a joined-up scrutiny approach that can evidence how well services work together across CPPs in delivering positive outcomes for people in local communities.
These inspections are carried out in conjunction with Education Scotland, Her Majesty’s Inspectorate of Constabulary, and Healthcare Improvement Scotland. They seek to examine, in each community planning partnership area, whether and how services are working together to improve both the delivery of public services. In 2013/14 we began a similar programme of joint inspections for adults, initially focusing on health and social care services for older people, working with Healthcare Improvement Scotland. Both joint inspections have established suites of quality indicators which allow community planning partnerships to understand what quality looks like.

Our joint inspections of services for children and young people are already providing an evidence base of how CPPs are currently working, including identifying areas of concern and areas where improvements are required. The joint inspections of health and social care for older people with HIS will allow us to consider and report on the effectiveness of local partnership working and the outcomes it generates for people.

3.0 To what extent do you consider the Bill will empower communities?

We believe that the Bill has scope to empower communities by placing community planning partnerships on a statutory footing. We believe this will more clearly establish how joint and shared decision-making occurs in local areas and facilitate wider community and voluntary involvement in the planning of public services.

Our joint inspections of services for children and young people show that members of the public, private, voluntary and community sectors are already working well together in some areas and have a shared commitment to improving outcomes for children and young people. However, in some CPP areas we have found that integrated children’s services plans are not always up-to-date and as a result there can be limited joint financial planning and joint commissioning of services. As a result, this can impact on opportunities for engagement with children and their families.

We believe that a statutory footing will place a stronger emphasis on delivering better outcomes for people who use public services. It will complement the focus on outcomes established by the Children and Young People (Scotland) Act 2014 and the Public Bodies (Joint Working) (Scotland) Act 2014.

The proposal to allow participation requests, as set out in Section 17, has the scope to empower local communities. The Care Inspectorate actively seeks to involve people affected by our decisions and work in planning and designing our scrutiny, and we expect both care services and the public authorities we inspect to do the same. This improves the quality of services being provided and helps ensure they are fit for purpose. We welcome the requirement in Section 19(3)c that consideration of such requests will be considered, inter alia, against the likely effect on public health and social wellbeing.
We welcome a wide understanding of what communities might be regarded for the purpose of the Bill: during previous consultation, we advised that a simplistic understanding based solely on geographic or administrative units may not be sufficient. Different localities will define communities in different ways. They should be focused on the needs of the local population and organised in a logical way that is credible with the local population. We need to be clear whether, in the context of health and social care, localities are designed around – for example – GP practices or clusters or schools, or in another way. We believe this is a critical issue and that some shared understanding across the public sector would aid efficiency and public understanding, but we understand this may be more helpfully developed in guidance than on the face of the Bill, Section 14 notwithstanding.

4.0 What will the benefits and disadvantages for public sector organisations be as a consequence of the provisions in the Bill?

First, a set of statutory national outcomes can help bring clearer focus to the mission, vision and values of public bodies in the discharge of their duties. Effectively drawn, they may be regarded less as governmental objectives, and more as Scotland-wide objectives in which many parties, not just the public sector, have a role in achieving.

Clearly, future national outcomes may change, but the current non-statutory outcomes provide effective high-level strategic guidance to public bodies at present. For example, the Care Inspectorate itself sets out, in our Corporate Plan 2014-18, how our strategic objectives align with both the Scottish Government’s strategic objectives and the national outcomes.

Second, we believe placing these national outcomes on a statutory footing may, to some degree, strengthen opportunities for Scotland-wide public sector organisations to work together more closely in the discharge of statutory duties.

Third, we welcome the proposals around the local outcomes improvement plan. Our joint inspection activities have found that the Single Outcome Agreement currently plays an important role in setting out how CPPs work towards improving outcomes for people in Scotland in a way that reflects local circumstances and priorities. We believe the proposal for CCPs to consult on and publish local outcomes plans is therefore welcome. These must articulate a shared vision for achieving better outcomes for people, and we would welcome further clarification on how these will link with our own framework of quality indicators used for joint inspections of CPP services. We support the proposal for a local outcomes improvement plan progress review, and would welcome further proposals of how this can be aligned to the existing scrutiny landscape to ensure it is robust, verifiable, and takes account of emerging effective practice from other parts of the country, and, where appropriate, internationally.
5.0 Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

We welcome the proposed duty for CPPs include consulting and engaging with communities and the third and business sectors on the local outcomes improvement plan should be developed and delivered. Our inspections of services for children and young people have found that third sector organisations often play a key role in providing support services to children, young people and families at risk.

It will be important that key stakeholders continue to be involved in assessing if the outcomes are being delivered effectively. CPPs must also consider a variety of engagement methods to ensure that seldom-heard parts of the community (for example, those who experienced homelessness, domestic abuse, drug and alcohol addictions, criminal justice services) are involved in identifying outcomes and helping decide how these are delivered.

In order to achieve equality of impact and participation, statutory and other public sector agencies should address directly the importance of building the capacity of community organisations where required, and developing the capacity of communities to become organised.

Public services should ensure that their overall dealings with communities are carried out in ways that build their capacity and thus empower them.

We would be further interested to know how such duties fit with other public involvement and participation arrangements.

6.0 Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

We have sought further clarification about how the proposed national outcomes will link with the national health and wellbeing outcomes set out in the Public Bodies (Joint Working) Act 2014, and also about how these outcomes will be scrutinised. We will need to work closely with other scrutiny bodies to consider how these outcomes complement our quality indicators framework for joint inspections. It is important that the outcome measures align to other national policies such as GIRFEC, the National Dementia Strategy and the Healthcare Quality Strategy for NHS Scotland, although we understanding why such detail may not appear on the face of the Bill.

During previous consultation phases, we stressed the need to take account of the move towards integration of health and social care. We therefore welcome the extension of the key CCP partners to include integration joint boards and would
welcome assurance that the governance arrangements for CPPs set out in Section 8 are sufficiently flexible to support the involvement of integrated health and social care arrangements. Ensuring the involvement of the joint integration board in the CPP will help mitigate the risk of it being perceived as an extension of either the local authority or the health board. Establishing the role of the CPP, or the local outcomes plan, in contributing to strategic commissioning plans will be important as the Care Inspectorate and Healthcare Improvement Scotland develop an inspection methodology due for 2015.

As part of our joint inspections of services for children and young people, we have identified the need for CPPs to better prioritise early intervention and prevention via targeted services for children, young people and their families identified as at most risk. We believe that the core duties for CPPs should include a specific duty to ensure that early intervention and prevention is set out as a shared priority and clarity is provided to show how outcomes are linked to these.

7.0 What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

We welcome the fact that it is reported that the EQIA concludes that the Bill’s provisions are neither directly or indirectly discriminatory on the basis of age, disability, race, religion or belief, sex, sexual orientation or gender reassignment. It is important that, in engaging with and supporting the empowerment of communities, public bodies are mindful of the public sector equality duty.

The provision of public services on island communities can have particular characteristics and we expect these to be reflected carefully as guidance associated with the Bill is developed, and as the powers it affords to Scottish Ministers are used.

8.0 Other remarks

The Care Inspectorate plays a key role in improving the quality of care across CPPs, working closely with other partner bodies such as Healthcare Improvement Scotland (HIS), Education Scotland, Audit Scotland, and Her Majesty’s Inspectorate of Constabulary Scotland (HMICS) to co-ordinate our scrutiny activities.

Our corporate plan sets out our continued commitment to focus our scrutiny activities on holding CPPs accountable for the delivery of positive outcomes for people in local communities. Through our improvement function, we will carry on supporting and providing constructive challenge to CPPs to develop capacity in building strong, resilient communities. We would welcome extending the scope of shared risk assessments amongst community planning partners.
We have also enhanced the role and function of our link inspectors to provide regular public reports on the quality of care across CPPs. We expect them to play a key role in helping scrutinise how the proposed changes are being implemented.

20 August 2014
SUBMISSION TO THE LOCAL GOVERNMENT AND REGENERATION COMMITTEE

COMMUNITY EMPOWERMENT (SCOTLAND) BILL

Background

1. Nourish Scotland is a not-for-profit organisation campaigning for a fairer food system in Scotland. Nourish facilitates this change through engaging with organisations, community initiatives, politicians and officials. We work to influence policies from local to EU level and provide a platform for networking and sharing best practice. We make sure that food is brought to the fore in public debates of various kinds, making the link between a localised food system and its positive outcomes for economic development, community cohesion, job creation, skills development, public health, environmental stewardship and justice.

2. Nourish is pleased to be able to comment on the Community Empowerment (Scotland) Bill. The Bill is wide-ranging in its scope and Nourish only comments here on the sections in which we feel we have interest or expertise.

National Outcomes, Community Planning and Participation Requests

National Outcomes

3. Nourish is generally supportive of the Bill and notes that the Bill has already undergone extensive consultation with stakeholder groups. Nourish endorses the principles of subsidiarity, community empowerment and improving outcomes which underpin the Bill.

4. Nourish generally supports embedding the process for determining Scotland’s national outcomes in legislation, along with the requirements to review and report on these outcomes. However, delivering on these outcomes, and promoting a vibrant and joined up public, private and third sector will require more effective community planning and community involvement mechanisms to be developed and resources to be invested in ensuring community participation in decision-making.

Community Planning

5. Nourish welcomes the introduction of the new community planning provisions in the Bill. Current practice is patchy and uneven across the country and these new provisions should bring some consistency. We welcome the wider range of bodies that will contribute to the process and believe it is important that the CPP is not just seen as an extension of the local authority. While the local authority will always play a lead role, the CPP should be a wider platform. We are also pleased to see the provisions resources to be aligned with agreed CPP priorities, along with new
reporting mechanisms which require partners to set out how they contributed to the CPP outcomes. This should ensure that more than just lip service is paid to joint priorities.

6. We also support the new provisions requiring the CPP to make all reasonable efforts to secure the participation of community bodies in the process and to take reasonable steps to enable bodies to participate. It should be recognised that some community bodies, and some areas where community participation has not been strong, will require capacity building efforts for this legislation to be successful and for genuine partnerships, not based on top-down models, to be developed. We recommend that the Accounts Commission and Auditor General be specifically asked to look at the level of community engagement, and the steps taken to ensure this engagement, as part of the audit process for CPP bodies.

7. It goes without saying that we would also support the production of guidance supporting the CPP process that gives proper consideration to crosscutting areas such as food. Food can cross multiple work-streams, from planning (land use and retail provision) to health (food poverty and diet-related ill-health issues) to environment (waste, biodiversity loss, energy use and emissions) and economy (business creation). It is important that the CPP process is used to adequately address these issues in a joined up way.

**Participation Requests**

8. Nourish generally supports the provisions regarding participation requests. However, we note that, unlike the CPP process, there is no requirement on the public authority to take reasonable steps to facilitate the involvement of community bodies or to assist community bodies to fully participate. This may undermine the effectiveness of this provision if communities are not supported during this process.

**Community Right to Buy, Asset Transfers and the Common Good**

**Community Right to Buy**

9. Nourish generally welcomes the extension of the right to buy to urban areas, along with the suggested improvements to the definition of community, the extension of the types of legal entities that can use the provisions and the provision for third-parties to carry out ballot procedures. Nourish also recommends that consideration be given to extending the power to purchase land to co-operatives as well as to SCIOs.

10. While not disagreeing with the symbolic target of having a million acres in public ownership, we believe it is important not to be sidetracked into pursuing high-acreage targets for the sake of the numbers. Sometimes small urban sites may be of importance to a high number of people and have a considerable impact on the surrounding community, even though they may not contribute much to the acreage target. There is also a need to ensure that funding is available, both for communities seeking to buy land and for advisory bodies to support this process. We would welcome confirmation that such funding will be secured and that resources will be put into supporting communities engaged in land acquisition, either through the expansion of existing services or the creation of new bodies.

11. Nourish also agrees with the creation of an absolute right to buy neglected or abandoned land, where it can be shown to be in the public interest. However, this is a significant power, and we question whether it is appropriate to leave the definition of abandoned or neglected land to subordinate legislation, as is currently proposed.
At the very least, a working definition ought to be available to the Committee during stage 2 deliberations in order for effective scrutiny to take place.

**Asset Transfers**

12. We are pleased to see the powers to transfer assets to the community and particularly welcome the fact that these powers will include the ability to transfer the use, management or occupation of land or buildings as well as just the ownership. For many communities, usage may be as important as ownership. However, we are concerned that these powers do not appear to apply to any hybrid or reserved bodies, such as the Crown Estate, the Forestry Commission, Ministry of Defence or Network Rail, all of whom are significant land-owners. We urge the Committee to seek clarification on the position of these bodies and the progress of any negotiations between the Scottish Government and the UK Government in relation to the landholdings of these bodies in Scotland.

**Common Good**

13. While understanding the difficulties in defining common good land, we remain concerned that many local authorities cannot or have not identified the extent of their common good holdings. We support the creation of the proposed register and the requirement to consult before disposing of or changing the use of such assets.

**Allotments and Food Growing**

14. Nourish welcomes the decision to completely re-write rather than simply amend the existing allotments legislation. This is clearly the best solution in terms of readability and simplicity. We are happy with the content of the revised allotment provisions, as we believe they reflect the results of previous consultation exercises. However, the decision to simply “add-on” elements about community growing into this Part of the Bill has resulted in an uneasy and inconsistent mix of allotments and community growing provisions. Community gardens and allotments are not the same thing and have very different rights and responsibilities attached to them in law. Sufficient land needs to be available to meet the needs of both forms of growing and there must be an appropriate mix of the two to meet respective local demand. Nourish believes that these provisions should be restructured to give due attention to each element of the food growing picture.

15. At the moment this Part of the Bill is a strange mix of detail, timescales and reporting requirements. For example, the local authority is under an obligation to maintain waiting lists for allotments and to provide allotments. They must also issue a yearly report on allotments, waiting lists and the measures they have taken to provide allotments. However, the local authority is also under an obligation to prepare a food growing strategy within two years of the Bill coming into force. The strategy should also identify areas that might be used to provide allotment sites or other areas of land that may be used for community growing. This must be reviewed every 5 years but there is no requirement to report on it.

16. It seems perverse that a local authority has to report every year on allotments, which are just one part of an overall strategy for growing, but have no requirement to report on community growing provision. Surely it would be more sensible to require a local authority to report annually on its overall provision for growing in the area, both in relation to the provision of allotments (both council and privately owned) and in relation to community growing? The current provisions seem to risk community growing being lost amongst the (necessary) specifics as they relate to the re-written allotment provisions.
17. Nourish is very much in favour of local authorities being scrutinised on the steps they are taking to meet the increasing demand for land to grow on. We support the introduction of a requirement for local authorities to produce a food growing strategy as this may provide a useful impetus for councils to consider food production issues and increase the likelihood of better provision of growing facilities.

18. However, planning policy must also begin to consider the requirements of food production and distribution and unless this is changed the proposal for developing local authority led food-growing strategies may not have much of an impact. The food–growing strategy must be dovetailed with the land-use, planning and development framework if it is going to have any real effect. This will require changes to be made to the current framework, which only mentions food production in a tangential sense. We would also welcome a situation whereby new developments have to address the provision of land for growing and community use as part of the process for obtaining planning consent.

19. Given that other areas of the proposed legislation confer a power to buy neglected or abandoned land, we see no reason why the less controversial proposal of allowing “meanwhile” growing spaces on such land should not also be supported. We support any measures that will encourage both public bodies and private landlords to develop this “meanwhile” provision. This may require a tweaking of the planning regime to clarify that meanwhile growing activities do not require planning consent and/or that they will not impact on current planning consents which may be pursued at a later date.

Conclusion

20. Nourish welcomes the publication of the Community Empowerment (Scotland) Bill and notes that the Bill has been preceded by an extensive consultation process. We support the broad thrust of the proposals in the Bill but believe that thought needs to be given to how these proposals will be developed and resourced in practice. We also believe that the Part of the Bill concerning allotments and food growing would benefit from restructuring and clarification of the respective roles and rights associated with community gardening and allotments.
Dear Sir/Madam
If you want to empower communities, give them power. In other words, give them the decision-making powers necessary for them to become self-governing. This bill is a joke and its title is a lie.
Yours faithfully,
Michael Gallagher
COMMENTS ON PROCEDURES PROPOSED UNDER NEW PART 3A OF THE LAND REFORM (SCOTLAND) ACT 2003 INTRODUCED BY SECTION 48 OF THE COMMUNITY EMPOWERMENT (SCOTLAND) BILL

1. This note comments on a couple of specific aspects of the procedures introduced by Section 48 of the Community Empowerment (Scotland) Act. These relate to mapping land and holding a community ballot, apparently based on procedures in Part 3 of the Land Reform (Scotland) Act 2003 and its associated regulations. I have been closely involved as a Director of the Pairc Trust with applications made under Part 3 of the Land Reform (Scotland) Act 2003. Pairc Trust is the only crofting community body in Scotland which has used these procedures to the stage of applications being approved by Scottish Government, and our experience may therefore be of relevance when considering the proposal to insert a new Part (apparently based on the procedures in the existing Part 3) to enable purchase by community bodies of abandoned and neglected land introduced by Section 48 of the Community Empowerment (Scotland) Bill.

2. I also understand that the Scottish Government now intends to use the Community Empowerment (Scotland) Bill to amend Part 3 of the Land Reform (Scotland) Act 2003 in relation to the crofting community right to buy. My comments below are therefore also relevant to the reform and simplification of this latter piece of legislation.

3. In general, my experience indicates that these are (i) sometimes There is in my view a need wherever possible to simplify procedures so that genuine and strong applications cannot be thwarted by legal action on technical issues contrary to the wishes of Parliament when they passed the legislation.

4. I note that the Scottish Government, through other provisions introduced by Part 4 of the Bill, is proposing simplifications to Part 2 of the Land Reform (Scotland) Act 2003. This is welcome, and I would suggest that the same approach should be taken in relation to the Part 3 procedures. This note is confined to ways of simplifying the requirements for mapping and the holding of a community ballot. I understand that others are commenting on ways of simplifying the definition of a community body, the legal status of the type of community body permitted, and that a Part 2 community body should be able to become recognised as a Part 3A community body.

5. requiring simplification under Part 3 of the Land Reform (Scotland) Act should say that I completely 6. , there seems no logical or functional rationale for being required to provide the following details:

* a map and written description showing not only the boundary of the land or lease to be acquired, but also all sewers, pipes, lines, watercourses or other conduits, and fences, dykes, ditches, or other boundaries. This goes far beyond what is required in other land or lease transactions, and there seems no functional reason to require this information. It is particularly onerous when the area to be purchased extends to several thousand hectares. Yet similar detailed requirements are proposed in Section 48 of the Bill (Clause 97G (6)(d) and (f) for the new proposed Part 3A).

* further, if the same regulations as are applied to the existing Part 3 of the Land Reform (Scotland) Act 2003 were to be applied to the new Part 3A, this would require a list of all postcodes and O.S.
Km. grid squares included in the land or lease area to be purchased (Question 4(c)). Again there seems no reason for this if the boundary is properly defined on a map. If the area concerned extends to several thousand hectares, the list simply opens up scope for a technical challenge if particular postcodes or grid squares are inadvertently omitted.

7. Finally, the regulations under Part 3 require crofting community body to supply a This runs the risk of a technical challenge if any of the information on the detailed list, however trivial, is inaccurate. The proposed new Clause 97J(3) and (4) to be included in a new Part 3A do not require a detailed list, but if similar regulations to those which apply under Part 3 were to be drawn up under the proposed new Part 3A then a similar risk would apply. In my view in the community a sa it contains any 8. A criterion of proportionality should be applied to all such provisions so that an application which meets the essential purposes of the Act is not at risk of refusal or legal challenge on minor technical details. For example, an error in one listing of one postcode or grid square should not invalidate an application if the boundary of the land or lease to be acquired is clear.

John Randall

August 2014
Hi,

I would like to add a further point to my submission. I have just been dealing with a dispute between Dumfries and Galloway Council and Langholm Community Council regarding their Common Good Fund. Basically, D & G Council have never compiled a moveable assets list since 1975 for Langholm despite there being dedicated oil paintings etc and are now claiming that as they don't have a list they don't need to keep one.

Added if possible, somewhere in the proposed Act;

"If a community through its representatives is able to demonstrate to the minister that a Local Authority has failed to comply with either the spirit or the letter of the Act with regard to Common Good Fund administration, the minister is empowered to apply financial sanctions to that LA until such time as it complies with the Act to his/her satisfaction"

Thanks,

Lindsay Neil
26 August 2014

Dear colleagues

Local Government and Regeneration Committee call for evidence:
Community Empowerment (Scotland) Bill

The Carnegie United Kingdom (UK) Trust welcomes the opportunity to respond to the Local Government and Regeneration Committee call for evidence on the Community Empowerment (Scotland) Bill. The Trust works to improve the lives of people throughout the UK and Ireland, by changing minds through influencing policy, and by changing lives through innovative practice and partnership work.

We warmly welcome the introduction of the Bill and we have been pleased to participate in the Reference Group which has helped to support its development. We believe that the proposals set out in the Bill provide a unique opportunity to significantly alter how we organise our society in
Scotland and deliver major improvements in our collective wellbeing. We have chosen only to respond to the questions where we have experience and relevant evidence. Further information on our work is available on our website [www.carnegieuktrust.org.uk](http://www.carnegieuktrust.org.uk).

1. **To what extent do you consider the Bill will empower communities, please give reasons for your answer?**

   The Bill and its legislative framework is an important step towards empowering communities, as it gives them the right to acquire assets and new opportunities to become involved in shaping and running local services. However, there are other steps which governments can take to support individuals and communities to achieve positive change and ensure that the most vulnerable are not left behind, such as working to an outcomes focussed approach and building capacity in disadvantaged communities.

2. **What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?**

   Communities know best about their own situation, aspirations, preferences, interests, knowledge and capabilities, and giving them more opportunities to take part in the community budgeting and planning process will lead to improved local outcomes. Empowering individuals and communities with the opportunity to become involved in setting national and local outcomes will give them more flexibility and autonomy to improve their own lives.

3. **Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what**
requires to be done to the Bill, or to assist communities, to ensure that this happens?
There is a real risk that more affluent communities have the most to gain the most from these new opportunities and that other communities are left behind. It is crucial therefore that the Bill is accompanied by investment in disadvantaged communities, including financial support for the means to buy assets or participate in services, support for access to skills, knowledge, training and social capital and support for co-production at the national and local level. The development of a review programme would ensure that national outcomes are improved over time and that the package of support to disadvantaged communities remains relevant.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill, and why?
We would like to see the introduction of a national asset register used by all public sector bodies, which is publically available, accessible and can be modified over time. Community bodies may have an interest in a wide range of public sector assets and a publically available database of publically owned assets which details where the asset is; what it is currently used for; which public sector body owns it and who to speak to about it would be very helpful.

We hope that you find these comments helpful. If you would like to discuss our response, or would like to find out more about our work please contact my colleague Jenny Brotchie, Policy Officer at jenny@carnegieuk.org or by telephone 01383 721 445.
Submission of Written Evidence – Community Empowerment (Scotland)
Bill submitted by Friends of Midmar Inn Community Company

A) Summary of FOMICC Experience with CRTB

The historic Midmar Inn, aka The Cottage Bar and a one time Drovers Inn, had been a busy and successful meeting place for over 200 years, it has always played a central role in the community life of Midmar and the surrounding area. In 2004 it was sold and under the new ownership, rapidly declined because of poor management and lack of investment, in September 2007 it was closed.

In late 2007 a group of local residents were interested in buying the business and property from the owners and these approaches were rejected, therefore in January 2008 this group formed the Friends of Midmar Inn Community Company (FOMICC) (SC 337914) and commenced the process of applying for a Community Right to Buy (CRTB), this was originally awarded in 4th July 2008.

In parallel with the CRTB process the owners applied for Change of Use of the building (part public house and part private residence) to entirely residential and also sought planning permission for an extension to the property. This was planning application G/APP/2008/0932, the Garioch Area Committee refused the application. The owners then appealed the decision (ref P/PPA/110/810) and as per the judgement in July 2009, this was not successful, primarily because the owners had made no attempt to market the business before they had closed it down.

On various occasions since the closure of the Midmar Inn, FOMICC has attempted to negotiate its purchase however the general attitude of the owners has been that :-

1) By not offering the property for sale they can avoid engaging with the CRTB process
2) they have not allowed any independent valuations or surveys to be undertaken, choosing instead to initially set an indicative sale price equivalent to the property value had it already been converted to a private residence and then more recently at a level below that value but
still much more than it is probably worth.

In undertaking this project, FOMICC intention is to procure the property at a fair value on behalf of the community and re-establish the business; we have not therefore been able to conclude any deal with the owner.

The CRTB award lasts five years, therefore in July 2013, with more than 75% support from our community (as indicated by validated ballot) FOMICC re-applied for the CRTB which was awarded again in August 2014.

As witnessed by one of the many communications we have had from the owners over the past six years, in a similar vein, following the Ministers decision the owners wrote:- “This screwed up decision by the Scottish Ministers to grant you lot another 5 years make no difference to me at all, the Midmar Inn will fall down before I sell it to the supposed Friends of the Midmar Inn.”

To summarise the Current Situation at August 2014:-

- Under CRTB, the FOMICC has the Right to Buy the Inn, but the Owners will not engage with this process
- FOMICC has the money to buy the property at a fair valuation as a Public House
- The planning system and associated appeal have both refused a Change of Use until the option to reopen as a Public House has been fully tested in the open market.
- FoM ICC has a business plan in place (that has been validated by experts) showing that with the right investment and under professional management the business will be a success.
- This historic building has been boarded for more than 5 years and continues to decay when it should be a source of economic activity and benefit to our community.

B) Response to Committee Questions

In this section we have summarised our views regarding questions highlighted by the Scottish Parliament press release “Putting the ‘power’ in community empowerment?” (link https://www.scottish.parliament.uk/newsandmediacentre/78922.aspx) announcing the Community Empowerment Bill consultation process on 26 June 2014.

Our experience is particular to the Community Right To Buy (CRTB) process which was originally defined by Part 2 of the Land Reform (Scotland) Act 2003 and may now modified refined by Part 4 of the proposed Community Empowerment Bill. We have therefore limited the scope of our evidence as to how this new Community Empowerment Bill effects the CRTB legislation.

B.1 To what extent does the bill empower communities?

a) General

It is FOM ICC opinion that the original act has been of enormous benefit to communities all around Scotland. Where existing landowners have demonstrated by their actions (or lack of), over a long period of time, that they have no interest in embracing the social and economic responsibility that comes with ownership of their land, it is right that a mechanism should exist that allows others to take action.

The CRTB process, as defined in the original act, sets out a fair mechanism by which communities, if they are so minded, can take over the operation of land (with associated buildings and businesses) and run it for the benefit of all, including the original owner if they are a local resident.

It is evident from many projects around Scotland that where there is a willing seller and an organised community body that the CRTB process has been a force for good over the last 10+ years. Even in cases where the seller is not willing the implementation of a CRTB has helped to facilitate the sale process, because:-
  - The community companies that are established are “not for profit” (any profits being returned to the community), this is a powerful incentive for everyone to want to contribute and thereby create social pressure on the owner to either improve or sell-up.
  - The mechanism establishes a framework that allows sufficient time for monies to be raised to procure at a value that has been established by an independent valuation
  - Other community improvement bodies and local government can engage because the community companies are a recognised legal entity

We would cite the case of the Crook Inn (Tweedsmuir near Peebles) as an example of all of the above, by virtue of establishing the Community Company this created pressure on the owner who initially set an unrealistic value.
The Crook Inn had been made a Listed Building in 2002 and consequently the local Council were able to approach the owner in regard to his responsibilities to maintain the building. As a result of this approach the owner sold the Crook Inn to the Community Company within 3 weeks.

Unfortunately the Midmar Inn is not a Listed Building, nor is it in a Conservation Area, which means that the Local Council is unable to enforce maintenance of the building.

b) Unwilling Owners (Seller)

As highlighted in the Policy Memorandum for the Community Empowerment Bill, clauses 57 and 65, the proposed Part 3A to be inserted into the original act to provide a framework for community bodies to purchase abandoned or neglected land without a willing seller, this, we hope, will solve the deadlock situation that our project has been in for six years.

The owners of the Midmar Inn (Aberdeenshire) have steadfastly refused to engage with the CRTB process presumably believing that if they wait long enough then the community will lose interest in the project. As evidenced by the survey we undertook in 2013 to re-establish the CRTB the community is still interested, more than 75% of those polled were in support of the FOMICC ambition to procure the land and re-establish the Midmar Inn business. The dilapidated state of the building and site is a constant topic of discussion both in Midmar and the wider Aberdeenshire community.

Unlike the Crook Inn (Tweedsmuir), the Midmar Inn building is not listed, either in part or whole, and hence there is no mechanism under current legislation for FOMICC or government to encourage the owners to engage, nor is it in a conservation area. By this means the Midmar Inn owners, over the last 6 years, have successfully frustrated the intention of the CRTB awarded by the Scottish Ministers in 2008 and 2013 to FOMICC and denied our community the opportunity to improve the economic and social welfare of our area.

FOMICC has no doubt that if the Part 3A if inserted into the original act and is made applicable to all land will be hugely empowering for all communities since it should ensure that owners will engage. It is important that the process is fair to both parties and FOMICC believes that the CRTB procedure ensures this through confirmation ballots, independent valuation and time limiting the period to raise the funds.

c) Definitions of Registrable and Excluded Land

We do not believe these changes will affect our situation as the Midmar Inn is already registered land and is hence not excluded land. What is proposed would seem sensible; the effect of the bill should be applicable throughout Scotland to ensure all communities have equal opportunity.

d) Definition of Community Area

The existing regulation about post code areas has caused the FoMICC a number of problems. The changes to section 34(5) of the original act are interesting but we are unclear as to what effect they may have on us. We would hope that rather than having to use Post Code to define the community area the Community Company could apply to use a combination of Geography and Post Code. As indicated in the drafted changes this would become a “prescribed type of area”.

Because we have only a small population within the Post Code area around the Inn it would be beneficial for FOMICC to continue to use the Post Code to define the voting population for the
Purpose of ballot but also allow members of the company (there needs to be 20 in number) from the wider geographical community, for example within an eight mile radius of the Inn.

e) Changes to Timelines and Procedures

FOMICC notes the various changes proposed to time limits and procedures, notably:

a) The Confirmation Ballot to be performed by an independent “Balloteer” appointed by ministers.

b) That Ministers may waive the requirement for a confirmation ballot if the application ballot had a sufficient majority.

c) Extension of the time to raise funds from six to eight months.

d) Making the valuation process more robust.

e) Requiring minutes of company meetings to be shared with those requesting to see them.

Point (a), as drafted, provided the Community Company does not bear the cost of using an independent “Balloteer” to run the confirmation ballot, therefore FOMICC supports this initiative because it will improve the credibility of the result and ensure impartiality.

Point (d), we welcome the changes to strengthen the valuation procedure, in FOMICC experience this has been one of the major reasons that the owners of the Midmar Inn have refused to engage with the CRTB process. They have always stated their belief that the independent valuation would not be fair and they had no right of reply. FOMICC throughout have steadfastly maintained the position that we will pay a fair price, considering what was originally paid by the owners in 2004 and the state of the property and business as it is today.

B.2 Benefits and disadvantages for public sector organisations?

FOMICC cannot offer any evidence in this regard except that it may make it clearer for such organisations what their responsibilities are.

B.3 Do communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

In our opinion, where the cause is important enough, communities will find the skills required to take advantage of the provisions in the Bill. To mobilise these skills does however require a financial input, organisational and leadership skills and a significant voluntary contribution by members. This has been FOMICC experience. The original act, and the improvements proposed by the Empowerment Act “open the door” and it must be up to the community to grasp these opportunities to move forwards.

We would however qualify this support by stressing that it is important that the legislation must not impose an onerous requirement on the community for financial outlay at the inception of a project which would be a wasteful and unnecessary expenditure of a scarce resource. We believe that by the government funding ballots and independent valuations etcetera that are required by the process, this goes a long way towards satisfying this requirement.

We would also recommend that the bill offers to support the community with legal costs if owners take a challenge to the courts over rulings that have been made, i.e. the independent valuation.
C) Concerns and Other Information Regarding the Bill

C.1 Drafting of section Part 3A regarding Abandoned or Neglected Land

Having read all appropriate documents, we are confused as to whether or not the right to buy Abandoned or Neglected land, with an unwilling seller applies equally within the proposed amended Land Reform Act to land registered under Part 2, such as the Midmar Inn and to crofts registered under Part 3A. To comply with the principals as evidenced by items 57 and 65 of the Policy Memorandum, we strongly believe that it should.

We do not understand why Part 3A has been drafted separately to the original Part 2 and modifications to this to be applied by the proposed Empowerment Bill. The wording of the new Part 3A is very similar to Part 2, with the apparent exceptions that a community company constituted under this Part 3A can :-

a) Have less than 20 Members, if Ministers think it in the public interest to allow this.

b) Procure Abandoned or Neglected Land from an unwilling seller

We note that Part 3 of the original act was concerned with crofts and therefore query if this new Part 3A is intended for application only to crofting land?

It is our concern that because FOMICC is a Community Company constituted under Part 2 of the original act, if the proposed drafting of the new bill using this Part 3A will preclude us from using this legislation to deal with the scenario of an “unwilling seller” who has totally neglected the property for the past 6 years that we describe in our evidence B.1(b). If this is the case, we regard this as a major deficiency of the Empowerment Bill and in direct contravention of the ambition expressed in items 57 and 65 of the Policy Memorandum.

C.2 Existing Local Authority Powers to bring property back into use.

The Policy Memorandum (on its Page 6, 5th Bullet of Section 25) states that :-

“There are already a range of powers available to local authorities to bring long term empty property back into use, and it was not clear that new legislation would be more effective than the current powers. The Government is continuing the work of the Empty Homes Partnership and monitoring the use of other powers, such as compulsory purchase for immediate re-sale and the Local Government Finance (Unoccupied Properties etcetera) (Scotland) Act 2012.”

It has not been FOMICC experience that local government has been in a position to help.

Though our local councillors have been supportive, in 2013 we approached our local authorities about the state of dilapidation of the Midmar Inn and to paraphrase received the negative response that, planning were “concentrating on listed buildings and buildings in a conservation areas”. The implication being that the officials in our local planning department had different priorities. Conversely of course the Crook Inn in Tweedsmuir did get indirect assistance from their local councillor pursued maintenance requirements on the Crook Inn.

FOMICC view is that the proposed bill will make the responsibilities uniform throughout the country and this must therefore be a good thing.
C.3 Penalties for non-compliance with CRTB Process

Not being professional legislators it is not clear to us what the penalty is for non-compliance with the CRTB process.

For our own part we understand that if we fail to meet the criteria specified by the original Act and proposed Empowerment Bill then the CRTB will be withdrawn by the Scottish Ministers from FOMICC.

We do not see anything in the existing or proposed legislation that defines what penalties may be imposed on the owner if they do not comply with the process.
Community Empowerment (Scotland) Bill

Stage 1 Call for Evidence

Submission by Dollar Community Council
to the Local Government and Regeneration Committee concerning
Part 2 of the Bill

Contact details:
Executive Summary

Although Community Councils are statutory bodies, local authority officials have no duty to act upon their representation of community wishes within the planning process. Our evidence is based on the Dollar Community Council (DCC) attempt to influence the Local Development Plan (LDP) in Clackmannanshire (Clacks) during 2012-2014:

- In 2012, at the cost of £5,000, the DCC created a Community Plan that articulated the vision of the community detailing the wishes and preferences of its residents and business owners for its development until around 2040;
- In 2013, at a cost of over £35,000, the Community Council appointed an Urban Design & Town Planning Consultancy to develop a Masterplan for the same period;
- The aim was to stimulate sustainable growth of an appropriate style and character to an historic town;
- In 2013 a Masterplan Steering Group was formed by DCC comprising landowners, residents and a representative from the local authority;
- Details of how the steering group operated are provided below.

When submitted to the Clacks Council it became clear that the officials felt no duty, obligation or professional need to consider changes to the LDP that would enable the aims set out in the Masterplan. DCC believe that whilst efforts made over 3 years to convey the wishes of residents have been ignored because the existing statutory process does not place a duty on local authorities to involve community partners.

It is therefore hoped that the Community Empowerment Bill will impose duties on local authority officials to respond to officially organised community processes as part of the envisaged ‘Community Planning Partnership’. The bill must also include an ombudsman to which Community Councils may turn when these duties are not properly performed because it is felt that, based on our evidence, the Committee should not underestimate the changes needed to counter the ‘top-down’ inclinations and culture of present-day planning departments.
Dollar as a community

Dollar is a town in Scotland’s smallest county, Clackmannanshire. It is one of the Hillfoots Villages, nestling below the Ochil Hills to the north and the River Devon to the south. Dollar is on the A91 road, which runs from Stirling to St Andrews, around 3 miles east of Tillicoultry. In 2010 the population was estimated at 2,970. The Historic Scotland Castle Campbell, a well-preserved, late medieval tower-house castle, overlooks the town centre. Dollar Academy, one of Scotland’s top independent schools, is integral to the old town.

It displays many of the characteristics of a vibrant society with its own Museum, 10 hobby groups including the Hillfoot Harmony choir, 11 sporting clubs all which have junior programmes, 5 organisations specifically supporting child and youth development such as scouting and guiding and 5 groups catering for neighbours and friends. Its primary school has a roll of over 200 pupils. There are 2 church congregations.

However Dollar is certainly not immune from many of the challenges facing similar sized settlements. One of the most common challenges relates to the gradual decline of independent retailers in small towns and how this process can be managed and potentially reversed. There is also a lack of business park type accommodation for local micro businesses.

DCC took the approach that an expansion of the town boundaries would mean positive outcomes providing housing development was managed in the interests of the community.

Community Planning 2012

A Community Plan provided the means in which the Dollar community came together to collectively decide on a range of initiatives that meet the growing needs of their town and how these can be appropriately co-ordinated and phased with and without an expansion. The main goal of the Dollar Community Plan was to identify short, medium and long term proposals designed to maximise not only the social and physical potential of the town, but also address the economic benefits needed.

The creation of the community plan took place during the period April to August 2012. Through a series of meetings, workshops and public consultation the plan realised its vision as:

‘Dollar will be an attractive and vibrant rural town, offering a safe and friendly environment in which to live, work and visit. Building upon its community spirit, strong historic and
Local Government and Regeneration Committee

Submission Name: Dollar Community Council
Submission Number: 17

*educational roots, Dollar must continue to evolve towards a sustainable and prosperous future*. This headline vision was substantially supported by detailed ‘what and how’ plans. With regards to the size of Dollar, it was concluded that whilst some would prefer there to be no change in the town, the majority of residents felt that Dollar would benefit from some appropriate growth. The Community Plan emphasised that this must be carried out to a very high standard of planning and design, leading to the following potential benefits:

- Increased population to support and sustain local shops and services;
- Provision of new homes, including affordable units for local people ‘priced out’;
- New facilities including an improved primary school, park, cemetery and sports fields;
- Opportunities for employment via new office space and a sports campus.

A copy of the Community Plan was sent to the Chief Executive of Clackmannanshire Council on August 13th 2012 and to Derek Mackay MSP at the same time.

**The 2013-2014 Masterplan Initiative**

**Context**
The Masterplan became the means by which the community vision could be articulated on the ground. In late 2013 DCC were able to obtain draft copies of the LDP for the county and it was decided to commission a project to develop as Masterplan for the expansion of the town.

In considering a Masterplan approach DCC was aware of the provision made under Section 22 of the Planning etc. Scotland Act 2006 for the preparation of supplementary guidance in connection with a Local Development Plan. It understood that Supplementary Planning Guidance (SPG) can include documents such as Masterplans, Development Briefs and expressions of detailed policy which expand upon or supplement the policies and proposals in the current Adopted Local Plan.

DCC was also aware of PAN 83 covering the Masterplanning process from beginning to end, including understanding the need for Masterplanning, to preparing, creating, processing and implementing a Masterplan.

DCC was therefore confident that the commissioning of a Masterplan would fit into the statutory process of the Clackmannanshire LDP and this belief was strengthened by the involvement of a senior manager in the steering group stakeholders.
Stakeholders
Dollar Community Council
Harviestoun, Landowner & Partner
Dollarfield, Landowner & Partner
Dollar Academy, Landowner & Partner
Clackmannanshire Council

Professionals
The Paul Hogarth Company, Masterplanner
Etive Consulting, Engineer
Sam Shortt Consulting, Transport Consultant
Robin Kent Architecture, Conservation Architect
Guard, Archaeologist

Key Component
A key component within the Masterplan is the ambitions of Dollar Academy to develop a Community Sports Campus operated as a regional/ national centre of excellence with the duel benefit of modern facilities and, crucial to the needs of the town, employment opportunities. However to enable this major project the proposed LDP boundaries did require extension to the south of the town.
Masterplan development and timetable

The Masterplan was developed during the 7 month period October 2013 and April 2014 involving seven monthly working group meetings chaired by the DCC chairman and attended by the stakeholder partners, professionals, Dollar community council members.

In February 2014 a two week public consultation was mounted to obtain feedback on the emerging document.

The consultation established 80% support for the principle of a community led Masterplan and over 80% support of the outcomes.

A commercial appraisal was commissioned late in the process. However this step simply highlighted how unfeasible it would be to implement the Masterplan when Clacks Council refused to contemplate financial involvement.
Involvement of Clackmannanshire Council

During meetings 30 October and 8 November 2013 Clacks Council was kept briefed of the Masterplan progress. However the reaction to a request that the new LDP green belt boundaries were revisited (to overcome good practice issues such as defensible edges and the concern of constraining development in relation to the economics of funding a new long term and permanent access off the A91) the planning department manager responded by saying that there was no time to promote a schedule 4 change in the LDP for the south boundary despite accepting a similar change to the east boundary, even though the LDP had still become public.

The advice that we could express our objections during the LDP public consultation period in early 2014, thereby relegating the Masterplan process to the status of a ‘public contribution’, is clear evidence that the authority officials had no intention of amending the draft LDP in relation to the south boundary, critical to the smooth passage of the Community Sports Campus.

Final Response from Clackmannanshire Council

Prior to Clacks Council putting their proposed LDP forward to the full body of elected members for adoption Dollar Community Council was again informed that this proposed LDP would not be altered by the inclusion of any boundary changes as set out in our Masterplan because that would mean going out to public consultation and hence delay.

After the members adopted the LDP Clacks Council informed Dollar Community Council that the submission to the Scottish Government would include the preparation and submission of Schedule 4 forms laying out their views and acceptance of these proposed boundary alterations as laid out in our Masterplan. We have had no confirmation that this was done or even that the LDP has been submitted to the Scottish Government.

Dollar Community Council conclusions and appeal for change

Dollar Community Council, as well as Dollar Civic Trust, has made many representations over the years to Clacks Council not only on planning proposals but on the general well-being and upkeep of the town.

It is our view that decisions taken by Clacks Council do not always reflect the views and wishes of the majority of Dollar Townsfolk.

We would ask the Scottish Government to take these observations into account and develop statutory orders to compel Local Authorities to heed the wishes of local communities within the parameters laid down in current and future planning regulations. The bill must also include an ombudsman to which Community Councils may turn when these duties are not properly performed because it is felt that, based on our evidence, the Committee should not underestimate the changes needed to counter the ‘top-down’ inclinations and culture of present-day planning departments.
Strengthening the Community Empowerment Bill to empower every community in Scotland

As organisations we welcome the Scottish Government’s plans to pass a Community Empowerment Bill. However, as organisations working with and advocating with Scotland’s most disadvantaged communities, it is important that the Scottish Government’s proposals help to address Scotland’s most significant inequalities, and empowers communities right across Scotland. We have developed these proposals together, as ways that we believe the Bill can be strengthened, so that all communities, including those who are currently the most disempowered communities, can be empowered through the Bill’s provisions.
Standards for Community Engagement

There is much good practice in the public sector when it comes to consultation with communities. However, this practice is not always of a consistently high standard. To genuinely involve communities in the design of public services, the high-quality involvement of communities in local decision making must become second nature to public services, as well as being a part of their everyday core purpose.

There are already existing national standards for community engagement, but their implementation is varied across Scotland, and the passing of a Community Empowerment Act would create an ideal moment to renew them and place them on a statutory footing. Requiring all public bodies to adhere to a set of national standards for the engagement of communities, and to regularly report on them, would be a major step advance for the rights of communities to participate in decisions that affect them.

A key part of the standards should be a focus on addressing inequality and empowering Scotland’s most disempowered communities.

More than two thirds of respondents to the Scottish Government’s consultation on this topic in summer 2012 responded favourably to this proposal, including a clear majority of local authorities and other public bodies.

We recommend:

- That a new power is created that allows Ministers to create statutory regulations for the engagement and empowerment of communities, which all public bodies must follow and regularly report upon.
- When Community Planning Partnerships are creating a local outcomes improvement plan, they should be required to adhere to the Standards.

Makes community empowerment central to the purpose of Community Planning Partnerships

The new Bill will put Community Planning Partnerships onto a statutory basis, enshrining their existence, and the contributions of public bodies, into law. As the Scottish Government has recognised this is a golden opportunity to improve the functioning of Community Planning.

As things stand, the focus of CPPs tends to be on bringing public bodies together to plan for communities. In the spirit of the Christie Commission, we must fundamentally change this, so that, instead, communities come together with agencies to co-produce their public services. The development of local outcomes improvement plans should be through a participative process of community engagement.

There should be duties on CPPs that reflect this, and that require them to involve people who live and work in the local area in local decision making, and the deciding of outcomes. This must go beyond consultation or engagement to participation in the decision making process.

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The need for this change is supported by the 2013 Audit Scotland report on Community Planning\(^2\), which found that:

“Community planning takes account of a wide range of consultation activity, but there is a long way to go before services are truly designed around communities and the potential of local people to participate in, shape and improve local services is realised”

This change would also join the dots between different sections of the Bill. At the moment the sections of the Bill about the empowerment of communities, and the sections about public service reform sit in isolation from each other. This change would help make the empowerment of communities the common thread underpinning all of the Bill.

**We recommend:**

- The legislation should require that the local outcomes improvement plan that each CPP must create, is created through a participative process of community engagement.

**Strengthening the proposed ‘Right to request to Participate’**

It is welcome that the proposals set out participation requests, as a right of communities – the involvement in decision-making is very much a human right. However, in order that this right can be fairly and equitably exercised by all communities, there must be a clearer arbitration and review mechanism. The current proposals give the public body the power to decide whether to accept or decline requests, as well as how to facilitate requests and so on. We therefore believe that a third party must be able to act as the protector of this right, through a challenge mechanism or appeals procedure, and we suggest that the Scottish Human Rights Commission could be an appropriate body.

In addition, we would suggest that public bodies should not only be passive recipients of participation requests. There should be a clear role for public bodies in bringing together and connecting communities, especially communities of interest such as young care leavers, removing barriers to participation and supporting communities to take advantage of their rights to request participation, and their other community empowerment rights.

**We Recommend:**

- That the Bill sets out an arbitration and appeal role for the Scottish Human Rights Commission, in the event that there is a dispute about a participation request.
- That there is an additional order making power for Ministers, that would allow them to set out requirements about how public bodies must support communities to come together, connect, and make participation requests.

**Participatory Budgeting**

Participatory budgeting has significant potential as a means to devolve money, power and resources to our communities. In parts of Brazil this has had tremendous success stimulating engagement and subsequent investment in public services.

We believe that there is a great deal of enthusiasm for participatory budgeting approaches throughout Scotland, but as yet, there have been limited attempts by the public sector to trial the implementation of participatory budgeting approaches. However, in recent years where participatory budgeting has been used on a small scale in Scotland there is some evidence to suggest that its application has been transformative in increasing local democratic participation and community involvement, leading to stronger and more cohesive communities. On that basis, we suggest a new duty on community planning partnerships to set aside a small proportion of their annual budget, for communities to decide where it is spent, through a process of participatory budgeting.

We recommend:

- That the Bill requires each Community Planning Partnerships to set aside 1% of their annual budget, to be decided upon through an appropriate community participation process or processes, and assess the impact of doing so with a view to further embedding this approach.
1) To what extent do you consider the Bill will empower communities, please give reasons for your answer?

Where empower is giving someone the power or authority to do something then the Bill gives this to an adequate extent for the areas set out that the Bill addresses subject to the concerns raised in response to Q2-5. Where empower is making someone stronger and confident to control their life and claim their right then the Bill does not adequately address this, as the Bill does not take due consideration of the resource required to enable people in communities and community groups, as defined in the Bill, to become stronger and confident in order to access the rights being provided. The Scottish Government should consider this aspect of empowerment and the costs and resources required in order to fully realise the potential of the Bill. We would suggest that there is a need for more work to explore these implications rather than the immediate process implications so to address risks of inequality in the access to rights outlined in this Bill. Currently the Bill only addresses part of the full meaning of empowerment.

Currently the Community Right to Buy legislation requires the Community Group to conduct a ballot with the local community. The new proposals indicate that Scottish Ministers will appoint a balloter who will undertake the ballot on behalf of the community and this will be paid by Scottish Ministers. The Bill gives greater opportunity to communities by increasing the ballot time from 28 days to 12 weeks. In addition, the Bill affords communities greater time to conclude a sale. This increases from 6 – 8 months. The required evidence arising from a ballot to justify a sale is reduced within the Bill. The proposed provisions simply refers to a proportion sufficient to justify a sale to a community being required cast votes in favour whereas at present a voting turn out of 50% or greater is required or less than 50% but with a significant proportion of those who did vote being in favour.

The Bill also contains a proposal for Community Groups to apply for land which is deemed to be neglected or abandoned although the owner of the land does have the right to make a case for any future development proposals to be taken into account. In addition, the Bill gives community bodies the right to make requests for the transfer of assets and envisages that these should be granted unless it can be demonstrated that reasonable grounds exist for not doing so. It appears that the community group making the request does not require to provide justification to demonstrate what benefits would accrue to the community if the asset was transferred. There are particular issues around this from the Council’s point of view. Legitimate community aspirations need to be balanced against, in the case of publically owned assets the need to secure both land, and capital receipts, to enable future developments.
2) What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

Possibly the principal disadvantage to public authorities would arise from the additional time afforded to conduct a community ballot and also to conclude a sale. In respect of the former there are potential financial implications for the local authority in maintaining an asset for the duration of the ballot period, which is not beneficial. The latter provision could hold up wider marketing of an asset. The Bill also appears to grant community groups the right to acquire land that they deem to be abandoned and also on an unsolicited basis, to make request for the transfer of assets. From a local authority perspective, this could be a detrimental step particularly if there is no requirement on the part of the community to produce a business case to demonstrate the benefits that would arise to the wider community from the transfer.

Ultimately, such an approach could carry the risk of the community being unable to sustain the asset. In addition, the Bill requires to carry a requirement for the Council to provide allotments if the number of people requesting one exceeds 50% of the number of allotments available or if there are more than 15 people on a waiting list. Local authorities are also obliged to make regulations in relation to allotments and must prepare a food growing strategy together with an annual allotment report. This could prove to be a considerable burden to local authorities both in terms of land assembly and the requirement to allocate officer time to these additional tasks.

The language in the Bill is also confusing and will disadvantage organisations trying to engage communities for example in Community Planning, if the Bill is using terminology such as Local Outcomes Improvement Plan. Can clarity please be given to what is meant by this in the Bill? Is this another term for delivery under Single Outcome Agreement? The Bill could set expectation that a Local Outcomes Improvement Plan is to be developed separate to development of delivery under Single Outcome Agreements and it is not beneficial for any public sector organisation for there to be confusion with this.

3) Do you consider communities across Scotland have the capabilities to take advantage of the provisions of the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Communities across Scotland are likely to be encouraged by the provisions of the Bill but in many instances, depending on the nature and complexity of the asset in question, they are likely to require additional professional support to develop business cases or funding applications. Future sustainability of large scale assets is also of critical importance and although community activists can support the initial thrust to secure and manage an asset, it is questionable whether this can be sustained in all instances particularly when key individuals move away from an area or their ability to continue to support the project diminishes over time. Therefore, particularly with respect to larger
and complex transfers of assets, the long term sustainability of proposals should be investigated thoroughly at the outset.

From a community planning perspective, it would be beneficial to have reference to the National Standards of Community Engagement as this guidance enables communities and those working with communities to understand best how to identify what provisions in the Bill a community may wish to take forward.

There is also a need to provide community capacity building support for those communities which may not currently be able to access the opportunities afforded by the new legislation. For example, support to strengthen the skills, abilities and confidence of people and community groups to take effective action in the development of their communities. Without this support, the opportunities of the bill may not be enjoyed equitably and some communities will benefit while others may not, particularly those communities which are most marginalised, and in remote and rural locations. Resource is required for this and this must come through Scottish Government funding to those working with communities.

4) Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

The provisions of the Bill appear to give communities greater encouragement to apply for the transfer of assets. However, the transfer is only the beginning of their task so alterations should be made to ensure that the long term sustainability of individual projects is more adequately taken into account.

The Bill must be clear on its impact to existing legislation. For example, it is not clear in what way the reference to partners in community planning impacts the provision for the council to be the lead in the CPP as laid out in the Local Government Act 2003. It would also be beneficial for the definition of terms such as community planning in section 4.2 to be written in a way that is meaningful and understandable for the public.

5) What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

In respect of the equality impact assessment that has been carried out, which concludes that the Bills provisions are neither directly or indirectly discriminatory in respect of age, disability, race, religion or belief, sex, sexual orientation or gender reassignment, it would be useful for this to be published for viewing.

The equality duty has been included when considering asset transfer and participation requests, but does not appear to be applied for the other parts of the bill – why is this?

Island Communities – given the recent publication of the report “Empowering
Scotland’s Island Communities”, it would be useful to understand how much of the bill has been “island proofed”, and to understand which aspects of the bill will produce a differential impact on the islands.

There is limited consideration of the Bill on the various elements of Scotland’s sustainable development (e.g. land use/environment) and it would be useful if a more comprehensive assessment of the impact was provided.

Specific comments in respect of Part 8 – Non Domestic Rates

This creates a power to allow local authorities (as rating authorities) to reduce or remit business rates within our areas in any financial year from 2015-16 onwards as a local rates relief scheme. Any such rates relief offered has to be fully funded by the local authority. In creating the scheme, the local authority must have regard to the interests of persons liable to pay council tax. This is because they will be the ones who pay for any such relief. CoSLA has previously welcomed the Scottish Government’s intention to create this power. This came out of the earlier consultation entitled “Supporting Business – Promoting Growth: Business Rates Consultation” and this was set out in the Scottish Government response issued on 4 September 2013. Argyll and Bute Council responded to this consultation and were of the view that there should not be any flexibility to introduce local relief schemes as NDR is a national tax which local government collects on behalf of the Scottish Government and as such there should be very limited difference in how this is levied across Scotland. We therefore do not welcome these proposed new powers. They will mean that we are subject to many more calls for us to offer rates relief e.g. in response to roadwork disruptions. However it will usually be difficult to fit individual circumstances into an overall “scheme” - which is what is required under this new legislation.
Dear Mr Cullum,

Community Empowerment (Scotland) Bill

Thank you for the opportunity to contribute to the Committee’s scrutiny of the Bill.

You specifically requested feedback on the non-domestic rates aspect of the Bill, namely the proposed new power to award ‘local discretionary relief’ that local authorities will have at their disposal from next Spring should the legislation be enacted.

It is worth noting that our members believe Scotland’s non-domestic rates system is no longer fit for purpose and is in need of fundamental reform. The tax only ever rises, it is a disincentive to invest in retail or commercial premises, and retailers pay around a quarter of all business rates in Scotland which, next year, is set to generate £2.9 billion in total tax revenues. A comprehensive overhaul of the business rates system would increase retailers’ confidence about investing in premises, create more jobs and help revive our high streets and town centres.

We support the principle behind the proposed local discretionary relief, and view it as a welcome acknowledgement of the need to keep down costs for retailers and other businesses.

We have similarly backed the flexibility provided through the introduction of Business Improvement Districts, and are calling for the Business Rates Incentivisation Scheme (BRIS) to be resuscitated. Our members do not support the repatriation of control over the poundage rate to local authorities.

However we would strongly counsel against the provisions within the Bill being amended to allow councils to increases rates bills, for example in the form of a local discretionary supplement. Our research shows that one in every eleven retail premises is empty, and anything that makes it more expensive or more difficult for retailers to invest will only exacerbate this problem.
While we support the principle behind the proposed new relief, we remain to be convinced that its use will either be widespread or substantive enough to be effective, particularly as we understand no Scottish Government funding will be available to help offset the cost to councils. Indeed, the lack of use of a similar power which is already in existence in England has been highlighted by a joint government/industry forum on the future of high streets. One possible solution would be to couple BRIS with the local discretionary relief scheme, so that any additional revenues accruing from BRIS could be used to incentivise further business expansion through the local discretionary rates relief.

I enclose a copy of our recent submission to the Scottish Government on its Budget for 2015-16, in which we set out a number of recommendations for stimulating further investment in Scotland’s retail industry and town centres, and which I hope will be of interest to the Committee.

Yours sincerely,

David Lonsdale
Director
Community Empowerment (Scotland) Bill

Response from Midlothian Voluntary Action (MVA)

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

There is the potential that it will empower communities, however, there is also the risk that it will only empower the communities that are either more affluent (with professionals on their committees/boards e.g. architects, accountants, etc); or that have long-established organisations with support already firmly in place.

Also, communities need to know about the Bill and the possibilities arising from it before they can benefit from it.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

The public sector will need to be seen to treat every community body equally and fairly, particularly if there are conflicting interests, for example, to take over a community building.

3. Do you consider communities across Scotland have the capability to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Further to question 1, some communities undoubtedly do have the capability to take advantage of the provisions in the Bill, however, many will not. From experience, we are aware that there are communities that contain well educated and confident professional/retired professional workers that would find it relatively easy to take advantage of the provisions of the Bill. Also, that there are individual community bodies in more deprived areas of Scotland that are also fairly well able to take advantage of the Bill because they are long-established, and have been well trained and well supported over a considerable period of time.

However, we are also well aware that there are many other communities (and individual community groups) that will be less able to take advantage of the Bill for a number of reasons, for example, less education; transient populations; no access to professionals to join Boards; less confidence; and less relevant skills. These communities could potentially need considerable support. We are concerned
that sufficient support might not be available as there are still substantial staff cuts being made at local authorities, and there are likely to be substantial cuts also at voluntary organisations including support organisations such as Third Sector Interfaces.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Part 2 – Community Planning

We welcome Community Planning Partnerships having statutory requirements, however we have some concerns, for example:

(a) Clause (5) “a community planning partnership must (a) consider which community bodies are likely to be able to contribute to community planning”. This lets CPP to choose the community body(ies) they want to engage with. The Bill does not give the local voluntary sector the right to nominate one or more community bodies of their choice. We do not think this is “community empowerment”. We believe that it is important that communities, including voluntary organisations, have some say in who represents them as it is important that community bodies involved in the community planning process engage with other organisations in order to feed into/and from the process.

We are disappointed to see that whilst the Consultation in January 2014 stated (clause 151) “We further proposed that, reflecting the Statement of Ambition, the core duties of each CPP should be to:

[...]

consult and engage with the third sector and the business community on the outcomes to be achieved and how they can best be delivered” - this statement has not been included in the Bill which has been watered down to state (Part 1, clause 5 (3)) – “in preparing a local outcomes improvement plan, a community planning partnership must consult –

(a) such community bodies as it considers appropriate, and

(b) such other persons as it considers appropriate.

Part 4 – Right to Buy

We welcome the inclusion of bodies that are SCIOs (Scottish Charitable Incorporated Organisations) to the list.
Local Government and Regeneration Committee

Submission Number: 21

Part 7 – Allotments

We are pleased to see the requirement for each local authority to maintain a list of persons who make a request under section 70 (1); and a Duty to provide allotments. However, we are concerned to see that there is not a timescale set down for the provision of allotments.

We also welcome the requirement for each local authority to prepare a food-growing strategy for its area which will include the identification of land that may be used for allotment sites, etc.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

No comments.

Further Comments

We are aware that this Bill cannot be looked at in isolation. For example, the Public Bodies (Joint Working) (Scotland) Act 2014 will drastically change the community planning environment.

Although the Integrated Joint Boards are included as Community Planning Partners in Schedule 1 of the Community Empowerment (Scotland) Bill, we are concerned that there will be a reduction in the ability of the voluntary sector to get involved in sectors where we previously were integrated into the Community Planning process.

In addition, we are aware that the economic crisis, Council Tax freeze, and the results of the forthcoming Referendum could all impact on this Bill and the ability of many communities to benefit from it.

We are concerned that the creation of Police Scotland has led to reduced subsidiarity, with more decisions apparently being taken centrally, and that there may be a reduction of importance of Community Planning accordingly.

The Policy Memorandum states that “.. the Scottish Government expects all public service providers to support communities in using these processes and in becoming more empowered generally”. We are concerned there are still substantial staff cuts being made at local authorities, and there are likely to be substantial cuts also at voluntary organisations including support organisations such as Third Sector Interfaces. These are likely to impact on the ability of many community bodies to take advantage of the opportunities arising from the Bill.
This leads to the concern that potentially only already advantaged community bodies and communities will benefit from the Bill.
Local Government and Regeneration Committee

Submission Number: 22

Community Empowerment (Scotland) Bill
Submission to the Local Government and Regeneration Committee
Alison Johnstone MSP on behalf of the Green MSPs
28th August 2014

Background

- This document follows the consultation response submitted by the Green MSPs to the Scottish Government to the then Community Empowerment and Renewal (Scotland) Bill in January 2014, a document which was informed by consultations made by the Green MSPs with representatives of football supporters' trusts across Scotland. To avoid repetition, an edited version of that earlier document is included here as an annex.

- Although this current document will consider all the questions posed by the Local Government and Regeneration Committee in their call for evidence of 26th June 2014, the focus of this response will be on a series of legislative options designed to empower football fans' trusts to take control of their clubs, set out in the answer to question 4 below.

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

The Green MSPs believe the Bill will deliver more of the tools communities need to deliver community empowerment. We support the general principles of the Bill but would like to see some of the legislation and policy intent go further.

We support the proposed statutory footing for a system of national outcomes and associated reporting. Up-to-date reporting will be essential to inform the periodic reviews and we suggest a requirement for reporting to be as up-to-date as practicable, either generally or in advance of a review.

The inclusion of community bodies within the community planning process represents an improvement on the Local Government in Scotland Act 2003 definition (point 39 of the policy memorandum), as does the inclusion of a formal right for communities to initiate dialogue with public sector organisations (point 45). We continue however to have concerns about the centralising nature of the Single Outcome Agreements, which will be delivered in part through the Community Planning Partnerships. In fact this concern goes much wider and rests on the inability of Scotland’s very large local authorities to address local needs and deliver community empowerment. Many of these issues are set out in COSLA’s Strengthening Local Democracy report.

Scottish Government’s decision to reject the "Community Right To Challenge" approach, as used in England and as described in point 52 of the policy memorandum, is undoubtedly correct. Adopting that process would indeed expose key services to privatisation, the antithesis of community empowerment.

The extension of the community right to buy as described in point 57 of the memorandum is also a cautious step in the right direction, in our view. We support a single framework for the right to buy that covers both rural and urban land, one that recognises communities defined not exclusively by geographical area, and one where communities have more flexibility about the legal structures they adopt for this purpose.

The enlarging of the scope of legal entities that can be applicable (described in point 61 of the policy memorandum) is to be welcomed, although we believe Community Benefit Societies should be included in the initial primary legislation rather than merely optionally through subsequent subordinate legislation. We believe this is a matter of critical importance, because whilst both the proposed legal vehicles that would be eligible to exercise the rights – companies limited by guarantee (CLGs) and Scottish Charitable Incorporated
Organisations (SCIOs) are excellent vehicles to own and operate assets - they are very poor at raising capital to do so, because both are prohibited in law from having equity. The Community Benefit Society is, by contrast, able to be asset-locked whilst also issuing equity, but is prevented in law from paying dividends to members and is legally required to work for the benefit of its defined community which it seeks to benefit. We can see no reason to exclude the CBS, and every reason to include it in the legislation to enable communities to immediately draw upon the support of bodies like Community Shares Scotland, a joint venture of Locality and the Carnegie UK Trust.

We fully support the measures set out in point 94 onwards of the policy memorandum concerning allotments: better and more consistent community access to space to grow food would have substantial and wide-ranging benefits.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?
The Bill rightly places additional duties on public sector bodies to engage with communities on a range of planning and ownership issues. These duties will have administrative costs associated with them, costs which will (at least initially) only partly be offset by the benefits brought by such engagement. We would urge Scottish Ministers to consider the provision of additional direct support on a transitional basis to bodies most affected. We also believe that these changes have the potential, at least, to lead to some beneficial culture change across the public sector, provided they are implemented with a degree of flexibility and openness.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?
Some communities do, but not all have the financial assets or institutional capacity to take advantage of the benefits that the Bill can bring: in fact, the communities which could benefit most from greater control over their lives are likely to include those for whom these kind of changes may be inaccessible. We believe the biggest restriction will be on the inability to utilise the community-friendly capital-raising powers of the community benefit society, a vehicle that fits superbly with the powers the Bill proposes to extend to Scottish communities but which has been omitted so far.

We also believe that – for reasons outlined below – that the ability of football supporters to use the powers of proposed in the Bill to buy the football clubs they support are limited and that without amendment, this potentially sizeable group of potential users will be excluded from bringing the benefits of community ownership to their sector of economic and cultural life.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?
We would like to see specific changes to the Bill’s provisions to provide football fans’ trusts with more rights to be part of the ownership and governance of what is an important community asset. To do this requires a broadening of the community right to buy to a right not defined by land and physical assets alone.

The Bill’s values are set out very clearly in the policy memorandum. It states: "In line with trusting the people who live and work in Scotland to make decisions about the nation’s future, the essence of self-determination, the Scottish Government is also committed to supporting subsidiarity and local decision-making." (point 4)

It continues (point 5) to observe that the Bill seeks to: "Empower community bodies through the ownership of land and buildings and strengthening their voices in the decisions that matter to them."
These are objectives that the Green MSPs share. In particular, we wholeheartedly agree with the following assessment of the benefits this kind of empowerment can bring (point 7):

“When people feel they can influence what happens in their community and can contribute to delivering change, there can be many benefits. Communities can often achieve significant improvements by doing things for themselves, because they know what will work for them. They become more confident and resilient; there are often opportunities for people to gain new skills and for increased employment as well as improved access to services and support. These in turn can lead to improvements in a wide range of areas such as crime, health, and reducing inequalities.”

However, the focus on land, in terms of the community right to buy, directly contradicts this excellent summary of the varied needs and aspirations of communities across Scotland (point 10 of the policy memorandum): "Community empowerment means different things for different communities. Some communities will want to take on the ownership or management of land or buildings, or delivery of services to members of their community. Others may be more interested in engaging with the public sector to have more say in how services are delivered or how assets are used."

Furthermore, the asset transfer provisions are broader and not limited in this way (and Section 27 of the Bill as introduced does recognise non-land assets: just salmon fishings or mineral rights). The Green MSPs believe a community value test for other private assets (including services) should also be introduced for consistency, effectively broadening the terms of the Land Reform (Scotland) Act 2003 to cover a range of additional non-land assets. This could cover assets which are often crucial to rural communities but which are currently excluded: for example, village pubs, local post offices, and so on. Some services flow directly from the control of the physical assets in which they are operated from, such as pubs or cinemas. If you own the pub building, you can run the pub as a service. But in other cases the right to provide the service is key: for example, the building where the Post Office is run from can change, and the community’s core transport may be provided from a depot nowhere near where they live. In these cases, it is the right to provide the service that is the core property asset, not the premises most strongly associated with its delivery. The policy memorandum recognises this, in the section below (point 53), but provides no route for democratic community control over a local shop or community hub unless those assets are owned by a public body:

"Whether it is retaining the local shop, renovating a derelict site or providing a hub for community activities, control of assets can be a key factor in making a community more attractive to live in, supporting economic regeneration and sustainable development.”

These same principles and benefits apply with regard to football clubs, and the Green MSPs believe clubs should therefore be included in the scope of these changes. The nature of football administration means this would require specific amendments to be made through this Bill to the 2003 Land Reform (Scotland) Act.

In our view, the “compulsory” community right to buy for abandoned and neglected land implemented through Section 48 should be extended to cover sports clubs that enter administration, using the same protection of Ministerial oversight and approval, including similar tests. Similarly, the right of community purchase where a “willing seller” exists should be extended to include sports clubs when they come up for sale, just as is already permitted with land in rural communities.

Under point 46, the policy memorandum also covers, for public engagement purposes, the definition of appropriate community bodies. The test set out there fits neatly with the structure and nature of fans’ trusts: “Section 14 identifies the key features of a body which meets these requirements, ensuring that it is open to all members of the community and controlled by those members. It is for the body to define the community it
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represents, whether that is by geographical boundaries or by common interests or characteristics of its members."

Annex 1 below sets out the specific amendments which the Green MSPs believe the Committee should consider at Stage Two. In particular, we believe options 1, 3 & 6 there would be straightforward to implement, while option 5 should be considered: options 2 and 4 are probably beyond the scope of amendments that could be brought to the Bill as drafted. The Scottish Government has this year set up a working group on fan ownership, and we believe that, given the absence of another suitable legislative vehicle, it would be a major error not to lay the legislative groundwork for any recommendations about fans' right to buy which that working group may propose. Given the proposed tests around Ministerial assessment of each bid, adopting these amendments would also not prejudge the outcome of that work.

At Stage 1 we hope the committee will consider how the right to buy provisions could be broadened to include eligible assets beyond land and buildings. In terms of football clubs this asset would be the membership shares enabling the club to play in the league – further explanation is given in Annex 1. Finally, we encourage the committee to invite representatives of football fans trusts to give oral evidence on a fan’s right to buy.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

As per the Pairc case in 2012, we believe these proposals, and the extension of them set out above, are within the margin of appreciation afforded member states with regard to Article 1 of Protocol 1 of the ECHR. We also share the Scottish Government’s assessment of the impact of this Bill on island communities, and also on sustainable development as defined by the Scottish Government (with the caveat that the latter is defined by Scottish Ministers in a way which promotes growth at the expense of true sustainability).

Annex 1 - January 2014 response to Scottish Government consultation

Outline

Greens believe football clubs are prone to suffering from many of the same problems tenants have historically had with absentee landlords, and that football clubs are frequently at the core of communities across Scotland. We believe that a right for fans to buy their clubs, either at any point or when their clubs get into financial difficulties, would be desirable in policy terms and also that the CE Bill represents the ideal vehicle for such legislative changes.

Purpose and background

Fan ownership in Scotland and beyond

Fan ownership is a common ownership model for sports clubs, and is the norm in Scandinavia and Germany. However across Scotland and the rest of the UK, private ownership remains the norm. Fan ownership in Scotland has grown during the devolution era, mainly thanks to the efforts of Supporters Direct, and in particular as a response to clubs’ financial difficulties.

Several clubs have been majority owned by their supporters, notably Clyde FC, East Stirling, Stirling Albion and most recently Dunfermline Athletic, currently the largest club to hold this status with Annan Athletic expected to join them in the coming months. The current preferred bidder for Heart of Midlothian is the Foundation of Hearts, a fan-led consortium. Both Ayr United and Motherwell are working on plans to be community owned by the start of season 2014-15.

There are two major problems affecting the take-up of fan-ownership.
At present, owners are under no obligation to even deal with their supporters, let alone involve them in ownership and governance. As a result, fan ownership overwhelmingly comes about against a backdrop of corporate failure, where the lack of willingness of clubs’ owners to engage with supporters is followed by the willingness of an insolvency practitioner to deal with anyone proposing a realistic rescue plan. However, as a result, most fan ownership arrives against a legacy of failure, debt and limited capital.

Relatedly, a common model is for a private owner/supporter to commit the club to spending money it cannot afford and to supplement revenue with their own resources. That means that without a wealthy benefactor, Scottish clubs are regularly faced with a dilemma in which sporting goals cannot be achieved through ‘normal’ trading, i.e. trading where expenditure is based on earned income.

As a result, financial success and sporting success are, for the vast majority of clubs, mutually exclusive. Under this model, clubs continue to be solvent only as long as their benefactors have the means to support them, but when such means are exhausted, the club quickly moves from apparently rude health to severe insolvency. It is this which lies at the root of the deep structural instability of the game, which has seen the majority of professional clubs in the UK go into formal insolvency over the past 20 years, most spectacularly at Rangers - one hundred and fifty four administrations in the UK since 1992.

While there are mechanisms which seek to address this in terms of controlling club expenditure, these efforts have had limited effects at best. The evidence is that expanded fan ownership is the only current option to go beyond those mechanisms in the interests of the sport at both a club and national level. Where the fans are in a position of control unsustainable options are simply taken off the table; if the club has no wealthy benefactor, there is simply no way for it to be run other than as a ‘normal’ enterprise in which income and expenditure are linked in a sustainable manner.

A critical mass of fan owned clubs would be the most effective way to achieve sustainable Scottish professional football, and sustainable football is also a necessary condition for successful and sustainable fan ownership.

A decisive break is required with the failed models of ownership. While the Scottish football authorities can address overspending in a slow and incremental way, the governing bodies are creatures of their members, and as a result, regardless of the ways in which fan ownership helps deliver their stated goals of a more sustainable sport, the authorities inevitably cannot endorse it as an ownership model. They will remain structurally unable to drive greater fan ownership until such a time as a majority of clubs are fan-owned in order, i.e. when this objective is already largely achieved. That leaves the Scottish Parliament as the only body with the means and ability to effect change.

**Constitutional and policy basis**

Schedule 5 of the Scotland Act does not reserve sport to Westminster, meaning the Scottish Parliament can legislate in this area. There are limitations to the powers of the devolved institutions here, though: the prescribed forms of corporate vehicle and terms of their registration are not devolved, so more radical options - such as creating a specific legal form for sports clubs, as is the norm in the rest of Europe - are not possible. Similarly, the Scottish Parliament will not be able to amend insolvency legislation, but can use insolvency as a trigger for the right to buy (see below).

**Human rights**

To quote the Land Reform Review Group’s Interim Report from May 2013:
A free society also has to respect the rights of an individual with regard to his or her property. The European Convention on Human Rights, at Article 1, Protocol 1,5 states

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it seems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Central, therefore, to a consideration of land ownership lies the concept of the public interest and the tension between it and individual human rights.

This tension would similarly apply where the right to buy is extended to non-land assets such as football clubs. However, in our view the public interest arguments (economic and social) for community ownership of clubs will typically be stronger than any human rights arguments used by a transient owner of a football club, especially where a club has a long history of community support.

Consistency with the 2003 Act
The thrust of the CER Bill is to enable communities in every part of Scotland to enjoy the same rights around land reform and related issues as communities in places where the 2003 Act already applies, and in so doing, extend the benefits of community ownership across Scotland.

The assumption inherent in the CER Bill is that community ownership is good for the assets owned by communities and good for communities themselves, indeed that it is in the broader public interest: a principle which the Green MSPs support wholeheartedly. The Bill focuses on local self-determination, and it would be hard to find a situation more likely to lead to feelings of disempowerment than the collapse of a football club.

Football clubs are one of the few places where people across a community meet each other on equal terms, regardless of the differences between them in terms of occupation, income and education. They are critical parts of their various community networks, and benefit from being owned and operated by people for whom that character is more important in their strategic management of the club than its potential to maximise profits for the short term.

A wealth of reports at national, UK and European levels have illustrated the advantages of community ownership of football clubs for the greater sustainability of clubs (and thus incidentally supporting their contribution to general taxation), their greater focus on long-term community engagement, increased usage of local suppliers to maximise local economic multipliers, and their overall contribution to community well-being and resilience.

In short, supporting fan ownership of football is an ideal opportunity to enhance the social, economic and environmental benefits clubs bring to their communities, and to boost local decision-making and control.

The first important amendment required
The 2003 Act is specific in its focus on land and physical assets, and the focus of the CER Bill is consistent with this. In this case, though, the physical assets (the football stadium, training ground) are not the focus of the community interest: that is in the football club itself. It is what is done through the ownership of a form of
property - a club - which matters, and it is ownership of the club, not the land, which gives the power to
current owners to make the operating decisions they do.

To bring football clubs themselves under the control of this process of community empowerment will require
an amendment to the 2003 Act to broaden the scope of eligible assets beyond land and buildings on it to
encompass a class of related assets which are better understood as rights that entitle the asset owner to
undertake certain functions (although the land clubs use remains important). This could be delivered either as
a football-specific amendment or as a more general change.

In this instance, the particular asset aimed for here is the membership share in the Scottish Football
Association and leagues (hereafter called ‘membership shares’). These are the key asset which underpins
football clubs, as they give them the right to play football under the aegis of the respective bodies. No club can
be a member of the SPFL which is not already a member of the SFA, and no club without a member share in
the SPFL can play in any of the Scottish leagues.

As a result, the right to participate economically in Scottish football flows from ownership by the football club
company of these assets. A club without a stadium can share a ground with another club; a club without a
league membership share cannot play football against anyone else in the world.

The goal therefore is to enhance in legislation the definition of eligible assets or property to encompass the
limited companies that own league membership shares in Scottish football governing bodies. This, ultimately,
is what defines a Scottish football club, and is not dependent on whether a club’s ultimate corporate parent
has a registered office in Cumbernauld or the Cayman Islands.

That might be done through direct legislation. Better, however, would be to allow a broader definition within
constraints, such as:

- Eligible assets upon which the Community Right to Buy powers may be exercised shall be any land in
  Scotland (unless deemed to be excluded under the terms of the Act), and other property of a consistent
  community character which may be deemed to be included.
- Ministers shall be responsible for all determinations as to which assets may be included and excluded
  under this definition.
- In defining what non-land property shall be included, Ministers shall have regard for assets whose
  ownership and operations are a matter of significant public concern and interest in their community of
  operation.
- Ministers may only define such non-land property as included by reference to a specific class of assets or
  asset and not by direct reference to a specific asset in isolation of comparable assets in the same sector of
  economic or cultural activity, to avoid discrimination or the appearance of same.
- The process by which each class of assets shall be registered, the groups eligible to register and launch a bid
  and the terms under which they may do so may be varied by Ministers to reflect the specific operating
  environment of assets in that class, within the framework established by the Act.

Once this has been legislated for, we propose at the same time that Ministers are directed to include all
companies registered in the UK which own a league membership share in a Scottish football governing body.
The result would be that football clubs would be classed as suitable cases for community right to buy.

**Detailed options**

Beyond that, several other options should be considered, in part to reflect the diversity of Scottish clubs, in
terms of scale, value, indebtedness, and wealth of the community they are based in.
For all of these options, the assessed prices of any club would be subject to revaluation at the end of every football season, and in the event of a club entering insolvency, the fair price is determined by the insolvency practitioner at the time.

1. **Right to buy when clubs are being sold.**
   This would require a time limit to assemble funds - provisionally six months - and would probably also require a cooling-off period after any unsuccessful bids, perhaps two years, to reduce uncertainty for clubs. There could be an exception to the two year restriction where the assessed price falls sufficiently far to allow the sum raised during the six month period to be viable (e.g. if land is sold off or if a club is relegated). This is aligned with the existing model for rural land reform.

2. **Right to a say when clubs are sold.**
   Where fans simply can't afford to buy a club, and where more than one bid meets that assessed price, the fans get to be involved in the decision. This would ensure bidders take account of fans' views, and might include incentives to offer fans' trusts free shares, seats on the board, or other increased involvement.

3. **Right to buy when clubs go into administration.**
   We do not believe that changes to insolvency and company law would be required: those areas are reserved, but the relevant parts of this proposal would merely use insolvency as a trigger.

4. **Right to buy a proportion of the shares at any point where a right to buy overall exists.**
   This would probably apply in blocks of 5% or 10%, allowing fans' trusts to make a start and head towards control without having to find the entire sum. It could be particularly useful for the larger clubs, whose fans might find a full purchase in one go impractical. The same time limits would apply as above.

5. **Right to buy at an independently assessed price at any time.**
   This would keep owners in check, and would protect against sale of grounds without change of ownership. A change of this sort would be powerful in particular in combination with 4 above.

6. **Access to SG funding to support clubs.**
   Funds will be made available for urban community purchase through this Bill, and it would be straightforward to adding clubs to the list if the other amendments pass. The objective here would be merely to add clubs to the list of assets for which such funding could be applied, rather than to pursue new money or to mandate specific amounts of funding. The decisions here would be for Ministers, who would merely be empowered to act in this way.

In addition, the current consultation by the Scottish Government asks for views on the issue of which legal forms can be considered eligible for the purposes of exercising rights to buy. It is imperative that this definition includes Industrial and Provident Societies in general, and specifically in the case of football.

The supporters' trusts, who would be the bodies in football who would seek to exercise a right to buy, are all legally registered as IPS Community Benefit Societies, and so these legal entities need to be included to allow supporters trusts to be able to access these rights.

Secondly, IPS are not regulated by the Financial Conduct Authority for the public offer of equity, and so can undertake share offers to raise capital quickly and cheaply. Since the right to buy is dependent on the ability to raise the necessary capital, a vehicle which has proven very effective at raising capital for community
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ownership would seem to be essential; such vehicles have raised over £20m in the last 3 years over the UK across all sectors, and are on track to increase that to £30m by the year-end.
Representations by Portmoak Community Council (PCC) on Community Empowerment (Scotland) Bill

Preliminary
PCC’s general comment on the bill is that it ignores the potential to use community councils as the elected representatives of their respective areas as the means of empowering those communities. It acknowledges the difficulty created by the fact that not all areas have a community council, but that is largely the result of their being seen as powerless and given (at least in Perth & Kinross) scant recognition by their Local Authorities. If given more concrete functions than they have at the moment there would be more interest in forming and joining Community Councils. For example the introduction of a “Community Controlled Body” into Part 3 of the bill is completely unnecessary in an area where a Community Council (which fits the definition of a Community Controlled Body exactly) is already in existence.

There is no common good asset in PCC’s area and so it has concentrated its attention on Parts 2 and 3 of the Bill.

Parts 2 and 3
An issue which affects both parts is the misuse of the word ‘outcome.’ Its dictionary definition is ‘result or consequence’ yet that is clearly not what it means in Part 2. It appears to be used as a synonym for ‘objective.’ Yet in part 3 it appears most of the time to be intended to convey its dictionary meaning. The clarity of the drafting would be much improved if the word ‘outcome’ were to be avoided and another word, appropriate in the context substituted.

Part 2
Community planning partnerships will consist of officials from councils and the various quangos mentioned. There is no community empowerment in that. They should also include representatives of the community councils in the local authority area by right and not by invitation. Other ‘community bodies’ without statutory authority to speak for their respective communities could still participate by invitation.

Part 3
A community controlled body should only fall within the definition of ‘community participation body’ if there is no community council in that particular area.

The definition of an ‘outcome improvement process’ is verbose and unclear. Should it not be simply ‘a process...established... with a view to improving the provision of a public service’?

In section 17(2) the reason for a request to participate will surely be that the provision of the service is seen to be inadequate, or simply capable of improvement, in some way. That should be stated in this subsection.
1. Introduction

Scottish Enterprise is delighted to contribute to the Committee’s scrutiny of this Bill. As directed by the Committee’s call, and in line with our remit, we have focused primarily on Part 2 of the Bill, on Community Planning.

In contributing to the delivery of the Scottish Government Economic Strategy, we are committed to a strong partnership approach, recognising the real benefits and outcomes that can be achieved from clear alignment and engagement behind a common goal. For each Community Planning Partnership (CPP) in Lowland Scotland (27) we have a designated Location Director, a senior member of SE staff, who leads on our contribution to ensure there is purposeful alignment between our work and that of the partnership.

As statutory partners in Community Planning we have welcomed the renewed focus the Scottish Government has given to improving the process to ensure greater impact and this Bill will contribute to that. We have, in this submission, highlighted aspects of the Bill and what they would mean for our involvement in Community Planning.

2. Local Outcome Plans

One of the key things introduced in Part 2 of the Bill is the Local Outcome Plan. This plan will take into account the needs and circumstances of the local area and any representations arising from the consultation that the CPP must undertake during its development. Each outcome to be improved must be set out, along with a description of the improvement and a timescale.

We welcome this focus on an evidence-based approach to setting tangible, time-bound outcomes. Through an assessment of the opportunities and challenges in an area, the CPP will be better able to identify areas that will benefit from partnership activity. This should also recognise what the appropriate contributions should be from national and local bodies in improving the outcome.

In looking at the needs and opportunities, it is important that each Local Authority area is not treated in isolation. Therefore it is vital that the outcome improvement plan development looks at the regional opportunities through, for example, supply chains or travel-to-work areas. We would suggest that the Regional Advisory Boards are included in the consultation process.

SE’s own activities are informed by, and developed in line with, a robust evidence base and we subject all of our programmes to rigorous evaluation to ensure they deliver the best possible impact. For example, our Account Management service underwent a substantial evaluation last year which identified much strength in the programme, to be welcomed, but also identified areas for improvement. These areas have been looked at and have resulted in an improved service better focused on ensuring businesses get the right service at the right time. Targeted outcome improvement is something with which we are very familiar.
A good example of such evidence-based partnership working to improve a local outcome is Team North Ayrshire. This example (box) shows how SE and a Local Authority can work together to improve local outcomes, through aligning our key strengths and assets.

Team North Ayrshire

North Ayrshire has experienced many years of economic challenge and it was clear that there was a need to expand and increase the business base, improve skill levels and redevelop town centres to provide a basis for future improvement.

Acknowledging this challenge, SE and North Ayrshire Council (NAC) developed an Economic and Regeneration Strategy to support the area's businesses, increase economic growth and attract inward investment.

Partnership working, across both public and private sectors, and ensuring that resources fully supported delivery, were crucial to the success of the strategy. SE engagement was informed by our strategic framework based on the principles of supporting growth, maximising opportunities, developing partnerships and facilitating full engagement. This framework approach led SE to bring its expertise, experience, knowledge and networks to the table and help form an alliance-based partnership.

Reviewing the existing business support model, and with support from SE, NAC created an Economic Development and Regeneration Board consisting of both public and private sector board members. This mixture of public and private working allows an appreciation of the concerns raised by the business base whilst also accepting the structure in which progress can be delivered.

This work culminated in the board's principal goal, to deliver tailored business support to approximately 150 North Ayrshire companies. From there, the result was the formation, in December 2013, of Team North Ayrshire: a network of public and private partners dedicated to driving the area's business growth and offer local access to expertise and financial support.

In supporting this development, SE's Company Growth team brought invaluable expertise, for example sharing best practice from SE's Account Management Programme and the SE Competency Framework for Account Managers.

Team North Ayrshire is now providing local businesses one dedicated, streamlined single point of contact for advice, support and assistance. The partnership is growing and already includes representatives from the education, tourism and hospitality sectors. SE will continue working alongside the council as the new economic strategy develops.

3. Involvement of Community Bodies

A vital part of the evidence base for any outcome improvement plan is the views of the end user of the service being improved. As such, we welcome the prominence given in the Bill to the involvement of the community in developing the outcome improvement plans and involvement in the CPP.

In particular however, we would like to draw attention to the importance of involving the business community. This has, in the past, been quite difficult due to the high level nature of
the Single Outcome Agreements. Given the focus on sustainable economic growth it is critical that the business voice is heard. With evidence-based improvement plans focused on tangible outcomes however, local businesses and business groups are more likely to become involved.
This being the case, and recognising the past difficulty, we would like to see the guidance on community involvement explicitly mention the business community.

The Team North Ayrshire example shows that, with such a solid evidence-based plan, it is possible to get private sector participation at thematic level in Community Planning. It also shows the value in having service delivery agents and representatives of their customer base working together in the delivery of a strategic plan.

4. Participation Requests

SE is mentioned as a public sector authority in relation to part 3 of the Bill on participation requests. This provides for community participation bodies to request involvement in an outcome improvement process.

We would welcome further clarification in guidance on how this will work in practice. 17(2)(a) refers to an outcome resulting from a service provided to the public by the authority. SE does not deliver services to the public at large but to a particular subset of businesses which have growth potential. It would therefore be helpful to clarify what form the community participation body could take, and in what way they can be involved.

Involving our customers, and the business community, in the identification and improvement of our services is standard practice in Scottish Enterprise. At the strategic level, our approach to industry sectors is informed by sector strategies, developed for and by the industry itself through Industry Leadership Groups (ILGs), which are majority private sector bodies providing strategic leadership and advice to both industry and the public sector in Scotland.

As mentioned above, we subject all of our programmes to a rigorous evaluation, both to ensure that they are delivering as they should and to identify areas for improvement. In this, engagement with customers in receipt of the service is crucial. For example, at the core of the Account Management evaluation last year was engagement with 601 companies which had been account managed at some point over the previous four years.

5. Conclusion

We hope this submission proves useful to the Committee in its consideration of the Community Empowerment Bill. We look forward to discussing this further at the round table on 1 October.
Community Empowerment (Scotland) Bill – Written Evidence at Stage 1

Introduction
The Equality and Human Rights Commission (EHRC) is the National Equality Body (NEB)\(^1\) for Scotland, England and Wales, working across the nine protected grounds set out in the Equality Act 2010: age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment. We are an “A-status” National Human Rights Institution (NHRI)\(^2\), and share our human rights mandate in Scotland with our colleagues in the Scottish Human Rights Commission (SHRC).

The Commission welcomes the opportunity to comment on the Community Empowerment (Scotland) Bill at Stage 1. We have previously responded to the pre-legislative consultation on the Bill, and have discussed its provisions with ministers and officials. As we have made clear in these discussions, there are a number of areas – such as community planning, setting and meeting outcomes, and community involvement and participation – where the Bill’s proposals resonate with the existing regulatory and policy framework for equalities in Scotland. This response will briefly set out that framework before looking at the Bill’s provisions.

The Public Sector Equality Duty
The general equality duty, as set out the Equality Act 2010, requires public authorities, in the exercise of their functions, to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not.

\(^1\) [www.equineteurope.org/-Equality-bodies-](http://www.equineteurope.org/-Equality-bodies-)

The duty is to ensure that public authorities and those carrying out a public function consider how they can positively contribute to a more equal society through advancing equality and good relations in their day-to-day business, to:

- Take effective action on equality
- Make the right decisions, first time around
- Develop better policies and practices, based on evidence
- Be more transparent, accessible and accountable
- Deliver improved outcomes for all.

Key public authorities, such as councils, health boards, and Police Scotland, are subject to the specific devolved equality duties which set out the steps they must take to meet the requirements of the general duty, and to publish information on, among other areas, the outcomes set for different equality groups in their geographical or policy area.

Analysis undertaken by The Equality and Human Rights Commission in 2013 suggests that only one in three of the listed public bodies in Scotland have robust – i.e. clear, measurable and evidence-based – equality outcomes in place. Whilst the Commission is taking remedial action to improve the weakest of these sets of outcomes it is discouraging to note that such a high proportion of Scottish PAs were unable to equality outcomes. This suggests that there is still a significant issue of equalities capacity in PA which is preventing effective mainstreaming of equality issues.

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

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4 [www.scotland.gov.uk/Topics/People/Equality/PublicEqualityDuties](http://www.scotland.gov.uk/Topics/People/Equality/PublicEqualityDuties)

Comments on the Bill

National Outcomes: The EHRC strongly supports the outcomes approach to policy in Scotland. As the policy memorandum accompanying the bill mentions, this approach has been recognised internationally as defining national policy goals and measuring progress. We therefore support the proposal to place National Outcomes on a statutory footing, and well as the requirement to consult on and regularly review these outcomes.

However, as the evidence above suggests, more work is needed to support public authorities to set robust, meaningful outcomes, and to ensure proper alignment with existing requirements such as the Public Sector Equality Duty. We note the work already underway to improve performance under the PSED\(^6\) and would welcome more detail on how ministers intend to assist public bodies and the communities they serve understand better how to set clear and robust outcomes. We would also urge early consideration of how these new statutory outcomes will be aligned with ministers’ and public bodies’ responsibilities under the Public Sector Equality Duties.

It is also important to recognise that, since the launch of the consultation on the draft Bill, Scotland’s first National Action Plan for Human Rights (SNAP) was launched\(^7\). The plan has empowerment – “increasing people's understanding of human rights and their participation in decisions”\(^8\) – as one of its main priorities, and the highlights Community Planning and the present Bill as key opportunities for doing so. As with the Public Sector Equality Duty, we would expect to see over time the closer alignment of the Scottish Government’s National Performance Framework with SNAP.

Community Planning and Local Outcomes: the policy memorandum cites public service reform and the recommendations of the Christie Commission as principal policy drivers for the Bill. The Commission endorses the approach set out in the Christie recommendations particularly in relation to the mutually-reinforcing nature of equality, participation, prevention and high-quality public services\(^9\).

\(^6\) www.scotland.gov.uk/Publications/2013/12/9408
\(^7\) www.scottishhumanrights.com/actionplan
\(^8\) www.scottishhumanrights.com/actionplan/bcempowerment
As much local engagement, prioritisation and outcome-setting is now done through Community Planning Partnerships, the EHRC would support placing CPPs on a statutory footing. We would recommend that:

- Adequate attention is given to effective “read-across” from individual public authorities’ equality outcomes and the outcomes set by statutory CPPs. This will also be important for other multi-agency outcome-setting processes, particularly the new health and social care partnerships.
- CPPs as statutory bodies in their own right should be covered by the General Duty of the PSED. The question of whether they should also be covered by the devolved specific equality duties should be kept under review. For example, should CPPs begin to take on more of a role in procurement, or policy formation this may be an area where it would be useful to have more structured approaches to equality.

Participation Requests: The EHRC’s guidance on involvement and the Public Sector Equality Duty makes clear, active, ongoing, structured and focused involvement helps public bodies better understand the communities they serve, and provides the evidence on which to develop robust and measurable outcomes. We therefore support the proposals to give community participation bodies the right to make a request to participate in an outcome improvement process.

We welcome the policy memorandum’s recognition of stakeholders’ concerns on the importance of ensuring that community bodies are open, inclusive and genuinely representative (paragraph 46). As the EHRC noted in our evidence in the draft Bill, this is particularly important where participation requests relate to sometimes contentious local issues such as, for example, the provision of stopping places and authorised encampments for Gypsies/Travellers.

With this in mind, we would recommend accompanying guidance in this provision makes refers public authorities back to their existing responsibilities.

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in relation to the elimination of unlawful discrimination, advancement of equality and fostering good relations.

Community Right to Buy: the EHRC supports the policy intention of extending the provisions of the Land Reform (Scotland) Act 2003 so that they apply throughout Scotland, not just rural areas. We would however underline that where an asset passes from a public authority to community ownership, the public authority must have due regard to the need to meet the three requirements of the General Equality Duty in managing that process.

Equality & Human Rights Commission
September 2014

For more information, please contact:
Euan Page, Government Affairs Manager
euan.page@equalityhumanrights.com, 0141 228 5971
Voluntary Health Scotland

Call for Evidence

Community Empowerment (Scotland) Bill - Written evidence for the Local Government and Regeneration Committee

Introduction

Voluntary Health Scotland is the national intermediary for a network of voluntary health organisations and workers. Our members range from large national health charities to small, local service providers, and members’ interests span service planning and provision, prevention, early intervention, self-management, advocacy, and support for service users and carers.

We welcome the opportunity to respond to the Local Government and Regeneration Committee’s call for evidence on the Community Empowerment (Scotland) Bill. We support the policy principles behind the Bill, as described in the Policy Memorandum, that aim to empower communities and improve the processes of community planning within public service reform.

However, there are areas that could be strengthened to ensure that communities have the capacity and support to inform, influence and shape services more effectively. The policy memorandum recognises that there are differences in levels of involvement, engagement and empowerment across Scotland, but there needs to be a stronger emphasis on addressing inequalities, and empowering and building capacity with local communities.

Consultation

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

The Community Empowerment (Scotland) Bill has the potential to empower communities by placing community planning partnerships (CPP) on a statutory footing. This will place a stronger emphasis on delivering better outcomes for people using public services and should complement outcomes established in the Public Bodies (Joint Working) (Scotland) Act 2014.

However, the legislation does not go far enough. It states that a CPP must make all reasonable efforts to secure the participation of any community bodies considered likely to contribute to community planning, and take reasonable steps to enable them to do so. Following the recommendations of the Christie Commission on the Future Delivery of Public Services, this should be strengthened to include a significant focus on communities coming together to not only participate, but to co-produce services.
Co-production recognises the skills and assets of people in designing and delivering services. Full engagement for the people who use support and services, and the third sector, is necessary to meet the needs and requirements of people in their local communities. The Community Empowerment (Scotland) Bill should ensure that people are meaningfully engaged in this process, and there are mechanisms in place to monitor and report on this involvement.

In addition, the Community Empowerment (Scotland) Bill does not detail the support needed to allow communities to take advantage of its provisions on an equal basis. The policy memorandum acknowledges that, to date, there have been variable levels of empowerment and engagement between public sector organisations and community groups, stating that:

“Where communities want to do something for themselves this has often been facilitated by good practice guidance, funding being available and the attitudes, skills and commitment of many people working in many different organisations.”

While this legislation seeks to address this inconsistency and promote best practice throughout Scotland, it is vital that the capacity of all community groups is supported at local levels by public sector partners to ensure that the most vulnerable groups are not further marginalised, and in turn, inequalities are not strengthened by the legislation.

Our concern is that there are no provisions for how public bodies should support less empowered community bodies, or those who are unable to mobilise their own participation to take advantage of the routes of engagement. We support the addition of provisions to ensure that there are mechanisms and resources in place to support, empower and capacity-build with local communities and organisations to support them to adequately engage with the process.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

The development of national outcomes provides a clear focus and steer to public bodies, however it is imperative that communities have the opportunity to contribute to the shaping of those outcomes.

The policy memorandum states that ‘Scotland’s people are its greatest asset: they are best placed to make decisions about our future, and to know what is needed to deliver sustainable and resilient communities’.

Empowering and engaging local communities will strengthen community planning processes and provide a significant focus on outcomes, and improved local outcomes.
3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

We welcome the provisions in the Bill, however, as previously stated in our response to question 1; our concern is that the legislation may unintentionally have a negative impact on inequalities. Community bodies that are already empowered or have the capacity to engage will benefit the most from these opportunities. The most marginalised and vulnerable groups might not be in a position to take advantage.

We would therefore strongly support the addition of provisions to ensure that there are mechanisms and resources in place to support, empower and capacity-build with all local communities and organisations, particularly those from disadvantaged communities/areas, to support them to adequately engage with the process. The legislation should ensure that there are mechanisms in place to monitor and report on community involvement.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Overall, we are content with the provisions of the Bill, but we would like to see a genuine focus on a human rights based approach and a real commitment to reducing, preventing and reversing health inequalities. We recommend the addition of provisions to ensure that there are mechanisms and resources in place to support, empower and capacity-build with all local communities and organisations, particularly those from disadvantaged communities/areas, to support them to adequately engage with the process.

We welcome Section 25 of the Bill which deals with reporting and believe this reporting requirement will ensure a robust planning and evaluation process. However, we would also like to see a provision to ensure that people and communities have the opportunity to report on their experiences of their involvement and engagement in the process and whether this has contributed to delivering national outcomes.

Further Information

Thank you for considering the comments discussed in the above response to the Local Government and Regeneration Committee’s call for evidence on the Community Empowerment (Scotland) Bill.

Voluntary Health Scotland, Mansfield Traquair Centre, 15 Mansfield Place, Edinburgh, EH3 6BB. Tel: 0131 474 6189. www.vhscotland.org.uk mail@vhscotland.org.uk VHS is supported by NHS Health Scotland and the Scottish Government. VHS is a company registered by guarantee. Registered in Scotland No. 267315 Charity No SCO3548
COMMUNITY EMPOWERMENT (SCOTLAND) BILL

1. This is the response from Scottish Natural Heritage (SNH) to the call for evidence from the Local Government and Regeneration Committee as part of the Stage 1 consideration of the Community Empowerment (Scotland) Bill.

2. We have been pleased to contribute to the development of this legislation, through our response to the consultation on the draft Bill which concluded on 24th January 2014, and on the earlier exploratory consultation which closed on 26 September 2012.

Q1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

3. We welcome the Bill, which reflects and builds on the Christie Commission agenda. The Bill sets out approaches to community involvement in service delivery, land ownership and asset management. We believe that the combination of a strengthened framework for community planning, a wider right to buy, increased co-production of services and a stronger focus on outcomes should all help to empower communities.

4. While this legislation should do much to empower communities, a key need is for these communities to have the skills and capacity to engage fully in the opportunities that the legislation should help provide. SNH believes that the current capacity of community groups in relation to environmental issues varies considerably and that many communities and groups (including Community Councils) will need further support and capacity-building in order to take up these opportunities. In recent years, our Sharing Good Practice programme and Learning Through Doing project have helped some community groups to develop more skills and capacity. Developing these sorts of approaches should help, and we would be ready to support such work in the environment field.

Q2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

5. We comment here on the individual Parts in the Bill.

Part 2 Community Planning

6. We support efforts to strengthen and extend community planning, including the widening of the membership of Community Planning Partnerships to include SNH and the other bodies listed in Schedule 1. Requiring the bodies listed to engage where there is a need for them to do so is more likely to bring about the joint working that is required to help areas that have multiple disadvantages and to improve places for people.

7. SNH believes that whilst we are well-engaged with some CPPs we have struggled to become involved with others, particularly in the Central Belt. Schedule 1 begins to illustrate the range of partners and expertise required to help deliver shared
outcomes, and this may help to switch the emphasis from some organisations ‘pushing’ to get involved in relevant CPPs to seeing a ‘pull’ from Partnerships and communities for their input.

8. To be consistent, Historic Scotland could be added to the list of community planning partners in Schedule 1 (they acquire NDPB status with the creation of Historic Environment Scotland Scotland in 2015).

9. We welcome the clarification of the roles and responsibilities of community planning partners, particularly around governance.

10. The Bill introduces a requirement for community planning partners to produce a local outcome improvement plan. Given that the Policy Memorandum states that the recently completed Single Outcome Agreements are the equivalent of Local Outcome Improvement Plans, it might be helpful to use one term or the other. This should help to avoid any confusion when the legislation is implemented.

Part 3 Participation requests

11. Co-production is a major theme of the Christie Commission recommendations on the future delivery of public services in Scotland. Together with SEPA, we have been exploring the implications of this for our work and for the environmental sector in general, as set out in the published report on social productivity carried out for us by the Royal Society of Arts. From this it is clear that co-production requires significant changes in the way that the public sector works, and the Bill provides for many of these. We are also working with the Scottish Leaders Forum through their Skilled Workers Skilled Citizens initiative to build capacity in SNH for this approach.

12. The Bill requires that a Participation Request be accompanied by a simple statement of benefits, basically “an explanation of the improvement in the specified outcome”. The Bill also states that the public body receiving the request must evaluate it against a list of factors (Section 19 (3)). For the avoidance of doubt, it would be helpful if the legislation was clear on whether all of these factors need to be considered in every case, or only those that are appropriate.

Part 4 Community Right to Buy Land

13. Paragraph 73 of the Consultation on the Community Empowerment (Scotland) Bill, 2013 stated that “Land which is intended for recognised conservation purposes would not be considered to be neglected or abandoned.” This does not seem to be reflected in Section 48 of the Bill.

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

15. The identification of community assets could be done through collaborative ‘co-production’ approaches involving local communities.

Part 5 Asset Transfer Requests

16. SNH has been involved in the transfer of local assets to the community on Rum. It is possible that community bodies may apply to organisations like SNH for funding and advice in support of managing natural assets that are transferred. This may have resource implications but this is very dependent on each case and so it is difficult to estimate generally.

17. Details of what is to be included in an asset transfer request are expected to be set out in (forthcoming) Regulations. We would hope that these include the need to demonstrate that any transfer would be financially sustainable in the long term, providing confidence that the proposed benefits can realistically be achieved.

18. It might be helpful to consider whether the requirements under Part 5 could be aligned with those under Part 4, so that a community body would need to set out a “plan for the land” to help show how the transfer of that land would be “in the public interest and compatible with furthering the achievement of sustainable development in relation to the land”. This would build on what we believe has been productive experience for all parties in negotiating purchase of community woodlands and other land assets under the Community Right to Buy.

Q3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

19. Please see our response to Q1 above.

Q4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

20. We have no comment on this question.

Q5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

21. We have no comment on this question.
Dear Sir

COMMUNITY EMPOWERMENT (SCOTLAND) BILL

Oban Community Council is pleased to support the provisions of the Community Empowerment (Scotland) Bill. We believe that this Bill shall bring additional powers to communities to progress projects and initiatives which shall advance economic and social development.

In relation to the proposed ‘Community Right to Buy Abandoned or Neglected Land’, we note that the definition of eligible land is land which is in the opinion of Ministers wholly or mainly abandoned or neglected.

We consider that it will be very difficult for community groups to persuade Ministers that land is abandoned. It is quite difficult to envisage the circumstances when a Court of Law would rule that land had been truly abandoned, as it would only take some minor activity to take place upon the land to convince otherwise.

It may be easier for communities to present an argument that land has been neglected, although we have concerns that this would also end up in a legal dispute concerning the definition of neglected. Community groups reliant on volunteers, and with limited financial resources, would find it difficult to pursue the registration of interest in land in such circumstances.

We note in the Explanatory Notes supporting the Bill that the concept of abandoned or neglected land is ‘for the purpose of the sustainable development of that land’. We would suggest, therefore, that the wording of the Bill itself be changed to define eligible land as land which is in the opinion of Ministers wholly or mainly abandoned or neglected having regard to its potential in furthering sustainable development.
Community Empowerment (Scotland) Bill
Call for evidence (June 2014)

1 Background

1.1 The Scottish Health Council was established in April 2005 to promote improvements in the quality and extent of public involvement in the NHS in Scotland. It supports and monitors work carried out by NHS Boards to involve patients and the public in the planning and development of health services and in decisions that affect the operation of those services. The Scottish Health Council has a network of 14 local offices across Scotland and a National Office in Glasgow. The Scottish Health Council is part of Healthcare Improvement Scotland.

2 Introduction

2.1 The Scottish Health Council welcomes the opportunity to respond to this consultation. Our interest relates particularly to public involvement, community engagement and how well people are involved and supported in the planning and delivery of services. In that context, Healthcare Improvement Scotland and the Scottish Health Council (working closely with Scottish Government officials, third sector and representative organisations, service users and members of the public) are currently working on developing proposals (due in December 2014) which will ensure that the views and experience of service users and the public define health and social care services in future. This follows an announcement by the Cabinet Secretary for Health and Wellbeing in June 2014 that voices of our patients, those receiving care and their families, needed to be heard in a much clearer and stronger way.

2.2 The Scottish Government’s ambition is to ensure that our services are co-produced with the communities they serve, build on people’s assets and support the health and wellbeing of the whole person and their family. The Scottish Health Council believes that this can only be achieved by creating a much stronger voice for people and communities using services. A voice that is respected, representative and informed and focused on improving outcomes and has a key role in driving the future shape of health and social care services nationally and locally.
2.3 Also, recognising people as assets brings demonstrable benefits to individual and community health and wellbeing. Co-design and co-production are essential as we tackle the continuing challenge posed by health inequalities.

3 Comments

Comments relating to specific sections of the Bill are outlined below.

Part 2

3.1 Section 4 highlights the important role of community bodies contributing to community planning. There is, however, no mention of how they will supported to make contributions so as to ensure their involvement is meaningful.

3.2 Section 7 mentions that Community Planning Partnerships will be required to produce a Local Outcomes Improvement Plan and publish it. They will also be required to "prepare" a progress report. There is no indication of whether the intention is for the Progress Report to be published. The Scottish Health Council suggests that both reports are published and in accessible formats.

3.3 Section 15, talks about the involvement of "Community Controlled Bodies". It would be useful to include a short description of what they are and/or an example for clarity purposes.

3.4 Section 18 highlights that communities can recommend topics for consideration of outcome improvements. Whilst the process for submitting them is quite clear as well as the criteria, there doesn't seem to be much about any prioritisation process. It would be helpful to make that element clearer.

3.5 With regards to Section 17, the Scottish Health Council supports the process as outlined for dealing with participation requests or communities asking to take part in a process to improve the outcome. It is important to recognise that participation requests should, however, not negate the responsibility on public bodies to engage proactively but instead enable community groups to make a more formal approach to them if they felt necessary (and with the body then having to respond in an open and transparent way).

3.6 Section 20 describes the outcome improvement process in agreeing to a participation request by a community participation body. It does not offer any further description as to how this may operate in practice, and without this the extent and remit of participation could become inconsistent. It may benefit from the reference of
recognised standards such as the National Standards for Community Engagement to inform practice.

4 Further information

Further information about the Scottish Health Council can be found on our website www.scottishhealthcouncil.org. Any queries regarding this response should be directed in the first instance to Christine Johnstone, Community Engagement & Improvement Support Manager, Scottish Health Council, tel: 01592 200555 or email: christine.johnstone@scottishhealthcouncil.org
Response to the Call for Evidence

Preamble

The Bill is a mix of specific provisions with little commonality and cohesion.

Its primary purpose as set out in the Policy Memorandum is the firming up of National Outcomes – Part 1. These outcomes, Single Outcome Agreements [SOAs], are to be achieved by Community Planning through the strengthening of local authority Community Planning Partnerships (CPPs) - Part 2. Communities may set themselves up as Community bodies to assist the CPPs in delivering services to their communities - Part 3. However the Bill provides no guidance on which services such Community bodies might target – they may choose to come forward in an ad-hoc way. Further provisions are made within the Bill that are largely ‘catch ups’ – the extension of the Right to Buy to urban as well as rural areas – Part 4; Requests from Communities for transfer of under used or derelict public assets – Part 5; auditing of Common Good Properties – Part 6; formalisation of Allotments – Part 7 and setting of Non-domestic Rates.

The five points:

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<th>1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?</th>
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<td>I consider that the Community Empowerment Bill is built on the wrong premise. The title itself is misleading. The Bill has nothing to do with decentralising local democracy below the existing local authority level. Indeed bullet 6 of paragraph 25 specifically excludes from this Bill any immediate change in the democratic responsibilities of Community Councils. Paragraph 191 of the Consultation to the Community Empowerment Bill itself states: ‘We also recognise that councils [local authorities] are the level of government closest to the citizen. This is currently the situation; local authorities are indeed to level of government closest to the citizen. But as the COSLA in its sponsored report COMMISSION ON STRENGTHENING LOCAL DEMOCRACY forcibly states this is not tenable for a modern state. For example the democracy appropriate for our town Linlithgow is very different from that that is appropriate for the ex coal mining towns of Uphall, Broxburn and Armadale and that from the burgeoning new town of Livingston yet it comes under the West Lothian local authority. One can hardly imagine the needs of the Highland Council covering as it does an</td>
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area larger than Belgium; the same will be true of a city like Glasgow.

If the Bill is to go ahead as it stands it will allow communities to help their local authorities to undertake work set out in the Single Outcome Agreements (SOAs) and by extension the Scottish Government to improve services to their communities. However very little in the Bill indicates that Communities will be empowered to undertake work that is outwith a local authority’s SOA. The extra powers that the Bill will give to Community Planning Partnerships will further tighten the rein that the Scottish Government has over the scope and flexibility of public services. Witness the centralisation of the Scottish Police Service – it should be evident that the policing of the large cities is very different from that from highland rural areas.

Elliot Bulmer in ‘A Model Constitution For Scotland’, commissioned by the Constitution Commission, features the lack of local democracy, page 90, and advocates a number of ‘lower tier’ authorities consisting of the restored Burgh Councils and reinvigorated Community Councils with proper budgets and paid staff, to which certain powers could be delegated. – see also Article VI of his draft constitution – Local Government.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

The public sector will be able to save money by Community Bodies taking over work that the public sector would have done themselves. In the cash strapped economy we are in, this may well be seen by Government as beneficial.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Some Communities may well be in a position to help themselves within the scope of Point 1. Such Communities are likely to be ones where its citizens have the time and good access to non-governmental funding to do so. The Bill as written indicates that the Government does not propose to help Communities with any finance directly. Witness Community Buy-out where community bodies will need to seek funds from charitable organisation

And it should be noted that even the Government’s Annex A in response to the Call for Evidence gives little concrete evidence that empowering Communities is a real ‘goer’

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

The specific provisions for extending Community Right to Buy, Asset Transfer and Common Good Property look appropriate. However the provisions for National Outcomes, Community Planning and Participation Requests look to provide for increased central government control through the strengthening of the Community Planning Partnerships:
the latter in particular are formal organisations who at least currently have little connection or knowledge of local communities. In this latter respect I am not content. As stated in Point 1. the Bill makes no provision for further local democracy – for Communities to decide and implement what are the priorities for their own areas. These will continue to be exercised by the existing local authorities and their Community Planning Partnerships. I would like to see a provision for local communities to apply by petition to the Scottish Government for delegation of powers to local town or parish councils.

I refer to paragraph 12 of the Policy Memorandum

Democratic Engagement

12. Local government and other public service providers increasingly use a range of community engagement and participatory activities to seek views on their service delivery. This recognises that representative democracy needs to be complemented by other ways in which people can express their views and influence decisions which affect them. Such activities can in turn inspire increased engagement with local and national government. When people are actively engaged in tackling issues in their communities, have direct contact with elected representatives and feel that they can influence decisions, they are more likely to become involved in the electoral process themselves, whether at Community Council, local authority or national level. This enhances the relationship between elected members and the communities they represent and can lead to better-informed decision making all round.

This paragraph is laudable but it would be so much more laudable if citizens were able to be responsible for managing and prioritising through their own democratically elected bodies what public services they need for the flourishing of their own communities; a major irritant in Linlithgow is ‘parking’ – recently parking attendants were dispensed with and the responsibility for parking is now transferred to the police – but the police have no resources to do so. If Linlithgow had its own local council it could decide to provide funds for reinstating a parking attendant if it wishes to allocate funds for this provision. Again West Lothian council in its SOA is targeting an increase for its 4 key visitor attractions by 16% over the next four years - how much more appropriate for Linlithgow itself together with Historic Scotland to come forward with its own figures and involving the whole town to ensure that its figures are achieved in the way most appropriate. On a wider scale in
5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

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<th>Submission Name: Mike Vickers</th>
<th>Norway the town councils are responsible for managing and running pre-school and primary schools in their towns.</th>
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<td>5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?</td>
<td>As the Bill focuses on Community Bodies helping themselves within the constraints of Government Policy, the Communities likely to participate most effectively are those with time and money to do so. This militates against the poorer less well-off communities who may well be those that would benefit most from improved public services. Without Government money it is unlikely that there will be many more Island Buy-outs as happened in Eigg, Gigha and Knoydart – all supported by independent charities. One of the Government’s responses in their response to the Call for Evidence to funding is apply to the Big Lottery fund – ie funds outwith the Government’s own budget.</td>
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Scottish Ambulance Service

Call for Evidence Response to:

COMMUNITY EMPOWERMENT (SCOTLAND) BILL

The Scottish Parliament’s Local Government and Regeneration Committee has launched a call for written evidence as part of its Stage 1 consideration of the Community Empowerment (Scotland) Bill. This Government Bill was introduced into the Scottish Parliament, on 11 June 2014.

Organisations are invited to submit written evidence to the Committee setting out their views on the provisions of the Bill. The Committee has stated it would be helpful if written submissions could address the following questions —

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?
   
   **SAS Response**

   There is an opportunity for communities to become more involved in the design and delivery of services through improved use of local assets. The Scottish Ambulance Service is supportive of this approach and recognises the benefit for communities where improved partnerships with traditional service providers leads to increased community resilience. An example of this exists on the Ardnamurchan peninsula where the community have redesigned the use of a local building to allow them to access clinicians and care advice via a tele-health link.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

   **SAS Response**

   The benefits to public sector organisations will be an increased opportunity to co-design and produce a local service model which the community recognises as being fit for purpose and supports. This will help address areas where delivering traditional a service model is impractical and/or unaffordable. It will also offer opportunities for public services to have access to local buildings, which have passed into community ownership, in support of delivering the service locally e.g. for the SAS increasing the number of stand-by and deployment points.

   In terms of disadvantages there is a potential risk within Part 3: Participation Requests which could result in ill informed challenges to public service delivery which requires mitigation through effective ongoing local engagement.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

   **SAS Response**

   Broadly, we are confident that communities have the capability to take advantage of the Bill. Where there are difficulties in individual cases partners within public sector organisations should be able to effectively assist communities to achieve their aims obviously dependant on the issue.
4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

**SAS Response**

The provisions within the bill seem reasonable however guidance is required to ensure there is consistency within the partnership process. This is particularly relevant to the Scottish Ambulance Service given that, as a national service, we will engage with all 32 Community Planning Partnerships across Scotland.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

Having reviewed the Bill in the context of these questions I have provided responses to the questions I feel are relevant to the business of the Scottish Ambulance Service.

I’d therefore ask the Executive Team to endorse the response to this call for evidence request.

Drew Wemyss

Head of Strategy Implementation
Reform Scotland submission to the consultation on the Community Empowerment (Scotland) Bill

I am pleased to respond to the Local Government & Regeneration Committee’s consultation on the Community Empowerment (Scotland) Bill.

I refer to part 8 of the bill which includes provisions for local relief schemes to NDR as well as additional measures which Reform Scotland believes would improve community empowerment in Scotland.

NDR relief scheme

Whilst the ability to create localised relief schemes to reflect local needs and support communities proposed by the bill is to be welcomed, we would like to see far greater decentralisation. Reform Scotland believes that each tier of government should be responsible for raising the majority of what it spends. Councils in Scotland today arguably have no real control over raising the tax revenue they spend (due to centralisation of NDR and the council tax freeze) despite being responsible for a significant proportion of expenditure.

Our report Local Taxes, published in March 2012, explained in detail how council tax and non-domestic rates could be properly devolved to councils, giving them far greater control over raising the money they spent, as explained below.

Business rates are a form of local taxation and Reform Scotland believes that as well as collecting the tax, councils should be responsible for setting it too. Just as it has been argued that there is little incentive for the Scottish Government to improve the economy if any increase in revenue as a result of greater economic growth is returned to Westminster, the same argument applies to business rates. There is little incentive for an individual council to develop the local economy if any increase in business rate revenue resulting from a stronger local economy is simply returned to Holyrood. Devolving business rates to local councils would restore the link between local economic development and higher revenues. It would give councils a real incentive to work with local businesses to improve the performance of the local economy.

Devolving business rates would obviously lead to a reduction in the grant given to councils and would result in a situation of net winners and losers since some councils account for a larger proportion of business rate revenue collected relative to their resident populations than others. Some of this is due to differences in economic performance across the country and some due to council boundaries not reflecting real economic flows. Reform Scotland
recommends that, in the first year of operation, the Scottish Government grants to each
council should be based on the grant they received the previous year, less the business rates
collected from the council area. Councils would then receive the revenue raised from business
rates in their area, with the remaining part of their revenue grant adjusted to ensure no council
was better or worse off.

Each council would then have to decide whether to retain the business rates inherited or to
seek to increase or reduce business rates. Councils would have an incentive to provide a
competitive economic environment. A council could seek to increase business rates which
might have the effect of increasing income in the short term, but is likely to lead to poorer
economic performance and lower income from business rates in the longer term. However,
the increase in local financial accountability is more likely to provide an incentive for
councils to design business taxation policies and broader local economic development
strategies to support the growth of local businesses, encourage new business start-ups and
attract businesses to invest since this will benefit the council directly by increasing its income
from business taxes.

Passing control of business rates to local authorities would also mean giving them control
over business rates relief schemes. As a result, it would be up to each individual local
authority how the tax operated within their area.

Reform Scotland also believes that local authorities should be able to introduce other taxes,
such as a ‘bed tax’, if they feel they are appropriate for their area. If the electorate disagrees,
they can register this protest at the ballot box. Such schemes also increase diversity and allow
councils to learn from the experiences of other local authorities. Importantly, they also make
councils less dependent on central government grants.

As well as giving local authorities freedom to raise and cut council tax as they see fit, we also
believe that local councils should be able to choose to whom the tax applies, where discounts
can be offered and indeed the type of local tax they wish to operate. There are a number of
different types of local taxes which are used around the world; each with its own pros and
cons. Reform Scotland believes that it should be up to local authorities to decide what type of
tax system they want. There is no reason why, for example, Edinburgh couldn’t operate a
council tax system while Midlothian used a Land Value Tax. By allowing different forms of
tax to exist around Scotland, this would help to increase diversity as well as discovering
which systems work best for different communities.

Reform Scotland’s proposed reform to local democracy
Devolution was never supposed to stop at Holyrood, but increasingly this seems to be the
case. This is why Reform Scotland’s reports on a range of issues from healthcare to policing
and finance to planning have argued that more power needs to be devolved down to our local
authorities and beyond to make those services more responsive to local needs and priorities as
well as making service delivery more accountable and transparent.

We believe that local authorities should have greater fiscal powers to help ensure that they are
responsible for a greater proportion of their own expenditure. Given the current limitations of
the fiscal powers of the Scottish Parliament, at present this could be done only by giving
councils full power over council tax and non-domestic rates, which would also require
legislation to enable the councils to have control over issues such as the tax base, the bands,
discounts etc. Further powers could be devolved once they are first devolved to Holyrood.

Reform Scotland favours a diverse structure of local government in Scotland, reflecting the
diverse circumstances of the different parts of Scotland. Two options which we feel should be
considered by the new councils would be an enhanced area committee system where more
decisions are taken for the local area by the councillors from that area and directly-elected
mayors, or provosts as they could be known in Scotland. Reform Scotland does not believe that either of these options should be forced on a local authority from the centre, but should be options that they could introduce should they wish. To enable this, Reform Scotland would recommend the introduction of legislation which would allow local authority areas to hold referendums on the introduction of a directly-elected mayor, or provost, where 5 per cent of the population signs a petition or a council resolution is passed. Elected civic leaders would help address the problems of local government’s lack of visibility and, therefore, accountability. As they are elected by the public across their council area, rather than just one council ward, they have a stronger democratic mandate and a much greater incentive to focus on responding to the concerns of their electorate.

Local authorities should, in turn, consider devolving greater responsibilities to community councils in order to better involve the local community and encourage participation within community councils. While some community councils are viewed as effective, others are not and participation is low. However, just as is the case with local government, if a community council is seen to have no meaningful role in a community it is very difficult to encourage volunteers to become interested and increasing responsibilities should help address this issue.

Reform Scotland does not think there should be a single model for community councils across Scotland, rather local communities in conjunction with their local authority should develop a system that best suits their area and circumstance.

Worryingly, there appears to be an appetite for reforming public services by bringing more power to the centre. While this may be being done in the name of efficiency (i.e. apparent financial savings from merging the police) or to save people money (council tax freeze), the end result is the erosion of local accountability and decision making.

Whilst there is near unanimity that more powers should be passed down to Holyrood, on the basis that politicians in Scotland are better placed to make decisions for the people of Scotland, this argument has yet to apply to local government in Scotland.

Reform Scotland believes there needs to be a fundamental change in approach towards extending devolution beyond Holyrood.

Yours sincerely,

Geoff Mawdsley
Director, Reform Scotland
For 130 years, as the RSSPCC and now as CHILDREN 1ST, we have campaigned for every child in Scotland to enjoy a better start in life and for no child to grow up in fear of abuse and violence. We will continue to be a strong public voice for vulnerable children and young people in Scotland, listening to them, to influence public policy and attitudes. Then, now and for another 130 years, as long as Scotland's children need us.

CHILDREN 1ST has 63 local services and five national services across Scotland, and we work closely with many local authorities as well as working in partnership with other organisations. All our services are child centred and the children, young people and families we support are key partners in all aspects of our work.

CHILDREN 1ST welcomes the opportunity to provide written evidence to the Local Government and Regeneration Committee on the general principles of the Community Empowerment (Scotland) Bill. We welcome this bill and support its general principles, particularly its ambition to remove barriers to make it easier for communities to engage and play a more proactive role in community planning. However, we consider this bill could go further to ensure that children and young people, and vulnerable families are able to participate.

Summary of our key points:

- There should be a duty for Ministers to consult with children and young people on the National Outcomes
- There should be a duty for Community Planning Partnerships (CPPs) to consult with children and young people
- This bill does not address the barriers to community engagement for many members of the community
- Third Sector Interfaces should be part of CPPs
- This bill needs to link with the aims and duties of children’s services planning as set out in Children and Young People (Scotland) Act 2014
- The bill should work to further UNCRC, the child poverty strategy and wellbeing of children and young people

We note that this bill does not mention children and young people and their role in community empowerment. The Children and Young People (Scotland) Act 2014 places duties on Scottish Ministers to take UNCRC requirements into account, and we therefore consider that a Child Rights Impact Assessment should have been conducted to assess the bill’s impact on the rights of children.
We also consider it important for the bill to connect with other Scottish Government national policies that strengthen our communities and would like to see the bill link with the work and the stretch aims of the Early Years collaborative; a main driver of the community assets based approach.

Early intervention and prevention is a key aim of children’s services planning in the new Children and Young People (Scotland) Act. The Community Empowerment bill is an opportunity to focus and connect this important aim into all community planning and participation, to enhance the delivery of services and to prevent issues arising, particularly for children.

Part 1 – National Outcomes

CHILDREN 1ST support placing the National Outcomes in legislation and are pleased that there is a duty on Scottish Ministers to consult on the outcomes. We would like to see a duty for Ministers to consult with children and young people here, and for this to be outlined on the face of the bill. All the current national outcomes already set by Ministers relate to children’s everyday lives, and it is necessary and important to include children and young people in decisions which will impact them. Doing this will adhere to Article 12 of the UNCRC.

Part 2 Community Planning

CHILDREN 1ST is pleased that Part 2 of the bill provides a statutory basis for community planning partnerships and that the bill defines community planning as the process by which public bodies work together and with community bodies to plan for, resource and provide services to improve local outcomes. However we have concerns about whether this bill will actually enable all members of the community to be involved in decisions which impact their lives.

There are barriers for many members of the community to participate in community planning. Poverty, lack of means, childcare issues, trust, confidence, lack of transport and language barriers all impact people’s ability to participate in community planning. This, coupled with reduced funding for local community learning and development workers, means many people will find it difficult to participate in the formal process of community planning.

Using third sector organisations, and local services or community groups used by more vulnerable people to support relevant consultation, can help improve participation for more vulnerable members of the community, helping them to feel empowered.

We welcome the bill’s definition of “community bodies” as bodies that can represent “the interest of any communities”. We consider children and young people as a community with a right to be consulted and included. We would like to see the bill set out a duty on CPPs to engage with children and young people in creation of the local outcomes improvement plan. This is important as Article 12 of the UNCRC states that when decisions are made that affect children, children have the right to contribute to the process and have their opinion taken into account. This consultation
should be done in a child friendly way, perhaps involving schools and youth clubs. Indeed the Children and Young People (Scotland) Act states that public authorities must every three years report what steps it has taken to further UNCRC requirements in its area of responsibility. It makes sense for the duties spanning the Children and Young people Act and this bill to link together.

CHILDREN 1ST also considers that clarity is needed around the impact of community planning structure and outputs and the new requirements of children’s services planning as set out in part 3 of the Children and Young People (Scotland) Act. The Children and Young People (Scotland) Act places duties on public bodies to coordinate the planning, design and delivery of services for children and young people with a focus on improving children’s wellbeing outcomes and report collectively on how they are improving those outcomes. We believe it is vital for this bill to create links between the new duties under that Act and the local outcomes set by CPPs to ensure joint planning. CHILDREN 1ST would welcome reference to the duties of children’s services planning within this bill.

The aims of children’s services planning in part 3 of the Children and Young People Act include a focus on early intervention and prevention\(^1\). We consider it helpful for the duties of CPPs to mirror this in their planning, outcomes and objectives. This will also ensure a joined up approach and core focus within community planning. To help this approach, CHILDREN 1ST would also like section 9 to state a duty for CPPs to further the effect of the Scottish child poverty strategy, to consider the wellbeing of children and young people (through using the GIRFEC framework\(^2\)) and the UNCRC within its community planning.

We also believe it is vitally important that the local Third Sector Interface is a member of the CPP and recommend that the Schedule 1 list is amended to state this, while keeping section 9. 1 (a) and (b) as they stand.

It is also vital that there is meaningful representation of third sector organisations and services within local community planning processes. It is important that those third sector organisations that can provide and share the best practice and outcomes are invited to the table, to share their knowledge whether they are services that are part of a larger national organisation, or are singular small local organisations.

We also consider it important for CPPs to demonstrate how the community groups they have engaged with, such as children and young people, have been able to help proactively shape and ideally co-produce outcomes in community planning. This will help ensure participation is not just a tokenistic gesture, and ensure transparency and fairness.

Part 3 Participation requests

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\(^1\) Part 2 section 9 (2) (a) (ii) ensures that any action to meet needs is taken at the earliest appropriate time and that, where appropriate, action is taken to prevent needs arising,

\(^2\) [http://www.scotland.gov.uk/Topics/People/Young-People/gettingitright](http://www.scotland.gov.uk/Topics/People/Young-People/gettingitright)
CHILDREN 1ST welcomes Part 3 of the bill regarding participation requests to public service authorities from community participation groups and that the weight is in favour for public service authorities to accept this request. The aspirations of the bill to meaningfully involve the community must be matched by resources; we are concerned that in reality this may not be accessible for certain members of the community. The bill does not mention how community members will be made aware of the opportunity for participation requests, or what support will be offered to those interested in participation requests. It is vital that this information is available in communities.

Part 3 section 19 states that in reaching its decision, the authority must take into consideration whether agreeing to a request would improve or promote economic development, regeneration, public health, social wellbeing, or environmental wellbeing. We would also like the public service authority, in this instance, to consider how such a request would further the UNCRC, the child poverty strategy, and how it will impact the wellbeing of children and young people. It is important that any changes in service delivery take into account the consequences and impact on the rights and wellbeing of children and young people.

We also have questions around the funding and information sharing of budgets of a successful participation request. It is unclear who will continue to provide the funds to run that service, if a community participation body is successful in applying to run a service, and if budget information will be shared and passed on. We are also unclear how this may impact tendering and strategic commissioning of services and would welcome clarity on this.

Part 4 & 5 – community right to buy and asset transfer requests

During an asset transfer request, we hope there will be safeguards and consideration of how members of the local community are already using the land on a formal or informal basis. The authority’s decision to accept or refuse a request should also take into account any potential impact on children and young people. For example if children are using an area of grassland as recreational ground for play, then consideration of this need should be given before the transfer request is agreed to.

We hope there will be safeguards in place to ensure that any profit from acquisitions is used for the benefit of the local community. Finally, the bill does not outline any support that will be offered to those interested in registering an asset transfer request. Support to navigate complex bureaucratic processes is vital to ensure communities do not find the process alienating.

CHILDREN 1ST welcomes the general principles of the Community Empowerment (Scotland) bill but believes it could and should go further to ensure that all members of the community, including children and young people, can be empowered to take part in the process of improving their local community and services.
I welcome the opportunity to respond to the Call for Evidence of the Local Government and Regeneration Committee in relation to Stage 1 of the Community Empowerment (Scotland) Bill. This response is made in a personal capacity, but two points should be noted in that regard. First, I am employed by the University of Aberdeen at the School of Law. Second, I was an adviser to the Land Reform Review Group (appointed in June 2013). Neither role has had any direct impact on this submission.

I am happy for this response to be in the public domain.

This response will focus on: human rights; the use of the term “abandoned”; the need for a company limited by guarantee in the proposed Part 3A of the Land Reform (Scotland) Act 2003; and the Part 3A register

**Human Rights**

The right to property is recognised in the European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”), that right being expressed in Article 1, Protocol 1 (“A1P1”). A1P1 does not mean that private ownership is sacrosanct in all circumstances. A landowner can be divested of ownership when it is in the public interest for that to happen. The Committee may be interested to note that in South Africa, there is a specific constitutional declaration in section 25 that “the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources” (although the recognised need for reform in post-apartheid South Africa is not a direct comparator to Scotland).

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

That said, the ECHR is crucial because of the role it plays in relation to devolved legislation (in the Scotland Act 1998 (as amended)). The Committee should therefore note that a compulsory transfer of property from one landowner to a new private landowner is acceptable in ECHR jurisprudence, as seen in *James v UK* (1986) 8 EHRR 123 and more recently in *Pairc Crofters Ltd v Scottish Ministers [2012] CSIH 96; 2013 S.L.T. 308.*

It can also be noted that the operation of positive prescription (under the Prescription and Limitation (Scotland) Act 1973) can serve to replace a remiss owner of land with another owner, where the new owner has possessed that land for a certain length of time and registered a deed at the Land Register of Scotland. That process is due to be reformed very soon, by the Land Registration etc. (Scotland) Act 2012, but for present purposes it shows that Scots law is perfectly comfortable with the idea of one person’s ownership being usurped by another.

As such, it would seem the current proposals to introduce a new Part 3A to the Land Reform (Scotland) Act 2003 and to widen the scope of the right already conferred by Part 2 are well within the realms of ECHR compliance.

**Abandoned land**

Clause 48 of the Community Empowerment Bill deals with “abandoned and neglected land” by giving communities a right to acquire land that is “wholly or mainly abandoned or neglected” (see the proposed s.97C(1) of the Land Reform (Scotland) Act 2003. The word “abandoned” is suboptimal, because it has a very specific meaning in Scots private law. Property lawyers would use that term in a
situation where an owner has actively sought to walk away from an item of property. This is most readily imagined with corporeal moveable things (i.e. tangible objects that are not attached to land): consider Carey Miller with Irvine, *Corporeal Moveables in Scots Law* (2nd edition, 2005) at paragraphs 2.07-2.08. Whilst land cannot be cast away in quite the same manner, an owner may seek to disclaim land. This was most recently witnessed in the case *SEPA v Joint Liquidators of Scottish Coal* (2014 SLT 259).

As such, a synonym for abandoned seems preferable, but it is tricky to pick one. "Unused" and "underused" are ripe to cause arguments and there may be issues where an owner has made a conscious decision to not manage land (i.e. allow it to go wild, perhaps for conservation purposes). "Derelict" might be appropriate, but in common usage that normally relates to buildings. "Deserted" might imply a complete surrender of any relationship to the land. Unfortunately, I do not have an ideal substitute for "abandoned", but the Committee should consider carefully whether "abandoned" is appropriate. One drastic solution might be to remove "abandoned" entirely, leaving the legislation to relate to "wholly or mainly neglected land".

*Company limited by guarantee*

There is no compelling reason to mirror the requirement for communities to incorporate as a company limited by guarantee (but see below relating to the Part 3A Register). Whilst it might be argued consistency with the rest of the Land Reform (Scotland) Act 2003 is useful, this comes at the cost of flexibility for a community. An alternative approach is to focus on an organisation's rules/constitution, as is the case with some common property options in the comparator jurisdiction of South Africa (See further Combe, “Parts 2 and 3 of the Land Reform (Scotland) Act 2003: A Definitive Answer to the Scottish Land Question?”, (2006) Juridical Review, pp.195-227).

*The Part 3A Register*

Although publicity is undeniably important when dealing with land, a query might be raised about the need for a new register. Assuming the requirement that a community be embodied as a company limited by guarantee is retained, publicity about that community comes via Companies House. The Land Register will provide publicity about the land. Notifications from the Scottish Ministers can (presumably) be publicised without a new register. Is a new register justified?

That said, a central reference point for Part 3A could be useful for a variety of people, so this potential criticism should not be overstated.
Community Empowerment (Scotland) Bill

The Scottish Parliament’s Local Government and Regeneration Committee’s Call for Evidence.

The Meldrum Bourtie and Daviot Community Council’s written submission of evidence addressing the Committee’s stated questions is as follows:

“1. To what extent do you consider the Bill will empower communities; please give reasons for your answer?”

A representative of Meldrum Bourtie and Daviot Community Council attended the National Conference on 6th May 2014 at which the keynote speaker was Mr Derek McKay MSP, Minister for Local Government. The conference provided an excellent insight into the proposed Community Empowerment (Scotland) Bill and allowed our delegate to meet other presenters and attendees who provided a great source further background information.

We were very disappointed to learn that the future of Community Councils is not addressed as part of this legislation, but worse still that there seems little appetite to change the status quo.

The only “Empowerment” that the Bill will provide for Community Councils is, “a new statutory role in relation to the common good, recognising their important role as voices for local communities”.

The “common good” is not defined in the Bill because “at this stage our view is that there are significant difficulties in framing a satisfactory definition”. Suffice it to say that the common good is comprised of property and funds which have been bequeathed to the Council for the benefit of all its citizens.

So in a nutshell, we get to have a say on what already belongs to us anyway.

One question asked of the Minister was if this “so-called Empowerment Bill” was just a means of validating the principle of independence, in that what is good for Scotland was also good for Scotland’s individual localities independence within Scotland. The Minister’s response was to laugh it off by suggesting that some cynical people would obviously see it this way, without actually giving a straight answer. He is a politician, after all.

The Minister made very few references to Community Councils but for us his most telling comment was his dismissal of any idea that Community Councils should be given any further powers at present, because they are largely unelected and therefore unrepresentative generally of their communities. We were promised a copy of his speech after the event but this has not been forthcoming. We therefore requested a transcript and were advised by email on 15th May 2014 that, “Unusually, the Minister spoke off-the-cuff at the conference last week, with minimal handwritten notes and without an official writing his speech. We have been advised by his office that they are unable to provide a summary in this case”
It is we feel a lost opportunity to finally devolve power to the communities via the long-established framework of the Community Councils. We also feel that the COSLA Commission on Strengthening Local Democracy gives a fair answer to this question.

The interim COSLA Report makes very interesting reading, but again fails to tackle the potential (or in some cases lack of potential) of Community Councils. This is very surprising, as the most startling fact is that Scotland has the most centralised government system in Europe. This is illustrated on the table below (Figure 1).

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<th>Sq. km</th>
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Figure 1 Source - http://bellacaledonia.org.uk/2011/09/29/beyond-centralised-power/

The full text of the report makes an interesting read, and can be found here: http://www.localdemocracy.info/2014/04/24/time-to-reverse-50-years-of-centralisation/

[Our Community Council was invited to send one member to this forum, but due to an overwhelming response, the invitation was reduced to one per Local Authority Area in attendance and one on a web-inar]

Prof Richard Kerley was also a speaker at the National Conference on 6th May 2014 and he concluded that Community Councils should not be simply given more grants by “higher authorities” but should be given more power and the associated accountability. That way they would become more representative and the funding would follow. Either do this or “just kill them off”, was Prof Kerley’s conclusion.

On this same subject, Donald Manford of Voluntary Action Barra & Vatersay a delegate to the Conference, spoke to the floor when responding to the speakers about the centralisation of Scottish Government, “Don’t be fooled into thinking that there is anything “Local” about Local Authorities”. [Donald Manford is also the elected member for Barra on the Western Isles Council.]

Empowerment = Give (someone) the authority or power to do something (Oxford English Dictionary)

It is clear to us that Local Authorities have no intention of relinquishing any of their true power and the Community Empowerment (Scotland) Bill as it stands will not change this in any way.
“2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?”

Meldrum Bourtie and Daviot Community Council is not a public sector organisation so, we cannot state what the views of Local Authorities might be.

From the Community Council’s perspective the Community Empowerment (Scotland) Bill would appear only to be a means for providing an avenue for Local Authorities to dispose of assets only when they see a benefit of saving costs by transferring the responsibility of those assets which are becoming a burden to their finances.

The “disposing” of Local Authority assets for the benefit of the Local Authority rather than truly for the benefit of the Community seems to be embodied in the two actionable parts of the Bill:

PART 4 - COMMUNITY RIGHT TO BUY LAND
PART 5 - ASSET TRANSFER REQUESTS

“3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?”

There is very little evidence of any appetite for Community Council reforms in the Community Empowerment (Scotland) Bill, so the only course of action is for Community Councils to learn how to lobby those in actual power more effectively. In some areas of Scotland there is very poor engagement between Community Councils, their communities, and their Local Authorities, in some cases leading to the disbandment of them entirely.

Reform should start at home and Community councils should be encouraged by Scottish Government to strive towards better representation by involving people throughout the community, especially younger people.

The “Seven Principles of Representation” as laid out in “The Principles of Representation: A framework for effective third sector participation” published by the Cabinet Office.

This would be a more tangible way of Community Councils gaining more credibility and then empowerment would be the next rightful step.

The “Seven Principles of Representation” are:

1. Accountability – clearly defined responsibilities for all decisions and actions
2. Equality – place equality, diversity and inclusiveness at the core of what you do

3. Leadership – the sector’s representatives will need to think and act strategically

4. Openness – be as open as possible in all your dealings and relationships

5. Purpose – be clear about the local sector’s objectives and support them with a strong evidence base

6. Sustainability – ensuring the continuation of the collective voice

7. Values – identify and build on the values of the local sector

There are many occasions where the Local Authorities and Community Councils should be working together but end up working at cross-purposes. There must be mutual respect and this should be fostered by Scottish Government.

“4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?”

As a Community Council we see very little benefit to us or to our community. The Bill does not “Empower” any of us in any meaningful way. All the true “power” remains with Central and Local Government.

The worthy principals currently being championed by the argument for Scottish Independence from the UK should logically be passed down the line to allow our community independence from a centralised government in Edinburgh and the “Local” government, in our case based in Aberdeen.

“5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?”

Equal rights are very important to us and it is good to see that the often forgotten and voiceless members of our being provided with an opportunity to have their say. It has to be said though, that this is not true empowerment, simply a better means of lobbying those actually in power.

We are not an Island Community, so we have no views on the impact on Island Communities.
LOCAL GOVERNMENT AND REGENERATION COMMITTEE: COMMUNITY EMPOWERMENT (SCOTLAND) BILL
SCDI is an independent and inclusive economic development network which seeks to influence and inspire government and key stakeholders with our ambitious vision to create shared sustainable economic prosperity for Scotland.

For more information on this response please contact the SCDI Policy Team at

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t  0141 222 9727
Local Government and Regeneration Committee on the Community Empowerment (Scotland) Bill

Q1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

1) SCDI is an independent membership network that strengthens Scotland’s competitiveness by seeking to influence and inspire government and key stakeholders with our ambition to create shared sustainable economic prosperity. SCDI’s membership includes businesses, trade unions, local authorities, educational institutions, and the voluntary sector.

2) SCDI welcomes the Community Empowerment Bill, and agrees it provides a legislative framework which supports the empowerment of communities through provision of powers to take ownership of land and buildings and request rights in relation to property and services.

3) These mechanisms can be considered necessary to support the pace and scale of public service reform required by ongoing budget restrictions. By 2013-14 only 40% of cuts to the Scottish Government’s resource budget have been undertaken, and the rest are expected between now and 2017-18\(^1\). This reduction in spending is compounded by increased need, caused by the economic downturn itself and the effect this had on pay and opportunities, as well as longer-term demographic issues which will increase pressure on services. As such, it is no longer possible to continue providing the same services with less resource. We must instead find new, innovative ways to provide the services communities need, and the Community Empowerment Bill supports this.

4) Alongside the Bill however, communities will also require some form of capacity building or support service if they are to access these new opportunities and use them to their full effect. Likewise, public bodies must be supported by guidance in order to effectively assess and respond to requests by community groups around property and services.

Q2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

5) Communities can be considered experts in their own needs and by enabling greater input into service planning and delivery, the public sector may uncover innovative delivery mechanisms which more effectively meet their service users’ requirements.

6) The provisions around community rights in relation to property and participation in outcome design and service delivery could provide an efficient mechanism to deal more effectively with the requests which public bodies already receive and respond to. Where community bodies take on ownership or maintenance of assets which previously

\(^1\) http://www.gla.ac.uk/media/media_286106_en.pdf
incurred costs to the public body, savings could be realised. However, some public bodies are anticipating high demand in the initial stages to request such rights which will have cost and resource implications. As such, it is essential that any new duties placed on public bodies must either be cost neutral or appropriately funded, and any significant changes in duties must also be subject to an appropriate notice period.

7) Likewise, community bodies should be able to appeal decisions where they have legitimate concerns around reasons for refusal, the application of significantly different terms and conditions from those specified in the request, or where no decision notice is given. Unfounded appeals, however, will have resource implications for all bodies involved. Clear and practical processes are required to minimise the propensity for burdensome disputes to arise, drawing resources away from service delivery and community capacity building.

Q3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

8) While Scottish Government has articulated a clear desire for greater community ownership of assets and community led regeneration, the rhetoric may outweigh the ability of these groups to meet increased expectations and transform themselves into enterprising organisations in thecontinuingly difficult economic conditions unless appropriate organisational and community development support is provided.

9) The Big Lottery Fund’s ‘Growing Community Assets’ evaluation, for example, identified over-dependence on the same people, managing volunteers, and making the transition from voluntary organisations to social enterprise or other professional business structures as challenges that face projects as they develop. In addition, capacity between communities can be affected by the social and demographic make-up of the area, with more affluent areas likely to have greater access to pro-bono professional skills. These must be overcome in order to ensure the opportunities of the Community Empowerment Bill are realised.

Q4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

10) As well as support effective community engagement, Community Planning Partnerships could also involve other important stakeholders in the community including businesses and the third sector. Part 2, Section 5 of the Bill states that each CPP must prepare a local outcomes improvement plan through consultation with (a) such community bodies as it considers appropriate, and (b) such other persons as it considers appropriate. ‘Other persons’ could include business; however, this should be expanded on in

http://www.biglotteryfund.org.uk/-/media/Files/Research%20Documents/er_eval_gca_Yr5Final.pdf
guidance through recognition that business can have an important role in certain communities through employment opportunities and wider impacts.

11) Awareness amongst the private and third sectors of the Single Outcome Agreements at a local level is low – businesses have limited understanding of the process and Agreements or input into their development, despite their often vital role in delivering the outcomes. This tends to embed the belief that the public sector is alone responsible for service provision and delivery of the outcomes, and does not encourage attempts to draw on private sector finance into the provision of underlying infrastructure.

Q5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

12) No comments.

Ashleigh McLennan
Policy Executive
Scottish Council for Development and Industry
1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

North Ayrshire Council welcomes the Community Empowerment Bill and agrees that the Bill goes some way towards empowering communities in certain policy areas, including:

- Increasing sustainable economic growth;
- Seeking to increase individual and community capacity, making communities more confident and resilient;
- Making use of community talent, creativity and combined resources to achieve an empowered community (asset based community development approach);
- Empowering communities to influence and effect change in the way services are designed and delivered; and
- Engaging with communities so that community voices are heard in public sector processes.

However, a number of opportunities to embed broader principles of community empowerment could also have been included.

For example, the proposed use of the National Standards for Community Engagement, and the requirement to publish and implement a community engagement plan as discussed in the previous consultation on the Community Empowerment and Renewal Bill, should be reintroduced. It is acknowledged that the requirement to engage with communities is included in the Bill in relation to community planning, and is expressed with a focus on the outcome, rather than the process. A more rigorous approach may be required.

The Bill requires Community Planning Partner agencies to report annually on their community engagement activity. The Bill could be an opportunity to encourage Community Planning Partners to jointly plan and monitor community engagement, and the resultant outcomes.

A 'place based' or neighbourhood planning approach is at the heart of getting effective business and third sector engagement. There should be a requirement to develop an evidence-based neighbourhood profile within the Community Planning approach, to agree priorities and obtain partner commitment to pursue such priorities. This process provides ample opportunity to engage with
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businesses, community and third sector, both in agreeing the priorities and their roles in implementing these.

The Council welcomes the Government’s statement that it is committed to subsidiarity and local decision-making in public life and the recognition that councils are the level of government closest to the citizen, giving people an opportunity to participate in decision making affecting their everyday environment. However, the importance of the role of young people should be recognised, including their right to statutory consultation.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

The Bill places a duty on the Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, which must be reviewed at least once every five years. This provides a positive and constructive basis for policy development within Community Planning Partnerships.

Moreover, the clarification and strengthening of the role of Community Planning Partnerships is a helpful direction of travel, especially with its emphasis on place and the importance of community engagement.

Evidence shows that involving people more regularly and more effectively in the decisions that affect them leads to better outcomes, making the most of the knowledge and talent that lies in communities. It also increases confidence and fosters more positive relationships between communities and the public sector. Community bodies might use the “Right to Participate” provisions to discuss with service providers how they could better meet the needs of users, to offer volunteers to support a service, or even to propose that they take on the delivery of a service themselves. It will be for the public body to decide whether to make any changes to existing service delivery arrangements.

If the community body proposes to deliver services itself, the public body will need to decide whether the community body has an appropriate corporate structure and the capacity to take on that role.

The processes set out for requesting a right to participate are fairly complex. Unless appropriate support and guidance is provided for marginalised and less organised communities, the complex process will result in further marginalisation of less powerful communities and interests.

The above is also true in relation to the right to buy legislation.

In relation to the Common Good provisions, a challenge is provided in identifying all of the community bodies which are known to the authority. Central registers will require to be established, which can be accessed when representations are required to be offered.
The Community Empowerment (Scotland) Bill contains a potentially significant change for non-domestic rates (Part 8 of the Bill).

The Bill proposes that the Council can from the 1 April 2015 introduce its own scheme for the reduction and remission of rates to meet the needs of local business and communities.

The Council will have the discretion to reduce or remit the rates for any non-domestic property, in any designated area, for any designated activity or for any other reason decided by the Council. The only condition detailed in the Bill is that the relief ends when there is a change of occupation.

Councils will need to fund the scheme themselves and take into account the interests of the council tax payer; this is because any loss of income from non-domestic rates incurred by the scheme must be offset from other income raised by the local authority.

The two broad implications for local authorities in relation to allotments are based around the responsibility of the local authority to manage waiting lists and respond to demand for allotments by providing more allotments should waiting lists exceed certain trigger points.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

As communities become more empowered they are likely to seek partnerships with organisations in the public private and voluntary sector to achieve their goals. Supporting such approaches is increasingly becoming a priority in the context of re-shaping public services. In North Ayrshire a recent review of directorates brings together Economy and Communities which will be well placed to drive the ambition the Scottish Government has for local community empowerment and local economic growth.

However, the availability of appropriate support, guidance and a culture of nurturing community action are key.

Support for groups and organisations to build their own capacity and aspirations is a basic requirement, and needs to come from the public and third sectors. Resources have been reduced through the process of public sector reform and are often insufficient to effect lasting change in communities.

The Bill provides the right for communities to be consulted on local budgets. The Bill will strengthen requirements for communities to be involved in setting priorities for public services, which has a significant impact on how budgets are
spent. The Scottish Government also supports Participatory Budgeting (PB), which directly involves local people in decisions on a specific budget. The Scottish Government is funding consultancy support to help more local authorities develop PB in their areas. Significant training and support will be required for community organisations to participate.

While the Bill does not amend the legislative status of Community Councils, it does recognise their interest in shaping local services, and gives them a specific role in relation to common good assets.

The Scottish Government is taking forward work to strengthen the role of Community Councils and increase the diversity of members, but significant support, training and resource implications will result at national and local level to ensure that Community Councils fulfil their responsibility to be genuinely representative and effective.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

The provisions of the Bill are largely already being addressed by North Ayrshire Council as evidenced in:

- The Community Planning Partnership;
- Neighbourhood Locality Planning;
- The Review of Community Councils;
- Review of Corporate Management Team 2014;
- The Community Engagement Strategy - including the corporate cohort training with the “Consultation Institute.”
- Asset Transfer Policy and Guidance;
- The Community Contract/ SLA partnership with Community Associations in the management of Community based assets;
- The Asset Based Community Development programmes with key partners including Health and the CPP with regard to early and effective intervention; and
- The Allotment Strategy.

North Ayrshire Council would be happy to discuss any of the above initiatives in relation to the call for evidence.

North Ayrshire Council wishes to reiterate its support for the Bill but also the requirement for additional resources to continue to build capacity in communities, particularly in deprived communities, to develop the approach
which underpins the Bill. Specific policy initiatives, such as the right to buy, the right to participate, the provisions for non-domestic rates and the development of allotment and food strategies will be resource intensive and will require public sector partners, especially local authorities, to identify and prioritise resources in a climate of financial austerity.

5. **What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?**

   North Ayrshire Council agrees with the assessments as set out in the Policy Memorandum.
Introduction
I am submitting this evidence based on my 15 years of experience working in local government in Scotland, in a range of roles relating to community participation and empowerment, combined with evidence from my current research into community participation policy and practice in Scotland and England, and related academic literature. At the previous consultation stage of the Bill, I and colleagues from the Neighbourhoods and Wellbeing Research Group in Glasgow University submitted a joint response, but we have not had time to agree a joint response to this call for evidence, so this is a personal submission.

Evidence submission
1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

The Bill should make some significant advances in terms of empowering communities, particularly through the new rights regarding participation requests and the extension of rights regarding community control of land and buildings. In relation to participation requests, there is research evidence that communities desire influence over the public services they use, and that gaining such influence has important feedback effects within communities in terms of increased confidence, skills and feelings of efficacy. In relation to community control of land and buildings, there is significant research evidence regarding the benefits for communities, such as increased confidence, financial sustainability and social capital.

There are, however, two key areas of concern regarding potential limitations to the impact of the Bill, which form the core of this submission.

Firstly, as I and colleagues emphasised in our response to the earlier consultation document, there is a risk that these new rights may disproportionately benefit more affluent communities, where community bodies are able to draw on a stronger base of skills and expertise, and where property is more likely to be an asset rather than a liability. Thus there is a risk that this new right could exacerbate inequality, undermining the Scottish Government’s solidarity ambition.

The research literature has evidenced increasing concern in recent years that community participation may be used to shift responsibility from the public sector onto communities. This is particularly true of the Big Society/Localism agenda in England, so the Scottish Government may wish to ensure that the Bill cannot be used or interpreted in a similar fashion. Thus it will be important in relation to this new right, to ensure that community bodies are given appropriate support to participate in outcome improvement processes, and to plan effectively for and make good decisions about asset transfer. An explicit link to the new Community Learning and Development Regulations may be useful here, either in the Bill or in related
guidance. Furthermore, in order to enable all communities to make use of these new rights, it will be important to ensure that they are communicated effectively to all communities, whether this is by the Scottish Government directly, or by placing a further duty on local public service agencies.

Secondly, whilst the proposals to strengthen Community Planning are to be welcomed, there is a concern that there may be a disjuncture between community involvement in Community Planning processes and the new right regarding participation requests. As the Policy Memorandum rightly makes clear, ‘community empowerment cannot be delivered by legislation alone’ and the importance of creating a public sector culture that assumes community participation as a starting point cannot be under-estimated. In this respect, there is a risk that CPPs interpret the new Community Planning duties as meaning that communities need only be involved in the initial development of the Local Outcome Improvement Plan, thereafter taking an entirely reactive approach to participation requests rather than proactively working to engage communities.

It would therefore seem important to draw a specific link, either in the Bill or in related guidance, between these two approaches to community empowerment. Whilst it is important for communities to have the new right to request participation, one of the aims of this legislation should be to ensure that it rarely needs to be used, as public sector agencies incorporate community participation and support for community action into their everyday operations. The recent report of the Commission on Strengthening Local Democracy suggests there is considerable support for this approach to public service provision, but changing organisational culture is a complex and challenging business. As well as drawing stronger links between Community Planning and participation requests, it could be useful to add a duty on public service agencies which mirrors the new participation requests, requiring them to proactively identify and engage with relevant community bodies when undertaking any outcome improvement process. Given that public service agencies should be looking for continuous improvements in outcomes, this might help to reinforce the message that community participation should be an ongoing relationship rather than an occasional consultative exercise.

A further option in relation to this second area of concern would be to return to the original proposals to require CPPs to produce a Community Engagement Plan and to follow the National Standards for Community Engagement. Although there will inevitably be concerns that these might become bureaucratic exercises, as suggested in the Policy Memorandum, it should be possible to limit the bureaucratic burden of such a duty, and the lack of a Plan raises considerable questions about how CPPs can be held to account by communities, auditing bodies or Ministers. Similarly, the notion of having a lead officer for community engagement has been left out of the Bill on the basis that it might lead to the perception that other officers are not responsible for community engagement, but a lead officer role need not work in this way at all. Given the need for all CPP services and agencies to engage with communities, a central coordinating point will become increasingly important to avoid duplication, inconsistency of standards, and consultation fatigue in communities. And such a lead officer could play a vital role in shifting the culture of public services away from limited consultation and towards effective community engagement, taking
responsibility for improving other officers’ approaches to community engagement, rather than delivering it personally.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

As indicated above, the key benefit of the Bill for public sector organisations should be the development of public service reform through enhanced community participation. On the one hand, community participation in relation to services can improve their targeting and efficiency, enhancing their outcome impacts. And on the other hand, community self-help activities and strengthening of community assets such as social capital can result in reduced demand for public services.

In terms of community participation in relation to services, there is relatively little robust research evidence which demonstrates savings as a result of community participation. However, the research review conducted by the Office of the Deputy Prime Minister in 2005 ('Improving delivery of mainstream services in deprived areas – the role of community involvement') suggested that the process benefits of community involvement (e.g. better local knowledge, better access to services, etc.) feed through into reduced unit costs of service provision, and reduced costs in other aspects of service provision such as lower housing management costs through reduced tenant turnover.

There is even less in the way of clear research evidence about the potential savings to public sector organisations arising from community self-help activities, although this is an area that I am currently working on.

The additional short-term costs of establishing community participation processes need to be balanced against longer-term savings, as part of the wider re-design of public services.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

As indicated in response to question 1 above, there are significant concerns that the new rights included within the Bill could disproportionately benefit more affluent communities. Ensuring that public sector organisations address such issues through an explicit link to the CLD Regulations and possibly additional duties to proactively engage with communities would go some way to alleviating this concern.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Other than the points raised above, I have no difficulty with the specific provisions in the Bill.
5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

No specific comment.
RIAS’s submission to the Call for Evidence on The Community Empowerment (Scotland) Bill

The Royal Incorporation of Architects in Scotland represents architects and architecture in Scotland. The RIAS welcomes the opportunity to respond to this consultation and our Planning Committee have prepared a response.

The RIAS support The Community Empowerment (Scotland) Bill and its aims to empower community bodies through the ownership of land, buildings and strengthen their voices in the decisions that matter to them; and an increase in the pace and scale of Public Service Reform by focusing on achieving outcomes and improving the process of community planning.

We have addressed the five questions as requested, however have made some specific reference to the parts of the Bill and the Memorandum where appropriate.

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

The Bill has the potential to empower communities to a considerable extent however will be dependent on how accessible the Bill will be to communities and how equipped communities will be to take on such responsibilities. With reference to the eight separate parts of the Bill please note the following:

Part 1 National Outcomes - The outcomes have yet to be determined however when set Ministers need to be aware of the responsibilities that communities will undertake and ensure that suitable resource is made available to turn these outcomes into reality.

Part 2 Community Planning - Putting Community Planning Partnerships on a statutory basis is most likely to have a positive effect on empowering communities however it is important that the partnerships truly represent the community. Can measures be taken to ensure that this is the case.

Part 3 Participation Requests - It is important that communities are aware that they can make such a request.

Part 4 Community Right to Buy Land - This will create opportunity to empower communities however we ask that measures are taken to prevent protracted legal battles.

Part 5 Asset Transfer Requests - It is positive that communities can request to take control of land and buildings however it is important that local authorities retain their responsibilities for the upkeep of these assets and this is not seen as a means of disposing unwanted liabilities.

Part 6 Common Good Property - This will help understand what is important to local communities as well as the wider good and that when determining what is for the common good, local communities are consulted.

Part 7 Allotments - This will help individuals and will empower the local community if the local community wish more allotments. This is most likely to be the case but not necessar-
ily a given, if this was not the case we would consider an individual's right to grow their own food should be the priority consideration.

Part 8 Non-Domestic Rates - This will help empower communities to create solutions to their needs and revitalise run down town centres. It will be dependent on how much rate relief will be given, to have any impact this has to be reduced to a level which will realistically help. The Ministers need to be aware that local commercial opportunities will change and that there is a need for the extent of relief to vary from area to area.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

The most obvious disadvantage to the public sector will be the additional workload which is likely to ensue from the Bill and will additional resource be made available or will tasks be delegated to others. We would also note that there may be some public bodies which could be added to the current lists e.g. Forestry Commission, Marine Scotland. With regards to specific benefits and disadvantages please note the following;

Part 1 National Outcomes - This will put pressure onto public sector organisations however the purpose of these organisations is to serve the public therefore their key role will be enhanced.

Part 2 Community Planning - Putting Community Planning Partnerships on a statutory basis is likely to have a positive effect on empowering communities however it is important that the partnerships truly represent the community. Measures should be taken to ensure that this is the case however care is required to prevent divisions within the community.

Part 3 Participation Requests - This is likely to generate complex relationships for local authorities however will lead to the better use of assets and a more satisfied local community. The process should be simplified and be made as easily understood as possible.

Part 4 Community Right to Buy Land - If land and/or buildings which are falling into disrepair / neglect are taken on by an able group this could help local authorities resolve specific problems.

Part 5 Asset Transfer Requests - This will take the control of assets away from local authorities however this may improve their use and take some of the burden of organisation away from public sector organisations and into the hands of the local communities.

Part 6 Common Good Property - There could be different opinions on what is common good property, this may be beneficial and also a disadvantage to public sector bodies. Will there be an independent assessor to determine this list and will all parties be involved in any judgement.

Part 7 Allotments - There will be a pressure for local authorities to supply land for allotments which especially in cities will be difficult. This could be a disadvantage but also a potential benefit as redundant space can easily be transformed.

Part 8 Non-Domestic Rates - There is a case to argue that a reduction in non-domestic rates will increase the use of redundant / neglected properties with a net financial gain, it could though also result in a loss. The judgement of what would qualify for reduced rates will be
influenced by local circumstance and although overall criteria can be agreed it would be best left to the local public organisations to set rate relief.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

This as one of the fundamental problems of the Bill, how will communities be made aware of these opportunities and how will they be able to deal with the inevitable legal problems, monetary issues, responsibilities and likely differences of opinion. We are not best placed to comment and capabilities will vary across Scotland, the Ministers will have to find ways of ascertaining these and additional resource is inevitable to ensure these problems can be overcome.

As needs will vary across Scotland, our cities will face different challenges to the island communities, each local authority should draw up its own plan as to how it intends to take advantage of the Bill. To what extent these are devolved around the country likewise needs to be determined and Ministers need to include timescales for these into the overall programme.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

We fully support the aims of the Bill and many of the specific provisions, these will though be subject to development. The control of the development stage after adoption of the Bill has been placed in the hands of the Scottish Ministers e.g. in setting / reviewing the outcomes the Ministers will consult with persons ‘they consider appropriate’, it is not clear how the Ministers will determine who is appropriate. This is one example and it is important that this part of the process is transparent.

It would be helpful if there was more accountability to the developmental period of the Bill and that although a five year review is appropriate once outcomes have been set, a time period and programme should be set for the development and implementation of the Bill.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

Equal Rights - The memorandum states that an equality impact assessment has been carried out although has yet to be published but concludes that the Bill’s provisions do not affect equal rights, we are happy to accept the findings of the EQIA.

Island Communities - The Bill will apply to all communities across Scotland including island communities. It is noted that there may be a potential shortage of land available for allotments in island communities, it is important that this is addressed especially as this is a remote setting where this need seems greater.

Sustainable Development - Best use of land and local decision making is at the heart of the Bill. The memorandum notes no impact or minimal impact on the environment, however there is a strong socially sustainable argument that the overall potential of the Bill is more sustainable than the current position.
The above community council respectfully submits its own evidence on the community empowerment bill for consideration.

1. We believe the government’s basic idea is clear and sound, the problem as we see it as has always been is the delivery of it, unless there is clear unambiguous legislation /standing order’s it will result in some local authorities delivering their own interpretation on it and leave the communities frustrated.

2. The communities made up on average of people with a wide range of life skills and disciplines are more than capable of taking advantage from the Bill’s provisions given a level playing field to start from, time and again we the community suffer when if only for the sake of backing and finance we could be able to do a better job in some cases than the authority.

3. One example is here in Glasgow the authority is throwing everything at CPP and whilst the community councils are now given a seat at the table with a vote, as a body the community council is heavily bound by council rules and standing order’s unlike other partner’s such as RTO’S, we survive on an administration grant of £500 less £20 insurance premium to the council and that can be means tested, if we have more than twice our annual grant in our account, where other groups can have thousands.

It is not positively promoted that we take on properties which we could use as a community base, but at the same time the council contradict itself by saying we need to be more obvious to the community and promote ourselves better, but how can this be when the registered address is the secretary’s hall cupboard, who has to in some cases hold down a full time job, and run the community council affairs using his /her home phone, mobile, lighting, and to store and run the CC computer and files etc. with no remuneration, and as we say every other group can run as any small business would and the council go on about equalities.

4. The council have a CCLO for support and administration most of this is seeing that we are run to the council’s traffic light standard there is no promotional material, training courses on the essential things we need such as planning and licensing very poor in fact only now since the CPP have offered
through the NHS will licensing training be given, and planning aid Scotland have offered to pick up the bill for a one day seminar on planning the offer on the table being if the council supplied the venue the PAS will supply the materials and the bodies to deliver it, which is ridiculous when if the community council could be allowed to run its own affairs we could do this for all local community groups on a local basis.

5. The Communities Minister addressed a group of community councils from around the city and he gave us the his analogy as the Nike advert on TV if there is something needing done in your community (JUST DO IT) all very well for him to say try getting the Authority to believe in it, even with CPP there are still some dinosaurs who don’t want to be partners here, then the issue we had when the authority withheld our grant for nearly 10 months because of an internal problem as it turned out and no apology, which again begs the question why the Community councils are not independent of the council as they were at the start as it could be construed that he who pay’s the piper calls the tune again an equalities issue when none of our other non council community groups have to go through this and can and do JUST DO IT, without any hassle.

6. We are not going to get overly optimistic on this community gaining any more autonomy or financial independence without the requisite back up legislation/standing order’s being in place it does at times make you feel like giving up and let them get on with it.

7. The Bill Says it will make provision for unused properties to be brought back in to community ownership, perhaps someone could point this out to the authority we have at least 5 such properties and the authority don’t want to know nor do they want to interact with us on other issues, if it wasn’t for our MSP taking up the cudgel’s for us we might as well live in the mess forever, as we say we are not overly optimistic on the delivery but support the idea.

Thank you for this opportunity to submit our concern’s and wishes you well with the Bill.

Regards Bill Carson
Secretary Pollokshaws /Eastwood Community Council.
COMMUNITY EMPOWERMENT (SCOTLAND) BILL

Background to The Coalfields Regeneration Trust

The Coalfields Regeneration Trust (CRT) is dedicated to improving the quality of life for people in Britain’s former coalfield communities.

Established in 1999, our mission is to lead the way in coalfields regeneration and restore healthy, prosperous and sustainable communities.

We work with people at a grassroots level in order to build confidence and encourage them to take their communities forward. Since 1999 CRT we have supported just over 1000 projects promoting and supporting regeneration activities in the coalfields across Scotland. We have supported a wide range of initiatives that provide added value to the community planning process whilst making significant progress towards our Objectives.

We deliver programmes and services that;

- support people into work
- improve skills and help people gain qualifications
- create pathways into volunteering
- improve health
- develop sustainable solutions for community facilities
- engage young people in positive activities
- grow new businesses and social enterprises
- provide community development support

We work in the heart and soul of coalfield communities, investing resources, expertise and knowledge to ensure local people are able to fulfill their potential. Coalfield communities had a strong history of unity and we have galvanized local people enabling them to participate in building a new positive sense of community.

In response to the invitation to give evidence to the Scottish Parliaments Local Government and Regeneration Committee’s call for written evidence on the above Bill.

Specifically the call for evidence focuses on the following questions.

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?
2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill, and why?

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

**CRT RESPONSES**

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

CRT has nearly 15 years experience of supporting community action in the coalfield areas across Scotland. A key area of our work involves focusing more explicitly on building capacity in our most fragile coalfield communities, and where we and others have found it difficult to invest in the past.

CRT welcomes the Bill and agrees that it will help to empower communities across Scotland, because

- It sets out a plan for empowering people of Scotland to get involved and make important decisions about their communities
- It is about helping residents play an active role in regenerating their communities, the people living in the communities know what’s best for their area
- It also encourages public service providers play a more active role in listening to communities and encouraging them to take part in partnership working arrangements

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

The Bill suggests that public service providers should talk more to communities, help them have their say about services, and be listened to.

Many residents think ‘it’s the councils responsibility’ to develop communities and provide services, more needs to be done to promote to residents that it’s okay for them to take ideas forward and let them know who can help them do this.

Local Authority Officers don’t always live in the areas where they work, yet it’s often the same officers who make decisions about a particular community, for example Community Planning Agencies. We anticipate that the Bill will ensure greater interaction with communities should work towards ensuring a local issues and concerns are taken into account when decisions are being made.
The Bill works towards making sure the right people will be heard and have a greater input, its local people from the communities who know what the issues and concerns are for their communities, ‘coming from the horses mouth’ so to speak would result in more sustainable communities – getting it right

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill or to assist communities, to ensure this happens?

It is clear that the affluent communities are more successful in being heard. CRT has found that our most disadvantaged communities struggle to deliver regeneration activities as people don’t know how to go about regenerating their communities and they have low confidence levels, skills and knowledge to take forward their ideas. This could be improved by financial investment and services to encourage and support residents to become involved in their communities at a local level.

A combination of partnership working, development support with funding is a potent mix for village and neighbourhood level organisations, which will help, bring about neighbourhood renewal and social inclusion.

‘They don’t know what they don’t know’

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill, and why?

More needs to be done to help communities:
- Know who is there to help them become involved
- Easily find out what assets, land etc is available to them
- How they can go about acquiring assets and develop their communities

We hope you will find the comments useful

Pauline Douglas
Head of Operations, Coalfields Regeneration Trust, Scotland
September 2014
COMMUNITY EMPOWERMENT BILL (SCOTLAND) BILL 2014
RESPONSE TO QUESTIONS IN THE CALL FOR EVIDENCE:

Q1 - To what extent do you consider the Bill will empower communities, please give reasons for your answer?

The bill will only empower communities if they are able to be sufficiently organised to take advantage of the provisions of the bill.

Currently there is a so called community consultation process within the Scottish Planning system. However, community representative whether community councils or self organised groups, are usually up against big developers who employ their professionals effectively against lay people with no matching resources. The process is unequal, power conferred by virtue of the process is simply not there in reality. The same will happen with this bill.

It seems to me that in this bill, everything is in the spirit of empowerment and in the procedures, yet nothing about the reality of how communities will be represented other than in the case of specific one issue groups.

Power to the people is meaningless if the people whilst been shown the route, do not have the wherewithal for the journey, let alone reaching the outcome stage set for them.

Q2 - What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

I am not especially interested in the benefits or disadvantages to public sector organisations.

It seems to me simply more time distracted from doing what they should be doing already. This might end up being yet another layer of bureaucracy. It is very telling that they need a new bill in order to know that they have to take account of community aspirations and needs.

Q3 - Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill ? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

No I do not.

What do we mean by communities, local residents, active groups with a single goal or what ? Who exactly are community organisations and who do they represent ? A community can be a group, a village of a whole town or urban district. How will they organise themselves in a democratic manner and be truly representative of the wider community.

When making an application a community participation body is expected to provide details of any knowledge, expertise that the body has. How are they expected it do this ? They will need professional expertise. How are they expected to be funded ?

Passing power to communities is only going to work if you have a model for structuring and organising what they can do and how they do it. For example saying that communities have the right to buy land is no use if they have no professional help and funding, to investigate its condition ( e.g. any contamination ), its suitability for the project, to value it, to buy it and then to manage it.
I think we need a community assistance bill with funding mechanisms.

Q4 - Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

I applaud the spirit of the bill viz. greater power to communities to take on public sector land and buildings, greater transparency in the management and disposal of all local authority owned property whether or not common good property etc. However, I am not content with certain aspects of the Bill.

The process in very rigid and dictatorial and controlled from the top down and not the bottom (i.e. the community level) upwards. I can appreciate the need for the process to be controlled at each stage presumably to ensure accountability, combat corruption and guide the process. However, national outcomes, determined by the Scottish Minister, local outcome improvement plan determined by each community planning partnership. No community involvement there then! Who sets the outcome and on what criteria? Those eligible to be community planning partners seems to be extremely limited!

NB: I am anyway, sceptical about the term 'outcome', a word now used to replace aims, potentially ignoring needs and opportunities which should be the basis on which to make assessments for future aims. Simply setting an outcome, at outset is too specific, with the risk of ignoring issues cropping up during the process, which may put the initial outcome in question.

I am not convinced that the process will be sufficiently inclusive at any level. The community planning partnership decides what are the priorities as regards outcomes and then also decides whom they will or will not consult. A vociferous and very active, one issue, community group can end up having more of a say that the wider community, who historically speak through their community council. Thus under 'Governance', I think there should be something about inclusiveness e.g. that each local authority and community planning partner must ensure that they are satisfied that all relevant community opinions are catered for in the process.

Another flaw is the lack of guidance and support to communities to take advantage of this new freedom to decide, this new empowerment. The proper setting up of the community controlled bodies is crucial to ultimate empowerment of communities and to ensure that it is not the community planning partnership which decides the outcomes sought but local people.

With regards to communities tasking over apparently vacant or abandoned land and buildings. It is morally wrong that government can force anyone to sell their property. Why should an owner have to sell a building or land to a community and at what price, the market price, valuation figure, highest bidder? Land is rarely abandoned another word which needs defining. All land is owned by someone whether it has a building on it or not.

I do support the notion of more local authority unused and vacant land and building (including common good property) being available for community use. However I can see the present trend of Councils selling off such land to developer to counter Government cuts, will continue. They cannot simply give the land to communities as communities will struggle to raise the necessary purchase price. There have to be other financial mechanisms in place to help fund communities aspirations.
Q5 - What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memoranda.

Community empowerment increases equal rights but also raises human rights issues. It is important to strike a fair balance between the general community interest and the protection of land owners’ human fundamental rights.

Clearly the right to buy can be beneficial to island communities and especially if the land has been so abandoned and neglected and that it is counter to the survival or the whole community.

I am concerned about how all this land which is passing into community hands is to be secured legally, and properly and transparently managed and safeguarded for future generations and in the best interests of the wider community.
Community Empowerment (Scotland) Bill  
Further Comments From Helensburgh Community Woodland Group, 3/9/14

This note has been initiated since the above Bill was put forward on the 11th June 2014. The Bill states that people can still ask for changes to the Bill whilst the Scottish Parliament is looking at it. The following are comments of endorsement, alterations and suggested changes.

Part 4 of the Bill- Community right to buy.

We fully endorse and welcome the proposal to extend the right to buy to the whole of Scotland including the urban areas such as and including Helensburgh. We also support the recognition that has been given to SCIOs as being suitable bodies to deliver and exercise this right.

Specific Concern and suggested amendment:

1. We are concerned that the definition of “community” and their subsequent involvement in a ballot could be prohibitive, time consuming, causing unnecessary delays and potentially precluding the community from being able to register their interest and ultimately buy the land.

In urban areas “the community” served by any community body could easily be in excess of 10,000 people. Yet, individual projects which a community body wishes to promote under the CRBL may concern only part of its area and a minority of those who live within it. It is unreasonable to have to ballot 10,000 people for projects that concern only 1,000. We suggest that it would be better if the community for balloting purposes could be defined separately project by project. For example it may be appropriate to use a single Council election ward for a specific area as the interested community, rather than the settlement as a whole. Another example could be to include people who reside within half a mile of the area of interest. A final one which is our preferred option, would be that of defining the community by people who will be affected or directly benefit from the facility.

We therefore recommend that the Bill should amend Section 37(1) of the Land Reform (Scotland) Act to require any application to register a community interest in land to specify the particular community affected by that project, and that there should therefore be no automatic presumption that the community served more widely by that community body necessarily equates to the particular community that should be balloted for particular projects. Of course, any community body that misused this flexibility by seeking to ‘gerrymander’ the area to be balloted would run the risk that its application for registration would be rejected by Ministers. These suggestions are therefore intended to make the ballot process easier, more efficient, quicker and cheaper to carry out.

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

3. We would suggest that there is no logic in limiting the powers on abandoned and neglected property to specifically companies limited by guarantee and excluding SCIOs from access to these areas of land. The Bill should be amended to allow SCIOs to have powers and access both neglected and abandoned properties.

We hope you find these observations and comments of use

David Robertson,
Trustee,

Helensburgh Community Woodland Group
3rd September 2014
To Scottish Parliament

On behalf of Polmont Community Council, we would like to raise the following concerns regarding the Community Empowerment Bill.

1 Right to buy:
We feel that this aspect of the Bill is unnecessary as we already have the power to buy land or property given funding and the wish to do so.

2 Right to take over services:
We feel that it is not the role of a Community Council to take over existing Council services but to support, enhance and consult on services which affect the residents of our community.

3 Common Good:
We feel that, given the transient nature of membership of Community Councils, it would be inappropriate to take on long term responsibilities of guardianship and security of commonly held resources.

4 Equality Impact Assessment:
While we welcome the positive outcome of the Equality Impact Assessment on the Bill, we would have concerns if every Community Council had to conduct its own Equality Impact Assessment, as this is a specialised process which would require training, resources and support.

While we are committed to our communities, we are apprehensive about taking on additional responsibilities and long term commitments.

Yours sincerely,

Rosemary Taylor

Convener Polmont Community Council
NHS Tayside response to the Local Government and Regeneration Committee’s Call for written evidence on the Community Empowerment (Scotland) Bill

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

The Bill will certainly encourage and give communities a formal footing to have a right to be involved in the improving outcomes processes and greater rights to buy/lease/manage land and properties.

The lessons learned and successes of community involvement / public participation pre community empowerment Bill will be important factors in its implementation and support for communities. It will be important to ensure that there is evaluation of the impact of the sections of the Act which in turn will determine the extent to which the Bill will have empowered communities.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

Part 3 – Participation requests –

   i) Strengthening the engagement of communities

The introduction of ‘A community body being able to make a request to a public service authority to permit the body to participate in an outcome improvement process’, is welcomed as a way of strengthening the engagement of communities.

   ii) Definition of outcome

The definition of outcome or what constitutes an outcome may be challenging.

   iii) The involvement of all key stakeholders

It is important that this is not seen as the only way to engage stakeholders in improving services. The public service authority should continue to also have the right to invite others to be involved in an ‘outcome improvement process’ if it
Local Government and Regeneration Committee

Submission Name: NHS Tayside  Submission Number: 45

Considers that there is a need to gather the views of people not included in the community body. For example if the outcome would also impact on the provision of a service to a particular patient / condition related group. It is important that regulations capture details relating to the involvement of all key stakeholders and not just those who are part of the community participation body.

iv) **Patient Rights Act (Scotland) 2011**

It is welcomed that the provisions of the bill do not say that a ‘body’ has to be a community participation body in order to be involved in improving outcomes / services. In practice a group would not have to be a ‘community participation body’ to be involved in improving services. This will allow for ‘informal’ groups, such as patient participation groups linked to GP practices or patients of a particular clinical condition to be involved and make suggestions for improvement and to outcomes. It would also mean that individuals can contribute. Indeed the Patient Rights Act (Scotland) 2011 makes provision for individuals to have a right to be informed, and involved in decisions, about health care and services. The Bill makes no reference to this Act. It will be important that the Rights contained therein continue to be observed.

v) **Clinical considerations**

It is crucial that regulations and future guidelines bring clarity around aspects relating to ‘clinical’ considerations. Section 19 requires a public service authority to agree to or refuse any participation request it receives and sets out how the authority must make that decision. It describes factors that should be considered relating to public health, social or environmental wellbeing and other benefits or matters the authority considers relevant. Clinical reasons could fall under ‘a matter the authority considers relevant’, however these could be substantial and surely justify particular reference to them in this section.

**Parts 4 and 5 Community Right to Buy and Asset Transfer Requests**

The benefits to communities to exercise their rights to buy and request asset transfers have many potential positive outcomes. However, at a time when we are and will continue to be challenged financially, for most NHS Boards, the need to vacate property ‘not fit for purpose’ and secure optimal returns from the sale of such assets via the open market has been an absolute necessity. The right to buy should therefore be at the full market value of the land or buildings and through the open market.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Yes, communities will have the capabilities to take advantage of the provisions of the bill. But not necessarily all communities may recognise this. There are
existing structures to help communities building capacity however additional support / education / training should be made available with community involvement to help people to develop the skills required around this. Public service authorities will have a role in this but a key player would be the voluntary sector.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Part 2 – Community Planning -

We have some concerns about the following two clauses in the Bill:

9 Community planning partners: duties

3) Each community planning partner must, in relation to a community planning partnership, contribute such funds, staff and other resources as the community planning partnership considers appropriate—

(a) with a view to improving, or contributing to an improvement in, the achievement of each local outcome referred to in section 5(2)(a), and

(b) for the purpose of securing the participation of the community bodies mentioned in section 4(5)(a) in community planning.

12 Establishment of corporate bodies

(1) Following an application by a local authority and at least one other community planning partner for the area of the authority, the Scottish Ministers may by regulations establish a body corporate with such constitution and functions about community planning (including in particular its conduct and co-ordination) as may be specified in the regulations.

With regard to 9.1, we have no difficulty with the concept of CPP members challenging each other’s expenditure, but to give the CPP powers actually to stipulate the sum to be spent by each partner is a step too far.

Likewise with 12.1, it seems to us questionable to give the power to the Council – and why specifically the Council? -with only one other partner to make an application to Ministers to establish a body corporate.

Part 3 – Participation requests -

As described in 2, Section 19 requires a public service authority to agree to or refuse any participation request it receives and sets out how the authority must make that decision. It describes factors that should be considered relating to public health, social or environmental wellbeing and other benefits or matters the authority considers relevant. Clinical reasons could fall under ‘a matter the authority considers relevant, however these could be substantial and fall under particular standards relating to provision of care. It is suggested that specific
reference is made to clinical reasons for accepting or refusing the participation request in this section.

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<th>5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?</th>
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<td>The core principles of a human rights approach have been captured and due attention to, and consideration of, equalities legislation and duties have been demonstrated.</td>
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Submission to Local Government and Regeneration Committee’s call for evidence on the Community Empowerment (Scotland) Bill

Scottish Community Development Centre
4th September 2014

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

SCDC has published a briefing on the Community Empowerment (Scotland) Bill, which is primarily focused on the above question. The full briefing can be read at: http://www.scdc.org.uk/media/resources/policy-and-practice/SCDC_Towards%20Empowerment.pdf.

In summary, our interpretation is that the Bill proposes to reflect the policy principles of subsidiarity, community empowerment and improving outcomes through providing a legislative framework to:

- “empower community bodies through the ownership of land and buildings, and strengthen their voices in the decisions that matter to them”, and to
- “support an increase in the pace and scale of public service reform by cementing the focus on achieving outcomes and improving the process of community planning”

The detail in the Bill confirms that the provisions do indeed fall within these two key aims, but we agree with the Committee that it is important to consider the extent to which these aims might empower communities, especially in respect of the new duties on community planning. Our response to the Committee is therefore focused primarily on the provisions of the Bill concerned with the empowerment of communities through the community planning process.

The logic of the provisions is that community planning will be strengthened and more clearly focused on outcomes; while the community empowerment element will essentially be the extent to which community “voice in decisions that matter” will be strengthened. If the provisions of the Bill are to succeed in empowering
communities we need to question where the locus of power lies and the ways in which it should be channeled.

The policy memorandum distinguishes between community empowerment and community engagement, by arguing that: “it is important that community voices are heard in public sector processes, but that this engagement differs from community empowerment, where communities lead change for themselves.”

If this is the case we would argue that the draft legislation, in respect of community planning, implies an important shift in the relationship between communities and public services from recent years, but not necessarily a shift towards more empowerment. Until now, engagement was seen as a mutual relationship between communities and public agencies, as expressed in the National Standards for Community Engagement, which define community engagement as:

“Developing and sustaining a working relationship between one or more public body and one or more community group, to help them both to understand and act on the needs or issues that the community experiences”

This definition of engagement is a much stronger statement than simply “hearing community voices”. It clearly acknowledges that many communities, in particular disadvantaged and disenfranchised communities, are not always in a position to lead change for themselves as they do not always necessarily have the resources or confidence to do so.

The Policy Memorandum (para 11) argues that community empowerment is a key plank of public service reform, and this should result in “strong, independent and resilient” communities that are “best placed to determine outcomes for local services” and, therefore, public service providers should fully engage communities in decisions about the design and delivery of services to achieve such outcomes. This raises interesting questions about the anticipated relationship between ‘empowerment’ and ‘engagement’ in improving service delivery and other outcomes.

If, in policy, effective engagement remains the critical factor for effective community planning, we would argue that the Bill does not go far enough in its requirement to “consult such community bodies as it considers appropriate” in preparing the local outcomes improvement plan. Instead, this part of the Bill should specify that community planning partners should ‘engage’ with community bodies, and that this engagement should be in line with the definition of community engagement embodied within the National Standards for Community Engagement.

1 http://www.scotland.gov.uk/Topics/Built-Environment/regeneration/engage/standards
Furthermore, we reiterate our desire to see the National Standards for Community Engagement, endorsed, tested and proven by a range of agencies including Scottish Government, placed on a statutory basis within this Bill as a framework for guiding and assessing the extent of community planning partners’ commitment to involving and empowering communities.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

The provisions of the Bill are clearly in the spirit of public service reform, given their emphasis on strengthening collaboration and partnership between public bodies in assessing needs, designing solutions and delivering change through a more robust community planning process. Equally, the rights for communities to request participation in an outcome improvement process opens opportunities for greater and more purposeful engagement with communities, and this is consistent with the reform objectives of decentralisation, prevention and co-production.

We believe that the ways in which each public sector organisation provides its services and whether or not they utilise participatory practices will be the key factor in the way benefits and disadvantages come to be distributed.

These provisions will be welcomed by those public service organisations that see themselves as working with the grain of civil society, with communities and community organisations, and with an enabling, developmental philosophy.

It will be a greater challenge for organisations that continue to operate a traditional, top-down, consumer model, and those that, to date, have not been committed to community planning/community engagement. For such bodies, the Bill may well appear to be disadvantageous as it may be seen as a potential distraction or obstacle to their ability to meet centrally driven targets.

However in response to the larger question of whether the Bill is likely to encourage public sector organisations in the direction of public service reform principles, our opinion is that it will be broadly beneficial.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

While we welcome the provisions that better enable communities to take more control over land and buildings, and to have the right to request participation in outcome improvement processes, we question the extent to which these provisions, in isolation, will empower those communities that are excluded or marginalised, or who are unaware of the rights enshrined in the Bill.

In general, SCDC is of the view that the provisions concerning participation requests
will potentially be very useful to “community participation bodies” (as defined by the Bill) to trigger action on a concern or opportunity, in the knowledge that it will be a legal requirement for the CPP to respond and react. We do, however, have some concerns about the way these provisions may operate in practice and which groups and organisations utilise the legislation.

As with other aspects of the Bill, the key issue is the extent to which the provisions may serve to further empower those communities that are organised and influential, while not achieving meaningful change for marginalised or excluded communities, or those with weak infrastructure. Such communities may well be unaware of the rights they will now have, or be aware of them but may not currently have the capacity to take advantage of their rights without impartial support and advice.

From our consultations on the Bill with community groups and community development practitioners, and from our experience in working directly with local communities, we know that, in order to benefit from the Bill, disadvantaged and marginalised communities often need assistance to:

- find common cause on issues that affect them
- work together on such issues under their own control
- build local independent networks
- build equity, inclusiveness, participation and cohesion within their organisations and within the wider community
- influence and help transform public policies and services and other factors affecting the conditions of their lives
- advise and inform public authorities on community needs, viewpoints and processes
- work in partnership with public services

Community-led anchor organisations such as community development trusts, community-based housing associations or representative councils can play a leading role in gathering intelligence and information about the community, understanding community needs and issues and working with public services to improve outcomes, or to provide services directly.

Where such anchor bodies do not exist, or where they do not enjoy the support of the whole community, community development approaches can help build a stronger network of interests, groups and organisations; and can help assess needs and issues, ensure engagement is conducted well, and assist with evaluation and learning lessons.

In section 10 (3) of the Bill, it is recognised that funds, staff and other resources need
Local Government and Regeneration Committee

Submission Name: Scottish Community Development Centre

We strongly recommend that similar provisions should apply in the case of participation requests, and more broadly, in order to achieve a level of equity in the way communities may access and use the legislation.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

We believe the Bill is limited in its ambitions and is informed by a centralised view of governance and government, rather than the more participatory model as advanced in the Christie commission report and elsewhere. We agree with the recent report of the Commission on Strengthening Local Democracy report where it argues that:

“The Community Empowerment and Regeneration (sic) Bill contains many interesting ideas, but its major thrust is still within a relatively centralist mind-set in this regard. Communities have the right to take proposals for asset transfer or outcome improvement to national or local government, but it is for them to decide and there is no appeal. In other words, communities have to persuade government and local government to “cede” powers. This seems like the reverse of subsidiarity, and the Commission’s view is that this tends to keep us where we are rather than taking us forward.”

In addition, SCDC is concerned with questions of equality of access to the new rights in the Bill, fearing that it could further empower the best organised communities at the expense of the most vulnerable and disadvantaged. Rebalancing power in favour of the least powerful is more important than a broad-brush intention to empower.

In response to this, we recommend that priority is given to supporting disadvantaged communities to enhance their power and influence through direct work in communities to support local people to articulate and address their own issues and concerns, through building confidence and developing community relationships and through supporting community-led organisations to take advantage of the provisions of the Bill.

We believe that the specific provisions of the Bill could be improved by:

- Replacing references to ‘consult’ in the Community Planning provisions

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2 http://www.localdemocracy.info/2014/08/14/time-to-rebuild-scottish-democracy-what-the-referendum-decides/
with a requirement to ‘engage’ (as defined in the National Standards for Community Engagement)

- Aligning with the way in which the regulations have been framed to support community learning and development\(^3\), by incorporating provisions which place a specific requirement on community planning partners to plan services with the full involvement of communities (in line with the National Standards for Community Engagement)

- Placing a similar requirement on community planning partners to commit funds, staff and other resources to engage purposefully with community bodies and respond meaningfully to participation requests, as is proposed for securing the participation of community bodies in setting outcomes

Furthermore, we recommend that the Committee, as part of its scrutiny of the Bill, explores the following questions:

- Given the recognition within the documents accompanying the Bill of the need for resources and support to back up the Bill’s empowering potential, what is the existing and planned policy that will meet this need?

- If such support does not currently exist, what needs to happen to put it in place?

- What additional benefits might be accrued from the reinstatement, into the Bill or accompanying support and guidance, of proposals outlined in the legislation at draft stage, namely;
  - A requirement for the publication of community engagement plans
  - A named community engagement officer
  - The adjustment of procurement in favour of community groups,
  - The right for communities to be consulted on local budgets
  - Enforcement of the sale of empty property
  - Changes to the status of community councils

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum

SCDC is satisfied with paragraph 106 and those following, where the implications of the Bill from the perspectives of human rights, island communities and sustainable development

\(^3\) The Requirements for Community Learning and Development (Scotland) Regulations 2013
http://www.educationscotland.gov.uk/communitylearninganddevelopment/about/ssi/index.asp
development are considered and reported. In the body of the Bill the main references are to the question of sustainable development, and in several places it is proposed that the transfer of land and assets, particularly derelict assets, will be in the interest of sustainable development.

While we support the transfer of land and assets to community use we do not believe that such use will, of itself, necessarily be sustainable. Proposed uses of land by communities will presumably be governed by planning, licensing and environmental legislation and it is here that we would expect the issue of sustainability to be to be scrutinised.
Submission to Local Government and Regeneration Committee’s call for evidence on the Community Empowerment (Scotland) Bill

Community Health Exchange (CHEX)
September 2014

About CHEX

CHEX supports community-led health organisations (CHOs) that work in areas of poverty and disadvantage to create opportunities for community members to come together and to work towards positive health outcomes for individuals and the wider community.

CHOs use methods such as participatory research to reach and engage people who traditionally do not access services or readily get involved in community health activity.

CHOs address barriers such as language, income, disability, race, and age that prevent people to become involved in community health activity and decision-making processes. They support people at various stages of development towards empowerment. For example: some people who experience severe mental health problems may only wish to become involved in therapeutic activity, while others may want to organise for a new health facility or work in partnership with public sector agencies to co-produce health services.

CHOs therefore have an informed and in-depth understanding of the processes that assist community members to become involved, remain involved and engage with decision-making processes that affect positive health outcomes.

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

The Bill as it stands should enable strong and cohesive communities to influence local decision-making processes/structures and, if so desired, become involved in the transfer of local assets and services. The Bill is however a major opportunity to support the empowerment of people in more
disconnected communities of poverty and disadvantage. To do this effectively, we believe it needs strengthened in certain areas. If empowerment is a core value of policy it needs to be used to rebalance and not reinforce power relationships that contribute to disadvantage. The Bill will only succeed in empowering communities in this way if it can prevent already powerful interests furthering their advantage at the expense of marginalised and excluded interests unable to take advantage of the provisions of the Bill.

The Bill should go further to strengthen the openness and engagement of communities in community planning processes. The current policy drivers aspire to the participation of communities in the shaping and implementing of health and social policies. The Christie Commission, the integration of health and social care and the draft Community Empowerment and Renewal Bill all offer optimism and encouragement to people in low income communities to participate in reshaping public services.

The previous Chief Medical Officer (2011) stated that “an important aspect of improving wellbeing is to ensure communities have involvement in choosing and shaping the programmes in which they participate.” The recent report from the Ministerial Taskforce on Health Inequalities (2014) reinforces the importance of building social capital, working with the third sector, communities co-creating and co-delivering services, harnessing community assets and place-based approaches.

Further, NHS Health Scotland’s Health Inequalities Action Framework recognises the value of participation and of “lived experience, in particular the voice of the voiceless” in helping to respond to health inequalities.

CHOs currently support community groups to engage and influence services through a number of district-wide processes and structures including; Community-led Health Networks, Healthy Living Networks, Patient Participation Groups and Strategic Health Inequalities Group. To a certain extent this enables engagement with strategic partnerships such as Community Planning Partnerships and the evolving Health and Social Care Partnerships. However, CHOs consistently highlight significant challenges

and barriers to ensure participation in these processes is influential and achieves the desired outcome for community health groups.

We recommend:

1.1 The Bill should enshrine processes that enable disadvantaged communities to fully participate in decision-making that directly affects their lives. Allied to this would be the necessary approaches from public sector services to ensure meaningful community engagement. While the right to participate is vital, the expertise and skills to exercise that right to participate is critical. The Bill therefore should include duties whereby community groups should be able to automatically access support and resources to fully participate.

1.2 Communities are integral to decision-making processes within community planning and therefore should automatically be offered opportunities to shape and implement local policies. They should not have to ‘request’ attention to their priority and/or issue as currently outlined in the Bill.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

The evidence shows that empowering communities brings significant benefits to public sector agencies/services e.g. local knowledge and expertise in finding joint solutions to complex health problems\(^7\) and better use of resources and ‘value for money’ in the delivery of services.\(^9\)

Community members stated in our consultation that having a greater stake in their community leads to stronger relationships with health providers together with enhanced responsibility and accountability for all parties.\(^10\) Further, informed, active and connected community members bring significant assets and transform the demand on service provision.\(^11\)

We recommend:

2.1 The Bill should strengthen the duties of community planning partners to build the capacity of their respective public sector workforces to create the conditions to release community assets. This will assist the co-production of services and support communities to both lead on health priorities that they

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\(^7\) ‘Communities at the Centre’ case studies (2014)

\(^8\) ‘Breaking through the barriers to wellbeing’ (2011)

\(^9\) ‘Exploring the use of economic evidence to support the health improvement contribution of the third sector’ (2011)

\(^10\) ‘Breaking through the barriers to wellbeing’ (2010)

\(^11\) ‘Exploring the use of economic evidence to support health improvement and contribution of the third sector’ (2011)
identify and work in partnership with public sector strategic managers and practitioners.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill or to assist communities, to ensure this happens?

It is clear from the range of evidence on community-led health, community-led regeneration, community-led environmental sustainability etc. that communities do have the capabilities, creativity and perseverance to transform their community. However, the evidence also shows the inequalities that exist in and between communities in Scotland. Many communities have already tapped into and use the wealth of talent, expertise and experience that is held in their neighbourhoods. However, many more communities require interventions to build capacity and social capital. Compared to more affluent communities, marginalised and disadvantaged communities are often less organised and have fewer resources to draw on - financial resources and established social capital. The Bill’s proposed processes on asset transfer, buying land and buildings and requesting the right to participate in decision-making demand knowledge, confidence, skills, contacts and resources. This should be recognised and met with the systematic targeting of resources to disadvantaged communities.

CHOs have suggested the type of resourcing and support that would be effective and recommended that the Bill places duties on public agencies to:

“Support community groups to organise to respond to the needs that they themselves have identified as priorities”;

“Create opportunities to get information, training on different methods to reach, involve and sustain involvement from different groups of people in the community; especially with those people who traditionally do not access services or are under-represented in groups”;

“Support involvement in forums to gain more influence and reflect identified health priorities. It is important to reach out to communities that do not come within designated strategic boundaries for priority funding resources.”

We recommend:

3.1 Duties are placed on community planning partners to create processes and offer tailored support whereby communities that experience disadvantage in relation to levels of poverty and inequalities are empowered to fully engage in asset transfers and decision-making structures. The systematic

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12 Healthy Communities: Meeting the Shared Challenge (2010)
implementation of the National Standards for Community Engagement would support and assist this process.  

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Not as the Bill currently stands.

We recommend:

4.1 Strong consideration is given to increasing the duty of Community Planning Partnerships to include community body representation on a continued basis. No sector is as rooted and as knowledgeable about local communities as the community sector itself. Therefore, the Bill should place a duty on CPPs to ensure that consistent opportunities are created for community bodies to influence decision-making processes and that a community body is a full partner and is represented at the table. 

4.2 Section 10 (3) stipulates that funds, staff and other resources need to be committed by community planning partners to secure the participation of community bodies in setting local outcomes. We would recommend that similar provisions should apply in the case of participation requests (Section 17) in order to achieve a level of equity in the way communities may access and use the legislation.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum

Average health in Scotland continues to improve while health inequalities continue to increase.  

NHS Health Scotland’s recent review of health inequalities highlights the stark impact on life expectancy and health outcomes between the most affluent and least affluent communities in Scotland. The indicators show social, economic and health inequalities will continue to increase if cuts in welfare provision continue to be implemented. The NHS and the community and voluntary sectors are already

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16 Ibid., p45


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experiencing an increase in demand on services as a result of austerity measures.

There is real concern that implementation of the Bill as it stands will exacerbate health inequalities with stronger and more powerful voices prevailing from already organised and more affluent communities. It is expected that more affluent areas will mobilise further to take up new opportunities that the Bill’s offers. Therefore, priority attention and resources should be allocated to communities that have greater challenges in motivating and sustaining involvement towards empowerment.

**We would recommend:**

5.1 Resources allocated in relation to implementation of the Bill are directly targeted at low income communities and that every action is taken to create an environment for those communities to have equal opportunities to influence and sustain a healthy community for all.

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Rural Policy Centre

Local Government and Regeneration Committee

Call for Evidence on the Community Empowerment (Scotland) Bill

SRUC Response, September 2014
Local Government and Regeneration Committee

Call for Written Evidence on the Community Empowerment (Scotland) Bill

September 2014

Introduction

SRUC (Scotland’s Rural College) welcomes the opportunity to contribute to the call for written evidence from the Local Government and Regeneration Committee on the Community Empowerment (Scotland) Bill.

SRUC is an innovative, knowledge-based organisation that supports the rural sector through research, education and expert consultancy services. SRUC wishes to see, and contribute significantly to delivering, a sustainable agricultural and rural land use sector in Scotland. SRUC staff work in a broad range of areas (for more information see www.sruc.ac.uk) and our responses to the questions below reflect this broad expertise, but draw on specific research projects and expertise where appropriate.

Several SRUC staff have contributed to this submission¹ which has been co-ordinated by SRUC’s Rural Policy Centre.

¹ Dr Sarah Skerratt (Director, Rural Policy Centre, Lead author), Dr Jane Atterton (Manager, Rural Policy Centre), Ellie Brodie (Researcher, Rural Policy Centre) and Dr Artur Steiner (Rural Society Researcher, Rural Policy Centre).
Introductory comments

1. The Rural Policy Centre (RPC) welcomes the statutory commitment of the Scottish Government to the empowerment of communities. We welcome the legislative framework being put in place which seeks to create the conditions for community empowerment, subsidiarity and self-determination, operating in a consistent manner across Scotland.

2. Our evidence suggests that, in order to maximise the impact of the Community Empowerment (Scotland) Bill (hereafter referred to as CESB), specific concerns would need to be addressed. We now outline these in relation to specific points clarified in the CESB Policy Memorandum (hereafter referred to as the PM). We then explore how these concerns are even more pertinent within rural Scotland, before concluding with some pointers to evidence and cases which may feed into an enhanced understanding of how CESB might best deliver its outcomes.

Our concerns and their associated risks

1. **Narrow focus:** In PM paragraph 18, the Scottish Government rightly states that: “Ultimately, community empowerment cannot be delivered by the legislation alone, although creating a supportive legal framework will enhance the process”. The emphasis within the CESB is on statutory outcomes, where community empowerment is defined as: “a process where people work together to make change happen in their communities by having more power and influence over what matters to them” (PM paragraph 9, originally stated in the Community Empowerment Action Plan [Scottish Government/COSLA, 2009]). Further, in the National Performance Framework, Outcome 11 is: “We have strong, resilient and supportive communities, where people take responsibility for their own actions and how they affect others”. However, the CESB primarily focuses on service provision, together with community ownership of land and other assets, as the ways in which communities become empowered. This is narrower than the original (2009) definition. CESB therefore also omits potential wider empowerment aspirations, such as participatory democracy. There is a risk that the CESB will become primarily focused on service provision and community ownership of land and assets, rather than on delivery of wider empowerment outcomes.

2. **Empowering the empowered:** There is considerable onus on communities to come forward, with pre-existing, demonstrable capacity, to identify and bring about change in partnership with other stakeholders. For example: “Where an appropriate community body, or a group of bodies, believes it could help to improve the outcome of a service, it will be able to make a request to the public body or bodies that deliver that service, asking to take part in a process to improve that outcome. The community body will need to explain what experience it has of the service and how it could contribute to its improvement” (PM, paragraph 47). Further, communities will be able to “initiate dialogue on their own terms” (paragraph 45) (see also paragraphs 76-79 on communities’ Asset Transfer Requests). What this implies is that those communities which already have the capacity to engage will do so, and will become more empowered. As is it currently written, the CESB acknowledges the need for wider capacity-building (PM,
paragraph 18: “the availability of appropriate support, guidance and a culture of nurturing community action are also key”); however, the CESB does not legislate for it. The Community Right To Buy Register indicates that of the 173 registered interests, the Right to Buy has been activated in just 16 cases. This is an indication of a risk that the CESB legislative framework may result not in a wider spread of power, but in the increased empowerment of those already empowered. We have found evidence of this, and have raised concerns over “Darwinian” development which operates at two speeds, where those who are able can ‘harvest’ the resources (project funds, service delivery opportunities), leaving those less able even further behind. So, “empowerment for whom?” becomes a really pertinent question.

3. Public sector capacity: When discussing “community empowerment”, the focus is typically on enhancing the capacity of communities. However, the differing capacities within the public sector to deliver community empowerment (PM paragraph 20) must also be addressed. Although the CESB states: “a key reason for bringing forward this legislation is to address this inconsistency and promote best practice throughout Scotland” (PM paragraph 20), no guidance is given as to how this is to be achieved. In CESB we read that: “All public service providers have a responsibility to create the conditions that encourage and support strong, independent and resilient communities, and ensuring a focus on supporting community empowerment is a key plank of public service reform” (PM paragraph 11). Under CESB, this specifically translates into:

Community Planning Partnerships (CPPs) having a statutory basis with additional duties and developing “Plans for Place”; potential restructuring of service delivery; arranging and supporting asset transfer; statutory requirement for establishing/maintaining/publishing/updating the register of “common good” property, and consulting with community bodies before disposal of such assets; providing more allotments where waiting lists exceed certain trigger points, publishing an Annual Allotments Report and a food growing strategy; and using new powers to create localised non-domestic rate (NDR) relief schemes (PM paragraph 102) to “reflect the needs of businesses and the local economy” (PM paragraph 101). Implementing these required changes in a “universal and enduring” (PM paragraph 20) manner will, in turn, necessitate an increase in the underpinning processes of consultation, partnership-working and trust, and bringing more parties to the table. This in turn will require changes in public sector working processes, governance practice, and decisions over re-routing of resources (time, people, finance – PM paragraph 43). Capacity-building within the public sector will therefore be essential. Otherwise there is a risk that the CESB will be implemented in a way which operates at the level of the “lowest common denominator” – i.e. ticks the boxes required by the CESB, rather than seeing a cultural shift towards encouraging and proactively supporting greater community engagement in decision-making and outcomes delivery. Further, the fact that community engagement plans and a named community engagement officer are not being taken forward (following the initial consultation period) (PM paragraph 25) is also a concern in this regard, since there is a risk that this will reduce any strategic approach to community empowerment, and its distinct resourcing.
4. **Evaluation and attribution:** It is not possible to see, from the CESB Policy Memorandum, how the CESB’s outcomes-based approach will be evaluated; and whether a baseline will be established from which to assess progress towards delivery of the CESB outcomes. The risk is that it will be more difficult to review/identify/attribute progress towards community empowerment to the CESB and/or to other measures, and thus to improve processes etc.

Specifically rural concerns

The issues which we have raised above have particular pertinence to the “how” of delivering community empowerment in rural areas. There are three key points which we believe need to be taken into account.

1. **Geography:** although in rural areas, “communities of place” may perhaps be easier to define (than in some urban areas) due to physical boundaries such as villages or islands, their populations tend to be more dispersed. This means there are physical and distance challenges in bringing people together, and in ensuring the inclusion of all sectors of the population. This is exacerbated by the costs of private transport, and the unavailability of public transport. Empowering the (social and economically) disempowered therefore, is a particular concern in rural areas.

2. **Demography:** The fact that rural populations comprise small numbers has two main implications.
   a. Firstly, a phrase often used in rural areas is “the usual suspects” – that is, the same group of people who repeatedly input to development at community level. This can lead to concerns over how ‘representative’ people might be of the wider community. Additionally, there is a limited pool of people from which to draw, and evidence of ‘burn-out’ exists.
   b. Secondly, those who may benefit most from empowerment may exist in small numbers, such as those with mental or physical illness, those from black and minority ethnic groups, younger people and single parents. This means that ensuring *their* empowerment becomes more challenging, particularly for the public sector, where small numbers of ‘clients’, ‘customers’ or citizens is a criterion which influences support decisions.

3. **Poverty and disadvantage:** For the majority of public agencies, the Scottish Index of Multiple Deprivation (SIMD) remains *the* Index for determining their focus of spend and activity in relation to addressing poverty and disadvantage. However, as reported in our *Rural Scotland in Focus* 2014 Report\(^2\), SIMD is poorly-suited to rural areas (due to dispersal and small numbers of population). This makes it much more complex to direct community empowerment measures to those experiencing poverty and disadvantage in rural Scotland, since they exist in dispersed pockets (sometimes of individuals within

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\(^2\) For more information, please see: [http://www.sruc.ac.uk/info/120428/rural_scotland_in_focus/1265/2014_rural_scotland_in_focus_report](http://www.sruc.ac.uk/info/120428/rural_scotland_in_focus/1265/2014_rural_scotland_in_focus_report)
communities) below datazone level. This increases the risk that such people within communities will remain untouched by CESB since they live ‘below the radar’.

Evidence and existing models which may help address these concerns

1. **Empowering the disempowered:**
   a. We have been involved in evaluating two projects which were delivered through the LEADER 2007-2013 Programme: Capacity for Change (C4C) in Dumfries and Galloway, and Ayrshire 21 (A21) in North, South and East Ayrshire. Both had as their core aim the reaching of those who are typically under-represented, and who can be considered to be low capacity/low-resourced. In C4C we produced a resilience framework, and studied changes in resilience over time due to C4C; in A21, we worked alongside community support workers to assess the impact of their processes, and the associated outcomes. These two innovative projects seeking to include those otherwise “on the margins” could be useful exemplars of enhancing empowerment through inclusive processes.
   b. The CESB Policy Memorandum mentions the work of DTAS, both as a network and as the providers of the Community Ownership Support Service (COSS). In addition to DTAS, lessons could be identified from the rolling out of the People and Communities Fund (delivered through the Scottish Community Development Centre [SCDC]). Other established approaches also include the community engagement officers in the Cairngorms National Park, and the Community Account Managers of Highlands and Islands Enterprise. Further, the European LEADER Programme has been operating in since 1991, seeking to empower communities throughout rural Scotland; there will be a wealth of learning and experience which can be ‘harvested’ from these examples. The work of the Plunkett Foundation and the Carnegie UK Trust could also be of value in this regard.

2. **Evaluation and attribution:**
   a. There is a range of evaluations which have been carried out over many years, including, for example: Rural Voices; Growing Community Assets 1 and 2; LEADER programmes. Work needs to be carried out to identify the meta-lessons, the ingredients of what works.
   b. Ex ante evaluations have been carried out for various schemes and programmes (including the SRDP). Learning from these approaches could be useful in establishing a baseline and appropriate monitoring and evaluation frameworks for CESB, so that CESB can be improved during its implementation.
   c. It would also be beneficial to pull together evidence of what communities have already been doing to empower themselves. Examples may include communities who have bought the land they live and work on (not only those

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3 More information on these projects is available by contacting any of the authors of this response.
who achieved this through the Community Right to Buy but also those who worked through this independently); communities who have bought and run community shops, pubs, transport and other services etc. It should be possible to identify the critical success factors of these projects and build these into the on-going implementation and evaluation of CESB.

d. What Works Scotland is mentioned in PM paragraph 37. SRUC is included in the 'academic pool' in this initiative and we would be keen to identify synergies, as appropriate, between CESB and WWS, particularly from a rural perspective.

3. **Targeting empowerment in areas of rural poverty and disadvantage:**
   a. SRUC’s 2014 *Rural Scotland in Focus* Report showed how the use of existing data types gives a picture of the ways in which rural poverty and disadvantage are being experienced by people and communities in rural Scotland. Further work can be developed from this, to enhance the targeting of CESB in areas of such disadvantage.
   b. Highlands and Islands Enterprise (HIE) has been developing maps and measures of Fragile Areas since the early 1990s, and have recently updated these following the release of the 2011 Census data. There is scope to explore how the HIE Fragile Areas assessment might feed into more focused implementation of CESB ensuring better “fit” for rural areas, certainly within the Highlands and Islands area.
Dear Sirs

Community Empowerment (Scotland) Bill
Submission on Bill Provisions

I thank you for the opportunity to provide a Submission regarding this Bill and my comments are as follows:-

Section 97C, Sub-section (2) (Explanatory Note 121)

It is noted that Ministers may make regulations setting out what factors they must have regard to when deciding where the land is wholly or mainly neglected or abandoned. It is very important that the criteria set out to define ‘wholly or mainly neglected or abandoned’ land are very clear, otherwise there may well be a large number of appeals to the Sheriff under the appeal provisions in 97V.

Section 97J, Sub-section (1) (Explanatory Note 164)

It is noted that, unlike the provisions for rural subjects in Part 3 of the 2003 Act, the community body in this case will not know the valuation at the time at which the ballot takes place. Under the current 2003 Act, community bodies, when the ballot takes place, are well aware of the valuation which has taken place and know exactly what they are voting for. This could cause difficulties if the community body vote to approve a Right to Buy, and the valuation is significantly higher than they anticipate. This difficulty would be averted if, as in Part 3, the valuation took place prior to the ballot.

Section 97J, Sub-section (6) (Explanatory Note 168)

It is noted that it will be the community body which is responsible for the expense of conducting the ballot. This again is different from the procedure in Part 3 of the 2003 Act, where it is the Scottish Government which is responsible for that cost. This could also cause issues for more disadvantaged communities which, without adequate financial support, might find it difficult to source the money to conduct the ballot.
Section 97S, Sub-section (8) (Explanatory Note 213)

This requires the valuer to ask both the owner and community body for their views in writing on the value of the land. However, unlike the new amendments to Section 60 of the 2003 Act, where both the owner and community body have rights to make comments on the other party’s representations, there appears to be no such right in this case. Those changes to Section 60 were, presumably, made in order to ensure that both parties were treated fairly by giving the each party the opportunity to comment on issues raised in the other’s representations, and draw attention to anything inaccurate or potentially misleading, and thus to ensure that the valuer had received accurate representations. It also brought the procedure into line with that outlined in the RICS Guidance Note for Independent Experts and Arbitrators, and I suggest that it would be useful to introduce such additional representations to the procedure in this section also.

Section 97S, Sub-sections (9) and (10) (Explanatory Notes 214 and 215)

It is not quite clear to me what happens if the valuer disagrees with the valuation which has been agreed under Sub-section (9) between the community body and the owner of the land. My assumption is that the valuer must report his or her own assessed value, whilst noting the figure agreed by the two parties. This will be of relevance if, for example, the figure agreed by the parties is higher than the valuer’s assessed valuation, and public money is being used to fund the acquisition.

Section 52, Asset Transfer Requests (Explanatory Notes 256-257)

It is noted that the community transfer body, in making an asset transfer request, must specify, inter alia, the transfer price or the amount of rent, whichever is appropriate. This could cause difficulties if the property concerned is one where the community body would prefer to obtain professional valuation advice, as unlike the circumstances in either Part 3 or Part 3A, there are no provisions for payment for such costs to be met by the Scottish Government. It should be noted that although the Council’s Asset Register may contain a valuation of the property, for many properties this would be calculated on a depreciated replacement cost basis, and that figure would be inappropriate as a basis for a transfer price or rent. It might therefore be helpful if payment of necessary professional fees were possible.

Section 58, Appeals (Explanatory Note 267-269)

It is possible that the reason for the disagreement and the Appeal is because the relevant authority has a substantially different idea of value from the community body. In such a case, it would be helpful if there were provisions allowing the Scottish Ministers to appoint a valuer acting as an Expert, as happens elsewhere in the Act, to provide a valuation.

Thank you for the opportunity of making this submission.
Pinsent Masons LLP response to the Local Government and Regeneration Committee's call for written evidence as part of its Stage 1 consideration of the Community Empowerment (Scotland) Bill.

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

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

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

Section 44 Expenses of valuation of land

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

Section 48 Abandoned and neglected land

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

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

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

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

Under new section 97S (assessment of value of land etc) does the market value take account of the owner's special interest if it is the owner of other land nearby?
Local Government and Regeneration Committee

Submission Name: Pinsent Masons LLP
Submission Number: 50

Part 5 of the draft bill (Asset transfer requests):

Section 55 Asset transfer requests: decisions

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

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

Section 56 Agreement to asset transfer request

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

Section 58 and 59 Appeal and Review by local authority

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

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

Pinsent Masons LLP

4 September 2014
1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

Glasgow Life welcomes the Bill’s aspiration to improve the involvement of local communities in the design and delivery of public services. We particularly welcome the statutory focus on understanding, specifying and achieving outcomes as we believe this is a fundamental component of meaningful empowerment and participatory approaches. The focus on prevention and reducing inequalities specified in the new approach to Community Planning processes via the requirements for Local Outcome Improvement plans is also particularly important.

Our view is that the Bill will change the dynamic between well organised communities and public services and will go some way towards empowering local communities to drive positive changes. The main reasons for this from our perspective are:

- the new obligation on Community Planning Partnership (CPP) to consult community bodies in the development of local improvement plans and resource these processes
- increased clarity around the need to understand the complexities of local communities
- the simplification of asset transfer
- enabling community controlled bodies to make formal requests to public bodies regarding involvement in the outcome improvement processes
- a recognition that funding, staff and resources need to be committed by CPPs to support communities to engage

More excluded, fragmented or disparate communities with weaker infrastructure or capacity may continue to struggle to engage with public bodies. Power sharing among and across disparate stakeholders trying to address highly complex issues in an increasingly tight fiscal environment is also likely to result in conflict. If the Bill’s aspirations are to be achieved then the skills and capacity to manage this positively may need additional investment.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?
From our perspective the likely benefits to public organisations will include:

- a more sophisticated understanding of community need and the diversity of communities we serve which will enable better planning, design and delivery of services
- opportunities to develop a more sophisticated and practical understanding of outcomes and impact and how to use these to shape services
- increased social capital in communities
- transfer of assets to communities which may facilitate access to additional resources

Possible disadvantages may include:

- communities with less power being marginalised in decision making or co-production
- skills development and capacity building around co-production for agencies and communities will require investment
- increased potential for tension and conflict given the diversity of communities and interest and the complexity of the issues

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Communities are fluid and diverse. Many are well organised and focused on achieving agreed objectives. However there are many facets to personal identities. Public agencies often (and often by necessity) conceptualise “community” in a manner which meets their service deployment needs but does not take into account these complexities.

Communities which are less well organised or have not developed common visions may struggle to fully engage with the Bill’s provision without sustained capacity building support. In addition in order for asset transfer to be successful and sustainable many communities are likely to need a level of support that agencies find it challenging to provide given the fiscal environment.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

We would welcome more detailed guidance around the roles and responsibilities of “arms-length” public organisations such as Glasgow Life. We are part of the City’s Community Planning networks but it can also be inferred that we should be consulted by the CPP because of our other functions.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy Memorandum?
We welcome Bill’s synergy with the aspirations of the range of equality and human rights legislation. Given our urban focus we have no comments to make regarding island communities. We would welcome additional information regarding the definition of “environmental wellbeing” specified in the Policy Memorandum.
Community Empowerment (Scotland) Bill

Response to the Call for Written Evidence from the Scottish Parliament Local Government and Regeneration Committee

The UNISON Scotland Submission to the Scottish Parliament’s Local Government and Regeneration Committee
Introduction

UNISON is Scotland’s largest public sector trade union. UNISON members deliver a wide range of services in the public, community and private sector. Members are also tax payers and service users and are ideally placed to provide evidence to inform the committee during its scrutiny of public sector reform. UNISON Scotland welcomes the opportunity to submit evidence to the local government and regeneration committee.

Evidence

UNISON is generally supportive of involving community groups, including trade unions, in the design and delivery of services and extending the community right to buy particularly round neglected and abandoned land. We do though have a range of concerns about the impact of this Bill on communities, services and the workers who deliver them.

Staff

UNISON is concerned that both the Scottish and UK governments see community empowerment as a way to deliver services more cheaply. Where outsourcing services has claimed to save money it has been through cutting jobs, wages and the terms and conditions of the staff who deliver those services.

Despite concerns raised by UNISON during the earlier consultations the workers, who currently deliver services on/in the land and building that community groups will have the right to ask to takeover, are not mentioned in the Bill. There is a big difference between a community taking over unused public buildings and land and putting then to public benefit than for example taking over the health centre, library or swimming pool. UNISON is also concerned that the staff who currently deliver services could be replaced by untrained volunteers. There needs to be much more clarity about how this will impact on services and the staff who work there.

- Who will the new employer be?
- Will this require new legislation?
- How will staff transfer to a new employer?
- Will staff still be employed on local authority terms and conditions?
- How will these be negotiated going forward?
- Will staff still be able for example to apply for internal vacancies with the local authority?

Privatisation

The Bill does not contain enough protection against for privatisation of public services. The outcomes approach means that organisations could focus on specific outcomes and set up bodies to bid for services claiming they can achieve one of the government’s outcomes.

Community bodies having taken over an asset may also then bring in a private partner. If the aim of empowering communities is to be achieved and privatisation avoided the Bill needs to contain measures to prevent this happening.
The experience of Leisure Trusts and Housing Associations shows that in order to achieve economies of scale organisations originally set up to be small and responsive to their local communities end up joining together for financial reasons recreating the large corporate bodies they originally sought to escape. They can also be “captured” by their management again losing the benefits of co-production.

What happens if the community group cannot sustain the service? Can a private provider take over? What happens if a group in future want to sell assets to another body? Public bodies at a minimum need the right to buy back the assets at the original price.

**Equalities**
UNISON believes that empowering communities through increased participation is not about transferring assets or ownership of services to groups of people, but about ensuring that citizens are consulted and listened to at all points of the process. This requires appropriate resources. As the Christie Commission highlighted there are communities of interest as well as communities of place. There needs to be recognition of the many different groups and individuals who want and need to access public services. There must be substantial protection service users, particularly those voices that are already less well heard in Scotland, from the well organised well off further controlling assets and influencing service delivery to suit their needs. The Equalities Impact Assessment of the Bill has not yet been published. This should be a fundamental part of the policy development process not an add-on once the main work has been done. It is impossible to see if this has been investigated and protections are in place without access to the assessment.

**Resources**
The Financial Memorandum states that the Bill will not place substantial costs on public bodies and that most costs will be administrative. The Bill will be implemented at a time of severe financial pressure and job cuts in the public sector. Further detail is needed on how public bodies will find the resources to fund the implementation of this Bill.

The Bill proposes more rights for local authorities to reduce business rates but not to increase them. UNISON would prefer local authorities to be given full control of business rates.

**Outcomes approach**
UNISON has been generally supportive of an outcomes based approach to public service delivery particularly as an alternative to the more accountancy based approach of the past. UNISON is concerned though that the current performance framework is not delivering on its promise. Scotland Performs was launched, with much fanfare in 2008. Finance secretary John Swinney said:

"Scotland Performs is about responsibility and accountability."

"By making this information easy to access, and by showing exactly whether we as a country are doing well or need to do more, everyone in Scotland will have the ability to judge for themselves how Scotland is performing.

"This website is about how all of Scotland is performing. For many of the progress measures responsibility for success is shared between the Scottish Government and partners in local
Local Government and Regeneration Committee

Submission Name: Unison Scotland  Submission Number: 52

government, with our universities, the business community and in many cases with individual Scots. Decisions we all take will determine whether we are becoming the more successful nation we all seek.”

The release also stated that “Scotland Performs is based on the Virginia Model, a strategic planning and communications tool used in the State of Virginia, USA.”

UNISON believes that Scotland Performs has not lived up to this promise. The site itself does not have easy to understand pages, does not provide “quick access to information” nor is there evidence of it being a strategic planning tool. Scotland Performs has surface similarities to Virginia Performs but is nowhere near as extensive in terms of data or analysis. The Virginia site offers both easy to read graphics for a range of geographical and subject areas for those looking for snapshots as well as explanations/discussions of issues and extensive data for those seeking wider information or wishing to do their own analysis. Scotland Performs is not the “go to” place for data on Scotland or the delivery of its services nor has it become a source of debate or discussion. Sites like Virginia Performs and Baltimore’s city website (https://data.baltimorecity.gov/) give access to data that require freedom of information requests in Scotland, including the amounts of individual procurement contracts. Scotland Performs may be modelled on Virginia Performs but it has only a surface resemblance to that performance framework.

UNISON is not aware of Scotland Performs updates or indicators being used in question/debates in the parliament. The outcomes and indicators do not seem to have become part of the in the discussion in parliamentary committees or the wider body of Scottish debate. UNISON has not found it useful in our policy development or analysis process. So far it has not become part of Scotland policy debates. If we are to embed the outcomes approach in legislation then the method of monitoring this approach needs a great deal of work.

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

UNISON is supportive of a role for communities and voluntary organisations, including trade unions, in influencing the planning and delivery of services. There is little evidence that people want to take over services and run them for themselves. For example in the Big Lottery Fund paper Growing Community Assets Evaluation (April 2013) referenced by the Minister in his response to the committee states that while people thought that community ownership was a good thing only 10% were actually interested in volunteering or making the decisions themselves.

There needs to be clear mechanisms to ensure that such a community body is representative of the community it claims to represent and how the wider community influence decisions, made if an asset comes under the control of that body. There is a great deal of difference between a group of activists in a community and the many large third sector organisations who currently deliver outsourced services. Many are in the conflicted position of providing advocacy for disadvantaged groups and also delivering services directly to those groups. There needs to be an onus on community groups to consult with the wider community and to
publish meeting dates and minutes to ensure that citizens out with the group do not lose out when an asset moves out of local authority control.

Communities are not homogenous whether they are geographical or of interest. Even in small communities there will be differing needs and more and less powerful individuals. Graduates are more likely to be active already than those with no qualifications 23% versus 3%. (2020 report What do people want, need and expect from public services). UNISON is concerned that those people who already are or feel disempowered could be further marginalised as they are the least likely to participate in policy making processes. There needs to be substantial protection for the wider community, particularly those voices that are already less well heard in Scotland from the well organised well off and articulated further controlling asset of influencing services delivery to suit their needs. "Sharp Elbows": Do the Middle-Classes have Advantages in Public Service Provision and if so how? shows that this is already the case and there is a real risk that in its current form this Bill will make this worse.

Giving Communities assets in itself will not bring change: JRF highlight the following as key success factors

“Allowing time for staged growth and development was a key success factor, along with access to support technical aid, brokerage and community development. The diversity within communities and the nature of local community organisations were also important factors; assets needed to be embedded in a strategic approach to local community development that recognised organisations’ interdependence with other public, private and third sector agencies.”

The Big Lottery Fund report states: “Another issue that has grown in importance as community ownership has developed is ensuring that projects are driven by, and fit within, a wider community vision rather than in isolation. Projects that are driven by a small group’s desire to develop, or rescue a building, for example (and then try and find another use for it) are less likely to succeed in the long term. With the potential for more building assets transfers to take place in the future, care needs to be taken by both communities and funders to ensure that these are led by local demand and complement other developments. Local authorities are therefore particularly important stakeholders and partners”

It is clear that public bodies will still need to be involved if the wider aspirations of the Bill to transform Scotland are to be achieved. While the financial memorandum suggest that costs will be minimal local authority budgets are under severe pressure. Many community bodies will, as research indicates, need support from local authorities in particular to support their bid and the ongoing viability of the project.

UNISON also has concerns about openness and access to information about assets and services once they are out with local authority control. These concerns have not been addressed. Citizens should be able to access information about the public services they use and about public and political decisions which affect them. This must be the case whatever type of body holds the information or provides the service. The availability of information is

2 JRF report Community Organisations controlling assets: a better understanding June 2011
key to community empowerment and any organisation including community groups that deliver a service or take control of a public asset must be subject to the Freedom of Information Act. They should also be subject to the same Equalities Duties as a public body.
2. **What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?**

The extension of the right to buy and the power to buy derelict and abandoned land even when the owner is unwilling to sell could support communities to make use of land in their areas. This could improve both the “look” of an area and where these spaces are used for anti social behaviour reduce the impact of that behaviour on communities. This also saves money for public bodies like the police who no longer have to deal with this behaviour.

There are though disadvantages for public bodies from such transfers. Firstly they will lose an asset. Many will have earmarked assets for future use or to be sold in order to raise funds for other projects. This will also impact of long-term planning as bodies will not know what requests will be made. Even though public bodies can refuse to transfer an asset the time taken to deal with a request may impact on the timing and costs of projects.

There is also the risk to service delivery and maintaining standards if services become fragmented. There is also a risk of higher costs as some of the savings made by economies scale will be lost.

3. **Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?**

It would be easier to comment on this aspect of the Bill if the Equalities Impact Assessment had been published. UNISON is concerned that better educated and connected members of communities will be far more able to make use of the provisions of the bill. This could lead to increasing inequalities rather than achieving its stated outcomes. Giving Communities assets in itself will not bring change: JRF\(^3\) highlight the following among key success factors

> “well established community organisations may be able to thrive and grow in this new environment if the right conditions are in place. In disadvantaged areas there may be a lack of capacity and more limited opportunities to generate revenue from community assets. There is a real risk that some communities will be left behind in the asset transfer agenda, representing a missed opportunity that may exacerbate existing inequalities among communities”

4. **Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?**

The Bill needs to be much clearer about protections for those workers who currently deliver services on/in the land and building that community groups will have the right to ask to takeover. Public bodies should have the right to buy back assets at the original price if a community group decides to sell. Any groups which deliver public services should also be subject to the same Freedom of Information and Equalities duties as public bodies.

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\(^3\) Community Organisations controlling assets: a better understanding June 2011
5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

UNISON is concerned that the Equalities Impact Assessment of the Bill has not yet been published. This makes it very difficult to comment on this question. Communities are not homogenous whether they are geographical or of interest. Even in small rural communities there will be differing needs and more and less powerful individuals. There need to be measure within the Bill to ensure that women, people with protected characteristics are able to take part in and have a say in the future of public services and that where groups do take over services they are not excluded from those services.

Conclusion

UNISON as Scotland's largest public sector trade union has long been a supporter of empowering communities to have a real say in the delivery and design of public services. UNISON is concerned that the Bill does not contain protection for public sector workers or for less powerful and marginalised citizens. We therefore welcome the opportunity to submit evidence to the committee.
Regarding the call for evidence to the Community Empowerment Bill. Lynne Palmer 4th Sept; 2014

I have already contributed on the consultation paper which had to be in by 24th June. This is a further attempt, on the 5 questions.

Q1. I have to say that I don’t think the Bill will empower communities; what it will do is make a start on empowering communities & individuals. Groups & individuals must come forward genuinely wanting to make changes. Changes in their personal lives will come before this so that a person or a few people realise they are disempowered. The problem known as ‘the Scottish psyche’ is at the back of this, but people don’t realise the power it has over them. If people moved to change themselves, years & years of training & adjustment of their personality to a certain extent would be necessary.

Q2. The benefits would be that some volunteers could be given responsibility for some tasks, relieving some staff & requiring less staff. This would help to remove the ‘them & us’ problem; a certain amount of equality with staff could be achieved, so genuine working together. This would help members of the public & groups to sense their own innate power. But Scottish people don’t want to do this! The disadvantages for public sector orgs. is that staff resent the above happening!, they will have to be assisted to get over this. There is also the problem of volunteers or any member of the public showing signs of becoming ‘semi-professional’ in their ability level. This is a good thing, but some professionals will not like it. Some volunteers when realising the effect they are having may shrink back, but mentoring should be used to keep them on track.

Q3. No they generally do not have the capabilities to take advantage of the Bill. Insert something in the Bill regarding mentoring. Keep raising the profile of personal empowerment in what ever way it can be done for the whole of Scotland. You could put something about empowerment in the Bill; something like an introduction to the theory of empowerment & what it can do for people. This should have to include an easy-read way of speaking about fear.

Q4. Yes; no doubt there will be amendments as years pass.
Q5. I have nothing that I can think of to say, except that equal rights must include the **chance** to become empowered for every Scottish person whether individual or group.

Lynne Palmer.
To Whom It May Concern,

I am writing on behalf of Kincardine & Mearns Community Planning Group – one of the six local Community Planning Groups in Aberdeenshire – with our response to the call for evidence on the Community Empowerment Bill.

We endorse the response made by Aberdeenshire Community Planning Partnership and would like to add that in our Group has understood the wording of the bill to effective exclude community councils as a statutory body within Community Planning Partnerships by not including them in Schedule 1. Instead they seem to be included as a ‘community participation body’ and even these community participation bodies do not appear to be statutory partners and may be excluded. If that is not the case, then the bill could be worded more clearly. Our group feel that it is important that community representation is necessary and statutory within Community Planning Partnerships, and furthermore it is preferable, at least in our location, that Community Councils are the nominated body acting as a hub for other community organisations in the area.

Relating to the section on Common Good Land – we feel that it would be unmanageable and unadvisable that every community council in Aberdeenshire be located on every possible change of use of common good land – our area is too big for this to be a good idea. We do feel that consultations should ideally involve community councils and also go wider.

Thank you.

Emma Kidd
Local Community Planning Officer
Kincardine & Mearns
Aberdeenshire
Local Government & Regeneration Committee enquiry – Community Empowerment Bill

SCVO response
05 September 2014

Summary

- The Community Empowerment Bill is a small part of the change required to enable more empowered communities.
- The primary role for government and the public sector in this agenda is a supportive one, which enables community empowerment but does not direct or control it.
- Involving people in top-down public sector-led agendas is not community empowerment and can in many instances be disempowering.
- The barriers that communities face are rarely just legislative - culture and attitude are much more likely to restrict a community’s development.

Comments on the Bill

- To give communities a greater say over local spending priorities, 10% of the total budget for the public sector in each local authority area could be allocated for participatory budgeting processes.
- We support the introduction of a single, clear process for the transfer of assets to communities from public bodies.
- We would like to see the bill amended to include a duty on public bodies to maintain an asset register and publish asset management plans.
- We support changes to the land reform legislation which would extend the Community Right to Buy to all communities in Scotland.
- We are concerned that the definition of ‘neglected or abandoned’ used for the new part 3A of the Community Right to Buy could prove an impossible barrier for communities to overcome in rural areas.
Our response

SCVO has worked extensively on the Community Empowerment Bill since its inception in 2011. This response draws from a large number of discussions held with our members, third sector intermediary bodies and our Policy Committee over that period. Most recently, SCVO convened a group of third sector organisations to discuss what is needed ‘beyond the Bill’ to empower communities. The main points arising from these discussions have been incorporated into this response.

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

The Community Empowerment Bill is one small part of the change needed to enable more empowered communities. It is vital that this Bill is considered in those terms and not seen as the totality of the approach that is required. It is our view that the impact of the Bill itself on community empowerment will be minimal unless there is a wider strategy adopted.

As a starting point it should be clear that governments, public sector bodies, politicians and third sector organisations don’t empower communities. Communities empower themselves. The role of all the agencies involved with this agenda should be a supportive one that does not seek to direct or control.

The Bill includes a mix of legislation that has been brought forward to achieve different purposes. This can make the policy objectives of the Bill seem at times incoherent. By mixing legislation on land reform and asset transfer with measures on community planning and public service reform, the Bill adds to the confusion that exists between community empowerment and community engagement. This is despite page 3 of the Policy Memorandum for the Bill making it clear that the Scottish Government understands the distinction: “The Scottish Government is clear that it is important that community voices are heard in public sector processes, but that this engagement differs from community empowerment, where communities lead change for themselves.”

If it is done well, we support people and communities having a greater say in the improvement of public services and other local decision making processes. However, involving people in top-down public sector led agendas is not community empowerment and can in many instances be disempowering.

A bottom-up process of genuine community empowerment involves a community coming together collectively and pursuing a set of shared objectives through a collaborative effort. The best expression of this type of empowerment can be seen in the many Development Trusts or Community Land Trusts that have taken their own future into their hands. They set the agenda, decide their priorities and lead the development of their own communities.
Local Government and Regeneration Committee

Submission Name: Scottish Council for Voluntary Organisations
Submission Number: 55

The Royal Society of Edinburgh ‘Community Empowerment and Capacity Building Paper’ gets to the heart of the issue:

“The extent of the power shift is less pronounced if a ‘top-down’ approach is favoured, because agenda design remains with the relevant public body, and community action is only sought when the implementation phase is reached. However, this approach falls short of genuine empowerment. The ‘bottom-up’ approach, which sees the identification of local agendas and desired outcomes taking place at the grassroots level, requires that a much larger degree of power and trust be handed to communities. By this approach, it truly is the community which identifies the societal challenges it wishes to see addressed, and it is the community which designs the processes to address these and to deliver the changes it wants. If empowerment is to be an aim of public policy, taking a bottom-up approach will be necessary and inevitable.”

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

The net effect of the Bill on public sector organisations should be positive. Hopefully the Bill will become part of a wider reform of the way public bodies interact with communities. If successful it could lead to greater and more equal collaboration that will deliver significantly improved outcomes. Changing the culture in public bodies to provide a more bottom-up approach to their work is vital. We welcome the contribution of the Commission on Strengthening Local Democracy to this debate:

“A fundamental review of the structure, boundaries, functions and democratic arrangements for all local governance in Scotland based on the principles of strengthening local democratic accountability, subsidiarity and public service integration in order to localise and simplify accountability of public services to local communities.”

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

The ability of communities to take advantage of the provisions in the Bill can be shown from the many successful community projects which have already been taken forward. Significant and challenging projects from North Harris to Cassiltoun, demonstrate the scale and diversity of successful projects that have been achieved in communities of all types. However, there are also communities that have been unable to achieve their objectives. The reasons this happens are complex and can range from financial problems to volunteer fatigue. If we wish to see more success, then creating the right conditions for communities to thrive should always be the priority and there are a number of practical ways this can be achieved.

Different communities have different capacities and will therefore need different types of support to realise their ambitions. It is important to recognise that this isn’t as simple as saying disadvantaged or poorer communities will need greater support. Many communities have
significant social capital but might need specialist advice to cover a skills gap. Many deprived communities are perceived as disempowered but the reality can be that they are better connected, more united and have the capacity to undertake fantastic projects and influence decision making. Appreciating this complexity and diversity of communities is crucial.

Guidance or support should be accessible to communities and available at the time when they require it. The Development Trusts Community Ownership Support Service is a good example of how to approach this.

There should be a greater priority given to sharing of ideas and experience between communities and bridging skills gaps by establishing connections between communities. Research on Community Land Trusts vi showed how significant external connections are in creating more resilient communities. Schemes such as the Scottish National Rural Network Project Visits or the DTAS Knowledge & Skills Exchange Fund should be supported to provide further opportunities for establishing these connections.

Funding is hugely important, particularly in the early stages of a community’s development, to support voluntary effort and help get projects of the ground. Finance of this type is best invested directly in the organisations communities have established to progress their priorities. We would like to see additional funding assigned to these ‘Community Anchor’vii organisations that perform this role and bring other community activities together.

The People and Communities Fund is a good example of the problems with current funding programmes and the reluctance from Government to trust communities to set their own priorities. Despite being established for ‘community-led regeneration’, the fund proscribes outcomesviii for applicants to conform to. If outcomes are decided in a top-down way, it is not community-led regeneration. The Strengthening Communities programme is a positive step forward but needs additional support. Funding programmes for empowerment must have open outcomes that allow for the breadth of activity that communities wish to undertake.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Part 1 National Outcomes
We are generally supportive of the proposal to embed Scotland Performs and the National Performance Framework in legislation. This could improve accountability of reporting mechanisms while offering greater opportunity for more people to become involved in the process of deciding outcomes. The key to the success of this proposal is the process that is developed to implement it and how participative and inclusive it is.

Part 2 Community Planning
We question the relationship between these proposals and community empowerment. It is difficult to see how the proposals for community planning outlined in this Bill will empower communities as they mainly concentrate on tightening up and enshrining in legislation processes which have proven to be unsuccessful in improving outcomes or engaging communities.
Local Government and Regeneration Committee

Submission Name: Scottish Council for Volunteer Organisations
Submission Number: 55

It is difficult for us to see how the Bill will reverse that trend. A better way to improve community planning would be to build on good practice examples of partnership working which can be replicated across CPPs.

Both third sector and statutory agencies are often at the forefront of producing exemplar projects, responding quickly to change and working closely with the people they support to deliver positive outcomes. We must learn from what made these projects successful, particularly where they involve partnerships between third sector and statutory agencies. We can then use this learning to nurture similar initiatives in other areas - up-scaling, replicating and adapting where needed. We hope the outcomes from the new 'What Works Scotland' centre will contribute to this.

Part 3 Participation Requests

There may be some value in legislating for this process. Allowing organisations to initiate a process to improve services could open up discussions between communities and public bodies. However, its effectiveness will still be dependent on the culture and attitudes within the relevant public body. Improving the understanding of participative approaches within public bodies through training or demonstrations of good practice is more likely to achieve success than bringing forward legislation that could be ignored or regarded as a nuisance by these bodies.

We are also concerned that introducing this process might disrupt the positive ways that third sector organisations and public bodies already work together. The formal process that has been proposed might disrupt positive interactions which already take place if it becomes the main route for engaging the sector in improving public services.

1. We would like to see an appeals mechanism created for this process that provides an additional route for communities to take if their request is declined.

2. We are concerned that the legislation as drafted wouldn’t permit a community to initiate an outcomes improvement process for a service that does not already exist. This would prevent communities from working with public bodies to design and develop a new service in their area that is a priority for them.

3. We are disappointed that this single mechanism is the only concrete proposal for increasing participation in the decision making and the design and delivery of public services. The Scottish Government’s single line in the Policy Memorandum to offer consultancy support for local authorities to develop participatory budgeting in their areas is insufficient and underwhelming.

4. We welcome the Commission on Strengthening Local Democracies' commitment to participatory democracy:

“...The right of individuals and communities to local democracy needs legislative expression through a clear duty in law to support and resource participation in decision making.
Voluntary Organisations

Democratic innovations such as deliberative assemblies, participatory budgeting and citizen scrutiny of public services should also become the standards by which this is delivered in Scotland.

“Implementing arrangements for participatory budgeting that go beyond a consultation on predetermined options for budget cuts, and instead focus on local tax and spend priorities.”

5. We would like to propose a considerably more ambitious approach to participation than that proposed by the Bill.

In order to give communities a greater say over local spending priorities, 10% of the total budget for the public sector in each local authority area could be allocated for participatory budgeting. This would have a number of benefits:

- Improved collaboration between public agencies
- Greater participation in democratic processes
- Greater transparency and accountability in public spending decisions
- Improved trust between communities and public bodies
- Greater understanding of the public’s views
- Improved outcomes that genuinely reflect people’s priorities
- Increased social capital

We are under no illusions that this would be challenging to achieve on a practical basis, but it is our view that the benefits would make it worthwhile. Scotland’s experiments with participatory budgeting have so far been small scale, we could be much more ambitious and give the public a real say over the priorities for spending in their area. This could involve a wide variety of models from local authority level processes with large budgets being considered, right down to the neighbourhood level with small amounts being assigned. The schemes that have taken place in Porto Alegre in Brazil were undertaken with as much as 18% of the overall budget allocated.

Part 4 Community Right to Buy Land

We support changes to the Land Reform legislation which would extend the Community Right to Buy to all communities in Scotland. We appreciate that there will be different opportunities and challenges in urban communities that require further investigation but we see no reason why they should not enjoy the same rights as rural areas.

1. We welcome the introduction of part 3A which will provide a Right to Buy without a willing seller. This will provide a last resort for communities by giving them the right to buy land if it can be shown to be in the public interest and important for sustainable development.

2. We are concerned that as the legislation stands the current definition of “neglected or abandoned” could prove an impossible barrier for communities to overcome. This will be
Voluntary Organisations

particularly problematic in rural areas where landlords wishing to avoid coming under the scope of legislation could easily claim that land is being returned to a more natural state.

3. We would like to see the Bill amended to remove the limitation to “company limited by guarantee” in part 3A. Scottish Charitable Incorporated Organisations (SCIOs) should also be able to access these rights as they can do elsewhere in the Bill.

4. While we support this radical change in the underpinning presumptions about ownership, there would be a responsibility on the community to establish that they have the will and capacity to take on the responsibilities of ownership, and that they have pursued other avenues before seeking to exercise this right.

5. The amendments made to part 2 of the Land Reform Act are on the whole very welcome and should simplify the process for communities. However, we would not support the additional requirement for community bodies to make minutes available within 28 days. There is no justification provided for this in the policy memorandum and it would place an unnecessary and impractical burden on organisations.

We would recommend that the Committee pays particular attention to the submissions from Community Land Scotland and Community Woodlands Association whose experience and expertise in this area allows them to give a more detailed consideration to the specific provisions in part 4.

Part 5 Asset Transfer Requests

SCVO supports the transfer of assets to communities, provided that the community has an active desire to take ownership of them. Whilst recognising the benefits of asset ownership, we welcome the Bill’s support for management of assets, which will hopefully ensure the most appropriate model is available to each community.

It is vital that communities have as much information as possible prior to taking control of an asset. Knowing the yearly running costs and potential rental value as well as details of impending repairs or maintenance costs would all be vital information to a community’s assessment of whether to obtain an asset and should therefore be easily accessible. Legislation or regulations must ensure that this type of detail is made available to communities prior to any asset transfer so they can make an informed decision.

1. We support the introduction of a single, clear process for the transfer of public sector assets to communities that has been outlined in draft legislation.

1. We are disappointed that the Bill does not provide a duty for public bodies to maintain and publish an asset register. Knowing what assets a public body holds which could be made available for community use would be a significant resource for communities. It would allow them to look at all the assets in their area and identify those which would suit their purpose.
2. As well as maintaining a public asset register we would like to see a duty on public bodies to publish asset management plans. As communities play an increased role in delivering public services and owning and managing assets, they should also have the opportunity to contribute to the development of these plans.

3. If this process is to be successful it will be necessary to clarify the situation around the valuation of assets and how they can be transferred from public bodies at less than market value.

The Development Trusts Association has significant and valuable experience in this area and their response to these proposals should be given particular consideration.

Part 6 Common Good Property
We support the introduction of an asset register and proposals to consult on the disposal and use of common goods assets. These assets are valuable to communities, so we support provisions which would create greater involvement from communities in the decisions made about these assets. However, we recognise the limitations of the approach being taken by the Bill and note the recommendation of the Land Reform Review Group: “The Group recommends that a new statutory framework should be developed to modernise the arrangements governing Common Good property.”

This should look to develop a statutory definition of common good, the right for communities to take back the assets that were foregone in 1975 and provide additional rights for communities to own and manage common good assets.

Part 7 Allotments
We support the proposals outlined for the provision of allotments by local authorities. Underused and unused land is one way of meeting the demand for growing spaces but sites must be suitable and free from contamination to be viable. This means prioritising and setting aside uncontaminated sites for use as allotments or community growing spaces.

The use of land for therapeutic projects, such as the models developed by the care farming, therapeutic gardening or the men’s sheds movements should also be supported by local authorities, both as a way of making better use of assets and also as a part of a support for wellbeing and early intervention strategy in partnership with NHS and other agencies.

We would encourage the committee to pay particular attention to the response from the Scottish Allotments and Gardens Society who have done extensive work with their members on these proposals.

Part 8 Non-Domestic Rates
We have no comment on this proposal.
Conclusion
We welcome the central role that community empowerment now occupies in public policy. However, we have concerns about the priority given to community engagement and the extent to which the policy has translated to change on the ground. Culture and attitude must be addressed and support provided to communities to help them achieve their own ambitions. The primary role for government and the public sector in this agenda must always be a supportive one which enables community empowerment but does not direct or control it.

We are supportive of the introduction of proposals for transferring assets to communities from public bodies but are disappointed that an asset register has not been legislated for. Bringing Community Right to Buy legislation to all communities, introducing an absolute Right to Buy and improving the processes involved in the Land Reform Act is an important step. We are disappointed that Participatory Budgeting was not included in the Bill and would like to propose that 10% of the total budget assigned for the public sector in each local authority are should be assigned to a participatory budgeting process.

Web: www.scvo.org.uk

About us
The Scottish Council for Voluntary Organisations (SCVO) is the national body representing the third sector. There are over 45,000 voluntary organisations in Scotland involving around 137,000 paid staff and approximately 1.2 million volunteers. The sector manages an income of £4.4 billion.

SCVO works in partnership with the third sector in Scotland to advance our shared values and interests. We have over 1500 members who range from individuals and grassroots groups, to Scotland-wide organisations and intermediary bodies.

As the only inclusive representative umbrella organisation for the sector SCVO:

- has the largest Scotland-wide membership from the sector – our 1500 members include charities, community groups, social enterprises and voluntary organisations of all shapes and sizes
- our governance and membership structures are democratic and accountable - with an elected board and policy committee from the sector, we are managed by the sector, for the sector
- brings together organisations and networks connecting across the whole of Scotland

SCVO works to support people to take voluntary action to help themselves and others, and to bring about social change. Our policy is determined by a policy committee elected by our members.

Further details about SCVO can be found at www.scvo.org.uk.
The Scottish Council for Voluntary Organisations (SCVO) is a Scottish Charitable Incorporated Organisation. Registration number SC003558
Introduction

The Fife Partnership is the community planning partnership for Fife. It provides strategic leadership, overseeing partnership activity to support the delivery of its agreed vision and outcomes, as set out in Fife’s community plan and single outcome agreement.

Response to call for evidence – Community Empowerment (Scotland Bill)

To what extent do you consider the Bill will empower communities (please give reasons for your answer)?

What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

Summary answer to the above questions:

Many communities will have the skills, knowledge, experience and confidence to advance, and benefit from, the greater opportunities to own, manage, and deliver services the Bill affords.

However some communities and groups still struggle and will require additional support, for instance in areas that may be new to them, such as:

- becoming a trust;
- managing staff;
- contracts and tendering;
- business planning and financial planning.
This will require targeted resourcing by CPPs and an acknowledgement of suppressed aspirations and a lack of confidence in some communities, generally those in the most disadvantaged areas. The gap between communities that have the skills, knowledge and experience required to take advantage of the provisions in the Bill and those that do not may serve to increase inequalities.

It is implicit in the process that a degree of power and responsibility will be devolved from public services to local groups and communities. Communities, in particular some rural communities, may feel inhibited by top-down agendas, competitive bidding processes, pump priming and short term funding, which may have the effect of reducing community confidence and deter people from becoming involved. Inherent within this is the need for a culture change within large centralised organisations. A culture of working with, rather than doing to, along with genuine partnership is required. Empowering communities can enable communities to become more resilient, while at the same time relieving some of the burdens on public services, including local authorities.

In rural areas community members and voluntary and community groups often have a substantial role in service provision. In some areas they deliver key services, such as lunch clubs and activities that address inequality and exclusion. Policy measures often fail to impact effectively on those who are excluded. Many centralised agencies have not embraced community representation, community membership, engagement and consultation. It is to be hoped, therefore, that the preparation of a clear plan for place will strengthen local community planning and acknowledge the different areas, both urban and rural.

Feedback on Part 2 – Community Planning

Para 4 (a) Persons listed in Schedule 1 must participate in community planning

Evidence: We consider that listed partners should participate as appropriate – this will not necessarily involve full membership of the CPP Board. It may be more appropriate for some partners to become involved as members of thematic partnerships.

Para 5(c) CPPs must take reasonable steps to secure the participation of community bodies and enable community bodies to participate in community planning

- Evidence: Fife Community Planning Partnership is supportive of any measures to promote effective community engagement in community planning. In Fife, this is being achieved by promoting community engagement in local community planning. This is being supported through the Partnerships involvement as one of four What Works Scotland case study areas.

Local Outcomes
Para 3 (a) & (b)

- **Evidence**: Consultation with community bodies and other persons is common practice in Fife and this requirement is welcomed.

- **Evidence: Rural Proofing**
  As part of the duties of CPP, of planning and the achievement of local outcomes there should be a requirement to undertake *rural proofing* audits especially in a mixed urban/rural local authority area.

  Rural proofing is part of the policy making process and should be used to scrutinise proposed policies. It should ensure fair and equitable treatment of rural communities and ensure that a policy does not directly or indirectly have a detrimental impact on rural dwellers and rural communities.

  The process should also involve monitoring the implementation of the policy to ensure that this is achieved.

  This *rural proofing* should be included in the local outcomes improvement plan.

  It may be that the *national outcomes* to be developed by Ministers should also require to be rurally proofed and adjusted, if required, to ensure equality and fairness for rural communities.

6. LOCAL OUTCOMES IMPROVEMENT PLAN: REVIEW

Para 2 (a) & (b) CPPs must from time to time review and revise plans

- **Evidence**: This is common practice in Fife where there is generally a 3-yearly review of the plan

7. LOCAL OUTCOMES IMPROVEMENT PLAN: PROGRESS REPORT

Para 1 CPPs must prepare an annual progress report

- **Evidence**: This is common practice in Fife.
8. GOVERNANCE

Paras 1 & 2 Partners named in subsection (2) must facilitate community planning and take reasonable steps to ensure the CPP carries out its functions efficiently and effectively.

- **Evidence:** Fife CPP considers that the boards of management of regional colleges should also be included in this list.

9. COMMUNITY PLANNING PARTNERS: DUTIES

Para 3 Each CP partner must, in relation to a CPP, contribute such funds, staff and other resources as the CPP considers appropriate:

(a) With a view to improving, or contributing to an improvement in, the achievement of each local outcome; and

(b) For the purpose of securing the participation of community bodies in community planning.

- **Evidence:** This provision should help to encourage community planning partners to commit resources to the delivery of community plan outcomes. However, it is difficult to see how this provision will be effectively enforced.

10. GUIDANCE

Paras 1 & 2 Each CPP and CP partner must comply with any guidance issued with the Scottish Ministers.

- **Evidence:** This is common practice in Fife. However, there are occasions when detail contained in guidance from Scottish Ministers may be inappropriate for particular local circumstances. National guidance should not stifle innovation and local flexibility.

Feedback on Part 3: Participation Request

Section 14 defines a “community-controlled body” – as a corporate body or unincorporated, but it must have a written constitution.

**Evidence:** Unincorporated associations are not recognised as entities separate from their members. Consequently, such organisations cannot carry out acts, such as entering into contracts, owning property or engaging employees. The lack of legal personality can also give rise to unforeseen repercussions for members (even within an umbrella body) in civil or criminal liability. For example, it is possible that, under the current law, a member of an unincorporated association could, by virtue of that membership alone, find himself or herself personally liable to a third party injured at an event hosted or organised by the association.
We would therefore suggest that all community controlled bodies require to incorporated and liability limited.

**Feedback on Part 4: Community Right to buy**

**General Comment:**

We would make some minor points in the proposed arrangements in order to alleviate some of the burdens on communities.

- Groups wishing to undertake *Community Right to Buy* only have access to the edited register whereby up to 30% of the electorate may not be included. This makes the initial 50% threshold difficult to achieve.
- We welcome the continuation of the Scottish Land Fund or similar to help ensure that communities have the necessary resources in place.
- Could re-registration be streamlined or the registration period increased?
- We welcome the inclusion of urban areas. However in an area that is more densely populated areas, there may be some competition with different groups registering fan interest in the same asset. Ministers would make that decision. However would there be a right to appeal?

**FEEDBACK ON PART 6: COMMON GOOD**

Part 6 of the Bill, which deals with common good property, in many ways reflects what should be good practice amongst local authorities. It requires local authorities to establish and maintain common good registers, to consult on those registers, and to consider any representations made by members of the public.

So far as disposal is concerned, again it is current good practice that, before common good property is disposed of, consultation takes place with at least the Community Council. Legislation now proposes to extend this to “any community body that is known by the Authority to have an interest in the property”. Again, that seems to be perfectly sensible.

So far as the existing provisions are concerned, the only comment might be in relation to proposed section 65 (1) (b), which applies the requirement for consultation on any change of use to common good property. Whilst that might seem a reasonable suggestion, it does mean that local authorities will have to consult with community councils and community bodies, for example, where there is a request by an existing tenant for a change of the user clause in their lease. The consultation process, whilst not long, may have an impact on a commercial business – and may well be in respect of a common good property which has been leased out for some time.

Of more concern are the areas which the current provisions do not cover in respect of common good.
The first of these is in relation to appropriation of inalienable common good land for another Local Authority purpose. This issue was discussed in the case of *Portobello Park Action Group, Petitioners* [2012] CSIH 69 where it was held, correctly, that the current legislation does not allow local authorities to appropriate such land for other uses – in this case a school. The net effect of that was to force the City of Edinburgh Council to put private legislation through Parliament to enable the development of a school which a large sector of the community wishes to see happen.

This case has now been bolstered by the recent decision of *East Renfrewshire Council, Petitioners* [2014] CSOH 129; in that case, East Renfrewshire, faced with a similar proposal to develop a school on inalienable common good land, chose to characterise the arrangement they had for the new school's development with Scottish Futures Trust as a disposal rather than an appropriation for the purposes of the Act. However, following previous case law, it was held that this too was not an option open to local authorities.

The net effect of these two cases is that local authorities are not able to appropriate inalienable common good land for other public purposes. It seems counterintuitive that they can, on the other hand, dispose of such land with the court’s consent for commercial purposes such as a supermarket. It would in fact be a relatively simple amendment to the existing section 75 (2) of the Local Government (Scotland) 1973 to enable a similar assessment to be made by a court as to whether, taking into account all the circumstances, an appropriation of common good land was the correct way forward for a community, in the same way that the court currently assesses whether a disposal to a third party would be the correct way forward.

A suggested minor amendment to existing sections 75 (2) and (3) is appended for information.

Also of concern in this context is the division of common good land into alienable and inalienable common good land. The determination of whether common good land can be safely disposed of or appropriated without court consent is a matter of interpretation of facts and circumstances, but also interpretation of case law, many of the cases dating back to the 19th or early 20th century.

There is an opportunity in the current legislation to provide more certainty for local authorities and communities alike as to what common good property needs consent for disposal, and what does not. This could be provided by a requirement on local authorities to maintain, in their register, separate lists of what they consider to be alienable and inalienable common good property; to do this, it would be extremely helpful to have a statutory definition inserted. Again, this would not in itself be overly difficult. It would be a case of codifying the existing case law and ensuring that the definition was as clear as possible.

Such definitions could be added to the end of existing draft section 67.

**Tim Kendrick**  
**Partnership and Policy Manager**  
**September 2014**
Appendix 1

Suggested amendments to s.75(2) and (3) of the Local Government (Scotland) Act 1973

75 (2) Where a local authority desire to appropriate or dispose of land forming part of the common good with respect to which land a question arises as to the right of the authority to alienate, they may apply to the Court of Session or the sheriff to authorise them to appropriate or dispose of the land, and the Court or sheriff may, if they think fit, authorise the authority to appropriate or dispose of the land subject to such conditions, if any, as they may impose, and the authority shall be entitled to appropriate or dispose of the land accordingly.

(3) The Court of Session or sheriff acting under subsection (2) above may impose a condition requiring that the local authority shall provide in substitution for the land proposed to be appropriated or disposed of other land to be used for the same purpose for which the former land was used.
Response to the Community Empowerment Bill:

Part 2:

Community Planning.

Schedule 1
Community Planning Partners.

1. Third Sector: given the importance, both economic and social, that the Third Sector plays in community development, the Bill should consider giving it a much higher prominence within Community Planning. This would be possible since the establishment and the increasing strength and sophistication of local Interfaces is leading them going beyond administrative bodies and becoming service providers for the Third Sector.

2. One recommendation from the ‘Community Council Short Life Report 2012’ was

➢ That as a matter of course, through a suitable forum, Community Councils have a principal role in Community Planning Partnerships by identifying the most appropriate group to represent specific community views for the purpose of community planning.

In East Ayrshire this was practice before the Report:

About: The Coalfield Communities Federation (CCF) is a representative body of communities within the Coalfield Area of East Ayrshire and acts as a key mechanism to ensure that the community is fully integrated in the activities of East Ayrshire Community Planning Partnership (CPP).

The CCF provides a forum through which the activities of the CPP can be made known and debated throughout the Coalfield Area as well as ensuring that partnership activity reflects local need. The CCF has representation on the CPP Board and assists to inform strategies and future programmes promoted and funded by the CPP. The CCF is also practically involved in the design and realisation of local projects and initiatives.

This fragile arrangement will end in 2015 however as a result of the grant funding being terminated by the newly formed Grants Committee. Where the decision making process was carried out on a cost-benefit basis.

We feel that the recommendation above was sound it should be supported and where arrangements of this sort are made they should be given some form of protection.
Thank you for the opportunity to contribute to the dialogue in the development of the Community Empowerment Bill. This is an important piece of legislation which should, if it is developed fully, contribute to strengthen communities throughout Scotland, and help to foster stronger engagement of the people within the communities, enabling them to take control of their own destiny.

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

These comments are not on the detailed clauses, as we do not have the technical capability to make detailed comments on the legal clauses of the Bill. They are around the objectives that we consider will make the Bill more effective and generate considerably more community involvement, changing the balance of power in communities from speculators to the local people.

Options

Our second attempt to lodge a “right to buy” was thwarted by the “sale of an option to sell” on the land we wished to register, at an apparently late stage in the registration process. Our understanding is that “options” are not registered so it is not possible to see who holds an interest in the land – an issue that needs resolving. It is not clear to us that the Bill, as proposed, has sealed this loophole. We would be grateful for confirmation that it has, or if not, for confirmation that it will be sealed.

Neglected or abandoned land

Up until June 2013 we might have considered that this clause would have been useable in the case of Holmehill, but our experience over the last 14 months has suggested that it has a limited application as currently drafted.

It is quite clear that the landowner is not currently, in the dictionary definition, neglecting the land, nor is it abandoned. What is happening is the wholesale destruction of the woodland that makes it the special...
place that it is. This destruction is at a slow pace, but also includes the denial of access to a considerable
part of the space.
So we are concerned that the concept as presented in the Bill will be of limited value in many cases. There
may be cases where it will be of real use to communities so we are not suggesting that it is removed,
rather that it is strengthened.
The key issue is not that the land is un-managed, but how it is managed. In our case when we went to
court over the refusal to register our first application the judgement against us was partly based on the
grounds that we were seeking to purchase the land to subvert the planning process. We would argue
quite the contrary – at the time of purchase by the current owner, after our rejected registration,
Holmehill was designated in the Local Plan as public space. Our desire to purchase it was to retain it as
public space and develop it as a public amenity. Thus our intentions were actually in support of the
planning process, unlike the current owner who paid a price based on the idea that they would overturn
the designation and build on the land – a speculation.

What has transpired has been years of neglect, two planning applications for building that have had to be
fought through the planning process and which were ultimately respectively withdrawn by the owner and
rejected by Stirling Council. Moreover we secured a continuing, and strengthened designation, as public
space, in the new Local Plan with strong support from the Local Plan reporter.

However all of this has been at considerable cost to the community, both financial and emotional.

Now the neglect has now been replaced by an illegal felling of a large number of protected trees and
subsequently the very slow destruction of the woodland on Holmehill by the owner, Allanwater
Developments. This is restricting its use by the public, has damaged the general aspect and reduced
habitats for birds and other wildlife. It is significantly reducing its amenity value to the people of
Dunblane.

To prevent this ongoing destructive activity we still wish to purchase Holmehill and to develop it into a
vital green space for all of the community to use.

Consequently we consider that the Community Empowerment Bill should include the ability for the local
community to take ownership of land that is not being used in line with the defined planning designation
and where there is a clear community demand.

This is critical in the case of land bought speculatively, where communities have to endure repeated
planning applications to change be use of the land, often against consulted local plans, by the speculators
as they try to realise significant profits. This aspect of the planning and land ownership process causes
great cynicism amongst communities and considerable backlash against development in general.

As a group we hope that you will address these issues so that we can secure Holmehill for the community
and then develop it into the valuable and accessible community resource that the community desire,
rather than its remaining as a semi-derelict woodland.

David Prescott
Chair Holmehill Community Buyout
Evidence to the Local Government and Regeneration Committee of the Scottish Parliament on the Community Empowerment (Scotland) Bill (CEB), as introduced.

Community Land Scotland (CLS) is the membership organisation of Scotland’s community land owners which between them own and manage some 500,000 acres with assets valued in excess of £60,000,000.

CLS members have significant experience in the workings of the Land Reform (Scotland) Act 2003 (LRA) which the Community Empowerment Bill (CEB) seeks to amend.

The principal focus of this submission is on Part 4 of the CEB – the amendments to the Land Reform (Scotland) Act 2003 (LRA).

High level summary of CLS evidence – CLS:

- Welcomes Part 4 of the CEB and the proposed simplifications to Part 2 of the Land Reform (Scotland) Act made
  - Welcomes the extension of the Community Right to Buy to all of Scotland
  - None-the-less, there are important omissions, clarifications and measures needed to strengthen this Part of the CEB
- Strongly welcomes the extended Community Right to Buy in Section 48
  - However, there are important clarifications and strengthening of the provisions required if they are to be effective
- Welcomes the recent indication by the Scottish Government of its intention to use the CEB to also simplify Part 3 of the LRA. Not have done this would have been a serious omission and and would have left important inconsistencies between Part 2, Part 3 and Part 3A.

Committee Call for Evidence - Questions

The Committee asked a number of questions and this submission principally addresses question 4 about the specific provisions of the Bill and changes respondents would like to see. Beyond this, CLS considers the Bill will help empower communities by giving them new or improved rights to exercise. The effect of the Land Reform (Scotland) Act 2003, which established community rights to buy land, has been to see a change in the whole climate for community purchases, in the knowledge that rights exist to support community aspirations. Community land owning, along with other asset owning activities through, for example, community woodlands and development trusts, has shown that communities do have the capabilities to do remarkable things, and have the capacity to utilise legal rights to help deliver the regeneration of their communities. This Bill puts in place an enabling framework which should add to the ability of communities to act in positive ways.

By enacting provisions that will empower communities, public sector organisations can benefit by more informed and capable communities acting to deliver sustainable development and help better design the delivery of public services. CLS can see no disadvantages to public bodies from this, even though it is recognised they will have some new obligations.
Local Government and Regeneration Committee

Submission Name: Community Land Scotland  
Submission Number: 59

Part 1 – National Outcomes; and Part 2 – Community Planning

CLS does not have sufficient expertise in these matters to make comment on these provisions.

Part 3 – Participation Requests

CLS regards these provisions as important in strengthening the hand of local communities to seek to be involved and potentially secure improvement in matters important to the life of their community. These provisions complement other provisions in the CEB designed to strengthen the rights of communities.

Part 4 – Community Right to Buy

Modifications of Part 2 of the Land Reform (Scotland) Act 2003

In principle and for the most part these modifications are welcome as a means to improve the workings of the LRA in light of experience over the decade since its implementation. This experience has shown a number of problems with the LRA and the provisions in the CEB seek to deal with key aspects which have been criticised.

Section 27 – extending the Community Right to Buy to all of Scotland

This is a welcome extension of community rights. There is no reason why communities in the urban realm and in towns of over 10,000 should not enjoy the same rights as smaller rural communities.

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

There are practical matters that would benefit from clarification and/or change in what is proposed. It is not clear whether the minutes are of all meetings; in particular, the question of whether this is intended to include board meetings as well as members meetings; sub-committees; and whether it is ‘approved’ minutes that are referred to. Further, it appears this provision would apply retrospectively to community bodies and, if that is the case, the implication would be that existing community bodies would have to take steps very quickly to convene members’ meetings for the purpose of passing special resolutions to make these alterations to their Articles. Failure to make change may have wider implications arising from 35(2) and (3) of the LRA and could terminate a registration of interest or trigger consideration of compulsory purchase by Ministers. It is not believed this is intended. Perhaps the same policy could be effected by, for example, a requirement for Community Bodies to enact such byelaws or Rules. These provisions do not seem to apply to a Part 3A or Part 3 body, and this would be anomalous.

Section 30 - Period for indicating approval

The proposal for a 6 month limit, before which time Ministers may not take into account certain matters, appears impractical. Registration of a community body can take in excess of 6 months itself in certain circumstances. Important feasibility and other studies which may be put to a community for support may well date back before 6 months. CLS believes Ministers should be free to take account of anything they consider relevant in indicating approval and not be artificially restricted, and this 6 month limit is unhelpful.

Section 31 (4) - Late applications to register an interest in land

This is an issue of very real significance to the future prospects of community ownership. For a variety of legitimate reasons, communities do not to think of or register an interest in land as an abstract exercise. For all communities to protect the potential interests of the community through timeous registrations of interest in land, may require registrations of interest in a significant number of areas of land, with little prospect that they may ever come on to the market. There are considerable administrative implications for a community and for government from any process of ‘mass registration’ of interests in land by communities, yet the current LRA rather founds on that broad
Local Government and Regeneration Committee

Submission Name: Community Land Scotland Submission Number: 59

assumption. Experience shows communities are also very reluctant to register an interest in land if they feel that might be interpreted as a hostile act by an owner.

Communities tend only to engage with the need to register an interest in land when they become aware the land may be available for sale and this can happen often quite unexpectedly, thus triggering the need to consider a late registration of interest in the land. It is not unreasonable that communities behave in this way.

On the face of it, it is not clear why the proposed changes, which replace the need for a community to show “good reasons” why they did not apply timeously, with a new provision to show they had undertaken, sufficiently in advance, “such relevant work as Ministers consider reasonable was carried out, etc”, are any less onerous than the original provision, if this is what is intended (Section 31 (4) & (9)(6)). The new provision may well make the opportunity for a late registration more difficult than it already is, and this would not assist any objective of greater community ownership that was in the public interest.

It would be best to accept late registration as the likely norm and of itself need not be justified by any prior action or lack of action, and instead rest on the other existing tests for late registration and which are already demanding;

- first, in showing significantly greater support for within the community than for a timeous application
- and second, that registering the interest would be strongly indicative that it is in the public interest

These provisions will continue and seem sufficient in themselves, without the new provisions, but with the deletion of the current need to “show good reasons”.

Additionally and more pro-actively it might be possible to make provisions that where Ministers were notified by a land owner that they had an interest in selling their land, Ministers would take steps (through existing government agencies) to seek to establish whether a community had an interest in buying the land.

Section 37 51A (6) - Information for ballotor.

It is not clear why the ballotor would require this information to conduct the ballot, nor why, if that were justified, it would need to be separately supplied, when it forms part of the application process.

Significant omission from Part 2 LRA revisions

There is one significant omission from the potential amendments to Part 2 of the LRA regarding re-registration of an interest in land after 5 years. The current re-registration provisions are seen as demanding and unnecessary.

The 5 year period is considered too short, and consideration should be given to extending this to 10 years. This would retain the ability to occasionally test the will of the community on their continuing interest in purchase, while reducing the burden on communities. Further, re-registration requires replicating the original registration demands, which can be considerable. A further way to simplify matters would be to change this requirement to one that is less demanding, while still open and transparent and providing opportunity for a community and landowner view. These points are supported in the final report of the independent Land Reform Review Group (Section 17.1 – 9 & 10)

The latter suggestion could be achieved through a registered interest remaining valid, with an occasional and simple procedure being adopted to confirm community views if there were no material changes in circumstances. For example, the community body could be required to take an advert in a local newspaper indicating that the community body was under an obligation to re-register its interest in land, what its view was, and offering an opportunity for any qualifying residents (on the electoral roll) to lodge an objection with the Scottish Government.

Section 31(4)(aa)(iii), appears unnecessary and restricting.
The 7 day limits set above appear potentially tight for all circumstances and providing some latitude for a different time, if that was ever considered appropriate, might be helpful to all parties.

Schedule 5 - repeals the word ‘substantial, and this is welcome. However, when it came to any question of the settlement or re-settlement of once cleared land, it may be difficult still to demonstrate a contemporary connection to the land, and this matter ought to be provided for by a separate permissive provision.

Section 48 Part 3A - extending the community right to buy “abandoned or neglected land”

CLS strongly supports the introduction of this new power extending the community right to buy. This is viewed by CLS as a last resort power. This proposal responds to a weakness in the current LRA that, even if it were in the public interest, there is no means for a community to acquire land unless it came on to the open market. The new provision means this matter can now be considered.

The challenge of this part of the CEB is to find the right balance between granting this welcome extended right, and setting tests for the exercise of the right so high that they would not, for all practical purposes, be possible to meet. CLS believes that the significant qualifications on the new right probably makes it impossible to be exercised in practise. There are a number of ways in which the provisions in the CEB could be helpfully clarified and strengthened, and the balance in this regard improved, while still meeting all ECHR requirements. It would only be with important amendment to what is proposed that the cause of community land owning would be likely to be advanced by these provisions.

The Explanatory Notes and the Policy Memorandum make it clear that, respectively, the land in question, to be eligible, is wholly or mainly abandoned or neglected “for the purpose of the sustainable development of that land” and “in order to further the achievement of sustainable development”.

However, the provisions at Section 48 - 97C (1) do not make explicit that sustainable development connection. The provision appears to stand alone with the considerations solely about the physical condition of the land, not about the social and economic development of the place, the classic two pillars of sustainable development in addition to environmental considerations (See Lord Malcolm in the Pairc Crofters Ltd and Another v Scottish Ministers 2012 CSIH 96 at Para 112).

The everyday interpretations of “abandoned” and “neglected” do not link with the issue of the land’s lack of, or potential or need for, sustainable development, and there is therefore a risk that, even if subsection (2) of section 97C was used to bring in these issue as prescribed matters to which Ministers must have regard in determining whether land was eligible, that could be the subject of challenge on the grounds that the linkage between the concepts was not sufficiently warranted or reasonably envisaged by the statutory provisions, or was stretching the normal interpretation of the primary tests set out in subsection (1).

This matter could be clarified and the CEB strengthened by making it clear – within subsection (1) or via a further subsection within section 97C itself - that the land in question, to be eligible land, could be regarded as wholly or mainly abandoned or neglected, or otherwise in need of sustained development, when having regard to the sustainable development of that land. This would be one approach to seek to make clear the concepts of abandonment or neglect of land were related to sustainable development and not solely constrained to its physical condition, use or occupation. This would be consistent with policy as set out in the Policy Memorandum, and the agreed and statutorily required Scottish Land Use Strategy which stresses the use of land for community well-being contributing to a more prosperous and successful nation. Even with this improvement, the requirement to show land was wholly or mainly abandoned or neglected still sets a very considerable hurdle to be overcome. This clarification would need to apply equally to 48 97G (6) (b) and 97G (10) (c).

Any amendments along such lines above would, CLS believe, be compatible with ECHR A1P1 which requires that the interference in individual ownership rights must be - provided for by law; to pursue a legitimate aim; and the means
of doing so must be proportionate to achieving that aim; and must achieve a fair balance between the demands of the community and the requirement of the protection of the individual’s rights. All these tests would be met as the matter would be provided for in law; would pursue the policy purpose of furthering sustainable development; would be proportionate [see Pairc case and Lord Gill, paras 36 and 40]

In the case of urban areas and particular sites within such areas, it may be possible to argue that a particular site or building had been abandoned or neglected (in the normal sense of those words) by pointing to its physical condition or the absence of occupation or use, and it is probably why these provisions are in the CEB. They still remain very high, or impossible, hurdles for a community to clear.

However, when considered in the rural context and over the potentially extensive areas of land of the sort that communities have acquired by voluntary agreement in recent years, it is difficult to see how a successful case could be made that land (except in the very narrow circumstances of a building, for example) had been abandoned. The sort of defences that an owner might put up can readily be seen; the abandonment being a deliberate act of land management for conservation purposes for example, or the appearance of abandonment is simply a function of the market conditions for development not being sufficient and there being an intention to use the land, or to take some small and immediate action which would have the effect of showing the land had not been abandoned.

Similar arguments can be made about the question of whether land is wholly or mainly neglected. Had these provisions existed at the time of the initial struggles by the islanders of Eigg, for example, to secure the island into community ownership, would they have been effective in securing that outcome (the ‘Eigg Test’)? Even with these provisions, this may still have been an impossible case to successfully argue. This might be marginally helped by the addition of “or significantly” to “wholly or mainly” in the definition at 97C(1).

Further, however, tying this Part 3A route to community ownership of land solely to the concept of abandonment or neglect, is too limiting. Community ownership of land is not only potentially motivated by questions of abandonment or neglect, it is principally motivated by communities considering barriers to the sustainable development of their place.

The objectives in the Policy Memorandum make clear the purpose of this part of the CEB is to remove barriers to the sustainable development of land. Wider human rights considerations also point to more positive justifications to promote change in the human condition toward achieving more adequate standards of living and the continuous improvement of living conditions, of the sort sought in the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Article 2, Subsection 1). The ICESCR sets out that signatory states should, to the maximum of its available resources, seek to progressively achieve the full realization of the ICESCR by all appropriate means, including particularly the adoption of legislative measures. The Scotland Act 1998, Schedule 5, Paragraph 7 (2) makes clear that Scottish Ministers may take actions, inter alia, “observing and implementing international obligations”. With ICESCR having been ratified by the UK Government, it is brought within the terms of the Scotland Act 1998 and as such, not reserved for this purpose. Ministers are empowered and encouraged by these various provisions to take actions that would further improvement in the human condition.

In all, the Bill could therefore be significantly strengthened with the addition of further criterion to the effect that eligible land could include land, for example, the ownership of which by a community body would be conducive to furthering sustainable development (and in pursuance of objectives of the International Covenant on Economic, Social and Cultural Rights); or, (when having due regard to International Covenant on Economic, Social and Cultural Rights) the ownership of which by a community body would be conducive to furthering sustainable development and the public interest. These are initial ideas of potential ways to clarify and strengthen the CEB.

CLS recognise that part of the Scottish Government’s reasoning in these matters is likely to be in relation to ECHR considerations and the rights of existing owners. CLS believes potential strengthening provisions, such as from the concepts above, would not threaten ECHR compliance, given their nature and given the provisions and procedures elsewhere in this part of the CEB which, in the view of CLS, addresses the principles of human rights law round due process. Further, CLS notes that the existing provisions in the LRA, and which have withstood Court challenge on
ECHR Article 1 Protocol 1, do not require any notion of abandonment or neglect of land in order for it to be eligible land, so it is not clear why this would now be required. (See Lord Gill’s judgement in the case of Pairc Crofters Ltd and Another v The Scottish Ministers 2012 CSIH 96)

It is further not clear whether, even if it were possible to identify some parts of a land holding in which a case could be mounted that they were either wholly or mainly (and possibly ‘or significantly’) abandoned or neglected, it is only those parts which could be eligible land, or whether it could be argued that the entire land holding was abandoned or neglected by virtue of those parts being abandoned or neglected. This matter needs further clarification.

As noted above, the Bill makes clear that (97C(2)) Ministers must have regard to prescribed matters in relation to what is eligible land. This makes the Regulations here absolutely critical to the interpretation of this provision and it would be vital to see these draft regulations before a final judgement could be made on the provisions or amended provisions themselves.

Lastly, with regard to 97C, it is not clear why bona vacantia land is excluded from being eligible land, particularly when related to the need to identify ownership of land which, for reasons set out above, may not always be possible and potentially therefore rendering it bona vacantia.

Further still, 97H (c) requires that Ministers must not consent to an application to buy by a community body unless they are satisfied – “that, if the owner of the land were to remain as its owner, that ownership would be inconsistent with furthering the achievement of sustainable development in relation to the land.” It is difficult to see how this could ever be proved, it appears to require proof of a negative as distinct from proof of a probability and it goes much further than would be required in order to achieve a “fair balance” required by ECHR A1P1. This appears a very high and most probably an impossible hurdle to be overcome and unnecessary to meet ECHR requirements; it implies that, even if a community was able to show that the land was mainly neglected for the purpose of its sustainable development, and this was not in the public interest, if that owner could show that, none-the-less, their continuing ownership was not of itself “inconsistent” with some level of sustainable development, then the community’s application must be refused.

Under the provisions, the Ministers already have to satisfy themselves that:

- The land is eligible land, ie, it is wholly or mainly (and possibly ‘or significantly’) neglected
- Purchase by the community body is in the public interest
- Purchase by the community body would be consistent with the achievement of sustainable development in relation to the land

Given these tests, and the fact that there is no equivalent of this requirement in Part 3 of the LRA, which was held to be compatible with ECHR A1P1 in the Pairc case, it appears unnecessary to have this further requirement. There is a strong case for deleting it entirely, which failing, it would be essential to clarify it to the effect that, the ownership of which by the current owner would be inconsistent with (or not conducive to) the public interest when having regard its potential for contributing to the sustainable development of that land. There is potential here too of linking this consideration to having due regard to (or, in pursuance of the objectives of) the International Covenant on Economic, Social and Cultural Rights.

It would be further helpful to clarify here and throughout Part 3A that in referring to “the sustainable development of that land” that the term “that land” refers to the place and community of that place and not just some physical condition of the land.
Clarifying that the date when it is to be determined that land is eligible land is the date of the application for consent. There appears no provision to this effect, although it may be argued that it is implied. In the absence of some provision, there could be arguments about this.

It may be worth considering the merits of providing whether or not a minimum period has to elapse before land is to be regarded as wholly or mainly (and possibly ‘or significantly’) abandoned or neglected and, if so, what is it and whether that period can be, or commence, before the date of commencement of Part 3A.

97H (d) requires that the owner of land is accurately identified. However, even if reasonable steps are taken to ascertain the ownership, this may not always be possible and may indeed be the root of why the land is not being used in a manner conducive to its sustainable development. There are instances where it might appear that ownership is purposefully concealed in off shore arrangements and/or and by other means; in addition, the existence of large areas of rural land which have not yet been brought within the mapping system of the Land Register continues to create uncertainties in identifying the owner in certain cases. It will, therefore, be important to make provision for such a deadlock to be broken through providing for the community taking reasonable steps by publicly advertising their intentions in an appropriate journal, when their reasonable steps to ascertain ownership have failed.

The requirement (97D) to have a separate Part 3A community body means that the creation of that body is an open and public process. This, of itself, can have the effect of alerting an owner such as to permit them to take steps at that point to seek to demonstrate the land in question was not wholly or mainly (and possibly ‘significantly’) abandoned or neglected, or to shift and possibly seek to conceal, ownership. It will be important to provide for these circumstances in some way, so as not to allow an owner to circumvent the provisions of Part 3A, having been alerted to the community’s interests by the provisions of Part 3A itself requiring a public process of registering an interest.

Further, 97H (j) might benefit from some clarification, possibly in guidance, as to what might have constituted circumstances in which it could be held a community had tried and failed to buy the land. This would be important in general, and not least in circumstances where ownership was not known.

97B the definition does not seem to include salmon and mineral rights, and this may be necessary for clarity.

97R could helpfully make it clear that whenever the process of valuation is complete, there is a period of 4 months for the completion of payment. This would exist if the valuation is completed timeously, but could be shorter if that was not the case, to the disadvantage of the community and while not a matter in their control.

**Greater diversity in Scotland’s land ownership patterns**

The Scottish Government has made clear in recent PQ answers, replies to debates in Parliament and policy pronouncements that it wants to see a greater diversity in the ownership of Scotland’s land. This Bill could usefully support that objective. One way would be for the provisions at 97C to have a further provision to the effect that, eligible land would be land, the sale of which to a community body, would contribute to the achievement of a greater diversity of ownership of land in Scotland.

**Consistency in revisions to Part 3A and Part 3 of the LRA**

Part 3A extends the community right to buy and is modelled on the crofting community right to buy in Part 3 of the LRA. Experience has shown real difficulties with Part 3 of the LRA which are, therefore, repeated in this new Section 48 Part 3A. This also has the effect of leaving substantial inconsistencies between the community right to buy for a community body in the revised Part 2 of the LRA introduced by Part 4 of the CEB (with the suggested amendments above), while utilising none of the helpful simplifications and flexibilities introduced into Part 2 in this new Part 3A, let alone Part 3 of the LRA. This is why it is very welcome the Scottish Government now intend to use the CEB to change Part 3 of the LRA.
The simple way to manage this would be for the changes to the definitions of a community body brought in by Part 4 of the CEB in relation to Part 2 of the LRA to be applied to the definitions of a Part 3A community body at 97D, and to Part 3 of the LRA. Similar provisions for the new balloting procedures in the revised Part 2 of the LRA introduced in Part 4 of the CEB should apply to the new Part 3A, and Part 3 of the LRA. Consistency more generally between the new Part 3A, Part 3 of the LRA and the revised Part 2 of the LRA should be sought throughout the provisions of the CEB, as appropriate.

Most importantly, among these matters, the mapping requirement at 97G (d) (ii), and in Part 3 of the LRA, are excessive. CLS contend that it is not necessary for any purpose for a Minister to know of all “sewers, pipes, lines, watercourses or other conduits and fences, dykes, ditches or other boundaries in or on the land”, in order to make a decision and given all the other criteria, including a map of the location and boundaries of the area. This requirement is a near impossible task for any significant land holding and gives substantial room for technical appeals based on a minor error in the extent of a ditch within, say, a 40,000 acre estate of the sort purchased voluntarily in recent years. This mapping requirement should be deleted as being far in excess of what is needed. The Land Reform Review Group in their final report has acknowledged the excessive nature of the mapping requirements on which these requirements are based.

In addition, it seems odd and unnecessary that a Part 2 community body could not also be a Part 3A community body by some simple means, otherwise an unnecessary duplication of effort would be required when it is conceivable that a Part 2 community body which had registered an interest in land could proceed to the Part 3A provisions if they subsequently formed the view the land in question had in fact become abandoned or neglected.

CLS is aware of detailed evidence from Mr Simon Fraser on Part 3 of the LRA. Mr Fraser is highly experienced and respected in these matters and CLS draws particular attention to his submission in raising issues of importance for attention.

Prescribed matters

There are significant matters to be dealt with in regulations throughout Part 4 and it would be important that a clear understanding of what the regulations will contain is seen prior to Stage 2 and where possible to see actual draft regulations, in order to consider whether leaving important matters to regulation is appropriate in all circumstances.

Power to Ministers to facilitate discussions and make regulations

The new Part 3A sets up a process which holds the prospect of dispute arising between community and current owner, because of the nature of the request for what is a compulsory sale. These are circumstances under which dispute resolution or mediation would be helpful. Ministers do not have powers to facilitate this at present.

It would seem appropriate to give Ministers power to make such arrangements as they may regard appropriate to facilitate discussions between the community body and owner upon a request from either party and to have powers to set out procedures for such facilitated discussions through regulation, if they ever felt the need for this.

Part 5 - Asset Transfers

CLS strongly supports the provisions of Part 5 as important in improving the potential transfer of public assets and building on practical experience in, for example, forest estate transfers to date.

The provisions could be strengthened by a duty to provide publicly accessible asset registers, and making clear, possibly in guidance, the local authority discretionary power to transfer at less than market value is available to other public bodies in the Scottish Public Finance Manual, under certain conditions.
CLS recognises the expertise within DTAS and CWA both of whom have made submissions on these provisions, and supports their suggestions.

**Part 6 - Common Good Property**

In so far as the provisions go, they are advantageous to greater transparency on the ownership, use and disposal of Common Good property. In the context of recent developments in community ownership of assets, the potential of common good land to be managed more locally and put to wider community development use could be significant. A wider review of the common good issues may be a preferred way of moving forward as part of the actions flowing from the recommendations of the Land Reform Review Group. This could embrace a statutory definition, rights for communities to take back title to common good assets that were foregone in 1975. A further useful change in the legislation, now, would be to remove the requirement for Sheriff Court approval for common good assets being transferred to communities. This seems an unnecessary and additional hurdle and adds extra time and cost.

**Part 7 – Allotments; and Part 8 Non-domestic rates**

CLS has no comments on these Parts.

**Conclusion**

Community Land Scotland continues to consider and develop thinking on suggested improvements, particularly to Part 3A, and will publish supporting reasoning on its website and share with the Committee and the Scottish Government any significant developments in thinking relevant to the above submission.

CLS will be happy to expand on any of the issues raised in this submission.

Community Land Scotland  
September 2014
Dear David

Community Empowerment (Scotland) Bill

Thank you for providing the Scottish Environment Protection Agency (SEPA) with the opportunity to give written evidence on the Bill; our submission is attached. While we are very supportive of the Bill in many aspects, it will potentially have significant implications for SEPA in terms of resources and delivering our priorities. Our key points can be summarised as follows:

1) the environment should be just as important, and is as legitimate as human health, in terms of policy setting for the Bill

2) SEPA is not resourced to carry out any significant work in this area without seriously prejudicing existing priorities

3) as a national agency, it is extremely difficult to identify, and then to meet, the demands of localised interests; and where we can, there could be a major issue with consistency in delivering policy objectives, so a careful balance is required.

As a public body committed to openness and transparency, SEPA feels it is appropriate that this response be placed on the public record. If you require further clarification on any aspect of this correspondence, please contact Paula Charleson, Head of Environmental Strategy, SEPA Corporate Office at the address shown.

Yours sincerely

James C Curran
Chief Executive
SEPA response to the Local Government and Regeneration Committee call for evidence on the Community Empowerment (Scotland) Bill

The Scottish Environment Protection Agency (SEPA) is a non-departmental public body, accountable through Scottish Ministers to the Scottish Parliament. We are Scotland’s principal environmental regulator. We support and are aligned to the Scottish Government’s overarching purpose of sustainable economic growth. SEPA’s role is wide-ranging, from environmental regulation and reporting on the state of the environment, to promoting sustainability and advising on environmental issues. As such our response reflects that national focus as we seek to embed protection and improvement of the environment into communities’ priorities and activities.

The Committee may also be interested to refer to SEPA’s response to the Scottish Government consultation on the Bill in January 2014, available here.

1. To what extent do you consider the Bill will empower communities? Please give reasons for your answer.

1.1 As is the case with most primary legislation, the operational detail will be set out in regulations and guidance which follow. The Bill provisions alone are unlikely to transform the day to day experiences of the most vulnerable individuals and communities in society. All public services – including SEPA – need to drive reform at increased scale and pace and create conditions that encourage and support strong and resilient communities right across Scotland.

1.2 Realising the Bill’s full potential will be significantly dependent on individuals and communities having both the capacity and will to drive reform. Those less mobilised and more vulnerable individuals and communities will require significant support to do so. It is perhaps those very parts of Scotland, where the ‘skill and will’ are less mobilised, that the greatest potential for driving change potentially exists.

1.3 The primary role for government and the public sector in this agenda is a supportive one which enables community empowerment but does not direct or control it. Yet, there needs to be strong leadership and culture change at all levels to build individual and community capacity, and ensure a more level playing field for participation and engagement. Culture change, leadership and real, fruitful partnerships with Scotland’s citizens and communities will be the ultimate game changers when it comes to addressing multi-faceted and multi-generational environmental, social and economic problems or “wicked” problems. It will require careful thought to ensure all parties maximise the benefit from the limited resource we each have to achieve the aspirations of the Bill.

1.4 SEPA’s involvement in community planning has often become a significant resource demand with limited return, especially where social and economic outcomes have been prioritised over environmental outcomes. If the environment were to feature more explicitly in the six agreed national priorities1 for Single Outcome Agreements (SOAs) it would help strengthen our mandate. Environmental protection and improvement delivers many multiple benefits for communities. The environment has a very important role in supporting early intervention and preventative approaches in reducing outcome inequalities.

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1 economic recovery and growth; employment; early years; safer and stronger communities, and reducing offending; health inequalities and physical activity; and outcomes for older people
1.5 Tackling problems with urban air quality is a good example. Air quality is likely to be poorer in some of the more deprived areas of our towns and cities. Reducing the number of people exposed to poor air quality in these areas by greening our cities, promoting active travel, and reducing black carbon and other air pollutants that contribute to climate change can achieve lasting benefits that go far beyond improving air quality - to help tackle health and social inequalities and may even stimulate investment for sustainable growth.

2. **What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?**

2.1 SEPA sees the Bill as an additional mechanism to help deliver our new statutory purpose, under the Regulatory Reform (Scotland) Act 2014. SEPA’s work delivers important benefits not just for the environment but also for communities and the economy. A healthy environment is essential for a healthy population and also for a healthy economy.

2.2 Wellbeing, sustainable economic development and a good quality, well-functioning environment should collectively be at the heart of empowered communities. And yet the Bill misses the opportunity to put the environment on a level footing with health and social care and sustainable economic growth objectives. SEPA’s vision is for a future where the people of Scotland have taken increasing responsibility for their own environment and wellbeing, and a joined-up approach to health and well-being is achieved through active dialogue, whereby individuals and communities engage and are involved in decisions that affect them. Environmental services can, and do, complement health, social care and blue light services in the delivery of strong, healthy and resilient communities. The six agreed national priorities for CPPs could do more to embed the environment as a golden thread throughout.

2.3 A protocol or common statement between government and its agencies, local authorities, CPPs, and the third sector could help drive pace and culture change around community planning and empowerment to support wider public service reform. We could perhaps take a lead from *Delivering Planning Reform* (2008). This was extremely valuable because it demonstrated a concerted and determined joint effort to deliver fundamental change in the way that planning stakeholders work.

2.4 The opportunity for SEPA and other public sector organisations to formally engage with Ministers in identifying National Outcomes for Scotland to build on the “Scotland Performs” framework is a further benefit of the Bill. The people of Scotland – including the public, private and third sectors – should rightly have a more proactive role in shaping them. SEPA is keen to continue its dialogue with the government in identifying future qualitative and quantitative wellbeing and environmental indicators.

2.5 The Bill presents some very real challenges to us as a national Agency. Many aspects of SEPA’s business do not naturally lend themselves to self-determination. Likewise, Bill provisions which enable community bodies to make a request to improve the outcomes of a service could be limited in the context of SEPA’s regulatory role, but equally other opportunities may arise, for example in relation to River Basin Management Planning and Flood Risk Management, where SEPA already engages with communities. We are keen to engage with the government in drafting regulations and guidance on participation requests.
2.6 We anticipate that new duties which stem from SEPA being named as a community planning partner will be a real challenge. It is quite difficult to see how we could exercise these new duties cost-neutrally.

2.7 There could be false expectations that SEPA will fully engage with all CPPs in Scotland. That would be highly resource intensive, and not cost neutral. We have previously audited our involvement in CPPs and we see it as important that SEPA can engage with CPPs at a level most appropriate to the key environmental challenges and opportunities of the local area, to the prioritisation afforded within that area, and in the most efficient and effective way for us as an Agency. This means having the flexibility to adopt different types of levels of engagement with different CPPs, deploying our limited resource where we can add the most value. We have similar concerns about resourcing new duties relating to participation requests and the associated processes and procedures this could require.

2.8 Even where SEPA is not participating directly or closely with a CPP at a local level, we will have a duty to take the local outcome improvement plan (LOIP) into account while carrying out our own functions at a local level. Again, this will probably not be cost-neutral. Guidance on the ways in which public authorities are to take account of LOIPs, and LOIPs relationship to SOAs, would be helpful.

2.9 There could be some real challenges around the practicalities of dovetailing SEPA’s own priorities with those identified in the LOIP. SEPA’s priorities set out in our Corporate Plan and Annual Operating Plan tend to be strategic and usually non-locally specific. The environment is intrinsically inter-connected and we work hard to focus our resources in a truly strategic way in order to deliver maximum improvement through achieving multiple benefits. Priorities in the LOIPs are more likely to be locationally specific and targeted. There will be challenges aligning local and national outcomes from the bottom-up, and reconciling conflicts where they arise. It should be recognised, for example, that SEPA additionally sets national standards in its approach to licensing and in its delivery of European directives such as the Water Framework Directive.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

3.1 It is unlikely that communities across Scotland have the capabilities to take advantage of the Bill provisions in equal measure. Appropriate support mechanisms need to be put in place to create a more level playing field. These should include individual and community capacity building as well as financial support packages for communities experiencing multiple deprivations.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

4.1 There will be limited or no scope for asset transfer from SEPA, so the value of including SEPA in Schedule 3 as a ‘relevant authority’ for such requests is probably negligible.

4.2 We do though have an interest in ensuring that right to buy and asset transfer can be delivered in ways consistent with our primary duty to protect and improve the
Local Government and Regeneration Committee

Submission Name: SEPA  Submission Number: 60

Both aspects of the Bill should consider Scotland’s natural environment as a stock of potential resources and assets able to produce value and ongoing services to Scotland’s economy, underpinning the health and wellbeing of communities. We would like to see an ecosystems approach included in the matters which the authority must take into consideration in reaching its decision on whether to agree or refuse an asset transfer request.

4.3 Land is eligible for right to buy provisions if, in the opinion of Ministers, it is wholly or mainly abandoned or neglected. It would be helpful to have greater transparency, in regulations or guidance, as to what constitutes wholly or mainly abandoned or neglected land.

4.4 There could be cases where abandoned or neglected land is partly or wholly contaminated and may not be suited to a use the community would like to see. Appropriate mechanisms will be needed to ensure that communities have access to expert advice and support in this regard.

4.5 Conversely, land which may be wholly or mainly abandoned or neglected could also have a high value in terms of the ecosystem services it offers - such as supporting biodiversity and flood risk management. Having a robust evidence base will be important to inform decision making. Both the land valuation and process of determining requests for transfer of such land should take account of ecosystem value in a systematic way.

4.6 It may be useful to build in a proportionate consultation process between the relevant authority and other public bodies in reaching a decision on an asset transfer request, to help achieve shared outcomes.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

5.1 The Policy memorandum provides a ‘light touch’ assessment of the sustainable development impacts of the Bill. The Bill has the potential to make a positive contribution to sustainable development and there may be an opportunity for government to provide regulations and/or guidance to help all parties maximise these opportunities.

5.2 A pro-sustainability culture could help community planning partners better integrate and align their sustainable development outcomes. The UK National Ecosystems Services conceptual framework may provide a useful toolkit for community planning partners. It helps decision-makers understand the wider value of our ecosystems and the services they offer, summarising the cycle that links human societies and their wellbeing with the environment.

5.3 There may be challenges for communities around ensuring that right to buy land and asset transfers are used sustainably, are suitably managed, and are maintained in perpetuity.

5.4 In reaching decisions on asset transfer and participation requests, authorities are required to take into consideration specific matters, including ‘social wellbeing’ or ‘environmental wellbeing’. These are ambiguous terms. We would prefer to see...
‘social wellbeing replaced with ‘wellbeing’ and ‘environmental wellbeing’ replaced by ‘environmental protection and improvement’.

END

SEPA
04 September 2014
Dear Committee

COMMUNITY EMPOWERMENT (SCOTLAND) BILL – CALL FOR WRITTEN EVIDENCE

I am writing to you on behalf of the eight Community Justice Authorities (CJAs) in Scotland. We welcome this opportunity to submit our evidence, setting out our views on the provisions of this wide-ranging Bill.

Our particular interest in this Bill stems from the Scottish Government’s plans to transfer the responsibility for Community Justice and reducing re-offending from the CJAs to Scotland’s 32 Community Planning Partnerships (CPPs) by early 2016.

Our experience is that resilient, confident communities are at the heart of developing a safer, stronger Scotland. The Bill will provide CPPs with the powers to engage with Community Justice organisations at both national and community levels. Communities will need to be supported to acknowledge, engage and take ownership of the agenda and to realise their own potential to reduce re-offending.

Given that our interest in the Bill is specific, we have not responded directly to the five questions set out in your call for written evidence. However, there are a number of issues that we feel remain unresolved and should be brought to the Committee’s attention - we have outlined these below:

i. There is an absence of specified justice bodies within the list of public bodies to be covered in Schedule 2 (Annex C, page 21). If we see Community Planning as the critical partnership for driving the public sector commitment to Community Empowerment, then we need to ensure CPPs link strategically with all key partners.

For community justice, we note that under the lists of Relevant Authorities and Public Services Authorities, key partners are not explicitly listed. Community Empowerment, in relation to improving justice within communities, will fall short without the critical input from
partners within justice, in particular the Scottish Prison Service, the Crown Office and Procurator Fiscals Office and the Scottish Court Service.

There are also a number of key third sector partners, many unique to justice, who are vital, not least of which is Victim Support Scotland.

ii. Whilst the definition of Community Body, set out at section 1, appears widely embracing, the necessary steps within the definition may inhibit engagement with broader, informal communities of interest. Such communities are not necessarily organised or constituted groups. This would potentially limit the opportunity for many justice-based communities of interest to engage with public bodies, such as offenders and ex-offenders (including those recently released from custody), families affected by the criminal justice system and victims of crime.

iii. It is vital that there is a clear place for Community Justice on the agenda of CPPs that does not get overshadowed by other, high profile issues. CPPs need to be clear on what Community Justice encompasses, and to be resourced to take on their new duties and responsibilities. This should be clearly linked into the lessons that can be shared from the CJAs.

iv. CJAs have demonstrated the added value of partnership working across a wide range of groups and organisations, including a strong role for the third sector. It is our experience that partners can and will commit to shared outcomes where these are clearly defined and of mutual benefit. CJAs have also developed and tested out new models of collaborative funding and joint capacity building. To develop, drive forward and sustain this level of partnership requires significant coordination and support.

v. Community interests and priorities must continue to play a central role in community justice within the new arrangements. Operating as CJA Boards, local Elected Members have brought communities’ voices to the table.

vi. We welcome the impetus on partners to contribute (rather than simply identify or align) funds, staff and other resources that the CPPs deem appropriate. We do however have concerns around the priority Community Justice will receive amongst the competing demands that this will bring.

vii. We welcome the enhanced focus on neighbourhood planning within community planning. It should be noted though, that within Justice, there is very little data available at a neighbourhood level, therefore most justice partners will need considerable support (and in some cases resources) to report in this way.

Thank you again for the opportunity to submit written comments on this Bill. We believe that communities lie at the heart of promoting community justice and reducing reoffending, and that the Community Empowerment Bill therefore has the potential to create a safer and stronger Scotland.

Yours faithfully

Cllr Peter McNamara
Chair of National CJA Conveners Group
Local Government and Regeneration Committee

Submission Name: NHS Health Scotland  Submission Number: 62

NHS Health Scotland welcomes the bill and also recognises that a number of the committee’s questions reflect concerns we raised in our previous consultation response and which overlap with our experience and current activity around third sector and community engagement, the establishment of a place standard, support for Community Planning Partnerships and health inequalities impact assessment.

An important introductory point would be use of consistent terminology in this and other current and emerging legislation. The Scottish Public Health Observatory’s brief introduction to ‘assets’ outlines meanings, background and challenges and could be a useful contribution to maximising clarity and consistency.

Engagement

NHS Health Scotland have a long history of supporting **third sector and community engagement**, funding the Community Health Exchange (CHEX) and Voluntary Health Scotland (VHS) for over fifteen years. These are well respected national intermediaries tasked to ensure the least vocal communities have the capacity and confidence to be heard. Health Scotland’s experience and understanding of working between low income communities and national policy development and delivery was further strengthened last year when Community Food and Health (Scotland) transferred in to the organisation following sixteen years with Consumer Focus Scotland.

All three national intermediaries have worked closely together over the years, most recently contributing to the development with government of the engagement matrix and a learning exchange programme. The broad nature of the bill would suggest that the collaboration of appropriate national intermediaries, not only in health but in community development, economic development and sustainable development could provide the right mix to support take up and effective impact of the bill’s provisions by the communities with most to gain.

Working with Health Scotland, CHEX was central to the delivery of the government funded programme ‘Healthy Communities: Meeting the Shared Challenge’ and all three national intermediaries worked closely with Health Scotland around the confidence and capacity of communities to work with economic evidence, a key ability when engaging with the bill’s provisions.

Health Scotland’s experience of engagement with the third sector suggests that a focus only on community bodies with a written constitution (part 3 section 14) could miss the communities at the sharpest end of deprivation and health inequalities with evidence south of the border suggesting that deprived areas have fewer charities and voluntary groups. The picture concerning place-based policies and dimensions of equality was very usefully reviewed north of the border by the Equalities and Human Rights Commission.
Place

NHS Health Scotland is working in partnership with Scottish Government (Architecture and Place) and Architecture and Design Scotland to develop a **Place Standard for Scotland**. The Place Standard will be specifically designed to support communities, the public sector and the private sector (where appropriate) to work together to deliver high quality places that nurture health and wellbeing. This initiative stems in part from a recognition of the importance of the environment as an influence on health, and ensuring deprived areas gain most benefit will enable the Place Standard to contribute to a reduction in health inequalities. Key themes within the Place Standard are likely to include walkability, the use and maintenance of public spaces, local services and amenities, and perceptions of safety. Community voice and influence and the capacity for communities to drive improvements to their local neighbourhood will be essential components of the Place Standard and critical to its implementation. Provisions within the Community Empowerment Bill should augment this capacity. For example the idea that CPPs should empower communities; community influence over public services; and community use of public land and buildings are consistent with the principles and goals of the Place Standard. The Place Standard will provide a resource to support and encourage communities to influence their neighbourhoods using provisions contained within the bill where appropriate, and conversely the bill should empower communities to exert greater influence over their local environment.

Support

Alongside this an **Inequalities Action Group** has been established. Its remit includes identifying feasible actions to address health inequalities through the Community Planning Partnership process (national and local) over the next three years. It flows from the Ministerial Task Force report. NHS Health Scotland’s Chief Executive, Gerry McLaughlin, chairs the group, comprising of a core partnership between NHS Health Scotland, Scottish Government, COSLA and SCVO.

Impact

NHS Health Scotland has developed a **Health Inequalities Impact Assessment (HIIA) toolkit** which offers an integrated approach to assessment of potential impacts of a policy or plan on groups legally protected by the Equality Act 2010, wider population groups, the social determinants of health and human rights.

The main aim of HIIA is to strengthen the contribution of policies and plans to reducing health inequalities by improving equity of access, ensuring non-discriminatory practice and acting on the social determinants of health. Any public sector agency that makes a contribution to reducing health inequalities can use the toolkit.
HIIA fulfils the legal requirement to conduct an impact assessment under both Section 149 of the Equality Act 2010 (the public sector equality duty), and the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012.

NHS Health Scotland is able to offer a variety of support mechanisms to agencies wishing to undertake a Health Inequalities Impact Assessment

NHS Health Scotland clearly believe the proposed legislation impacts on a number of areas where we have experience, evidence and an active involvement and would be happy to assist the committee in your deliberations in any way we can.

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i [www.scotpho.org.uk/life-circumstances/assets](http://www.scotpho.org.uk/life-circumstances/assets)

ii [www.chex.org.uk/](http://www.chex.org.uk/)

iii [www.vhscotland.org.uk/](http://www.vhscotland.org.uk/)

iv [www.communityfoodandhealth.org.uk/](http://www.communityfoodandhealth.org.uk/)


xi [www.scotland.gov.uk/Publications/2013/06/9811/5](http://www.scotland.gov.uk/Publications/2013/06/9811/5)

Scottish Community Alliance (SCA) is a coalition of national networks that provide specialist technical advice and opportunities for peer to peer support across a broad range of community based activity that takes place throughout Scotland. Many of these intermediary networks have developed a body of knowledge and expertise which relate to specific measures proposed in the Community Empowerment (Scotland) Bill. For instance, Community Land Scotland, Community Woodlands Association and Development Trusts Association Scotland have significant expertise in relation to the provisions which seek to extend the Community Right to Buy and simplify and improve the provisions contained in the Land Reform (Scotland) Act 2003. Some, like Scottish Allotments and Gardens Society, Nourish and Federation of City farms and Community Gardens have a special interest in those proposals that relate to allotments and the expansion of community growing and will be providing expert evidence in that regard. Others have a more general interest in the broader principles of community empowerment and may offer some comment or detailed evidence on that basis. The evidence submitted here by SCA will not replicate the detailed evidence and analysis of its member networks. Instead SCA seeks to offer some general comments on the measures proposed by the Bill.

During the early consultations on the Bill, SCA took the view that legislation of this nature should be underpinned by some ‘first principles’ of community empowerment. These are:

- **Subsidiarity** is an organising principle that should inform all aspects public policy in Scotland and be at the heart of the new legislation on community empowerment. The principle of subsidiarity requires any matter to be handled by the smallest, lowest, or least centralised authority capable of addressing that matter effectively.

- **Self-determination.** Local people should be allowed to determine for themselves how their community is defined and which local organisational structure is best suited to take forward their programme of local empowerment.

- **Local people leading.** Community empowerment only occurs when local people lead the process of taking power and resources to themselves. Communities empower themselves through bottom-up activity and the evidence points to the fact that better outcomes are invariably achieved when this occurs.

- **Land and self-generated income.** Ownership of land and control over land use, and the capacity to generate income streams which are independent of the state, are critical in determining the degree to which a community is able to empower itself.
1. To what extent do you consider the Bill will empower communities?

This Bill needs to be seen as one element in a series of related policy developments, particularly over the past five years. When Scottish Government and COSLA launched the Community Empowerment Action Plan in 2009, Alex Neil MSP, the Minister of Housing and Communities described community empowerment as a journey with no fixed destination with the Action Plan being just one of many staging posts along that journey. The Action Plan had special significance because it represented the first time that the Scottish Government had published a formal policy position in relation to community empowerment. And since 2009, the policy context has become steadily more encouraging and supportive of community empowerment.

The most recent national regeneration strategy published in 2011 – Achieving a Sustainable Future – being another example of this change. This new strategy, with its focus on community led regeneration, reflected a clear departure from previous approaches (which had been predominantly top down and led by investment in physical infrastructure) by acknowledging that these regeneration efforts had largely failed to achieve the desired outcomes, and in any event were now ‘fractured’ as a result of the financial crisis in 2008. The crisis in our system of public services identified by the Christie Commission (2011) and the new emerging consensus around the value of co-produced services, added further weight to the view that communities would have a central part to play in the design and delivery of public services in the future. The developing land reform agenda, and the emergence over the past ten years or so of a vibrant community sector based on the ownership of land and other asset classes, have further contributed to a general policy environment into which a Bill of this nature can only be viewed as adding further momentum.

However, we are aware that that the principal driver behind this Bill is the Scottish Government’s commitment to the public service reform agenda rather than any belief in the intrinsic value of community empowerment as a ‘social good’ in its own right. That said, this Bill contains new opportunities that communities can take advantage of and, if they do, these communities are likely to become more empowered than they otherwise would be. It has often been said during the course of the consultations for this Bill, that legislation cannot empower communities - only local people can empower themselves. Therefore, it is important to be clear that the Bill on its own is only going to present opportunities that local people may or may not be able to take advantage of. The extent to which local people choose to, or are able to, take advantage of these opportunities will inevitably vary across the country and be determined by a range of other factors – some internal, some external. These factors may be categorised as capacity (skills, experience, confidence and access to external networks), resources (funding and human), and the immediate context (supportive public agencies, local development opportunities). Each of these factors will need to be addressed if the full potential of this Bill is to be maximised.

One further point is worth making in the context this section. The debate around community empowerment is heavily shaped by the extent to which communities have been able to engage with the current system of local government. Concerns about the health of Scotland’s system of local representative democracy are well documented and most recently these have been laid bare in the final report of The Commission for Strengthening Local Democracy. It could be argued that the current level of interest in how communities can be empowered correlates directly with the level of concern about this democratic deficit. In other words, if this deficit in the quality of local democracy was to be resolved, the community empowerment debate might well be very different. It could also be argued that the proposals
within the Bill to enhance levels of community empowerment are in effect only compensatory measures for a deeper problem within local democracy.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

While it is true that only communities that can empower themselves, it is equally true that public sector organisations are not passive around this process – they can either play an enabling role or they can play an obstructive one but they cannot be neutral. If those in the public sector choose to see the community empowerment process as an opportunity that can assist them in the design and delivery of public services at a time of ever decreasing resources, then there are very significant benefits to be gained. If on the other hand, they see it as a threat or an unnecessary distraction at a time of ever more scarce resources, then trouble lies ahead. At the heart of this policy shift towards community and co-produced solutions lies a requirement for an openness to new thinking and ways of working. Changing attitudes and culture on this scale is very difficult to bring about in large organisations and remains one of the biggest obstacles to be overcome. If public sector organisations are able to view an empowered community sector as a partner, with parity of esteem, within the community planning process then significant long term benefits may well accrue.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

All communities are different, have widely varying capabilities and levels of capacity with which to take advantage of opportunities as they present themselves. There is well researched evidence to show that when resources are scarce, those communities with ‘sharp elbows’ end up with the lion’s share of what is available. Given the absence of a level playing field in this respect and in the interests of supporting those communities where need is greatest, there is going to have to be substantial investment in compensatory measures. But this is not just about resources – although that is important – it is as much, if not more so, about how these resources are allocated. Since the days of New Life for Urban Scotland, 100’s of millions of pounds have been spent and much of it wasted in the name of community regeneration. In particular, much of this wasted investment has been in short term, revenue funded projects with no eye on the long term sustainability of the regeneration process, with many of these projects conceived of and parachuted into these communities in top down fashion. If this fundamental problem is to be addressed, there requires to be a serious reappraisal of how the key issues of trust and risk are to be managed in the future. In the past, by effectively controlling all decisions of how and where regeneration investment was to be made, the public agencies were working within very low thresholds of risk and trust – ‘risk’ in terms of the risk of money being misspent (although that depends on what is understood to be meant by misspent) and ‘trust’ in terms of trusting local people to know what is needed to improve their community. In respect of both of these critically important elements of the regeneration process, what is required more than anything else is a fundamental shift in terms of attitude and approach towards risk and trust.
With respect to which measures are needed to assist communities, SCA believes much greater emphasis needs to be given to investing in the community sector’s capacity to support itself. In particular much more could be done to support peer to peer learning and support. This already goes on in an informal, ‘under the radar’ fashion with a number of community anchor organisations around the country being called upon to offer ‘fire-fighting’ support in other communities where the need for such help has been identified. Most of this is informal and comes about as a result of the constant networking that runs throughout the community sector. This work however could be built upon and expanded with appropriate levels of investment.

In some cases, a very little investment can make an enormous difference. A small grant to allow a community to visit with another group that has already achieved something of interest, can have a massive impact. Previously, a Knowledge and Skills Exchange Fund which enabled this kind of activity across the sector had proved to be very popular and successful. It was simple idea – to remove the financial barrier to communities learning from each other. However it fell victim to the budget cuts. This year the Scottish Government has demonstrated that it has been listening to the sector and has invested significant resources into a Strengthening Communities Fund which invests directly into a number anchor organisation with aim of helping them to accelerate their business plans and become more sustainable. This is to be welcomed but it is important it does not become another piloted approach that is soon forgotten. Instead we would argue that this is the kind of investment that will be critical to the successful implementation of this Bill and should be expanded upon at the earliest opportunity.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

i) National outcomes.

Enshrining the national outcomes in legislation is a statement of the Government’s commitment to this way of setting out its strategic priorities and in showing a degree of accountability and transparency in reporting progress towards these priorities. It is therefore to be supported although the extent to which it is relevant to community empowerment is less clear.

ii) Community Planning

As with the section on National Outcomes, the relevance of community planning as it has been widely understood and practised since its inception in 2003, to community empowerment is not clear. Other than the duty to engage with communities which, as the Policy Memorandum, acknowledges is a distinct activity from community empowerment, it is not clear how putting CPPs on a statutory footing will improve the situation but there again, neither should it make it any worse.

iii) Participation requests

This is a positive measure that presents communities with a new opportunity to enter dialogue with a public service provider over an aspect of a public service and ultimately to affect real change and improved outcomes within a service area. However its value will depend largely on the internal culture of the public body and how that body receives and responds to this request. The absence of any appeal process leaves the balance of power...
with the public body which may ultimately discourage communities from exercising this right. It is however to be welcomed that there appears to be a presumption in favour of the community’s right to participate with a requirement on the part of the public body to explain its refusal.

There is some concern as to the applicability of this provision to the arms-length organisations that many Councils have set up to run services and administer assets. Clarification is sought on this.

iv) Community right to buy

There is much in this section that is to be welcomed. In particular the extension of the community to right to buy to all communities in Scotland and the changes to the procedures of the Land Reform Act to make it simpler and more widely accessible. There are some technical aspects of these proposed procedures that colleagues from the community land movement have identified which make sense and would improve the operation of this part of the Bill.

There are three areas of this section we would like to make specific comment on:

a) **Late applications to register interest in land.** In an ideal world, a community body would survey all local land and assets, agree amongst themselves which assets are of strategic long term importance to the community and then set about making a multiple set of applications, thereby registering interest in all these key assets. But the real world is not the ideal world. Communities are reactive not proactive by nature, and are galvanised into action usually only when something is threatened. But even if they had the inclination to think forward to the day that any of these strategic assets were to be put on the market, it is unlikely they would wish to assert their rights due to the potential for ill feeling that this might arouse from the potential seller who will perceive this as a constraint on their freedom to access the best market price possible. The additional hurdles associated with a late registration also appear to be too burdensome. We would therefore support the position of Community Land Scotland in respect of this aspect of the Bill.

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

c) **Absolute right to buy – abandoned and neglected land.** We support the introduction of this provision in principle but would also support a number of concerns that members have raised in their more detailed submissions. Particularly around some inconsistencies with the procedures as laid down for this section as compared to the improved procedures for the pre-emptive Community Right to Buy. In particular, we would agree with the comments from the Federation of City Farms and Community Gardens with regard to the suggestion that this section in the new Bill has followed the same wording as the Land Reform Act 2003 rather than the new improved wording for the pre-emptive right to buy. We would also support the view
that more clarity is needed to determine what is meant by abandoned and neglected land as the same description of land in two very different settings (city centre vs remote rural) can be interpreted very differently. Given that these provisions could result in an asset owner being deprived of his/her property against their wishes, it is very important that there is absolute clarity around the circumstances in which this will be permissible. A number of SCA members have raised specific and technical questions regarding this section. While these issues need to be addressed, it is also clear that all these responses are in support of the broad principle of having an absolute right to buy as a backstop provision.

v) Asset transfer requests

These provisions are to be welcomed and in particular the principle that it is not only the transfer of ownership of an asset that communities might be interested in but also the management or use of an asset. In each of these respects the Bill will strengthen the hand of communities. The presumption in favour of the community’s interest in a public asset and the placing of an onus on the public body to respond and give reasons if the transfer is not possible is also a step forward. It would be an even bigger step forward if there was a duty on public authorities to maintain and publish an asset register which communities could inspect and consider which, if any, public assets they were interested in.

vi) The Common Good

This section lacks real substance and it is unlikely to resolve the long running issues that have surrounded the common good. In particular it does not resolve the issue of what is meant by the common good. Requiring local authorities to publish a register will be of little value if there is no statutory definition of what should be included in it. There are other substantive questions such as whether the administration of common good funds should be invested with communities rather than local authorities and who should hold the title to common good assets that have not been resolved and should perhaps be the subject of wider debate.

vii) Allotments

This section has been broadly welcomed by SCA members with specialist knowledge of growing and the local food agenda. In particular the requirement on local authorities to produce a local food growing strategy will provide an important focus for this important aspect of building local resilience. In general it is to be welcomed that the previous and outdated allotment legislation which was no longer fit for purpose is to be replaced by this new legislation. However there are aspects of the old legislation that appear to have been lost. In particular the duty on local authorities to provide suitable land to meet demand from their existing stock or by leasing or purchasing new land does not appear in the new legislation and this will undermine the aim of providing better support for demand for allotments and community growing spaces. SAGS have raised a specific concern about the lack of precision in the Bill when referencing the size of an allotment and have proposed that the Bill should refer to a normal plot as being 250 square meters (which can then be subdivided into halves or quarters to suit local circumstances).

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

SCA has no comment to make.
Dear Clerk to the Local Government and Regeneration Committee,

Please find attached evidence to your committee on the Community Empowerment Bill from the Edinburgh Compact Partnership and Edinburgh’s Third Sector Strategy Group – on behalf of the City’s Third Sector.

In answer to the specific questions you have asked in your call for evidence,

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the policy memorandum?

1: As it stands, the Bill will further empower Scotland’s strongest communities – those with the greatest power, influence, and voice. Considerable work would need to be undertaken to redress existing imbalances in power. Our evidence suggests better engagement with the third sector and with third sector interfaces.

2: Significant impacts on public sector agencies could flow from this Bill. In our opinion, these are likely to be differently perceived by different people, agencies and sectors. Embarking on a process of culture change such as this Bill could well engender will very likely have a range of impacts, and much will depend not only on the legislation but also on how it is interpreted and applied.

3: Some communities already have the capabilities to take advantage of the provisions in this Bill, but too many – in our opinion – do not. Greater coproduction and a concerted effort to tackle social inequalities could go a long way to ensuring that more people and communities are better able to benefit from this Bill.

4: As per written evidence, and previous submissions linked from the attached document.

5: Please see comments within our written evidence.

I am happy to take any questions you might have about our input.

End
Community Empowerment (Scotland) Bill

Evidence to the Local Government & Regeneration Committee from the Edinburgh Compact Partnership and the Third Sector Strategy Group – on behalf of the city’s Third Sector.  

The Edinburgh Compact Partnership is a multi-agency strategic partnership within the Edinburgh Partnership (Community Planning Partnership) family: EdinburghCompact.org  

The Third Sector Strategy Group (TSSG) brings a range of thematic and geographic Third Sector interests together with Edinburgh’s Third Sector Interface. The TSSG feeds Third Sector partners in to the Edinburgh Compact Partnership. See: EVOC.org.uk/partnership/third-sector-strategy-group/  

EVOC (Edinburgh Voluntary Organisations’ Council) – as part of Edinburgh’s TSI (Third Sector Interface) – supports both the TSSG and the Edinburgh Compact Partnership.

EDINBURGH’S Third Sector Strategy Group (TSSG) has responded previously to calls for submissions in the journey towards this Community Empowerment (Scotland) Bill. First in September 2012, then again in January 2014. It might be helpful if this submission is read together with those documents.

First, it is important to establish that both the Compact Partnership and the TSSG clearly welcome the Scottish Government’s intention to enable the development of empowered communities.

Stripped down to the bare essentials, there are two core themes to our input: Coproduction and Equality.

By our definition, Coproduction presumes equal and respectful relationships characterised by trust and predicated on shared purpose. This joint purpose may be to make budget or policy decisions, or to plan, deliver and assess human services. We support the Community Empowerment Bill, and the Government’s intent, to the extent that it enables and encourages coproductive behaviours and relationships.

Similarly, we are wholly supportive of the Community Empowerment Bill, and the intention behind it, if (and Only if) the Bill acts to reduce social inequalities rather than exacerbate them. A Bill drafted in ‘general’ terms, without recognising that different people and different communities bring with them unequal abilities to engage and to shape change, will only perpetuate existing inequalities in wealth, power, and voice.

In addition to these two general points, as well as the points made in our previous submissions, we hope the committee will be receptive to the following key messages.
Role of the Third Sector

Within a vibrant and engaged Scottish social context the Third Sector plays a key role. Edinburgh has arguably been somewhat ‘ahead of the curve,’ with a Compact Partnership (bringing a range of Third Sector and Public Sector partners together) installed 10 years ago.

Increasingly the Third Sector delivers services under contract to local government and/or the NHS, and can – in that regard – be seen as a delivery agent acting on behalf of ‘the state.’

Simultaneously, however, and often particularly because the Third Sector delivers services to those people and communities furthest beyond the reach of public services, the Third Sector is also an effective conduit from the public sector to disadvantaged communities in greatest need. While they may not have been set up expressly for that purpose, many voluntary organisations find themselves acting to articulate the voices of people most distant from mainstream services. These are often the voices which are the most difficult for the public sector to reach and to hear.

For these reasons, the Third Sector occupies a unique role within Scottish society today – both reaching out to and speaking out for the least powerful communities. The very communities, in fact, most in need of empowerment.

Given this unique position that Scotland’s Third Sector occupies, it should be enabled to positively and creatively impact on various elements of the Community Empowerment Bill including: setting, reviewing and revising National Outcomes; engaging and supporting engagement with Community Planning; developing, engaging with, and enabling voice in setting, reviewing and reporting on Outcome Improvement Processes; and more supporting and enabling Community Participation and Community Right to Buy. A stronger duty placed on Community Planning Partnerships to engage with the Third Sector, and with Third Sector Interfaces, would be welcome.

Within the Third Sector, Scotland’s 32 Third Sector Interfaces play a unique, pivotal role in (among other things) enabling participation in and participating in Community Planning. Over and above support for Scotland’s Third Sector in general, the Community Empowerment Bill should include a particular role for local Third Sector Interfaces. Interfaces engage with Community Planning Partnerships, enable Third Sector engagement more widely, and – where appropriate – themselves represent the interests of the Third Sector. This role requires effective support, and explicit recognition (we would suggest) outlined within the guidance accompanying the Community Empowerment Bill.

Edinburgh’s Third Sector wishes to add its voice to those proposing that (for the first time ever) the guidance accompanying this legislation be coproduced - with legislators, Third Sector Interfaces, and the broader Third Sector engaging with each other in equal, respectful, trusting and purposeful ways.
Specific Suggestions

In line with the themes of Coproduction and Equality outlined above, our specific suggestions are these:
1 Coproduce the Guidance which will accompany the Bill. We would be pleased to help support this process.
2 Add ‘the reduction of social inequalities,’ ‘social equality,’ ‘a flattening of Scotland’s social inequality gradient,’ or similar to the list at 19 (3) (c)
3 Add explanatory notes in the Guidance which explicitly draw out how the reduction of social inequalities and the removal of poverty from Scotland lie behind all of the terms within 19 (3) (c)
4 Strengthen the imperative on Community Planning Partners (and Partnerships) to engage effectively with all Communities who wish to, actively redressing existing imbalances in power, influence and voice.

For further information, or to discuss anything within this submission, please contact:

Useful links:
Edinburgh Compact Partnership: www.EdinburghCompact.org


Ardrishaig Community Council
Community Empowerment (Scotland) Bill

Reference: Policy Memorandum-Easy Read Version

Comments by Ardrishaig Community Council

Paragraph 2, page 6 Community Planning

The new law should require that public service providers must make every effort to engage with the community ideally via the community council. Public service providers should be required to attend a community council meeting or organise public meetings in order to have meaningful discussion on people's needs. Given the volunteer make up of a community council, public service providers should provide personnel resources, to help the community council develop meaningful outputs and outcomes which can contribute to community plans.

Paragraph 3, page 7 Community Organisations

Public service providers should pass all proposals for service changes to a community council as a statutory requirement for discussion.

Paragraph 4, page 7 Community Right to Buy.

Ardrishaig Community Council supports the new law to allow for the purchase of land or building assets even if the owner does not want to sell.

Paragraph 6, page 9 'Common Good' Property

The new law to require that local councils should make a list of common good property should also apply to other public bodies. For instance, this would require a list from Scottish Canals, owners of the Crinan Canal and land and building assets in Ardrishaig.

Edward Laughton
Convener
4 September 2014
Local Government and Regeneration Committee

Community Empowerment (Scotland) Bill Call for evidence (June 2014)

Response from Community Learning and Development Managers Scotland

The aim of Community Learning and Development Managers Scotland (CLDMS) is to provide a national focus on professional issues and standards for Community Learning and Development (CLD) provision, provided directly or indirectly by local authorities. Managers from all of the 32 Scottish local authorities are involved. They provide, or plan with partners for, a wide range of services including community development and community capacity building, youth work and community-based adult learning.

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

The Bill is a step in the right direction. It has the potential to give communities more confidence that they will be heard, that they can help to set the agenda for change, and that they can acquire and use assets for their own benefit.

The proposals on new duties for community planning partnerships and partner organisations set out in the Bill do not directly facilitate community empowerment. It refers only to ‘consulting’ and ‘engaging’, and only in the context of identifying and prioritising outcomes. Empowerment is not simply a matter of having rights to participate. Although these rights are necessary, they are not sufficient. The enhanced duties for community planning will not lead to the empowerment of communities unless they are used to continue to engage with communities across a broad range of issues, to give community empowerment the priority it needs and to apply principles of social justice in doing so.

The definition of the community planning partners ‘at the table’ does not include community interests. Instead their participation appears to be at the invitation of the partners from other agencies, should they choose to do so. There is a danger that this may further centralise and cement power with local authorities and other public bodies.

The Bill fails to give Community Planning Partnerships any overall responsibility for supporting community empowerment in their areas, through co-ordinating the community
development work and community engagement processes of partners. Nor does it place obligations on individual partner agencies to support community empowerment, but only engagement in Community Planning itself.

The requirement that each CPP should consult and engage with communities is to be welcomed, but further guidance may be required to ensure that engagement is properly planned, resourced and integrated across partners. There is a need for a clear statement, agreed across each Partnership, of responsibilities for delivering community engagement, expressing a commitment to engagement that applies both jointly and severally to the partners demonstrating how the National Standards for Community Engagement will be applied, and providing accountability for engagement at the same level as the Key Performance Indicators for services. There must be flexibility and innovation in the approach to offering opportunities for dialogue with groups of people who might not otherwise take part – including young people.

Mechanisms need to be established to enable communities to be more involved in the planning and delivery of public services and the identification and delivery of local solutions to issues. The right to raise issues and obtain a response is an integral part of effective engagement and the proposed rights to make Participation Requests are a welcome contribution to ensuring this.

The provision could, rightly, potentially be used at many levels from e.g. influencing a city-wide service providing care to influencing provision in a neighbourhood facility. The scale and nature of the improvement processes involved would be significantly different and therefore the Bill must be worded to allow considerable flexibility in interpretation.

The definition of ‘outcome improvement processes’ should also be sufficiently broad as to allow communities to be enabled to make appropriate choices from a range of options, from engagement in decision making through to direct service delivery, participatory budgeting etc. It should be made clear that a right to request participation in ‘delivering outcomes’ can include a request to be involved in how services are designed, delivered and evaluated.

Ideally we should work for a system where participation in outcomes is offered without the need for formal requests. Arriving at this situation will require offering potential users of these provisions the opportunity to participate in learning and community development processes.

We also welcome the provisions that better enable communities to take more control over land and buildings.
But we have to question the extent to which all of these provisions, in isolation, will empower those communities that are excluded or marginalised, or who are unaware of the rights enshrined in the Bill. We need to be vigilant over which communities are actually able to exercise the new rights. Deprived or marginal communities remain so partly because they lack the power to make the case for the changes that they seek. For such communities the rights introduced in the Bill will not in themselves confer power or influence. For them empowerment is better understood as a long-term, purposeful process that builds cohesion and confidence and establishes a social and organisational infrastructure.

The next steps need to focus on ensuring that all communities are equipped and supported to take advantage of the rights and duties contained in the Bill, and we would encourage Scottish Ministers to consider actions to take this forward.

The values and skills that are put in to practice by Community Learning and Development workers in all sectors are vital to this process. These include not only community organising and capacity building work but also adult learning and youth work that equips people with the necessary knowledge and skills.

We welcome the fact that the Policy Memorandum reminds us that legislation alone cannot deliver community empowerment and that ‘appropriate support, guidance and a culture of nurturing community action’ are also vital. We do however consider that, as we outline in response to the questions 3 and 4, more could be done to make these links explicit in the legislation.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

It is entirely appropriate that Community Planning becomes more outcome focused. We welcome the emphasis in the Policy Memorandum (37), which states that the local outcome improvement plans should provide: ‘a clear “plan for place”, focused on prevention and reducing inequalities’.

Community empowerment is a key plank of public service reform. Public service providers should fully engage communities in decisions about the design and delivery of services to achieve such outcomes.

Public sector bodies should be encouraged to develop Community Asset Transfer strategies and establish a set of ground rules against which prospective transfers are identified, supported, assessed and taken forward. The process should assist communities in making
appropriate choices from the range of options from full ownership to rights of management and use. Overall, the aim must for public authorities to set out a transparent framework that proactively enables and manages the transfer of assets to community organisations in order to bring about long term social, economic and environmental benefits to the community and to public services, and not merely in order to assist authorities to dispose of troublesome assets.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Whilst the Policy Memorandum is clear that support is needed to enable communities to take advantage of new rights, it is less clear on how this should be provided and by whom, other than a vague reference to ‘the attitudes, skills and commitment of many people working in many different organisations’. This is not enough to address the acknowledged inconsistencies in support to communities or to promote best practice (paragraphs 19 and 20).

A clear link is needed to a strategy for meeting Community Learning and Development needs. Community Planning Partnerships need to demonstrate clearly how they have taken account of the 2012 Strategic Guidance for Community Learning and Development and have embedded planning for CLD in their processes.

The needs for community development support, community capacity building, and learning aimed at enabling people to take action on issues that concern them are among the needs are being assessed as local strategies that are being drawn up under the Community Learning and Development (Scotland) Regulations 2013. It would be helpful if the Bill could explicitly state that support to communities to exercise their rights under the Bill and to enable community empowerment are needs that must be taken into account in future strategies developed in terms of the Regulations.

We welcome the provision in section 9 (3) of the Bill which states that: ‘Each community planning partner must, in relation to a community planning partnership, contribute such funds, staff and other resources as the community planning partnership considers appropriate’ (a) with a view to improving, or contributing to an improvement in, the achievement of each local outcome referred to in section 5(2) (a), and (b) for the purpose of securing the participation of the community bodies mentioned in section 4(5)(a) in
community planning. This makes it clear that resources do need to be made available to support community involvement and participation in the outcome improvement process.

We would recommend that similar provisions should apply in the case of participation and asset transfer requests.

Consideration also needs to be given to the skills that may be needed to advise community-led bodies to raise concerns under the participation process, and potential conflicts of interest between community bodies and between communities and public bodies must be recognised. Potential conflicts will presumably need to be addressed through the CPP process. Guidance on how disputed or conflicting outcomes might be handled should be explicit. This is not to question the right to request participation – which should be fundamental – but an acknowledgement that the process may be fraught with difficulty.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

We would like Community Planning Partnerships to be given an explicit overall responsibility for supporting community empowerment in their areas (Part 2, section 4), through co-ordinating the community development work and community engagement processes of partners, and an explicit duty on partners to make appropriate contributions (Part 2, section 9).

The 2013 Community Learning and Development Regulations require CLD partners to target resources to community need. The Bill should explicitly require partners in the recognising to take into account the need to support communities to make effective and equal use of its provisions when developing future Community Learning and Development strategies in terms of the Regulations (Part 2, section 9 or as appropriate).

The provisions in the provision in section 9 (3) for appropriate resourcing should be extended to apply in the case of participation and asset transfer requests.

We note that in response to the Committee’s questions about the effect of the Bill on Arms Length External Organisations the Scottish Government has stated that it is not its intention “to place duties in terms of participation requests on bodies which include members from outwith the public sector.” We are concerned that this is unduly restrictive, since many such bodies will include a minority of directors from other sectors. We would suggest the inclusion of all bodies covered by the Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2013, which designates as ‘a Scottish public authority in relation to any function of a public nature’ a body
5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

The implementation of the Bill’s proposals at a local level will require robust equality impact assessments to identify and overcome any barriers, identify and implement actions that will promote protected communities’ inclusion and participation in the processes of outcome improvement and asset management or ownership.

The experience of communities in areas of multiple deprivation may be restricted in relation to complex processes such as the transfer of assets and participating in outcome improvement processes. Properly resourced support will be crucial to ensure that such communities can access and experience the full benefits of the opportunities which the bill is creating. Individuals may also have general and specific learning needs in order to enable their effective participation, and such needs are most effectively met in a community learning context.

People with communication, physical and sensory issues will require additional resources to fully participate in these processes. Those tasked with the implementation of the programme must ensure that all delivery agencies are aware of their Duty under the Equality Act 2010 and that due regard is given in meeting the needs of all communities. This will require adequate resources to be made available to community groups to support equality of access e.g. communication supports, accessible buildings etc. and an awareness amongst public services of how to engage protected groups, and all disadvantaged groups, in developing an inclusive approach.

If community groups can acquire assets then they may be able to access funds for property/environmental improvements otherwise denied to local authorities. The converse also applies in that a community group may not have the resources to maintain an asset in an environmentally friendly fashion, which may leave the asset without sufficient environmental protection. Consequently, ongoing support to ensure the sustainability of any community group acquiring assets is vital.
Community Empowerment (Scotland) Bill: Written Evidence on the provisions of the Bill.

Annette Hastings, Professor of Urban Studies, School of Social and Political Sciences, University of Glasgow

I am grateful for the opportunity to contribute to the scrutiny process for the above Bill in written and oral form. I support the development of such a Bill - primarily because of the symbolic support it lends to the idea of giving community bodies a more central role in decision making about the nature and quality of the public services they use. I also support the opportunity it affords to such bodies to take on the management of land and assets where they so wish. The fact that the Bill envisages that the community empowerment agenda is of relevance to communities across Scotland is also to be welcomed. As a consequence the Bill might be expected to challenge the expectation that only disadvantaged communities should be required to voluntarily give of their time and effort if they are to achieve the outcomes from public services that they need.

However, I am concerned that the Bill does not centrally address the issue of inequality between communities. This concern relates mainly to the potential impact of the new right to request participation. It relates in particular to questions 1 and 3 in the Call for Evidence.

Historically a key driver of community development approaches to securing more effective participation has been the belief that more and effective participation might contribute to narrowing the gaps in resources, attention, opportunities and outcomes between more and less disadvantaged communities. However, I am concerned that provisions in the Bill may exacerbate already existing social and economic inequalities by further empowering those who already hold or have access to power. While the Bill and the associated Policy Memorandum acknowledge concerns voiced during the consultation process that communities are not equally equipped to take advantage of the provisions in the Bill, it lacks specific provisions designed to address these concerns. While I appreciate that the Guidance which will be drafted to support the Bill may address this issue in part, I would like to take this opportunity to suggest:

1) That the Bill itself should more explicitly recognise that participatory and empowerment processes can empower the powerful. This recognition might be expressed via a clear commitment to hold public bodies to account if they fail to:
a) take action to actively promote and provide additional support to participatory processes with disadvantaged communities at levels beyond that provided to better off communities;

b) consider the wider implications of participation requests on the outcomes likely to be experienced by other, particularly more disadvantaged, communities as a result of granting the request. In order to achieve this I would suggest an additional provision which might also place a duty on public bodies - when faced with a request to participate from one community body - to identify and invite other community bodies with an interest in the outcome to participate in the outcome improvement process. This would supplement Paragraph 49 of the Bill in which public bodies are facilitated to aggregate different requests into one outcome improvement process.

2) That the Guidance which accompanies the Bill should be centrally concerned with identifying specific measures, supports and good practice which could help ensure that disadvantaged communities are not further disadvantaged by aspects of the Bill. In particular it should make a clear and prominent link between the new rights in the Bill and the duties set out in the recent CLD Regulations.

3) That the Scottish Government should put in place a process of evaluation and review of the outcomes of the Bill designed to ensure that the new right to request participation does not result in the displacement of existing community development and engagement activities undertaken by public bodies with disadvantaged community groups. There is a need to build safeguards into the implementation of the Bill which are focused on ensuring that it results in additional levels of engagement in processes to improve the outcomes on public services, particularly amongst disadvantaged groups.

I would like to justify these suggestions with brief reference to the evidence of a series of research studies I have conducted over the past 10 or so years which have sought to understand the processes by which ‘middle class capture’ of public services can occur. The studies build on long standing concerns in both the policy and research communities that better off social groups are often the main beneficiaries of public services. The research offers some insight into how the participation of affluent groups in processes which can impact on the distribution of resources and benefits from public service provision can sustain and exacerbate inequalities. The studies have largely been conducted in collaboration with colleagues from the University of Glasgow and Heriot Watt University.
A key strand of this work has focused on the distribution of local government environmental services. One study involved a forensic analysis in three case study authorities of the allocation of street cleansing resources in order to understand the differences in workloads between staff providing services in more or less affluent streets. The distribution of staff workloads was then related to cleanliness outcomes. In one Scottish authority, there was clear evidence that better off streets enjoyed higher levels of street cleansing resource than streets which were home to more disadvantaged households. Thus, staff servicing better off streets had smaller workloads in terms of street length and per capita population levels than staff in deprived streets. These better off streets also enjoyed the best cleanliness outcomes. There was evidence that this pattern of resource distribution and outcomes had also previously been the case in one of the English case studies.

Evidence from senior and local managers, as well as with ‘front line’ operational staff, helped to explain this skew of resources and outcomes. It appeared to be a consequence of the participation of better off individuals and community groups in discussions with the local authority over the nature, quality and quantity of street cleansing services. These discussions generally took the form of complaints from individuals and community bodies about the quality or quantity of service received, or took place in fora such as community council meetings. While they were not the result of formal participatory processes, the discussions were focused on improving the outcomes of a particular service for a particular community. The evidence from staff suggested that the regressive pattern of workload allocation evidenced was not the result of a deliberate strategy to skew resource to better off areas, but was rather a consequence of numerous small adjustments to workloads made over a number of years to accommodate the demands of better off communities.

This example illustrates some of the challenges that public authorities will face as they try to be responsive to requests from community bodies to improve outcomes. In the example, improvements in the outcomes in some streets were at the expense of the quality of outcomes in other streets. Given that resources are limited and require to be rationed – and the extra demands placed on rationing by austerity – then the processes encouraged in the Bill could increase the degree of challenge faced by public bodies in this respect.

Indeed, question 2 of the Call for Evidence asks about the advantages and disadvantages of the provisions in the Bill on public bodies. A key disadvantage may be that it increases the expectations held about public bodies with respect to their capacity to improve outcomes. Such bodies may feel compelled to divert resources to particular places or populations, whether or not improving these outcomes for this particular community is a strategic priority. Our research suggests that a key part of the work undertaken by those working at a range of levels within public services involves ‘managing the middle classes’: that is, resisting or accommodating the demands of an often vociferous, articulate and well connected social group.
The need for substantial investment and practical support for disadvantaged communities to avail themselves of these new rights is also evidenced by research conducted with Peter Matthews at the University of Stirling. In this work, we demonstrate that there is a systematic bias within many public agencies to be more responsive to the ways in which the ‘sharp elbowed middle classes’ interact with the local state. Our synthesis of research evidence from the UK, US and Scandinavian countries suggested that the language, modes of argument and social connections of better off groups produced an inadvertent ‘alignment’ between these groups of service users and those making decisions within public services. We also argued that the practical support historically offered to support community participation in poorer communities (community development and CLD approaches focused on building competencies and confidences) can help to offset these disadvantages. In particular, it can help individuals and organisations in poorer communities to develop the modes of speaking and acting which predispose service providers to take their expressed needs and demands seriously – to deem them ‘appropriate’ according to their own value set and world view. This is a key reason for arguing for real practical action and investment in supporting more disadvantaged social groups.

One final issue is in relation to asset transfer requests, and the concern that public bodies may use the provision in the Bill to facilitate the offloading of liabilities rather than assets. My ongoing work with English local authorities involved in ambitious asset transfer programmes as part of their approach to managing severe budget cuts suggests that this will be a real danger in some places. For example, senior officers in one case study council were quite willing to admit on the record that a driver of the asset transfer programme was to transfer the risks, liabilities and future costs of facilities such as community centres and sports pavilions from the council to other bodies. Para 77 of the Policy Memorandum suggests the secondary legislation will stipulate what information public authorities will be required to provide to community bodies before they decide to request the transfer of an asset. The Memorandum states that this requirement “may include, for example, information about maintenance costs and energy efficiency”. I would argue that this secondary legislation must require public bodies to provide exactly this information.

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1 See the response to the second consultation on the Bill submitted by the Neighbourhoods and Wellbeing Research Group, University of Glasgow
2 See the response to the second consultation on the Bill submitted by the Neighbourhoods and Wellbeing Research Group, University of Glasgow


http://www.jrf.org.uk/publications/coping-with-cuts
Plunkett Foundation is an independent charitable body which has been supporting the empowerment of rural communities throughout the UK and Ireland since 1919. Our philosophy is based on enabling each generation to address the issues that matter to it through co-operation and enterprise. Today our focus is on community-owned and run businesses in rural areas, often centred on the ownership of physical assets, land and buildings. In 2013 Plunkett Foundation merged with Scotland’s Community Retailing Network to create Plunkett Scotland, a comprehensive community enterprise support service for rural Scottish communities.

Plunkett helps communities to respond to the challenges they face, providing ideas and inspiration, access to online and face-to-face networks, business advisors, mentors and trained staff who can advise on legal structures, incorporation, business planning, community engagement, access to development finance. Our interest in this Bill stems from our conviction that communities know best how to tackle the challenges they face, and empowerment is the way to unlock their potential.

General Comments

In general we welcome the Scottish Government’s foresight in putting the principles of subsidiarity, community empowerment and improving outcomes at the heart of the government’s purpose. We are conscious however that a supportive legislative framework, while a vital precursor to empowerment, is not enough. To achieve genuine and widespread community empowerment, and the beneficial outcomes that can flow from it, communities need appropriate support to exercise those rights. It is important that the processes and details reflect the ways in which communities respond to the challenges facing them. In an ideal world communities would sit down and put together a considered plan for their long-term development, and identify which assets they will need. In practice however communities are often only galvanised into action by the threat of loss or withdrawal, and there is little time to plan. We are concerned that this Bill should not restrict communities’ options and the tools available to them, nor put undue burdens on them in accessing and operating the provisions.

1. To what extent do you consider that the Bill will empower communities?

This Bill can be seen in the context of an evolving public policy agenda in Scotland which over the past 10 years has seen community empowerment and community-led regeneration taking over from the previous top-down approaches based on investment in physical infrastructure. The Bill presents communities with a number of new opportunities to take control of some of the issues affecting their lives, but the extent to which this genuinely empowers communities will depend on other factors. Ownership of assets and the ability to generate income streams independent of the state are critical factors in determining the
degree to which a community is enabled to empower itself. Legislation alone cannot empower communities, only local people can do that for themselves. In addition to the legislative framework communities need **Capacity** (skills, experience, confidence), **Resources** (both human – volunteer effort and paid staff – and funding), and a **Supportive Context** (local authorities, public agencies, voluntary bodies and third sector intermediaries).

2. **What will be the benefits and disadvantages for public sector organisations?**

While it is true that only communities that can empower themselves, it is equally true that public sector organisations have a key role to play. The community empowerment process can assist public sector bodies achieve more efficient outcomes in the design and delivery of public services at a time of ever decreasing resources. But if the process is seen as a threat or an unnecessary distraction at a time of ever more scarce resources, then those in the public sector can prove obstructive. At the heart of this policy shift towards community and co-produced solutions lies a requirement for an openness to new thinking and ways of working. Changing attitudes and culture on this scale is very difficult to bring about in large organisations and remains one of the biggest obstacles to be overcome. If public sector organisations are able to view an empowered community sector as a partner, with parity of esteem, within the community planning process then significant long term benefits may accrue.

In the past, by effectively controlling all decisions of how and where regeneration investment was to be made, the public agencies have worked within very low thresholds of risk and trust – ‘risk’ in terms of the risk of money being misspent, and ‘trust’ in terms of trusting local people to know what is needed to improve their community. In respect of both of these critically important elements of the regeneration process, what is required more than anything else is a fundamental shift in terms of attitude and approach.

3. **Do you consider that communities across Scotland have the capabilities to take advantage of the provisions in the Bill?**

It is critical that communities are properly supported to take advantage of opportunities the Bill presents. Simply extending CRTB (Community Right to Buy) to the whole of Scotland will not achieve the policy objectives if it only gets used by most able and advantaged communities. Undoubtedly some communities will have the capacity and support to take advantage of the opportunities. Within the Highlands & Islands communities are able to access a comprehensive support service through HIE’s Community Assets Team and local development officers. Outwith this area, in lowland and southern rural Scotland, the support is much more fragmented, and communities face a patchy landscape of advice and signposting. Marginalised and disadvantaged communities will need a lot more support in capacity-building and confidence raising to realise the potential opportunities. That support needs to be properly resourced through third sector intermediaries. Big Lottery’s programmes such as Investing in Ideas and Growing Community Assets have been very useful in funding feasibility studies and development projects, but can’t be relied upon to
deliver national outcomes – community empowerment requires properly resourced grassroots development support or community initiatives will never get started. In particular there is a need to support those organisations doing the proactive 'inspire' work – promoting the benefits and opportunities of community ownership and enterprise – networking, inspiring and showing what can be achieved.

4. Are you content with the specific provisions within the Bill?

With regard to the operation of CRTB we welcome the attempts to streamline the application process, increase flexibility and reduce the burden on communities to meet deadlines, however we feel that the process is still weighted in favour of landowners, and where they choose to be obstructive the options available to a community are still very limited. Given the onerous nature of the registration process for community interest in land, we would support the proposition that re-registering should only be required every 10 years, not 5 as is currently proposed.

We are however disappointed that definition of an eligible community body has only been extended to include SCIOs, and we suggest that is too narrow. The decision on what type of legal entity best represents their interests should be left to communities. It would be better for legislation to simply define characteristics of a democratically accountable community body (as CERB does), and not go on to restrict the choice of legal structure to the two options currently proposed (CLG & SCIO). The decision on whether a particular proposed structure meets the eligibility test for a community body could then rest with Scottish Ministers. Restricting the choice of legal structure to two options now cuts off opportunities for communities to select the most appropriate vehicle to acquire and manage an asset in the future under circumstances which cannot be known now.

In particular the exclusion of Registered Societies (formerly known as Industrial & Provident Societies) from eligibility has created anomalies whereby Scottish communities (for example Tweedsmuir in the Borders, and Midmar in Aberdeenshire) that wished to exercise the CRTB to acquire their local pubs through a Community Benefit Society have been prevented by the current Land Reform Act from utilising the potential of community shares to fund the acquisition of the assets. Within the UK as a whole 62% of community owned shops and 90% of community owned pubs have chosen to adopt the Registered Society legal structure as their preferred vehicle for ownership of a community asset. These are fundamentally democratic structures with a long and proven history of successful community co-operative enterprise. We cannot predict now what legal structures communities will need in the future to take advantage of the opportunities presented by the Bill, so cannot see any reason to restrict them unnecessarily?

If Ministers are uncomfortable with the proposal that the exact type of legal structure for an eligible community body is left open, eligibility in principle should at the very least be extended to include Community Benefit Societies and Community Interest Companies as well as SCIOs.
We welcome changes to the legislation around allotments, especially the imposition of a duty on Local Authorities to be more accountable over the provision of allotments, waiting lists and development plans for allotment land. We would also like to see specific duties on a Local Authority to make provision for communal (as opposed to individual) allotments where demand is evidenced by a group of people.
Community Woodlands Association evidence to the Local Government and Regeneration Committee of the Scottish Parliament on the Community Empowerment (Scotland) Bill.

The Community Woodlands Association (CWA) welcomes the opportunity to submit evidence on the Community Empowerment (Scotland) Bill (CEB) as introduced to Parliament.

CWA was established in 2003 as the direct representative body of Scotland’s community woodland groups. The first community land buyout in Scotland was at Wooplaw Community woodland in the Borders (1987), and there are now well over 200 community groups across Scotland responsible for the management of tens of thousands of hectares of woodland and open space. More than half of our members own their woods, the remainder lease or work in partnership with public and private sector landowners.

We have extensive experience of supporting our members to acquire land by a variety of means: often through negotiation or open market sale but also often via Forestry Commission Scotland’s National Forest Land Scheme (NFLS) or the Community Right to Buy provisions of the Land Reform (Scotland) Act 2003 (LRA).

In its call for evidence the Committee asked five specific questions. Our submission largely covers Q4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why? but also has important implications for Q1 To what extent do you consider the Bill will empower communities, please give reasons for your answer? and Q3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Our evidence concentrates on two parts of the CEB: Part 4 - the amendments to the Land Reform (Scotland) Act 2003, and Part 5 – the provisions for asset transfer from public authorities. In general we are very supportive of the proposals; however we believe there are some important clarifications required, some unfortunate omissions and some areas where amendment would strengthen the Bill and contribute to more effective delivery of the Scottish Government’s community empowerment objectives.

The Land Reform (Scotland) Act has had huge symbolic significance since enactment, but the complexities and hurdles contained within the act have severely limited its use on the ground: Registration, and even more so activation of registration, are exceptions rather than the norm. In part this is due to shortcomings in the legislation which, it is hoped, the Community Empowerment Bill will address. However, in our view it also reflects a certain lack of imagination as to how these provisions might be used to facilitate proactive community development planning, as the norm rather than the exception, and some of the points made below are designed to make the LRA fit for a much wider purpose, so that its value is not just symbolic, but hugely significant to and supportive of the empowerment of Scotland’s communities.
Part 3 – Participation Requests

We support the provisions as contained in the Bill but are disappointed that a number of the more radical proposals discussed in earlier consultations, such as participatory budgeting, appear to have been dropped.

We also note that not all public bodies (e.g. Forestry Commission Scotland (FCS)) are included in the scope of this part of the legislation.
CWA welcomes the Scottish Government’s commitment to revise Part 2 of the Land Reform (Scotland) Act 2003 (LRA), and we are very pleased to see a number of amendments which should improve the usability of the legislation.

27(1)(a) allowing community bodies (CBs) to register an interest in land across Scotland, irrespective of size of settlement; we see no reason why “urban” communities should not enjoy the same rights their “rural” counterparts;

28(4) extending the range of eligible types of community body to include Scottish Charitable Incorporated Organisations (SCIOs) and any other type specified in regulations;

28(7) giving Ministers powers to prescribe other methods of geographic definition for communities;

36 removing the reference to at least half of the members of the community voting in the ballot and provides that the requirement in section 51(2)(a) of the LRA is met if the proportion of the members of the community who voted is sufficient to justify the CB proceeding to buy the land;

37 providing for the ballot to be conducted by an independent person appointed by Ministers.

We also welcome the various adjustments to timescales: taking public holidays into account, ensuring adequate time for the valuation and increasing the time to finalise community acquisition from 6 to 8 months.

There are, however, a few elements of the Bill as introduced, and some omissions, that we believe will hinder the achievement of the Scottish Government’s stated objectives.

**Constitutional requirement to provide minutes**

28(3)(c) and 28(4) require that a community body include in its constitution the provision that the CB give any person a copy of the minutes of a meeting within 28 days. The rationale for this requirement is not given in the policy memorandum or the explanatory notes, and it is not included in the list of criteria for a Part 3A Community Body.

Whilst it may be good practice for a community body to make approved minutes of meetings available, e.g. on a website, few if any will have such a provision in their constitution. This requirement may not be a significant obstacle for future community bodies that have not yet been incorporated, but it does, however, erect a barrier to the hundreds, possibly thousands, of existing community bodies who will have to amend their constitutions to comply with the new requirement. This is not necessarily a simple operation, as the standard LRA-compliant constitution provides that CBs can only amend their constitution by special resolution (requiring 75% vote) at a general meeting called for that purpose.

Moreover, it raises the prospect that CBs who have already used the CR2B provisions to acquire land, or those with active registrations, will be required to amend their constitutions to maintain these registrations or keep the land thus acquired. We note that 35(2) of the LRA provides that if Ministers are satisfied that a CB which has registered an interest is no longer eligible to do so they may direct the Keeper to delete that interest, and that 35(3) of the LRA provides that if Ministers are satisfied that a CB which has used the CR2B to buy land which it would not now be entitled to do so, then Ministers may acquire the land compulsorily.
The requirement to include this in their constitutions be replaced with provision to allow Ministers to require that Community Bodies enact byelaws or Rules with the same effect. Any such regulations should:

- specify that the reference is to approved minutes, recognising that approval typically takes place at a subsequent meeting;
- clarify whether they apply only to the approved minutes of the main board, or to those of subgroups, committees and subsidiary companies;
- maintain the provision for CB to withhold information contained in the minutes.

**Period for indicating approval under section 38**

30 precludes Ministers considering any community support that is dated earlier than 6 months before the date an application to register a community interest in land is received by Ministers (quoted from explanatory notes)

We believe this 6 month limit is unnecessary, and that Ministers should be free to take account of anything they consider relevant in indicating approval. In particular, where the approval of community members is being demonstrated through a coherent and proactive development planning process such support may well be over 6 months old by the time an application is lodged.

**Late applications to register an interest in land**

CBs face significant additional burdens in attempting late registration: demonstrating significantly greater support than for a timeous application, showing that registration is strongly in the public interest, and doing so in constrained timescales. However, in the absence of a process that supports proactive community development planning and promotes (or permits) mass and multiple registrations, it is inevitable that in many cases communities will only engage with a specific building or piece of land when they become aware that it may be available for sale, and thus it is essential that there be a usable mechanism to permit late registration.

31(4) replaces the requirement for a community to show “good reasons” for not submitting a timeous application, with a new provision to demonstrate they had undertaken, sufficiently in advance, “such relevant work as Ministers consider reasonable was carried out, etc”. Whether or not this is an easing of the demands on CBs will depend on the interpretation of the text.

31(4)(aa) requires that “the relevant work was carried out … (ii) in respect of land with a view to the land being used for purposes 20 that are the same as those proposed for the land in relation to which the application relates,” which suggests that for instance where a community need has been identified (i.e. for affordable housing) which could be met by acquiring suitable land, then such work would be admissible as “relevant work” even though the land now being registered had not been specifically been identified. This would be a positive step in our view.

However the explanatory notes state “The new paragraph (aa) also provides that the relevant work or steps undertaken must be in relation to the land to which the application relates or other land being used for the same purposes as the land to which the application relates,” which could be taken to imply that the “other land” must be already be being used for the same purposes as the land to which the application relates. This could be usefully clarified.
Local Government and Regeneration Committee

Submission Name: Community Woodlands Association
Submission Number: 69

Information for ballotter

37 51A(6) requires that the CB provide the ballotter with “its proposals for use of the land in relation to which it has confirmed it will exercise its right to buy”, although it is unclear why this is required when 37 51A(2) requires Ministers to supply the ballotter with a copy of the application to register an interest.
Local Government and Regeneration Committee

Submission Name: Community Woodlands Association
Submission Number: 69

We note two significant omissions from Part 2 LRA revisions: removing the prohibition on blanket registrations and easing the requirements for re-registration

**Blanket registrations**

67(2) of the LRA should be amended to permit community bodies to buy part of the land which has been registered where this intention has been notified in the registration.

67(2) of the LRA specifically prohibits community bodies from exercising the right to buy over only part of the land which has been registered. The official guidance says (para 30) *You should not use multiple registrations as a “blanket” registration. Should your CB consider submitting multiple registrations, you should demonstrate serious intent to purchase any land subject to its registration. Your CB should make applications only in respect of land which, given the opportunity, you would want to buy. Any attempt to register a larger piece of land when a smaller piece is required will … result in your CB having to buy either all or none of the registered land if the whole lot is put up for sale.*

There are many scenarios where a community body might, e.g. though a development planning process, identify specific needs/issues that it wishes to address, (e.g. retail, workshop or office space, or land for community growing / extension to cemetery / children’s play / affordable housing etc) and then, after an inventory of their community area, identify say 10 premises or plots of land that would fit their parameters.

If those plots/premises are in separate ownerships then separate registrations are required. However, if those ten plots / premises are all in the same ownership (not uncommon in some parts of Scotland), and in particular if they are subsections of a contiguous piece of land, then it would make much more sense for the community to make a single registration covering all suitable plots/premises with the stated intention of only buying one if it came on the market. This would require the community to state the size and other parameters (e.g. shape. road access, services, etc) of the plot that they wished to buy.

So for example, a single registration might cover 10ha of land, on either side of a road, but would stipulate that the community wished to acquire 1ha for their defined purpose, with the proviso that this must be a contiguous 1ha plot, with road frontage and a minimum width of 50m. If and when the whole or part of the registered area came up for sale the landowner would identify the plot, which would have to meet the parameters laid down in the approved registration, for sale to the CB.

**Re-registration**

The Bill contains no provisions to simplify the re-registration provisions, which are widely seen as unnecessary, and unduly demanding. The current 5 year cycle for registration is too short, and consideration should be given to extending this to 10 years.

Rather than replicating the original registration demands, which can be considerable, the re-registration process should be simplified, with a presumption in favour of continued registration unless the circumstances have materially changed. The community body should be asked to confirm that it wishes to continue re-register its interest, for the same objectives. There would also be an opportunity for the landowner or any other qualifying residents to lodge an objection, based on change in circumstance since the previous registration.
Section 48 Part 3A - extending the community right to buy “abandoned or neglected land”

CWA welcomes the introduction of a new power extending the community right to buy to circumstances where there is not a willing seller. We consider it a significant shortcoming of the LRA that community acquisition of an asset can be assessed and approved by Ministers as in the public interest and furthering sustainable development, and yet in the absence of a willing seller there is no mechanism to take it forward.

These proposed new powers should be viewed as a last resort, to be exercised when other methods and negotiations fail. The existence of such powers will, however, have an important role in incentivising negotiation. It is essential therefore that they are usable and credible, and that special care is taken to prevent avoidance on the part of landowners.

We believe that as proposed, the new right would be impossible to exercise: the bar is being set too high, there are too many obstacles in the way and there are clear opportunities for avoidance on the part of landowners. There are, however, a number of ways in which the Part 3A provisions could be helpfully clarified and strengthened, and thus made fit for purpose.

Eligible land “abandoned and neglected”.

48 97C(1) stipulates that “Land is eligible for the purposes of this Part if in the opinion of Ministers it is wholly or mainly abandoned or neglected.” We are concerned that this requirement is overly limiting and whilst it may be possible to demonstrate this requirement is met for buildings, we do not believe it will not be workable in practice with respect to woodlands and other extensive landholdings.

We are aware that Community Land Scotland’s submission contains very detailed consideration of this point, and in particular on the importance of relating this requirement to the furtherance of sustainable development and potential interactions between these provisions and European Human Rights law; we endorse their submission on these points.

Eligibility requirements for Part 3A bodies

The eligibility requirements for Part 3A bodies and many of the procedures they will be required to follow have been drawn from the unamended Part 3 provisions. We believe that eligibility requirements should be harmonised with those in the (amended) part 2, i.e. including SCIOS and any other types specified in regulations.

Balloting

The provisions for the new balloting procedures in the revised Part 2 of the LRA introduced in Part 4 of the CEB should also apply to the new Part 3A.

Mapping requirements

97G(d)(ii) reproduces the mapping requirements from Part 3 of the LRA, which are widely considered to be excessive. Again we see no justification for any higher mapping requirements than those that apply to Part 2 of the Act.
Ownership
97H(d) requires that the owner of land is accurately identified. We note that whereas Part 2 of the LRA as enacted includes provisions covering circumstances where the owner of the land in question cannot be found, there is no equivalent in the proposed part 3A; although such circumstances might well be pertain if the land in question was actually “abandoned”. Equivalent provision should be included in Part 3A.

Current ownership “Inconsistent with furthering sustainable development”
97H(c) requires that Ministers must not consent to an application to buy by a community body unless they are satisfied “that, if the owner of the land were to remain as its owner, that ownership would be inconsistent with furthering the achievement of sustainable development in relation to the land.”

We believe this requirement should be deleted. Given that Ministers already have to satisfy themselves that the land is eligible land, (i.e. abandoned or neglected), and that purchase by the community body is both in the public interest and compatible with furthering the achievement of sustainable development in relation to the land, this further test is either an unnecessary duplication or sets an impossible hurdle, as it is unclear what additional level of mismanagement (successful prosecution for wildlife crime?) would be required to actually trigger such a judgement, and begs the question why statutory authorities would not already be intervening in such a case.

Previous attempt to acquire land
97H(j) provides that Ministers must not consent to an application unless they are satisfied that the CB has already tried and failed to buy the land. Guidance is needed to clarify whether this means the CB simply has to make an offer which the landowner refused, whether the offer has be based on a specified valuation methodology, and also on whether the CB required to have gone through a formal process (e.g. registration under part 2).

Potential for avoidance
97H(j) provides that CBs must have already tried and failed to buy the land, and 97J(1)(a) that the CB must have carried out a ballot in the 6 months preceding the submission of an application. These actions would give plenty of warning to landowners, who if minded to obstruct the process, could obfuscate ownership by selling (or giving options on) some or all of the land (unless the CB already had an active registration on the land), or by carrying out the bare minimum of management activity required to counter the “abandoned and neglected” criterion. Regulations and guidance will need to be framed to guard against such avoidance, in particular in taking a long-term view of management practices on the land in question.

Timescale for completion
97R provides that where the valuer has taken longer than expected, this will cut into the time that the community has to raise finance and complete the acquisition. This seems unjust, and we suggest that it be amended to ensure that whenever the valuation process is complete, there is a period of 4 months for the completion of payment.

“Market value” of the land
97S(5)(c) identifies “the amount attributable to any disturbance to the seller which may arise in connection with the transfer of the land to the Part 3A community body” as a component of “market value” and which must be paid by the CB. This seems unnecessary, as given that the Bill requires the CB to already have made an offer, it is in effect the landowner’s choice to force the CB to use...
the Part 3A provisions. It also raises the prospect that landowners may choose this route deliberately in order to gain such compensation and thus inflate the sale price.

**Relationship with Part 5 Asset Transfer provisions**
The interaction of Part 3A and the Asset transfer provision contained in Part 5 for the CEB needs to be addressed: can communities, having failed with asset transfer request, then attempt a Part 3A acquisition? And if so, what are the decision making processes where Scottish Ministers are the landowner?
Power to Ministers to facilitate discussions and make regulations
We believe it would be useful if Ministers had powers to facilitate discussions and dispute resolution between communities and landowners.

Part 3 of the Land Reform (Scotland) Act
We were concerned at the apparent omission of any measures amending part 3 of the LRA, and welcome the recent correspondence from the Scottish Government to the Conveners of the LGRC and RACCE notifying them of its intention to use the CEB to also simplify Part 3 of the LRA. Amongst the key points that should be addressed are streamlining the mapping process, and aligning the eligibility criteria with those for Parts 2 and 3A of the amended act.

Part 5 - Asset Transfers
We strongly support these provisions. We have considerable experience of working with Forestry Commission Scotland’s National Forest Land Scheme (NFLS), and believe that there is much that can be learned from the experience of operating this scheme, in particular the value of:

- Within a public authority, there should be a single point of entry to any asset transfer process, with identified administrators, dedicated guidance, and a single decision making process, to maintain consistency of advice to applicants and assessment of applications.
- The criteria and the levels of evidence required to meet them should not be "one-size-fits-all" but commensurate with the size/value of the asset in question; as for example, with the NFLS, where a full business plan and a community ballot are only required where the asset is valued at >£50,000.
- External input to the evaluation process helps maintain consistency and enables the process to remain positive (as an assessment of what an application is attempting to achieve) rather than a negative sifting (approving applications on the basis that they don’t fail any specific, rigid criteria). Additionally, external evaluation distances public authority staff charged with administering the scheme from the decision making process, which assists the management of both external and internal relationships, whilst the public authority is not perceived to be sitting in judgement on decisions to which it is also an interested party.

We consider that the effectiveness of these asset transfer provisions would be strengthened by a duty to provide publicly accessible asset registers, and by amendment of the Scottish Public Finance Manual to ensure that all public authorities have the discretionary power enjoyed by local authorities, to transfer at less than market value under certain conditions.

The provisions as introduced are relatively light in a number of areas of detail, which are explored below. In general we agree that it is better to cover these aspects in regulations and guidance, rather than in the legislation itself, but this makes it critical that the regulations are written effectively. We would recommend that there is thorough stakeholder (and in particular user) input to the regulations and associated guidance.
Eligibility criteria

50(2) appears to allow a wide range of local community of interest groups (e.g. sports clubs) and social enterprises to use the provisions, subject to Ministerial order.

We welcome this apparent flexibility, but consider that regulations and guidance should include elements of definition to ensure a local connection with the asset, and that the requirements are commensurate with the asset

Valuation

52(4)(e)&(f) place the onus on the community transfer body (CTB) to indicate the price / rent that it is prepared to pay for transfer of ownership / lease of the asset, but price / rent is not explicitly included in the list of matters (55(3)(c)) to be taken into consideration by the public authority when reaching its decision, e.g. whether agreeing to the request would be likely to promote or improve economic development, regeneration, public health, social wellbeing, or environmental wellbeing.

However, 55(3)(h) provides that the authority must also take into consideration “any obligations imposed on the authority, by or under any enactment or otherwise, that may prevent, restrict or otherwise affect its ability to agree to the request”. which appears to allow public authorities to use their obligations to the Scottish Public Finance Manual to refuse an asset transfer request which does not (in their opinion) comprise an appropriate valuation.

Guidance should be made available to CTBs on determining the price / rent they offer. Where this is carried out by an independent professional valuer to specified criteria, either a “full market valuation” or such other valuation methodology as prescribed by a revised Scottish Public Finance Manual, there should be a presumption that public authorities be obliged to accept it the valuation. If not, then guidance needs to describe what processes will be used to facilitate settlement when the CTB and public authority disagree over price or rent.

Decision-making

The Bill as introduced says nothing about the decision-making processes within public authorities: who receives and administers asset transfer requests, who assesses eligibility and who makes decisions on whether or not the asset transfer request is granted.

We agree that such matters should be covered by guidance rather than directly legislated for, and believe there is much to be learned from the experience of the National Forest Land Scheme, as noted previously. We trust these issues will be addressed in statutory guidance, and would request that stakeholders, particularly those with experience of asset transfer, be consulted in the process of drawing up such guidance.

Forestry Leasing

We note that there is a potential conflict between a community transfer body as defined in the CEB and the definition given in the Section 11 of the Public Services Reform (Scotland) Act 2010, which amends the Forestry Act (1967), (which otherwise restricts FCS’s ability to delegate its responsibilities) to permit leasing of land for forestry purposes to community-controlled companies by guarantee.
This should be dealt with by placing an appropriate amendment to the Public Services Reform (Scotland) Act 2010 in Schedule 4 (introduced by section 98(1)), Minor and Consequential Amendments.
The Centre for Scottish Public Policy

Evidence on the Community Empowerment [Scotland] Bill to the Local Government and Regeneration Committee

Participation and Asset Transfer

This submission comments on some parts of the CE[S] Bill, specifically Participation and Asset Transfer [P&AT] as requested in your recent email.

CSPP may submit comments on other parts of the Bill at a later date.

Background

The Centre welcomes the publication of the Bill and view the underlying principles as desirable and consistent with the direction we wish to see public policy on engagement and democracy moving.

That said, some aspects of those principles are likely to be hard to put into legislative form and we therefore think that the Bill will benefit from wider discussion and review.

We hope this will lead to a position where amendments and change emerge from such discussion and are not seen by the government ministerial sponsors as hostile and provocative.

What is a ‘community’?

Seeking to define community is a complex challenge that has been much discussed since the use of the word became fashionable in policy circles perhaps some 4 or 5 decades over. The presumption in the Bill appears to be primarily based on geographic notions of community. This might usefully be supplemented by some wider reflection and debate on communities of interest, and other forms of affiliation other than just geography.
The phrasing used in various Bill related documents to describe community organisations is curious: “...organisations open to everyone and really speak for their community.” This might well be thought to capture the essence of Community Councils and is similar to the form defined for these in the 1973 Act. The Bill appears light on discussion of these statutory entities which have struggled to thrive in all council areas ever since their creation in post 1975.

In terms of geography, research evidence in various settings shows that people can concurrently hold more than one concept of community in their mind. Part of a town or city for others who live in that town or city; often the entire city/town itself for others who are further afield; and approximation for those from further away or overseas. To one person a community might be described variously as: Fisherton; Musselburgh; Edinburgh at different times and in different conversations.

Therefore both proximity and scale are relevant to any consideration of participation as the next section discusses.

**Participation**

One aspect of the Bill is the provision for strengthening Community Planning; we view this as desirable. It is not clear whether an increased and mandated expectation of greater participation is best channelled directly through the [strengthened CPP] or through individual partner organisations. Where there are multiple approaches to participation there may well be tensions over asserted or inferred community wishes. So, for example, it appears that Police Scotland invested considerable street police time in seeking ‘community’ views on the local [ward and council] policing plans. To take one example, there is little available evidence – certainly not in published neighbourhood policing plans -that action on saunas in Edinburgh was a high community priority. Yet such action was taken, apparently in contradiction of health organisations & council views.

The other key issue is how different communities are resourced to engage in such discussion. Capacity building and purposive participation encouragement is needed if such participation is not simply colonised by those with loud voices and high order access to communication channels. This is particularly important as we are increasingly more aware of differential access to media such as the internet, telephony and similar channels across Scotland.

We have stated above that proximity and scale are relevant to notions of community and participation, another feature is representativeness. We currently operate most of our public institutions on the basis of some form of representative decision making. In local government through election; in health boards through appointed representation [trials of partial election having been abandoned]; in other public bodies through the appointment of various stakeholders of proximately interested parties [e.g. economic interest on Scottish Enterprise].
In such a context it is not clear that any other form of ‘participation’ that involved the co-option; appointment or even election of ‘community’ interests would be other than effectively creating a small number of people to attempt to represent wider interests. A current listing of, say, Community Councils in Glasgow appears to show 100+ of which some are dormant - how is any participation other than by representative numbers to be achieved in such circumstances?

**Asset transfer**

This appears to refer to ‘publicly owned land and buildings’ as some documents referring to the Bill state is one of the key features of the proposed legislation.

This seems to derive from the [generally very successful] experience of community right to buy in some remote and undeveloped areas of Scotland.

The explanatory documents refer here to councils, government organisations and other public bodies and explicitly indicate that the intention is to take this acquisition right beyond rural areas into all parts of the country.

A key difference between such rural areas and other developed parts of the country is that boundaries are often clearer in the former. Eigg is Eigg; Glen Elg is Glen Elg. Acquisition for ownership or use with clearly defined parameters is much more readily achieved in those places than it is in, say, Leith or South Edinburgh.

The other key difference between land [essentially the key subjects of Community Right to Buy] and properties [more probably the subjects in developed areas] is that undeveloped land can decline in quality or use value, but it is relatively inert in costs terms. A neglected field; woodland or estate may grow more weeds and collect more rubbish, but clearance/usage costs can be incurred gradually.

Urban assets tend to be costly from the date of acquisition, particularly if, as inferred from the Bill documents they are unused or underused. The LG&R Committee can walk with 15 minutes of the Parliament to at least two examples of privately and publically owned buildings that are ‘...not in good use...run down.’ In each case, to retrieve/restore each to acceptable standards might incur £0.5/1.0M. Similar buildings are in the ownership of public bodies across Scotland. It will be a formidable business case that is required in each instance.

**Summary**

A commendable Bill, with underlying principles that are excellent and consistent with our ambitions in the Centre. It will be hard to capture some such sentiments and ambitions in legislative form; harder still to implement.

September 2014.
Written Evidence to
Scottish Parliament
Local Government and Regeneration Committee

Community Empowerment (Scotland) Bill
5th September 2014

On behalf of

[Logo: Assemble Collective Self Build]
Background

Assemble Collective Self Build is currently in the process of registering as a Community Interest Company with the purpose of enabling community-led housing projects within Scotland.

Assemble believes that traditional mainstream housing options do not suit a growing sector of society, whether based on affordability, design, sustainability or community involvement grounds.

The role that Assemble seeks to fulfil is to guide groups through the entire process, including agreeing suitable governance structures and tenure, land identification and procurement, planning, design, construction and management.

In this respect, Assemble wishes to provide a brief general response to the Community Empowerment Bill and specifically address Question 3 of the Committee’s Call for Evidence invitation, which asks:-

“Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?”
Community Empowerment Bill – the benefits

Assemble supports the Government’s key aim of creating the conditions for community empowerment. Specifically, Assemble considers that there is a real opportunity to address a number of core social, economic and environmental aims through the control of suitable land and buildings by appropriate community bodies. These include addressing the housing affordability issue, direct participation in local decision-making, energy efficiency, financial sustainability and more varied and smaller-scale urban design. The need for a legislative framework to support these aims is clear and the emerging Bill provides the basis to continue previous community and land reforms in Scotland, and seek to address elements of the Land Reform Review Group recommendations.

Community control of land and buildings

Assemble believe that land control is a core requirement to enable greater community engagement and empowerment. As is widely accepted, land control (whether outright ownership or under a secure long lease) provides direct power in terms of ability to control use and associated security of tenure and management.
For community groups to benefit from the same degree of control that is afforded to large public and private landowners, the opportunity must not just be for one-off community buildings but areas of land of a scale that can deliver local homes, workplaces and recreation.

**Community Right to Buy (Part 4)**

Assemble supports the legislative changes to allow for community bodies to acquire abandoned or neglected land without a willing seller and more importantly, to extend community right to buy across urban areas. This will enable ‘mainstreaming’ of community empowerment throughout the greater population of Scotland. The **definition of community-controlled bodies** is critical in delivering these aims - representative groups are required but obstacles to delivery through over-prescriptive requirements must be avoided. For example, the ability for existing groups such as non-profit housing co-operatives to avoid overly onerous administrative changes required by registered charity status requires to be examined.

**Asset Transfer Requests (Part 5)**

The process of **public asset transfer** to community groups has to be fully embraced by the public sector – when assessing a request, the relevant authority must be obliged to give equal weight to social, environmental and economic benefits
so that best value against perceived market value doesn’t remain the key determination (clearly with regard to Common Good land, there should be a presumption in favour of asset transfer unless there are strong material reasons why the public authority should retain control).

Community Capacity

In terms of Question 3 and the capability of community bodies to access these opportunities, programmes and funds linked to the 2003 Land Reforms generated expertise to advise communities but it is considered that community groups still generally suffer from lack of resource and access to information to assist with delivering these aims.

Assemble believes that, with the extension of community right to buy to urban areas in particular, a clearer framework should be provided for public authorities to minimise impact on pressurised resources (including staffing). In this respect, both advisory and funding assistance will require to be addressed if the aims are to be delivered.

With regard to advice, there should be opportunities for community empowerment ‘enabling’ organisations to be appointed to assist in delivering the desired outcomes through matching community groups with land and funding
opportunities. This could involve a framework agreement for each local or public authority and the Bill should perhaps address this requirement at the outset.

Whilst those groups with funds and knowledge will be able to move forward in the short term, more disadvantaged groups will require guidance if aspirations are to be met.

In terms of funding, whilst it is appreciated that it is not the remit of the Bill to identify specific mechanisms, work should be developed in tandem with the finalisation of this legislation to identify where support can come from. Government funding either from existing or new programmes for communities should be linked to social investment funds to generate a deeper resource to really make a difference and deliver community-led housing for example on a larger scale.

Linking the two aspects of community ‘enabling’ and community funding is critical to the success of this legislation whereby a clear framework should exist so that groups seeking to improve their living environment or protect and develop local assets can get immediate access to required expertise and/or financial assistance.
The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector intermediary for a range of health and social care organisations. It brings together over 700 members, including a large network of national and local third sector organisations, associates in the statutory and private sectors and individuals.

The ALLIANCE welcomes the Local Government and Regeneration Committee’s call for evidence on the Community Empowerment (Scotland) Bill. The Bill has the potential to empower individuals and communities to be contributing, active citizens and encourage greater levels of community ownership and control. We would like to reinforce the message in the Scottish Community Development Centre’s 2013 response to the consultation on the Community Empowerment and Renewal Bill¹ “community engagement is effective if and when it involves developing and sustaining a working relationship between one or more public body and one or more community group, to help them both to understand and act on the needs or issues that the community experiences”.

Consultation Questions

1. To what extent do you consider the Bill will empower communities? Please give reasons for your answer

Community Planning

The ALLIANCE welcomes the provisions in the bill to make community planning a statutory function and shared responsibility of specified public bodies. Effective community planning has the potential to bring together the totality of partners in a local area whose assets and views are essential in driving change, not only for the purpose of participation, but to co-produce person centred services.

¹ [http://goo.gl/BGz83k](http://goo.gl/BGz83k)
We believe, however, that there is an opportunity to strengthen the Bill in order to ensure a more robust system in terms of shared planning and community involvement. For example, while the Bill extends the list of key partners to include a wider range of public bodies, the involvement of community interests appears to be on the terms of statutory agencies, who must “consider which community bodies are likely to contribute to community planning” and “must make all reasonable efforts to secure the participation of such community bodies in community planning”. This language should be strengthened in order to more closely capture the spirit of empowerment which forms the basis for the Bill and to avoid further centralising power with public bodies, as per the recommendations of the Christie Commission.  

Community planning will be most effective when it can demonstrate back to communities how their desired outcomes and priorities are being listened to and reflected in decision making. In this regard, we believe that further clarity is required within the Bill and accompanying guidance over whether invited community bodies will be considered as full members of the Community Planning Partnerships (CPPs), and if not, what ‘contribute’ can be expected to mean in this context.

At present, Third Sector Interfaces are represented on all 32 CPPs in Scotland. This is a position strengthened by the ‘Agreement on Joint Working on Community Planning and Resourcing’ which states “Making the most of the total resources available locally means ensuring that the Third Sector Interface is a full community planning partner and drawing on the huge commitment of all those, including volunteers, who work to improve communities.” To consolidate this position, we support Voluntary Action Scotland’s proposal that it is possible to write Third Sector Interfaces, as an advocate for the sector, into legislation whilst excluding them from certain duties places on statutory partners.

Asset Transfer

The ALLIANCE welcomes the aims of the Bill in giving the initiative to communities to take ownership or make more effective use of land and buildings, and believe that this process could be supported by the introduction of an asset register. This should be collated by statutory bodies and made readily available to the public in order to promote transparency in the asset transfer system, and should provide sufficient information to enable community bodies to make informed decisions on their viability.

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It is important to recognise, however, that the hard work for many community-led organisations will begin after an asset transfer has taken place, e.g. securing funding for refurbishment and ongoing costs. The ALLIANCE therefore believes that additional capacity building is required to ensure that community bodies taking on assets are adequately supported.

The Bill should encourage further proactive work with communities rather than simply encouraging transfer of assets. It provides the opportunity to strengthen this partnership, however there is a possibility that the practical implementation of this legislation will result in either the community taking over an asset or the public body retaining control – when the public body working closely with local communities can often result in the best outcome.

**Capacity Building**

As the policy memorandum recognises, “community empowerment cannot be delivered by legislation alone… the availability of appropriate support, guidance and a culture of nurturing community action are also key”. In order to secure the adequate input from “community bodies” to inform community planning this must be strengthened, with a particular emphasis placed on the duties on Community Planning Partnerships to resource community engagement.

At present, there are no specific proposals for statutory intervention to achieve this capacity building. We support the proposal of Voluntary Action Scotland that the duty on Community Planning Partners should be extended in order to pro-actively develop the capacity for community bodies to exist and develop their knowledge in order to contribute to the community planning process.

“It would be possible to amend 8.1(b) to include a responsibility on statutory partners to provide adequate resourcing of community and third sector involvement. There should also be an onus on community planning partners to produce materials at CPP level in an accessible and timely manner to allow smaller organisations the opportunity to process and prepare their response in order for them to contribute fully to the CPP process. Further to this a mechanism needs to be introduced to allow for a right to appeal should a community bodies application to participate in a CPP be rejected.”

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4. ‘Community Empowerment (Scotland) Bill’, Briefing note and VAS policy statement, 2 September 2014
2. **What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?**

Strengthened partnership working has the potential to improve outcomes for public sector organisations, communities and people who use support and services and result in long term, preventative savings.

The third sector plays a significant role not only in supporting amplification of the voices of people who use support and services, but as a provider of community-based support that is often preventative and represents high value for money. In light of this, and in order to support the desired culture change in the way in which resources are managed and services are designed and delivered, it is important that the Third Sector is recognised on the face of the bill, which is not currently the case.

There is also a growing interest in ‘asset-based approaches’ in Scotland that recognise that individuals and communities are part of the solution, work *with* people rather than viewing them as passive recipients of services, and empower people to control their future.⁵

There is existing evidence of communities and the third sector being engaged in a range of ways and bringing about the change they wish to see. This works well when people are engaged with local public bodies and feel listened to, but there is clearly an appetite for greater engagement and empowerment, as per the below example.

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**Case Study: Partners for Change - Inverclyde**⁶

Like most areas of Scotland public services in Inverclyde are now under increasing strain. In order to sustain services and deliver better local outcomes, the Council and CHCP are taking steps to recast their relationship with the third sector. The first Local Authority area in Scotland to participate in the Partners for Change process, Inverclyde is now implementing wide-ranging action to involve the third sector more fully in service planning, to ensure a level playing field during procurement processes, and to grow the role of the sector in public service delivery. The Partners for Change (PfC) process is a tried and tested approach to securing better local outcomes through improved collaboration with the third sector. In Inverclyde the process involved:

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⁵ An Assets Alliance Scotland, briefing (December 2010) (prepared for an event held by the Chief Medical Officer, Health and Social Care Alliance Scotland and Scottish Community Development Centre)

⁶ Case study provided by Social Value Lab and available on [www.discoverthethirdsector.org.uk](http://www.discoverthethirdsector.org.uk)
Three intensive half-day workshops, each bringing together mixed groups of public sector service heads and commissioning/procurement staff (from the Council and CHCP) with representatives from leading third sector providers.

Development of an action-oriented Commissioning Improvement Plan focused on maximising the benefits of commissioning health, social care and other services from the third sector.

Ongoing mentoring and advisory support to help deliver on agreed actions and take the next steps to partnership improvement.

This process was delivered by the Social Value Lab and partners as part of the national Developing Markets for the Third Sector Providers programme. Among the priorities identified in Inverclyde was enabling the third sector to bring to bear its capacity for innovation in the redesign of public services.

A range of mechanisms were agreed to harness this innovation, including the increased use of outcomes-based specifications, introduction of service-focused ‘innovation forums’, and the piloting of one or more Public Social Partnership projects.

3. **Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?**

Recognising the fact that all communities are different and have different capacities and capabilities, a key issue will be ensuring that they are properly supported to take advantage of the Bill’s provisions on an equal basis. If this is not addressed, there is a danger that the provisions may serve to further empower those communities that are organised and influential, while not achieving meaningful change for communities which may not have the confidence or capacity to engage with the process.

In this regard, the Bill would be strengthened by the addition of provisions specifying measures and resources to build capacity within marginalised and excluded communities. This issue is fundamental to facilitating community empowerment and tackling inequalities.

4. **Are you content with the specific provisions in the Bill? If not, what changes would you like to see, to which part of the Bill and why?**
National Outcomes

The ALLIANCE welcomes proposals to embed an outcomes-based approach in the legislation as a means of driving quality and consistency and allowing for scrutiny of the progress made in this area.

Developing a set of national outcomes offers the potential to meet the local needs of the community; however this cannot be achieved without strong involvement of a cross section of community interests in establishing what the outcomes (and underlying indicators) should be. The Bill outlines that in determining the outcomes, Scottish Ministers will be required to “consult such persons as they consider appropriate”. We would welcome a stronger duty that requires the direct involvement of community-based and third sector organisations in the development of outcomes in order to help empower communities and avoid embedding a centrally driven process.

Where national outcomes are developed, it is critically important that there is a mechanism in place to hold public bodies to account for meeting these. A sufficiently robust and transparent mechanism is absent within the Bill at present, within which public authorities or any other person carrying out functions of a public nature are required to “have regard” to the national outcomes and Scottish Ministers would be required to to publish reports on the extent to which they have been achieved.

Co-production

The ALLIANCE recommends adopting the term “co-production” on the face of the Bill to ensure that it is strongly embedded in the Scottish policy landscape across all sectors.

Co-production is a term which is increasingly in use to describe a strengthening of the relationship between people and public bodies and increasingly resonates with the role of the third sector. Co-production can describe partnership at the individual level but it is also about involving people in decisions about the design and delivery of services. This is an essential mechanism for producing models, services and systems that are person-centred.

Co-production has a significant role to play in empowering communities to be actively involved in supporting the design and the delivery of better, more sustainable services, and offers an approach to service design and delivery that makes the best use of the capacities of all stakeholders to create effective, sustainable solutions.
About the ALLIANCE

The ALLIANCE vision is for a Scotland where people of all ages who are disabled or living with long term conditions, and unpaid carers, have a strong voice and enjoy their right to live well, as equal and active citizens, free from discrimination, with support and services that put them at the centre.

The ALLIANCE has three core aims; we seek to:

- Ensure people are at the centre, that their voices, expertise and rights drive policy and sit at the heart of design, delivery and improvement of support and services.

- Support transformational change, towards approaches that work with individual and community assets, helping people to stay well, supporting human rights, self management, co-production and independent living.

- Champion and support the third sector as a vital strategic and delivery partner and foster better cross-sector understanding and partnership.
Community Empowerment (Scotland) Bill ("the Bill") 
South Lanarkshire Council ("the Council") - Response to Scottish 
Parliament’s Local Government and Regeneration Committee

1. To what extent do you consider the Bill will empower communities, 
please give reasons for your answer?

The Council considers that the Bill will empower communities. However, as 
discussed in question 3 it will not necessarily enable communities to successfully 
secure an asset transfer. The requirements placed upon the community in 
making an application are very specific and it is unlikely that organisations would 
succeed if making an application without prior engagement with an authority.

The requirement for the Community Planning Partnership ("CPP") to involve and 
consult local communities is welcomed, and the provisions within the Bill present 
opportunities for increased community engagement and empowerment. The Bill 
proposes to strengthen the governance and accountability arrangements of 
CPPs, placing a statutory duty on the CPP that should ensure a shared 
understanding of roles, responsibilities, commitment and common purpose. The 
duty to consult and involve community bodies in decision making and the 
requirement to take into account the needs and circumstances of those affected 
by introduction of Local Outcome Improvement Plans is positive, presenting 
CPPs with enhanced opportunities to inform, engage, involve and empower 
communities.

2. What will be the benefits and disadvantages for public sector 
or ganisations as a consequence of the provisions in the Bill?

It is difficult to assess the impact on authorities’ resources and processes in the 
absence of the detailed regulations and guidance. However, the Council 
considers that there are benefits and disadvantages.

Benefits

The Bill enshrines the outcomes approach to legislation. Partnerships and 
collective decision making will be strengthened and robust processes will need to 
be put in place to support the delivery of shared planning, co production, 
community involvement and community influence.
CPP partners will have a shared understanding of roles, responsibilities and 
common purpose.
Provisions will encourage local democracy, enhanced (CPP) partner and public 
accountability and transparency.
Existing arrangements around community ownership and asset transfer will be 
able to be developed and streamlined.
Communities will be more engaged in community planning and able to participate 
in processes to improve outcomes in service delivery.
Disadvantages

Some duties remain vague, information and guidance is required around funding, staff and other resources, priority setting and the fulfilment of duties. Duties remain vague about collective accountability and how this will work. The definition of a community body is unclear – does this include "local" and "national" communities?

The process for participation requests is onerous for public sector organisations and for community bodies.

There is a lack of clarity around resource implications of community engagement and the capacity building required to support this.

More clarity is required around the principles of right to buy process legal status of community bodies (e.g. Section 28(4) of the Bill mentions that a Scottish charitable incorporated organisation ("SCIO") is a community body. Does this mean that unincorporated associations registered with the Office of the Scottish Charity Regulator ("OSCR") cannot be community bodies?), development needs and attending timescales to secure the transfer of assets.

More guidance is required on how community engagement will be planned, resourced and integrated across partners.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

The Council considers that larger organisations and those in more affluent areas have capacity and are best placed to take advantage of asset transfer but there is nothing in the Bill to support the development of capacity for new or small scale organisations with aspirations. Accordingly, organisations in disadvantaged areas are unlikely to be able to develop the capacity to manage an asset without assistance.

Extensive capacity building and community infrastructure development would be required particularly in disadvantaged areas, to ensure that the provisions, advantages and opportunities of the Bill can be realised across all communities. The definition of community bodies could be fine tuned and improved. The National Standards for Community Engagement have already been endorsed by public sector bodies; implementation and use could be further supported by the introduction of a CPP Community Consultation Plan or Engagement Strategy. A clear articulation of the commitment to deliver effective community engagement is required at a CPP level to ensure that this is supported and promoted at all levels of decision making.

However, there needs to be a focus placed on ensuring that communities are adequately supported and equipped to take full advantages of the arrangements in the Bill, particularly in relation to participation requests, right to buy and asset transfer.

In relation to the costs associated with community capacity buildings, the Council considers that as councils will likely be responsible for managing the process of supporting participation requests, and the other key provisions on behalf of the CPP, additional resources should be provided to ensure that the appropriate level of support is in place. The Council already supports capacity building work, in particular in its most deprived communities. However, the provisions of the Bill
will require additional investment, some of which could be sought from Community Planning partners to establish the appropriate structures. In relation to resourcing community capacity building / engagement, the Council considers that the Scottish Government should be providing additional resources to ensure CPPs are able to maximise the impacts of these Bill provisions. Additionally, the Council is working closely with CPP partners to develop a more strategic approach to community capacity building and engagement and this will require consideration of partner contributions in addition to the current Council investment into community capacity building / engagement structures and activity.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

It is unclear whether the intention of the Bill is that community-controlled bodies will have the ability to make application to authorities under both the Community Right to Buy and Asset Transfer. It would seem onerous on authorities to have to deal with applications under both routes.

The inclusion of land leased by an authority has an adverse impact upon the ability of the Council to negotiate cost effective commercial lease terms and should be excluded from Asset Transfer.

The disapplication of restrictions in lease of land to relevant authorities does not reflect the different governing regulations between the different types of Relevant Authority who on occasion share ownership or leasehold interests in property.

The definition of "community- controlled body" is very open and although there are predefined "tests" in terms of the organisations constitution it will, presumably, still be possible for national organisations, geographic or special interest groups to make applications under the Bill. Therefore, the concerns previously raised in the Council's response to the consultation on the Bill in January 2014 still apply.

The Council would comment on particular Sections of Part 5 of the Bill (Asset Transfer Requests) as follows:

Sections 52 -54 (Asset Transfer Requests, Community Bodies requesting ownership transfers, Regulations)

As the Bill is currently written a "community transfer body" is the same as a "community-controlled body" as defined in Part 3 until such times as Scottish Minister make an order that provides further designations. This is a very broad definition.

In addition, however, the organisation must also be a SCIO. This could be seen as discrimination. It is also noted that it is not OSCR but Scottish Ministers who will decide where an asset goes to if an organisation is wound up. This is contrary to the position that generally applies to charities in their constitutions and, as the Council understands it, the requirements of OSCR and charity law.
The Council considers that the requirement for an organisation to have at least 20 members is positive as in order to sustain a project and maintain a property there will need to be capacity within the organisation and succession planning which would be difficult with a lesser number.

The Bill recognises that asset transfer can be by lease or sale which is positive as many groups are not ready for outright ownership and in some cases lease offers more flexible opportunities and allows a project to grow gradually taking on more space as required. However, of concern is the extension of asset transfer to include land which is leased to the Council. The terms and conditions of leases to the Council will contain restrictions in terms of alienation and use and the rental charged takes into account these restrictions. If this legislation takes precedence over the terms of existing and future lease contracts, it will impact adversely upon the Council's ability to negotiate lease terms which are in its best interests. It could result in landlords refusing to renew leases and potentially lead to increases in rental values, particularly if use clauses are opened up. It may be that this is only intended to apply when the lease is between 2 Relevant Authorities however if so the wording is not specific (see Section 60 below for further comment).

The Bill places a duty on the community organisation to specify up front the reason for the transfer and to justify the community benefits that could be derived from the transfer. From the Council's experience most groups are nowhere near ready to make a formal application for transfer when they first approach the Council and if there is no prior engagement upon a proposal an asset transfer is request is unlikely to succeed.

It is very difficult to assess the impact of the Bill on the Council's approach to Asset Transfer without the further regulations and guidance referred to in Section 54. The matters referred to in this Section fundamentally affect how asset transfer requests are managed and processed but at present there is no detail.

Section 55 (Asset Transfer Requests – Decisions)

The process for reaching a decision upon an application is not far removed from that the Council has although it may need to be adapted. However, the main concern will be the time scales placed upon reaching decisions and there is no detail in the current Bill wording which would enable useful comment at this stage.

Section 56 (Agreement to Asset Transfer Requests)

At present the Council separates out the decision to consider asset transfer from the negotiation of the specific terms of the transfer. However, this Section implies that as soon as a decision is reached Heads of Terms will be issued and the organisation has to submit a formal offer.

If the timescales (as yet undefined) are restricted then there will be little opportunity for negotiation of terms, particularly price, or refinement of proposals. Given that most organisations will not have a full business plan in place, or an agreed funding package approved at the time of making the application this seems onerous. The development of a viable and sustainable project usually
relies upon several matters running in parallel. Organisations will only make a formal offer on a conditional basis not wanting to commit until they have funding in place over and above the normal matters such as planning consent etc. This is not unreasonable. Therefore, the ability for the authority and the organisation to agree a period is welcomed.

However, the right of the community organisation to apply to Scottish Ministers to set a period for the submission of an offer seems unfair. As there is no right of appeal to Scottish Ministers in terms of the decision to grant an asset transfer it seem inconsistent to allow the Scottish Ministers to determine the length of time that an authority must hold an asset pending transfer. The authority has already agreed to the principal and terms of transfer by this stage in the process, and has under the Bill to agree a minimum of 6 months for the submission of an offer. It is reasonable to allow the authority to set a long stop date, particularly if the asset is a vacant building the condition of which is deteriorating or for a property which has other market interest. The agreement to a long stop date is critical to the transfer negotiations particularly in view of the conditions of Section 57 where authorities cannot even enter into short term lets or uses during the process. It may be that an authority would prefer to make the offer to transfer and it is not clear what is gained by prescribing that the organisation makes the offer. This is particularly relevant if the transfer is by lease where almost certainly the Authority will wish to draft the detailed terms and style (which is the “norm” in landlord-tenant relationships).

Section 59 (Review by local authority)

The Council will have to establish a review process for dealing with applications that are refused or the terms and conditions proposed to the organisation are substantially different to those made by the organisation. Again Scottish Ministers have the right to issue further regulations on the process so at present there is insufficient detail to comment.

The Council’s Executive Committee currently takes the decision to agree an asset transfer and the terms and conditions of transfer are approved by its Housing and Technical Resources Committee. The Council will have to give consideration to the appropriate forum for appeals.

Section 60 (Disapplication of restrictions in leases)

This Section of the Bill removes restrictions in lease agreements which would hinder the asset transfer and only applies to leases between Relevant Authorities. However, it can affect the asset value of properties and does not reflect for instance the different legal and financial regulations that apply to the health boards and Councils. For example, if a council has transferred its assets to an arms’ length organisation as part of a financial arrangement then the commercial terms of that financial arrangement could be affected by this Section. If a property was owned by the Council and leased to a health board could a community organisation apply to both authorities? It is not clear.
The Council would comment on Part 6 of the Bill (Common Good Property) as follows:

The Council has 4 common good accounts and a list of assets held on each common good account, so initial publication in accordance with the Bill can be achieved quickly. However, the duty to consult on the lists and consider applications for additional assets to be added to the lists will be resource intensive. Common Good accounts are the subject of considerable local interest and it is anticipated that the Council will receive many representations. Detailed title investigations will likely be required which will have an impact on staff time and the Council finances (e.g. through instructing external advice where the title position is unclear).

Again, the impact on the Council in terms of the process of consultation on disposal or alternative use of assets held in common good will depend upon the regulations made by Scottish Ministers in the future.

At present the Council has no common good assets under disposal but a number that are under long term lease agreements.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

The Council considers that an explicit duty should be placed on CPP partners to reduce inequality and increase a focus on early intervention and prevention.

Specifically, in relation future allotment development, the Council will seek to encourage greater social inclusion as residents participate in this social and educational activity. There is currently provision within the existing allotments for client groups who include physical and mental special needs, and this will be taken into consideration with any future allotment site designs. Again, the provision of any new sites will be taken after considering factors such as available infrastructure, existing utilities, population, minimising nuisance to existing residents etc. The Council will encourage through the development of management rules, sound environmental and horticultural practices and this will provide education benefit to users and communities and encourage biodiversity within the proposed sites.
Introduction

The Community Learning and Development Standards Council for Scotland (CLDSC) ([http://www.cldstandardscouncil.org.uk/Home](http://www.cldstandardscouncil.org.uk/Home)) is the body responsible for the registration of CLD practitioners, the approval of relevant training courses, and the continuing professional development of the CLD workforce. It is a member–led body, currently located within Education Scotland.

Access to professional qualifications in CLD, which is directly relevant to the ambitions of the Bill, is increasingly utilised by people active in their own communities. The CLDSC has supported this access by developing and operating an approvals process at three levels (professional qualification at degree level; developmental qualification, for example at National Certificate and Higher National Certificate level; and a Standards Mark to recognise quality provision of continuing professional development); and by promoting pathways for individuals to enable them to develop their competence and progress in occupational terms, whatever the starting point.

CLD has a key role in building the capacity of communities, through a workforce that is itself substantially embedded within them. The CLDSC’s specific interests are in working with the CLD field to improve practice.

The CLDSC welcomes the ambition of the Bill to empower communities. We believe that the need for the Bill implies that a broader process of change is required. We need to clarify how, through the provisions of the Bill and the actions that accompany or follow from it, we can empower communities to empower themselves.

1. **To what extent do you consider the Bill will empower communities, please give reasons for your answer?**

To start by stating the obvious, a bill will not in itself empower communities. If communities are to be empowered, they will do it themselves, assisted or hindered by a range of factors, including the legislative framework, their economic and social circumstances, their access to political influence, the degree to which they have developed their own capabilities, their access to support in doing this and the quality of this support, and the willingness and capability of public service agencies to engage with and respond to them.
The Bill includes a number of provisions that in broad terms create rights that will result in communities being able to either take direct control of assets, or to influence the way in which services are provided, in ways that have been less open up to now.

In assessing the extent to which this will “empower communities”, it is important to consider the question of which communities are most likely to exercise these rights successfully. The rights, and the raised expectations of the role played by communities created by the Bill, are not matched by the current opportunities for disadvantaged communities to develop the capacities to make use of its provisions.

There is a risk that the communities most likely to do so are those that have the readiest access to technical skills, networks of influential contacts and other relevant resources, and the confidence that results from these; in other words those that are already significantly “empowered”.

Our view in the light of this is that the extent to which the Bill will empower communities will be critically dependent on the availability of support to those communities that are currently dis-empowered, and on the nature of this support. We have provided further comments in relation to this in answer to question 3 below.

A further critical factor in the extent to which the Bill will empower communities is the adequacy of the skills, knowledge and capability base of government and national agencies in relation to the demands raised by the Bill; these need to be questioned and re-assessed.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

Both the Bill and the issues it seeks to address present a major challenge to public sector organisations. Without significant change in their culture and the resulting ways of working, they are likely to face a growing disconnection from the communities they exist to serve. To avoid this and to grasp the positive opportunities offered by the empowerment of communities, they need to re-assess their own capabilities in relation to the changing context, and take steps to develop them in the light of this.

For public sector organisations committed to working in partnership with communities, to challenging and reducing inequalities and to enabling communities to play a greater part in shaping their own future, the benefit of the provisions in the Bill is that they provide a clearer statutory framework for a range of initiatives and activities that can support progress in these areas.

Potential disadvantages for public sector organisations with these commitments could arise from the interaction of provisions in the Bill for community planning
and for the setting of outcomes at a national level, which may have the, presumably unintended, consequence of “planning for outcomes” at local level being constrained by the transmission of nationally-set outcomes via the Single Outcome Agreement and the Community Planning Partnership.

A public sector organisation committed to reducing inequality could find itself in difficulty as a result of the relative scale of demands arising from provisions in the bill from better-off and already-empowered communities and from those that are relatively disempowered. This again highlights the point made in relation to question 1 on the availability and nature of support to those communities that are currently dis-empowered.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

It is clear that some communities are much better-placed than others to take advantage of the provisions in the Bill. Communities that are relatively advantaged in terms of income, employment, health, education and influence are also not only already in a far stronger position than others to gain control of community assets and to participate in decision making, but also in a far stronger position to take advantage of many of the bill’s key provisions. Indeed these inequalities of power and influence can be seen both as a central cause of other continuing inequalities of opportunity and outcome, and a product of them.

As a result they have a massive impact in preventing the development and use of the latent capabilities of a large section of the population.

As noted above, our view is that in this context, the issue of the availability and nature of support available to communities, and in particular those that are relatively disadvantaged, is critical for the Bill achieving its stated objectives.

Suggested changes to the Bill

We therefore welcome section 9(3) which states that each community planning partner must contribute funds, staff and other resources, as determined by the community planning partnership (CPP) with a view to improving identified local outcomes and “for the purpose of securing the participation of the community bodies mentioned in section 4(5)(a) in community planning”.

At the same time there are a number of respects in which we think it is important that this provision is added to, strengthened, and widened.

- There is currently no direct indication of how the CPP, or community planning partners, should decide on which community bodies should receive support in this way, or to what level. It may be suggested that a link with the local outcomes improvement plan will ensure that those community bodies that are active in communities that are currently least
empowered secure the most benefit from this provision. However, we suggest that this is much more likely to happen if there is a specific provision that resources should be allocated in a way that addresses inequality and prioritises those communities that are currently least empowered.

- The provision in section 9(3) relates solely to securing the participation of community bodies in community planning. While this is welcome in itself, support provided on this basis is concerned with community participation viewed from the perspective of the CPP and community planning partners, rather than with enabling communities to identify and progress their own concerns, using community planning, participation requests, requests to own or manage assets and/or other methods as determined by them.

This latter type of support is ultimately far more effective in bringing about the empowerment of communities, and also in stimulating real participation in community planning that provides a dynamic for change, than support solely for “securing participation in community planning”, which inevitably starts and ends with the perspective of the core community planning partners.

We therefore suggest that section 9(3) is reframed as a duty on community planning partners to contribute funds, staff and resources to assist communities to determine their own priorities, organise themselves to achieve these and to participate in community planning, and take advantage of other provisions of the Bill, in pursuit of the goals and objectives they have identified; and to ensure that these funds, staff and resources are allocated in such a way as to maximise their impact in reducing inequalities between and within communities and in empowering those communities experiencing relative disadvantage.

- On that basis, the duties set out in the current section 9(3) in relation to participation in community planning would become duties in relation to a range of provisions in the Bill and we suggest that consideration is given to how provisions of this sort could best be incorporated into the Bill.

- The effectiveness of support provided to communities will depend crucially on the competence – the relevant skills, knowledge and understanding – of the practitioners providing it, whether as paid staff or as volunteers, and their commitment to appropriate values informing their practice. We therefore suggest the addition of a duty on community planning partners and CPPs to take steps to ensure that, in providing or securing staffing support for communities in support of the objectives of the Bill, the staff or volunteers have the appropriate competences and values, and are assisted to develop them further.
Action to assist communities

It is generally recognised that the Bill needs to be accompanied by a range of other action in order to achieve the significant change that is sought. Ensuring that the appropriate support is available to communities, and that central and other public service agencies develop the additional capabilities they need to respond to and engage with communities, are key areas in which this action is needed.

Developing the values, skills and competence to assist communities to take advantage of the Bill’s provisions

In relation to the final bullet point above, the CLD Standards Council can offer advice on how community planning partners and CPPs could best ensure that staff and volunteers have the appropriate competences and values, and are assisted to develop them further. The Standards Council’s competence framework¹, statement of values and Code of Ethics², all developed by working with the field, provide a ready-made framework for use by community planning partners and CPPs in this context.

The Standards Council’s remit, as directed by the Scottish Ministers, includes responsibility for setting out a model and framework for continuing professional development (CPD) for all involved in CLD (including qualified and unqualified staff, paid or voluntary). The CPD Strategy for CLD³, currently being refreshed, sets the direction for the development of a learning culture that could support all those involved in supporting the empowerment of communities in line with the provisions of the Bill.

The i-develop – learning for CLD platform⁴ provides a framework for practitioners to manage their own CPD. It provides a resource for paid staff and volunteers to develop their competence and effectiveness in empowering communities, and could be utilised by paid staff and volunteers supporting disadvantaged communities to make use of the provisions of the Bill.

Mobilising and co-ordinating support for communities

In order to organise, mobilise and co-ordinate support for communities to make use of the Bill’s provisions, we suggest that the Scottish Government should make clear that it expects the various lines of policy and legislation related to this to be supported and implemented in a joined-up way. National public

¹ http://www.cldstandardscouncil.org.uk/the_competences/Competences_for_Community_Learning_and_Development
³ http://www.cldstandardscouncil.org.uk/CPD/CPD_Strategy
⁴ http://www.i-develop-cld.org.uk/
agencies and third sector support organisations have key leadership roles in this, which to be exercised effectively require them to give up some of their own power to control in order to create the space for others to act. The remit and role of national support and umbrella organisation should be audited and refreshed to meet current and developing needs and opportunities.

In particular we suggest that the Scottish Government should emphasise that the CLD plans that each local authority is required to work with partners to prepare by September 2015 (under the provisions of the Requirements for CLD [Scotland] Regulations, 2013) should be utilised to assist development of support for communities to make use of the Bill’s provisions.

All those involved in providing this support should be encouraged to communicate with each other, to avoid duplication of effort and to collaborate with each other wherever this will be to the benefit of communities themselves. Differences of method and approach should be respected, and critically explored as a means of improving the impact of support provided in empowering communities. The Standards Council’s frameworks referred to above provide one means of developing agreed standards as a means of improving practice.

*Ensuring that accessible, high quality professional education to develop the support required by communities is available*

Access to professional education, in particular for volunteers involved in empowering their own communities, is a key means of developing the skills and competence needed to assist disadvantaged communities to make effective use of the Bill’s provisions. However, people from the communities that need support to take advantage of the Bill’s provisions face major barriers, including financial ones, to entering full-time further or higher education.

In a wide range of human service disciplines, the practice placement element of professional education is recognised as critical to its effectiveness. In line with this, the CLD Standards Council requires professional education programmes in CLD to include a minimum of 40% practice-based learning. This requirement restricts the amount of time that participants on programmes are available for work; whereas in a number of other professional areas practice demands are recognised in the offer of various forms of financial support, these are not available to students on CLD courses.

Given the importance of developing the skills and competences to support communities to take advantage of the Bill’s provisions within disadvantaged communities themselves, we suggest that a review of the organisation and funding of professional education in CLD is considered. Such a review would also provide the opportunity to ensure that all aspects of professional education in CLD are fit for purpose in the context of the evolving needs and aspirations of communities across Scotland.
4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

As outlined above in response to question 3, we would like to see changes in the provision currently set out in section 9(3).

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

Assessment of equal rights

We suggest the following two issues relating to equal rights, not mentioned within the policy memorandum, should be given consideration.

1. We have highlighted throughout these comments that there are significant risks that the Bill’s provisions inadvertently increase inequalities between communities.

These are not primarily inequalities relating to the “equalities groups” considered by the Equality Impact Assessment. However, it seems likely that in some instances the members of “equalities groups” are over-represented in geographic communities that are economically and socially disadvantaged, and/or that the effects of inequality experienced by members of “equalities groups” are exacerbated by living in disadvantaged areas. These are likely to be important factors in developing realistic strategies for supporting community empowerment.

2. “Community bodies” are not invariably benign, and it is important to acknowledge that the potential always exists for particular community bodies to be controlled by one grouping within a community and used for the perceived benefit of that grouping and to the detriment of others within the same wider community. Those discriminated against in such circumstances can be members of “equalities groups”.

We suggest firstly that further consideration is given to whether any additional or amended provisions of the Bill can assist, together with existing equality and human rights legislation, in minimising risks of this nature.

Secondly, we believe that addressing inequalities issues within and between communities must be a key focus of the assistance provided to communities to take advantage of the provisions of the Bill. Addressing issues of this kind requires the work of those enabling the empowerment of communities to be informed by a strong values base, an understanding of how this values base informs day-to-day activity and a high level of competence. All of this underlines...
the points already made about the importance of developing the values, skills and competence to assist communities to take advantage of the Bill’s provisions.

Impacts on island communities
Those working to empower island communities are faced with particular challenges in relation to accessing learning opportunities to support the development of their skills and competences, including opportunities to network and share experiences with their counterparts in other areas. This should be given consideration in addressing the issues of developing the values, skills and competences for empowering communities.

Sustainable development
Support for communities informed by a strong values base, an understanding of how this values base informs day-to-day activity and a high level of competence is a critical factor in enabling communities to work effectively for the sustainable development of their area or in relation to their shared interests.

In summary, the CLDSC believes that a number of fundamental conditions need to be in place if the change required to bring about community empowerment is to happen:

- There should be a clear focus in the Bill and associated actions on how we empower communities to empower themselves.
- Disadvantaged communities need access to high-quality support in identifying their own priorities, developing strategies for achieving them, building the organisational infrastructure required and engaging with decision-makers.
- This support should be informed by a clear value base and competence framework; underpinned by professional learning opportunities focused on how to empower communities to empower themselves and accessible to people active in their own communities.
- Public agencies should reassess their skills, knowledge and capability base in relation to the challenges posed by the change required to meet the Bill’s ambitions.
- Section 9(3) of the Bill should be reframed as a duty on community planning partners to contribute to assisting communities to determine their own priorities, and to organise themselves to achieve these.
- The duties set out in the current section 9(3) in relation to participation in community planning would become duties in relation to a range of provisions in the Bill.
- The Scottish Government should make clear that support for implementation of all the policy lines directly relevant to the empowerment of communities should be co-ordinated.
• National public and third sector agencies should take an active, enabling lead role in mobilising and co-ordinating support to empower communities to empower themselves.

• A review of the organisation and funding of professional education in CLD should be considered.

• Further consideration should be given to additional or amended provisions of the Bill that would assist, alongside existing equality and human rights legislation, in minimising risks of exacerbating inequalities.

• Addressing inequalities issues within and between communities should be a key focus of the assistance provided to communities to take advantage of the provisions of the Bill.
Community Empowerment (Scotland) Bill

Committee’s call for evidence

The Poverty Alliance is a network of individuals and organisations across Scotland working together to combat poverty. Our membership is made up of a wide range of organisations including grassroots community groups, individuals facing poverty, voluntary organisations, statutory organisations, policy makers and academics. We now act as the national anti-poverty network in Scotland, working with voluntary organisations, policy makers and politicians at Scottish, UK and European levels.

To what extent do you consider the Bill will empower communities, please give reasons for your answer?

The Poverty Alliance welcomes the Community Empowerment Bill, as an organisation representing people from some of Scotland’s most disadvantaged communities it is important to us that this Bill empowers all communities and seeks to narrow inequalities. We have been working alongside Barnardo’s and Oxfam Scotland to develop proposals on how this Bill could be amended to ensure that Scotland’s most disadvantaged communities are empowered. We have submitted a joint document representing the views of the three organisations separately.

For the Poverty Alliance, the most important aspect of this Bill is around empowering Scotland’s most disadvantaged communities, and narrowing inequalities between those communities which are already empowered and those which will require more support. We would like to see this Bill prioritise Scotland’s poorest communities. There is a danger that the Bill, in its current form, will most benefit those communities which are already empowered and able to take advantage of the provisions in the Bill.

Standards for Community Engagement

We would like to see the high quality involvement of communities in local decision making become central to public bodies’ core purpose. Standards for community engagement exist currently but their implementation is varied across Scotland. We believe that the Community Empowerment Bill is the ideal opportunity to renew these and place them on a statutory footing. Placing a requirement on public bodies to adhere to a set of national standards for community engagement would be a welcome step forward for communities’
right to participate. A key part of standards should be a focus on inequality and empowering communities.

**Recommendation:** A new power created enabling Ministers to create statutory regulations for the engagement and empowerment of communities. Community Planning Partnerships should be required to adhere to the standards when creating local outcome improvement plans.

In order for the process to be transparent, the Poverty Alliance would like to see parliamentary review of the national outcomes at the point of them being reported on. This would allow for increased accountability of both the Scottish Government and public bodies.

**Recommendation:** Parliamentary review of outcomes to be added to the Bill.

**Community Planning Partnerships**

Community empowerment should be central to the purpose of Community Planning Partnerships. This Bill will put CPPs onto a statutory basis and so this is the ideal time to consider how we improve the functioning of community planning. The focus of CPPs needs to change so that communities are given a meaningful role in producing their public services. CPPs should have a duty requiring them to involve communities in a meaningful way in the decision making process.

**Recommendation:** A requirement that the local outcomes improvement plan, that each CPP must provide, is created through a participative process of community engagement.

**Right to request to participate**

We believe there should be a clear role for public bodies in bringing together and connecting communities, removing barriers to participation and supporting communities to take advantage of the right to request to participate.

In order to increase transparency and accountability, we would like to see a requirement for public bodies to include in their public report a view of the process from the community body.

**Recommendation:** A requirement for public bodies to include an opinion piece by the public body in their final report.

**Participative budgeting**

The Poverty Alliance believes that including participative budgeting in the Bill would help further empower communities. CPPs should be required to set aside a percentage of their annual budget to be decided on through community participation.
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Recommendation: That each CPP is required to set aside 1 per cent of their annual budget to be decided upon through an appropriate community participation process.

By including these recommendations, the Poverty Alliance believes the Bill could be strengthened so that it works for all communities. As the Bill exists currently, there is a danger that it will only empower those communities who are already advantaged, and further widen inequalities.

What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

It is important that this Bill is about communities and this should be kept at the centre of all decision making. All decisions should be made around what is in the best interest of the community and it is important that public bodies support communities to take advantage of the opportunities available to them. If communities are to make use of any new powers granted by the Bill they will need resources to help finance projects and support to carry out their ideas. There may also be financial costs to public bodies in supporting communities and it may be necessary to set up a fund to help communities take advantage of the proposals in the Bill.

It is important that transferring assets to a community group is not viewed as a cost cutting mechanism for public bodies, and decisions on any asset transfer should not be made based on financial reasons. The main purpose of any asset transfer must be clear community benefit. Communities’ greatest assets are their people and by including these people in decision making processes public bodies will benefit from hearing different voices and from people with different expertise. Including communities in planning services may also lead to a more cohesive relationship between public bodies and communities.

Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

There will be some communities who already have the capacity to take advantage of the Bill but the Poverty Alliance is concerned that the Bill does not do enough to empower the most disadvantaged and disempowered communities. People living in disadvantaged communities have the same desire to see the places where they live improve, the same desire to have greater influence and indeed control over the matters which affect them and their communities. However, often the practical capacity to act on these desires may be limited, perhaps through the lack of resources, the absence of crucial social capital, or the expertise in key areas (e.g. legal or planning issues)

We are concerned that there is insufficient recognition in the Bill that not all communities are equally empowered and there is too little in the Bill to change this. As the Bill currently
stands, the communities which will benefit the most are those which are already empowered. The Poverty Alliance would like to see capacity building included in the Bill to help tackle the existing inequalities between communities.

Communities experiencing the greatest poverty have many assets, but often lack financial resources, relevant skills and the time necessary to be able to take advantages of the proposals in the Bill. We have been advised by one community group who have already taken over an asset, that funding applications are one of the biggest challenges they face. They are often notified by the Local Authority about funding opportunities but are not supported in their completion. One possible suggestion is a commission to support deprived communities.

**Recommendation:** An additional duty on local authorities to support disadvantaged communities to take up the opportunities presented by this new Bill.

Communities need to be made aware of the opportunities available to them. Being aware of assets available for community use is a significant resource for communities. It is also important that communities have as much information as is available about these assets before they request a transfer. This includes running costs, potential rental value and maintenance costs.

**Recommendation:** A duty placed on public bodies to publish and maintain an asset register.

The purpose of Community Planning Partnerships needs to change to ensure that all communities are all able to come together with public agencies to co-produce their public services. The development of local outcomes improvement plans should be through a participative process of community engagement. There should be a duty on CPPs to reflect this and for them to involve citizens in local decision making and the deciding of outcomes. This must go beyond consultation and should be a genuine process of engagement.

**Recommendation:** A legislative requirement for CPPs to create a local outcomes improvement plan through a participative process of community engagement.

In order to ensure that all communities are able to take advantage of their right to request to participate, all communities need to be made aware of process and their rights. The Poverty Alliance would to see a duty on local authorities to advertise the right to request to participate and encourage communities to become involved. As part of this, there has to be an open, transparent and straightforward process of review. We believe that there must be a third party to protect the right of communities to participate. Communities must have the knowledge of where they can turn in the event of requests being declined.

**Recommendation:** The ‘Right to request to participate’ to be strengthened through a clearer arbitration and review mechanism.
Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

The Poverty Alliance has highlighted a number of issues with this Bill in our answers above and also in our joint submission with Oxfam and Barnardo’s.

To summarise, our recommendations are:

- A new power created enabling Ministers to create statutory regulations for the engagement and empowerment of communities. Community Planning Partnerships should be required to adhere to the standards when creating local outcome improvement plans.

- Parliamentary review of outcomes to be added to the Bill.

- A requirement that the local outcomes improvement plan that each CPP must provide, is created through a participative process of community engagement.

- A requirement for public bodies to include an opinion piece by the public body in their final report.

- That each CPP is required to set aside 1 per cent of their annual budget to be decided upon through an appropriate community participation process.

- An additional duty on local authorities to support disadvantaged communities to take up the opportunities presented by this new Bill.

- A duty placed on public bodies to publish and maintain an asset register.

- A legislative requirement for CPPs to create a local outcomes improvement plan through a participative process of community engagement.

- The ‘Right to request to participate’ to be strengthened through a clearer arbitration and review mechanism.

The reasons for these recommendations are given in response to previous questions.

What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the policy memorandum?

The Poverty Alliance is supportive of the explicit requirement for public bodies to consider the Equality Duty when making decisions on asset transfers and participation requests. We believe is would be appropriate for public bodies to carry out an Equality Impact Assessment when developing policies in relation to the provisions of the Bill.
Museums Galleries Scotland response to the Call for Written Evidence on the Community Empowerment (Scotland) Bill

Museums Galleries Scotland (MGS), the national development body for museums and galleries in Scotland, welcomes the opportunity to respond to the Local Government and Regeneration Committee’s call for written evidence on the Community Empowerment (Scotland) Bill.

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

- The legislation is timely as Local Authorities are working with more community / volunteer run museums. The draft Bill provides a process for those activities which are already taking place.
- It improves community engagement and involvement in decision-making and identifying outcomes. The processes included in the Bill are supported by clear mechanisms and appropriate policy frameworks. There is a stronger voice for communities regarding service provision and the outcomes that affect them.
- The Bill should enable Local Authorities to work closely with independent community and volunteer run museums in delivering improved outcomes for the communities in which they operate. It should be of benefit for museums as they will be able to contribute to Single Outcome Agreements and the National Performance Framework through involvement with the Community Planning Partnerships.
- The Bill should ensure improved relationships between museums and communities, enabling stronger support through shared ownership and responsibility for heritage and culture.
- The Bill allows for improved transparency of process and decision making about assets management and transfer, particularly in relation to Common Good.
- Extending the legal entities that can use the community right to buy provisions to include SCIOs will be good for those museum organisations which are using this governance model and may wish to acquire land or property for their museum activities.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

- Benefits
  - The main benefit we see is that of vacant or under-utilised public buildings and land being made more use of for purposes relevant to / required by communities.
Another benefit is the clear structure, roles and responsibilities of the Community Planning Partnerships as laid out in the Bill. This will enable communities to see how they can engage with the various community planning processes. It will also help to convey that those organisations involved in the Community Planning Partnerships have a shared responsibility and accountability.

- Disadvantages
  - A current disadvantage is the lack of clarity regarding the Ministerial role in the appeals process. It is very important that we have more information about how this would work. There is a need to ensure transparency and to have an understanding of how decisions would be made.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?
   - The capabilities and confidence about taking advantage of the provisions in the Bill will vary both across Scotland and across different community groups. There could be a role for public sector organisations in providing support for some areas, whether this is for a geographic area or relating to a specific sector.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?
   - The current section relating to the Ministerial role in the appeals process does not provide sufficient information about how this element would work. There is a need to ensure transparency and for all parties to have an understanding of how decisions would be made.
   - Common good
     - Local Authority museums can request the common good register from their Local Authority and extract relevant information when required. It should be possible for museums to include this information in their Accession register and in their Content Management System.
     - In relation to disposal of common good items it might be helpful to refer to any ethical guidance from a relevant body, e.g. Museums Association disposal toolkit and the Code of Ethics. The Disposal toolkit only has to apply to accessioned collections (it represents best practice which may not be followed for non-accessioned items.)
     - Museums should have a policy on assets and asset (both tangible and intangible) transfer to be published and made available on request. See FRS IPAC policy process for Accounting for Heritage Assets: IPAS 31 and FRS 30.
   - Overall, we are content with specific provisions in the Bill.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?
   - We are content with the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum.
Children in Scotland is the national network organisation for the children’s sector in Scotland. We have over 400 member bodies in the public, voluntary, community and independent sectors. We are aware that several of our member organisations have responded at length and in detail to the call for evidence and we would not propose to reiterate many of the points made. In particular, the evidence submitted by Barnardo’s Scotland is both extensive and comprehensive and we generally endorse its content. There are a few additional points, however, we would like to contribute.

1. To what extent do you consider the Bill will empower communities?

While we very much welcome the commitment to community empowerment embodied in the Bill, we do believe that its provisions could be made more robust. We are concerned that the level of formality and organisation required of groups before they can apply to participate may deter or disqualify less formal and ad hoc groupings, or single-issue topical campaigns. Specifically we are concerned that those in less advantaged communities and groups may find these requirements a barrier to access. We also believe it is important to provide opportunities for empowerment in settings outwith designated community planning partnership arrangements. Many people may be concerned, for example, about litter in their street, about standards in their local school, about local transport provision, about the quality of their social housing or about the accessibility of local healthcare. They may not wish to be engaged in the wider issues with which CPPs concern themselves. Community empowerment is more likely to be effective, both in terms of reach and impact, if it allows individuals and groups, formally constituted or not, to be involved in issues that affect them directly.

Similar issues apply to the matter of appropriately empowering children and young people. Communities will in the longer-term be much more effectively empowered and have meaningful influence over issues of importance to them if co-production of services becomes perceived as the norm for all citizens, whatever their age. Ensuring that systems and methods are in place to involve children and young people in contributing to the development of the services they use will build active citizenship that is likely to be sustained into adulthood.
2. *What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?*

The bill will certainly have an impact on how public bodies discharge their functions. Whether these are seen as benefits or disadvantages depends on the values that underpin the organisations’ work. There is certainly potential for an increase in bureaucracy without any measureable impact on community wellbeing. Processes may be more time-consuming, particularly if dialogue with community groups is detailed, thorough and inclusive. Public services are, however, likely to be more responsive to community need, thus more likely to result in positive outcomes and potentially, to generate cost savings.

3. *Do you consider that communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure that this happens?*

We strongly believe that growing empowerment ‘from the ground up’ is the most effective approach to ensuring that capacity exists within communities to take advantage of the Bill’s provisions. We therefore urge that building capacity, through relevant knowledge and experience, among children and young people is given high priority. We are concerned that many individuals and groups already involved in community planning processes are not adequately representative, in terms of diversity, of the communities they seek to represent. We also believe that there are groups and individuals who are detached and disengaged from effective engagement with community structures and that they are likely also to be those who experience marginalisation in other aspects of their lives. It is should not be a case of ‘training’ such people to fit in with structures largely devised and driven by large bureaucratic bodies, but ensuring that systems are accessible, enabling and, critically, can show that community participation is not a tokenistic compliance with a statutory duty but can bring about positive change. It is, however, important that community capacity is developed and supported through an adequate level of relevant service such as Community Learning and Development, much of which provision has been eroded in recent years.

4. *Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?*

We would like to see changes that address the issues we have raised above. We would also wish to see a requirement to demonstrate the impact of community empowerment by the gathering and analysis of appropriate data. We believe that increasing the level of information and evidence available to communities on relevant issues should be increased; for example most school and hospital closures are resisted even though improved outcomes may result from a review of provision. This is vitally important when developing meaningful participatory budgeting as assumptions may be inaccurate and unreliable. It is important that participation in budgetary processes is not a ‘popularity contest’ among services but increasingly becomes an informed and informative contribution to achieving better public services.

5. *What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?*

We believe that a Child Rights Impact Assessment should be part of this process. We would also like reassurance that the degree of impact on socio-economically disadvantaged groups will be fully considered.
The Historic Houses Association Scotland (HHAS) represents individually owned historic castles, houses and gardens throughout Scotland; many regularly open to the public. Historic houses are not only not an expense which the public purse has to pay, but are in fact net contributors to the Scottish economy. Collectively member properties make a major contribution towards employment in Scotland, both in terms of the rural and national economy. The bulk of Scotland’s built heritage is in independent ownership which means that its future stewardship is secured for the benefit of Scotland and the Scottish people at little or no public expense. We recognise the importance of preserving these assets and engage with both the Scottish and UK Governments and local communities across Scotland.

We have focussed our evidence on the parts of greatest relevance to our areas of primary responsibility. However, it is important to note given the integrated nature of historic houses with adjacent related enterprises such as farming or holiday lettings, that any reforms in respect of “abandoned and neglected” land will very probably impact upon heritage properties too. Frequently, historic houses are dependent upon the productivity of the land and assets around the building itself as a support for the historic house and separation of the different components or any cherry-picking of land would potentially have a detrimental impact upon the house.

We welcome the opportunity to provide evidence since our members have wide-ranging interests in their local communities and many are already working to deliver the aims of the Community Empowerment (Scotland) Bill (“the Bill”).

General Comments

HHAS is supportive of the principles of the Bill and the extension of community right to buy on the current willing seller basis to the whole of Scotland, but it is important that the Bill provides a framework through which groups, individuals and businesses are empowered to deliver locally. We fully recognise that successful community empowerment results from local enthusiasm leading to local initiatives, local decision-making and local processes, and wish to ensure that all parts of the community are truly empowered. Voluntary agreement has to be the essence of genuine community empowerment, and there are many benefits to be gained through collaboration and partnership. It is noticeable that much land which has been transferred into community ownership, has been undertaken without recourse to the provisions of the Land Reform (Scotland) Act 2003. It is imperative that lack of use of the powers is not seen as a failure of the community ownership
agenda. The lack of information on land and property assets transferred to the community without recourse to the legislation must be addressed.

The apparent focus on ownership in the Bill does not of itself equate to “empowerment”. There are many ways in which a community can become empowered. As Stuart Hashagen, senior Community Development Adviser at the Scottish Community Development Centre said in evidence to your Committee on 12 March 2014, “My point is that not every community wants to take over buildings, land and assets.” Specifically we have concerns regarding the provisions in relation to abandoned and neglected land which we have addressed below.

Local interests are important and we do not underestimate the quality of expertise available in many local communities, but there is also significant knowledge and expert advice in national civil society outwith central and local government.

Generally, it will be vital for the measures in the Bill to strike the correct balance between the policy objective of strengthening the role of communities in influencing the stewardship of local property assets, on the one hand; and the right for owners of historic properties for instance to be in a position to progress their own long-term asset management objectives on the other.

Part 2 - Community Planning

HHAS is broadly supportive of clauses 4 to 13 of the Bill in relation to Community Planning. We are of the view that effective community planning is central to helping enable more people across Scotland have a stake in the ownership, governance, use and management of land. Therefore we welcome the alignment with national outcomes at Clause 4(3), having previously called for further work to align national policy initiatives with local planning. The sentiment in the Policy Memorandum in terms of maximising involvement from all partners, which obviously needs to include the private, independent and third sectors, is also encouraging. A strategic joined-up approach is vital and we would have welcomed specific reference to Community Councils in Schedule 1 to the Bill. Overall, it needs to be borne in mind that legislation alone will not establish successful community planning which is dependent upon the relationships between and culture of, organisations. We would like a clear commitment from the Scottish Government that significant activity will be undertaken in addition to the legislation to improve the community planning process.

Part 4 - Community Right to Buy Procedure

HHAS is keen to ensure that the community right to buy process is as straightforward and equitable as possible for both parties, community and owner. It is in neither party’s interest for a community acquisition to be protracted or for there to be any uncertainty.

Clause 33 introduces a requirement for an owner to inform Ministers within 28 days of an exempt transfer being made of this taking place. We consider this to be at odds with the fact the transfer is “exempt”. Further, Registers of Scotland maintain both the Land and Sasine Property Registers as well as the Register of Community Interests in Land and at present it is sufficient to include a declaration in the disposition, detailing the exemption which is being relied upon. It would therefore
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appear to be most straightforward for there to be internal communication within Registers of Scotland as opposed to placing an additional unnecessary burden on the owner to notify.

Under the current legislation there is certainty regarding the outcome of the ballot result and we are therefore concerned that clause 39 of the Bill removes this certainty, reducing the worth of the ballot and increasing the time period for determination. A ballot is the best and fairest way to measure support as there requires to be transparency, clarity and a tangible outcome. The Post Legislative Scrutiny Report of the 2003 Act published in September 2010 noted, “there was strong support among Community Bodies for the principle of holding a ballot, and most (though not all) supported some level of minimum turnout requirement. One interviewee noted that the demonstration of community support achieved through conducting a rigorous ballot was very useful to their organisation because —no-one can say that the community don’t support what we’re doing.”

In terms of extenuating circumstances which may be taken into account we would be keen to guard against spurious claims and specifically would be interested to know if there is any standard practice or guidance from the Electoral Commission or other impartial body in relation to elections generally which should be reviewed if such a measure is to be adopted. It is entirely proper that circumstances such as adverse weather should be accounted for.

We appreciate that the Financial Memorandum suggests expenditure involved in running the ballot will not be onerous, but this is predicated on a certain restricted usage of the measures in the Bill. In our view, as the ballot is at the initiation of the community body it should be for the community body to meet the expenses and not the public purse as proposed in clause 37 of the Bill.

Late applications were intended to be the exception rather than the rule, but now account for around one-third of community right-to-buy applications. The Bill further relaxes the criteria in terms of Clause 31. In reality if the process is working properly we believe that this should reduce the need for late applications. Community right to buy in our view is intended to be a proactive as opposed to reactive tool and the legitimacy of the process is undermined where late applications become almost standard.

One suggestion which may improve the late application procedure would be if a landowner could obtain exemption from a late application by giving forward guidance of say, six months, of a potential sale of land by advertisement in a local newspaper, giving the community body say, 4 months, to organise itself and register an interest in that land, failing which no late application would be entertained by Ministers.

One part of the existing process where there has been undue delay in consideration of applications to date is in relation to the discretion which Ministers currently have and there is no recognition in the drafting of the Bill or accompanying documentation of the potential role of Scottish Ministers delaying determination of matters, whether that be political or resource-led. Ultimately it should not be forgotten that community right to buy involves three parties, not just the landowner and community body, but also the Minister as well. The Final Report published in September 2010 on the Post-Legislative Scrutiny of the Land Reform (Scotland) Act 2003 by Calum MacLeod and others
flagged this issue of Ministerial discretion. We would welcome the introduction of a monitoring system into delays in this part of the community right to buy process.

Clause 44 of the Bill means that a landowner who withdraws from a sale to a community body following Ministers appointing the valuer, will be at risk of having to pay to the Ministers, at their discretion, any expense the Ministers have incurred. This provision is a cause for concern, given that under the Community Right to Buy, an owner has the right to withdraw his land from a sale to the community body, after the right to buy has been activated, provided the appropriate notification has been given. We would look for comfort that Clause 44 is not used to arbitrarily penalise a landowner who for a variety of reasons decides not to proceed to sell land, as is his right. A landowner may decide not to proceed for a number of valid reasons, such as where land is owned in Trust, not all of the trustees being made aware of the sale, where family or financial circumstances of the landowner change. Further clarification of the criteria which would form the basis for the Minister’s decision on expenses is required. A landowner must remain free to deal with their land as they see fit and having the threat of recovery of expenses against the landowner could adversely affect them.

Abandoned and Neglected Land

HHAS members similar to others in their respective communities will be supportive of moves to deal with derelict, vacant and untidy ground which impacts on the local amenity and environment. However, we have serious concerns about the current drafting of clause 48 of the Bill in relation to “Abandoned and neglected land”. If the aim of this section is genuinely to stop community blight and allow for productive use of the land as the Policy Memorandum appears to indicate, then this is not realised in the current drafting of the Bill. We are concerned that the provisions will in fact give succour to those seeking to thwart development or other management plans.

It was noticeable that of the seventy-five questions in the second consultation document only two of those concerned this absolute right to buy provision on neglected and abandoned land and there was no reference to it in the draft Bill which accompanied the consultation. The responses to those questions by consultees across various sectors expressed concerns about how this proposal could be adequately legislated for and it is extremely disappointing that definitions have not been developed by the Scottish Government since that second consultation, given the passage of one whole year. It will not be clear at all how this will work in practice until regulations are published and even then it will depend upon the drafting of those regulations which will enjoy less thorough scrutiny than primary legislation. While we recognise there is a purpose for secondary legislation where detailed procedural matters require to be fleshed out, in this instance the critical matter of definition is being left to secondary regulations.

In our view, an owner is entitled to know, prior to the Bill becoming law, what is meant by the separate terms of “abandoned” and “neglected”. As the Bill is currently worded neither owner nor community body will have certainty on the circumstances in which these provisions could be used. We would suggest that is not appropriate to deal with the transfer of fundamental property rights through secondary legislation. The definitions of “abandoned and neglected” need to be set out in the Act, given this is such a major issue and introducing compulsory acquisition.
The clause heading in the Bill refers to “Abandoned and Neglected” land which we assume refers to the fact that both areas are to be dealt with in that clause, since the part which is to be inserted in the Act refers to “abandoned or neglected”. Clarity is required not only in terms of definition of both, but also that these are being considered exclusively in that the land need only meet the tests of one definition. We also question whether consideration has been given to this part of the Act relating to urban areas alone, rather than coverage being for the whole of Scotland? If we are looking to address those small parcels of land which prevent sustainable development or cause blight then should we restrict use to settlements over a certain population?

We are unclear as to the reference to “wholly or mainly” at 97C(1). The extent of the landholding to be considered requires to be thoroughly scrutinised in forming any legislation in this area. Indeed, 97C(3)(a) requires further consideration in terms of the definition of “an individual’s home” and also the extent to which the location of stables, log sheds and other outbuildings are considered. We also have concerns regarding 97C(3)(f) which allows for the exclusion of prescribed land, particularly if this includes large charities.

While we recognise abandonment as a concept in terms of a leasehold interest, we are not clear how title to a property can be abandoned. The Court of Session only last year on appeal ruled in relation to Scottish Coal Company that Scottish liquidators were unable to abandon land owned by an insolvent as a means of avoiding onerous duties relating to the land. Indeed we are also unclear how land can be “mainly abandoned”. This does not appear to be a legally competent term.

In terms of the process set out in the Bill, we believe that deprivation of ownership is not the appropriate final outcome and it is questionable in ECHR terms whether this is in fact a proportionate response. Where there is “abandoned and neglected” land, the key issue the Bill requires to address is land use, not ownership. This is not realised by 97H(c) which solely relates the criteria for consent to ownership. In contrast the Housing (Scotland) Act 2006 addressed problems of condition and quality in private sector housing with Housing Renewal Areas very much focused on addressing use.

For example, owners of land under agricultural tenancies may have very limited control over the utilisation of the leased land and short of going through time-consuming and potentially costly court processes may be unable to rectify this. It would seem inequitable for land to be compulsorily acquired, where the owner is not actually responsible for the perceived absence of activity or poor management.

Some redevelopment projects can take a considerable period of time and the sense that nothing is being done with the land is not the reality. The various flora and fauna that may be existing in an “overgrown” site may have a value all of their own. This must be carefully examined. In a rural context a scheme to return land to wild land status may appear neglectful to some in a community, but in fact the absence of active management is not necessarily a sign of either “abandonment” or “neglect”. Land may be delivering wider public good in the form of ecosystem services despite not being actively managed. Active management of itself can therefore not be properly used as a term in defining abandonment and neglect. Biodiversity, carbon capture, recreation and cultural value may all be components of different sites and the Bill as drafted does not take into account such
circumstances, despite page 19 of the consultation document stating “Land which is intended for recognised conservation purposes would not be considered to be neglected or abandoned”, the Bill as drafted does not reflect that.

Under the provisions there is a risk that land which is lying fallow as a result of sound farming practice or land which cannot currently be developed for justifiable commercial reasons or land subject to a conservation agreement to reduce sheep grazing would be threatened. Rather than empowering a community, this provision as it stands could lead to conflict in a community.

There is in the present drafting no clear opportunity afforded to the owner to counter suggestions of abandonment or neglect. The only provision available is clause 97G(9) whereby Ministers may invite views in writing on the application by the owner and the community body thereafter has another opportunity to address those points, without further input from the owner of the land. This would seem to be inequitable.

In tackling land abandonment, the reasons behind this, not necessarily related to statute should be better explored. These can include environmental such as a decrease in soil fertility; socio-political, for example rural depopulation; or economic, market globalisation. Whether abandonment poses a threat or an opportunity may depend on a whole variety of factors. The Final Report of the Land Reform Review Group highlighted “long-term urban land vacancy and dereliction” and we feel that the focus ought to be on urban renewal where there are recognised problems.

One area of concern we have is that the abandoned or neglected ground might give the appearance of that owing to a blight such as ransom/lack of access, which any community body purchasing would only inherit and be equally incapable of defeating – unless it was envisaged that the Government would use compulsory powers to remove the blight. We would sincerely hope that Ministers are not following that arbitrary route which we believe would be discriminatory.

We understand from the proposed section 97H that Ministers are to be satisfied that if ownership was to remain with the existing owner, that would be inconsistent with furthering the achievement of sustainable development in relation to the land and conversely that the community body’s exercise of the right must be compatible with the achievement of sustainable development in relation to the land. HHAS would contend that sustainable development is development which, when completed, can be seen to have been compatible with the natural and historic environment in which it is situated; with the people who use it or benefit from it; and which contributes not only to the local economy but also to the costs of its future maintenance.

We are not clear in terms of the proposed clause 97D why the community body for this part of the Act effectively requires to be a company limited by guarantee and suggest that there is parity with the new provisions for normal community right to buy.

In summary, we support the aims of this section but do not believe that the mechanism is the appropriate tool.
HHAS welcomes clauses 63 to 67 of the Bill in relation to the common good. In our consultation responses, we supported the establishment and maintenance of a publicly accessible common good register following clarification of the assets which form part of the common good. The Bill rightly focuses on this area and we do not have any further comments at this stage.

Part 8 – Non-Domestic Rates

HHAS is encouraged by the fact that while clause 94 provides powers to local authorities to create localised relief schemes, the local authority must have regard to their council taxpayers’ interests and we appreciate in specific instances like flooding, such a power may well be worthwhile. However, the potential and viability of such schemes is not yet known and we may wish this part to be re-visited if there are adverse consequences for private sector businesses. In particular local authorities will require to be cognisant of ECHR and Competition Act rules in relation to this provision. We would oppose any relief scheme which arbitrarily gives a market advantage to one particular type of ownership or governance structure and we could perceive difficulties arising for instance in the rural sphere where a community-owned shop was party to relief, which was not available to an adjacent privately family owned historic house shop paying full rates. It may be helpful if your Committee were to take soundings as to how similar provisions in the Localism Act 2011 work.

We would be happy to provide further detail on any of the issues raised in our written evidence.
Community Empowerment (Scotland) Bill
Local Government and Regeneration Committee Call for Evidence
Response from Voluntary Action Scotland
4th September 2014

About VAS

Voluntary Action Scotland (VAS) is the umbrella body for Scotland’s network of 32 Third Sector Interfaces (TSIs). We work with TSIs (unitary agencies and partnerships of Councils for Voluntary Services, Volunteer Centres and Social Enterprise Networks) around three keys themes; advocating on their behalf, supporting practice development and co-ordinating with them to help deliver stronger and more resilient communities. An important aspect of the role of VAS is to better inform the Scottish Parliament, Scottish Government and the statutory sector of the challenges and opportunities TSIs, the local third sector and local communities face. We aim to work with stakeholders to ensure that TSIs can play their role in supporting communities and delivering a consistent and valued impact across Scotland.

Introduction

VAS welcomes the opportunity to provide evidence on the Community Empowerment (Scotland) Bill. We see potential within this Bill and believe that if amended appropriately it can have a beneficial effect on the communities our members work with on a day to day basis. At the core of our response is the theme of co-production and co-design, this thread runs throughout our response and is central to empowering communities. We believe that the third sector and TSIs in particular have an important role to play in the successful implementation of this Bill.

As a network organisation we have consulted widely with our members when producing our response, although some points will vary between members. As such we found the most productive way to gather members views was by inviting comment on each section of the Bill, our response reflects this format.

Overall, we do not believe this Bill on its own will produce the empowered communities that we wish to see. However, if taken as part of a wider public service reform agenda and coupled with increased capacity building we believe it provides a useful stepping stone on the journey to real community empowerment. Crucial in achieving this is a culture change within public bodies that moves from a ‘top down model’ of service design and delivery to a ‘bottom-up’ community led model. We acknowledge that legislative provisions can only achieve so much in this regard, they can however provide the impetus to public bodies to move towards more collaborative ways of working.

We believe a culture within the public sector that works closely with local communities in service design and delivery will be hugely beneficial for the public bodies involved and crucially advantageous for the individuals within our society. It will lead to greater community buy-in and services which are more reflective of the true needs of the community.
The areas we have focussed on within the Bill are Part 1 – National Outcomes, Part 2 – Community Planning, Part 3 – Participation Requests, and Part 5 – Asset Transfer Requests.

Provisions within the Bill

VAS has made a number of recommendations on provisions within the Bill. These have been broken down by section:

Part 1 – National Outcomes

VAS supports putting the setting of national outcomes into primary legislation and therefore supports the Scottish Government in this regard. However, we believe this section needs to be strengthened further to ensure that meaningful consultation is undertaken on the outcomes with a broad range of stakeholders, allowing for civic society and communities to voice their opinion and help set the outcomes. This will help empower communities rather than the process being driven and set by the centre. In order for a participatory approach to be successful the process for setting national outcomes needs to be simple and done in plain English that people in communities can relate to. Throughout this response we are calling for the National Standards for Community Engagement to be adopted in this regard to act as a code of conduct for engagement, albeit an updated list of standards that has co-production embedded within them.

We would also advocate for Parliamentary review of the outcomes at the point of them being reported on. This would allow for greater scrutiny and transparency and would help hold the Scottish Government and public bodies to account for achieving the outcomes. Finally, we consider the wording of ‘having regard for’ the outcomes when carrying out functions to be not assertive enough at present and would welcome stronger language being used.

Part 2 – Community Planning

Overall, VAS is seeking two key changes in the Government’s approach. Firstly we believe the outcomes for CPPs must include tackling inequalities in outcomes and secondly that legislation must ensure that community involvement is not confused with third sector involvement but that both are understood and specified.

VAS argued in our response to the consultation on the draft Bill that in order for community planning to be effective it must undergo significant reforms, making it a community led, collaborative, budget sharing, bottom-up process. We are therefore concerned about the limited progress that has been made in the current iteration of the legislation.

The reforms needed in community planning extend far beyond this Bill, however, we do believe it is necessary to make changes to the Bill at present in order to facilitate these longer term reforms. Therefore there are a number of additions and amendments that we believe would improve the Community Planning section of the Bill:

- At present Third Sector Interfaces are represented on all 32 CPPs in Scotland. This is a position strengthened by the ‘Agreement on Joint Working on Community Planning and
Resourcing\(^1\) released in September 2013 which states: “Making the most of the total resources available locally means ensuring that the Third Sector Interface is a full community planning partner and drawing on the huge commitment of all those, including volunteers, who work to improve communities.”. VAS is therefore keen to ensure legislation recognises the role of the third sector in community planning via the support of Third Sector Interfaces (TSIs), this role is not currently recognised or alluded to within the Bill. We acknowledge that ‘community bodies’ have been mentioned, and welcome this development, but are unclear as to what this refers to. Regardless of its definition we would advocate for clarity in guidance of the role of Third Sector Interfaces (TSI) in connecting and developing the third sector to community planning: bringing the voice and assets of the third sector to the table. This would ensure clarity, responsibility and accountability for the TSI.

The definition given in Section 4(8) does not seem to encompass the unique role TSIs play in our communities, connecting and enabling voices and assets from the third sector and bringing these to the community planning table. Whilst we do not wish to see duties placed upon Third Sector Interfaces, as they are not statutory bodies, we believe that in order to ensure they are a mandatory member of CPPs it is vital that there is a mechanism within the Bill for them to be written into guidance, perhaps by including reference to an advocate for the local third sector on the face of the Bill, this in turn would be described in guidance as the Third Sector Interface. If the Scottish Government fully believes in creating a culture change in the way resources are managed and services designed and delivered it needs to provide parity of esteem to TSIs as a voice for the local third sector. Community Planning should be about harnessing the totality of a localities assets and using them effectively to improve person centred, co-produced, outcomes, this is not possible without the inclusion and recognition of the third sector. We believe it is possible to write an advocate for the third sector into legislation whilst excluding them from certain duties placed upon statutory partners. VAS will suggest amendments to this effect.

- In order to secure the input from community bodies that is necessary to inform community planning there needs to be a strong community capacity building element, however, this does not appear to be present in the current iteration of the Bill. The duty on Community Planning Partners should extend to beyond merely securing input from community bodies to pro-actively developing the capacity for community bodies to exist and develop their knowledge in order to contribute to the community planning process. There needs to be an acknowledgement of the role the TSI plays in third sector engagement, involvement and capacity building. It would be possible to amend 8.1(b) to include a responsibility on statutory partners to provide adequate resourcing of community and third sector involvement. There should also be an onus on community planning partners to produce materials at CPP level in an accessible and timely manner to allow smaller organisations the opportunity to process and prepare their response in order for them to contribute fully to the CPP process. Further to this a mechanism needs to be introduced to allow for a right to appeal should a community bodies application to participate in a CPP be rejected.

- The current wording around involvement of community bodies is too ambiguous, stating that the CPP must ‘make all reasonable efforts to secure participation of such community bodies in community planning’ and “consider which community bodies are likely to be able

to contribute to community planning”. The language still leans towards top-down involvement rather than bottom-up processes, involvement is on the terms of the statutory agencies, at the very least we would be advocating guidance on the Bill once enacted to define more clearly what constitutes ‘reasonable effort’. Important in this is that legislation should outline that the CPP must ensure demonstrable community involvement (beyond community bodies solely) in the development and scrutiny of CPP progress against outcomes. Third Sector involvement in this regard should be included independent of community bodies, third sector and community bodies are not the same thing and therefore the role of both, and needs to engage both, needs to be stipulated individually in relation to section 4.5 and section 5.3. The use of mechanisms such as participatory budgeting and citizen’s juries are two methods by which the CPP could demonstrate community involvement, VAS would encourage the committee and Scottish Government to consider how these approaches could be incorporated into guidance.

- The Bill does not make it clear whether invited community bodies will be considered as full CPP members or if they are just there on a consultative basis. If only on a consultative how do they guarantee that their views have an influence on the CPP?

- A key element of local outcome improvement plans (5), in our view, is demonstrating how that outcome will help tackle inequalities. Therefore, we would argue that the Bill should make it mandatory for local outcome improvement plans to outline how inequalities in an outcome will be tackled (5.2(b)). Further to this, we believe it would be beneficial for outcome improvement plans to be able to demonstrate the involvement of the community and third sector in that locality (5.3) rather than just outlining who to consult.

The VAS vision for community planning extends beyond what can be accomplished through this Bill and we acknowledge that there will be challenges in achieving this vision, particularly around a culture change in sharing resources and co-producing outcomes. We hope this Bill can be a step in the right direction and will continue to call for a much improved, community focused, version of community planning.

**Part 3 – Participation Requests**

VAS welcomes the inclusion of participation requests in the Bill and believes it is a move in the right direction in terms of communities having a say in the design and delivery of public services. We would emphasise the need for participation requests to be a simple process to ensure high levels of participation, key to this is the community capacity building element we proposed in the community planning to section that will help secure participation from a wide cross-section of society. The third sector has significant knowledge and expertise to bring to the table and can help significantly improve outcomes, however, the system must be simple enough that it does not overstretch their current capacity and resources as this may detract from their current role. The onus must be placed upon statutory bodies to actively pursue and resource the input from relevant community and third sector organisations in order to improve outcomes for all society. We welcome the removal of the need for community bodies to provide evidence of how their inclusion in an outcome improvement process would be beneficial, as was written into the draft Bill.
There are certain elements in this part that we believe could be strengthened further. Section 14 lists criteria describing a community-controlled body, we have concerns this is overly prescriptive and that a body having a written constitution would suffice in the majority of cases. Added to this is the lack of an appeal process should the public service authority reject the participation request. This leads to a lack of transparency and accountability and goes against the general principles of the Bill. We would also like to see a duty on public service authorities to have to publicise the existence of the participation request mechanism and encourage and support community bodies to become actively engaged.

Consideration must be given to the role of ‘arm’s length organisations’ (ALEOs) and their potential role in participation requests and throughout the Bill. We are currently unclear of their potential role and are keen to ensure any role they do have is not to the detriment of the communities and local third sectors potential impact.

Again, this section would benefit from the adoption of an updated set of National Standards for Community Engagement in primary legislation. This is very much in line with the spirit of the Bill.

**Part 5 – Asset Transfer Requests**

A number of public bodies are already involved in schemes which work towards transferring assets from the public body to community bodies. This Bill looks to extend this further, placing this approach into legislation and opening to the whole of Scotland. It gives the initiative to communities to identify property they are interested in and places a duty to agree to the request unless they can show reasonable grounds for refusal.

VAS welcomes this approach as it extends rights and potentially releases much needed assets to communities. The principles are therefore sound but could still be refined further. VAS believes an asset register should be collated by statutory bodies and made readily available to the public, creating a transparent asset transfer system, along with a duty to publicise when a transfer request has been made. This should be coupled with a transparent approach to the current state of assets and whether they are in a suitable condition to be transferred to community organisations. Clarification also needs to be given over the process whereby more than one community body initiates an asset transfer request.

Finally, one area has already reported the transfer of local authority assets to an arm’s length organisation on a significant scale. We have concerns that in a situation where a public body wishes to protect property and withhold it from possible asset transfer that they may also be inclined to place these assets in an arm’s length organisation or trust and therefore exclude it from this piece of legislation. This is clearly not in the spirit of the Bill and does nothing to empower communities, therefore we are calling for clarification on the position of assets that were previously controlled by a public body but have been voluntarily transferred to an arm’s length organisation.
Please note that our response is limited to Points 1 and 4 as we, as a Community Council, consider these points most relevant to 'empowerment' in our local community of Linlithgow and Linlithgow Bridge.

**Point 1: To what extent do you consider the Bill will empower communities, please give reasons for your answer?**

We consider that the Community Empowerment Bill is built on the wrong premise and will not empower communities in any meaningful sense. As written, the Bill could in many respects be misinterpreted by some as “the Entrenchment of Central Government Control Bill”. It does next to nothing to advance the idea of subsidiarity at the local level.

Paragraph 191 of the Consultation to the Community Empowerment Bill states: “We also recognise that councils are the level of government closest to the citizen.” This is currently the situation - local authorities, albeit the largest and most remote in Europe, are indeed the level of government closest to the citizen. As stated **forcibly** by COSLA in its recent final report, Commission on Strengthening Local Democracy, this is not tenable for a modern state. Our own 'local' authority of West Lothian is much too large to cater, effectively and sensitively, for the different needs and aspirations of communities as diverse as our town of Linlithgow, ex mining towns like Uphall, Broxburn and Armadale and the burgeoning new town of Livingston. Of course, the situation is even worse in some of the larger councils, Highland Council covering an area larger than Belgium and a city like Glasgow having many times the population.

**Example 1: Housing**

There has been no social housing built in Linlithgow for nearly 40 years since the Town Council was abolished in 1975; indeed some council houses have been demolished and not replaced, despite a ten-year waiting list. A local council would be much more aware of the needs of the whole community – in particular the need to retain young people in employment in the town for the long term.
economic health of the community. This clearly demonstrates disconnection between community and government.

**Example 2: Planning**

A recent planning application on the town's outskirts for the construction of 600 houses, supermarket and related development led to over 1,000 individual written objections submitted by local residents who were desperately worried that a decision on this project, to be taken by 33 West Lothian councillors of whom only 3 represent the Linlithgow ward, would be taken contrary to the likely recommendations of the planning officers and without proper regard to the needs of the community. There had been previous insensitive decisions which had caused concern. Such concerns are widespread throughout the country because the planning system is insufficiently ‘local’ in its democratic application.

**Example 3: Linlithgow & Linlithgow Bridge Town Management Group**

This body has representation from local groups, councillors and officers with a view to the implementation of town enhancement projects. However laudable are its aims, there appears to be little imperative on the part of West Lothian Council and its staff to implement decisions made by the group. Community input has frequently been ignored, thereby stifling the enthusiasm, energy and commitment of the true local community.

The Bill proposes that Community Planning Partnerships will take over the role of the local council in managing relations with the community – but it is near impossible to find anything in the Bill likely to produce that outcome. Community Planning Partnerships are no closer to communities than are Councils – and, judging by the proposals in the Bill, are never likely to be.

Nothing in the Bill indicates that communities will be empowered to undertake work on their own initiative; nor is any local authority likely to delegate any powers to local communities, whether within the scope of existing local organisations such as Community Councils or through any other lower tier of local government. This is confirmed in West Lothian where the recently revised Scheme Review for Community Councils rejects community councils taking action on their own behalf.

The extra powers that the Bill will give to Community Planning Partnerships will further tighten the rein that the Scottish Government has over the scope and flexibility of public services. Witness the centralisation of the Scottish Police Service – it should be evident that the policing of the large cities is very different from that from highland rural areas.

**Point 4: Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?**

The specific provisions for extending Community Right to Buy, Asset Transfer and Common Good Property look appropriate. However the provisions for
National Outcomes, Community Planning and Participation Requests look to represent increased central government control through the strengthening of the Community Planning Partnerships: the latter in particular are formal organizations, the centrally-based staff of which, at least currently, have little connection with, empathy for, or knowledge of, local communities. In this respect we are not content.

As stated with reference to Point 1, the Bill makes no provision for further local democracy – for communities to decide and implement the priorities for their own areas. These will continue to be exercised by the existing ‘local’ authorities and their Community Planning Partnerships. In order that the local democratic deficit be addressed, we would like to see a provision for local communities to apply by petition to the Scottish Government for delegation of powers to local town or parish councils.

In this context, we refer to paragraph 12 of the Policy Memorandum:

Democratic Engagement
12. Local government and other public service providers increasingly use a range of community engagement and participatory activities to seek views on their service delivery. This recognises that representative democracy needs to be complemented by other ways in which people can express their views and influence decisions which affect them. Such activities can in turn inspire increased engagement with local and national government. When people are actively engaged in tackling issues in their communities, have direct contact with elected representatives and feel that they can influence decisions, they are more likely to become involved in the electoral process themselves, whether at Community Council, local authority or national level. This enhances the relationship between elected members and the communities they represent and can lead to better-informed decision making all round.

This paragraph is laudable but it would be so much more laudable if citizens were able to be responsible for managing and prioritising, through their own democratically elected bodies, what public services they need for the flourishing of their own communities.

Example 4: Party at the Palace
This was a ‘first’ for Linlithgow, a hugely popular event on Linlithgow Peel, organised from within the community, featuring high profile bands and performers. Welcomed by all across the town, not least local businesses and employers, its status as a repeat annual event has been thrown into doubt because of the attitude of West Lothian Council – not only did it not make a positive contribution but it actually threw up barriers and obstacles to seriously hinder the organisers.

Example 5: Burgh Beautiful Linlithgow
After winning the ‘Small Town’ category in the 2013 Beautiful Scotland awards, Linlithgow once again this year was invited to take part in the premier competition – Britain in Bloom. Although this initiative is largely driven and funded by the local community members, wholehearted council support might have been expected towards the Britain in Bloom entry, especially given that success in this prestigious event has the potential to promote Linlithgow as a
visitor attraction across the UK. Although some welcome help was in fact provided, there was a general corporate unwillingness to engage on the part of the council which led to extra work for volunteers and certain works being carried out too late for the benefit of the judges.

**Example 6: Car parking in Linlithgow**
A major irritant in Linlithgow is ‘parking’ – recently parking attendants were dispensed with and the problem of irresponsible parking was transferred to the police – but the police have no resources to tackle the problem. If Linlithgow had its own local council it could decide to provide funds for reinstating a parking attendant. Additionally, one or more central car parks could be run by the town for the town, proceeds being used to fund a traffic warden rather than being exported out of the community to the benefit of a remote private company.

**Example 7: Heritage-based Tourism**
West Lothian’s Single Outcome Agreement is targets a 16% increase in visitor numbers for its four key visitor attractions over the next four years - how much more appropriate would it be for Linlithgow itself, in liaison with Historic Scotland, establish its own figures and embrace the whole town to ensure that these figures are met.

**Example 8: Heritage-based Charrette**
Over the past couple of years, members of various community groups have been working with Historic Scotland to arrange a charrette to consider how best to capitalise on Linlithgow’s heritage, not least Linlithgow Palace, but also all the other heritage aspects of the town. Funding for the charrette was agreed in principle, subject to the presence of selected officers of West Lothian Council at the event. The Council refused to participate and as a result the opportunity was lost – sadly another example of remote disinterested, ‘local’ government failing to co-operate with active community members and losing an important opportunity for the development of tourism in the town.

**End-Notes**

**Community Planning Partnerships**
Community Planning Partnerships were introduced in 2003. The contributors to this submission have been engaged in community activities as members of Linlithgow Civic Trust, Burgh Beautiful Linlithgow, Linlithgow Business Association, Linlithgow Union Canal Society, Linlithgow Community Development Trust, Linlithgow Victoria Hall Trust and Linlithgow’s Community Magazine, as well as Linlithgow & Linlithgow Bridge Community Council – collectively a, very wide experience of working in the community. During these 11 years, through all these activities, we have never once heard of, or been contacted by, or had any form of communication from, even a single known member of the ‘Community Planning Partnership’, the only exception possibly being grant advice on one occasion. Nor does there appear to be any provision in the proposed Bill to remedy that deficiency with a view to establishing a real, live working connection between the local community and government.
COSLA Report

In our view, the recent final report of COSLA’s Commission on Local Democracy is founded on acceptance of the single most important concept of true community empowerment, and that is that there must be a ‘bottom up’ approach to the deployment of power in local communities. As stated above, the local communities should have their own powers to act over a specified range of services and activities within their own community. This is not revolutionary, it is the norm elsewhere in Europe and should be a central theme of the Community Empowerment Bill.

With reference to the contents of the COSLA Report when compared to the contents of the Bill, we find it difficult to understand why the claim is made that the two are working closely together, along with the Improvement Service, when the contents of the Bill and the COSLA Report are poles apart in terms of the way they address the issue of community empowerment. COSLA is radical in addressing the root of the problem, the Bill is at best superficial and, give or take some minor changes to property rights, amounts to little more than “steady as she goes”.

Unfortunately we were not aware of the Inquiry into the Flexibility and Autonomy of Local Government, but note now that no community representatives seem to have responded to the call for evidence, while many councils have. We would therefore assume that community councils were not invited to offer evidence – our community council is certainly not aware of an invitation – which at face value seems odd as it is the community that is on the receiving end of whatever powers ‘local’ government currently has. Interesting points could have been made under the first and second inquiry points at least.

‘ “Local” Government should get out of the way’

Based on our experience of trying to get things done in Linlithgow, and what we have learned by listening to others in similar circumstances throughout Scotland, we would wholeheartedly agree with the above recommendation made in the COSLA Report referred to above, and identified in the Sir John Elvidge/Carnegie UK Report ‘A Route Map to an Enabling State’ as the number one step required to begin a process of community regeneration.

We have noted above several, cumulatively significant, examples in our town of how a ‘bottom up’ administrative and democratic approach would more sensitively meet the needs of our local community – an approach which is needed throughout Scotland. In addition, it would combat the current demoralisation of willing community activists and encourage creativity and innovation, to the great benefit of all concerned. Devolution of power to more truly local councils (of whatever nomenclature) is urgently required.

Linlithgow & Linlithgow Bridge Community Council
4 September 2014
Community empowerment (Scotland) policy memorandum.

Fossoway and District Community Council generally welcomes the tone and thrust of the memorandum.

Community Planning
How are local communities involved? There is no mention of their representation it is only public service providers.

Community Organisations
The principle of involvement is welcomed but there has to be a means by which the service provider is judged on their involvement. At present Perth and Kinross Council do not listen to the Community Councils in the Kinross-shire area, although it preaches involvement. It does not provide support for the Community Councils in the manner recommended by the Scottish Government. i.e. it does not provide support services, it charges for meeting places, and pays a very low administration grant. The Community Council wishes to work in partnership with Perth and Kinross Council and not be ignored. The Community Council is in agreement regarding the taking over of public buildings. In particular those which have been donated by benefactors such as Andrew Carnegie.

Yours
Sincerely
A C Morrison
Chair
Fossoway and District Community Council.
The National Trust for Scotland – Response to call for evidence by the Local Government and Regeneration Committee on the Community Empowerment (Scotland) Bill

We refer you to our previous submission on this topic, much of which remains relevant. We have chosen to emphasise key points, but would be extremely happy to expand on these.

To what extent do you consider the Bill will empower communities, please give reasons for your answer.

Definition of community

PAN3/2010 notes:

“"Defining 'community' is not simple. It means different things in different situations. It can be based on location - those who live, work or use an area. But it can also be based on a common interest, value or background - for example societal groups (based on race, faith, ethnicity, disability, age, gender or sexual orientation), members of sports clubs and heritage or cultural groups. Each community will have different desires and needs which have to be balanced against the desires and needs of others.""

We remain concerned that community is defined more narrowly in the context of Community Empowerment than it is in Community Engagement and fails to recognise the complex nature of inter-connecting community interests.

Partnership Approach to Resilience

The proposed Bill may strengthen the weight of communities in decision-making. This would help improve current methods of community engagement where communities often feel that their input (which can be considerable) is ignored.

As a membership organisation, we manage our national estates on behalf of 320,000 members, and ultimately the national benefit, rather than as an individual landlord, or for private gain.

With property managers and staff often living locally at each of our properties we are members of the geographical community as well as land managers. Our employees contribute to deer management committees, mountain rescue teams and even community councils as well as manage our property interests. In doing so community partnerships have evolved and relationships with the geographical community enhanced and community assets developed both in rural locations such as Balmacara and urban properties such as Robert Burns Birthplace Museum.

The Trust also plays a key role in engaging with those who are socially isolated or part of a harder to reach community. The ability for a community body to do this may be harder and changes to
ownership could inadvertently cause further lack of participation, engagement and empowerment as well as social isolation for members of the geographical community who are not members of the community body. From our own research we know how few people in Scotland feel they are able to influence local decisions and that this falls further with socio economic status. There is a need to protect and ensure engagement and participation in decision making amongst our most vulnerable citizens and ensure that they too can benefit.

Community resilience is not about ownership alone, it is about how the people living and working in an area interact and engage inclusively with one another and work together to influence changes for mutual public benefit.

Hopefully the Bill will allow better community planning across the local area and ensure that everyone feels empowered to get involved with local decision making. The change towards local service provision may also help target services to those who need them most.

Particularly in relation to community buy outs, it is essential that appropriate evaluation researches all members of the postcode community to see how they have been impacted and how their feeling of empowerment and wellbeing has been enhanced.

What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill

We are strongly supportive of the desire to improve community and civic engagement in local decision making and are very aware that individuals struggle to influence local decision making at present. We also think that there is much that third sector organisations could do in improving services and share knowledge across local authorities. However, this wide-ranging legislation may cause local authorities and public bodies to perform less effectively.

The scope of the proposals is very wide. It would be helpful to have further explanation of the public services covered by the proposals - it is understood that the Bill covers all services which is very broad.

Strong Support Function

Without exceptional guidance and support from the outset the Bill could lead to many speculative bids for assets, partnerships and buyouts which are not fit for purpose. We would strongly urge the Scottish Government to create a strong support mechanism which saves community bodies from spending significant finance on building applications which should not have been raised in the first place. There is a need for this portal to also bring together the various funding bodies which will support these applications and ensure that they are clear on the capacity of their funds so that false expectations of finance are not raised. Many inappropriate or under-developed applications could be stopped at an early stage with the right support and gatekeeping.

This gatekeeping should be designed to manage expectations, ensuring well funded and planned applications can progress, but ensuring those which need more work or are not going to bring public benefit are put on hold to avoid community bodies from over-extending themselves.

This will also create less administrative burden on local authorities, public bodies and land owners.
Managing Market Failure

The issue of community failure and the inability to deliver against objectives must be considered carefully.

- Will the Ministers have power to step in and save the asset for its community if the community body faces market failure and the asset is at risk of being seized by creditors?
- Similarly, if a community body tries to sell or develop a transferred asset, are there wider community protections in place to consult on this before the change of use is permitted?

Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill or to assist communities to ensure this happens?

There are instances where land – particularly in urban areas – may be deemed abandoned, but is allocated for development, subject for example to an improvement in market conditions. Here we could see temporary community gardens, art installations and general improvements to site condition which improve the area during the interim. Thus improving the appearance of abandonment and neglect and improving placemaking. This could also help with capacity growth and skills development within the community and is something that the Community Planning Partnership could help facilitate.

Are you content with specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Conservation Provision

The Bill gives Scottish Ministers huge discretion to deem land to be “wholly or mainly abandoned or neglected” and, further, to grant a right to buy over it. Although it is stated in the policy memorandum, there is nothing in the Bill which would suggest that land or buildings held for conservation could not be considered to be abandoned or neglected.

The National Trust for Scotland would like all land held for conservation to be excluded from the statutory provisions and the Trust’s inalienable land deemed to be held for conservation.

Should this not be accepted by the Committee, we would suggest that the Scottish Ministers should have power to reject an application where the land is held for conservation and the Trust’s inalienable land should be presumed or (preferably) deemed to be held for conservation.

If the Trust’s inalienable land is not absolutely excluded from the statutory provisions, then we would seek a special parliamentary process to be built into the legislation to allow the Trust to appeal any compulsory sale order (in the same form as in the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 and the Crofters Acts, expanded on below).

Inalienable Land

There is no recognition in the text of the bill of the statutory status of the Trust to hold inalienable land and buildings. In terms of section 22 of the National Trust for Scotland Order Confirmation Act 1935 we have power to declare land held by us for the benefit of the nation, to be inalienable. This provides an extra protection for donors and members, meaning the sale of significant properties,
gifted to NTS for the nation, must ultimately be approved by the Scottish Parliament. This is why we argue that, if the Scottish Ministers decide not to deem inalienable land as excluded, where land has been granted that status we should have a right of appeal by special parliamentary procedure against any buy out order. The rationale for this is not new and has been recognised in public statute already – notably within the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947:

“4(1) If no objection is duly made by any such person as aforesaid [or if no objection is duly made by the National Trust for Scotland in a case where the land comprised in the order was held inalienably by the Trust on the date of the passing of the Crofting Reform (Scotland) Act 1976 and was acquired from the Trust by a crofter as defined in section 3 of the Crofters (Scotland) Act 1955 in pursuance of an order under section 2(1) or 4(1) of the said Act of 1976] or if all objections so made are withdrawn, the confirming authority, on being satisfied that the proper notices have been published and served, may, if the authority think fit, confirm the order with or without modifications.”

and crucially:

“9 A compulsory purchase order shall, in so far as it authorises the compulsory purchase of land which is the property of a local authority, or has been acquired by statutory undertakers, not being a local authority, for the purposes of their undertaking or of land belonging to the National Trust for Scotland which is held by the Trust inalienably, be subject to special parliamentary procedure in any case where an objection has been duly made by the local authority or the statutory undertakers or the National Trust for Scotland, as the case may be, and has not been withdrawn.”

The Crofters (Scotland) Act 1993 also has conditions attached in section 17(4) and 17(5). Whilst such legal parallels were not drawn in the drafting of the Land Reform (Scotland) Act 2003, it is our view that this was accidental and that it would be logical to recognise existing legal precedents and to adopt similar conditions in community buy out to that given for compulsory purchase orders and crofting.

The National Trust for Scotland has been responsible in using its power of inalienability, which also binds the Trust in its management of properties, and has not used this power to prevent needed or useful developments, while maintaining the public interest in conserving places of historic interest and natural beauty.

We would also question, under the ECHR, whether it is in the public interest for land held in trust for the nation should be subject to sale.

Conditions of Transfer

We would seek S97L to be explicit that the conditions set could include the application of Conservation Agreements or Conservation Burdens. As mentioned above, our preferred position is land which has been granted inalienability for conservation purposes might be deemed to be “excluded” land.

Alternatively, on transferring any land, it may be in the public interest for conditions to be attached to ensure their long term conservation or preservation. We note that the Crofters (Scotland) Act 1993 makes clear that the Scottish Land Court can establish the conditions attaching to a compulsory transfer of crofting land. In doing so though in cases where the owner of the land is the National
Trust for Scotland (and in terms of section 17(4) of the Crofters (Scotland) Act 1993) the court shall have regard to the purposes of the National Trust for Scotland. We suggest that a similar provision should be inserted into the draft Bill in order to allow us to apply appropriate conservation conditions.

Looking at s97H: where a Heritage Lottery Fund or other grant has been awarded – or a duty placed within a donor’s bequest – would this be considered reason that the Trust cannot sell land? We would seek clarification of whether this legislation is intended to override the wishes of donors and force disposal.

Other Issues

We refer you to our previous consultation response with regards our concerns on lack of definition for common good assets. It would seem too easy for a local authority to not recognise a common good simply by omitting it from the register.

Under the Register of Common Good we would like the Keeper to note whether the asset is held inalienably and for what purpose it was acquired.

We have some questions for the committee on the proposals:

- How will the Ministers judge competing public interests? Where two community bodies have put forward bids which are deemed to be in the public interest, what criteria will be used to measure their respective strengths and contributions to public benefit?
- Similar to this point, where there are competing statutory provisions, what procedures are in place for Ministers to prioritise the public interest where a right to buy land has been registered say by an individual croft, a crofting community and a community body?
- Can community bodies choose to enter conservation agreements – for example with the National Trust for Scotland – when they take over title of land?
- At what point does a landowner or land manager’s decision to leave a field fallow become neglect? Neglect must be carefully defined.

The Scottish Government proposes to extend right to buy to communities in all parts of Scotland, where the Scottish Government is satisfied that it is in the public interest. Do you agree with this proposal?

As the Scottish Government is well aware the feeling of engagement with decisions made locally varies greatly and people with the protected characteristics listed are often disengaged and feel unable to influence. We are unsure how the proposals will assist in enfranchising these individuals, and indeed there is a risk that the strong voices in a local community simply become stronger and these individuals become less engaged or worse still caught between two competing bodies who each feel they better represent the local community.

We welcome any proposals by the Scottish Government which strengthen the equality testing of community buyouts. Many communities struggle to recruit active and able volunteers, resulting in pressure for the same core group of volunteers appearing on several community groups. A critical issue is the sustainability of community groups in this regard.

We note that a number of community buyouts have also benefitted from support from communities of interest, for example the Scottish Wildlife Trust on Eigg.
The impact of urban stewardship of nationally important assets could be positive or negative depending on the capability and strengths of the community group.

We would hope that Scottish Ministers take due care in protecting our built heritage and ensure that the impact of the Community Empowerment (Scotland) Bill enhances place-making and community and encourages us to re-use and re-vitalise, where reasonable, our rich built heritage and existing infrastructure.

Please do not hesitate to get in touch should you wish to discuss any of our evidence further:

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Submission in response to the call for evidence in relation to the Community Empowerment (Scotland) Bill

The Church of Scotland General Trustees wish to submit the following representation in response to the call for written evidence in relation to the Community Empowerment (Scotland) Bill.

Introduction

The Church of Scotland General Trustees are the property-holding corporation for the Church of Scotland having been set up by Act of Parliament in 1921. The Church of Scotland (Property & Endowments) Act 1925 and the subsequent amending Act of 1933 transferred into their ownership the majority of functional buildings used by congregations – churches, halls, manses as well as holdings of agricultural land (glebes).

The Trustees hold glebes and buildings not for themselves but primarily for the benefit of the congregations in whose parishes the properties are located. They are a registered Scottish Charity (SC014574). The Trustees have two charitable objectives which are to support parish ministry and to support congregations in the provision of suitable buildings. As a result, they require to exercise legal and fiduciary responsibilities in the administration of the assets in their care.

General comments

The Trustees have been given administrative responsibilities for the land and buildings vested in them which they discharge in collaboration with congregations. Every congregation is also a registered Scottish charity. In rural areas and in areas of urban deprivation, congregations often represent one of the few stable organisations which exist and which provide a social capital to local communities. It is usual for churches and halls to be well-used not just by congregations but also by non-religious groups. Glebe land is usually let for agricultural use, with the income helping to pay for parish ministry including the provision of services such as weddings, baptisms/blessings and funerals. In other cases, glebe land is used for a wide variety of amenity purposes which often provide a direct community benefit such as a play park, sports pitches, community spaces, woodlands etc.

Specific Areas of Concern

The Trustees wish to comment on item 4 of the questions posed in the call for evidence:
4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

(1) Operating the Community Right to Buy –

In principle, the Trustees have no difficulties with the extension of the community right to buy to urban areas, provided that this continues on a “willing seller” basis. However, they do have concerns as to how this will operate in practice. While the Trustees are not a geographically discrete community body (as defined by the Land Reform (Scotland) Act 2003 and as proposed in the Community Empowerment Bill) they would emphasise that they hold each property on behalf of and for the benefit of a local community group – the congregation – with a specific geographical connection to the property in question. Accordingly, although not meeting the statutory criteria for constituting a “community body” the Trustees are required to operate for the benefit of a specific and identifiable geographical community.

The Trustees are therefore concerned as to how a potential conflict between the interests of a property-owning organisation holding assets for a community group on the one hand and a different community body seeking to register an interest on the other, would be managed, particularly in relation to two aspects:

(a) It is proposed that entitlement to be recognised as a “community body” is to be extended to Scottish Charitable Incorporated Organisations. If implemented as proposed, there would be an intolerable situation whereby two charitable organisations – an SCIO and the General Trustees – would be expected to discharge their legal and fiduciary responsibilities in opposition to each other. The Trustees would therefore propose that the definition of “community body” is widened to include charities such as themselves and that land owned by a registered charity as opposed to a profit-making commercial body is excluded from the right to buy.

(b) The Trustees have experience of how the exercise of the existing, preemptive, community right to buy can cause division within communities. Current guidance states that, in determining whether it is in the public interest for land to be registered as subject to a community right to buy: “Ministers will also consider the wider public interest. This may include the interest of any sector of the public (however small), which, in the opinion of Ministers, would be affected by the exercise of your right to buy. Ministers do not see this as a measure to place the interests of your CB above the wider public interest. This is intended to protect the interests of distinct existing communities and groups other than the community which your CB represents.” Even when the
Trustees are in the position of being a willing seller, with a sale in prospect (the proceeds from which would benefit the local congregation) that sale can be imperilled by the intervention of a community body attempting to exercise the right to buy.

The Trustees are therefore firmly of the view that the “public interest” referred to should have a clear, statutory definition and application rather than being defined in guidance published subsequent to the passing of the Bill.

The Trustees would also observe that while the Bill proposes a method of adjudicating between two or more competing “community buyers” at the time of first purchase there is no method of dealing with a post-purchase move by a registered community body to acquire property held by another registered body despite the likelihood of such cases becoming more frequent as the target of 1 million acres in community ownership is achieved or exceeded.

(2) Register of Community Interests in Abandoned or Neglected Land

The Trustees are opposed to the introduction of an absolute right for communities to buy abandoned or neglected land when no attempt has been made to define these terms.

The Trustees are concerned that Ministers will make regulations subsequent to the enactment of the Bill to stipulate what factors are to be taken into account in deciding whether land is “abandoned or neglected”. While there are clear difficulties in setting out criteria to define “abandoned or neglected”, it appears to the Trustees that the definition of these terms is at the heart of this element of the proposals. Without statutory definition of these terms, Parliament is being asked to approve a concept, rather than scrutinize the specific terms and application of the legislation with the danger of unintended consequences.

The Trustees would strongly suggest that when the result of the use of this legislation will be to remove property rights from a property owner particularly one which is registered as a charity, it is essential that such definitions are set out and approved by Parliament at the start.

The Trustees submit that the terms “abandoned or neglected” should be defined within the primary legislation and should take into account:

- a property owner’s right to peaceful enjoyment of his or her possessions;
- that land may be “inactive” for valid land management or commercial reasons;
- whether existing local authority powers to enforce maintenance (but not use) of buildings and land have been exhausted.
Final Comment

The General Trustees are aware of the terms of the response which has been submitted on behalf of one of the Church of Scotland’s central Councils, the Church & Society Council, and do not consider that anything in that response cuts across the foregoing submission.
The Development Trusts Association Scotland (DTAS) is the national member-led organisation for development trusts in Scotland, with a membership of 210. Our members are community-led organisations engaged in the regeneration of their communities through a combination of enterprise, community ownership, creativity and voluntary effort. The most recent survey of members, established that in 2011, DTAS members had a combined annual turnover of £39 million (of which £21 million was derived from non-grant income) and owned assets valued at £51 million. See: www.dtascot.org.uk

Over the last 5 years, DTA Scotland, has run a Promoting Asset Transfer programme (2009-11) and we currently operate our Community Ownership Support Service (2011 to present). Both these Scottish Government funded activities have focused on the sustainable transfer of local authority assets to appropriate community organisations, although COSS has more recently began to engage with other public agencies seeking to explore asset transfer. See: www.dtascommunityownership.org.uk

Early this year, a DTA Scotland-led consortium was awarded a contract from the BIG Lottery Scotland and Carnegie UK to run a 3 year community shares programme. Community Shares Scotland aims to create a step change in the awareness of, and knowledge about, this exciting new form of social finance, and will directly supporting tens of community share issues across a range of community sectors. This is likely to include community renewable energy projects, community owned shops and other businesses, and the acquisition and development of community owned asset. See: www.communitysharesscotland.org.uk

DTA Scotland welcomes the opportunity to submit written evidence on the Community Empowerment Bill and this submission to the Local Government and Regeneration Committee draws heavily on the combined knowledge and experience of DTA Scotland as an intermediary organisation, and the collective wealth of knowledge and experience of our membership.
To what extent do you consider the Bill will empower communities?

Over the last couple of decades there has been an almost organic growth in development trusts, community land initiatives and other types of community anchor organisations throughout Scotland. The emergence of these organisations builds on, and complements, the proliferation of community controlled housing associations and tenant co-operatives during the previous couple of decades. These community anchor organisations are running an increasing range of services, activities and businesses, and the approach taken is invariably characterised by the use of community ownership and community enterprise. The progress which these organisations make over the coming years, will determine the success of the Scottish Government’s aim of promoting community-led regeneration.

DTA Scotland believes that key parts of the Community Empowerment Bill (CEB) reflect and build on this grass roots development, and have the potential to strengthen the ability of communities to take the initiative, be innovative and enterprising, and unlock local creativity. In particular we believe that the CEB has the potential to encourage and support many more communities to become involved in community-led regeneration and crucially, to make it easier for communities to acquire vital or important physical assets, and / or have a greater role in the delivery of local services. DTA Scotland acknowledges that this will depend to a large extent on getting the detail within the accompanying statutory guidance right, but believes that parts of the Bill provide a useful overview and framework for this to take place.

DTA Scotland particularly supports Parts 3, 4 and 5 of the Bill, covering the areas of community involvement in service delivery, community right to buy and asset transfer respectively. It is however less clear how some other parts of the CEB contribute to community empowerment, and caution needs to be taken to ensure that the range of provisions included, do not confuse rather than clarify what we mean by community empowerment. For example, top down, community engagement, which is a valuable activity in its own right, is not community empowerment. Too often in the past, opportunities to empower communities have been lost on the altar of community engagement.

In general however, DTA Scotland is very supportive of the Community Empowerment Bill. We recognise that some key messages have been picked up within previous consultation phases which we believe have undoubtedly strengthened the Bill. We also believe that there is potential to further refine and strengthen the CEB, and we offer some suggestions which we hope will assist the Local Government and Regeneration Committee’s discussions and deliberations.

What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions of the Bill?
DTA Scotland believes that the existence of strong, independent community anchor organisations provides the public sector organisations with an additional, alternative and potentially dynamic partner as they grapple with the undoubted challenges which the public sector will continue to face in these straightened financial times. The ability of community organisations to utilise local passion and access alternative funding to maintain important and heritage assets, to find new and creative ways to deliver (or co-deliver) key local services, to take a more enterprising approach to address some public sector challenges, and to take increased responsibility and build community resilience, should all be regarded as a useful and positive contribution which provides an alternative but complementary option for public sector organisations.

The experience of development trusts suggests that this is precisely what happens when a mature and mutually respectful relationship develops between community anchor organisations and, in particular, their local authority. However, far too often, the emergence of a development trust is seen as a threat, rather than a potential ally and partner, and the relationship is characterised by a lack of understanding and respect, and can often be undermined by bureaucratic inertia.

The Community Empowerment Bill ushers in a new approach which, if it is to have impact and be successful, requires significant culture change within large parts of the public sector. This is unlikely to be easy or quick, but the Community Empowerment Bill has the potential to give out a serious and important message about Scottish Government intent. DTA Scotland welcomes the recent COSLA report which embraces the principles of subsidiarity and empowerment, and regards this report as an extremely important contribution to the debate and to the necessary culture change process.

Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill?

The Minister has made it clear at many public appearances over the last 12 months that legislation will not be enough in itself, to deliver community empowerment, and DTA Scotland totally endorses this position. There is clearly two additional issues which need to be addressed – one of ensuring the sufficient availability of funding and resources which support the activities covered within the Bill, and secondly, as the question suggests, ensuring that the right kind of information, advice and support is available to, where necessary, build the capacity of community anchor organisations to take advantage of the provisions.

DTA Scotland, reflecting the experience and views of our members, have argued consistently that we need to re-think how we do ‘capacity building’ in Scotland if we are serious about supporting community-led regeneration. We need to be clear about whose capacity is being built, and for what purpose. On the basis of this we may need to re-prioritise, reconfigure and refine the capacity building support which is currently available. DTA Scotland would be happy to expand on our thoughts on how
we do this, but in the interests of brevity, we would draw the Committee’s attention to two specific areas.

Firstly, the experience of development trusts throughout Scotland is that if we want to build organisational capacity, we need direct (and focused) investment in community anchor organisations. We are delighted that the Scottish Government’s Regeneration Unit recently launched an innovative ‘Strengthening Communities’ programme which does exactly this, and while this is being regarded as a pilot to demonstrate impact, DTA Scotland believes that the roll out of this programme would go a long way to addressing the question of capability.

Secondly, DTA Scotland would argue that we need to recognise that the knowledge and expertise increasingly rests, not within external support organisations, but within the development trusts and other community anchor organisations who are turning around failing assets, developing renewable energy projects, managing landed estates, successfully regenerating high streets, taking over post offices, petrol stations and local shops, etc, etc! The implementation of the Community Empowerment Bill presents an exciting opportunity to recognise this, and develop a peer education and peer support programme which taps into and effectively utilises this knowledge and expertise. Such a programme would be incredibly resource efficient in relation to other methods of capacity building, with the added benefit that the main financial beneficiaries would be community organisations themselves.

Are you content with the specific provisions in the Bill? If not what changes would you like to see and why?

While this submission focuses on the Parts 3, 4 and 5, DTA Scotland would like to reiterate a couple of comments made in previous submissions about Community Planning and offer some a further general observation. We also recognise that some of the issues highlighted below may be best addressed within the development of the statutory guidance, but would welcome assurances that this will be the case.

(a) In the interests of clarity and plain English (key principles of Community Empowerment) we request that Community Planning Partnerships (CPPs) are re-named to describe what they actually do. Whatever your views about CPPs, they are strategic public sector planning organisations, and their title should be amended to reflect this.

(b) The suggestion that CPPs will drive the full public sector reform agenda lacks evidential support. While most CPPs are undoubtedly addressing the integration of public services, there seems no evidence that the kind of increased role for communities envisaged by the Christie Commission will be delivered through CPPs. This is a crucial aspect of the public service reform agenda and thought needs to be given to what kind of mechanism or what space is required to facilitate the engagement of what are, effectively, top down and bottom up processes. Whatever this mechanism or space looks like, it would
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Association Scotland

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be the view of DTA Scotland that given the, at best marginal, involvement of communities, it is unlikely to be created within CPPs.

(c) Given the innovative nature of the Community Empowerment Bill, DTA Scotland suggest that the Local Government and Regeneration Committee may wish to seek an assurance from the Minister that the legislation will be reviewed within a specific period of time.

Part 3: Participation Requests

This is a crucial part of the Bill, and one which DTA Scotland believes is a potential game changer. However, a lot has been left to regulation, and there is a danger that the processes will be overly complex and inaccessible. We would therefore welcome a commitment to keep processes simple and in plain English, within the guidance.

While welcoming this provision, we would offer the observation that it may be helpful to separate the ability of communities to influence service delivery, from the ability of communities to request to be involved in delivering / co-delivering public services. These are quite different activities. While there is a relationship between both aspects, it would appear to us that a more light touch process would be applicable to the former activity, which should also arguably be available to a wider range of community organisations.

We note that there is no right of appeal for this provision, and would request that this is included in the legislation, or that an assurance is given that this is included within the guidance.

Part 4: Community Right to Buy

DTAS fully supports the creation of a universal community right to buy (CRtB).

We also fully support the efforts of the Bill to simplify and refine the CRtB. Our colleagues in Community Land Scotland and Community Woodland Association have provided detailed comments on the simplification and refinement of the CRtB processes and we would add the weight of DTA Scotland to the relevant comments made on this area within their respective submissions.

While we are pleased to see the inclusion of Scottish Charitable Incorporated Organisations (SCIOs) in the definition of an appropriate community body, we would urge the Committee to request the legal reasons why Community Benefit Societies (BenComs) have been excluded. In our experience many community organisations using a BenCom structure can meet the ‘prescribed requirements’ of an appropriate community body, and given the increasing use of community shares to fund the acquisition and development of assets, the omission of BenComs from the legislation seems perplexing.
DTA Scotland commends the Scottish Government for introducing a provision for dealing with abandoned or neglected land. However the Committee may wish to explore why SCIOs (and BenComs) are not regarded as an appropriate community body for this provision.

Section 97 requires that the application must specify the owner of the land. If the land is abandoned or neglected, it may not be possible to identify the owner of the land. Does this invalidate the application? Given that the issue of establishing clear title is a common problem when dealing with abandoned or neglected land, how will this be addressed?

Also in section 97, is it possible to clarify what is meant by “the community body has tried and failed to buy the land”. For instance what happens if the community has tried to buy the land, but the asking price bears no relation to the value of the land?

Section 97 places a duty on the community body to expedite transfer on completion of purchase. There needs to be a public commitment of support (both technical and financial) to ensure that this is not too onerous a burden, which effectively prevents the use of this provision.

We also note that in clause 97S, the valuation of land includes separation or disturbance value for the owner. If the value of the landowners wider holding is diminished this is the result of them abandoning or neglecting the land. Could the Bill team explore whether the valuation could be limited to market value only.

DTA Scotland has a concern about clause 97T, which provides owners with a right of compensation from the community body. Surely this should be limited to those situations where the application is granted. If the owner loses land due to their own negligence, it does not seem disproportionate that they have to cover their own costs. There is also a danger that owners sue community bodies for high levels of solicitors’ fees, etc.

Finally, clause 97X, which allows any interested party to refer questions to the land tribunal, seems to add unnecessary delay to a process which already has sufficient checks and balances. Could the Bill be amended to request that Ministers can refer to lands tribunal, if considered appropriate?

Part 5: Asset Transfer Requests

DTA Scotland acknowledges that this area of the Bill has been strengthened in a number of ways since the consultation process. While we fully support the asset transfer provisions, we feel that they could be further strengthened.

DTA Scotland has consistently requested that all local authorities and public bodies should make registers of assets publicly available. This is essential if community bodies are to look critically and pro-
actively at what assets would best further their aims, rather simply respond to ‘fire sales’ of surplus assets (many of which will be liabilities).

In the CRtB provision, there is a useful discretion which allows for a body of less than 20 members, but this discretion is not reflected within Section 53 – Asset Transfer Requests. DTA Scotland is currently working with the development on the island of Canna for whom the ability to take on a couple of assets will be critical to sustaining the small population on the island. While this discretion is likely to be used infrequently, it could be crucial for small, marginalised communities, and we would, therefore, seek to see it included.

DTAS would seek assurance that within the statutory guidance there is a requirement to provide relevant information about public sector assets (conditions surveys, utility costs, etc) to prospective community buyers within asset transfer processes.

The issue of transfer at less than market value is a crucial element within this area of activity, and the Committee may wish to seek an update from the Minister on how relevant revisions of the Scottish Public Finance Manual are progressing. It is imperative that the discretionary power, which local authorities currently enjoy, to transfer assets at less than market value, is extended to other public bodies, and that advice on how to arrive at an appropriate value (perhaps with the help of a third party) is included in the statutory guidance.

The commercial sustainability of an asset transfer will often hinge on the value of the asset and the conditions (eg economic burdens) attached to the transfer. It is essential that there is scope for negotiation on these issues within the asset transfer processes and we suggest that clause 56(2)(a) could be reworded to encourage negotiated settlements.

We welcome the introduction of an appeal provision within the local authority asset transfer process, and would request that appeals are considered by elected members. DTAS would seek an assurance that this is reflected within the statutory guidance. It would also be helpful to clarify whether the appeal process will apply to the valuation of the asset and the conditions attached to the transfer.

Part 6: Common Good

While DTAS welcomes the ‘tidying up’ of Common Good, we would have liked to see this area addressed further within the Bill. We are however satisfied that there will be the potential to address this concern within the Land Reform Bill, which we understand will be brought forward within this administration.

However, within the specific context of community empowerment, there are 2 issues which we would like to highlight.

Firstly, we would suggest that it is essential that common good registers make clear reference to the specific area (town or burgh) from which common good assets came. We would seek confirmation that this will be picked up in the statutory guidance.
Secondly, where a common good asset is, in effect, clearly being transferred back to the community from where it came, we would suggest that the Bill removes the requirement for Sheriff Court approval of the transfer. This adds time and money to what is already a sufficiently costly and expensive process for both the community body and the local authority.

What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

It seems reasonable to demand that community bodies who benefit from the various provisions are democratic and inclusive organisations, and can demonstrate this in terms of their governing documents and practice.

The provisions of the Bill should create opportunities for all communities. As referred to above, there will be a challenge in doing this in those communities which are more grant dependent and less enterprising, and which currently lack the necessary capacity to embrace the opportunities which the Bill will create. Pro-active intervention may well be required in communities (particularly deprived or disadvantaged ones) which do not have the kind of strong, community anchor organisations necessary.
ERS Scotland response to the call for evidence by the Local Government and Regeneration Committee on the Community Empowerment (Scotland) Bill.

ERS Scotland campaigns for a better democracy, where every vote and every voice is valued. We welcome the Community Empowerment (Scotland) Bill, Parts 1-3 of which are of particular interest to the society.

The most interesting of these is the introduction of ‘Participation Requests’.

We are also interested in the opportunities offered by putting Community Planning Partnerships on to a statutory footing, and in placing the outcomes approach in legislation.

National outcomes

The Democracy Max inquiry uncovered a general frustration with the short-termism of the current political structures, and suggested setting out overarching outcome based goals that all political parties could agree to as being of benefit to the country.

Different governments might implement different policies to achieve these goals but it was felt having a longer term outcome would enable citizens to better hold politicians to account. It would also better provide an understanding of the long term progress of policy development. We hope cementing the outcomes approach will help move towards us more to this style of policy making.

It is possible that decision making may be slowed down as a result of the proposals in the bill, but this should be balanced with the better decision making provided for. There may be variation in how local outcomes improvement plans choose to meet the national outcomes. This should be acknowledged and minimum requirements included in the national outcomes (and the associated local outcomes).

Community Planning Partnerships

The Bill requires Local Authorities to establish Community Planning Partnerships, and also legislates for the involvement of listed partner organisations. Community Planning Partnerships are a means to bring together interested organisations in the process of planning public services at a local authority level and to involve the community in developing those services. The role of CPPs is to prepare a plan for improving local outcomes, in consultation with community bodies and others. The Bill improves current guidance and puts it on a statutory basis.

The vision in the Bill suggests that every local authority will establish a CPP. Since every local authority does already have one, the key parts of the Bill are the additional requirements that public sector partner bodies work collaboratively with the CPP and that once the partners have come together (including community groups), they prepare and publish a plan for improving local outcomes. The CPP must then monitor progress and report annually on that progress.

In its best iteration, this could be a group encompassing local authority representatives, public sector partners and community groups. They would jointly decide on local outcomes reflecting the national outcomes, and would hold public meetings to report on progress and hear back from the community.

But as it stands, the Bill does not provide that this will be the model. There is a requirement to report, but not to do so in public, and no mention of to whom the report should be made. It is also unclear whether a community response would be required, what the role of existing Community
Councils would be in this process, or how bodies who have instigated a participation request would be involved.

Suggested amendments

In order to make the local outcomes improvement plan as transparent and well publicised as possible, we would suggest that when preparing the local outcomes improvement plan (s5(3)) CPPs should be required to bring forward a participation plan that indicates how they will ensure full participation in the process across the community. The participation plan should be approved by a stratified sample jury type group (also known as a mini-public) which would be required to be formed in order to act as a monitor and assessor of the effectiveness of the CPP.

We would also suggest that the Bill requires each CPP to set aside at least 1% of their annual budget, to be decided upon through an appropriate community participation process or processes, and assess the impact of doing so with a view to further embedding this approach. This participatory budgeting approach has met with significant success in a number of countries including Brazil, France, Spain and Italy but is always more successful when required by legislation rather than taking a voluntary approach.

In reviewing the local outcomes improvement plan (s6(2)) we would suggest that the CPP report to the stratified sample jury type group review who would help the CPP consider the progress and if necessary review the plan. The CPP should also present the annual progress report (s7) to this group, and to a public meeting called with at least 1 months’ notice and with the agenda and supporting papers published online at the same time as the meeting is called. There should also be a capacity for members of the community to comment via the internet ahead of the public meeting.

Participation Requests

The Bill introduces an exciting new proposal: that a community body, effectively constituted, can identify a local outcome where it thinks it can add value and can request of the local authority that they be involved in delivering that outcome.

ERS Scotland would suggest that information and advice about how to go about forming a group as per the legislation should be provided. We would propose that each Local Authority should have staff members trained to assist and advise – and should promote the advice and information, along with a means of contacting said individual in an obvious area on their website.

Communities should not feel that using the Community Empowerment legislation is a last resort, or a difficult process, but rather should be a norm, which allows the community to be empowered and encouraged to take part.

We would also suggest a review, preferably including a report to the Scottish Parliament, after a defined period of no more than five years of the legislation being in operation, should be committed to in the legislation to ensure the process isn’t preventing willing, able and justified groups from being formed.

The Scottish Government already encourages public sector organisations to engage with communities and support their participation in setting priorities and designing and delivering services. The Bill gives community bodies an additional power to themselves initiate that participation and a right to have their request to do so properly considered. If the public body refuses the request it must explain the reasons.
We would suggest the maximum amount of transparency be applied in considering any participation request, and that an acknowledgement of the possible, indeed likely, lay role of the community body be considered in applying the criteria set out.

It may also be worth considering additional criteria regarding the socio-economic status of the community that is putting forward the participation request, alongside other engagement measurements like turnout in elections, and number of registered voters. We suggest this as we consider that the proposals in the draft Community Empowerment Bill could serve to re-engage communities in formal politics if it is successfully and effectively implemented. The flip side of this is of course that if badly implemented this Bill could further deter and discourage people from becoming involved in community issues.

ERS Scotland would also recommend that there be a reporting requirement required of public bodies to say how many requests they have had, how many approved and denied and the outcomes. Additionally, we think it would be useful if there was a requirement to undertake outreach to inform communities and citizens of the ability and methods to request participation that the Community Empowerment (Scotland) Bill makes available.

At the end of the process the public body must publish a report as to whether the outcomes were improved thanks to the community involvement.

If more than one community body requests to participate in the design and delivery of an outcome they can all join the same participation process, and indeed community bodies can themselves group together in order to request to participate in a chosen outcome.

The Bill does not specify how the local outcomes will be publicised, nor how existing participation requests will be made public. It does not indicate how the participation should be undertaken, nor how the wider community might be involved, either during the process or in considering whether the outcomes were improved due to community body participation at the end of the process.

ERS Scotland feel this is a missed opportunity to ensure wider community engagement and empowerment through the use of innovative participation methods. We are also feel the reporting requirements could be strengthened.

Suggested amendments

Section 19 should include a requirement that any participation request must seek to involve the wider community in order to avoid vested interests influencing decision making without due consultation with the wider community affected. This could include publicising the participation request, holding public meetings and consulting the wider community. It should include the use of deliberative and participative methods of decision making.

In section 25, as mentioned above we would suggest that a stratified sample jury type group be selected and the report be made to them for comment and feedback. Their response should be published alongside the report of the outcome process and the participation request.

In requiring both the CPP overall outcomes and the results of participation requests to be reported in public to a stratified sample of the community, this would therefore assist in holding the CPP and the LA to account but also, and perhaps more importantly, would provide the opportunity for reflection and learning, from failure as well as success. This process should be publicised and the
results disseminated – something which may instigate participation requests if groups feel the outcomes could be better met.

**Conclusion**

In suggesting this approach we are proposing that the Bill introduce an additional requirement for a ‘mini public’ to be established to which the CPP would report as detailed and which would also respond to reports of participation requests. This would introduce an innovative method of public reporting to the CE Bill process and would allow for all parts of the community to be represented. It would begin a process of communities understanding how decisions are made, how processes are followed and how communities can assist in delivering outcomes. Where required the mini-public should have the power to request additional information from the CPP or the LA and to suggest alternative actions for the CPP or LA (and community body who has submitted a participation request) to consider.

**Establishment stage**

Local Authority

Establishes Community Planning Partnership with requirement to engage the community in a participatory discussion

Community Bodies - Can make Participation Requests of LA (or other bodies as specified) on a specific outcome

**Reporting stage**

Local Authority (or other body as specified) reports on outcome improvement process to which participation request refers

CPP reports on progress towards local outcomes

Mini Public

Hears reports, responds and response & report are made public
ERS Scotland supports the submissions made to the Committee by Oxfam, Barnado’s Scotland and the Poverty Alliance (submission 18), and by the EHRC (submission 25).
Local Government and Regeneration Committee

Submission Name: Highland Council
Submission Number: 86

Community Empowerment (Scotland) Bill
Local Government and Regeneration Committee

The Highland Council Evidence

NB a response from officers and not considered by elected members at this time.

Highland Council officers welcome the opportunity to provide written evidence to the Local Government and Regeneration Committee in respect of the Community Empowerment (Scotland) Bill. The Council has previously supported the aims and objectives of the Bill and envisions that this legislation will have positive impacts across the range of areas it provides for.

Officers are pleased to see a number of the points the Council made during the consultation phase taken on board in the drafting of this legislation. This includes:

- The focus on outcomes and the importance of all relevant partners contributing to community planning.
- A core list of public bodies to be involved while enabling flexibility to include others and the ability for the Community Planning Partnership (CPP) to consider how best to enable the participation of all partners within the CPP’s governance arrangements.
- Definition of community body – it is helpful that attempts have been made to simplify the various definitions.
- Community Right to Buy – the inclusion of Community Right to Buy within the Bill will go a long way to promoting community ownership and the benefits that can result.
- Community Participation – the legislation now provides for public service authorities to decline multiple requests for the same outcome.
- The flexibility for public authorities to extend the period in which community bodies have to submit an offer, reflecting the need to be response to the needs of individual groups.
- Asset transfer decision review - that it would not be appropriate for an external body to review any decision taken by a Local Authority but now includes a process for Local Authorities to review their own decisions.
- The definition of allotments – ensuring it is now broad enough to take in community growing.
- Size of an allotment plot – no specific size enables Local Authorities to use such a definition as appropriate to their area.

The Council's evidence focuses on 2 key areas:

1. Previously Drafted Legislation: Points of concern which we have previously highlighted and yet have not been taken on board. These remain of significant concern that we wish to note these once more.
Local Government and Regeneration Committee

Submission Name: Highland Council  Submission Number: 86

2. Newly Drafted Legislation: Relating to those areas where draft legislation has not been previously seen and its current form causes some concern.

The comments outlined below are intended to be constructive to enable this legislation to be as effective as possible in its operation for both communities and public service authorities.

Part 1: National Outcomes

The inclusion of the requirement for Ministers to determine and publish national outcomes following consultation is welcomed. This will provide clarity not only of Government intentions but also provide a focus for public service providers, including public sector organisations. The proposals for reviewing outcomes and reporting performance appear sensible. The extent to which the provisions for national outcomes, their review and performance reporting will empower communities will depend on:

- what those outcomes are;
- how Ministers consult on them, the reach of that consultation and how they can demonstrate they have listened;
- the accessibility of performance information to a range of interests and community groups and how that can have meaning to individual communities.

Part 2: Community Planning

We welcome that the Bill as drafted reflects the Council’s earlier feedback on: including a defined list of core public bodies to participate in community planning while providing flexibility to include other community bodies operating in the area; the engagement of partners to fit local CPP governance arrangements and with scope for partners to be involved in particular outcomes or all as the CPP decides; a focus on outcomes; emphasising the importance of all relevant partners contributing to community planning; and recognising that some community bodies might need more support to participate in community planning.

It is helpful to public sector organisations to:

- have a definition of community planning included and for it to mean improving the achievement of outcomes through public services delivered by a range of providers;
- have clarity on which core bodies are expected to participate in a community planning partnership while enabling flexibility over identifying other community bodies to include;
- enabling the CPP to decide how best to arrange their governance arrangements effectively and efficiently and for it to agree which partners may not comply or be involved in a particular theme.
• to be required to prepare, publish and review a local outcomes improvement plan as this is not dissimilar to the current practice for preparing Single Outcome Agreements;
• for the duty of facilitating community planning to be shared across the defined partners for community planning given the shared responsibility for delivering on outcomes;
• that the duties of community planning partners includes contributing funds, staff and other resources as the partnership decides, as this will make collaboration more meaningful and that this relates to achieving outcomes and enabling community bodies to participate; and
• that guidance for community planning will be issued and it will be consulted on.

It would be more helpful to public sector organisations and for empowering communities if the following amendments could be made:

• Under section 4(3) on the requirement for local outcomes to be consistent with national outcomes, a qualification or reference to 5.(4)(b) should be included. This relates to the need for local outcome improvement plans to take into account local needs and circumstances. Otherwise the legislation may be seen to be contradictory, particularly if national outcomes are cast in a narrow way. This could also disempower communities if national policies do not reflect the needs in a CPP area and are too top down.
• Third Sector Interfaces should be listed in the schedule of core bodies to include in community planning partnerships in schedule 1. This would not preclude the engagement of individual third sector bodies from participating in the community planning partnership because they can be included in a CPP’s identification of other community bodies to involve. This would enable a better representation of the third sector in the CPP.
• Under section 4(8) the community bodies to include should only be those that are formally constituted. This provides more assurance of their aims, membership (and by default their representativeness) and governance arrangements. Given the support available from Third Sector Interfaces for community groups to be formally constituted this should not be a barrier to the involvement of appropriate groups. It also aligns better with the Bill’s provisions for formally constituted groups to be able to participate in improving outcomes. Community groups that are not formally constituted would not be excluded from community planning processes and could e.g. still be consulted as part of a CPP’s normal consultation process, but that is different to being a community planning partner. We seek removal of the reference to community bodies not being formally constituted from the definition of community bodies as community planning partners.
• There needs to be clarity in the Bill on the external scrutiny and inspection regime for community planning. Given that the focus of community planning is for the improvement of outcomes, how this will be inspected and audited needs to be clarified along with information on any remedial steps that may need to be followed.
This does not appear to be included at all in the Bill and in earlier consultation we have expressed our view that this needs to comply with the principles of the Crerar Review.

Part 3: Participation Requests

Section 14 and 15 – Definition of community bodies
Whilst the attempt to simplify the definition of community bodies able to submit a participation request is welcomed, it still appears overly complex. It is beneficial that there is now synergy between the definition of community body for both asset transfer requests and participation requests, however, it still appears confusing and is likely to be so for both public service authorities and more significantly, community groups.

Section 17 – Participation requests
The process set out under this legislation is a formal process, with a number of key steps. It is therefore surprising that the requirement to present a participation request in writing has been removed. It would appear appropriate, given the circumstances, that community bodies should outline their request and reasons for it in writing to ensure there is no misunderstanding.

Section 19 (5) – Participation requests: decisions
There is still a lack of clarity around the reasonable grounds for refusing any request.

General comment – Simple Guidance
In order to encourage communities to participate, the guidance accompanying the legislation should be written in simple language explaining what terms mean e.g. a definition of outcomes. This will be critical to ensure that groups are not only enabled legislatively, but are able to understand what they have been empowered to participate in.

Part 4: Community Right to Buy Land

Section 28 (3) (c) – Meaning of community
We are concerned about this provision - whereby any person may receive a copy of minutes of the meetings of the company, if the request is reasonable, within 28 days. There is a need for further clarity here. Does the provision apply to all meetings (sub-committees and AGM meetings, which may be available only after approval and once a year)? Is the provision concerned with the provision of approved minutes only or may it include draft minutes? Another concern here is what information may be withheld if any. There is a need for clarity here too.
Council officers would also wish to express concern that this provision may require a wide number of existing associations to change their articles of association. This is particularly significant given that this now must be done prior to the commencement of any process under the modifications made to Part 2 of the Land Reform Scotland Act.

Section 28 (7) – Meaning of community
This provision introduces flexibility for Ministers to prescribe the definition of types of area, other than defined by post code. Clarity around what is meant by ‘type of area’ should be provided. Perhaps an example would illustrate what the flexibility provided may achieve.

Section 31 – Procedure for late applications
Applications for late registration are becoming the norm (two in Highland in last month). Given the likelihood that the number of late registrations will increase, it is considered that existing hurdles regarding the requirement to demonstrate additional community support and that the registration would be strongly in the public interest are of themselves sufficient, without the new requirements suggested in the Bill.

Section 48 – Abandoned and neglected land
This section appears to introduce a significantly higher barrier to community ownership than is currently the case. There is concern that the requirement for an interested community to demonstrate that land has been abandoned (particularly in a rural setting) would be very challenging indeed.

General comment - Re-registration of an interest in land:
The potential amendments to Part 2 of the Land Reform Scotland Act have omitted to consider the re-registration of an interest in land. We would therefore suggest that there should be simplified arrangements for the re-registering of an interest in land provided that ongoing and continuing community support can be demonstrated. It is also suggested that registration should be extant for 10 years rather than 5 years. This is an issue that has been considered by the Scottish Government’s Land Reform Review Group and is one that Council officers would like to see included within the Bill before approval.

General comment – Mapping requirements for Part 2 of Land Reform Act
A further unfortunate omission is the Bill’s failure to simplify the onerous mapping requirements which currently exist. Council officers would strongly recommend that it should not be necessary to detail every sewer, line or watercourse, fence, dyke or ditch in order to demonstrate the area of land which is of interest. This is another point considered by the Land Reform Review Group.
Part 5: Asset Transfer Requests

Section 52 (1) – Asset transfer requests
There is no current provision within the legislation if more than one community transfer body makes an asset transfer request (ATR) in connection with the same or similar piece of land/property either:

   a) at the same time, or
   b) at different times (ie. the relevant authority is already responding to one ATR and another ATR is made).

 Provision/guidance will be welcomed for dealing with this eventuality either within the legislation or the regulations.

Consideration should also be given within the Bill/regulations to prescribing some form of period of ‘advertisement ’ (ie. a fixed period of time and place) to allow potential interested community bodies to express interest in an asset transfer of a particular property. This will allow a) multiple requests to be progressed and considered at the same time; b) will allow equal opportunity between different community bodies to prepare and raise a request, and c) will avoid requests being submitted very late in a property disposal or other asset transfer process thereby extending the period over which the authority is required to retain a vacant and surplus property.

Section 52 (4) (d) – Asset transfer requests
In considering any ATR, the relevant authority must take into account whether the transfer will promote or improve: (as section 55(3)(c))

   (i) Economic development
   (ii) Regeneration
   (iii) Public Health
   (iv) Social Wellbeing, or
   (v) Environmental wellbeing

 It is therefore recommended that this requirement should also be applied at 52 (4) (d) and that any community transfer body should specify and evidence within its ATR how its proposal will promote or improve and deliver the five requirements outlined above. The ATR should evidence how the proposal and each of the above criteria will promote, improve and deliver the benefits to the community, and how these link in with the Aims and Objectives of the Relevant Authority. Ideally such evidence should be SMARTA (ie. Specific; Measurable; Attainable; Results-Orientated; Timebound; Agreed).

Section 53 (2) (b) - Community transfer bodies and ownership of land
The legislation, as currently proposed, does not deal with or address the asset transfer requirements between the ‘company’ (ie. the original community transfer body benefitting from the original (below market) asset transfer from the Relevant Authority) and the successor (ie. another community transfer body, or charity).
What would prevent a successor community asset transfer body or charity from selling a public sector asset, originally transferred at below market value to the original company, on the open market and receiving capital receipt? How will the public pound be protected in this scenario?

There is a need to put safeguards in place, either within the legislation or regulations to ensure that the successor owner (ie. another community transfer body, or charity) benefitting from the asset transfer promotes or improves (as section 55(3)(c)) and delivers:

(i) Economic development
(ii) Regeneration
(iii) Public Health
(iv) Social Wellbeing, or
(v) Environmental wellbeing

Section 55 (3) (c) – Asset transfer requests - decisions
As outlined above (s52(4)(d)), the Community Transfer Body Request should specify in its request how its proposal will promote or improve and deliver :

(i) Economic development
(ii) Regeneration
(iii) Public Health
(iv) Social Wellbeing, or
(v) Environmental wellbeing

The ATR should evidence how the proposal and each of the above criteria will promote, improve and deliver the benefits, and how these link in with the Aims and Objectives of the Relevant Authority. Such evidence should be SMARTA (ie. Specific; Measurable; Attainable; Results-Orientated; Timebound; Agreed). This will assist the relevant authority to appropriately and fairly assess any ATR.

Section 55 (5) – Asset transfer requests - decisions
This removes the discretion of the (local) authority to seek a Best Value outcome to a property disposal, and thereby potentially foregoing a capital receipt that could be reinvested/recycled through its capital programme to deliver improved public services.

The Bill does not favour/encourage asset transfers at market value, and may, by stipulating that an ‘authority must agree to the request ….,’ inadvertently encourage ATRs at below market/nominal value.
Given the above, we would query whether other aspects of legislation require to be repealed to reflect this.

Further guidance (including in the regulations) would be helpful in this area.

**Section 55 (6) – Asset transfer requests - decisions**

As outlined above, provision or guidance is required, either within the legislation/regulations, should more than one community transfer body make an asset transfer request (ATR) in connection with the same or similar piece of land/property either:-

a) at same time, or  
b) at different times (ie. the relevant authority is already responding to one ATR and another ATR is made?

How will different ATRs be assessed to ensure equality and objectiveness between different proposals?

How will different ATRs submitted at different time intervals, possibly with different development and funding timescales be assessed and progressed?

Many (surplus and vacant) properties continue to attract on-going revenue costs (eg. rates; rent; utility costs; maintenance; security/vandalism costs) for the duration that they are retained, as well as having a potential capital asset value that could, upon generation of a capital receipt through an open market disposal, be reinvested/recycled through its capital programme to deliver improved public services.

Provision is required within the legislation or regulations to take account of these issues.

See also 56 (3) and (7) below.

**Section 55 (9) – Asset transfer requests - decisions**

It will be vital that the ‘Relevant Authorities’ should be consulted and given the opportunity to comment on the regulations and the procedures within the regulations to ensure that they are pragmatic and achievable.

**Section 56 (3) – Agreement to asset transfer request**

There are extended time periods prescribed within the Bill:

a) the period in which an offer is to be made (ie. minimum 6 months ); and  
b) period of 6 months beginning with the date of the offer (or such longer period agreed/prescribed) - also having regard to the requirements of 55 (5))
This may well entail the relevant authority retaining vacant and surplus property for extended periods of time that could otherwise:-

i) be disposed of at market value and thereby contributing through redevelopment/recycling to the creation of local employment/economic (re)development; 
ii) be used to generate a capital receipt through an open market disposal, that could be reinvested/recycled through its capital programme in to delivering improved public services; 
iii) could cause blight and attract anti-social behaviour in local communities whereby properties are left vacant, boarded up etc. for extended periods of time.

Section 56 (4) (ii) – Agreement to asset transfer request
Clarification/guidance may be required regarding what is a ‘reasonable time’.

Section 56 (7) – Agreement to asset transfer request
As outlined at section 56 (3), there are extended time periods prescribed within the Bill: 
a) the period within the decision notice in which an offer is to be made (ie. at least 6 months) (section 56 (3)); and
b) period of 6 months beginning with the date of the offer (or such longer period agreed/prescribed) (Section 56 (7)) - also having regard to the requirements of 55 (5)).

This may well entail the authority retaining vacant and surplus property for extended periods of time that i) could otherwise be disposed of at market value and thereby contributing through redevelopment/recycling to the creation of local employment/economic (re)development; ii) generation of a capital receipt through open market disposal that could be reinvested/recycled through its capital programme in to delivering improved public services; iii) could cause blight and attract anti-social behaviour in local communities whereby properties are left vacant, boarded up etc for extended periods of time.

Section 57 (2) - Prohibition on disposal of land
The inclusion of a prohibition on the disposal of land during the relevant period and the timescales specified with the Bill (Sections 56 (3) and (7)) may stifle or deter local/national business entrepreneurialism and inward investment that could otherwise contribute through property redevelopment/recycling to the creation of local employment/economic (re)development.

Section 59 Review by local authority
Council officers welcome that the Bill now provides for Local Authorities to review their own decisions as opposed to an external body. However, the regulations which Ministers will prescribe need to ensure they take account of Local Authority standing orders and existing procedures for reviewing decisions taken. It will therefore be important for Local Authorities to be consulted upon any regulations.
Section 61 (1) (b) – Power to decline certain asset transfer requests
This may require Authorities to keep registers and records of ATRS received in order to ascertain whether new requests relate to previous asset transfer requests.

Part 6: Common Good Property

General comment – Bodies to consult with
A concern which the Council raised during the development phase of the Bill was the extent of the consultation proposed. The proposed definition of ‘Community Bodies’ in terms of the Community Empowerment(Scotland) Bill is extremely broad and would appear to be an unnecessarily onerous task and one open to interpretation. As also noted within the Community Planning section of the Bill, the definition of community body applied in this section also includes unconstituted bodies which would appear inappropriate. A constitution provides assurance of an organisation’s aims, membership (and by default their representativeness) and governance arrangements. Overall however, we would suggest it far more appropriate to consult only with Community Councils, as proposed, as representatives of their communities. This would require a change at 22 (5) and 24 (5).

The Highland Council has responsibility for administering ten different Common Good Funds (Cromarty, Dingwall, Dornoch, Fortrose and Rosemarkie, Grantown, Invergordon, Inverness, Kingussie, Nairn and Tain). In relation specifically to Community Councils, the current wording in the Bill would require Highland Council to consult with all 156 Community Councils in its area on the establishment of a register and each disposal of property across any of the funds. We would therefore strongly suggest that the wording be amended to read “consult only with Community Councils that represent the inhabitants of the areas to which the Common Good related prior to 16 May 1975.”

Part 7: Allotments

Section 70 – Request to lease allotment
The draft legislation states ‘any person may make a request to the local authority in whose area the person resides to lease an allotment from the authority’ 70 (1). With an area the size of Highland the legislation still does not allow for a geographical approach within the
Authority to ensure allotments are developed and allocated within an acceptable (defined) geographical limit from the requester’s home.

**Section 70 – Request to lease allotment**
The bill only refers to local authority owned or leased land. The legislation still does not recognise the role of other statutory bodies by placing duties on all public sector land owners to make suitable surplus land available. We have evidence that some public sector agencies are however approaching this on an ad hoc basis. The Forestry Commission for instance has encouraged, assisted in the development of; and leased land for allotments directly to allotment associations.

**Section 72 – Duty to provide allotments**
There is still no provision for the Local Authority to limit the number of sites that must be provided simultaneously across the entire Local Authority area. This should be viewed in the context of the Highlands overall allotment strategy, budget, priorities and man power to meet the duty effectively.

**General Comment – Equalities**
It would be appropriate for the Community Empowerment Bill to make direct links to the general equality duty of the public sector equality duty set out in section 149 of the Equality Act 2010. The connection should recognise that different groups have historically been under-represented in community activities or faced barriers to participation - the Empowerment Bill is an opportunity to help mainstream the duty into the scope of its powers.

*Those subject to the equality duty must, in the exercise of their functions, have due regard to the need to:*  
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.  
- Advance equality of opportunity between people who share a protected characteristic and those who do not.  
- Foster good relations between people who share a protected characteristic and those who do not.

*Having due regard for advancing equality in particular involves:*  
- Removing or minimising disadvantages suffered by people due to their protected characteristics.  
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.  
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.
The Act states that meeting different needs involves taking steps to take account of disabled people's disabilities. It describes fostering good relations as tackling prejudice and promoting understanding between people from different groups. It states that compliance with the duty may involve treating some people more favourably than others.

**General Comment – Community Councils**

We would once again like to take the opportunity to register our disappointment at the noticeable absence within the Bill of any legislation relating to Community Councils. Given the extensive work over recent years in considering the roles and responsibilities of Community Councils, it would appear a missed opportunity not to address this within the current Bill where it would sit so comfortably. Community Council legislation primarily dates to the 1973 Local Government Act. The current community context has changed dramatically, as evidenced by this Bill, and therefore it is at odds with the current direction of community empowerment in general not to consider Community Councils given that they are a key building block within our communities.

There is one critical anomaly that urgently requires review and legislation to address it. This Council has consistently lobbied on the issue of Community Councils and the need for legislation to be amended to enable these bodies to have incorporated status. Some Community Councils already own assets but without a change in legislation, the liability and risk will continue to lie with individual office bearers. This is unhelpful we would urge that this particular element is considered as one component of the Bill. It should be considered in the context of an enabling provision for those Community Councils keen to have such a role. This would empower those Community Councils without expecting or compelling all Community Councils to take on this role.

It is important to emphasise that this would not change the fundamental definition of the role of a Community Council but provide protection for individual office bearers and enable any Community Council who would like to take a greater role within their community to enable them to do so.

Of course Community Councils can set up Community Trusts or alternative bodies to take on these roles, however, as noted in previous consultations, within small communities this can result in a lack of interest in a Community Council with individuals more interested in participating in the activities of the Trust.

A strength of Community Councils in terms of owning assets would be that their operation is governed by strict rules and regulations overseen by the Local Authority.

The Bill is about empowering communities and Community Councils are a key building block within our communities. Amending the unincorporated status of Community Councils would greatly assist and empower many Community Councils who wish to play a
greater role within their communities. This is an ideal opportunity to address this challenge within an appropriate legislative process and we would urge this element to be included within the Bill.
Barnardo’s Scotland response to the Local Government and Regeneration Committee’s call for evidence on the Community Empowerment (Scotland) Bill

About Barnardo’s Scotland

Barnardo’s Scotland is Scotland’s largest children’s charity, running over 100 projects around Scotland and working with over 10,000 children and families every year.

Our services work with children, young people and their families in some of the most vulnerable and disadvantaged communities in Scotland. These communities are often disempowered in comparison with other communities in Scotland and have often become the communities that are easiest for public services to ignore.

The overwhelming majority of Barnardo’s Scotland’s services involve some form of relationship with statutory partners, including local authorities and health boards. Many of our services are commissioned by local authorities or other community planning partners.

Summary

Barnardo’s Scotland has welcomed and supported the introduction of a Community Empowerment Bill by the Scottish Government and we urge the Local Government and Regeneration Committee to recommend that the Parliament supports the principles of the Bill at Stage 1.

However, we also believe that it is imperative that the Bill is strengthened in a number of ways and through our evidence we have outlined some suggestions that we believe will help ensure that the Bill empowers the most disempowered communities in Scotland, ensures that the Bill fits with the rest of the Scottish Government’s programme of public service reform and ensures that the Bill supports the rights of children as laid out in the United Nations Convention on the Rights of the Child (UNCRC).

We also support the joint evidence provided by Barnardo’s Scotland, Oxfam Scotland and the Poverty Alliance, entitled Strengthening the Community Empowerment Bill to empower every community in Scotland¹, and further supported by a large number of other civic organisations including the Church of Scotland, the Scottish Community Development Centre and Children in Scotland, and we call on the Local Government and Regeneration Committee to support the proposals outlined in that paper.

In this evidence we suggest a number of ways that the Bill could be strengthened, including:

- Placing National Standards for Community Engagement onto a statutory footing.

¹ Available as evidence to the Local Government and Regeneration Committee here - http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/18._Joint_Submission_from_Barnardos_Scotland_Oxfam_Scotland_and_Poverty_Alliance.pdf
Local Government and Regeneration Committee

Submission Name: Barnardo’s Scotland Submission Number: 87

- Requiring Community Planning Partnerships to create local outcomes improvement plans through a participative process of community engagement.
- Requiring Community Planning Partnerships to allocate a proportion of their budget through a participatory budgeting process.
- Requiring the Scottish Government to involve children and young people in the identification of the National Outcomes, and to undertake a Children’s Rights Impact Assessment.
- Measures that would ensure that the Bill was aligned with other parts of the Scottish Government’s programme of public service reform, including the integration of Health and Social Care and the recently passed Children and Young People (Scotland) Act 2014.
- The establishment of a suitable appeals process for participation requests, and a duty to support disadvantaged communities to utilise the process.

We have provided responses to the Committee’s specific questions below:

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

Barnardo’s Scotland has welcomed and supported the introduction of a Community Empowerment Bill by the Scottish Government and we urge the Local Government and Regeneration Committee to recommend that the Parliament supports the principles of the Bill at Stage 1. Empowered and connected communities, that have control over their collective destinies and that are able to organise their public services to suit their needs, experience better outcomes and are more likely to have all of their human rights upheld. The concept of community is a complex one, with individual people often feeling a sense of belonging to a complicated set of interconnected communities. We are therefore pleased that the Bill adopts a broad definition of ‘community’ throughout, and that these definitions include communities of interest.

Governments cannot, on their own, fully empower communities, nor should legislation be the only means with which governments should seek to assist the empowerment of communities. However, our view is that there is an important role for legislation to play, establishing new rights that empower communities and ensuring that public services in Scotland are structured around the ethos of the Christie Commission which states that public services should be designed and delivered with communities, rather than “delivered ‘top down’ for administrative convenience”\(^2\). The empowerment of communities should be one of the fundamental purposes of all public services. However, legislation must be accompanied by other policies, including funding and supporting community development activities and other initiatives that help to make communities more connected.

In the Scottish Government’s response to the Christie Commission’s Final Report, amongst other actions, the Scottish Government committed to;

"Developing a Community Empowerment and Renewal Bill that will significantly improve community participation in the design and delivery of public services, alongside action to build community capacity, recognising the particular needs of communities facing multiple social and economic challenges”\(^3\)

We believe that this statement continues to provide a good summary of what this Bill should be trying to achieve, and much of our comments arise from this statement providing a benchmark for comparison. However, as an organisation working with vulnerable children, young people and families in some of Scotland’s most disadvantaged and disempowered communities, we are concerned that the Bill, as introduced, does not go far enough in helping to address Scotland’s most significant inequalities – it does not, as yet, fully recognise the particular needs of


communities facing multiple social and economic challenges. We believe that it is imperative that this Bill is able to empower communities right across Scotland. In this evidence, and in the joint evidence we have submitted with Poverty Alliance and Oxfam Scotland, we suggest a number of ways that this can be achieved, including the placing of the Community Engagement Standards onto a statutory footing, proposals that make community empowerment central to the purpose of Community Planning Partnerships, a strengthened right to request to participate and the introduction of participatory budgeting to the Bill.

If community empowerment is made central to the purpose of all of Scotland’s public services, it is also imperative that the provisions laid out in the Community Empowerment Bill are in keeping with the remainder of the Scottish Government’s programme of public service reform, and in particular with other recently passed public service legislation. In particular, as an organisation that supported the Children and Young People (Scotland) 2014 Act, we are keen to ensure that the Community Empowerment Bill builds on the provisions in that Act that relate to the rights of children and the delivery of children’s services.

Community Planning Partnerships (CPPs) have played a role in the development of more effective, more closely-aligned public services in Scotland. In particular, CPPs have been successful in bringing together public services to plan for communities, as they have so far been principally designed to do. Whilst this has successfully encouraged collaborative, cross-sector working, it has not directly empowered communities. We believe that if communities are going to become more empowered in relation to their public services, Community Planning Partnerships must focus much more on the potential of local people to participate in, shape and improve these services. We believe there is much more that the Community Empowerment Bill could do in this area, so that communities come together with agencies to co-produce their public services. For example, the development of local outcomes improvement plans or Single Outcome Agreements (SOAs) should, ultimately, be through a participative process of community engagement.

Most CPPs have also, to varying extents, involved Third Sector Interfaces (TSIs) in their work. Across Scotland, third sector organisations, like Barnardo’s Scotland, deliver a wide range of services that support the improvement of communities’ outcomes. On that basis, we believe that it is important that the third sector continue to contribute to the shared decision making of Community Planning Partnerships, and we therefore hope that the Community Empowerment Bill can be amended to ensure that TSIs continue to represent the third sector in CPP areas.

We support the intention of putting the National Outcomes onto a statutory footing, on the basis of the proven benefits of focusing service delivery on the achievement of outcomes. However, this will only be empowering for communities in Scotland if those communities have an opportunity to shape and decide upon what those outcomes are. We therefore recommend that the Bill is strengthened, to require Ministers to involve communities in Scotland, and encourage their participation in deciding upon the National Outcomes. We also suggest that this should specifically include a requirement to involve children, and that the National Outcomes should be subject to a Children’s Rights Impact Assessment, before they are agreed to.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

Barnardo’s Scotland supports the principle that people using services are experts in those services, and are often best-placed to judge how those services can be improved and made more effective. As the Bill recognises in its definitions, communities are diverse in nature, and include communities of interest, geographic communities as well as groups of service users. Therefore, it is from the principle that communities of service users are experts in the services that they use that the benefits of sections 2 and 3 (the sections where we have concentrated our comments) will come to public sector organisations.

The involvement of people who use services in the design and delivery of public services has tremendous potential to improve services, whether that is the identification of new service needs,
ways to improve the efficiency of services, or simply to improve outcomes. However, we believe that, whilst there is good practice in many places across Scotland, the full potential of service user involvement in public services is not yet being fully realised. Indeed, in the case of community planning, the 2013 Audit Scotland report on community planning found that,

“... there is a long way to go before services are truly designed around communities and the potential of local people to participate in, shape and improve local services is realised.” [our emphasis]

Ultimately, more consistent, high quality engagement of service users will lead to public services in Scotland that are more effective, efficient and that are more attuned to the needs of the public who live and work in Scotland. However, as stated elsewhere in this consultation response, we believe that the Bill as introduced could be strengthened, and many of our suggestions would help ensure more regular, higher quality, community engagement by public bodies. We believe, therefore, that the suggestions we make for strengthening would help the Bill to achieve further benefits for public sector organisations.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

As an organisation working with some of Scotland’s most disempowered and disadvantaged communities in Scotland, we believe that the Bill must empower communities across all of Scotland, and help to address Scotland’s most significant inequalities. Whilst we support the general principles of the Bill, and see some merit in all of the provisions it contains, we are concerned that the Bill will not create a significant shift in the empowerment of Scotland’s most disempowered communities, unless it is amended and strengthened.

Together with Oxfam Scotland and Poverty Alliance we have created a number of proposals that we believe would help ensure the Bill empowers all communities. One of these is a proposal to place the National Standards for Community Engagement onto a statutory basis.

Standards for community engagement
There is much good practice in the public sector when it comes to consultation with communities. However, this practice is not always of a consistently high standard. To genuinely involve communities in the design of public services, the high quality involvement of communities in local decision making must become second nature to public services, as well as being a part of their everyday core purpose.

There are already existing National Standards for Community Engagement, that have been endorsed by a number of national agencies, but their implementation is varied across Scotland, and the passing of a Community Empowerment Act would create an ideal moment to renew them and place them on a statutory footing. Requiring all public bodies to adhere to a set of national standards for the engagement of communities, and to regularly report on them, would be a major advance for the rights of communities to participate in decisions that affect them.

A key part of the standards should be a focus on addressing inequality and empowering Scotland’s most disempowered communities.

More than two thirds of respondents to the Scottish Government’s consultation on Community Empowerment in summer 2012 responded favourably to this proposal, including a clear majority

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of local authorities and other public bodies. The Scottish Government’s Policy Memorandum on the Bill does not include any explanation of why this proposal has since been dropped.

It may be helpful, in amending the Bill, to make it a requirement for public bodies to follow the National Engagement Standards or other statutory guidance when undertaking particular forms of engagement with communities. We would suggest that, in particular, CPPs should have to follow the standards for community engagement when engaging with communities participatively to draw up local outcomes improvement plans. Ministers should also have to follow the standards when involving people in Scotland in drawing up national outcomes under Part 1 of the Bill. Other engagement exercises, which public bodies must now undertake under recent legislative changes, where a requirement to follow the National Engagement Standards could include consultation on children’s services plans, as required by the Children and Young People (Scotland) Act 2014, consultation on procurement strategies required by the Procurement Reform (Scotland) Act 2014 and consultation on the creation of integration schemes under the Public Bodies (Joint Working) (Scotland) Act 2014, should be considered.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

The parts of the Bill that have most relationship to Barnardo’s Scotland’s work are parts 1, 2 and 3. We have supplied further comment on these sections, and suggestions for changes that would further strengthen the Bill, below.

**National Outcomes – Part 1**

Barnardo’s Scotland welcomes the embedding of the National Performance Framework (NPF) into legislation, as we support a focus on outcomes across public services. Indeed, we believe that the embedding of an outcomes focus into the exercise of government has the potential to become an extremely important part of the democratic process in Scotland. We have said before that the Outcomes in the NPF are overdue for review, as some have been overtaken by events, and the requirement in legislation that this Bill provides for them to be regularly reviewed is welcome.

However, we are keen to suggest a number of ways in which we believe that the National Outcomes part of the Bill can be strengthened.

If the creation of National Outcomes is going to be a process that is empowering for people in Scotland, then it is important that national outcomes are created through a participative process that involves people who live and work in Scotland. On that basis, we believe it is important that the provisions in the Bill which require Ministers to consult on the creation of national outcomes are strengthened, to make it clear that everybody should have an opportunity to have an input. We also believe it should be made clear that children and young people, and organisations working with children and young people, should have an opportunity to shape the national outcomes, in order that the voices of children and young people do not become marginalised or ignored. We also suggest that Ministers should have to follow standards for community engagement when consulting on the national outcomes, to help ensure that consultation occurs in a positive and effective way.

We also believe that the Parliament should give consideration to whether parliamentary scrutiny of the national outcomes, would be an appropriate mechanism to help ensure that Ministers have

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5 Consultation on the proposed Community Empowerment and Renewal Bill: An analysis of responses, Scottish Government, 2012,
6 Also often referred to as Scotland Performs -
http://www.scotland.gov.uk/About/Performance/scotPerforms
7 Section 1(2) and section 2(5) of the Community Empowerment (Scotland) Bill as introduced.
involved people who live and work in Scotland in a participative process to determine the National Outcomes.

The recently passed Children and Young People (Scotland) Act 2014 created a new requirement on Ministers to take steps to secure the further effect in Scotland of the United Nations Convention on the Rights of the Child (UNCRC)\(^8\). On that basis we suggest that the Bill should be amended to include a requirement of Ministers to undertake and publish a Children’s Rights Impact Assessment, and then take account of it, before the National Outcomes are finalised.

There are also a number of outcomes that have already been placed into legislation by other pieces of legislation and we believe it is important that the Community Empowerment Bill is appropriately linked to these other pieces of legislation. In particular, we would not wish to see the Bill overshadow the requirements of the Child Poverty Act 2010, which require the Scottish Ministers to achieve a particular set of outcomes, relating to levels of child poverty in Scotland, by 2020. These important outcomes, which continue to enjoy cross-party support in Scotland, should not be superseded by the National Outcomes provision in the Bill. We therefore suggest that the Parliament consider appropriate mechanisms to ensure that the statutory child poverty targets continue to be key national outcomes.

Similarly, the Children and Young People (Scotland) Act 2014 creates a set of wellbeing outcomes for each child in Scotland, collectively described as SHANARRI. This outcome definition has wide support and is already in use by many professionals working with children in Scotland. The SHANARRI framework has also been linked to the rights set out in the UNCRC\(^9\). Again, the Parliament should consider what opportunities exist to link the national outcomes to the SHANARRI wellbeing definition.

Community Planning – Part 2
Barnardo’s Scotland has long been supportive of moves by successive Scottish Governments to support greater working across organisational boundaries within the public sector. This is most obvious in the development of Community Planning, but is also evident in the provisions in the Children & Young People (Scotland) Act 2014 and the Public Bodies (Joint Working) (Scotland) Act 2014 which both also create local joint service plans, with a statutory footing. Barnardo’s Scotland welcomes this kind of cross public-sector working for the potential improvements in effectiveness and efficiency that it brings, and we therefore support placing community planning onto a statutory basis in order to further improve joint-working across public bodies. We therefore particularly welcome the emphasis that the Bill gives on community planning as a shared endeavour of all public bodies in the area, and we believe that this will help to address the perception that community planning is primarily the responsibility of the local authority, rather than a shared endeavour.

However, as the Scottish Government has recognised, placing Community Planning onto a statutory basis provides a golden opportunity to improve its functioning. We have provided a number of ways in which community planning could be strengthened through the Bill below.

Making community empowerment central to Community Planning
The role of Community Planning in creating joint working between public bodies should not be confused with the purpose of involving communities in planning their future and their public services. As things stand, the focus of CPPs tends to be on bringing public bodies together to plan for communities. In the spirit of the Christie Commission, this must be fundamentally

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\(^9\) [http://www.scotland.gov.uk/Resource/0041/00417256.pdf](http://www.scotland.gov.uk/Resource/0041/00417256.pdf) is ongoing work by the Scottish Government to create a methodology that links the UNCRC to the eight SHANARRI wellbeing indicators.
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changed, so that, instead, communities come together with agencies to co-produce their public services.

The need for change is supported by the 2013 Audit Scotland report on Community Planning\(^\text{10}\), which found that:

“Community planning takes account of a wide range of consultation activity, but there is a long way to go before services are truly designed around communities and the potential of local people to participate in, shape and improve local services is realised.”

We therefore suggest that the Bill is strengthened, so that the local outcomes improvement plans that each CPP must create (the equivalents of current single outcome agreements) have to be created through a participative process of community engagement. This would also bring the Bill together ensuring that community empowerment is a common thread throughout the Bill, including in Part 2.

The Bill currently places a great deal of emphasis on the role of community groups, and whilst community groups have a very valuable role and their recognition is welcome in the Bill, their role should not be a substitute for direct engagement. This is particularly the case in the most disempowered communities, which, by definition, tend to have the least community capacity. Whilst the Bill includes a duty to support the participation of community groups in community planning, the Bill does not include any resources, or any duty on public bodies, to support the formation of community groups or the connecting of communities.

The Bill should also make it clear that Community Planning Partnerships, when involving people participatively in the creation of local outcomes improvement plans, should involve children and young people. This would also ensure that the Bill is consistent with the duties imposed by the Children and Young People (Scotland) Act 2014 on public bodies to further the rights of children (which includes a right for children to be involved in decisions which affect them) and the duty imposed on health boards and local authorities to consult users and potential users of children’s services in constructing a children’s services plan.

It is also important that the quality of involvement of people is high, and we therefore suggest that Community Planning Partnerships are required to follow the Community Engagement Standards (suitably revised, and placed on a statutory footing by the Bill) when drawing up a local outcomes improvement plan. In particular, we would hope that suitable recognition of equality, poverty and socio-economic disadvantage within the community engagement standards would help ensure that CPPs involve, and give power to the most disempowered and disadvantaged communities.

Lastly, as we have previously referenced there are diverse notions of community, and the way people experience their communities is often different to how statutory bodies define communities. For example, in its current consultation duty, the Bill does not recognise that for many people ‘community’ means a rather smaller and more local area than the scale of a CPP. For example, in our experience, for many families with young children, the primary school catchment area is much closer to their understanding of their local community. As things stand, there is currently limited development across Scotland of this scale of micro-local decision making and involvement. Even where Local Authorities have developed micro-local decision making or planning processes, or where there are thriving community councils, there may not be strong links between the more local decision making and the geographic scale of planning at CPP level. Most CPPs will have a more nuanced understanding of the communities in the CPP area, and we suggest that the Bill could be amended to require CPPs to demonstrate the range and nature of communities in their area, and how this links to the outcomes identified with those

communities. This could be particularly important in terms of addressing inequalities, as it could also require CPPs to identify those communities (whether geographic or otherwise) that are particularly disadvantaged, disempowered or vulnerable, and consequently demonstrate in their outcomes how they would make a particular difference for those communities.

The role of the Third Sector in Community Planning
The Third Sector makes a significant contribution to the delivery of services and improvement of outcomes across Scotland. This has been reflected in the involvement of Third Sector Interfaces (TSIs) as the representatives of the third sector in every Community Planning Partnership in Scotland. Barnardo’s Scotland is of the view that this involvement by the third sector in community planning must continue, and there must be a continuing right for TSIs to be full partners in community planning partnerships, in order to represent the contribution that the third sector makes to improved local outcomes. This may require complicated legislation, to ensure that TSIs do not become subject to ministerial direction or control and maintain their important independence from government, however, we believe that it is possible to find a way that embeds the role of TSIs within community planning partnerships, and that this is very much desirable.

Whilst the Bill currently recognises the role of ‘community bodies’ in legislation, Barnardo’s Scotland does not believe that this definition would include (or is intended to include) TSIs.

Alignment with the remainder of the Scottish Government’s programme of public service reform
The Scottish Parliament has recently passed a number of other Bills that form part of the Scottish Government’s programme of public service reform. In order that the Bill is as effective as possible in empowering communities, Barnardo’s Scotland believes it is imperative that the Bill fits with the remainder of the Scottish Government’s programme of public service reform.

The recently passed Children and Young People (Scotland) Act 2014 requires health boards and local authorities to jointly produce children’s services plans. Barnardo’s Scotland believes it is important that there is close co-ordination between local outcomes plans and children’s services plans, and that community planning does not supersede children’s services planning. MSPs should consider opportunities in the legislation to ensure that this co-ordination takes place.

The Children and Young People Act also makes clear some of the issues that children’s services plans must address. This includes a focus on early intervention within children’s services plans. A greater focus on early intervention has cross-party support in the parliament, proven financial benefits and was highlighted in the Christie Commission final report as a priority for change. Nevertheless there is still progress to be made in achieving a significant shift in public spending, across the board, towards early intervention. However, we were disappointed to see that there was not an explicit focus on early intervention within the Bill. In order that this does not become a missed opportunity, we suggest that again consideration is given to opportunities within the Bill to further focus public bodies on early intervention and preventative spending.

Barnardo’s Scotland and NSPCC Scotland also recently published a joint report, Challenges from the frontline: Supporting families with multiple adversities in a time of austerity, which reported experiences from the managers of 14 services across Scotland. The report found that families were finding it increasingly difficult to make ends meet and that there were a growing number of families experiencing very extreme forms of poverty and destitution. The report’s conclusion recommends that all public services take responsibility for addressing child poverty, and that they set out how they will do this in the range of plans that they are now required to produce as

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A result of recent legislation\(^{12}\). In turn, we suggest that there is a need to ensure that all CPPs take responsibility for addressing child poverty on a local level through community planning processes, in order that Scotland achieves its duties under the Child Poverty Act 2010. We would recommend that the Committee and MSPs consider options for how this could be ensured through this Bill.

Lastly, we would welcome clarification from the Scottish Government that any body-corporates established under the Public Bodies (Joint Working) Act 2014 are suitably included under the Act, that they would be suitably required to contribute to Community Planning Partnerships and that they would be subject to the participation request provisions. This may be an area in which amendments to the Bill as introduced are necessary. Additionally, we would welcome clarification from the Scottish Government as to whether there is a need to amend any aspects of the Public Bodies Act, which includes a schedule of local authority duties that may be delegated to an integration scheme\(^{13}\), to ensure that, in the event that key services are integrated, integration bodies are able to suitably contribute to community planning partnerships.

**Participatory Budgeting**

Barnardo’s Scotland supports the principle that people using services are experts in those services, and are often best-placed to judge how those services can be improved and made more effective. This applies just as much in decisions about where funding can be directed, and this means communities are well placed to determine which services are most beneficial to the community and therefore should be a priority for public spending. Community engagement in decisions about funding are also very much engagements that give people a strong sense of involvement in important decisions. On this basis Barnardo’s Scotland supports the further development of participatory budgeting approaches, of all types, in Scotland.

Although there is a great deal of enthusiasm for participatory budgeting across Scotland there are only pockets of existing good practice, and therefore Barnardo’s Scotland, along with Oxfam Scotland and the Poverty Alliance, sees the Community Empowerment Bill as an opportunity to further extend the use of participatory budgeting approaches by public bodies in Scotland. In particular we recommend that, in order to give community planning partnerships an initial focus on participatory budgeting, each Community Planning Partnership is required to set aside 1% of its budget (calculated on the basis of the combined local spend by the statutory partners in the area covered by the CPP) to be decided on by an appropriate community participation process.

**Participation Requests – Part 3**

The policy memorandum describes these provisions as additional to the requirements on public bodies to regularly consult and involve communities in decision making. On this basis, and notwithstanding our recommendations about how the regular duties of public bodies should be strengthened through putting the Community Engagement Standards onto a statutory footing, we support the creation of these additional provisions.

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\(^{12}\) In their foreword, Martin Crewe, Barnardo’s Scotland Director and Matt Forde, National Head of Service at NSPCC Scotland, say (page 2):

“The first round of Children’s Services Plans, which will be required under Part 3 of the Children and Young People (Scotland) Act 2014, the strategic plans created by each of the integration authorities created by the Public Bodies (Joint Working) Act 2014 and the procurement strategies developed by public bodies under the Procurement Reform (Scotland) Act 2014 will all have a major impact on the future shape of children’s services. ... We would hope that the wider issues raised by this research – the impact of austerity, benefit sanctions or delays in payments and increasing prices for basic commodities – are recognised as the context for these new statutory plans, and that tackling the growth in, and changing nature of, child and family poverty is therefore recognised as a key priority.”

\(^{13}\)
However, our view is that there needs to be a clearer arbitration and review mechanism, in order that this right can be fairly and equitably exercised by all communities. The current proposals give the public body the power to decide whether to accept or decline requests, as well as how to facilitate requests and so on. We therefore believe that a third party must be able to act as the protector of this right, through a challenge mechanism or appeals procedure. On the basis that the involvement in decision making is very much a human right (and is also recognised as a right of the child in the UNCRC), we suggest that the Scottish Human Rights Commission could be an appropriate body for appeals to be directed to, recognising that this might require some changes in the responsibilities of the SHRC, and that there are also other bodies that could provide a suitably independent appeals facility.

We are also concerned that there is no provision in the Bill that would place a duty on public bodies to support the involvement of community organisations in participation processes (in the event that a participation request is accepted) or a duty that would require public bodies to support communities to come together, connect, form community groups and make participation requests. We suggest an order making power for Ministers, which would allow them to address these issues in further statutory regulation or guidance.

To further ensure that all communities are able to take advantage of the new right and to exercise it in a way that gives them power in relation to the public body, we suggest that the Bill requires public bodies to give an opportunity for the community body to contribute to the final report required in section 25 of the Bill as introduced. We also suggest that the list of matters that a public body must take into account when reaching a decision about a participation request is extended to include poverty, inequality and the rights of children.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

In this evidence we have raised a number of concerns relating to the impact of the Bill on socially and economically disadvantaged communities, and set out a number of ways that we believe that this can be addressed.

We have also set out a number of ways in which we believe the Bill can be strengthened in order to ensure that children have equal access to the rights set out in the Bill. We are disappointed that a children’s rights impact assessment of the Bill was not carried out, particularly given the new duty imposed on Ministers through the Children and Young People (Scotland) Act 2014 to take steps to promote and improve access to the rights set out in the UNCRC.
The Community Empowerment and Renewal Bill

About HIV Scotland

HIV Scotland is the national HIV policy charity for Scotland: we speak out for people living with and at risk of HIV. We want a society which is well informed about HIV and devoid of HIV related stigma and discrimination. Our mission is to ensure that all HIV relevant policy and practice in Scotland is grounded in evidence and the experience of people living with and affected by HIV.

Introduction

The most effective way to ensure the best outcomes for people living with and at risk of HIV is to involve them in all aspects and decisions about their health and care. The 2014 Positive Persons’ Forum which brought together people living with HIV from across Scotland, named patient involvement as one of five priority issues for change. This Bill is of particular relevance to people living with and at risk of HIV, given its implications for increased involvement of communities in the work of public bodies. The Bill has the potential to ensure that communities are meaningfully involved in the planning, design and delivery of public services. However, HIV Scotland believes that the provisions in the Bill require to be strengthened if this potential is to be realised and to ensure a genuine focus on the needs and rights of individual patients and service users.

To what extent do you consider the Bill will empower communities, please give reasons for your answer?

Involvement in decisions that affect you as referenced by the UN convention on the rights of persons with disabilities and Scotland’s National Action Plan is a principle which underpins a human rights based approach to health and social care. Involving people in decision making processes also helps ensure that services are responsive, flexible and able to meet the needs of all communities. It is therefore essential that people living with and at risk of HIV are empowered to participate in the decision making processes of public bodies. Despite some significant improvements in understanding of HIV, people living with and at risk of HIV are sometimes still an ostracised and disempowered community and for this reason, HIV Scotland welcomes the Scottish Government’s plans to pass a Community Empowerment Bill.

However the Bill, as it stands, could have unintended negative consequences for some less well established community groups, including those working with people living with HIV, which are currently marginalised from mainstream engagement.

The current Bill provides additional routes to engagement for established community bodies who are already well placed to make use of them. Our concern is that there are no provisions to ensure

that public bodies support less empowered, less formalised bodies such as peer groups of people living with HIV, sex workers, and LGBT communities to take advantage of these routes.

If communities of interest are to be affectively empowered and barriers to engagement in decision making processes removed, public bodies also need to proactively inform communities of their rights as proposed in this Bill. Public sector staff will need support to understand and fulfil their roles and responsibilities. Successful implementation of these proposals will require guidance for public bodies in supporting peer community projects to meaningfully engage with them.

What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

In order for public services to be truly successful in their aims, it is vital that the people using those services are involved in their development and delivery from the offset. For this reason we consider the provisions in this Bill to be of benefit to public sector organisations by advancing their ability to deliver quality, flexible services which are able to meet the needs of all communities.

However, public sector organisations will also need to acknowledge that the voluntary sector has a key role to play, both in engaging people and communities and giving them a voice in decisions which affect them.

Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

The Bill makes some positive proposals to help communities have more control in local decision making and builds on examples of good practice in patient and service user involvement. However, it will be critical that there is a consistency across Scotland in the extent to which people living with and at risk of HIV are able to take advantage of provisions in the Bill.

We support proposals by Oxfam, Barnardos and the Poverty Alliance to renew existing national standards for community engagement. We agree that the Bill should enable Ministers to create statutory regulations for the engagement and empowerment of communities, which all public bodies must follow and regularly report upon. We also believe that a key part of the standards should focus on empowering communities of interest rather than just those of place and are supportive of proposals to require Community Planning Partnerships to adhere to the Standards when they are creating a local outcomes improvement plans.

However, if community engagement standards are to be relevant to patients and service users, consideration needs to be given as to how such standards would interact with existing policy. This includes: the Patient Rights (Scotland) Act 2011\(^4\), General Medical Council’s guidance for shared decision-making\(^5\) and British HIV Association ‘Standards of Care for People Living with HIV\(^6\). The new standards should be easy to understand and patients and service users should be informed about how to effectively use them.

\(^4\) The Patient Rights (Scotland) Act, 2011, \url{http://www.legislation.gov.uk/asp/2011/5/contents}
\(^5\) Consent: patients and doctors making decisions together, General Medical Council, 2008, revised 2011, \url{http://goo.gl/FaupVZ}
\(^6\) Standards of Care for People Living with HIV, British HIV Association, 2013, \url{http://goo.gl/mJMzHm}
Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Involvement in decision making is central to a human rights based approach to health and social care and it is paramount that people living with and at risk of HIV are active participants in the design and delivery of services. It is therefore welcome that the Bill proposes protecting the existence of Community Planning Partnerships (CPPs) and creates a community’s right to request to participate in decision making and improvement processes.

We believe that these proposals have the potential to increase the participation of people living with and at risk of HIV in service delivery. However, in the spirit of the Christie Commission, it is important that the Bill also challenges the existing hierarchy and focus of community planning in order that people living with and at risk of HIV can meaningfully influence the planning of the services they use.

Taking into account comments in the 2013 Audit Scotland report on Community Planning which said that “there is a long way to go before services are truly designed around communities and the potential of local people to participate in, shape and improve local services is realised”, the Bill needs to clearly articulate how local outcomes improvement plans will be produced through a meaningfully participative process.

Regarding the proposed ‘right to request to participate; current proposals give public bodies the power to decide whether to accept or decline requests, as well as how to facilitate them. A more robust challenge mechanism is required in order to ensure that the proposals are fairly implemented for the benefit of people living with and at risk of HIV. We agree with the proposal that it would be preferable to have an independent third party act as a facilitator and mediator through a challenge mechanism or appeals procedure.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

HIV Scotland supports the principles of the Bill and doesn’t consider that it would have a negative impact on the rights of people living with and at risk of HIV. The Bill has the potential to help communities better exercise their right to be involved in decisions that affect them and to particularly help marginalised groups identified by the World Health Organisation as the key groups at risk of HIV. These include gay men and other men who have sex with men, transgender people, prisoners, people who inject drugs and sex workers.

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7 Improving Community Planning in Scotland, Audit Scotland, March 2013, [http://goo.gl/mEaaHF](http://goo.gl/mEaaHF)
8 Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations, World Health Organisation, July 2014, [http://goo.gl/UCB1Yq](http://goo.gl/UCB1Yq)
The Scottish Parliament’s Local Government and Regeneration Committee has invited organisations and individuals to submit written evidence to the Committee setting out their views on the provisions of the Bill.

Committee’s Call for Evidence

The Committee is inviting responses in relation to the following questions:

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

   Overall the Bill itself will not empower communities on its own, success in this area will be determined by how communities and the public sector respond to the provisions and aspirations contained in it, and to what extent it acts as a catalyst to encourage increased participation and action on specific projects.

   The Bill creates opportunities for communities, however whether it will empower remains to be seen. Certainly it provides opportunities to develop community participation and engagement in decision-making and delivery of outcomes and services generally. For this to be successful, communities need to be supported and enabled to take up these opportunities. Capacity building is critical to ensuring that all communities are empowered and can be involved in improving outcomes. Without real support (both practical and in kind) many communities/bodies will be precluded from fully engaging or pursuing the opportunities presented by the Bill, and it will be those community groups with a fortunate blend of members or access to commercial support who will most likely benefit. This in turn may lead to frustration and disengagement for some and it could also increase inequality of community engagement and access to opportunities.

   Throughout the Bill there are different definitions used for community bodies etc. It is essential that whichever definition applies, that the focus is on the needs and wishes of the community itself as opposed to those “representing” that community. It is also essential for there to be mechanisms to ensure that groups do in fact represent the stated community.
The Bill allows communities to identify local issues/priorities and how they would wish to contribute to addressing these priorities by delivering certain services or assisting public bodies in the delivery of services. This may assist in the setting of local priorities, action plans and through additional community involvement local resources to assist in the delivery of shared objectives.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions of the Bill?

There are definite challenges and opportunities for public sector groups. The following are some of the potential implications.

Benefits

The Bill provides an opportunity to ensure genuine community engagement, consultation and active participation by citizens in identifying local needs and involvement in setting priority outcomes and how they should be addressed. Also, in theory, it provides public sector partners with the opportunity to rewrite the way we engage with communities for the better and involve local people more in seeking and participating in local solutions to local issues through “co-production” and community led service design and delivery.

Also, by opening up all public services to participation requests and making participation opportunities core within service delivery there is the potential for improved service delivery and improving public perceptions of public bodies service delivery alongside a better public understanding of existing decision making processes and constraints.

For local authorities and community planning partners it reinforces the importance of the Single Outcome Agreement, joint accountability for delivery, and the need to engage citizens fully in the processes of planning services and plans that deliver improved outcomes. This should strengthen community planning and ensure a wider understanding of what community planning is seeking to achieve, the shared goals of the partnership and ultimately improved accountability for public bodies to the communities they serve. Potentially, this may contribute towards improved public health and social well being, safer
communities and through regeneration better economic outcomes for our most disadvantaged communities and individuals.

The provision in the Bill relating to transfer of assets provides public bodies with the opportunity to transfer surplus and unused assets, thereby acquiring a capital receipt and saving on existing property/maintenance costs. If these types of assets can be moved quickly then better use can be made of existing assets, reduction in backlog maintenance and better use of budgets on core assets.

We agree with the note included on page 58 of the financial memorandum i.e a case by case basis for assessment of financial consequences is required.

For community groups that may have an interest in these assets this could provide an opportunity for them to hold and manage assets to deliver initiatives and projects to the benefit of their organisation and the wider community. Community groups have the potential to attract sources of funding not available to the public sector, borrow investment funds against an asset and via the development of social enterprises bring unused, or underused, assets into use that can become financially viable and contributing towards an improved property infrastructure available in the city.

The requirement to maintain an asset register is a positive provision and should have regard to the practicalities of being responsible for land that has been in public ownership for centuries. Likewise, the similar requirements in relation to Common Good assets and how they are being used will improve transparency.

In principle, the aspirations around increasing allotment space has the potential to increase the “green” aspects of the city and support increased citizen activity, encouraging healthy eating and growing linking to SOA outcomes around improving health.

Disadvantages

The Bill has the potential to significantly reduce the control/determination of what happens to publically owned assets. This loss of flexibility e.g. in determining whether to market estate commercially/for full market value could lead to subsequent loss of income and receipt.
The issues around transfer price requires to be addressed and given further clarity as the assumption of a transfer at market value is not clear. If properties are transferred at less than market value this will impact on capital planning from loss of capital receipt and there may be state aid implications.

There may be additional costs to a public body in terms of staff and asset management costs maintaining an unused property for the time taken to deal with a transfer request by a community body including an appeal, where relevant.

In responding to transfer requests, potentially from multiple community bodies making requests for the same asset, officer involvement from a range of skills and expertise will be required as part of assessing bids and quantifying community benefit.

In relation to Common Good assets if the common good asset holding is large and not transparently documented it may require considerable efforts to create and maintain an accessible register.

Based on the figures supplied - Aberdeen City Council’s Common Good makes up approx. a third of the total city assets therefore Aberdeen has one of the most substantial asset bases of Common Good land in Scotland. While we have a significant asset register that ensures the Common Good secures the rental income it is entitled to, there are occasions, when selling other Council land, the title search is performed resulting in the identification of land that is actually in Common Good ownership. To undertake a detailed review of every title, which date back centuries would in our view be cost prohibitive.

Further clarification is required in relation to Common good assets – definition/other statutory requirements including critchel downs.

In relation to Localised Rates relief currently we have 9 schemes for rate relief, this covers 3528 buildings and the total relief value is £21.6m (41% of properties in Aberdeen currently have some form of relief).

An additional scheme could be considered, systems can cope, but cost would be the Council’s and a procedure/scheme would need to be established to identify why/who. We are not clear at this point whether this is required.

There are so many schemes for some form of rates relief it is unclear what the additional benefit would be of another one.
Finally, in relation to potentially having to provide additional land for allotments it is not clear how funding for this would be sourced.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not what requires to be done to the Bill, or to assist communities, to ensure this happens?

Community capacity and capability will vary. For communities to be truly empowered, affordable and accessible independent support will be required e.g. professional/commercial/financial and technical advice etc. Awareness raising and significant marketing will also be required to ensure that all communities are aware of the rights and opportunities afforded by the proposed legislation, not just those who are accustomed to engaging in this way, or who have members/volunteers with the knowledge and/or confidence to pursue the opportunities afforded by the bill.

Community bodies and groups do not always speak with one voice so there will be a need to consider how the various voices that may at times conflict, or oppose, can be considered and ensuring that community empowerment goes beyond those citizens who are already actively involved. This is perhaps an area as the Bill is implemented that the Scottish Government may want to develop good practice guidelines.

Support requirements will vary from community to community and in particular this should be channelled towards engaging with previously excluded or hard to reach communities and those with specific difficulties in some of the processes envisaged by the Bill e.g. submitting written applications or responses to consultation.

There will need to be extra support provided to support communities to create plans and effectively participate in outcome setting processes via community planning. Due diligence will be needed within projects particularly where purchase of property and transfer of assets is under consideration. The Third
Sector Interfaces i.e. Aberdeen Council for Voluntary Organisation here, currently provide some of this type of support but would need to increase staff numbers if the bill was to encourage a regular stream of proposals where community groups and organisations might be seeking independent support.

The potential complexity of individual projects may also require funding for project appraisal by “professionals” in order that correct, legal and financial advice is sought by communities. Whilst some communities will undoubtedly be able to secure pro bono support from such firms, not all will and if not there immediately exists an inequality in the provision.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Clarification on common good and an ability for Council’s to transfer inalienable common good land to communities, where there is agreement, without the need of seeking consent from the Court of Session.

More flexibility for Councils to transfer common good land between council functions.

- Is the bill consistent with the Disposal of land by local authorities (Scotland) Regulations 2010.
- Do public sector partners have similar mechanisms to transfer assets
- Does the bill have to consider restriction on sale/ common good/ HRA/ critchel downs/ title burdens/ land held for future development.
- Asset transfer request has a presumption on transfer to communities taking away the discretion of a LA to manage their own assets.
- Is further consideration required to consider how competing community interests are dealt with.
- Are displacement issues mentioned in provision of facilities and state aid.
- Definition of common good assets required. Appropriate that a register is established albeit this may be an ongoing process.
- Common Good property may fall outwith the scope of the land disposal regs 2010.
• Concern over any CPO powers for communities in relation to complexity, legal process and skill to implement.
• Further work required to identify a range of detailed reasons to refuse an application. – Council property asset management plan. Market value with other sites etc.?

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

Equality – it is difficult to be specific in identifying potential problems, however there is scope for inequality and public bodies will have to be vigilant in implementing the terms of the Bill e.g. where a community body seeks to acquire an asset to prevent its use by another group. There is also an issue in relation to the various definitions of community group/body as they all appear to be focused on geographical communities. The inclusion of communities of interest, would perhaps increase the positive impacts of the Bill, as it would help encourage engagement by groups of people with a shared interest.

In addition to the above, and as stated previously, care will be required to ensure that all communities are enabled and supported to develop. Otherwise, communities where there is already capability and capacity will gain more from the Bill, leaving others behind. Community capacity building and support must be properly resourced.

Environment/Sustainability - The Bill throws up some concerns in relation to environmental and sustainability issues e.g where a building which is the subject of an asset transfer request is listed or otherwise classified. Public Bodies need the assurance that they can require robust evidence/guarantees from a community body that they are aware of any restrictions and the difficulties in managing those restrictions e.g. additional maintenance costs etc.

Generally, there must also be absolute clarity in relation to responsibilities and costs in terms of compliance with environmental issues e.g. energy performance.
There are also positive implications in relation to environmental and sustainability issues. The potential for communities to acquire abandoned and neglected land will help promote sustainable development and communities by bringing such assets back into productive and beneficial use.

COMMUNITY EMPOWERMENT BILL
ADDITIONAL COMMENTS ON THE DRAFT LEGISLATION

PART 1 NATIONAL OUTCOMES
Commentary/Analysis
National outcomes will clearly shape local outcomes and priorities. As such national outcomes will need to be sufficiently wide so as to apply to all communities so as to ensure relevance, and must not impinge on the ability of local communities to set local outcomes which are relevant to local circumstances.

There is a lack of certainty around consultation and reporting. It would perhaps be clearer and enhance transparency if the Scottish ministers were required to consult with a list of specific bodies and required regular reporting within a statutory time table which references a minimum frequency.

PART 2 COMMUNITY PLANNING
Commentary/Analysis
The statutory basis for the CPP and its functions is important in underlining its significance and enabling improvements. This is also mirrored by the statutory emphasis on outcomes and an outcomes based approach.

Throughout the Bill there are different definitions used for community bodies etc. It is essential that whichever definition applies, that the focus is on the needs and wishes of the community itself as opposed to those “representing” that community. It is also essential for there to be mechanisms to ensure that groups do in fact represent the stated community and are reflective and representative of communities and are also pursuing the community’s interests.

Whilst it makes sense for the CPP to co-ordinate arrangements for partnership working there may be tensions with other reform and integration initiatives, such as adult health and social care integration. It may be worth specifically listing each Integrated Joint Body as an organisation required to participate in the CPP in its own right.

PART 3 PARTICIPATION REQUESTS
Commentary/Analysis
It is unclear what arrangements would apply if two, or more Community Participation Bodies, which relate to the same community, make a participation request at the
same time. The Council, and the Community Participation bodies, could potentially find themselves in situations where two groups, representing the same community, but with diametrically opposing views, are seeking to participate. The potential for conflict would therefore seem obvious.

Further, if one body makes a participation request that is approved, then other bodies appear to then be excluded from participation if their outcome is the same or substantially the same given that their requests can then be declined before consideration.

There appears to be no provision allowing the authority to decline to consider a participation request deemed to be vexatious or malicious in nature.

It is not clear if the authority has the final decision on a participation request or if ‘rights of appeal’ against the authority’s decision will apply.

Existing forums for community representation / community involvement in outcome improvement processes may be undermined by the very formal nature of the process outlined in Part 3 and some communities may be disengaged / disempowered as a result.

Additionally, the requirement to prepare a submission detailing why the community participation body should participate in the outcome improvement process may impede the ability of some bodies to participate, particularly those with little or no support and those for whom communication may not be particularly easy.

Community participation bodies may find themselves in a position where, having had a participation request agreed, they are bound into the outcome improvement process. Depending on the development of the outcome improvement process, this may have adverse implications on the body’s ability to represent the views of the community and may stifle Community Empowerment rather than enhance it.

It is not clear where the onus for communicating with the wider community about outcome improvement processes will sit – whether with the public service authority or the Community participation body. Should this not be clear, and followed through on, the wider community may feel less empowered than before.

The potential for fairly ‘piecemeal’ involvement for communities in outcome improvement processes appears to be fairly high. If the community participation body requires to make a formal request to participate in each process, the potential for opportunities to be ‘missed’ may increase. There would need to be safeguards to ensure that communities remain engaged with the wider community planning agenda.

It is unclear what the implication, if any, will be if, once a participation request is approved, the body is unable to, or refuses to, then participate in the outcome improvement process.
PART 4 COMMUNITY RIGHT TO BUY LAND
Commentary/Analysis
Whilst this right has applied in rural communities for 10 years, the Bill now proposes to extend its application to urban areas. It also introduces a new community right to acquire abandoned and neglected land where the seller is not agreeable to a sale. As such it will apply within the Aberdeen City boundaries once the Bill is enacted and brought into force.

Value/transfer value?? Will the Disposal of Land by Local Authorities (Scotland) Regulations apply? It would be helpful for this to be clarified.

Timescales – extending the deadline for completion could mean that the Council ends up paying more to maintain an asset. Also, opportunities may be lost if the purchase doesn’t complete.

Community right to buy for urban communities may deliver significant benefits to the community, where the community’s activities are consistent with the Council’s objectives.

It may be prudent to include reference to potential restrictions on transfer/disposal of land e.g. HRA, Common Good, or other legal restrictions on the Council’s ability to transfer ownership e.g. where land was acquired by CPO – will the Crichel Downs rules still apply? If these restrictions are made clear from the outset then they could feature in the Scottish Ministers’ consideration of an application.

HRA land – should this be included within the community right to buy? If so, what cognisance will/should be taken of the restrictions already in place e.g. consultation with tenants?

On the face of it, the proposals for abandoned and neglected are to be welcomed, however there may be human rights challenges as the Bill proposes that Scottish Ministers can extinguish an individual’s ownership rights. There should perhaps be greater clarification in terms of the community benefit to be secured in such a transfer, thereby making it more akin to compulsory purchase.

Landowners may hold on to land for various reasons which may not require maintenance of the site. The Bill could provide an incentive for these owners to ensure that sites are properly maintained, even when not in use.

PART 5 ASSET TRANSFER REQUESTS
Commentary/Analysis
Value/transfer value?? Will the Disposal of Land by Local Authorities (Scotland) Regulations apply? It would be helpful and avoid conflict, delay and expense if this were clarified.
What is more than one community body is interested in the same asset?

Should a public body be required to intimate receipt and consideration of a request to any other public bodies that may be interested in the same asset?

What if the request conflicts with the interests of another community/community body?

There should perhaps be further consideration in relation to public companies and the likes as there may be external funding arrangements in place which are not conducive to these provisions.

**PART 6 COMMON GOOD PROPERTY**

**Commentary/Analysis**

Common good property is not defined, therefore it is not clear whether the provisions are restricted to heritable property or extend to moveable assets also? For the purposes of this commentary, I have assumed that it is restricted to heritable property, however even this poses a problem given that there is no standard, agreed definition of common good property. This may result in divergent views as to whether property is, in fact, held on common good and whether it can or cannot be transferred.

On the face of it, the idea of a common good register makes sense in terms of good asset management and transparency. The difficulty may be in the creation of the register. Title checks often throw up unknown common good issues. If it is envisaged that the initial register must contain all property held on common good (as opposed to all property known or believed to be held on common good) then it will create a significant resource issue for the Council as the Council’s extensive property holding will require to be checked. This is a massive exercise and would take up substantial staff time, thereby diverting limited resources away from operational work. It is proposed that the Council should be required to establish and maintain a register of property which is known or believed to be held on common good and which can be updated as other common good property comes to light.

As a follow on from this, it would assist the Council if there was clear direction regarding the on-going maintenance of the common good register. How often should it be reviewed or updated and how often should an amended version be published? Should the Council produce a list of properties and consult with community bodies prior to publishing an updated or amended common good register. If there is no clear guidance or direction re this, then it is almost certain that different practices will develop in each local authority area.

The Bill sets out certain conditions which the Council must comply with before disposing of common good property, including consultation with community bodies and complying with any guidance issued by Scottish Ministers. However the Bill is
silent in respect of other statutory obligations e.g. the duty to secure best value and s.75 of the Local Government (Scotland) Act 1973, which requires the Council to obtain consent of the Court of Session before it can transfer ownership or otherwise dispose of common good property which is inalienable, even to a community body for the benefit of the community. Indeed, in these circumstances the Council is prohibited from even transferring the common good property from one holding account or function to another. Therefore, in terms of the Bill as drafted, the Council may be in a position where it has undertaken extensive community engagement but is ultimately precluded from transferring common good property to a community body by the Court of Session. This would appear to undermine the intention to increase community empowerment. Even where consent is forthcoming, the process involved will cause substantial delays which may have knock on consequences e.g. in relation to the condition and state of repair of the common good property and may ultimately compromise transfer to a community body.

There is an opportunity within the Bill to deliver a genuine improvement in relation to common good property by removing the need for court consent so long as the transfer is within the Council’s functions or to a community body, and where there has been a comprehensive and robust consultation exercise leading to unanimity in terms of the transfer and/or change of use for the community’s benefit.

Publish details of proposed disposal/change of use – This might impinge on commercial confidentiality considerations, which may adversely affect the value that a Council can secure for a property by putting potential private purchasers off. It may also delay transactions, which again could have cost implications for the Council.

**PART 7 ALLOTMENTS**

Commentary/Analysis

The bill effectively requires the Council to provide allotments. Whilst there are good reasons for this, it does not take account of the potential cost. Land values in Aberdeen are high and the Bill could result in the Council requiring to spend money purchasing land or making land available (which it would otherwise sell for a capital receipt) for the purposes of providing allotments.

The delegation of powers to tenants may result in a saving for the Council and allow for greater community involvement. However this could also create problems depending on how the allotment is run and whether there is harmony amongst tenant of an allotment site. The Council may find itself having to settle disputes or differences which may be more time consuming than exercising the powers itself.

The provision of allotments should perhaps be based on local priorities, as opposed to a national target.
PART 8 NON DOMESTIC RATES
The proposed amendment is relatively straight forward in terms of the legislation, however the bigger issue relates to policy/operation and whether another relief scheme is required. At present the Bill does not specify the purpose/extent of the relief scheme.
A RESPONSE FROM THE SCOTTISH FEDERATION OF HOUSING ASSOCIATIONS

IN RESPONSE TO THE LOCAL GOVERNMENT AND REGENERATION COMMITTEE’S CALL FOR EVIDENCE ON THE SCOTTISH GOVERNMENT’S COMMUNITY EMPOWERMENT (SCOTLAND) BILL 2014

September 2014
1 Introduction

1.1 As the representative body for housing associations and housing co-operatives in Scotland, the Scottish Federation of Housing Associations (SFHA) welcomes the opportunity to comment upon the Scottish Government’s Community Empowerment (Scotland) Bill.

1.2 To provide context, housing associations and housing co-operatives in Scotland own and manage approximately 46% of the country’s affordable social housing stock. This represents 274,996 homes across Scotland. This is concentrated in some of the poorest communities in our country.

1.3 For 35 years, the housing association sector has been at the forefront of developing, building and managing high quality homes in Scotland. The sector has shown itself able and willing to contribute to the direction of national housing policy. It has delivered effectively a range of housing solutions at a local and national level. As the Scottish Government is aware, housing associations and housing co-operatives are leaders in community involvement and empowerment across Scotland. Their role as Community Anchors is to be recognised and celebrated, in their long history of housing provision and community involvement in Scotland.

1.4 This response has been developed following consultation with our members across Scotland.

2 Committee’s Call for Evidence

2.1 The SFHA has responded to both of the Scottish Government’s consultations on the proposed content of the Bill. The issues we have raised previously remain valid now that the Bill has been introduced. The work of housing associations as community anchors in developing sustainable communities remains crucial to regenerating local areas, and housing associations continue to be key proponents of regeneration in many areas across Scotland. Community planning, if administered appropriately, is also an important mechanism in ensuring the community’s voice is heard.

2.2 The Committee has invited specific responses on the following questions:

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

The main aim of the first consultation paper on the proposed Bill was very strongly in favour of strengthening communities. It is the SFHA’s view that this has been lost or at least diluted in a broader sense, along with the lack of an express link to all the various strands of regeneration. The published Bill places a greater emphasis on: community ownership/right to buy; allotments; statutory authorities and large public bodies (both national and regional). If statements such as the ‘...presumption of agreement to participation requests’ (s19 (5)) was afforded greater prominence in the Bill’s structure, it would be symbolic of a commitment to empowering communities.
Whilst issues such as community right to buy are important in themselves, these areas will not be of relevance or of interest to all local areas. It is our view that communities are looking to this Bill to be a vehicle by which they could empower themselves to improve their working relationship with public authorities and other partners so as to have a more equal footing. They are also looking for help in growing and developing their skills and experiences as community groups. The Bill as currently drafted does not meet this need.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions of the Bill?

Public sector organisations will now have other partners to share some of the onerous tasks such as managing Community Planning Partnerships: conversely, they may feel that some of their control may be lost and public bodies may find this a disadvantage. There may, however, be inconsistencies between local authorities in how ‘power’ is shared, and how they are able and/or willing to deal with the potential for increased community involvement. The authorities will also have to take on new duties such as establishing, managing and maintaining the Common Good Register, and managing participation requests.

We welcome that the CPP in Glasgow has now incorporated housing association representatives to sit on its various committees, and it would be good to see this replicated around the country. This has the potential to benefit community groups by the mere fact of their recognition and inclusion. The sharing of roles in some instances will mean that public bodies may have to look differently on how they work and engage with wider groups and this will be no bad thing.

A main disadvantage to public sector organisations is the missed opportunity to effectively empower and promote community bodies to help shape and deliver the future of those communities.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions of the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

It is the SFHA’s view that, under the current provisions, not all communities will have the capability to use the provisions of the Bill to their full potential. This is partly due to the lack of subsidiary/parallel funding and practical help to assist community capacity building. It is also due to the absence of practical help (perhaps on a peer- to-peer basis) to encourage and support communities to make the Bill work for them. A grass-roots approach has to be taken to ensure communities are at a good starting-point in order for them to progress, both in using the provisions of the Bill and in developing within their own areas.
4. Are you content with the specific provisions on the Bill, if not what changes would you like to see, to which part of the Bill and why?

The Bill must overtly mention housing associations and co-operatives as community bodies. Housing associations and co-operatives fulfil the requirements of community controlled and led bodies perfectly. We would urge Scottish Ministers to address this omission immediately. Also, as we have stated above, there is too much emphasis on community right to buy and allotments, and not enough on how communities are to be assisted to develop and grow and enter into meaningful partnerships with public bodies.

We remain concerned about the continued lack of budgetary powers being conferred on local communities, which would truly allow them to be empowered.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy Memorandum?

Assessment of Equal Rights: It is useful to see reference made to the need in many cases for an Equality Impact Assessment (EQIA) to be carried out. It may be necessary to provide information to some bodies on best practice to ensure a common method of assessment is adopted by all.

With reference to compatibility with Human Rights, we would ask if the Scottish Government has satisfied itself, through specialist legal advice, that the Bill provisions are compatible with the European Convention on Human Rights?

SFHA notes with interest this comment from the Commission on Strengthening Local Authority: “…as a country we have simply become used to a culture that doesn’t empower people locally. We have an ethos where…for something to be delivered efficiently it has to be centralised, for national outcomes to be achieved, national agencies have to be created and where local discretion is available, this is often seen as a postcode lottery rather than legitimate local choice and local democratic accountability. …only a very major initiative can alter the direction of travel.”1 This Bill does not address the issues of empowerment, of helping communities to become ready to participate, and allowing for real local involvement in its basest and broadest form.

Impacts on Island Communities: In some ways, positive discrimination may be a useful tool when applying the Bill provisions to island communities. The Oxford Dictionaries define positive discrimination as “… (In the context of the allocation of resources or employment) the practice or policy of favouring individuals belonging to groups which suffer discrimination”. In responses to previous consultations on the Bill, some responses advised that the islands suffer adversely from a shortage of land for allotments in crofting areas. It may be that some stronger measure is needed than “… (suggesting)… (that) local authorities …work with other landowners and public service...

providers to discuss the possibility of allotment provision on their land."\(^2\) As the Commission on Strengthening Local Democracy said, "What is right for the islands is unlikely to be right for the cities. What is right for large rural authorities is unlikely to be what is right for our towns."\(^3\)

Another issue that is of concern to island communities in particular is absentee landowners, where communities may have difficulty in tracking someone to ask if they could purchase the land under the Community Right to Buy.

**Sustainable Development:** whilst recognising that the Bill provisions *per se* do not have any environmental impact, individual proposals may do. It is important that those bringing the proposals do undertake an Environmental Assessment if it is appropriate for them to do so.

**Additional Comments**

There are certain aspects of the Bill that have afforded some further questions, and which have potential resource implications (such as Part 2, (s) 5 para (1)). Besides a possible resource implication, information on firm timescales for review of the local outcomes improvement plans would have been welcome (Part 2 (s) 6 para 2 (a)).

There is a lack of information on any further appeals processes available to communities where a participation request may have been rejected by the local authority in Part 3, and it would be useful for this omission to be addressed in a formal sense.

There seems to be a ‘push’ towards enforcement, rather than encouragement of, partnership working (Part 2, (s) 4 para 10 (1)). It is better to encourage such relationships in order that they work to best effect, not try to force a relationship.

If regeneration is stated as one of the areas needing promotion or improvement, why is social housing (and housing associations in particular) omitted from this Bill as main agents of regeneration? (Part 5 (s) 55 para 5 (c)). There needs to be a link back to regeneration in its broadest sense to allow this Bill to be as rounded as possible. Both the SFHA and Glasgow and West of Scotland Forum of Housing Associations (GWSF) agree that the opportunity that this Bill afforded in terms of community empowerment may not be as obvious now as once was hoped.

We wish to see housing associations and housing co-operatives recognised in the Bill as appropriate community bodies, as mentioned in our response to question 4.

### 3. Conclusion

SFHA is disappointed that the Bill’s focus has been diluted since the first consultation paper and that an overt linkage to regeneration in all its forms is absent.


3.1 We would urge the Scottish Government to address issues of local involvement and empowerment through another route if these issues are not to be at the heart of this Bill.

SFHA
September 2014
Our Ref: LF/LGRC

Date: 5 September 2014

Mr David Cullum
Clerk to the Local Government and Regeneration Committee
Room T3.40
The Scottish Parliament
EDINBURGH
EH99 1SP

Dear David

Call for Evidence: Community Empowerment (Scotland) Bill
Local Government and Regeneration Committee Meeting 1st October 2014

I very much welcome the Local Government and Regeneration Committee’s scrutiny of the Community Empowerment (Scotland) Bill. I would like to thank you for inviting me to attend the meeting on the 1st of October to provide my views on the provisions of the Bill from a local authority perspective.

Attached in Annex A, is a written response to the public call for evidence issued by the Committee. This response addresses the five questions outlined in your letter of 25 July 2014.

I hope this written response is of value to the Local Government and Regeneration Committee and I look forward to attending the meeting on the 1st of October.

Yours sincerely

[Signature]

John W Mundell
Chief Executive
Annex A

Call for Evidence: Community Empowerment (Scotland) Bill

Local Government and Regeneration Committee Meeting 1 October 2014

Response from John Mundell, Chief Executive, Inverclyde Council

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

The Bill will empower communities by establishing processes through which they can:

- Have influence over the design and delivery of public services
- Participate in community planning; and
- Acquire and use buildings and land for community benefit.

However, the extent of this empowerment is constrained by a number of factors:

- Not all communities will have the capability or desire to take advantage of the provisions within the Bill
- Terms like consultation and engagement are not defined and could lead to compliance without achieving empowerment (a missed opportunity to build on the Standards of Community Engagement.)
- Empowering concepts such as co-production, doing things with communities, not for or to them and developing asset based approaches are not supported by this Bill, as communities are not held to be equal partners.

Further detail regarding these factors is outlined below.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

One significant element of the legislation is the requirement on community planning partners to commit resources, both towards the delivery of local outcomes and for securing the participation of community bodies. This is proving challenging to map, particularly as many partner organisation’s budgets are agreed across more than one Community Planning Partnership area, and there is not the freedom in budget setting that would facilitate the easy commitment of resources to particular projects.

Issues for Community Planning partners could include what resource they currently have available within services to respond to community bodies and the capacity of officers to be able to engage community bodies effectively. In order to engage effectively with communities across a range of partner services, training may be required which will have a cost attached. In addition, the development of a report of the process, and ongoing updates on changes in the outcomes and related matters will require dedicated officer time. In the current climate with ongoing budget savings being made, this could become even more problematic, with fewer staff across partner organisations available to dedicate to these tasks. This is, however, all dependent on demand, which at present is difficult to predict.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Not all communities will have the capability or desire to take advantage of the provisions within the Bill. This is particularly true for disadvantaged and marginalised communities who may be unaware of the rights afforded to them by the Bill or lack the capacity to claim them.

The Bill does make reference to CPPs contributing ‘such funds, staff and other resources as the CPP considers appropriate’ to assist with capacity building, but in the present financial climate this is unlikely to be achievable.
The capacity building required to support those communities who currently lack the capacity to take advantage of the provisions of the bill, is currently under-funded across Scotland, and there has been no indication from the Scottish Government that funding would be made available to carry this out. In a climate of budget cuts and service reduction, it is unrealistic to expect local authorities to be able to provide the appropriate amount of support for disadvantaged communities as is required, without additional budget provision.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Part 1 National Outcomes

National Outcomes have been in place for some time, however, enshrining these in legislation in a Community Empowerment Bill without detailed reference to the consultation process is a missed opportunity for Scottish Government to make this consistent with the spirit of the Bill and to make it clear that this will not be a centralised process requiring ministers only to ‘consult such persons as they consider appropriate’.

This concern applies to the involvement of local community planning partnerships in the development of national outcomes as well as the involvement of communities within those partnerships.

Paragraph 2 should therefore be changed to encourage more robust engagement in the development of National Outcomes.

Part 2 Community Planning

Section 4: Paragraph 25, requires CPPs to ‘consider which community bodies are likely to be able to contribute to community planning’ and ‘to make all reasonable efforts’ to secure and enable their participation. This neither encourages CPPs to consider community bodies as equal partners nor empowers community bodies to see themselves in this way. Without guidance on when and how consultation should take place, this may not lead to the type of empowerment envisaged in the Bill.

Part 3 Participation Requests

The requirement on a community body making a request to ‘explain what experience it has of the service and how it could contribute’ is reasonable, however, as well as the requirement for CPP’s to report on the impact of their engagement on the specified outcomes, there needs to be an expectation of ongoing involvement of the community bodies and its members as well as the community planning partners, as in most circumstances the ‘improved’ outcomes will not be a one off quick fix. The practice of reporting on the impact of engagement should not be restricted to those who have formally made a request to participate.

Part 4 Community right to buy

With reference to Part 4, in so far as it may relate to the purchase of land in the ownership of a local authority, (and also per below to Part 5 on asset transfer requests), there is no explicit provision on how these parts of the Bill will interact with the following:

- The obligation on a local authority to obtain best value in a disposal;
- Title restrictions affecting disposal; or
- Common good issues.

The absence of such provision will mean these other considerations will still apply and the law in that regard will be unchanged. Nevertheless it would be a benefit if this was clarified in the body of the Bill by expressly stating either that they still apply, and therefore need to be considered in such applications or that they do not apply and can be discounted when considering such applications.
Greater clarification is required of the Local Authority role in this process in general. We foresee an expectation from community groups that they will be able to ask Local Authorities to exercise compulsory purchase powers to acquire such land. If such powers can and are to be exercised, then there will also be a question as to who will meet the cost of that process.

We also have a concern as to the sustainability of groups exercising this right, as there is a possible danger in that there will be an expectation on Councils to step in and take over assets acquired under Community Right to Buy should the acquiring organisation, for whatever reason, be dissolved or simply fall into inactivity. This would probably be more likely in respect of assets in a non-rural setting.

Part 5 Asset transfer requests

There are potential additional costs should community groups require support to go through an asset transfer process. Resource will be required to provide community groups with that support. There are also potential future costs for relevant authorities should the community group holding an asset cease to exist, with a potential expectation for the relevant authority to take back ownership and responsibility for the asset.

The comments above regarding the absence of explicit comment on interaction between Part 4 and the following issues are also applicable to Part 5:

- The obligation on a local authority to obtain best value in a disposal;
- Title restrictions affecting disposal; or
- Common good issues,

Part 6 Common good property

A number of issues with regards to Part 6 have previously been highlighted by this authority and others as part of the previous consultation process. However, this has not resulted in amendment to the Bill.

1. This Bill is an opportunity to include immediate improvement to the current law on common good, namely addressing the question as to whether or not a Local Authority may re-appropriate under S73 land that is common good land in respect of which “a question arises as to the right of the authority to alienate”. This is a grey area that has been left by the wording of S75 of the Local Government (Scotland) Act 1973, and can act as a barrier to effective use of Local Authority assets. The recent example of the Portobello Park/High School proposals demonstrates this.

2. This Bill is also an opportunity to provide clarification on the legal definition of common good. The consultation document circulated in respect of the draft bill acknowledged at para. 47 that “at this stage our view is that there are significant difficulties in framing a satisfactory definition [of common good]”. It is suggested that imposing an absolute obligation on Local Authorities to produce lists of common good assets in the context of those acknowledged significant difficulties:

- Is exposing Local Authorities to a significant risk of judicial review, with resultant resource and financial implications;
- May also result in such authorities adopting a risk averse approach, in that in cases of doubt over the common good classification of an asset, then it be classed as common good, which it is assumed is not the outcome that the Scottish Government sought in promotion of this Bill; and
- May furthermore result in an increase in the barriers to the effective use of Local Authority assets, which it is again assumed is not the outcome that the Scottish Government sought in the promotion of this Bill.

In short, the absolute nature of the obligations imposed under the Bill combined with the continued uncertainties around the definition of common good will present Local Authorities with a resources demand and a risk of challenge. Both of these have financial implications, at a time when they, like all public bodies, are operating under funding limitations.

Whilst it is accepted that defining common good is not an easy task, the inclusion of a statutory definition would be a significant improvement providing clarity for both local authorities and the public at large.
It is noted that this issue is discussed in the Land Reform Review Group’s recent report “The Land of Scotland and the Common Good”, and that therefore further provision may appear in the recently announced Land Reform Bill. Nevertheless, our comment on the present Bill must proceed in the context of the current law.

3. No distinction is made as regards heritable and moveable common good assets in terms of the draft Bill. The task of a common good assessment on heritable property, with the benefit or recorded deeds, is a difficult enough task. When dealing with moveable assets, where in many cases there are no such records, this task becomes significantly more difficult and may in some cases be impossible. If the intention of the Scottish Government in promoting this bill is that various provisions relating to common good extend to both moveable and heritable assets, in the knowledge of the resource implications this has for local authorities, then the wording as it stands achieves that. However, if the intention was only that heritable assets be covered by one or all of those provisions, then amendment to that effect is required.

4. The provision requiring consultation on the disposal or change of use of common good assets impose greater restrictions than currently apply. We consider that this creates a greater barrier to effective use of these assets.

- Firstly, no distinction is made between “alienable” and “inalienable” common good, or to adopt the wording of the 1973 Act assets where “a question arises as to the right of the authority to alienate” and assets where “no question arises as to the right of the authority to alienate”. By way of explanation, common good assets include many assets that may not be typically expected to be characterised as “common good” but nevertheless as a matter of law are. For alienable common good, a Local Authority is under the current law at liberty to dispose of or re-appropriate under S73 of the 1973 act. If the intention is that consultation requirement in this Bill is to cover all common good, both the higher profile “inalienable” assets and the less controversial “alienable” assets, then that is achieved. However, if the intention was not to include the “alienable” assets amendment to the wording is required.

- Secondly, the obligation is to consult with all community councils in the local authority area, not simply those connected with the Burgh whose common good the asset forms part of. Whilst current consultations prior to seeking S.75 consent for disposal of an inalienable common good asset need not necessarily be restricted to community groups in the Burgh in question, they would not in all cases extend to all community councils within a local authority area. This will present significant difficulties for local authorities covering a large geographical area. If this is not the intended result, then again an amendment to the wording is required.

Part 7 Allotments

The financial memorandum highlights that there will be costs incurred by local authorities regarding allotments depending on how much provision is required to meeting local authority targets and how much provision is actually possible. There will be costs to hold and maintain waiting lists and a major officer resource required to produce and report annually on a food growing strategy. The memorandum does not state whether the Scottish Parliament will make funding available for authorities to meet these costs.

Should there be an increased demand for allotments such that trigger points are reached, then there will be a resource issue both in officers’ time and funding in order to comply with the provision to provide allotments.

More emphasis and or explanation on the “reasonableness” of any request to enable resources more time to respond and react to demand should be incorporated.
Part 8 Non-domestic rates

This power may be useful in allowing the Council to be responsive to local problems or needs and to have the flexibility to offer a range of options which could help new businesses to locate in the area, to retain current businesses, sustain local employment and improve the local economy.

The scheme would require to be carefully thought out as 100% of the cost of any relief awarded would be met by the Council.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

With respect to equal rights, the Bill may not have the impact it seeks if marginalised and disadvantaged communities are not assisted to become aware of this legislation and to understand the rights it offers. These groups may also lack the capacity to claim these rights without additional support.
The GYOWG is generally supportive of the draft Bill. Some of the members of the GYOWG have concerns about specific details in the Bill, and are raising these concerns on an individual organisation basis.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

For the Bill to be effective, communities need support to have the capacity to cope with changes to the legislation, including with the assets they acquire, and in engaging with and understanding Local Authority Food Growing Strategies. Therefore the CE (Scotland) Bill needs to be properly resourced, with a dedicated fund (in a similar way to the Climate Challenge Fund accompanying the Climate Change (Scotland) Act, or the Scottish Land Fund accompanying the Land Reform Act). This fund could include loans as well as small grants, for developing projects at a grassroots level and capacity building by intermediary organisations.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

- In the previous Government consultation over the draft Bill the GYOWG were concerned that the right to buy was not the answer in many situations where communities want to grow food. Many community groups do not want the added responsibility of actually owning the land they work, they simply want to be able to use it. The GYOWG is supportive of the proposals for Participation Requests (Section 17) and Asset transfer requests (Section 52) as these support the right for communities to use land, without taking ownership, for purposes such as growing. The GYOWG is however concerned that these proposals only relate to land owned by those public bodies listed in Schedule 2 and 3 to the Bill, and so do not include land owned by other public bodies or do anything to promote meanwhile use of privately owned land.

- The GYOWG supports the proposal that Local Authorities must prepare a food-growing strategy (Section 77), but would like to ensure that any gaps in training requirements are identified in food growing strategies, and/or that training is a matter to be prescribed in future regulations (Section 77(3)(d)). At the moment, there is a significant shortage of skills relevant to food growing. This may be a contributory factor in the high turn-over of new allotment plot holders. Providing training is therefore essential to a thriving community growing sector, and there is untapped horticultural expertise in many traditional allotment sites and community gardens.

- The GYOWG are satisfied with the provision for finding alternative sites should an allotment site be closed (Sections 75 & 76).

- The GYOWG would like the legislation around Permitted Developments in the Planning System to be amended so that structures on community growing sites (E.g. sheds, polytunnels etc) do not require individual planning permission (they are usually permitted developments when within the curtilage of a dwelling). The current system is expensive and time consuming for
poorly resourced community groups. If such features have been permitted and regulated by the local authority within site management regulations (Section 73(4)(a) – (c)), we do not think that a separate planning application should be required.
Community Empowerment (Scotland) Bill
Local Government and Regeneration Committee - Call for Evidence

Introduction

The Glasgow and West of Scotland Forum of Housing Associations (GWSF) is the leading membership and campaigning body for local community-controlled housing associations and co-operatives (CCHAs) in the west of Scotland. The Forum represents 63 members who together own around 75,000 homes. As well as providing decent, affordable housing for nearly 75,000 households in west central Scotland CCHAs also deliver factoring services to around 13,000 owners in mixed tenure housing blocks. For almost forty years CCHAs have been at the vanguard of strategies which have helped to improve the environmental, social and economic well-being of their communities.

The Forum’s key objectives are: to promote the values and achievements of the community-controlled housing movement; and to make the case for housing and regeneration policies that support our members’ work in their communities.

We welcome the opportunity to contribute to the Local Government and Regeneration Committee’s Call for Evidence on the Community Empowerment (Scotland) Bill. Our response has been developed by members of the Forum and reflects their experiences of working alongside local people in their communities for the past four decades. We have answered the Committee’s specific questions but begin by offering some overall comments.

- We support the duty which the Bill places on Scottish Ministers to “develop, consult on and publish a set of national outcomes for Scotland, which must be reviewed at least once every five years. We also welcome the fact that Ministers must regularly and publicly report progress towards these outcomes. However, we would caution that the outcomes in relation to community empowerment must be developed in conjunction with communities and must be meaningful to them.

- The overall policy aims of the Bill in relation to community empowerment, including supporting subsidiarity and local decision making and taking an assets-based approach, echo the core values of the community controlled housing movement. Consequently, we are extremely happy to endorse them.

- We strongly believe that true community empowerment can only be achieved as a result of action taking place at local level with local people leading, supported by trusted community anchor organisations. As the community controlled housing model demonstrates, when community empowerment happens in this way it leads to sustainable and enduring physical and social regeneration within communities. We are therefore delighted that the Bill highlights the important role of community anchor organisations, and community controlled housing associations specifically.
However, we would like to reiterate here our concerns (as stated in our previous consultation responses) that the Bill does not develop thinking about how to support the role of CCHAs and other community anchors (e.g. Community Development Trusts). We would like to see the Scottish Government more clearly setting out the key characteristics of community anchors, and to use this as a platform for promoting innovative and collaborative approaches to public service planning and delivery in our most disadvantaged neighbourhoods. GWSF’s working definition of a community anchor is an organisation that:

- Operates within a particular neighbourhood;
- Has the interests of the community in that neighbourhood at the core of its purpose and activities;
- Operates at a local level and is both trustworthy and stable;
- Has a governance structure based on control by local residents and accountability to them.

The potential savings to public sector budgets of the early prevention and intervention activities which community Controlled Housing Associations are involved in are huge. Our model is based on real community empowerment which has stood the test of time over the last 40 years.

We know that the Scottish Government recognises this and we are delighted that the Government’s Third Sector Directorate has recently provided funding for one year for a GWSF post of Regeneration Partnership Coordinator. The aim of this post is to support CCHAs who wish to further develop their role as community anchors, improving on the social, economic and physical outcomes for their tenants and local areas. This type of formal acknowledgement and support will help to underpin our members’ work in their communities as we move into the next 40 years.

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

1.1 Overall, we believe that the Bill includes measures which have the potential to empower communities. But, we would add, not on its own, and with the following caveats and comments on particular sections. (Please note these draw upon our previous responses to CEB consultations).

1.2 We are pleased that the Bill highlights the fact that “community empowerment means different things for different communities.” As our members know from years of experience all communities are unique, and all are equipped with distinctive assets and often face distinctive obstacles.

1.3 Subsequently, we believe that there is no ‘one size fits all’ approach to community empowerment. Different approaches will work in different communities and some aspects of the Bill will be more relevant for particular types of communities. Furthermore, some communities will have an advantage/be better placed to take advantage of the measures in the Bill than others. (We have elaborated on this issue in our response to Question 3.)
1.4 Community Planning Partnerships

We support the emphasis on delivering better outcomes. We strongly welcome the proposed focus on outcomes, and a shared plan for outcomes is a sensible approach.

However, our view is that community planning has been (and is likely to continue to be) a mechanism for improving the way that public sector organisations work together to achieve agreed objectives. It has generally operated at a local authority level, and we believe is likely to continue. The current proposals do not challenge this ‘top down’ view of community planning.

There has been a serious disconnect between the (valid) objective of public sector organisations agreeing common and shared outcomes and the need to effectively engage communities in the decisions that affect them.

The most effective community engagement takes place at a neighbourhood level or within particular communities of interest. So there is currently a serious mismatch between the scale of community planning and the scale at which community engagement is likely to be effective.

Community planning partners have (on occasion) tried to bridge this gap by encouraging community activists rooted in particular geographic or thematic communities to ‘represent’ the community at a local authority wide level. This has led to frustration (on both sides) and to community engagement in community planning being ineffective.

In our view, there is a real need to redesign community planning from a neighbourhood level up, to allow effective community engagement and empowerment. This would make sure that the outcomes for community planning were directly relevant to the communities which were affected and that there was a direct interest in the planning, resourcing and integration of services. We see no way that this can be achieved at a local authority wide level.

We believe that community anchor organisations (suitably supported by resources from community planning partners) should have a key role in co-ordinating community planning at a sub-local authority level. This approach is being encouraged in Glasgow where New Gorbals Housing Association has been spearheading the new Thriving Place approach outlined in the Glasgow SOA, and Govanhill Housing Association has hosted the Hub - an operational joint tasking approach across all the main agencies operating in the area.

1.5 Participation Requests

We strongly support the participation of communities in the decisions that affect them. However, we are not convinced that legislation is the best way to deliver this. For example, our experience is that most public bodies have not embedded the National Standards of Community Engagement in the work of their organisations.

We believe that this has to do with the culture of the organisations and their leadership (and a fear of giving up any power to communities): legislation, certainly on its own, is not going to bring a major improvement here, in our view. The process that is suggested seems designed to introduce a confrontational, ‘stick rather than carrot’ approach between the community and the public body rather than a partnership or co-productive approach.
1.6 Community Right to Buy

We recognise that the Community Right to Buy provisions of the Bill refer to a specific legal mechanism. More generally, though, we would assert our strong support for community ownership. After all, each of our 63 members is a community owner and collectively our members own around 75,000 homes. This is beyond doubt the most effective community ownership approach in the UK.

Community controlled housing associations are the best and most enduring example of community ownership in Scotland today. They have achieved this through:

- well supported capacity building for community members;
- a balance of local accountability and appropriate external regulation;
- the creation of substantial community controlled housing assets;
- their local offices and staff resource;
- longevity and sustainability and a degree of resilience that is highly unusual in community based organisations;
- the development of a wide range of services; and
- providing the ‘social glue’ that holds communities together, strengthening local networks and making people in communities more connected with each other.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

2.1 We can envisage several benefits for public sector organisations as a consequence of the provisions in the Bill. These include:

- Meaningful engagement with communities and an opportunity for genuine co-production of services with Third Sector partners and communities themselves;
- The opportunity to develop innovative ways of working;
- The opportunity to align key policy areas including Reshaping Care for Older People and Health and Social Care Integration with community empowerment and a preventative agenda which incorporates a grass-roots, locally focused approach;
- The opportunity to overcome ‘silico’ style working and its associated perspectives and behaviours.

2.2 In our experience, public sector organisations often perceive these potential benefits as disadvantages. Framed in this way this, the key disadvantages might include:

- The need to relinquish control to the Third Sector and to communities themselves;
- The need for a top-down and extensive culture change in public sector organisations.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill or to assist communities, to ensure this happens?

3.1 As we have stated already (paragraphs 1.2 and 1.3), all communities are different and we believe that there is no ‘silver bullet’ approach which can be used to engender community empowerment.
3.2 Furthermore, some communities will be better equipped to take advantage of the provisions in the Bill since they are already farther down the road to empowerment and have more assets and skills at their disposal which will enable them to potentially benefit more. Consequently, an unintended outcome of the Bill might be increased inequalities between communities.

3.3 Most of our members operate in the most deprived communities in Scotland - and the achievement of real community empowerment in these areas has been an enormous influence in increasing confidence and self-esteem for individuals and communities in these areas.

3.4 We would like to have seen the Bill directly draw upon this experience and set out a coherent and explicit strategy for community capacity building with the community anchor model at its core. Although, we do welcome the Bill’s intention to ‘build on existing guidance and the experience of communities themselves in becoming more empowered, as well as those who have been working over the years to support communities.’

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

4.1 Whilst we broadly support the overall aims of the Bill we feel that there are two main areas of missed opportunity. In our preliminary comments we have already stated our concerns over the lack of a clearer recognition of the main characteristics of community anchor organisations.

4.2 As we have stated in our previous responses to consultation on the Bill, we are also disappointed that the explicit link between community empowerment and community-led regeneration has disappeared. We passionately believe that the two operate in tandem to deliver tangible results. This has been demonstrated time and time again through community-led physical and social regeneration initiatives in our neighbourhoods.

4.3 Dr Kim McKee\(^1\) (2011) highlighted this success stating “the success of localised interventions is nonetheless dependent on engaging the community in regeneration, so initiatives can be sustainable and genuinely reflect the vision of residents.”

4.4 As representative sector bodies both GWSF and the SFHA agree that the opportunity that this Bill afforded in terms of effectively making the links and establishing a framework between community empowerment and community-led regeneration may not be as obvious now as once was hoped.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

We believe the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum is both reasonable and adequate.

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The views we have expressed in this response reflect the community controlled housing movement perspective on the Community Empowerment (Scotland) Bill. We hope that they are of value to the Local Government and Regeneration Committee in its evidence gathering process. If the Committee wishes to follow up on any of the issues we have discussed we will be happy to provide further information.
Scottish Woodlot Association

Evidence submitted to the Local Government and Regeneration Committee on the Community Empowerment (Scotland) Bill

5 September 2014

Background

The Scottish Woodlot Association Limited (SWA) is an Industrial & Provident Society: a Co-operative. It is a grass-roots, non-profit distributing, forestry co-operative, whose members are working to implement Woodlot Licences and encourage small-scale forestry. It was founded in 2012 by a group of forestry professionals to bring Woodlot Licences to Scotland, giving rural people a stake in their local forests.

A Woodlot Licence (WL) is a lease agreement whereby an individual rents an area of woodland from a landowner on a long-term basis, to manage productively. The model has been inspired by the situation in British Columbia, Canada, where a successful Woodlot Licence programme has been running for over 30 years.

Benefits of woodlot licences include:

- They allow individuals and their families affordable access to woodland to manage
- They support rural lifestyles & livelihoods, and wider rural development
- They deliver high quality management due to the personal input of the WL holder, & their intimate knowledge of woodland
- They can bring ‘difficult’ areas of woodland back into management, generating income for landowners

For more information see: http://www.scottishwoodlotassociation.co.uk/
Local Government and Regeneration Committee

Submission Name: Scottish Woodlot Association
Submission Number: 94

Introduction
The SWA welcomes the opportunity to comment on the Community Empowerment (Scotland) Bill (CEB), as introduced. Whilst we support much of what is proposed by the Bill, we confine our comments to those sections most directly relevant to our work. We consider these below, in order of priority to us, rather than the order in which they appear in the Bill.

In recent months, the SWA has begun to roll out pilot Woodlot Licences on private ground across Scotland. We now wish to extend this to include publicly-owned woodland, including that owned by Scottish Ministers, believing that in many situations this will deliver enhanced public benefit.

At present there are legislative restrictions on who can lease woodland for forestry purposes from Scottish Ministers, and we have previously held discussions with Scottish Government and Forestry Commission Scotland in an attempt to address this issue. Our briefing paper outlining the issue and proposing solutions is attached to this submission as Appendix A.

Comments on Bill

1. Part 5 Asset Transfer Requests
We welcome the statement that a ‘community controlled body’ as defined in Section 14 of the Bill can be a ‘community transfer body’, and particularly that it can include a community of interest. We note however that this statement is qualified by Section 53 such that eligibility for a particular ‘community controlled body’ to request asset transfer by purchase, may be different from its eligibility to request asset transfer by leasing. We consider these situations separately below in relation to the consequences for the SWA.

Asset Transfer by Leasing
As the CEB stands, the SWA would currently be eligible to request asset transfer by leasing, which we welcome. This will potentially allow us to lease woodland from most of the ‘relevant authorities’ listed in Schedule 3, which will greatly expand our ability to deliver Woodlot Licences.

However, there is one key problem for the SWA in relation to requests to Forestry Commission Scotland (FCS), representing Scottish Ministers: the provisions in the CEB are incompatible with the Forestry Act 1967, which precludes FCS from leasing woodland for forestry purposes. Hence despite the flexibility afforded by the CEB, the Forestry Act still would not allow the SWA to lease woodland from FCS. This represents a major problem to the SWA, as Scottish Ministers are the largest owners of woodland in Scotland.

This restriction was addressed to some degree in the Public Services Reform (Scotland) Act 2010 (PSRA), in relation to community bodies, to allow them to lease woodland from FCS.
However, at that time the definition of community bodies used was much narrower than that of the ‘community controlled body’ proposed in the CEB – and in our view, unduly restrictive.

In January 2014, the SWA therefore proposed amending the PRSA to allow leasing for forestry purposes to a broader range of bodies, more in keeping with that proposed by the CEB. Full detail of our proposal to the Minister for the Environment & Climate Change is attached as Appendix A.

**The SWA believes the current CEB is the ideal opportunity to introduce such a legislative amendment to the PSRA, and remove the incompatibility between CEB, and PSRA & Forestry Act.**

The necessary amendment could usefully be included in Schedule 4 ‘Minor and Consequential Amendments’.

**Asset Transfer by Purchase**

As mentioned above, we note that the definition of ‘community controlled body’ eligible to make a request for asset transfer by purchase is qualified by Section 53.

We have no problem with such restriction in principle; however we are concerned that this section not only introduces qualifying criteria (which we accept as reasonable), but introduces some specific organisational types (companies & SCIOs) as eligible, but not others.

**The SWA would like to see the inclusion of Industrial & Provident Societies (IPS) – with appropriate rules – in this section.**

We recognise that paragraph 2(a) of Section 50 and paragraph 1(c) of Section 53 together give Scottish Ministers discretion to designate particular bodies (which might include IPSs) as eligible for asset transfer by purchase, but at this stage the process and timescale for this is not clear, and hence our preference would be for Section 53 to include the additional flexibility proposed above from the outset.

2. **Part 4 Community Right to Buy Land**

The SWA does not expect the Community Right to Buy to be a significant opportunity for our organisation, hence we make minimal comment on this section.

Our comments do however echo our thinking above on the definition of an eligible community body. The CEB proposes to extend the types of legal entities that can use the community right to buy provisions to include Scottish Charitable Incorporated Organisations (SCIOs), and allow for other legal entities to be added by subordinate legislation.
As above, we believe Industrial and Provident Societies with appropriate rules should be included from the outset, and not have to await the uncertainty of subordinate legislation.

It is the belief of the SWA that the qualifying criteria for a body to be accepted as eligible are most important, not the organisational type, and that legislation should define what these criteria are, rather than specifying particular organisational types.

3. Part 7 Allotments
The SWA notes that the inclusion of allotments in the CEB introduces an element of provision for individuals, rather than communities per se.

We welcome this recognition that the well-being and prospects of individuals, as members of their community, can be important elements in the health and well-being of the community more widely.

We note that the principles attached to allotments – the right to request an allotment; their personal & non-profit nature etc – could also be extended to small Woodlot Licences, which could provide similar benefits for a family, but based on woodland produce (firewood, Non-Timber Forest Products etc).

We invite the Local Government and Regeneration Committee (LGRC) to consider the potential of small Woodlot Licences, analogous to allotments, as a way to support families especially in rural areas; and to consider whether the CEB might be a good opportunity to introduce this concept, if necessary on a pilot basis.

We further note that, should such personal Woodlot Licences be supported, whilst they would be possible on most publicly-owned woodland, the restrictions of the Forestry Act as described earlier would preclude the use of FCS land, and thus a legislative amendment to the Act would be required.

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The Scottish Woodlot Association is happy to discuss the submission above further, and can be contacted via e-mail info@scottishwoodlotassociation.co.uk or by phoning the Secretary on 07742 443 107.

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APPENDIX A (submitted to Scottish Government on 21 January 2014)

SWA Background Briefing:
Proposal for Scottish Government support for woodlot leasing on state land by the Scottish Woodlot Association (SWA)

Summary
Current legislation permits Forestry Commission Scotland (FCS) to lease land for forestry purposes to eligible community organisations. However legislation wording precludes cooperatives such as the SWA. This paper proposes a positive legislative amendment that would facilitate woodlotting on state forest land.

Background
Historically, under the Forestry Acts, the Forestry Commission was unable to lease land for forestry purposes although it has been able to lease land for non-forestry purposes such as managing recreation facilities. In 2008, the Scottish Government consulted on proposals contained in the Scottish Climate Change Bill that would enable the leasing of 25% of the National Forest Estate to raise revenue for climate change mitigation. Whilst this proposal was dropped, support was expressed by consultees for powers to enable FCS to lease land for forestry purposes to communities. Enabling legislation was passed in 2010.

The Public Services Reform (Scotland) Act 2010 allows FCS to offer eligible community organisations the opportunity to lease national forest land for forestry purposes. Discretion is reserved to the Forestry Commissioners and/or Scottish Ministers in some areas, however there appears to be limited flexibility for including groups such as the SWA in the definition of community.

We reproduce the relevant sections of the PSR Act in the Appendix, highlight current limitations in the text and make a proposal for a positive amendment to the Act.

Discussion
The limiting factor in Section 7C is the requirement that a community body must be a company limited by guarantee. The discretion to vary this is not given to Commissioners under subsection 2, which allows other criteria to be varied. Nor is discretion available to Scottish Ministers. This is an issue for SWA as an Industrial & Provident Society, and more widely for community groups who are adopting other alternative structures such as Community Interest Companies and Scottish Charitable Incorporated Organisations.
The solution – an amendment to the PSR Act (2010)

We suggest including further eligible organisational types in Section 7C, subsection (1). These organisations to include:-

- Industrial and Provident Societies
- Community Interest Companies
- Scottish Charitable Incorporated Organisations

Further, we recommend that the wording of Section 7C, subsection (4) be amended to include community of interest groups; whose purpose complies with Section 7C, subsection (3).

Conclusion

We suggest a simple amendment to the PSR Act (2010) will have a transformative and positive impact on Scotland’s forestry sector, making it more diverse, more resilient and yielding more economic benefits at a local level.

This proposed amendment could be introduced as a Scottish Statutory Instrument (SSI) tabled in the Scottish Parliament.

Appendix 1. Extract from the Public Services Reform (Scotland) Act 2010 relating to leasing

11 Delegation of certain functions of Forestry Commissioners under Forestry Act 1967

In the Forestry Act 1967 (c. 10), after section 7A insert—

“7B Delegation of functions of Commissioners: Scotland

(1) The Commissioners may, to such extent and subject to such conditions as they think appropriate, delegate their functions under section 3(1) and (3) of this Act to such community bodies as they consider appropriate.

(2) A delegation under subsection (1) may only be made in relation to land in Scotland—

(a) placed at the disposal of the Commissioners by the Scottish Ministers under this Act, and

(b) which is let to the community body to which the delegation is made.

(3) A delegation under subsection (1) does not affect the ability of the Commissioners to carry out the function delegated.

(4) A delegation under subsection (1) does not affect the ability of the Scottish Ministers to—

(a) determine which land in Scotland is placed at the disposal of the Forestry Commissioners,
(b) give directions under section 1 to the Commissioners in relation to the land in question.

(5) A delegation under subsection (1) may be varied or revoked at any time.

(6) In this section, “community body” has the meaning given in section 7C.

7C Delegation of functions under section 7B: community bodies

(1) A community body is, subject to subsection (3), a company limited by guarantee the articles of association of which include the following—

(a) a definition of the community to which the company relates,
(b) provision that the company must have not fewer than 20 members,
(c) provision that the majority of the members of the company is to consist of members of the community,
(d) provision by which the members of the company who consist of members of the community have control of the company,
(e) provision ensuring proper arrangements for the financial management of the company and the auditing of its accounts.

(2) The Commissioners may, if they think it in the public interest to do so, disapply such requirements specified in paragraphs (b) to (d) in subsection (1) in relation to any body they may specify.

(3) A body is not a community body unless the Commissioners have given it written confirmation that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development.

(4) Unless the Scottish Ministers otherwise direct, a community—

(a) must be defined for the purposes of subsection (1)(a) by reference to a postcode unit or postcode units, and
(b) must comprise the persons from time to time—

(i) resident in that postcode unit or in one of those postcode units, and

(ii) entitled to vote, at a local government election, in a polling district which includes that postcode unit or those postcode units (or part of it or them).

(5) In subsection (4) above, “postcode unit” means an area in relation to which a single postcode is used to facilitate the identification of postal service delivery points within the area.

(6) In subsection (1), “company limited by guarantee” has the meaning given by section 3(3) of the Companies Act 2006 (c. 46).”

The Scottish Woodlot Association Limited is an Industrial and Provident Society,

Registered in Scotland no. 2755RS

Registered Office “Coppice Lea”, Summerhill, Lochmaben, Dumfriesshire, Scotland DG11 1RN
Inclusion Scotland response to Local Government and Regeneration Committee’s Call for Evidence on the Community Empowerment (Scotland) Bill

1. Introduction

1.1. Inclusion Scotland (IS) is a network of disabled peoples’ organisations and individual disabled people; and part of the disabled people’s Independent Living Movement. Our main aim is to draw attention to the physical, social, economic, cultural and attitudinal barriers that affect disabled people’s everyday lives and to encourage a wider understanding of those.

1.2. This response has been prepared by Inclusion Scotland using evidence we have gathered from our members, which include Disabled Peoples Organisations (DPOs) and individual disabled people. In particular Glasgow Disability Alliance, our largest member organisation with over 2,000 disabled people affiliated to it, carried out a large scale consultation exercise on the Bill proposals and the views they gathered have inform this response. Our submission also reflects our commitment to the social model of disability, and specifically our commitment to Independent Living.

1.3. Disabled people continue to ask for, campaign for, work for and fight for a right to have a say in decisions which affect them. This includes both decision which affect them individually and those which have an impact on them as a community.

1.4. Disabled people share, with others in communities across Scotland, the ability and the potential ability to be community participants at all levels including as leaders, volunteers, commentators and service providers, and to contribute equally to the advancement of community interests for all. However, many disabled people are hindered from fulfilling such roles and being fully participative citizens, or where they are proactive, their influence is unheeded.

1.5. Disabled people have the least ability to speak up for themselves as their participation in community life is hamstrung by the chronic underfunding of local disabled peoples organisations; disabled people’s social isolation from the communities that they live in and their declining income. A recent Inclusion Scotland survey of 138 disabled people found that a third felt that they rarely have adequate opportunities to be included in their community. Cuts to disability benefits & care services and rising living costs, including community care charges, are all reducing disabled people’s ability to meet the access costs of participation.

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2. Community Empowerment Bill – general comments

2.1. Inclusion Scotland are concerned that the Bill as currently drafted is a missed opportunity to embed the National Standards for Community Engagement\(^2\), co-production, and the lived experience of disabled people into the design and delivery of public services. There is a real danger that, whilst some communities may be empowered by the proposals in the draft bill, marginalised communities, such as disabled people, may become even more disempowered.

2.2. The consultation for the Bill itself excluded disabled people as a community. No versions of the legislative proposals were produced in accessible formats such as Easy Read, BSL & Braille and no events for disabled people or their organisations were arranged.

3. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

3.1. We share the concerns of the Scottish Community Development Centre: that in absence of genuine and meaningful community capacity building and engagement, the opportunities created by the Bill will not be enjoyed equitably. Communities which are the most marginalised, fractured and impoverished are likely to benefit least whilst communities already rich in resources and human assets are likely to benefit most through their acquisition of new assets.

3.2. Recommendation: Fundamental to the success or otherwise of the draft Community Empowerment Bill is how “community” will be defined. Community should not be defined by a narrow definition based on location and residence. Disabled people are often excluded from traditional communities, or have specific needs and interests that are best addressed by their own community.

3.3. The Bill’s focus on Community Planning is likely to lead to a focus on geographic communities rather than communities of interest – which by their very nature are not necessarily sited or organised in particular localities.

3.4. Geographic communities may unfortunately not necessarily be mindful of equalities and human rights responsibilities when exercising rights that are conferred by this Bill. Research compiled for the EHRC\(^3\) by Heriot Watt University suggests that where equalities groups live in the poorest areas, they do not always benefit from place based policies.

3.5. This is because the reasons for disabled people’s poverty may differ from those around them – for example a disabled people may need specific support with transport to enable them to work. However if disabled people’s specific problems are not addressed, but those identified by the majority community are, then their disadvantage may actually intensify rather than be reduced. The report concluded that “place based policies will not achieve their aims unless they embrace issues of equality, and that a strand based approach could therefore improve outcomes more equally”.

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\(^3\) ‘Hard-to-Reach’ or ‘Easy-to-Ignore’?, Mathews, Netto et al, Institute for Housing, Urban & Real Estate Research, School of the Built Environment, Heriot-Watt University for EHRC, September 2012
3.6. There is also a risk that public assets and services currently covered by public sector equality duties may no longer be so covered if passed to local community ownership or control. It is therefore essential that the rights of disabled people and other equalities groups are not unduly affected, and that opportunities to promote equality are not ignored in favour of the majority voice in the community.

4. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

4.1. No. Disadvantaged and marginalised communities, including disabled people, are less likely to be able to take advantage of the opportunities afforded by the community right to buy, and this is likely to exacerbate inequalities between them and more well-resourced communities.

4.2. The Bill does not make any specific mention of Equalities considerations. Nor do the proposals offer any level of support to marginalised communities which would enable them to engage with the Community Planning process. In addition marginalised, fractured and impoverished communities will, by definition, have fewer assets, or assets of lower quality, in their areas, which will in turn be harder and more expensive to manage and maintain.

4.3. Recommendation: We would prefer an approach that embeds the principles of the National Standard for Community Engagement and co-production in all aspects of the planning and delivery of public services, including monitoring and review.

4.4. The Bill as proposed puts the onus on the community to request a right to participate and to prove they have legitimacy to do so. The following issues need to be addressed in terms of the request to participate —

(i) The processes set out for requesting the right to participate are overly complex and not accessible to large numbers of disabled people and other disadvantaged communities.

(ii) The process is legalistic and will tend, by its nature, to favour the loudest and most powerful voices, potentially diverting attention away from the key issues and interests of marginalised communities.

(iii) The Bill proposals require community groups to demonstrate what part they will play in delivering change and to provide details of their knowledge, expertise and experience. This will tend to ensure that professional-led, funded organisations will gain recognition whilst further marginalising those communities whose organisations are less developed and well-funded.

(iv) The proposals completely fail to recognise the intrinsic value of community participation and the assets, skills, knowledge and lived experience that communities can bring to the table.

4.5 Inclusion Scotland believes that the requirement placed on community groups to request participation disempowers rather than empowers communities, as it leaves the power with the public bodies, which should instead have a duty to effectively engage with communities.
4.6 Another specific concern that we have is the lack of a provision for review or appeal where a public body refuses a participation request. Such a right to review and appeal should therefore be included on the face of the Bill and an independent body empowered to carry out this duty.

4.7 Inclusion Scotland further believes that the principles of co-production should be enshrined in the design and delivery of public services. Co-production describes a relationship between service provider and service user that draws on the knowledge, ability and resources of both to develop solutions. Co-production changes the balance of power between professional and service user and is thus a genuinely empowering process⁴.

4.8 Community empowerment will not be possible unless there is support to develop the skills, abilities and confidence of people and community groups to take effective action and leading roles in in the development of communities. Without this capacity building, the balance of power will always lie with the professional public servant rather than the communities that they supposedly serve. Recommendation: That a duty is placed on Community Planning Partnerships to dedicate part of their budgets to developing the capacity of disadvantaged and marginalised communities to participate.

4.9 Disabled Peoples Organisations (DPOs) do a great deal to build the confidence and capacity of disabled people. Empowering disabled people enables them to contribute to the civic and economic life of their community. It also makes genuine coproduction possible, for example improving services through partnerships between planners, providers and service users. However, DPOs have not been immune to spending cuts, and few have the resources and capacity needed to meet the increasing challenges of welfare reform, health & social care integration and community empowerment. Therefore the need to develop the capacity of DPOs must be recognised.

5 Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

5.1 Whilst we welcome the proposals to place new duties on community planning partnerships to engage with communities, Inclusion Scotland remains concerned that community planning is something that is done to communities rather than with communities.

5.2 Much we have said above applies as much to community planning as it does to community participation. Community bodies, made up of community members, are the most significant stakeholders in services. Whilst service providers are guaranteed places on Community Planning Partnerships the communities that they supposedly serve have to prove their worth before being admitted. That does not strike us as very “empowering”.

5.3 The Bill should instead make explicit the right of communities to be involved in and contribute to the work of Community Planning Partnerships. The Bill should also describe the role of communities in Community Planning structures.

5.4 As stated above we also wish to see the incorporation of the principle of co-production on the face of the legislation as this would ensure genuine empowerment of marginalised communities. We would also like to see clearer links made between the Community Planning process and the current and ongoing integration of Health and Social Care.

⁴ See http://www.ilis.co.uk/get-active/publications/co-production-toolkit
5.5 Inclusion Scotland would also welcome the embedding of the national performance framework, provided there is genuine engagement and coproduction of the national outcomes and performance indicators. In particular, we believe that there should be a proper match between policies and budgets and the national outcomes, which is lacking at present.

5.6 This would include ensuring that human rights, as well as equality, is integral to the budget process for national and local government, and involving disabled people in the budget planning process as recommended by the Equal Opportunities Committee of the Scottish Parliament in its report on the Scrutiny of the Draft Scottish Government Budget 2014/15.

6 What are your views on the assessment of equal rights

6.1 It is essential that equalities and human rights are protected in in transfer of public assets, to ensure that these assets remain available to all sections of the community. There must also be opportunities for communities of interest, such as disabled people, to take over assets to protect or enhance services for disabled people.

6.2 Although local discretion and decision making can be valuable in ensuring public services are responsive to local needs, disabled people also need assurance that there needs and services will be assessed to consistent national standards that promote equality and human rights.

6.3 Inclusion Scotland would like to see a much more robust Equalities Impact Assessment carried out which properly addresses the potential dangers that marginalised communities, such as disabled people, may face if recognition of community groups is granted to professional or already well-resourced groups at the expense of groups representing disadvantaged or equalities groups.

7 Conclusion

7.1.1 In conclusion, whilst there is much to be welcomed in the Community Empowerment Bill, we currently view it as a missed opportunity to truly empower disabled people (and other marginalised and disadvantaged communities) to participate in Community Planning.

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5 http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/70876.aspx
Dear Colleague,

I am writing as Vice Chair of Glasgow’s Third Sector Forum, a partner in Glasgow’s Third Sector Interface. The Forum provides a collective voice for the Third Sector in the city, so we welcome the opportunity to contribute to this Call for Evidence for the Community Empowerment Bill.

Much of the Third Sector: comprises of community led or community based groups; responds to or has evolved out of community need; and has its core the desire to support communities to empower themselves. We therefore believe that the Third Sector has an important contribution to make, both to the Bill process and to its subsequent implementation, and that its role should be made explicit in the Bill. On this basis, we would welcome the opportunity to discuss in more detail both the Bill and the role of the Third Sector within it.

We have answered the questions provided in the Call for Evidence below. We also attach a detailed review of the main sections of the Bill, highlighting our assessment of both the strengths and challenges of the Bill as it currently stands. This has been written by members of Glasgow’s Third Sector Executive Committee, which is the governing body of the Third Sector Forum.

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

We believe that as it stands, the Bill contains some important provisions which will go some way to empowering communities. However, if this legislation is really to achieve empowerment, it will require political commitment, a long-term view, and sustained investment and support. We would also highlight that the need to request to participate, and the lack of grounds for appeal in the participation process, present serious challenges to communities wishing to avail of the spirit of the legislation. We would further suggest that if the Bill is to inform service design and provision in line with Christie Commission recommendations, its implementation must address existing public sector cultures, and as such, an investment must also be made in workforce development.

There is a need to ensure a synergy between this Bill and other Scottish Government priorities and commitments, for example, the Community Learning and Development
legislation and guidance. It is important to ensure that these policies reinforce rather than undermine one another, with each adding incentive and pressure to really do things differently.

2. What will be the benefits and challenges for public sector organisations as a consequence of the provisions in the Bill?

It is our view that this Bill, if implemented well, could deliver significant and transformative benefits - not just for communities, but for the public sector too. In particular we would highlight a democratic benefit and a financial benefit. Empowered communities are active communities, and the legitimacy and trust in our public institutions could be greatly improved if this Bill is well implemented. To us, empowered communities go hand-in-hand with public sector reform. Therefore the delivery of the Christie dividend, savings to the public sector budget, will only be possible if communities are supported to empower themselves. By co-producing services with communities, services will become better targeted and more effective in responding to need.

We believe that in the long-term, empowered communities will deliver the benefits above, and so the challenges for public sector organisations are essentially short to mid-term. However, we would note that the public sector may experience a big demand on its resources and services as communities seek to use the Bill. Public sector organisations may need to disinvest in some services in order to re-invest in more preventative, co-produced and community oriented services. It will need to balance responding to ongoing priorities with facilitating a shift to a more preventative approach. Resources will be required by the Public Sector (and others) if we are to address culture change and staffing issues.

We would argue that an indicator of the success of the Bill will be an increased demand on public sector organisations. We believe that public services should be supported to respond to this demand.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

From an asset-based perspective, we believe that all communities at their core have the capabilities to take advantage of the Bill. However, we feel that communities may need supported to help unlock these capabilities. Given the diverse nature of communities in Scotland, this support will vary but it is likely to include:

- Support to ensure they have the opportunity to develop or access the skills, knowledge, confidence, finance, technical expertise and time to engage with the process;
- Support to take responsibility for any outcome – for example managing a facility or delivering a service.
Recognising this, we believe the Bill should reduce obstacles and acknowledge and address structural barriers.

As such, our key recommendation is that there is a ‘universal’ approach to support, ensuring that all communities, of interest and of place, have access to a basic level of support which they would identify as necessary to empower themselves. At the same time, it is important to recognise that particular support may need to be concentrated on disadvantaged communities to ensure that existing inequalities are not reinforced.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

This question is answered in detail in our attached submission. However, we would draw attention to two key issues:

- We would like to see an explicit recognition of the role and purpose of the Third Sector, as outlined in our opening statement;
- The right to request to participate puts communities at an automatic disadvantage. By having to ask to participate, the power imbalance between communities and public sector organisations is reinforced from the beginning.

Finally, we would suggest that the rest of the Bill process would be enhanced and validated by working with communities.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

We believe the Bill should be underpinned by a human rights and equalities approach. This should be viewed as fundamental, not as an add-on. This should be explicitly stated in the Bill.

The rights of property owners is welcome, but universal and fundamental rights should be the overarching principles and are therefore just as important, if not more so.

Glasgow’s Third Sector Forum would welcome further opportunities to be engaged and to discuss the Bill and its implementation. We would like to note out interest in giving oral evidence to the Committee and look forward to hearing from you in the future.

Yours sincerely,

Bronagh Gallagher
Vice Chair
Glasgow Third Sector Forum
Introduction

The TSEC believes the Community Empowerment (Scotland) Bill to be an excellent opportunity to engage communities, promote local, participatory democracy and devolve decision making to communities and will give communities greater control over their built environment. However, it does not take into account the work required to ensure that all community members have equitable and fair access to the powers outlined in the legislation. Our comments are designed to help address this and strengthen the provisions in the Bill.

The Third Sector Executive Committee (TSEC) is the governing body of the Glasgow Third Sector Forum, and welcomes the opportunity to offer feedback on the proposals contained in this Bill. We hope the government will seize this opportunity to utilise the diverse nature of Scotland’s communities of place and of interest to reinvigorate participation. Delivering the rights of communities will require an understanding of human rights and their impact on the participation of people in decision-making.

Wider rights context

Human rights

Awareness and learning about human rights promotes understanding and acceptance of people who are at the margins of communities. Without this, many in communities would remain disadvantaged. Embedding openness, human rights and equalities is therefore vital if the Bill is to deliver the opportunities it aspires to.

We believe that the Scottish Government endorsed Scottish Human Rights National Action Plan (SNAP) is central to the concept of community empowerment. A key SNAP priority is to promote empowerment. The plan acknowledges:

“People don't know enough about what human rights are and their benefits in everyday life. There is a need for greater consistency to ensure meaningful
participation of people in decisions that affect their lives. While ideas of fairness and ‘difference’ are widely accepted in Scotland; negative social attitudes against certain groups persist.”

SNAP promotes a human rights based approach which emphasises: Participation, Accountability, Non-discrimination, Empowerment and Legality (PANEL). We believe that the Bill, and its associated guidance, should adopt these principles. We propose that the Bill’s proposed ‘right to request to participate’ is strengthened by adopting the PANEL approach.

Equality

While welcoming the concept of a right for community bodies to request participation, we feel that this cannot be delivered in isolation from the Public Sector Equalities Duties. These duties recognise that public bodies must adopt consistently proactive approaches to empowerment through community engagement and funded community development. The Bill should therefore address the empowerment aspects of equality.

These duties require public bodies to work to eliminate unlawful discriminatory conduct; advance equality of opportunity, and foster good relations. Fulfilling duties such as assessing equalities impacts, monitoring and setting equalities outcomes all rely on high-quality community engagement and sustainable community development approaches.

International duties

Regardless of the outcome of the referendum, any future government is bound to uphold various international obligations, such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the UN Convention on the Rights of the Child. We would argue that empowerment is central to this, and therefore an important aspect of the Bill.

For the Bill to effectively enshrine human rights, the TSEC recommends the following:

- The Bill incorporates explicit reference to the need for marginalised groups within communities to have access to specialised support to realise benefits from the Bill;

- The human rights principles of non-discrimination, accessibility, participation and accountability be enshrined within the Bill. We feel this is especially pertinent to the section defining and underpinning “Community Bodies”, as well as the more general expectations of public bodies;

- The right to request participation be kept simple, rendered fully accessible, and underscored by focussed community development with marginalised
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groups. Specialist support organisations should be used as necessary to achieve this aim;

- The Bill contains a duty on public authorities to produce and oversee the implementation of viable community engagement plans;

- An explicit connection be made between community engagement, Community Planning Partnerships (CPPs), the relevant equality duties, and SNAP;

- The Bill embraces its role in delivering Scotland’s international commitments to participation and democracy.

Part 2: Community Planning

Setting national outcomes

We support embedding the setting of national outcomes in the Bill, and see this as a critical framework for policy development, including that of Community Planning. However, this should be subject to meaningful consultation with civic society and communities. It is essential that the outcomes are consensually agreed, address inequalities, and are not determined solely by government. Explicit national outcomes about empowerment, participation and public sector reform could then be included in, for example, SOAs, and CPP improvement plans.

The proposals to put CPPs on a statutory basis – with defined roles, responsibilities and duties on public sector partners – are broadly welcomed, provided that the mechanisms for genuine partnerships with the Third Sector and communities are in place. We are concerned that limited progress has been made on achieving this in the current iteration of the legislation.

In particular, in relation to Community Planning we would highlight:

- The role of the Third Sector within Community Planning and the need for Third Sector parity within the community planning process for it to fully play its role as working for, and behalf of, on communities

- To secure the input of community bodies, there needs to be clearer duties on public bodies for the resourcing, planning and co-delivery of work. This would strengthen community confidence, knowledge and skills via asset based community development and capacity building techniques.

- We would advocate that the Bill and associated guidance should define more clearly what constitutes ‘reasonable effort’ in securing the participation of communities and explores how genuine participation opportunities are maximised and measured;
A key element of local outcome improvement plans is tackling inequalities either of income and/or other protected characteristics. We believe it is essential that CPPs link closely with the Third Sector and groups with expertise in this area to assist CPPs to respond to these issues through a human rights and equalities lens.

The interim report of the Commission on Strengthening Local Democracy concludes: “The link between representative democracy and participatory democracy has become hard to bridge because of the gap between the scale of representative institutions and the community base for participation”.

We think the work of the Commission should be considered alongside this Bill, in order to ensure that the powers of the Bill are strengthened. Work is required to rebuild the trust of local communities in the democratic structures that represent them. Local authorities, CPPs and other public bodies should be required to state how they will respond to this challenge.

We would like to see the following requirements for CPPs included in the Bill:

- To advise local communities of their activities through public information and dialogue with representatives;
- To conduct ongoing monitoring and evaluation of engagement levels, such as attendance at community council meetings and public partnership forums, and conduct research with communities to determine reach and impact;
- To engage in active dialogue about how participation and empowerment could be improved;
- To be accountable – for example by ensuring community members are given feedback on their issues and suggestions and on the effectiveness of CPP actions.

These measures should foster a greater degree of trust and understanding of the role of local structures, encourage wider engagement, and improve the impact of the Bill for the wider community.

Additionally, building local, participatory democracy that will demonstrably allow equitable access to the powers of the Bill requires an asset based approach. We believe that people are the greatest asset of any community, and it is the responsibility of local and national government to give everyone equal opportunity to engage in any decision-making or service design that impacts upon them. This may mean developing long-term, achievable action plans. The Bill could require the development of long-term achievable action plans to help strengthen communities.
Part 3: Participation requests

We welcome that this Bill provides an additional and robust process for participation and engagement, as well as a clear requirement on authorities to justify the rejection of requests.

We do, however, see a potentially negative impact on participation arising from a bureaucratic process with no right to appeal decisions. We therefore strongly recommend that a streamlined system with minimum bureaucratic hurdles be developed, with clear guidance from government about what this should entail.

The TSEC believes there is a need to be explicit in the Bill and associated guidance that this new power is in addition to, and in enhancement of, existing routes. These existing routes include things such as direct representation to officers or elected members, membership of existing joint planning structures, and lobbying and campaigning for the use of legal instruments such as the Equalities Act. This would be consistent with the stated intention in the policy memorandum.

It is important to ensure that the right to participation is promoted to and understood by communities. We believe the resourcing of participation, as outlined in the duties, should extend to other ‘outcome improvement processes’, whether these arise from a participation request or from involvement in other partnership work with CPPs or with public authorities, where a request to participate has not been required to secure a seat at the table.

Participation request decisions

The Bill states that the authority must agree to the request unless there are reasonable grounds for refusing. The emphasis on authorities to justify their position is welcome, but the lack of an appeals process is a concern in a context of challenges around engagement, participation, and connection to the decision-making process. We strongly recommend an appeals process be introduced to improve confidence in the system and avoid a negative impact on the Bill’s overall community credibility.

Generally

We further recommend that:

- Authorities be instructed in the Bill to demonstrate fairness and equity in the setting of any bar for the agreement of participation requests;

- An authority instigating a process based upon a community request is required to clearly document the aims, methods and outcomes of participation. These should be co-produced with community and Third Sector partners in order to achieve high standards of participation;

- The participation requests process is extended to apply to CPP boards, and this be made explicit in the Bill;
• Involvement of community bodies and other stakeholders should be standard in establishing outcome improvement processes, therefore reducing the need for participation requests;

• Participation goes beyond one-off dialogue, and services must provide specifications of the ‘outcome improvement processes’ to applicants when these are approved, so the community’s role is defined;

• Co-production should be the design assumption of outcome improvements in relation to all public services;

• Whilst “reasonable” is a term extensively used in reference to processes and decisions about participation requests, this can be open to interpretation. Introduction of a definition of reasonable’ and guidance on the issue should appear within the Bill.

We believe that resourcing empowerment is crucial, especially where the resources to help build community strengths are very limited. Such resources need to be based on accurate assessments of need, and provided for as long as is required to make participation work for all partners. Such issues must be systematically addressed if this Bill is to have real impact. As such, the Bill, or its associated guidance, should make clear links for the provision and resourcing of community learning and development support with other statutory requirements for CPPs and Local Authorities.

A community body taking on responsibility for delivering a service as a result of a participation request or an asset transfer should be enabled to ensure that future funding arrangements are sustainable.

We note that authorities can decline a participation request related to a service within a period of two years if it is substantially the same as a previously refused request, regardless of which body has made the request. We would like clarification on the reasoning behind this, and suggest that it should be possible to accept requests when circumstances have changed. This should be the subject of co-produced guidance.

We note that Ministers can designate bodies as public service authorities if they are wholly owned by one or more public service authority, or deliver services on their behalf. However, we feel it is essential for the Bill to be explicit in terms of how Arms Length External Organisations (ALEOs) are to be included in provisions. Specifically, we would like clarity over who or what entity can agree or refuse requests when a service is being delivered on behalf of a health board or council. Could, for example, an attached ALEO be involved in the refusal, where they may have a conflict of interest?
We respect the requirement for a participation request to be submitted from a body with a written constitution, especially when public funds are involved.

However, this may not be desirable in all circumstances and may create a barrier to participation. The level of formality of the arrangement should be flexible. Groups of people such as domestic abuse survivors, pupil or parent councils, or organisations in the process of forming may have an essential perspective on how services could be improved. There should therefore be scope to apply some latitude in such circumstances.

The TSEC wants this Bill to be a genuine engine for involving communities in the design and delivery of services. We do, however, recognise that this will necessitate a culture change for public services. It is essential to incorporate an open monitoring process which looks at outcomes and allows cultural challenges to be pragmatically resolved in an effective and equal partnership process. We accept that this is partly recognised in the policy memorandum, and recommend that it is also addressed in the guidance.

We recommend that at all stages, parties to the Bill’s implementation are encouraged to simplify the steps to be taken in achieving its aims. This principle should be enshrined in the Bill.

**Part 5: Asset transfer**

The TSEC welcomes the commitment to enabling the transfer of assets from public bodies to local communities. We believe that the ownership and/or control of local assets is an important lever in empowering communities, enabling them to make best use of the resources available to them.

There are many welcome provisions in the Bill, including: recognising that the leasing of assets is more viable for some communities; the right to appeal; a number of the duties placed on the relevant authority during the process; and the timescales indicated for dealing with requests. However, we would suggest that a number of areas could be enhanced to ensure that the benefits intended by the Bill can be achieved.

The TSEC firmly believe that this section of the Bill has the potential to be transformative, particularly for our most disadvantaged communities and groups.

It is imperative, therefore, that those who have the most to gain from it are able to make best use of it, by being supported to develop and obtain the skills and capacity needed and by having access to essential financial resources.

**In particular:**

Further clarification on what is meant by “reasonable grounds” for refusal of a request would be helpful (Section 55, subsection 5). This would help to ensure that
the grounds are not subject to arbitrary decision-making by the authority, but rather are subject to criteria which have been understood and recognised from the start of the process.

We recommend that further guidance is needed on the appeals process to be followed by Local Authorities. It should be independent, fair and proportionate. There is a need to ensure that all stakeholders can have a voice in the appeals process.

We recommend that any transfer proposal should be subject to published stakeholder analysis. This would identify legitimate and reasonable entitlement to involvement in the decision, for example by neighbours, service users, local groups and community representative organisations. Such views should be actively sought as part of the decision making process.

Underpinning the ability of any community to request a transfer of assets is access to the resources – skills, capacity, time, and finance – to do this. It is, we feel, essential that there is adequate and agreed support available to communities to help them develop and grow their own capacity to both submit a request and manage or own local assets.

The TSEC recommends it be recognised that assets in more disadvantaged communities may be fewer, in poorer condition and in need of more support or resources, to develop or maintain, than in more affluent areas.

The TSEC recommends this issue be, at least in part, addressed through a register of assets, helping to establish that “assets” are not, in fact, liabilities.

**Part 6: Common good property**

The TSEC welcomes the proposals in relation to common good property. We feel the proposals offer the best possible opportunity for identifying and agreeing all common good property, both locally and nationally. Locally agreed registers will allow all interested parties to keep track of common good assets. We welcome the proposal that the register be permanently available online. In our view this represents a step forward for transparency in government.

We recommend use of a simple, standardised, online database to record the inventory. We believe this is critical, and would allow local datasets to be combined into a national record of common good assets.

We note with concern that consultation is planned with community bodies only as Ministers "see fit", with representations only taken from community councils or a community body "known by the Local Authority to have an interest". In making this initial draft available for local consultation, it is essential that government explicitly facilitate individuals and groups to make local comment on the first draft.

The TSEC is of the view that local people with good local knowledge of past benefactors should be enabled to have their voices heard. While section 63 (6) (b)
makes provision for “other persons” we suggest this be more specific, such as “people with local connection”. With this in mind, we think that local papers, local radio and the Edinburgh Gazette should be utilised to ensure the widest possible knowledge of the exercise for local people and for past estate trustees to add commentary.

In relation to future disposals, we are concerned that consultation with community bodies would take place only as Ministers "see fit". We feel that representations taken only from community councils or community bodies “known by the Local Authority to have an interest” could be potentially inadequate in some situations. We recommend that the Bill be explicit in awareness raising in the local press of any proposed changes to the register to allow true local engagement to take place. The TSI would welcome a further consultation on the issue of future disposals, perhaps in guidance on the Bill.

There does not appear to be an appeals process in this section of the Bill. We recommend that it should be possible to appeal the register’s initial content, and thereafter appeal on proposed disposals of assets from the local Common Good Register.

**Part 7: Allotments**

The TSEC generally welcomes the rationalisation of previous legislation and the enhanced proposals for allotments.

We recommend adding a requirement to include a proportionate number of accessible allotments in any new allotment, for use by wheelchair users and buggies. Accessibility aspects would include wide, all-weather decking and raised planting areas.

For all existing allotments, we recommend that accessibility be phased-in over five years from the date of the implementation of the Bill. This equalities-based suggestion would clearly need to be resourced, and public bodies should be encouraged or required to make provision for this.
Volunteer Scotland welcomes the opportunity to respond to the Scottish Parliament’s Local Government and Regeneration Committee consultation on the Community Empowerment (Scotland) Bill.

Summary: Volunteering and Community Empowerment

In our response, we highlight:

- the critical role of volunteers in managing the asset transfer process;
- the critical role of volunteers in empowering communities;
- the realistic role for volunteers to assist in the delivery of asset transfers and participation requests;
- the requirement for public bodies to shift their culture of engagement to ensure an empowered community / communities;
- the requirement for public bodies to recognise the value and worth of engaging volunteers in the early stages design and delivery of participation request regulations;
- the role that positive early engagement can have on communities, public bodies and the long term sustainability of community assets; and
- why a person centred approach to public service through community empowerment is both possible and critical to creating a healthier, wealthier and sustainable Scotland.

Voluntary participation is at the heart of community empowerment. Without volunteers community empowerment will fail. Volunteering is used (alongside other measures) as a proxy to understand the extent to which a community is empowered, and to assess a community’s social, economic and cultural capital. Volunteers set-up, drive, lead and run community organisations and charities, and they also carry out a wide range of governance and service roles. For example:

- Volunteers are community leaders: leadership spans all aspects of our society - campaigning for local older people’s services, campaigning for or against service changes and local planning decisions, vocalising their communities’ experience and needs, and leading on empowerment formally and informally. Volunteer leaders have a special creative
role in empowering communities; their drive and passion to encourage and inspire others to get involved and challenge accepted norms transforms their communities.

- Volunteers are activists: passionate about their cause, these volunteers make a difference and change society and culture to create a modern Scotland promoting equality, women’s rights, the rights of those with disabilities, fair pay, and supporting community activities defined by the lived experiences of those communities.
- Volunteers are community helpers: often the most hidden and least recognised but who provide substantial daily/weekly help to clean premises, provide meals and offer a listening ear to those in need and vulnerable in our communities. They also offer virtual online support or offer their skills and services such as pro-bono accountancy. They carry out formal volunteering roles such as maintenance, cleaning and technical help to ensure the daily maintenance of assets are accessible to communities at minimum cost.
- Volunteers are governors: we know that Scotland’s 23,000 charities can only function with volunteer board members or Trustees who seek to ensure these bodies are well governed, lawful, responsible and meeting their charitable objectives. Critically it is these volunteers who are culpable for mistakes which may require legal intervention and sanction on both the charity and the individual volunteers.

Our Response

Our submission does not simply represent our organisational position; during the publication and initial consultation period we spoke directly to volunteers actively making a difference in their communities and community organisations, as part of our own consultation process, this included talking to those volunteers formally involved in managing community assets. Our response is therefore based on our own knowledge and expertise, as well as the views and experiences of volunteers and communities of volunteering.

1. To what extent do you consider the bill will empower communities, please give reasons for your answer?

The Bill presents a real opportunity for change and to implement significant improvements in terms of how volunteers are engaged and enabled to participate in their communities, and how their contribution is recognised and fully valued. However, it is critical to understand the context in which the Bill will operate: it needs to recognise Scotland’s volunteer deficit where we are seeing a decline in the proportion of people volunteering formally\(^1\) at least once a year from 31% in 2010 to 28% in 2013\(^2\). The figures for those volunteering regularly are even starker – only 18% of adults volunteer at least once a month. While we recognise and celebrate the significant contribution of volunteers and volunteering, this means that 82% of adults are not providing the regular help we would expect to see happening to create empowered communities.

The Bill must grasp the opportunity to reflect the reality of those central to community empowerment - volunteers. The Bill may also create new chances for volunteers to rise to new challenges and...

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\(^1\) Providing unpaid help to an organisation or group
\(^2\) Scottish Household Survey (2010 to 2013)
avail themselves of new opportunities in taking on community assets, influencing decision making and taking greater ownership of their communities and sphere of influence. It is clear, however, that this Bill could have aspired to go much further by shifting power from public bodies to communities.

Much more needs to be done to ensure volunteering continues to develop and thrive; where everyone can volunteer and every community is empowered through sustainable approaches to volunteering. For example:

- Part 3 of the Bill relating to Participation Request only recognises the role of three distinct entities “community controlled body”, ‘community participation body’ and ‘public service authority’. The Bill in no shape or form reflects that at the core of its agenda are individuals building empowerment through their volunteering activity.

- The Bill does not recognise the level of support required to facilitate them or the requirements placed upon those volunteers who will be responsible for the day to day management and decision making relating to the asset, nor its impact on a defined geographic or thematic community. The Bill and its memorandums do not reflect the reality of volunteering landscape across Scotland.

- The formal process for making a request to a public authority the Bill in no way recognises the skills, support and or time commitment required of volunteers.

- While Part 3 Section 17 Participation Requests subsection (c) seeks to gain an insight to the knowledge, expertise and experience of the community participation body in relation to specific outcomes, it does so leaving the public body to define the knowledge, expertise and experience required of the community participation body. It is critical that there is an agreed base for such measurement and that public bodies recognise the full value of the individuals involved, this will require transparency, collaboration and support in the pre-application stage.

Volunteer Scotland would draw to the Committees attention that volunteering rates across Scotland have started to move in a downward trend (as mentioned above), and that the additional burden of asset management on the volunteering landscape leaves existing volunteers burdened with policy makers and public authorities unrealistic expectations of their capabilities and capacity to take on new community commitments. This may have a long term detrimental impact on community experience and diminish the value and worth of volunteers in Scottish society. For a number of years the direction over various administrations has been to invest in Third Sector which is seen in policy terms as the only volunteering related sector. While the sector has seen substantial investment we continue to see falling volunteering rates, for some this is part of a process of the professionalization of the Third Sector and the slow uptake of other community planning partners to fully recognise the value of volunteering to achieve their priority outcomes. It is noted that Third sector income – where the majority of volunteering takes place (81%) – has risen from £2.1 billion in 2001 to £4.5 billion in 2011\(^3\)

It is important for the Committee to recognise the diversity of volunteering across Scotland. Volunteering across local authority areas varies greatly and has changed significantly over time in some places. 19 of the 32 LAAs have a fairly stable rate of volunteering between 2007 and 2012. Western Isles has seen the greatest increase in volunteering from 35% in 2007 to 57% in 2012. However, some areas have also experienced a significant decrease - for example, East Dunbartonshire’s volunteering rate has decreased by -21 percentage points from 45% in 2007-08 to 24% in 2012\(^4\) (see Appendix).

- **Recommendation 1:** The Committee and Government must recognise the requirement to focus resources and investment in support for potential and active volunteers and challenge all Community Planning Partners to recognise the value and worth of volunteering to community empowerment and improvement in overall health and well being.

- **Recommendation 2:** The Bill should recognise the value and worth of utilising national standards for community engagement to ensure volunteers play a central role in defining basic criteria for knowledge and expertise standards before assets are transferred. The national community engagement standards are an agreed standard measurement component of each Community Planning Partnership.

- **Recommendation 3:** The Bill should include a formal clause recognising the role of volunteers in empowering communities and society.

2. **What will the benefits and disadvantages for public sector organisations as a consequence of the provisions in the bill?**

A unique benefit to the Bill is the challenge it sets for a range of sectors; critically the public sector will need to develop an enhanced understanding of the impact of volunteering in the management of community assets and in delivering of public services. The impact of involving individuals in the design and delivery of services, either by utilising existing volunteers or working in partnership across Community Planning Partnerships to deliver local understanding of a community’s needs, will involve communities volunteering time and commitment to engage in discussion, planning and assisting in the delivery of services.

Both elements of enhanced engagement and participation of the wider community pose benefits and challenges. However, we challenge the concept of disadvantages. Based on our experience a person centred approach to community empowerment can bring a key benefit to public sector organisations - the talent, skills and capacities volunteers and volunteering brings; enabling and enriching the way in which communities will be empowered to take on assets, influence decision and deliver services. This can only serve to increase public confidence in public services designed around the needs of communities.

Volunteers told us they were concerned about the suitability of legislation to solve the problems of empowerment – they felt that a change in attitudes and behaviours in the public sector is needed

\(^4\) Note of caution: we need to be careful when interpreting these figures as there’s a degree of fluctuation most likely due to small sample sizes.
more. Similarly some volunteers strongly believed that ‘empowerment’ cannot be bestowed on people in a top down way through legislation.

In addition, these volunteers were clearly of the view that volunteering connects them to a community (of other volunteers) and is in itself empowering; allowing citizens to contribute to their communities and in the design and delivery of services. The key is to allow communities to realise their own ambitions through participation. Through early engagement with volunteers public bodies could ensure a cohesive, locally empowered person centred approach to determining the direction of travel for the Community Empowerment Bill in their communities, and therefore allowing for participation requests to be founded on support prior to submission. This approach offers the potential for volunteers and public bodies to better recognise the requirements and expectations of each other in delivering and designing public services and managing assets.

- **Recommendation 4**: The Committee recognises the value and worth of a person centred approach to community empowerment and supports the early engagement and support of volunteers in asset transfers to better reflect a community focus to asset transfers.

3. **Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?**

The success of the Bill, and community empowerment more generally, is built on the assumption that individuals and communities can/will do more on a voluntary basis to empower their community – take on assets, join representative bodies; deliver services and activities locally – but the evidence tells us this is unlikely to happen. The Bill needs to recognise this assumption and the facts of Scotland’s declining volunteer numbers\(^5\). In this context much, more needs to be done to support individuals and communities to participate and tackle inactivity.

It should be noted by the committee that despite increased funding and resources to infrastructure development and the third sector, volunteering participation has not changed. Third sector income – where the majority of volunteering takes place (81%) – has risen from £2.1 billion in 2001 to £4.5 billion in 2011\(^6\), yet volunteering participation is in decline (as above).

In as much that the Bill is seeking to empower communities, we will find that asset transfers will increase pressure and burden on a limited and reducing volunteering pool. These volunteers are already delivering a diverse range of services across divergent policy headings; from criminal justice to older people’s agenda, from early years to health and social care, from transport to community resilience.

Potential volunteers have told us that they are willing to do more for their community if the opportunities are flexible and fit their own interests and commitments. 19% of those not currently

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\(^5\) Scottish Household Survey: 2013 Volunteering
Volunteering would start or restart volunteering with an organisation or group\(^7\), and people would be more likely to do this if it fitted in with their existing commitments\(^8\). A plurality of approaches to volunteer engagement and involvement is needed.

The Bill should encourage a move beyond traditional service models of volunteering - which are currently dominant and lagging behind social, economic, cultural and technological drivers of change and based on old notions where supply (volunteers) should meet the demand of organisational needs. More consideration needs to be given to the motivations, interests and needs of citizens as volunteers to enable sustainable solutions to community empowerment; a person centred approach.

The gravest consequence of the Bill would be an unrealistic expectation of an individual volunteer’s ability across a range of communities to manage community assets. For example:

**Case study**

In 2011, a swimming pool and leisure centre in a small town in Scotland was transferred to community ownership by the local Council. It was clear that the centre had suffered from under investment for decades, had been closed and had been scheduled for demolition. The community mobilised to oppose this and a campaign group and Committee was formed to oppose and reverse the Council decision, which it did successfully. The facility was sold to the Group for £1. The Group has now formed itself into a social enterprise and has charitable status and it is working to reopen the Centre.

Initially a large numbers of volunteers in the community became involved in the group and campaign but since then more and more responsibility has fallen on a small group of volunteers. The group is now grappling with health and safety issues, environmental issues and the need to attract funding.

Nevertheless progress has been made in refurbishing the Centre. The involvement of volunteers has been crucial to this. A key aim of the Group is: The advancement of citizenship and community development by encouraging and increasing involvement of individuals in community activity through volunteering.

**Recommendation 5:** The Committee recognises the governance implications of asset transfer; as they may have implications for the managing organisation and its volunteers. The Bill should therefore include provision for investment to support volunteers through the pre-application and post application processes. For example, a public body providing long term support to volunteers through a change-management process to ensure sustainability and longevity for transferred assets.

\(^7\) Volunteering in Scotland (Omnibus survey) [http://www.volunteerscotland.net/policy-and-research/research/volunteering-in-scotland/](http://www.volunteerscotland.net/policy-and-research/research/volunteering-in-scotland/)

\(^8\) Scottish Household Survey (2012)
Measuring the success of the Bill and the extent to which communities are empowered is crucial. However, the current Bill is institution centric and public sector lead and requires to recognise that only a person centred approach to community empowerment will ensure change in attitudes across public bodies and enhance the public services they and others provide (including the private and third sector). Critically the Bill should consider an effective measurement tool to influence public sector change in enabling community empowerment.

Consideration should be therefore given to the inclusion within Scotland Performs National Performance Framework of an indicator for volunteering, ensuring that all public service partners recognise and engage in volunteering development. This challenge would be best met via Community Planning where the national performance framework is already leading to substantial changes in local working practices and promoting collaboration. Such an approach would improve overall CPP recognition of volunteering enabling volunteering involving organisations across sectors to better plan and develop opportunities based on potential volunteer’s requirements.

Building upon this proposal would improve Community Planning Partnerships understanding of the role of volunteering. In their recent criticism of past and emerging regeneration policy, the Centre for Regional Economic and Social Research highlighted the recent statement of Audit Scotland:

“Audit Scotland has undertaken a couple of major reviews of the workings of CPP’s and both were highly critical of the relative absence of strategic capacity and tangible evidence of joint working arrangements”

While volunteering is reflected in the majority of Community Planning Partnerships Single Outcome Agreements the absence of strategic capacity and evidence of joint approaches to volunteering reduces community empowerment opportunities. Volunteering is not reflected in the majority of SOA’s. It is hard to evidence the connection between community empowerment and volunteering through the strategic document for localism in Scotland’s local authorities.

Much is made of the asset transfer disposal by non-governmental departments and that these should be passed to volunteer governed organisations. While Volunteer Scotland agrees that a range of assets may be best serviced by volunteering governed organisations it is critical in light of public service reform that any such adjustments to asset management are based on best value and effective management linked to outcomes for the wider community, and based on sustainability not merely a movement of financial responsibility and fundamentally risk to individual volunteers.

**Recommendation 6:** We would therefore seek the committees support to develop a National Performance Framework Indicator that will measure volunteering in the broadest sense across a wide range of public bodies – that is, taking account of the full value of volunteering activity in Scotland from the very formal to informal to which all public bodies should measure themselves.

**Recommendation 7:** Part 3 must better reflect the community in the design of transfer processes.

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5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the policy memorandum?

We would at this stage reiterate that voluntary participation is at the heart of community empowerment, and volunteering is used (alongside other measures) as a proxy to understand the extent to which a community is empowered, and to assess a communities and social, economic and cultural capital. The evidence suggests that the people who volunteer do not reflect the diversity of Scotland. The Scottish Household Survey (2012) suggests there are certain groups of people who are less likely to volunteer, specifically:

**Group dimensions**
- Men
- People with disabilities
- People from low income households
- Unemployed people are significantly less likely to volunteer than those who are self employed, employed full or part time or retired
- People with no formal qualifications are less likely to volunteer than those with qualifications.
- People with no families or caring responsibilities

**Place dimensions**
- People living in urban areas (particularly large urban areas) 26%, compared to 45% of those living in remote rural areas
- People living in the most deprived areas, 19% compared to 31% of those living in the rest of Scotland

In addition, a Scottish Government analytical report ‘Exploring Dimensions of Social Capital’ supports the above points, also finding that social capital – using multiple proxy measures - varies significantly across individuals and groups and communities of place. Based on this evidence, we would argue that some individuals, groups and communities do not have equal access to the provisions in this Bill.

The Bill must ensure that volunteering and community empowerment is supported, developed and targeted to enable all groups to participate. It is crucial that a positive, bottom up approach is adopted where the existing skills, capacities, talents and assets are recognised and built upon by individuals and communities themselves.

Volunteer Scotland is disappointed that the assessment approach is procedural. It is critical that the Committee and Parliament recognise the overall inequality of volunteering and the possible impact of the Bill across Scotland. The evidence demonstrates that the people who volunteer do not reflect the diversity of Scotland, and members of committee and Parliament should be mindful that not everyone in Scotland has equal access to volunteering thus limiting community empowerment.

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10 Scottish Household Survey (2012)
Consideration should be given to ensuring:

- Identification of effective deliver agents to enable community asset transfers (identifying those best placed to manage assets e.g. volunteer skills, individual understanding of responsibilities in asset management)
- A clear public outcome focus on asset transfers (reflecting local community need and volunteer ability to manage community assets)
- Leadership responsibility (recognition of the existing skills improvements in volunteering management skills base)
- Accountability (openness & transparency, improvements in standards and or their enforcement)
- Changes in working practices (organisational change & development and cultural shifts in relationships with volunteers)
- Innovation in volunteering development (identifying requirements of potential volunteers to meet their needs)

**Recommendation 8:** That the Bill should recognise the inequality of volunteering and the challenges to be faced by individual volunteers in promoting and enabling community empowerment in those areas with low volunteering rates.

**Conclusion**

Volunteering empowers individuals and creates a strong sense of community – volunteers already feel empowered by contributing to their communities across Scotland. Volunteers significantly contribute to our nation’s success as a wealthier and fairer, healthier, safer and stronger, smarter and greener place to live, but this is not well recognised. Nevertheless, the Committee must recognise that only 18% of the adults volunteer regularly (at least once a month), meaning 82% of adults are not providing the regular help we would expect to see happening to create empowered communities. There is a need to improve volunteering rates which is central to realising the success community empowerment as laid out in the spirit of the Bill.

In light of our response, we would advise the committee to consider the following recommendations:

**Recommendation 1:** The Committee and Government must recognise the requirement to focus resources and investment in support for potential and active volunteers and challenge all Community Planning Partners to recognise the value and worth of volunteering to community empowerment and improvement in overall health and well being.

**Recommendation 2:** The Bill should recognise the value and worth of utilising national standards for community engagement to ensure volunteers play a central role in defining basic criteria for knowledge and expertise standards before assets are transferred. The national community engagement standards are an agreed standard measurement component of each Community Planning Partnership.

**Recommendation 3:** The Bill should include a formal clause recognising the role of volunteers in empowering communities and society.
Recommendation 4: The Committee recognises the value and worth of a person centred approach to community empowerment and supports the early engagement and support of volunteers in asset transfers to better reflect a community focus to asset transfers.

Recommendation 5: The Committee recognises the governance implications of asset transfer; as they may have implications for the managing organisation and its volunteers. The Bill should therefore include provision for investment to support volunteers through the pre-application and post application processes. For example, a public body providing long term support to volunteers through a change-management process to ensure sustainability and longevity for transferred assets.

Recommendation 6: We would therefore seek the committees support to develop a National Performance Framework Indicator that will measure volunteering in the broadest sense across a wide range of public bodies – that is, taking account of the full value of volunteering activity in Scotland from the very formal to informal to which all public bodies should measure themselves.

Recommendation 7: Part 3 must better reflect the community in the design of transfer processes.

Recommendation 8: That the Bill should recognise the inequality of volunteering and the challenges to be faced by individual volunteers in promoting and enabling community empowerment in those areas with low volunteering rates.

For further information,

Volunteer Scotland is a registered Scottish Charity No SC013740

About Volunteer Scotland:

As the national body for volunteering we:

- Provide the most comprehensive online source of volunteer opportunities in Scotland, which is free to the public: www.volunteerscotland.org.uk
- Support tools to help volunteers get the most from their volunteering experiences.
- Build the skills, knowledge and aptitudes of staff that engage with volunteers.
- Work with organisations to connect better with volunteers; we do that by exploring where there’s a need for volunteers; we listen to people to understand how they want to make a difference; we make it easier for them to volunteer and we help volunteers and organisations make a difference and evaluate the benefits.
- Have an information service for volunteers, organisations, Government, and others. This provides insights into what volunteers are saying and experiencing, who volunteers in Scotland and demonstrates the difference this is making to our common good.
- Work with Change agencies in Government and funding bodies such as the Big Lottery, Third Sector Interfaces and Volunteer Centres - there’s a consensus about the value of volunteering and new opportunities such as the 2014 Glasgow Commonwealth Games offering real potential for growth and development.
- Are members of a European network (CEV - link) and have a track record of European projects and relationship building.
Appendix: Volunteering Rates in Scotland’s local authorities

<table>
<thead>
<tr>
<th>Local Authority</th>
<th>2007-08</th>
<th>2009-10</th>
<th>2012</th>
<th>Difference 07/08 &amp; 2012</th>
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Source: SHS (2007-08, 2009-10, 2012)
Keep Scotland Beautiful welcomes the opportunity to respond to the call for evidence from the Committee on the Community Empowerment (Scotland) Bill.

Keep Scotland Beautiful is the national environmental charity that campaigns, acts and educates and a range of local, national and global sustainability issues – we are committed to making Scotland, clean, green and sustainable, today and tomorrow.

If real progress is to be made in tackling the environmental challenges facing Scotland then we need to engage individuals, families and local communities in a meaningful way. Enabling and empowering them to effectively tackle local environmental issues that affect them on a daily basis can be the first step towards successfully addressing national and global issues.

Therefore, we welcome the introduction of the Community Empowerment (Scotland) Bill and believe that it can make a positive contribution to empowering communities across Scotland.

We have addressed the specific questions asked by the Committee in the attached document.

However, we have two specific concerns regarding the Bill we would like to draw to the attention of the Committee

1. the lack of prominence given to sustainable development, and
2. the ability of communities to access and utilise specific provisions of the legislation.

Our first concern is that an opportunity has been missed by the Scottish Government to embed sustainable development as an underpinning principle of this Bill and to ensure that this is effectively reflected in the relevant provisions of the legislation.
We would also want to be reassured by the Scottish Government that the Bill, and its component provisions, will, support and strengthen low carbon measures being progressed in the context of the Climate Change (Scotland) Act 2003.

We believe the provisions on participation requests, right to buy and asset transfer could cause changes in land use or public service delivery, and an increase in greenhouse gas emissions if the provisions of the Climate Change (Scotland) Act 2003 are not taken into account.

We note the response by the Scottish Government to specific questions raised by the Committee which relate to these concerns (Questions 21 and 147). We don’t believe that the answers provided specifically address the questions raised by the Committee or our concerns.

Our second concern relates to the ability of communities across Scotland to make use of the provisions of the Bill to have a positive impact on their neighbourhood or local area.

Although the broad thrust of the proposals contained in the Bill are worthy of support the reality is that they will be more easily accessed, and effectively utilised, by more affluent communities with well-developed civic infrastructure and associated knowledge, skills and expertise.

It is likely that those communities in areas of multiple deprivation will be less able to access and utilise the opportunities afforded by the provisions contained in the Bill. The Bill itself cannot create or improve capacity in communities across Scotland or equip them with the knowledge, skills and expertise to make effective use of the various provisions to take action to improve their neighbourhood or the services they receive.

Therefore, to ensure that the Bill has the anticipated positive impact at a local level across Scotland there is a need for the Scottish Government and other public bodies to provide additional advice, support and investment to avoid less affluent communities being left behind.

It is essential that public bodies in general, and Community Planning Partnerships in particular, work with communities to enable them to the develop the capacity and capability to take advantage of the opportunities afforded by the Bill.

We hope that you find our comments on the Community Empowerment (Scotland) Bill useful. If you would like to discuss our response, or have any further queries, please contact Catherine Gee, Head of Corporate Services at catherine.gee@keepscotlandbeautiful.org.

Yours sincerely

Derek A. Robertson
Chief Executive
Response by Keep Scotland Beautiful

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

Keep Scotland Beautiful believes that if real progress is to be made in tackling the environmental challenges that face our country then we need to engage individuals, families and local communities in a meaningful way – enabling and empowering them to effectively tackle local environmental issues that affect them on a daily basis can be the first step towards successfully addressing national and global issues.

We welcome the introduction of the Community Empowerment (Scotland) Bill and believe that it can make a positive contribution to empowering communities across Scotland.

The provisions of the Bill should enable communities across Scotland to become more actively engaged in local decision-making and empower them to play a meaningful role in the design, development and delivery of the services that affect their daily lives.

The Bill should generate a positive shift in the relationship between public bodies and the communities they serve, with a recognition the communities have an important perspective to share on their needs and aspirations and increased emphasis on collaborative working.

For example, the proposal that Community Planning Partnerships must consult and engage with the third sector, business and local communities is welcome given that their views should be central to determining local priorities and outcomes.

The challenge for CPPs will be ensuring that disadvantaged communities are equipped to be able to take advantage of any new arrangement for consultation and engagement to participate in the community planning process.

For example the proposal to extend the community right to buy, particularly the introduction of a framework for community bodies to purchase abandoned or neglected land.
This will be especially important in areas where a local community group can demonstrate that they have raised concerns about the neglect or abandonment of a specific site with the owner or relevant public body over a period of time and that no action has been taken.

This would help address a significant environmental blight in communities across Scotland and empower, in conjunction with other provisions in the Bill, local communities to take action to improve their local environment. However, we believe any community body established in this context must be able to demonstrate that if has made appropriate provision for the responsible management of the land in question and fully understands the associated legal requirements and long term implications for them.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

Keep Scotland Beautiful believes that the Bill should be viewed positively by public bodies as an opportunity to strengthen their relationship with the communities they serve and to ensure that the unique insight of local people regarding their neighbourhood, needs and aspirations is reflected in the design, development and delivery of local services.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

We are concerned about the ability of communities across Scotland to make use of the provisions of the Bill to have a positive impact on their neighbourhood or local area. Although the Bill itself is worthy of support the reality is that its provisions will be more easily accessed, and effectively utilised, by more affluent communities with well-developed civic infrastructure and associated knowledge, skills and expertise.

It is likely that those communities in areas of multiple deprivation will be less able to access and utilise the opportunities afforded by the provisions contained in the Bill.

The Bill itself cannot create or improve capacity in communities across Scotland or equip them with the knowledge, skills and expertise to make effective use of the various provisions to take action to improve their neighbourhood or the services they receive.

To ensure that the Bill has the anticipated positive impact at a local level across Scotland there is a need for the Scottish Government and other public bodies to provide additional advice, support and investment to avoid less affluent communities being left behind.
It is essential that public bodies in general, and Community Planning Partnerships in particular, work with communities to enable them to develop the capacity and capability to take advantage of the opportunities afforded by the Bill.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Keep Scotland Beautiful welcomes the proposal for the National Performance Framework and Scotland Performs to be placed on a statutory basis.

We also welcome the duty that the Bill would place on Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, which would be reviewed at least once every 5 years, with regular public reports on progress towards those outcomes.

However, Keep Scotland Beautiful believes that careful consideration should be given to the outcomes identified within the NPF, specifically those that relate to sustainable development and community and environmental wellbeing.

We believe the current set of outcomes relating to sustainability and wellbeing are fragmented and do not allow a holistic view to be taken of either the current position in relation to these outcomes or positive/negative movement.

Keep Scotland Beautiful welcomes the proposals contained in the draft Bill to strengthen community planning and the core duties of Community Planning Partnerships.

However, as stated earlier, the challenge for Community Planning Partnerships will be ensuring that disadvantaged communities are equipped to be able to take advantage of any new arrangement for consultation and engagement to participate in the community planning process.

We welcome the proposal contained in the draft Bill to introduce a framework that allows an appropriate community body, or a group of bodies, where it believes it could help to improve the outcome of a service, to make a request to the public body or bodies that deliver that service, asking to take part in a process to improve that outcome.

We already support joint working between local authorities, other public bodies and local communities to facilitate and support activity to improve local environmental quality.

We believe that the proposed framework would allow this activity to be developed and strengthened in a structured way, enabling a local community group or groups to become
more actively engaged in the planning and delivery of activity that has a direct impact on their neighbourhood and local environment.

We note and welcome that the provisions of this bill amount to a presumption in favour of agreeing to participation requests.

We also note the provision for consideration of the following in the determination of participation requests:

*Whether agreeing to the request...would be likely to promote or improve-*

- Economic development
- Social wellbeing
- Environmental wellbeing.

As these components essentially represent the three pillars of sustainable development, we feel an important opportunity has been missed to embed sustainable development as an underpinning principle of the Bill that is suitably reflected in all of its provisions.

We are also concerned that the potential benefits of this framework will be limited to affluent communities with well-developed civic infrastructure who have the capability to navigate the proposed process which could be considered onerous and overly bureaucratic.

Without the provision of additional support for, and investment in, capacity building it will be difficult for communities in areas of deprivation to take advantage of the legislation to become more actively engaged in the planning and delivery of activity that has a direct impact on their neighbourhood and local environment.

We welcome the proposals contained in the Bill to make changes to the community right to buy legislation and extend the provision to the whole of Scotland.

We particularly welcome the proposal to introduce a framework for community bodies to purchase abandoned or neglected land.

This will be especially important in areas where a local community group can demonstrate that they have raised concerns about the neglect or abandonment of a specific site with the owner or relevant public body over a period of time and that no action has been taken.

This would help address a significant environmental blight in communities across Scotland and allow, in conjunction with other provisions in the Bill, local communities to take action to improve their local environment.
However, we believe it is essential that any community body established in this context must be able to demonstrate that if has made appropriate provision for the responsible management of the land in question and fully understands the long term implications.

Keep Scotland Beautiful notes the proposal contained in the draft Bill that would allow communities to request that ownership of assets in their area owned by the public sector be transferred to enable them to address local needs and deliver community benefit.

Again, we believe it is essential that any community body established in this context must be able to demonstrate that if has made appropriate provision for the responsible management of the asset in question and fully understands the long term implications.

Keep Scotland Beautiful welcomes the proposal to place a duty on local authorities to hold and maintain waiting lists for allotments, and to take steps to provide more allotments if the waiting list exceeds certain trigger points. We support a range of food growing projects in communities across Scotland through funding from the Climate Challenge Fund and advice and recognition from the Beautiful Scotland and It’s Your Neighbourhood Campaigns.

Access to an adequate supply of allotments would enable the work currently being supported at a local level to be maintained and expanded. A number of groups who we have worked with have identified issues in relation to the provision of allotments and their ability to reach agreement on an appropriate lease with their local council.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy Memorandum?

Our concerns regarding equalities and sustainable development are reflected in our covering letter and in the detail of this response.
Background and context

Social Enterprise Scotland supports the principles of and motivations behind the Community Empowerment (Scotland) Bill. We appreciate the work that The Scottish Government has done so far in bringing the Bill forward, as well as the inclusive process of a wide-ranging and comprehensive consultation. We also recognise the important role of local authorities and community groups in facilitating community empowerment and their work in driving forward this agenda at a local level.

Empowerment is not just a word. It should also be seen in the real world context of improved relationships with neighbours, better physical and mental health, sustainable economic growth, greater individual life chances, in unlocking democracy and in the raising of the ambitions and potential of a community.

While we support many of the provisions contained within the draft Bill we believe that more can be done to improve and strengthen the legislation as we go forward. Community empowerment is part of a longer term process and we see the current Bill as a step in the right direction on this journey.

Many social enterprises across Scotland are already taking practical action to empower communities. It is people in communities who are forming development trusts, community-owned co-operatives and other local social enterprises, to take forward this agenda and drive innovation in areas like Community Shares and regeneration.

Specific provisions in the Bill and potential changes

We refer the Committee to our submission to The Scottish Government consultation on the Bill, as well as the response to the Commission on Strengthening Local Democracy (COSLA and partners) consultation.

We also support and refer the Committee to the joint submission by Oxfam Scotland, Barnardo’s Scotland and The Poverty Alliance, particularly the proposal regarding Participatory Budgeting.

Key points and questions:

- Finance is the key element in driving community empowerment. While we understand that the Bill is part of a wider legislative and regulatory framework, at least some provisions regarding finance should be included in this Bill.
Participatory Budgeting is one concrete way to empower communities. Specific ways to operate it in practice can be left up to individual local authorities and local organisations but 1% of CPP budgets should be specified in the Bill.

There may be scope to include provisions about boosting crowd-funding and Community Shares, without introducing regulation or stifling the organic progress that is already being made.

As a general principle a far larger proportion, at least 50%, of local authority funds for public expenditure should be raised at a local level than is currently the case.

Asset transfer - can the Bill cover additional public bodies such as the National Museums Scotland, National Galleries Scotland and VisitScotland and perhaps the SQA and SDS and other smaller bodies?

Asset transfer - despite the different legal status of universities, is there scope to include universities within the provisions of the Bill?

Asset transfer - a right of appeal to Ministers is welcome but is there scope for an independent appeals process too or instead?

Asset transfer - is there scope for a “right to try”, whereby there is a phased trial process for community organisations to take on assets?

Asset transfer - can we include an “absolute right to buy” for community organisations in certain circumstances?

Asset transfer - can Community Interest Companies (CICs) be specifically mentioned by name in the Bill, as SCIOs are?

Community Planning Partnerships - need to recognise the role of and include local social enterprises and community anchor organisations like Housing Associations and Credit Unions.

Community Planning Partnerships - equality of participation in CPPs e.g. ALEOs and social enterprises should be treated the same. Local authorities (despite an appropriate facilitation role) should not always be “leading”.

Allotments - change wording to clarify that community organisations and other social enterprises can use allotments to make profit and sell produce for community benefit, so long as they have appropriate asset lock etc.

General point - there should be serious moves towards hyper-local neighbourhood democracy. Services are best delivered at the most local level possible, with the
Local Government and Regeneration Committee
Submission Name: Social Enterprise Scotland       Submission Number: 99

greatest level of democracy possible and by community organisations and social enterprises.

- General point - democracy is not just about elected representatives or local authorities but is also about direct community democracy and community organisations i.e. social enterprises.

- General point - we need to begin the process of a real shift in the delivery of services from the public sector to community control and ownership.

For any questions or enquiries about this consultation response, please contact Duncan Thorp, duncan.thorp@socialenterprisescotland.org.uk / 0131 243 2650.
Local Government and Regeneration Committee

Submission Name: Scottish Allotments and Gardens Society

We are pleased that the Government has recognised that the existing legislative framework for allotments is complex, and consultation has shown strong agreement that it needs to be updated.

We welcome the statutory protection of allotments in the Bill. However we are concerned that the Bill repeals the existing legislation and in doing so some of the protections for plot-holder and allotment sites contained in the provisions of the old legislation appear to have been lost. There is no duty on the local authority to provide suitable land from their existing stock or by lease or purchase. Without such a duty the aim of the Bill to strategically support allotments and community growing spaces cannot be fulfilled.

We hope that the following amendments to strengthen the current legislation will be accepted by the Local Government and Regeneration Committee. The detail in this document is from a working group of twelve members of SAGS who have discussed and researched it over the summer. Our response has been shared with the wider membership of the organisation which covers every region in Scotland. We are all volunteers and have no legal or legislative expertise so we hope the Committee will take this into account when considering our requests.

Q4: are you content with the specific provisions in the bill, if not what changes would you like to see, to which part of the bill and why?

4.1 Plot size

Amendment 68 (d) replace 'of such a size as may be prescribed' with 'normally of size 250 sq m. which may be subdivided into half or quarter plots with agreement of the members of the local association'.

Rationale

1. The power to define a standard size has been delegated to the Scottish Ministers under Sections 202-204 of the Delegated Powers Memorandum. The reason given for delegating this power to secondary legislation is to enable existing variability of size to continue because the variability "reflects the individual tenants needs and abilities to maintain and grow on an area". This infers that the decision was taken in the interests of plotholders’ needs. We are concerned that unless a standard size of 250 sq.m is stipulated within the Bill, plot-holders will not be able to acquire sufficient area of allotment to fulfill their needs. There is also a concern that the reason for taking power, as described in Section 203, may be untenable in light of UK Parliamentary precedents set under scrutiny of the Delegated Powers Regulatory Reform Committee (DPRRC)

2. SAGS and its membership have consistently called for a 250sq.m plot size throughout this consultation process. This currently accepted size is based on the research contained in Finding Scotland’s Allotments and is an average of the current plots found across Scotland. Any sub division of this size can be accommodated, after consultation at the local association level and with the plot-holder depending on need, demand or expertise. This would ensure that the local community of plot-holders would have the power to determine flexibility of plot sizes. The proposed description in Section 68 (d) "of such size as may be prescribed" is not sufficient to secure an area that allows for the horticultural and environmental sustainability of plots to be maintained. A standard plot of 250 sq.m. would enable families and individuals to grow sufficient, nutrient dense, fresh foods to feed themselves throughout most of the growing year. This is especially important in areas of multiple deprivation.

3. The recommendation from the Grow Your Own Working Group (GYOWG) Report 2011 that fed into the 2011 SNP Manifesto was to facilitate:
Local Government and Regeneration Committee

Submission Name: Scottish Allotments and Gardens Society
Submission Number: 100

“an amendment to the Allotments Act that specifies a time-scale for allotment provision and number of allotments per head of population”

SAGS welcome the acknowledgement of GYOWG, set up by the Scottish Government and that its recommendations initiated that the allotment provisions in the Bill. However key recommendations made by the GYOWG are absent from the proposed legislation. It is estimated that at present there are about 8,000 allotment plots in Scotland which, assuming that an average of about 1.5 people cultivate each plot, means that only 1 person in 500 has access to an allotment plot. To put this into perspective, (assuming a mixture of standard size plots of 250 sq m and some smaller half and quarter plots) then all the land that is needed to offer 1 plot for every 100 people is only equivalent to the area of Holyrood Park or about 8 golf courses. (The figure of 1 plot for every 100 people is an estimate of potential need based on the current provision of plots across the UK and in Europe.)

4. The current proposal, in focusing only on waiting lists and not on the provision of land may result in the subdivision of current plots to satisfy the numbers on the waiting list. We are concerned that a small fraction of a plot will be offered as the norm by the local authorities. All those who wish should be able to access a full size plot for sustainable horticulture, food sufficiency and well-being.

5. The information contained in our answer to Question 2 shows that if the predicted need for allotments is satisfied with standard plots available for all who require them then allotment sites will contribute significantly to many priorities of the Government and local authorities including climate change and carbon reduction, health and well-being and food production.

4.2 Section 72 ‘Duty to provide allotments’
We are concerned the ‘Duty to provide allotments’ in this section rests on the proviso that each local authority must take ‘reasonable steps’ to ensure the waiting lists do not exceed a certain value. The following amendments to section 72 would clarify the ‘reasonable steps’ that a local authority should take.

4.2.1 Statutory duty to provide suitable land
Amendment Section 72 (1) Where subsection (2) or (3) applies then the local authority will by purchase, lease, or transfer make any suitable local land available for the purpose of allotments. This should take no more than 3 years as applicable in subsections (2) and (3).

Rationale
1. There is no provision for the local authority to acquire land. There is a duty to reduce the waiting lists 72 (1) and a duty to identify land 77 (3) (a), but there is no duty to provide land that is identified in section 77 (3). The provision or acquisition of land is at the very core of the previous legislation. The loss of these duties of land provision and other powers is a major loss from all the previous legislation and creates a significant barrier to the establishment and sustainability of local allotment communities.

2. The issues of access to land are core to the historical aspects of inequality in Scotland. Land held in Scottish Government departments or in Strategic Land Banks by Local Authorities, or vacant and derelict land, need to be transferred out in a form of social contract not an economic contract to communities. This will entail the creation of a new type of community vehicle of provision; one that does not take on the burdens associated with vacant and derelict land, but has powers of rebuilding brownfield neighbourhoods through an integrative public health and planning approach, which will be essential for improving the odds for sustainable redevelopment and securing long-term gains in public health.

3. Access to land to cultivate, care for, and grow food is a social justice issue. The neighbourhood statistics for Glasgow in 2007, where people often live in tenements or high rise flats showed that in some places only 6 per cent of the population had access to a garden and that 84 per cent were without a car. In 2009 the Scottish Allotments and Gardens Society (SAGS) and Scottish Natural Heritage (SNH) analysed access to allotments in Scotland against the Scottish Index of Multiple Deprivation. This confirmed that with fewer plots accessible per person there is less opportunity to garden in deprived areas. Since other statistics show that up to 70 per cent of the population enjoy and benefit from gardening this is clearly a social justice issue. It also means the priority must be to provide allotments in some of the most deprived areas of the country.
Data
1. Allotments (Scotland) Act 1892 Section 2: If the Local Authority is of the opinion that there is a demand for allotments in their area they have a duty, subject to the provisions in the Act, to acquire and let suitable land for allotments.

2. Allotments (Scotland) Act 1922 section 6 (2) Where land is acquired by a Local Authority for use as allotments under an order for the compulsory leasing of the land, the lease must be for over 10 and no more than 35 years.

4.2.2 Duty to provide suitable land and infrastructure

Amendment Add to 72: In consultation with the local group, the local authority has a duty to provide land that is 'fit for purpose' including initial reports, remediation, infrastructure and special provisions together with access to the allotments by suitable roads or paths, where such means of access are not already available.

Rationale
1. Costs that may be incurred before ground is deemed fit for purpose including soil tests, wildlife / ecology surveys, planning applications, building warrants etc. These are generally out-with the capacity of local groups. Funding may not be available until planning permission, which includes these reports are in place.

2. Land should be 'fit for purpose'. From July 2001, all Local Authorities were required to have a Contaminated Land Inspection Strategy in place. This ensures that formal notice of any contaminated sites is given and appropriate person(s) with responsibility for any remediation are identified. Allotment Associations should not be responsible for any remediation nor liable for any effects from contamination on the site.

3. The design and layout of the site which might include infra-structure such as fences (or hedges), water and drainage; provision for those with physical disabilities, mental impairment, the elderly or community groups should be agreed in consultation with the local group of potential plot-holders. Partnership funding could be acquired but it should be the duty of the local authority to lead on this and ensure the site fulfils the needs of the local community. Local groups are usually not cognisant with the difficulties and issues that may arise.

Data
1. Allotments (Scotland) Act 1892 Section 5: The Local Authority may improve and maintain any land acquired by them under this Act, and adapt the same for letting in allotments, by draining, fencing, making roads, and otherwise, as they think fit, to maintain the allotments in a proper condition.

2. Allotments (Scotland) Act 1922 Section 15 The Local Authority has a duty to provide access to allotments by suitable roads or paths, where such means of access are not already available.

4.2.3 Triggers –

Amendment Add to 72: Local authorities have a duty to provide land for allotments so that no-one on the lists waits more than 3 years for a plot.

Rationale
At present: 72 (1) Where subsection (2) or (3) applies, each local authority must take reasonable steps to ensure that the number of persons entered in the list maintained under section 71(1) is no more than one half of the total number of allotments owned and leased by the authority.

At present on established sites there is a turnover of about 5% of plots each year. This means that if the local authority only has to ensure the list is less than 50% of available plots, people could still wait 10 years for a plot.

The historic and current lack of appropriate provision of land is the key factor in the length of waiting lists and lack of allotment gardens and sites.
4.3 Consultation:

Amendment 79 (1) As soon as is reasonably practical after the end of each reporting year, each local authority must in consultation with the organisation representing allotment associations in their areas, publish an annual allotment report for its area.

Rationale
1. In Edinburgh, Glasgow and Dundee allotment associations come together as federations or forums. These bodies support the allotments officer, enable good practice to be disseminated and allow issues to be discussed.
For community empowerment, local groups should be involved with all the strategies, reports and evaluations. Direct involvement would ensure continuing interest and support for the local authority.

4.4 Governance

Amendment: Add 81 Delegation of management of allotment sites: The Scottish Ministers will appoint an Ombudsman to adjudicate in any causes of conflict between the parties involved (local authorities, allotment associations, individual plot-holders).

Rationale
1. As with other small organisations, allotments can be the site of conflict however community mediation provision across Scotland is not readily available to allotments. There is no ombudsman or regulator for disputes in sites that are not directly managed by the local authority.
To ensure that participative democracy and self management results in empowerment for all and to minimise cases of discrimination within the community, a system of controls and checks and balances needs to be developed to ensure that everyone is able to participate and any dysfunctional cliques or conflicts are minimized. Most public bodies, services and sectors have some forms of quality control or regulation and systems for appeal and conflict resolution, for example a local authority ombudsman. However there is very little detail in the Bill about how small-empowered organizations and communities will be regulated.

Data: Conflict is not often brought to the public domain so instances are anecdotal, reported in newspapers or captured on television series and films. However it is acknowledged that conflict is endemic in small community projects.

4.5 Recognising the needs of those with mental impairment or the elderly:

Amendment 70 (3) Where the person making the request is a person who has a physical or mental impairment, the request....

Rationale
1. Mentally impaired individuals and those with unseen difficulties may also require adjustments to their allotment sites and plots in the same way that individuals with a physical impairment do. Other people, such as the elderly, might also require adjustments, for example, those with Alzheimer’s are known to benefit from specialised sensory sites.

Q1: to what extent do you consider the bill will empower communities, please give reasons for your answer?

Any legislation which increases and supports allotment provision will empower the community and create the locus for new communities. ‘An allotment isn’t just a place to grow spuds. In each and every plot in this country you will find a wide range of people with a breadth of knowledge and experience in many areas, from the unemployed, the disabled, doctors, lawyers, engineers, environmental enthusiasts and kids who want to grow the biggest beanstalk in the world. There are few places where such a diverse mix of the population regularly get together and share information, advice and a cup of tea on an equal footing with each other because at the end of the day everyone is equal in wellies and an old torn jumper “ Raising
The reasons for the creation of the first Allotments Bill in 1892 are still present; the original wording of the ‘labouring classes’ encompasses the terms the poor, the working poor, the disadvantaged in use today. Legislation clarifying and updating the Allotments Acts together with the Explanatory notes, Policy Memorandum and Delegation of Power shows support for allotment provision. There is a proven need for more allotments in areas of deprivation; allotments provide community spaces where individuals can access cost-effective food sources by growing their own, as well as keeping active during the winter months so reducing their food and fuel bills. This legislation should provide the means for communities to work with the local authorities to rebuild brownfield neighborhoods, design sustainable redevelopments and secure long-term gains in public health.

1.1 Gains from the previous legislation:
(i) The disposal of sites will be the responsibility of Ministers whereas previously it was only considered to be a local matter. This recognises the significance of allotments to the national agenda.
(ii) The Bill contains an increased recognition of issues facing plot-holders together with containing the mechanism for more co-operation and collaboration between the Scottish Government, local authorities and plot-holders.
(iii) There will be an increased transparency and recognition of need through the duty on local authorities to keep records and report to communities through the Allotments Report. If these together with the amendments suggested in answer to Q4 are en-acted, the new legislation should decrease the frustration over lack of sites and long waiting times.
(iv) The power for training, promotion and support will help to make allotment sites productive and accessible for all.
(v) Equality of provision through recognising the needs of those with physical impairment - which we hope will be extended to the needs of those with mental impairment and the elderly.

1.2 We trust that:
(i) sufficient suitable land will be made available for all who wish an allotment plot to have one.
(ii) the Food Strategy will lead to the promotion of allotments and a long term strategy with an assessment of need.
(iii) precious land, particularly in urban areas that is suitable for cultivation will be conserved.

1.3 We have concerns about
(i) how land will be acquired and the right to a standard plot if required. (see Amendment 4.1)
(ii) how are voices heard – Allotments and allotment communities have the capacity to meet many of the national outcomes but the process for these communities to participate, articulate and demonstrate this is unclear when the onus is on the CPP to decide which bodies they consult and engage with. (Policy Memorandum (Pages 34 – 43)).

There are potential competitive tensions between some official partners within the CPP and some community bodies, particularly over land. The fact that one interest is elevated to official partner within the CPP imputes against the empowerment of some small communities. There is a need to ensure participative democracy does not become eroded. Therefore a stronger mechanism for statutory engagement of small communities is required. (See Bill section 4 (5)).
(iii) long term leases and permanent allotment sites - the current support for stalled spaces with very short term leases could mitigate against the need for permanent sites to justify the long term commitment plot-holders have to improving the soil and nurturing the environment.
(iv) asset transfer – problems with conflict (see Amendment on Governance in 4.4 in answer to Q4)
(v) the level of powers delegated to Ministers particularly in regard to the meaning of ‘allotment’ – see response to Q4 and amendment suggested in 4.1.

Q2: What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the bill?

2.1 Government agenda
(i) Climate change and carbon mitigation
• The CO\textsubscript{2} emissions of a Scottish plot-holder are 10% lower than the UK per capita average.

Increasing allotment provision to eliminate the known waiting lists would reduce CO\textsubscript{2} emissions by a further 5,700 tonnes per year.
Increasing allotment provision to the SAGS target of 1 plot per 100 people, would give a total CO\textsubscript{2} emissions saving of 45,000 tonnes per year.

(ii) Soil conservation:
Currently there is concern about the deterioration in quality of the soil across the U.K. Research has shown that 'Urban cultivation in allotments maintains soil qualities adversely affected by conventional agriculture'.
Many plot-holders have expertise in composting and in the virtuous cycle of cultivation.

(iii) Health and well-being:
It is known that gardening and allotment gardening specifically contributes significantly to physical, mental and overall health and well-being across generations and those with an allotment have better health than those without.

• Gardening greatly improves the health and well-being of older gardeners. Currently we have an ageing population and therefore any activity that improves the health of older people will in due course lessen the demand on health organisations.

• Gardeners have better balance, health and fewer falls than non gardeners demonstrating that allotments improve health and lessen the burden on pubic sector health organisations.

• Empowering small communities such as allotments may compensate for the loss of neighborhood in some areas, particularly socio-economically disadvantaged areas and areas where spatial organization of buildings do not promote neighborhood and social relations.

(iv) Food production: 250m\textsuperscript{2} will feed a family of four “five a day” for almost the whole year.
Good horticultural practice includes crop rotation, space for fruits and trees, composting and recycling, water management, boundary maintenance, soil care, peer education etc. All of which enables families and individuals to grow sufficient, nutrient dense, fresh foods throughout most of the growing year.

(v) Social enterprise: clear channels are emerging between stalled spaces that can introduce people to cultivation, through allotment plots which enable them to develop their skills and interest and some are then moving into social enterprises such as market gardens and community development projects. e.g. Nairn Academy has areas for the local students on the Rural Skills module.

(vi) Equality - average size of an existing allotment in Scotland today is 244m\textsuperscript{2}. A standard plot size of 250m\textsuperscript{2} should be available for everyone who wishes and can cultivate it regardless of area in which they live.

2.2 Local Authority agenda
(i) Allotments can contribute to the SOA e.g Edinburgh uses them in the outcome that Edinburgh’s natural and built environment is supported and enhanced.

2.3 Financial cost
(i) Savings to local authorities through devolved management of allotments, in particular by the contribution from plot-holders through taking over collection missives, responsibility for maintenance sites etc. For example in Glasgow it costs £15 per plot to send out and process the missives. The cost to the Council is about £14K. On devolved site management this would be about £400. There is of course a reciprocal cost from the plot-holders involved who take over this task.

(ii) Partnerships with local groups to acquire funding and develop sites. Implementing a stalled space can be extremely expensive whereas allotment sites that are larger and more sustainable in the longer term can be developed or far less money.
(iii) The amount of land we need in order to enable 1 in 100 is about 1000ha which even if it was all acquired at current agricultural price of land (<£4K per acre) would be less than £10M.

(iv) The estimated cost in the Explanatory notes to the Council ranges from £1900 to £6250 per plot. This does not take into account the contribution plot-holders can make especially if they are involved from the start with site design and lay-out. They can also access external sources of funding. We suggest that a reasonable figure is between £750 and £2000 per plot. However this will depend on the land being suitable and ‘fit for purpose’, as highlighted in Q4.3. The surveys etc can cost as much as £9K.

(v) Cost of producing reports is between £500 and £1K. If allotment associations were involved in this the cost would be reduced.

Q3: Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the bill? If not, what requires to be done to the bill, or to assist communities, to ensure this happens?

3.1 Sites are sustainable – The allotments at Cowlairs Works were founded in 1842 covered about 3.5 acres, remained for more than a hundred and thirty years. New Victoria Gardens in Glasgow was created around 1875 and is still in existence as are other sites across Scotland, created during WW1 and so almost 100 years old.

With support from local Councils or Development Trusts, many communities have organised new allotment sites across Scotland.

3.2 We need

(i) capacity building within communities is required to realize the provisions and the spirit of the CEB. Resources must be set-aside for this. Allotment communities consist of members of other communities in their area and can therefore reflect the social and economic disadvantage of the communities from which they draw. Many allotment communities will therefore be constrained from their entitlement to be empowered by a lack of capacity building.

There should be a duty for local authorities to build capacity by providing information and expertise to communities who request this. Knowledge and expertise is developed within local authorities and other public bodies: a mechanism to transfer this capacity more directly to empowered communities needs to be developed to avoid this being lost. Some allotment communities are dealing with complex issues that require expertise across several functional areas, for example in planning, land, leases, conflict resolution and environmental health issues. Much of this is currently embodied within councils and public services and a means of transferring this should be developed.

(ii) local authorities to work on a collaborative and participative basis with local groups in setting up allotment sites. An example of good practice is found in Fife where the Council has almost doubled the allotment provision in the last five years.

(iii) a new legal entity for allotments and other small community organisations. Empowerment brings responsibilities however without appropriate protections the default position may be small community organizations managed by office bearers who are either subject to unfair personal risks or a lack of participation for fear of personal liability. Even SCIOS are burdensome for small volunteer groups without time or experience to administer them. An alternative perhaps following the tradition of Mutuals (which several allotment associations were in the past) could be developed in consultation with Scottish Government and COSLA to cover the legal concerns regarding un-incorporated organisations and Governance of sites (see Amendment 4.5)

(iv) good practice guidance such as the SAGS Sustainable Allotment Site Design Guide and the New Plot-holders Guide to be promulgated through the Councils to all sites. The horticultural expertise already existing in sites should be recognised and disseminated among local associations. A mentoring scheme such as that originally set up by ARI (Allotments Regeneration Initiative) which no longer runs in Scotland would be most useful.

(v) support from local authorities for networking between local allotment associations but also with other associations and organisations such as housing, health etc to learn from each other.
(vi) encouragement for participative democracy perhaps with funding for schemes such as ‘art of hosting’

(vii) implementation of the Scottish Community Development Centre’s suggestion that a community engagement plan, as well as an officer to ensure engagement is facilitated, and provided for within the CEB.

Q5: what are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the policy memorandum?

[118] Local Authorities must make regulations about site management justified in public interest in making land available for community growing including allotments. Fair balance between public interest & tenants rights.

We are content that the Local Authorities make regulations about allotments although we wonder if it is necessary to specify these in so much detail. We strongly recommend that a duty is imposed on the local authority to consult relevant bodies when developing regulations. The knowledge and expertise that the allotment community has in terms of governance and disputes is an invaluable resource.
Annex: Further reading in support of arguments, a selection of the sources used for this submission:

1. Background papers:
   (x) Consultation on Community Empowerment (Scotland) Bill: Analysis of Responses 9.11 http://www.scotland.gov.uk/Publications/2014/06/3535/9
   (xii) Raising spirits – allotments, community and well-being by Jenny Mollison, Judy Wilkinson, Rona Wilkinson Argyll Publishing 2014

2. Carbon emissions
   (iii) Climate Challenge Fund data www.scotland.gov.uk/Publications/2011/06/28142748/4

3. Soil
   (iii) http://www.telegraph.co.uk/gardening/howtogrow/10792603/Soil-report-shows-we-should-all-grow-more-of-our-own.html

4. Health and well-being:
   (i) Horrocks, C and Johnson,S Advances in Health Psychology Palgrave Macmillan 2012
   Gardening and the social engagement of older people
   (iii) Van den Berg, A; Custers, M 2011 Journal of Health Psychology http://hpq.sagepub.com Gardening Promotes Neuroendocrine and Affective Restoration from Stress

5. Fairness, health equity and equality
   (i) http://www.instituteofhealthequity.org/projects/fair-society-healthy-lives-the-marmot-review
   (iv) Derelic Land, Deprivation, and Health Inequality in Glasgow, Scotland: The Collapse of Place http://www.gsa.ac.uk/media/530191/180113_the_collapse_of_place_maantay_2013_final.pdf

The background papers with more references from the SAGS team that informed this report will be found on the SAGS website www.sags.org.uk
Dear David,

COMMUNITY EMPOWERMENT BILL – WRITTEN EVIDENCE

I refer to the Committee’s call for written evidence on 26 June as part of its Stage 1 consideration of the Community Empowerment (Scotland) Bill. Whilst we have not specifically responded to the questions laid out in the committee’s call for evidence we do offer the following in relation to Part 2 and Part 5 of the Bill

sportscotland is the national agency for sport. We are the lead agency for the development of sport and we have a clear focus on developing and supporting a world class sporting system in Scotland.

Part 2 – Community Planning

We note the proposals contained in section 1 and schedule 1 of the Bill that requires sportscotland (listed as The Scottish Sports Council) to participate in community planning. This does, of course, apply equally to a number of other identified ‘core partners’ as originally trailed in the Scottish Government consultation earlier this year. The suggestion is that national organisations should participate fully in the community planning process and in helping Community Planning Partnerships (CPP) fulfil their core duties linked to local outcomes.

sportscotland already works closely with, and invests, in 32 Local Authorities (and partners) to develop and implement integrated plans which will improve the quality and delivery of sport at all levels. Much of our work with Local Authorities is to achieve focused and shared outcomes. There has been extensive growth in our partnerships and relationships in recent years.

Investment into our Local Authority partners is based on robust plans that have a clear focus on agreed local outcomes. sportscotland invests in local authorities against these agreed priorities and outcomes with a clear focus on our Corporate Plan areas of School Sport, Club Sport, People and Places. This includes our flagship programmes of Active Schools and Community Sport Hubs. These are underpinned by an integrated approach to the People [coaches, teachers and volunteers], Places[ local facilities] and Partnerships and Planning which are essential to deliver quality experiences in local schools, clubs and communities at a local, regional and national level.
Annual action plans are developed and reviewed by the local partners and sportscotland Partnership Managers to ensure that the outcomes and priorities are successfully achieved and delivered. Open and continuous dialogue between local authorities and sportscotland results in a strong and effective partnership for local sport.

Whilst we understand that CPPs include a number of statutory partners, local authorities do have a responsibility to lead these partnerships and it is our view that our work in supporting local authorities to deliver local outcomes for sport is not being communicated to the partnership.

This view is backed by evidence based on work conducted by sportscotland in the wake of the consultation carried out on the Bill by the Scottish Government. The underlying aim of this work was to help assess the role sportscotland could or should play in supporting the work of CPPs as recommended by the consultation and proposed by the Bill. The secretariat of each of the 32 CPPs was approached and interviews conducted, either face to face or by telephone, during the period 23 April – 28 May. In summary the feedback from the 32 CPP secretariats resulted in the following:

- There are few calls for sportscotland to be involved with CPPs – certainly not at Board level. Most CPPs have streamlined Board membership to include those agencies that have a day to day presence in the local area.

- Secretariats believe an approach from sportscotland would be welcomed, but it should be an approach about how it can specifically contribute to achieving priorities of the Single Outcome Agreement. Involvement would only likely be with relevant working groups.

- Few CPPs have considered sport-related implications of the Community Empowerment Bill. Those organisations that CPP secretariats suggest could have a role to play in supporting community empowerment, in relation to sport, do not include sportscotland.

- CPPs have been approached by other agencies mentioned in the Community Empowerment Bill as having a perceived role to play in CPPs. For all those currently not involved, current CPP members suggest only being involved where they can support day-to-day activities.

- There is strong support for sportscotland and its contribution, but little call for it to be doing more.

We are, of course, willing to share more of the feedback gleaned from CPPs if the committee would find that useful. It is our view that connecting with CPPs on the back of the existing proposals in the Bill is about working with local authorities to better communicate to the wider partnership our work in delivering local outcomes for sport.
Part 5 Asset Transfer

From a sport point of view we are concerned with some of the language used in the published documents linked to the Bill. In that context we question whether a community empowerment bill that would ‘give local people a greater say in their area, enabling them to deal more easily with derelict and eyesore properties and take over underused or unused public buildings for the benefit of their community’, is an asset or liability transfer.

We are, of course, in challenging economic times and funding is unlikely to grow. sportscotland’s budget accounts for around 10% of Scotland’s public sector investment in sport and we know that it will require robust partnerships and bold decisions to achieve our vision for sport and a legacy from the opportunities we have during what is a golden period for sport.

We would not wish to see liabilities handed to community groups who then need to seek financial or other support from national organisations such as ours which funding rules do not allow us to give. As a distributor of National Lottery resources, continuing to invest in line with national guidance, we are required to ensure we protect the additionality principle. This means lottery investment adds to, and does not replace, other funding sources, achieving additional impact to what otherwise would have been achieved. Furthermore our standard terms and conditions attached to awards state that lottery monies must be used for the purpose set out in the approved application and are non-transferable. Any proposed disposal of assets wholly or partially acquired, restored, conserved or improved through lottery (or Scottish Government funding) cannot be progressed without first giving us written notification and we are satisfied that full market value is being sought.

There are also repayment terms and conditions that could apply in the case of proposed transfer of sports facilities under our current policy guidelines. We can share these terms and conditions with the committee if that was considered helpful. I should also point out that sportscotland has raised these matters with the Scottish Government Bill Team which intends to look into the policy implications, if any, of the points raised.

We have also raised with the Scottish Government Bill Team the importance of developing and building capacity in community groups, before asset transfer, and the number of funding sources there are for such work. Funding such as that provided in the Legacy 2014: Sustainable Sport for Communities Fund which is a £1 million partnership between the Robertson Trust and Scottish Government which has a goal to support more sports social enterprises to be able to own and/or manage facilities and deliver sustainable services. We wonder whether some or all of these sources of funding should be rationalised or co-ordinated to support community groups more strategically. We also question whether there will be sustained funding to support the implementation of the Bill and its proposals.
In sport we also have many examples of communities that are already empowered and have taken on the responsibility of asset transfer. The Bill provides further opportunities to enhance this approach. We have provided the Scottish Government Bill Team with case study information that provides learning that could help other communities to build individual and community capacity to take best advantage of the Bill. The Bill could have gone further in terms of demonstrating this type of learning. Much of what is being proposed by the Bill is also resource intensive and will need investment to release capacity in communities. As mentioned previously in this response we would not wish to see liabilities handed over to community groups without careful consideration of financial implications of doing so. We would also caution against strong community groups being able to seek asset transfer that results in ‘asset grab’ for exclusive use to the detriment of the wider community. It is important to foster inclusivity within the community in any asset transfer. Developing the type of community capacity described above would ensure a focus on the strengths and abilities of individuals who could then empower themselves.

Should you wish to discuss the content of this submission to the committee please do not hesitate to contact me.

Yours sincerely

Alan Miller
Strategic Partnerships Manager
HIGHLANDS AND ISLANDS ENTERPRISE

Written evidence

The Scottish Parliament Local Government and Regeneration Committee

COMMUNITY EMPOWERMENT (SCOTLAND) BILL
Introduction

As the Scottish Government’s economic and community development agency for the Highlands and Islands, we welcome the legislative framework brought by the Bill. We strongly support the Bill’s aims.

HIE is an established advocate and exponent of community empowerments and community-led development. The CEB presents an unprecedented opportunity to create a policy and legislative environment focused on community empowerment, community engagement and with community-centered outcomes. We are pleased to continue to be involved in the CEB development process and provide the following evidence for the Committee.

1 Extent of empowerment of communities

To what extent do you consider the Bill will empower communities, please give reasons for your answer?

Community empowerment means different things to different communities. Some will want to take on the ownership or lease of assets (land and buildings) and/or delivery of local services. Others may be more interested in engaging with the public sector to directly influence how services are delivered or how public assets are best used.

The Bill usefully differentiates engagement from empowerment; engagement is about giving communities a voice in public sector processes whereas community empowerment is where communities lead change for themselves. The Bill gives all public sector bodies responsibility to create the conditions to encourage and support strong, independent and resilient communities. Ensuring a focus on supporting community empowerment is a key tenet of public service reform. As such we consider the CEB will fundamentally provide opportunities for community empowerment and will do this by both the formative (new) provisions it includes and the provisions which update and strengthen existing legislation.

The extent to which the CEB will empower communities is most significant in the following areas:

Within Part 3 – provisions formalise the opportunity for communities to engage in improvement processes – which has the potential to create a step change in levels of engagement by communities in the design and delivery of public services.

The suggested amendments to improve the effectiveness and efficiency of Part 2 of the Land Reform (Scotland) Act 2003, have reflected well on the experience to date of using the provisions. We believe these will make operation of that Act more workable, and therefore empowering, as a means to realise community asset ownership. The extension to urban land brings equity of the provisions across Scotland.

Part 5 - Asset Transfer Requests confers significant new powers to communities that can appropriately demonstrate their ability to deliver enhanced community benefit through Public sector assets.

Similarly, the enhanced transparency of the extent of common good property through Part 6, enables communities to effectively use participatory, Community Planning and asset acquisition powers within the CEB, directly enabling community opportunities and potential benefit.

2 Benefits and Disadvantages

What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

We comment here from HIE’s perspective, covering Parts 2-5 of the CEB only, as those are the most relevant to our work.
The CEB will impact on all public sector agencies and authorities. However the greatest impact may be on local authorities given the provisions which include: Community Planning; participation requests; public asset transfer; common good; allotments; and non-domestic rates. These provisions are equally pertinent to HIE in our role as Community Planning partner and owner of public assets.

Our dual remit of economic and community development means we have a corporate focus on strengthening communities. As such, many of the CEB’s provisions can be integrated into our working practices. The CEB also provides an enhanced range of opportunities for us to further support communities to realise their aspirations and growth ambitions.

There are also significant benefits for our pan-Scotland work supporting communities through the Scottish Land Fund and Community Broadband Scotland, where access to assets and ability to influence service design are very relevant. The empowering provisions of this Bill have a significant beneficial alignment with HIE’s strengthening communities work.

The Bill will require us to take a range of steps to address its content. In particular, we will revisit and further enhance our internal focus on CPP delivery, we will look to work with public sector partners in receipt of participation requests and review our policy positions around property and asset transfer. New mechanisms to enable us to respond to CEB provisions will be needed and we anticipate being able to work with partners across the region as they develop their own responses. We consider regional coordination and collaboration across public sector authorities on CEB provisions may in some areas be appropriately led by HIE – having consulted our partners.

Whilst not significant in terms of resource implication, these actions arising from the Bill will mean some permanent adjustment corporately as we comply with the provisions of the CEB.

We recognise that the demand from communities, stimulated by the CEB, will undoubtedly have resource implications for all those engaged in community capacity building, locally, regionally and nationally.

3. Community capability to take advantage of the Bill

Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Many, but not all, communities in Scotland will have the capabilities to take advantage of the CEB’s provisions. Communities comprise individuals with wide ranging skills and abilities, but the capacity of individuals to contribute to community development varies due to issues such as competing priorities (employment, personal and family priorities) time availability, financial status and individual confidence. In addition there are cultural, experience and capacity differences between communities. For example, land ownership aspiration and practice is not uniform across Scotland, with that being much stronger in parts of the Highlands and Islands than in other parts of Scotland. The extension of powers to urban communities introduces many more communities to the opportunities which asset based community development offers, and those communities may require support in order to realise the opportunity. Our experience evidences that community-led developments often evolves over time, starting with smaller initiatives, to build up capacity/skills, following which more ambitious undertakings can be driven forward.

There are also differences between rural and urban communities as a result of service provision design/availability between more easily serviced population concentrations and the challenges of servicing more remote, sparsely populated communities. Remote communities for example over time have more frequently exercised their capability to deliver a lifeline or amenity service themselves rather than do without it. In doing so, experience and capability is developed - even if out of need rather than opportunity. The provisions of
the CEB may therefore be capitalised on more readily where capacity has been built through earlier experiences.

Public and third sector partners will have an on-going role to strengthen the capabilities of communities across Scotland to ensure equity of access to the empowering provisions of this Bill.

4 Suggested Changes to Specific Provisions in the Bill

Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

We are content with the specific provisions of the CEB with the exception of the areas detailed below. We have made suggestions for changes which we believe would enhance the intended outcomes and workable delivery of the legislation. We are focusing our suggested changes on Parts 2 to 5 of the Bill, which relate most strongly to our remit and where we believe we have most value to add.

Part 2 Community Planning

We have commented through earlier consultations that high impact outcomes through CPPs can be seen in those CPPs where strong engagements at the appropriate leadership level by partner organisations is in place. Where this is the case, the partnership can identify shared and lead responsibilities for the CPP outcomes and enable strong collaborative delivery. The CEB substantially strengthens CPP duties and this will support the process of mutual commitment to a shared locality agenda and allow innovation in public service design, planning and delivery.

The proposed approach to determining the make-up of community planning partnerships is proportionate and provides the necessary flexibility to ensure all relevant stakeholders are included in the setting of local priorities and outcomes. However, we are unclear as to the merits of establishing the proposed ‘corporate bodies’ as set out in section 12 within part 2 of the draft CEB. Effective collaboration and the established understanding of the advantages to CPP delivery through powerful partnerships should negate the requirement to establish new structures in this manner and would therefore suggest there is no need for its inclusion within the CEB.

Clear articulation of local outcomes provides valuable direction to operational teams across the public agencies; however, measuring progress requires reliable, timely and informative small area statistics. In many sparsely populated areas the availability and robustness of socio-economic data does not easily allow for the tracking of changes over time – at a sufficiently granular level to inform policy decisions. Complementing the objectives of the CEB, it would be helpful to in tandem review the approach taken to capturing and publishing small area statistics to ensure progress reporting can be undertaken in a meaningful manner.

The CEB policy memorandum suggests (para 41) that the list of key partners will be extended and schedule 1 indicates this. However, this does not appear to be consistent with Part 2 Section 8 (Governance). It may be helpful for CPPs to determine their essential partners to reflect local circumstances and priorities. In addition, under this section and in schedule 1, given the connected economic development remit of HIE and Scottish Enterprise, it would be reasonable for the Enterprise Agencies to agree together with CPPs the most effective representation (rather than require both to be represented across the Highlands and Islands, which appears to be indicated).

Part 3 Participation Requests

We welcome the broad definition of ‘community-controlled body’ and ‘community participation body’ as by adopting this inclusive approach and not defining community in too narrow a context will enable a range of organisations with diverse interests to put into practice the provisions of the CEB.
The criteria as detailed for the refusal of a participation request appear to be proportionate. However, issues around consistency may arise if the criteria are open to interpretation. Guidance notes on each individual criterion would help in this respect, and we would be pleased to offer input here in due course. Additionally, it may be advisable to clarify whether all, or some, of the criteria are required to be met as detailed in Section 19(3)(c). Parity of the value(s) placed on qualitative and quantitative outcomes in the decision process would also be relative to include.

Outcome improves process - where a public service authority does not have an outcome improvement process in place (Section 20(3)), and subsequently Section 23, the consultation period from the time of agreeing a participation request to agreeing the outcome improvement process and subsequently establishing the process is extensive. This time period, as currently detailed in the Bill, may have a detrimental effect on the momentum of the community participation body making the request. Similarly, the CEB does not identify a maximum timeframe for the outcome improvement process to be completed within. Whilst we recognise that this may be agreed once the process has commenced, a maximum time period for the process would be beneficial for all parties involved as well as bringing clarity and certainty.

The reporting required within the CEB may be further enhanced if the learning from successful participation requests was linked more strongly to the Community Planning Process, and enhancing early community engagement in the design of services, as this may reduce the need for and number of participation requests in the future.

**Part 4 Community Right to Buy Land (CRtB)**

The provisions will extend the scope and flexibility of the CRtB and make the existing legislation more workable. Noted below are a number of detailed points for consideration which we would be pleased to discuss further with officers or the Committee.

**31(4): Late registration relevant work/ steps requirements** Removing ‘good reasons’ is helpful as this normalises late registrations. For a variety of well documented reasons late registrations are very much the rule rather than the exception.

**31(4)(a)(i):** It would be most helpful if this subsection enables communities to progress a late registration if they have considered purchase of an asset, specific or general, as detailed in a local development plan.

We advocate communities taking a strategic and holistic approach to their development through the establishment of whole community plans. Amongst other identified needs, these plans are likely to include asset ownership aspirations of specific or general nature. These plans involve widespread and detailed community consultation and are resource intensive for the community. As such they tend to have longevity of 3-5 years or more. If a whole community plan containing relevant asset ownership aspirations is considered appropriate evidence under the proposed ‘taking relevant work’ provision then this would be welcome. If so, it would be important for these actions to be considered ‘eligible’ for the lifetime of the plan. Consideration of guidance notes to clarify eligible relevant work/steps would be beneficial.

**31(4)(aa)(iii):** It is commonplace for the initial work to be undertaken by a community council or a working group with the intention that another body would pursue the CRtB. Pursuing a CRtB is a significant consideration and we advise communities to establish a community body (compatible with Section 34 of the Act) only when they are confident an application is to be made. Consideration should be given to decoupling the requirements for relevant steps/relevant work and the application being made by the [same] community body. This is an appropriate practical approach and does not render the initial work undertaken less relevant. Rather, it preserves capacity within the community as they consider a CRtB.
37(6) **Appointment of ballotter** Much of this information has already been submitted to Ministers as part of the application process and as Ministers supply background information to the ballotter in the proposed section 51A(2) we do not see any merits in this subsection. Further, we are not persuaded of the need for the ballotter to hold this information as the ballotter’s role is solely to undertake the ballot.

48 **Abandoned or neglected land – compulsory purchase powers** The inclusion of compulsory purchase powers, as a lever of last resort when all other efforts have failed and in certain considered circumstances, is noted. However, we would emphasise the need to be mindful of the local and wider consequences of inclusion of compulsory purchase provisions in contemporary legislation, especially where pre-existing powers are in place, for instance within other public body legislation. Having considered in detail the application of the CEB, we note the possible role of compulsory purchase as a mechanism (evident from the crofting community right to buy (CCRTB) where the lever of a form of compulsory purchase has been a largely passive facilitator). However, we would favour resort to existing compulsory purchase powers rather than re-prescription of these within the CEB. To ensure a balanced approach, we would only wish such powers to be available once a willing seller (negotiated) route to ownership has been exhausted and where a purchase by the community is demonstrably in the public interest.

**Abandoned or neglected land**

Although supportive of this principle, we consider the proposed new section, Part 3A, could be strengthened by additional definitions and information, which could be provided as guidance notes.

For instance, how might the difference between abandoned and neglected be distinguished? What criteria might “prove” a land asset is abandoned or neglected? We are not aware of an obligation on an owner not to abandon or neglect their property – might this obligation be an unintended implication through the CEB as presently worded? Consideration might usefully be given therefore to definitions, terminology and the ability for their consistent applications in urban, rural and remote areas.

Proving continuing ownership – this requirement will be challenging to demonstrate and it is unclear how the proving of ownership is connected to the intentions of sustainable development and the mitigation of abandoned/neglected land.

As drafted, the Part 3A provisions reflect the content of the CCRTB which is widely acknowledged to be challenging for crofting community bodies to use. We welcome the recent development to address CCRTB through the CEB and we will comment fully within any consultation offered in respect of these matters.

**Part 5 Asset Transfer Requests**

Public assets account for just over 10% of Scotland’s land area (excluding the seabed) so it is beneficial to facilitate the transfer of public assets to communities where this will lead to enhanced outcomes and potentially a reduced demand for public services. Whilst supporting the intent of these provisions – which we consider to be appropriate and balanced - their effectiveness will be determined to a great extent by the regulations. Consultation on the regulations would be welcomed.

51: **Meaning of ‘relevant authority’** We suggest the Bill would be strengthened and simplified by extending ‘relevant authority’ to all Scottish public sector bodies.

52: **Asset transfer requests** To promote a connection between the community and the asset, we suggest the community transfer body is required to demonstrate a connection with the asset. NB As currently drafted, a large conservation body or third sector organisation operating at a national or UK level may satisfy the community transfer body requirements – if this is unintended, and local communities/communities demonstrated interests connected with asset are intended, wording may benefit from revision.
54: Asset transfer requests - regulations  We recommend the regulations identify the criteria to be demonstrated by the community transfer body's asset transfer request. These could include:

- Information/evidence of organisational capacity
- A sustainable management/development/business plan
- Community involvement and evidence of community support
- Information on who/what will benefit and how they/it will benefit

55: Asset transfer requests - decisions  We have a portfolio of industrial/commercial premises throughout our region, which we deploy to assist in achieving wider economic development. Our policy is not to be a long-term landlord but to sell on properties when appropriate. We favour an outcomes based approach regarding the assessment of asset transfer requests. This would be consistent with Parts 1 and 2 of the CEB and will ensure maximum impact and benefit is achieved taking full cognisance of local circumstances. For example, it is our standard practice to offer sitting tenants the first refusal to purchase the properties they occupy and we have also supported asset sales to community bodies. In the event of interest in one of our assets from both the sitting tenant and a community organisation we would wish to consider the merits of both these proposals. We are confident section 55(3) accommodates this approach.

Inclusion of the following, in our view, would further strengthen these provisions:

The establishment of a national public asset register; the Minister’s announcement for all public assets to be recorded in the Land Register will facilitate this.

The experience of the Community Right to Buy and National Forest Land Scheme is that communities often respond to opportunities. We therefore suggest these provisions extend to the disposal of surplus assets by relevant authorities.

Finally, there is scope for communities to register an interest (CRTB) in public assets and common good land. We assume both routes will be available unless a prohibition is applied and suggest the guidance notes address such matters. At present there are examples of public authorities willing to sell assets to communities, yet require the community to first register an interest in the asset via the CRTB. This is a complex and demanding undertaking for the community and unnecessary where there is a willing seller. However, that public authorities currently use the process might indicate a preference to adopt an established process (potentially overlooking complexity for communities) over one which is more streamline and potentially effective. The opportunity exists within the CEB therefore to require public authorities to use the most efficient asset transfer mechanisms available for both the public authority and the community body.

5 Equal Rights Impacts as set out in Policy Memorandum

What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

The Bill explicitly recognises the enabling power of the current duties placed on public bodies by the Equality Act 2010 and the Public Sector Equality Duty (PSED) and acknowledges that its provisions are compatible with the European Convention of Human Rights. These are powerful foundations on which to build on the realisation of equal rights through community empowerment (e.g. when making asset transfer or participation requests), making explicit the provisions on equality impact assessment already covered by PSED. The requirement to form Community Planning Partnerships strengthens opportunities to develop partnership equality outcomes which reduce inequalities through collective responsibility and action, ensuring an equalities dimension is integrated into place-based policies and activity, which are recognised as having a particularly beneficial impact on some groups of people in both urban and rural settings.
The provisions on participation requests and addressing concerns that community bodies are open, inclusive and truly represent their communities have the potential to significantly increase the realisation of rights for some groups of people. This strengthens community empowerment by creating the right for communities to be engaged and to be supported by public bodies, taking into account the potentially differing needs of individual community groups, whether rural or urban.

The Policy Memorandum summary of the EqIA carried out focuses on only one element of the PSED, that the Bill is not discriminatory. Much of the impact of the Bill in achieving equality, as outlined above, will be accomplished through public bodies’ influence in maximising opportunities to advance equality of opportunity and foster good relations, the other elements of the General Equality Duty. This may be outlined in greater detail in the full EqIA document.

Determination of the compatibility of right to buy proposals as they affect the landowner and the community require legal consideration and we are aware of the detailed legal engagement undertaken during the CEB development period.

Ends
Community Empowerment (Scotland) Bill: Submission by the Chairs of Scotland's 7 Regional Transport Partnerships

This submission is by the Chairs of Scotland's 7 statutory Regional Transport Partnerships (RTPs). The RTPs have a statutory duty to engage in community planning. All RTPs currently seek to proactively support community planning in Scotland’s 32 community planning areas generally through the implementation of their statutory Regional Transport Strategies (RTSs), and specifically by contributing to the achievement of national and local SOA outcomes relating to sustainable economic growth, improving personal and community health and wellbeing, and improved environmental sustainability, including carbon reduction. As indicated in the Policy Memorandum accompanying the Bill, transport is a key cross-cutting community planning issue, which helps ensure that communities have efficient, effective and accessible services; that local economies are vibrant and well connected to markets; and that local communities are better and healthier places to live, work, visit and enjoy.

The RTPs are working proactively on a wide range of initiatives, including improving local and regional strategic connectivity; reducing peripherality and combatting social exclusion through a range of transport connectivity measures, including issues related to transport and health; and reducing the environmental impacts of transport, which are aimed at supporting achievement of local and national outcomes in partnership with our constituent Councils, Health Boards, Police, Fire & Rescue, Universities and Colleges, the Voluntary sector and other statutory community planning agencies.

The RTPs support proposals which will improve efficient and effective partnership working and will strengthen the role of community planning. Part 2 and Schedules 1, 2 and 3 of the Bill propose designation of various public sector bodies in relation to community planning. The RTPs welcome the inclusion of RTPs as:

- Public Service Authorities, as introduced by section 4 (1) of the Bill;
- Relevant Bodies, as introduced under section 16 (1) of the Bill; and
- Relevant Authorities, as introduced under section 51 (1) of the Bill

The reinforcement of the current statutory role of RTPs within community planning implied by these designations is strongly supported.

However, the RTPs have concerns relating to Part 2 of the Bill which, in Section 8, defines those partners having a statutory Governance role in community planning as Councils, Health Boards, Scottish Enterprise/HIE, Police Scotland and Fire and Rescue Scotland only, omitting RTPs and other defined bodies in Schedules 1, 2 and 3. In addition Part 2, Section 9 on community planning partners’ duties states that they:

- must cooperate with other community planning partners in carrying out community planning;
- must, in relation to a community planning partnership, contribute such funds, staff and other resources as the community planning partnership considers appropriate to ... improving, contributing to achievement of local outcomes ... and for the purpose of securing participation of community bodies in community planning;
- must provide such information to the community planning partnership about local outcomes as the partnership may request; and
- must, in carrying out its functions, take account of community planning local outcome improvement plans.
Whilst the generality of the above duties to cooperate in the achievement of community planning outcomes is also supported, it is of serious concern that RTPs are not included within the list of specified Governance bodies for community planning in Part 2, Section 8 (2) of the Bill and, therefore, have the potential to be excluded from core governance and resource decision-making in relation to determining and agreeing community planning resource requirements in accordance with Part 2, Section 9 of the Bill. This appears to be a potentially serious and hopefully unintentional governance dis-connect within the Bill, as currently drafted.

Part 2, Section 8 (3) of the Bill indicates that Scottish Ministers may, by regulations, add to the community planning partners listed under Part 2, Section 8 (2). However, in order to ensure that RTPs can continue to play a fully supportive role in community planning, the RTP Chairs formally request that the Bill is amended to specifically include Regional Transport Partnerships, along with the other statutory community planning Governance bodies, listed within Part 2, Section 8 (2).

If you require any further information or clarification of the content of this submission please contact Eric Guthrie, Partnership Director, Tactran at.
Community Empowerment Team  
The Scottish Parliament  
Edinburgh

Dear Sir  
04/09/14

COMMUNITY EMPOWERMENT (Scotland) BILL

Introduction
Fortrose & Rosemarkie Community Council has responded to previous consultations on this Bill. The following response to the Call for Evidence avoids repetition except when necessary to emphasise the points being made.

Definition of “Community”
A group of people who have a shared ‘interest’ is not necessarily a community body. They are self-selected bodies, can overlap other communities to which they are not accountable
A community council is an elected, statutory body representing the population of a defined area. It is governed by a standard Constitution and Code of Conduct. A community council is in a unique position, but to enable it to develop its full potential to serve its community, best practice requires changes of legislation.

Legislation
Fortrose & Rosemarkie Community Council has previously stated its views regarding:

- Corporate Body Status with the appropriate legal powers.
- Status as a Participant in decision making on delivering Public Services.
- Clarification of its role which is not very clear in the 1973 Act.

The strength of a Community Council can be enhanced by these amendments and the consequent benefit of better outcomes for their residents.

Community Planning
Fortrose & Rosemarkie Community Council took part in workshops and seminars during the Highland Council’s pilot scheme on Community Planning. The Pilot Scheme was authorised by the Scottish Executive. The community council also took part in an annual meeting of
Highland Council’s ‘Renewing Democracy and Community Planning Select Committee’. At discussions and seminars on Community Planning the public services included Police, Fire and Transport; the Wellbeing Alliance and many members of the Scottish Council of Voluntary Organisations (SCVO) were also involved. The role of communities was not clearly defined. Attendance at some seminars was poor and officials outnumbered delegates. Participation in matters of community safety seemed to be reserved to Fire and Police and there is valid criticism that this type of Planning is too centralised. Recent command structure changes could lead to better direct liaison between the emergency/safety service providers. As far as communities are concerned the outcomes of Community Planning discussions have not been productive. The value of maintaining this section of the Bill needs critical re-assessment.

Common Good
The Local Authority holds and administers Common Good assets on behalf of the community which owns them. This Community Council monitors its holdings, including two caravan sites and a Town Hall regularly. The proposed Register of property should have details of cash and/or investment holdings and a short statement of the current bank account. There are some matters of principle:

- Applications for grants from the Common Good must be submitted to the Local Authority through the Community Council. Lobbying elected members by special interest groups for Common Good grants is unacceptable. The Community Council is the appropriate consultee.

- The Community Council should be able to veto any proposed use of Common Good assets or income made by the Local Authority and its elected councillors. The right for Community Councils to decide must be embedded in statute. (This was recommended in an earlier submission.)

Allotments
Even in rural areas there is a shortage of suitable land. In this community 14 hectares of grade 1 farmland has been lost to housing, contrary to Scottish Planning Policy. Gardens are classed as “brownfield” site for housing. The loss of gardens is detrimental to healthy activity and to the environment. This misuse should be rectified by the Bill. Allotment sites may require vehicular access and possibly a power supply. Given that they can contribute to a food growing strategy the administrative and financing management as proposed in the Bill is not excessive. A community body might have a supervisory role on behalf of the Local Authority e.g. keeping waiting lists.

CONCLUSIONS
1 The Bill could add extra duties to the work of a community organisation. Empowerment is achieved by participating in the decision process relating to the
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provision of public services, and monitoring the outcomes of these decisions. Consultation with community organisations is too often tokenistic. The principles listed in the previous paragraphs on Legislation and the Common Good are necessary for Community Council to feel that they are “empowered”.

2 The Bill imposes extra administrative tasks on public services providers. Transfer of ownership of unused buildings or land, if any is available, will make little difference to the administrative workload.

3 The capability of community bodies to take on all or some of the actions in the provisions of the Bill could be limited. Community Councils in particular have had their membership reduced on a population basis and appointing suitable Associate Members is not always possible. Many community bodies may not have the time to carry out the detailed tasks involved in the provisions of the Bill.

4 Apart from Community Planning there are no comments on the choice of matters and provisions of the Bill.

Yours faithfully

James Cornwell (Community Councillor)

Pp Mrs Elizabeth M Brown
Chair Fortrose & Rosemarkie Community Council
The Church of Scotland has a commitment to, and an active presence in, every parish community in Scotland; in particular, the Church has prioritised work in Scotland’s most deprived and vulnerable communities, recognising the commitment of resources required to support and sustain that work. In many of these communities we are happy to work in partnership with Faith in Community Scotland and the Poverty Truth Commission (welcoming the part played by the PTC as in the Bill’s reference group). The Church’s structure has always been rooted in local, community-based decision-making through Kirk Sessions.

The Church’s original submission to the Scottish Government’s consultation on this Bill came from that commitment and engagement, and our reflections now, on the Bill as presented to Parliament, come from reading the Bill in light of that experience and our earlier submission.

The Church’s General Trustees will also submit evidence on matters relevant to their remit in relation to church properties.

1. **To what extent do you consider the Bill will empower communities, please give reasons for your answer?**

While retaining some reservations about the effectiveness of legislation in bringing about the culture change we believe is needed to move from tokenism to real partnership, we broadly welcome the Bill. In shifting the emphasis from consultation to participation and empowerment, the Bill lays down a significant marker for change.

Because we believe in the importance of a clear consideration of values, we welcome the clear opening statement in the policy memorandum of the principles underpinning the Bill as “subsidiarity, community empowerment and improving outcomes”, although we would also prefer to see an explicit aim of tackling inequalities running through the Bill rather than an occasional reference to that as a by-product.
We agree with the Poverty Alliance and others that a power for Ministers to create statutory regulations for engaging and empowering communities, which all public bodies must follow and report on, would help move from expectations which are patchily fulfilled to real empowerment across the board. The aim must be to ensure communities are embedded in the design of services in their areas. There remains a risk in the working of CPPs with two tiers of “partners” and “participants”.

A significant limit to the effectiveness of the Bill lies in the neglect of provision for building capacity, both in community bodies and in established public bodies. The financial memorandum anticipates extra administrative costs but appears to expect no additional funding need for building capacity (see further below). Without this funding, other measures may prove ineffective.

We welcome the recognition of the role of communities of interest as well as of place, while recognising that CPPs etc. continue to work with a geographic focus.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

People are the greatest asset of any community, not a hurdle to be overcome; and community bodies are key resources, not competitors to traditional public bodies. Genuine engagement in the design and delivery of services will improve outcomes.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Empowering communities has to mean more than opening a few doors into existing structures while only expecting some extra administrative costs. While some community bodies and individuals can readily slot into these ways of working, others will not. This is partly about building capacity – for which there would be clearer provision than the hope that it “may” happen (Scottish Government response to the LG&R Committee question 39 re s9(3) of the Bill) – but also about developing new models and practices of decision-making.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Our major concern is in the absence of specific provision in the Bill for participatory budgeting. In responding to the LG&R Committee, the Scottish Government has pointed out that the Bill will “strengthen the involvement of communities in setting priorities for public services, which is closely related to how budgets are spent” and that “a participation request under Part 3 of the Bill … may also address how budgets can be spent more effectively”. We believe that the Bill would be significantly strengthened by going further in making clear provision for participatory budgeting, such as in the Poverty Alliance’s suggested requirement for CPPs to set aside 1% of their annual budget to be decided by some appropriate community participation process, to kick-start the
process of embedding this in practice by demonstrating its value. While we welcome the establishment of a working group on Participatory Budgeting as a step in the right direction, and legislation may – as the Government states - not be “necessary to make participatory budgeting (PB) effective”, to fail to give a clear impetus through this Bill would be a missed opportunity.

We broadly welcome the sections on Community Right to Buy Land and Asset Transfer requests. In particular, we welcome the recognition that “ownership is not always the best answer; leasing, or managing a site on behalf of the owner, may be a better solution which allows for a division of responsibilities and costs”. A flexible set of tools, combined with flexible responses on rents, rates etc. and appropriate professional support, is important to empowering communities here (as is reflected, for example, in the evidence to the Committee from Love Milton). In addition to those already stated, we support the amendments proposed together by the Poverty Alliance, Oxfam, Barnardo’s and others.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

The lack, at this point, of a published equality impact assessment is a concern, especially as there are some expressed hopes for tackling inequalities. As indicated above, we believe this (tackling inequality) should have been one of the key principles underpinning the Bill, in order to keep that focus throughout.

In relation to sustainability, we particularly welcome the requirement for local authorities to prepare and keep under review a food-growing strategy. Our work towards finding ways forward “beyond food banks” sees this as an important dimension of putting the need for food banks behind us.

\[\text{http://www.actsparl.org/media/138602/or-cos-proposed\%20community\%20empowerment\%20and\%20renewal\%20bill-sept12.pdf}\]
LOCAL GOVERNMENT AND REGENERATION COMMITTEE

COMMUNITY EMPOWERMENT (SCOTLAND) BILL

STAGE ONE CALL FOR EVIDENCE

Response from East Ayrshire Council

INTRODUCTION

1. The Scottish Government introduced the Community Empowerment (Scotland) Bill to the Scottish Parliament on 11 June 2014. The Government says that its Bill will:
   - Empower community bodies through the ownership of land and buildings and strengthen their voices in the decisions that matter to them; and
   - Support an increase in the scale and pace of public service reform by cementing the focus on achieving outcomes and improving the process of community planning.

2. The Bill has been preceded by two Government consultations, in 2012 and 2013/14, and subsequently has been sent for scrutiny to the Local Government and Regeneration Committee, which has issued a Stage One Call for Evidence, with a deadline of Friday 5 September 2014.

3. East Ayrshire Council has responded to previous consultations on the proposed Community Empowerment (Scotland) Bill, the most recent being in January 2014, following approval by Cabinet on 14 January 2014.

4. The following information provides East Ayrshire Council’s response to the five questions, which the Committee has asked to be addressed.

CALL FOR EVIDENCE

1. **To what extent do you consider the Bill will empower communities, please give reasons for your answer?**

5. East Ayrshire Council supports the principle set out in the Community Empowerment (Scotland) Bill, which provides a positive step in providing people with more confidence that their views are heard, and that they can influence what happens in their community and contribute to delivering change.

6. In East Ayrshire, through Community Planning, good progress has been made in empowering local people and involving them in planning and decision making; however, the Council and its Community Planning Partners recognise that much more needs to be done to address the recommendation of the Christie Commission to build public services around people and communities, their needs, aspirations, capacities and skills, and work to build up their resilience.

7. As a result, we are continuing to build on existing arrangements for the delivery of community based services, which ensure that we focus on empowering our communities and neighbourhoods, and the need to move away from a culture of dependency to social integration, enhanced community cohesion, co-production...
and the promotion of local ownership, responsibility and participation. In East Ayrshire, the National Standards for Community Engagement have served well in ensuring the quality of engagement with communities and consideration should be given to reintroducing them into the Bill.

8. The Bill provides an enabling legislative framework to support community participation in setting priorities and in the design and delivery of local services. It would be our view that the Bill is not intended to be prescriptive and provides a framework to help communities to realise the outcomes which matter to them. It will be important for Community Planning Partnerships (CPPs) to have flexibility locally to agree how communities are involved in or, can best support improving local outcomes for their communities through Community Planning.

9. The proposals in respect of the ‘Community right to request to participate in processes to improve outcomes of service delivery’ support participatory democratic processes and the empowerment of communities, and place their right to be heard firmly in a legislative context.

10. East Ayrshire Council recognises that community ownership of assets can be a valuable tool in empowering communities, building the capacity of local citizens and inspiring others to create locally responsive solutions to local needs. The proposed extension to the community right to buy provisions and amendments to the procedures contained in Part 2 of the Land Reform (Scotland) Act 2003 will assist in this regard.

11. East Ayrshire Council is committed to community asset transfer and has since the adoption of its Community Asset Policy in October 2012 and the establishment of a dedicated Community Asset Transfer Team in July 2013 authorised seven transfer applications and received expressions of interest in pursuing transfer from more than 100 community groups or voluntary organisations. The introduction of a statutory framework in this regard will enable the Council to build on its existing policy and processes.

12. By creating a number of statutory rights for community bodies, and corresponding duties on public authorities, the Bill will provide a degree of consistency and a supportive legal framework to underline the Scottish Government’s expectation that all public authorities will support community empowerment and participation.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

National Outcomes

13. The shared Statement of Ambition (15 March 2012) makes clear the commitment of the Scottish Government, COSLA and representatives of CPPs to retain and develop Community Planning and Single Outcome Agreements (SOAs) as the foundation of an outcomes based approach to public services in Scotland.

14. The development and implementation of SOAs in the context of Community Planning have provided the foundation for working towards jointly agreed outcomes. In moving forward, there has been a clear commitment by the Scottish Government and CPPs to SOAs, as the key framework for the delivery of
outcomes, to ensure that all partners are focused on one set of key local outcomes, for which they are jointly accountable, linked to national outcomes.

15. Within the overarching framework of the National Outcomes Framework, a range of local outcomes have been agreed with the full involvement of local communities. This is based on the understanding that local partners and local people understand their communities best and are able to identify the priorities for local areas.

16. The proposal to place a duty on Scottish Ministers to consult on and publish a set of outcomes that describe their long term strategic objectives for Scotland would strengthen the link between locally agreed outcomes identified in SOAs, within the context of Community Planning, and the national outcomes set out in a national outcomes framework. Improved co-ordination and collaboration between national and local government and CPPs would result in the development of a national outcomes framework founded on a wide range of priorities and outcomes agreed by Scotland’s communities, resulting in improved outcomes for communities.

17. A complementary duty on Ministers to report on and publicly progress towards these outcomes would not only ensure transparent public reporting as a key element of scrutiny and accountability but also provide clarity for communities on how delivery of outcomes at local level has impacted at national level.

18. East Ayrshire Council welcomes the move to place the requirement to plan for outcomes on a statutory basis. It will be important, however, that involvement in this process allows consultation and engagement across CPPs and other key stakeholders to provide a range of opinion on priorities and expectations; otherwise, this could result in a centrally driven process by the Scottish Government.

Community Planning

19. East Ayrshire Council welcomes the proposals being put forward by the Scottish Government, which will further strengthen Community Planning Partnerships by clearly laying out the core duties on CPPs and all relevant Partners in the local authority area.

20. Within East Ayrshire, our Community Plan, which acts as the Council’s Corporate Plan, is recognised as the sovereign planning document for the local area, providing the overarching strategic policy framework for the delivery of services by all the Partner agencies. Our Single Outcome Agreement is the associated performance reporting framework for the East Ayrshire area.

21. The National Statement of Ambition and the associated Agreement on Joint Working on Community Planning and Resourcing are very clear about the expectations on CPPs in driving forward service integration, increasing the focus on early intervention and prevention, and securing continuous improvement in public service delivery. In this context, clarity on the core duties of CPPs and all participating Partners is welcomed.

22. A statutory underpinning for the SOA or similar process will support us to build and strengthen the work which has been taken forward locally with Partners and communities in respect of the SOA and ensure a focus on a range of challenging issues, including the joint resourcing of activity to achieve agreed outcomes; robust
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scrutiny and challenge of Partners’ contributions to the achievement of outcomes; and the management of performance across the Partnership.

23. The proposed duties of the CPP support effective community engagement and the involvement of the third and business sectors and will build on the existing robust arrangements within the East Ayrshire CPP.

24. Starting from the premise that communities should lie at the heart of Community Planning, East Ayrshire Council and its Community Planning Partners have a joined up and systematic approach to community engagement, which ensures that partners work together to understand the challenges faced by local communities and promote and support the involvement of local people at both the strategic and local level.

25. Good progress has been made in empowering local people and involving them in planning and decision making; however, the Council and its Community Planning Partners recognise that much more needs to be done to address the recommendation of the Christie Commission to build public services around people and communities, their needs, aspirations, capacities and skills, and work to build up their resilience.

26. As a result, we are continuing to build on existing arrangements for the delivery of community based services, which ensure that we focus on empowering our communities and neighbourhoods, and the need to move away from a culture of dependency to social integration, enhanced community cohesion, co-production and the promotion of local ownership, responsibility and participation.

27. This work includes an increasing emphasis on working with community groups to build the capacity of community representatives and groups, and to explore ownership of local facilities and the establishment of community trusts.

Participation Requests

28. The proposals in respect of the community right to request to participate in an outcome improvement process are designed to support participatory democratic processes and the empowerment of communities, and place their right to be heard firmly in a legislative context; however, they appear overly bureaucratic. The cross reference to the new proposals in relation to engaging communities in Community Planning is important in ensuring that the request to participate does not stand alone and that engagement with community views is seen not only as the responsibility of communities but also as a duty on public sector authorities to initiate participatory processes of community engagement.

29. However, while the Council and its Community Planning Partners continue to support the engagement of local people and involving them in planning and decision making, we have concerns regarding the volume of participation requests that could potentially be made by community participation bodies to participate in an outcome improvement process, and the associated capacity issues and resource implications around managing this process. Community Planning Partnerships should have flexibility to develop locally responsive solutions to engagement structures and procedures within a legislative context.
Community Right to Buy

30. As indicated above the extension of the Community Right to Buy provisions and the streamlining of procedures are welcomed by the Council particularly those that relate to the definition of community. Again whilst the Council appreciates the need for communities having a role in taking on responsibility for abandoned properties it considers that that outcome, if it is to be achieved on a sustainable basis through the introduction of specific rights, will result in a requirement for additional capacity building and ongoing support to be provided from the Council.

Community Asset Transfer

31. Whilst the introduction of a statutory framework will allow the Council to build on its existing policy framework, the terms of the legislation, and in particular the initial onus on community groups to identify terms and conditions, will require the processes within that framework to be re-evaluated and reviewed. It is our experience that community groups are not in a position to identify terms and conditions and prefer a framework which places this responsibility of the local authority. If the desired outcome is to be achieved additional capacity building will be required which will have a resource implication for the Council.

32. Whilst the Council welcomes, in terms of Section 53 of the Bill, a clearer definition of those groups which will be eligible for statutory transfer, it is felt that the requirement for 20 members, both in the case of a company or a Scottish Charitable Incorporated Organisation may be difficult to achieve particularly in a number of our more rural communities.

Common Good

33. East Ayrshire Council welcomes the opportunity provided by the Bill to provide clarification on the law surrounding common good and has already carried out a common good title audit and maintains a separate record of its common good assets. Whilst it is appropriate for communities to be aware of the common good assets held by a Council the introduction of a statutory consultation framework particularly in the absence of a definition of common good property will have resource implications for the Council particularly given the proposal that communities should have the option to identify assets which they consider to be part of the common good.

Allotments

34. The Council has responded to allotment demand by adopting an Allotment Strategy. This has sought to extend community participation by allowing the Council to act as facilitator in the management of allotment gardens and allotment service by promoting site self-management through allotment associations. In this regard, the Council’s recent experience has indicated that there is limited demand for allotments within its area which can be met from existing provision from allotment associations. It believes therefore that the proposed duties and requirements set out within the Bill will have resource implications to achieve the desired outcomes when there is a limited demand for allotments within its area.
35. Under Part 8 of the Bill, we note that there will be a new power to allow the Council to create a localised relief scheme for Non-Domestic Rates to develop local responses to local issues and this is to be welcomed.

36. However, the introduction of a local relief scheme will be expected to run alongside existing national schemes (for example, the Small Business Bonus Scheme) and billing will still be calculated using national poundage rates. This will place the financial burden of the local relief scheme on the Council with the total contribution to the National Pool being unaffected by those local schemes. There is therefore concern that some of the national schemes currently in place (for example, Small Business Bonus Scheme, Fresh Start, New Start) may either end or be significantly amended by Scottish Government. Accordingly, should the Council wish to continue such schemes for example, to help regenerate town centres by encouraging empty properties back into use, then it would be potentially at the Council’s expense. It would be important therefore that Scottish Government/national funding streams continued to be made available and accessible to support local authorities.

37. Consultation and engagement with communities and local businesses will be key to ensuring local schemes deliver the right results and, Elected Members, in setting budgets, will require to recognise that resource allocation will also now require to include the cost of local relief schemes. An impact analysis will be a useful tool to adopt in determining the benefits (to communities as opposed to individual businesses / sectors) against the cost of the scheme.

38. A further consideration for the Council around local relief schemes will be to ensure they are fair and transparent, with any scheme requiring to stand up to scrutiny. In addition, the administration of local relief schemes could result in a significant administrative burden through design of a scheme, management of the reliefs, software updates (currently a national “one size fits all” applies) at a local level, consideration of challenges/appeals, and reporting to the Scottish Government. This will require to be part of the overall analysis of cost versus benefits.

39. Business Rates Incentivisation Scheme and future developments/amendments to the current rating scheme will require to be carefully considered prior to introduction of this type of proposal.

40. Finally, the ability to introduce local relief schemes puts a degree of control in the hands of the Council. However, while we continue to operate a national pool, this will only impact on the margins. The key determinant of the cost of Non-Domestic Rates for businesses will remain the rateable value (determined by the assessor) and the rate poundage (determined by Scottish Ministers). The challenge will therefore be ensuring that any scheme is fair, affordable and delivers community benefits.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

41. East Ayrshire Council is committed to community engagement in all service areas with all sectors of our communities, not only with constituted bodies but those with
potential to develop, as well as individual members of the community. Capacity building support designed to assist communities to develop their skills, confidence, organisation and influence is required to equip communities to fully participate in the engagement process.

42. Empowering community development and participation will require an initial investment to ensure that adequate capacity building support can be provided to allow groups to develop their confidence and skills to enable them to fully participate in the decision making process. There is potential for this investment to be offset by savings in the longer term which will result from enabling communities to take more responsibility within their communities.

43. To further strengthen this approach the legislation requires to ensure that the Scottish Government supports CPPs to resource capacity building at community level, with a particular focus on deprived communities, in order to build the ability of communities to take ownership of community assets, participate in processes to improve outcomes of service delivery and contribute to the priorities of the work of CPPs. Failure to do so may result in those communities which are less established and active, particularly within our smaller and most disadvantaged communities, becoming more marginalised.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Local Outcomes Improvement Plan

44. Under section 5, we note that each community planning partnership must prepare a ‘local outcomes improvement plan’. This introduces new terminology which requires clarification and further detail. In particular, we would seek explicit clarification on how the Local Outcomes Improvement Plan would link to the development and delivery of the current Single Outcome Agreement process.

45. Within the Community Planning context, the development of the SOA has ensured a focus on jointly agreed outcomes and allowed CPPs to monitor their progress on achieving these outcomes. While putting the requirement to develop and deliver on a shared plan for outcomes (for example Community Plan and linked SOA) on a statutory basis will support us to build on the work which has been taken forward locally with Partners and communities in respect of the SOA, we would have concerns regarding an additional requirement to develop a supplementary local outcomes improvement plan.

National Standards for Community Engagement

46. Some of the concrete suggestions contained within the pre-draft Bill consultation have been stripped out, including compulsory use of the National Standards for Community Engagement. As previously highlighted at paragraph 7, consideration should be given to reintroducing them into the Bill as they have served well in ensuring the quality of engagement with communities.
Common Good

47. East Ayrshire Council feels that the Bill has missed the opportunity under Part 6 to provide clarity both in respect of the definition of common good, the distinction between alienable and alienable common good land and the interpretation of the terms of the Local Government (Scotland) Act 1973. The present situation remains unacceptable particularly given the appropriation issues raised in the case of Portobello Park Action Group v City of Edinburgh District Council [2012] CS1H69 and should be addressed by statutory amendment.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

48. The legislation requires to ensure that public bodies, such as the Scottish Government and CPPs, resource capacity building for communities, particularly deprived communities. Failure to do so may result in them failing to meet their General Equality Duties through not taking steps to involve all members of the community, including those with protected characteristics.

49. In the absence of a published Equality Impact Assessment (EQIA), the Council would agree in principle that the Bill has the potential to have positive impacts for people from protected characteristics. The Council is mindful of the public sector duty and recognises the importance of conducting local EQIAs as and when required to ensure that there are no negative impacts for people with protected characteristics.

5 September 2014
Written Evidence to the Local Government and Regeneration Committee on the Community Empowerment (Scotland) Bill

Scottish Land & Estates represents landowners, land managers and rural businesses across Scotland with wide-ranging interests in their local communities, many of whom are already working to deliver the aims of the Community Empowerment (Scotland) Bill (“the Bill”). We were pleased to form part of the Terms of Reference Group for the Bill and to have the opportunity to respond to the two previous consultations.

General Comments

Scottish Land & Estates is supportive of the principles of the Bill and the extension of community right to buy on the current willing seller basis to the whole of Scotland, but it is important that the Bill provides a framework through which groups, individuals and businesses are empowered to deliver locally. We fully recognise that successful community empowerment results from local enthusiasm leading to local initiatives, local decision-making and local processes, and wish to ensure that all parts of the community are truly empowered. Voluntary agreement has to be the essence of genuine community empowerment, and there are many benefits to be gained through collaboration and partnership. It is noticeable that much land which has been transferred into community ownership, has been undertaken without recourse to the provisions of the Land Reform (Scotland) Act 2003. It is imperative that lack of use of the powers is not seen as a failure of the community ownership agenda. The lack of information on land and property assets transferred to the community without recourse to the legislation must be addressed.

The apparent focus on ownership in the Bill does not of itself equate to “empowerment”. There are many ways in which a community can become empowered. As Stuart Hashagen, senior Community Development Adviser at the Scottish Community Development Centre said in evidence to your Committee on 12 March 2014, “My point is that not every community wants to take over buildings, land and assets.” Specifically we have concerns regarding the provisions in relation to abandoned and neglected land which we have addressed below.

Generally, it will be vital for the measures in the Bill to strike the correct balance between the policy objective of strengthening the role of communities in influencing the stewardship of local property assets, on the one hand; and the right for owners of property to be in a position to progress their own long-term asset management objectives on the other.
Part 2 - Community Planning

Scottish Land & Estates is broadly supportive of clauses 4 to 13 of the Bill in relation to Community Planning. We are of the view that effective community planning is central to helping enable more people in rural and urban Scotland to have a stake in the ownership, governance, use and management of land. Therefore we welcome the alignment with national outcomes at Clause 4(3), having previously called for further work to align national policy initiatives with local planning. The sentiment in the Policy Memorandum in terms of maximising involvement from all partners, which obviously needs to include the private, independent and third sectors, is also encouraging. A strategic joined-up approach is vital and we would have welcomed specific reference to Community Councils in Schedule 1 to the Bill. Overall, it needs to be borne in mind that legislation alone will not establish successful community planning which is dependent upon the relationships between and culture of, organisations. We would like a clear commitment from the Scottish Government that significant activity will be undertaken in addition to the legislation to improve the community planning process.

Part 4 - Community Right to Buy Procedure

Scottish Land & Estates is keen to ensure that the community right to buy process is as straightforward and equitable as possible for both parties, community and owner. It is in neither party’s interest for a community acquisition to be protracted or for there to be any uncertainty.

Clause 33 introduces a requirement for an owner to inform Ministers within 28 days of an exempt transfer being made of this taking place. We consider this to be at odds with the fact the transfer is “exempt”. Further, Registers of Scotland maintain both the Land and Sasine Property Registers as well as the Register of Community Interests in Land and at present it is sufficient to include a declaration in the disposition, detailing the exemption which is being relied upon. It would therefore appear to be most straightforward for there to be internal communication within Registers of Scotland as opposed to placing an additional unnecessary burden on the owner to notify.

Under the current legislation there is certainty regarding the outcome of the ballot result and we are therefore concerned that clause 39 of the Bill removes this certainty, reducing the worth of the ballot and increasing the time period for determination. A ballot is the best and fairest way to measure support as there requires to be transparency, clarity and a tangible outcome. The Post Legislative Scrutiny Report of the 2003 Act published in September 2010 noted, “There was strong support among Community Bodies for the principle of holding a ballot, and most (though not all) supported some level of minimum turnout requirement. One interviewee noted that the demonstration of community support achieved through conducting a rigorous ballot was very useful to their organisation because —no-one can say that the community don’t support what we’re doing.”

In terms of extenuating circumstances which may be taken into account we would be keen to guard against spurious claims and specifically would be interested to know if there is any standard practice or guidance from the Electoral Commission or other impartial body in relation to elections generally which should be reviewed if such a measure is to be adopted. It is entirely proper that circumstances such as adverse weather should be accounted for.
We appreciate that the Financial Memorandum suggests expenditure involved in running the ballot will not be onerous, but this is predicated on a certain restricted usage of the measures in the Bill. In our view, as the ballot is at the initiation of the community body it should be for the community body to meet the expenses and not the public purse as proposed in clause 37 of the Bill.

Late applications were intended to be the exception rather than the rule, but now account for around one-third of community right-to-buy applications. The Bill further relaxes the criteria in terms of Clause 31. In reality if the process is working properly we believe that this should reduce the need for late applications. Community right to buy in our view is intended to be a proactive as opposed to reactive tool and the legitimacy of the process is undermined where late applications become almost standard.

One suggestion which may improve the late application procedure would be if a landowner could obtain exemption from a late application by giving forward guidance of say, six months, of a potential sale of land by advertisement in a local newspaper, giving the community body say, 4 months, to organise itself and register an interest in that land, failing which no late application would be entertained by Ministers.

One part of the existing process where there has been undue delay in consideration of applications to date is in relation to the discretion which Ministers currently have and there is no recognition in the drafting of the Bill or accompanying documentation of the potential role of Scottish Ministers delaying determination of matters, whether that be political or resource-led. Ultimately it should not be forgotten that community right to buy involves three parties, not just the landowner and community body, but also the Minister as well. The Final Report published in September 2010 on the Post-Legislative Scrutiny of the Land Reform (Scotland) Act 2003 by Calum MacLeod and others flagged this issue of Ministerial discretion. We would welcome the introduction of a monitoring system into delays in this part of the community right to buy process.

Clause 44 of the Bill means that a landowner who withdraws from a sale to a community body following Ministers appointing the valuer, will be at risk of having to pay to the Ministers, at their discretion, any expense the Ministers have incurred. This provision is a cause for concern, given that under the Community Right to Buy, an owner has the right to withdraw his land from a sale to the community body, after the right to buy has been activated, provided the appropriate notification has been given. We would look for comfort that Clause 44 is not used to arbitrarily penalise a landowner who for a variety of reasons decides not to proceed to sell land, as is his right. A landowner may decide not to proceed for a number of valid reasons, such as where land is owned in Trust, not all of the trustees being made aware of the sale, where family or financial circumstances of the landowner change. We do however appreciate that there may be cases where use of these provisions is warranted.

Abandoned and Neglected Land

Scottish Land & Estates’ members similar to others in their respective communities will be supportive of moves to deal with derelict, vacant and untidy ground which impacts on the local amenity and environment. However, we have serious concerns about the current drafting of clause 48 of the Bill in relation to “Abandoned and neglected land”. If the aim of this section is genuinely to
stop community blight and allow for productive use of the land as the Policy Memorandum appears to indicate, then this is not realised in the current drafting of the Bill. We are concerned that the provisions will in fact give succour to those seeking to thwart development or other management plans.

It was noticeable that of the 75 questions in the second consultation document only 2 of those concerned this absolute right to buy provision on neglected and abandoned land and there was no reference to it in the draft Bill which accompanied the consultation. The responses to those questions by consultees across various sectors expressed concerns about how this proposal could be adequately legislated for and it is extremely disappointing that definitions have not been developed by the Scottish Government since that second consultation, given the passage of one whole year. It will not be clear at all how this will work in practice until regulations are published and even then it will depend upon the drafting of those regulations which will enjoy less thorough scrutiny than primary legislation. While we recognise there is a purpose for secondary legislation where detailed procedural matters require to be fleshed out, in this instance the critical matter of definition is being left to secondary regulations.

In our view, an owner is entitled to know, prior to the Bill becoming law, what is meant by the separate terms of “abandoned” and “neglected”. As the Bill is currently worded neither owner nor community body will have certainty on the circumstances in which these provisions could be used. We would suggest that is not appropriate to deal with the transfer of fundamental property rights through secondary legislation. The definitions of “abandoned and neglected” need to be set out in the Act, given this is such a major issue and introducing compulsory acquisition.

The clause heading in the Bill refers to “Abandoned and Neglected” land which we assume refers to the fact that both areas are to be dealt with in that clause, since the part which is to be inserted in the Act refers to “abandoned or neglected”. Clarity is required not only in terms of definition of both, but also that these are being considered exclusively in that the land need only meet the tests of one definition. We also question whether consideration has been given to this part of the Act relating to urban areas alone, rather than coverage being for the whole of Scotland? If we are looking to address those small parcels of land which prevent sustainable development or cause blight then should we restrict use to settlements over a certain population?

We are unclear as to the reference to “wholly or mainly” at 97C(1). The extent of the landholding to be considered requires to be thoroughly scrutinised in forming any legislation in this area. Indeed, 97C(3)(a) requires further consideration in terms of the definition of “an individual’s home” and also the extent to which the location of stables, log sheds and other outbuildings are considered. We also have concerns regarding 97C(3)(f) which allows for the exclusion of prescribed land, particularly if this includes large charities.

While we recognise abandonment as a concept in terms of a leasehold interest, we are not clear how title to a property can be abandoned. The Court of Session only last year on appeal ruled in relation to Scottish Coal Company that Scottish liquidators were unable to abandon land owned by an insolvent as a means of avoiding onerous duties relating to the land. Indeed we are also unclear how land can be “mainly abandoned”. This does not appear to be a legally competent term.
In terms of the process set out in the Bill, we believe that deprivation of ownership is not the appropriate final outcome and it is questionable in ECHR terms whether this is in fact a proportionate response. Where there is “abandoned and neglected” land, the key issue the Bill requires to address is land use, not ownership. This is not realised by 97H(c) which solely relates the criteria for consent to ownership. In contrast the Housing (Scotland) Act 2006 addressed problems of condition and quality in private sector housing with Housing Renewal Areas very much focused on addressing use.

For example, owners of land under agricultural tenancies may have very limited control over the utilisation of the leased land and short of going through time-consuming and potentially costly court processes may be unable to rectify this. It would seem inequitable for land to be compulsorily acquired, where the owner is not actually responsible for the perceived absence of activity or poor management.

Some redevelopment projects can take a considerable period of time and the sense that nothing is being done with the land is not the reality. The various flora and fauna that may be existing in an “overgrown” site may have a value all of their own. This must be carefully examined. In a rural context a scheme to return land to wild land status may appear neglectful to some in a community, but in fact the absence of active management is not necessarily a sign of either “abandonment” or “neglect”. Land may be delivering wider public good in the form of ecosystem services despite not being actively managed. Active management of itself can therefore not be properly used as a term in defining abandonment and neglect. Biodiversity, carbon capture, recreation and cultural value may all be components of different sites and the Bill as drafted does not take into account such circumstances, despite page 19 of the consultation document stating “Land which is intended for recognised conservation purposes would not be considered to be neglected or abandoned”, the Bill as drafted does not reflect that.

Under the provisions there is a risk that land which is lying fallow as a result of sound farming practice or land which cannot currently be developed for justifiable commercial reasons or land subject to a conservation agreement to reduce sheep grazing would be threatened. Rather than empowering a community, this provision as it stands could lead to conflict in a community.

There is in the present drafting no clear opportunity afforded to the owner to counter suggestions of abandonment or neglect. The only provision available is clause 97G(9) whereby Ministers may invite views in writing on the application by the owner and the community body thereafter has another opportunity to address those points, without further input from the owner of the land. This would seem to be inequitable.

In tackling land abandonment, the reasons behind this, not necessarily related to statute should be better explored. These can include environmental such as a decrease in soil fertility; socio-political, for example rural depopulation; or economic, market globalisation. Whether abandonment poses a threat or an opportunity may depend on a whole variety of factors. The Final Report of the Land Reform Review Group highlighted “long-term urban land vacancy and dereliction” and we feel that the focus ought to be on urban renewal where there are recognised problems.
One area of concern we have is that the abandoned or neglected ground might give the appearance of that owing to a blight such as ransom/lack of access, which any community body purchasing would only inherit and be equally incapable of defeating – unless it was envisaged that the Government would use compulsory powers to remove the blight. We would sincerely hope that Ministers are not following that arbitrary route which we believe would be discriminatory.

We are not clear in terms of the proposed clause 97D why the community body for this part of the Act effectively requires to be a company limited by guarantee and suggest that there is parity with the new provisions for normal community right to buy.

In summary, we support the aims of this section but do not believe that the mechanism is the appropriate tool.

Part 6 - Common Good

Scottish Land & Estates welcomes clauses 63 to 67 of the Bill in relation to the common good. In our consultation responses, we supported the establishment and maintenance of a publicly accessible common good register following clarification of the assets which form part of the common good. The Bill rightly focuses on this area and we do not have any further comments at this stage.

Part 7 - Allotments

The Bill repeals the Allotments (Scotland) Acts of 1892, 1922 and 1950 in their entirety as well as the allotments provisions contained in the Land Settlement (Scotland) Act 1919.

While the original legislation refers to local authorities letting to tenants, subsequent legislation does, at least in part, envisage private letting of allotment sites in the wording of some sections. This is particularly in relation to the termination of tenancies and compensation to both landlord and tenant. Therefore while we support the tidying of older legislation and the clarity and consistency which comes with the definitions in clauses 68 and 69 of the Bill, it does not appear that the relevance of some of the older legislation to privately owned allotment sites has been accounted for. This needs to be carefully reviewed prior to the passing of the Bill.

We support the duty incumbent on local authorities at clause 77 to prepare a food-growing strategy. While we note that in relation to allotments this only incorporates land owned or leased by a local authority per the definition, we are pleased that clause 77(3)(b) extends this to “other areas of land in its area that could be used for the cultivation of vegetables, fruit, herbs or flowers”. As we commented in our consultation response we consider that the totality of land available, including that outwith local authority supply should be taken into account in shaping such a strategy.

We disagree with clause 87 of the Bill in relation to the sale of surplus produce. While there is reference to “other than with a view to making a profit”, this does raise issues around trading income etc. There is a danger that this clause could be used to circumvent regulations and requirements which other businesses require to meet and could potentially raise environmental health matters. Allotments have moved towards a recreational hobby pursuit and are not
commercial enterprises as recognised in clause 68 (c)(ii) and we would perceive allotments as being for non-commercial personal or community food growing. Therefore this clause ought to be deleted.

**Part 8 – Non-Domestic Rates**

Scottish Land & Estates is encouraged by the fact that while clause 94 provides powers to local authorities to create localised relief schemes, the local authority must have regard to their council taxpayers’ interests and we appreciate in specific instances like flooding, such a power may well be worthwhile. However, the potential and viability of such schemes is not yet known and we may wish this part to be re-visited if there are adverse consequences for private sector businesses. In particular local authorities will require to be cognisant of ECHR and Competition Act rules in relation to this provision. We would oppose any relief scheme which arbitrarily gives a market advantage to one particular type of ownership or governance structure and we could perceive difficulties arising for instance in the rural sphere where a community-owned farm shop was party to relief, which was not available to an adjacent privately family owned farm shop paying full rates. It may be helpful if your Committee were to take soundings as to how similar provisions in the Localism Act 2011 work.

We would be happy to provide further detail on any of the issues raised in our written evidence.
Community Empowerment Bill

Response from: Maryhill and Summerston Community Council

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

There is a clear need and increasingly broad support for a return of meaningful power and responsibility to community level in Scotland.

The Bill - as proposed - is generally a welcome step towards giving community bodies (including CCs like our own) meaningful powers that can be exercised both independently and also in broader partnerships with public service authorities. Acknowledging the significant pre-consultation effort before drafting the legislation, we have the following comments:

Our (Maryhill & Summerston) Community Council area highlights many of the challenges facing the much-needed revival of real localism in Scotland. Notwithstanding the efforts of many active community councils across Glasgow, 22 of the 100 Glasgow City community councils are currently inactive and this has led to an increasingly centralised approach to the 'delivery' of 'services' in many Glasgow areas. Our ward has a number of well-networked community organisations and there is good community spirit around, but the ward experiences higher than average crime rates and unemployment (and many of the other indicators of 'social deprivation', which are inevitably imperfect proxies for determining the health of our 'community'). Set up in 1976, the Community Council was in abeyance for 10 years, and re-constituted in 2006 with the support of the local Maryhill Housing Association. The CC has worked to engage with planning applications, organise community events and support the initiatives of other local community groups. This has occurred whilst Community Councils across Scotland have been struggling (eg resulting from the cut in pooled financial support for CC networking via the website/secretariat of the Association for Scottish Community Councils in 2012).

We welcome the fact that the CE Bill is aimed at empowering a broadly-defined class of community bodies in Scotland. The extent to which the CE Bill can support the development of and empower, both urban community councils - and community bodies (eg Maryhill Burgh Halls Trust and local charitable organisations including SCIOs in our ward - is therefore of strong interest to this CC.

Three aspects of the proposed legislation – which if enacted - promise significant and welcome reform of the current level of community involvement and responsibility for decision-making and use of local assets.

- The right to buy 'abandoned or neglected' land even if there is no willing seller. Amendments to the Land Reform Act 2003 which alters definition of excluded land to enable community bodies in more urban areas such as ours to register a community interest in the right to buy. Although there is going to be a need to further define the term ('abandoned and neglected'), there are likely to be a number of buildings and
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land areas that fall into this category in Maryhill and Summerston. Some of these buildings/land are in important public areas of the ward and their condition has a depressing effect on the area. If they were brought into community ownership this could help to improve community life in the ward Legal provisions enabling the community to purchase and sustainably develop such land/property would give this CC a defined power that would actively help to engage the community in the work of CC: with more power, comes greater local participation.

- **A transparent avenue to participate in the strategic decisions that shape the delivery of local public services**

- Statutory underpinning for Community Planning Partnerships and provisions for participation requests would - if effectively communicated and resourced - start to better harness local views and knowledge about how public services are directed at a local level. For example involving local community organisations in prioritising maintenance contracts and investment planning to ensure that local communities are not neglected. Sometimes it seems that landscape maintenance focuses on the wrong areas and investment and cyclical maintenance misses out the works that are most needing done.

- **Statutory access to information**

  There are many provisions which place a duty on relevant public service authorities to publish information (eg about a "proposed outcome improvement process" and related report, "annual allotments report", "food growing strategy", "common good property register"). This access to information is vital for community bodies to assess their options and understand how they can participate in - and influence - what should be fully, public processes.

Inevitably the CE Bill is not comprehensive and there are areas which remain unaddressed by the Bill and some aspects of the Bill do not go far enough to secure the conditions necessary to ‘empower’ communities,

- **Community Councils**

  the Bill does not address the specific role and powers of Community Councils to reinvigorate local democracy. We note the work and recent report of the Commission for Strengthening Local Democracy and are aware that provisions of the CE Bill may well be supplemented by a wider review prompted by the findings of the Commission.

- **Right to Request a CPO over Land**

  Whilst the right to buy 'abandoned or neglected' land provides a route to purchase land where there is no willing seller, we would support the recent findings of the Land Reform Review Group report which recommends legal provision for an additional channel to facilitate community purchase of land where there is no willing seller, namely a "Right to Request a Compulsory Purchase Order over Land" - where a local community body could in certain circumstances request Scottish Ministers to exercise a CPO over land for re-sale to the community body, where that is deemed by Scottish Ministers to be in the public interest.

- **Access to information**

  As highlighted above, open access to information is vital and statutory duties to provide details of reports/registers/processes are welcomed. However, there are no
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specific provisions to ensure: that a "Common Good register" or a "Register of Community Interests in Abandoned or Neglected Land" are map-based and thus easily navigated. There are also no provisions to ensure that the local outcome improvement processes are made public at every stage (see answer to Question 4).

- **Financial burden on community bodies**
  
  Some of the provisions of the CE Bill establish powers that may not be easily afforded by a CC or community body.

It is acknowledged that some of these issues would likely be addressed via policy-fixes by the administration of the day, (e.g. the financial burden of administration and/or cost of 'capacity-building' could be surmounted by the development of targeted funds to support public authorities and communities engaging with the provisions), but it might be worth considering how to embed them in this or other legislation.

2. **What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill**

Whilst we cannot speak for those public sector organisations that would be affected by the CE Bill, we would imagine that in the long-term, the provisions of the Bill would as the Bill's title suggest 'empower' communities and therefore be of significant benefit to relevant public service authorities - as empowered communities are more likely to help shape and guide the delivery of services in a more strategic, targeted and efficient way.

3. **Do you consider communities across Scotland have the capabilities to take advantage of the provisions of the Bill? If not what requires to be done to the Bill, or to assist communities, to ensure this happens?**

Again, Maryhill & Summerston Community Council cannot comment broadly on the capacity of communities across Scotland, but for our area, it is unclear whether we would have the capability to take advantage of the s 48 right to buy 'abandoned and neglected' land. There may be significant sums of money involved in both the legal and administration costs of ballots indicating community approval (new Section 97J of the 2003 Act) and conveyancing. These costs, however, are the inevitable aspects of community responsibilities for. Without recourse to changing the Bill itself, there would be ways to assist communities by:

  - Ensuring resources were invested to promote easy access to the information for communities. A public register of common good land must be easy to navigate and map-based to enable CCs and other community bodies to easily assess the status of land in their area
  - Amendments could be made to broaden the remit - and increase the funding - of the Scottish Legal Aid Board to provide publicly-funded legal advice to assist community bodies in asset transfer/right to buy applications..

4. **Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?**

We consider a list of certain provisions in turn. Some comments on provisions detail potential changes to the legislation, some offer observations for deliberation:
• s 4(3) "Outcomes of the type mentioned in subsection (2) ("local outcomes") must be consistent with the national outcomes determined under section 1(1) or revised under section 2(4)(a)." What happens if/when local outcomes proposed by a CPP do not cohere with national outcomes?
• s 11 duty to promote - How will this be achieved? It would be difficult to be too prescriptive in legislation, but there could be some more specific reference to how Scottish Ministers will "promote" community planning effectively.
• s 19(5) makes a provision that a public service authority can refuse a participation request on if there are "reasonable grounds." This is highly subjective and there is no way to appeal the decision. This should be amended.
• s 19(7)(a) does not specify a period and leaves this open to subsequent regulation by Ministers. What is the rationale for this?
• s 21(7) states that "The authority must publish the information mentioned in subsection (6) on a website or by other electronic means is inadequate," but s 21(6) leaves this open: "The authority must publish such information about the process as may be specified in regulations made by the Scottish Ministers." It is crucial that participation requests and decisions are public at every stage and that this is built into legislation.
• s 22(1)(c) re: the power to decline participation requests The two year rule seems too restrictive, given that a refusal notice may have been issued due to the ineligibility of the initial, requesting community participatory body. Although the power to refuse is discretionary, there should be different categories of refusal (eg technical or substantive) so that requesting CPBs are not disadvantaged by eg previously poorly-framed requests of other CPBs.
• s 22(4) The rationale for this clause is not clear. It could be material as to whether the body making the request is the same as that which made the previous (and similar request).
• s 24(2) - This provision is a good idea, but potentially open to abuse. What does 'in consultation with' mean? What happens if the CPB does not agree. What happens if there are multiple CPBs and they do not all agree to modify the "outcome improvement process"
• s 48: See our response to Question 2. We would support the Land Reform Review Group's proposals for an additional avenue of community acquisition of land if there is an unwilling seller, ie a 'Right to Request a Compulsory Purchase Order over Land'
• s 48 97F "The Keeper must set up and keep a register, to be known as the Register of Community Interests in Abandoned or Neglected Land (the “Part 3A Register") Would there be benefit in proactively developing a publicly accessible register of Abandoned and Neglected Land - for which there isn't necessarily a registered community interest?
• s 48 The new 97J has a procedural provision for establishing a ballot to evidence community support for the application. "that at least half of the community voted in the ballot or where fewer than half of the members of the community voted, the
proportion that voted is sufficient to justify the community body proceeding to purchase the land; and finally, that the majority of the votes cast were in favour of making the application. What does "proportion that voted is sufficient to justify" mean? This may create confusion.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

We support the views laid out in the Assessment of Equal Rights and sustainable development as set out in the Policy Memorandum. Sustainable development would likely be well-served by community-led planning and ownership of common good land.

COMMUNITY EMPOWERMENT (SCOTLAND) BILL
Scottish Parliament Local Government and Regeneration Committee
Evidence from the Big Lottery Fund

1. To what extent do you consider the Bill will empower communities? Please give reasons for your answer.

There is no doubt that the intention behind the Bill is indeed to empower communities. It does not demand that all communities become empowered but instead, in most cases, the Bill makes provision for communities to become empowered only if they wish to, and only to the extent that they wish to become empowered. So, for example, the Committee will already be aware that one of our major investment areas, Growing Community Assets (or GCA), has, since 2006, made over £60 million available to communities throughout the whole of Scotland - both urban and rural - so that they can have more control and influence over their future development, prosperity and resilience through owning and developing local assets that are important to them. Although we have seen our investment bring about some spectacular transformations in a number of communities, nevertheless, the Fund has always been clear that asset ownership is not appropriate in all circumstances or for all communities. The Bill recognises this too in that while it does give communities the right to request to buy public sector land or buildings, it also gives them the option to request to lease, manage, occupy or use such land and buildings. This provides communities with a variety of ways in which they can make better use of public land and buildings. It also gives them the option to ‘test their mettle’ by maybe starting off by leasing and managing an asset to see how they get on before deciding to buy it outright from the public authority.

It should be stressed, however, that our GCA investment area only supports communities to acquire and own assets (private as well as public). But while GCA will not fund communities that simply want to lease, manage, occupy or use public sector land and buildings, some of our other investment areas and programmes may support community groups to provide services and activities from public sector premises.

The variety of ways in which the Bill permits communities to get involved in improving public services is also welcomed because of the choice it affords them to get involved to the extent that they want to. However, because the Big Lottery Fund is unable to financially support statutory obligations, there is probably an interesting debate to be had here as to just what funding we will be able to provide to communities who decide to accept this challenge.

The success or otherwise of the Bill’s proposals on participation and asset transfer requests, as well as a number of its other proposals, will depend to a great extent on the attitude and position taken by the public bodies affected by them, and especially, of course, by local authorities. In addition, success will depend upon the extent to which communities, and the statutory and voluntary organisations which support them, can access and develop the skills and resources they need to successfully exploit the opportunities the Bill creates.
Perhaps nowhere will this be more key than in the Bill’s proposals around community planning. The Bill legislates for this activity to be the process by which public bodies work together and with community bodies to plan for, resource and provide services which improve local outcomes in the local authority area. By putting forward these provisions, the Government is signalling how it intends community planning to operate and that it expects communities to be at the core of the process. It is to be hoped that the public bodies involved pick up this signal and include community bodies as full partners.

Community bodies will require help and resources to enable them to play this fuller role and this point will be returned to in our response to Question 3 below.

Other provisions in the Bill that are particularly welcomed include:

(i) The attempt to provide greater clarity and transparency around common good assets held by local authorities by placing a requirement on Councils to establish and maintain registers of all properties held by them that fall into this category;

(ii) The new measures aimed at making the ‘right to buy’ provisions in the Land Reform (Scotland) Act 2003 easier to use, as well as the extension of these provisions to urban Scotland (though, as was pointed out above, GCA has been supporting communities throughout the whole of the country to acquire and develop all sorts of assets that matter to them (not just land and buildings) since 2006). This will also assist us, and our partners, Highlands and Islands Enterprise, in our delivery of the Scottish Government’s Scottish Land Fund; and

(iii) The introduction of a new Part 3A of the Land Reform (Scotland) Act 2003, permitting community bodies to acquire neglected and abandoned land, even where there is not a willing seller (though it is anticipated that agreeing definitions of ‘neglected’ and ‘abandoned’ will not be straightforward).

A surprising omission from the Bill perhaps was the provision of greater clarity on a substantive future role for Community Councils. The Bill does recognise these Councils’ interest in shaping local services and gives them a specific role in relation to the monitoring of common good assets. However, it had been anticipated that the Bill would provide an opportunity to increase Councils’ profile and their contribution to civic and community life.

A final concern is one that it is understood was expressed previously by others, namely, that some people and communities might have difficulty understanding the language used in the Bill. It is appreciated that the Bill must follow the usual format and conventions, but this makes it all the more important that it is accompanied by clear, concise and easily understood explanatory notes. The recent publication of an ‘easy read’ version of the Policy Memorandum for the Bill is welcomed. Highland and Islands Enterprise’s work in producing support materials for communities using the provisions of the Land Reform (Scotland) Act are a good example of how this challenge can be addressed. Based on experience gained in over ten years of working with communities to acquire, develop, manage and operate local assets and services, we believe the Bill’s publication presents a perfect opportunity to work with communities already doing this to co-produce support materials and other resources.
2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

Asset transfers

Although public bodies will lose the capital value of any assets they transfer to community bodies (especially if, as the Big Lottery Fund prefers, they transfer the asset at a discount or even at nil cost), they will also be free of the associated liabilities. At the same time (and especially if we support them through our GCA investment area), the community will acquire an asset which may have fallen into disuse or has not been used to its full potential, but which the community themselves can now put to productive use to address local needs and benefit local residents.

In some instances, community asset projects and public sector organisations can be mutually beneficial. For example, instead of operating a separate local office, the public sector organisation could become a core tenant of the newly community-owned asset, thereby going a considerable way to help with the asset’s future sustainability too.

As mentioned above, since the introduction of GCA in 2006, the Fund’s policy has been to only fund acquisition costs when public sector assets are sold to community groups at a discount. This position is endorsed in the Report, ‘The Land of Scotland and the Common Good’ published by the Scottish Government’s Land Reform Review Group in May this year which states that:

“The Review Group considers that assets should be transferred to local communities at a reduced cost or no cost where that is judged in the public interest because of the wider public benefits it will deliver.”

What is more, the Review Group went on to state that it saw:

“no logic to the circulation of public funds”,

which we interpret as one public body (such as the Fund) having to provide grant assistance based on full market value to a community body to pay another public body (such as a local authority) for land or an asset which it is selling to a community.

Work to clarify and ensure a more consistent interpretation of the Public Finance Manual in relation to asset transfer will be important to the success of this part of the Bill.

Neglected and abandoned land

The Bill’s provisions allowing community bodies to apply to acquire neglected and abandoned land from unwilling sellers will see communities bringing such land into productive use, thereby removing what could be a blight on the areas affected and, in some cases, relieving public bodies of the burden of dealing with the consequences of this neglect. This can only be good for the communities and the local authority areas concerned - environmentally, but also maybe socially and economically. Moreover, the community’s development of such land may even stimulate the local property market and
encourage further sales by others.

There will, however, be challenges, particularly in cases of unwilling sellers in ensuring that a community body is able to gain sufficient information about an asset in order to make a reasonable decision about both its value and the aspirations the community harbours.

Allotments

The proposed new duty on local authorities to hold and maintain waiting lists for allotments will hopefully provide welcome clarity for all concerned (both the local authority and those wishing an allotment) about the availability of allotment sites in the local authority area. It will also provide a valuable source of intelligence about the demand for, and potential to develop, community growing sites. However, it will also put further pressure on local authorities to respond to increased demand for such sites.

Participation requests

While the outcome for everyone involved must be to provide a better service for those who need it, public bodies will inevitably have to spend scarce and precious time and other resources assessing any participation requests they receive from community bodies. This coincides with dire warnings from the Improvement Service for Scottish local government about sizeable cutbacks in expenditure that Councils and other public sector bodies are going to have to make.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Our experience indicates that many communities - and especially community anchor organisations - are already undertaking the sorts of activities described in the Bill. Nevertheless, the capability of communities across Scotland to take advantage of the provisions in the Bill will, as would be expected, vary enormously, and will do so to different degrees at different times. Many able and capable communities will undoubtedly have the capacity to take full advantage of the Bill’s provisions - or at least to take advantage of them to the extent that they wish to. Other communities - whether capable or not - will have no interest in the Bill’s provisions, while there will be others still who would probably like to make use of the provisions but lack the capacity to do so. Indeed, some of these latter communities may not even know how to start to take advantage of the provisions. And, as suggested earlier, even something as basic as the language used in the Bill and its associated documentation will be off-putting to communities if they are unable to understand them.

That said, we know that with the correct mix of capacity, engagement and support, communities are more than capable of rising to significant challenges and seizing substantial opportunities successfully. For that to happen though, the eventual Act will
need to be underpinned by a significant effort to ensure that it is well understood and used.

The preparation of applications and compilation of business plans, etc., are complicated and time-consuming tasks, especially for voluntary organisations. This should be recognised in the timescales given to such groups to put these documents together and to submit them.

A lot of community groups will probably need help and support to build their capacity so that they can put quality applications together. As well as this practical support (with things like business plans), the Big Lottery Fund has found that applicants often also need relatively small amounts of money to develop and test their ideas and thinking, for feasibility studies, technical reports and scheme design studies, community consultation, professional advice, or to visit similar operational projects elsewhere to see how they work and to learn from them. This latter activity is a particularly powerful and effective way for projects to learn from one another so as to build on positive experiences and avoid pitfalls. The Fund therefore offers grants of between £500 and £10,000 through its Investing in Ideas programme for these purposes.

Our years of experience of operating grant programmes which support communities to acquire and develop assets, as well as the independent evaluations of these programmes, have confirmed how much applicants need support to help them put together large scale and complicated capital projects. We have therefore made specific budgetary provision so that we can provide Investing in Ideas awards to potential GCA applicants. We have also put contractual support in place to help applicants and grantholders with self evaluation, financial and business support, and with renewable energy projects. Indeed, all applicants who make it through to stage two of the GCA application process are automatically referred on to our business support contractors (who are themselves a social enterprise). In addition to all of this, applicants can also apply for up to £50,000 (and sometimes more) in development funding. This is intended to help meet the costs of, for example, options appraisals, feasibility studies, site investigations, design development, statutory consents, business plans, professional and legal fees, market research and capacity building, between stages one and two of the application process.

We also employ two members of staff who can help applicants and grantholders with advice and support on a wide range of building and technical matters. This form of support is particularly highly valued by applicants and grantholders.

The findings from the five year, independent evaluation of GCA, published last year, provide very useful indicators, identified by projects themselves, about the factors that contribute to successful community ownership projects, as well as the sorts of challenges (including some that are not inconsiderable) that they face. The capability and capacity of a community group can have a direct bearing on a lot of these factors and challenges. So, for example, GCA project managers recommend that group members need to be committed to their projects, willing to give generously of their time, effort and expertise, and to engage constantly with the members of their communities. Major challenges included an over-reliance on the same office-bearers, members and volunteers and, of course, achieving financial sustainability. Fortunately, GCA projects also suggested some practical measures that can be taken to help make community ownership a success and thereby contribute to the success factors.
The GCA evaluation also made another couple of interesting observations which have a bearing on the capability of community groups to make a success of their projects.

The first was how crucial local Councils can be when it comes to enabling communities to achieve their aspirations to own and manage public assets. This can range from the authority’s fundamental attitude to the community ownership of assets (i.e. whether they are prepared to even consider the disposal of their assets to community groups), through to the support – financial or otherwise - they are willing to provide to the new community owners after they acquire the former Council property. The GCA evaluation makes it clear that there are both benefits and challenges for both parties to such transactions.

The second observation arose from a survey of households in areas where GCA projects are located. This demonstrated more limited interest in volunteering and managing projects in urban areas. The evaluators suggested that the greater interest shown in rural areas, and particularly in remote rural areas, might be due to the stronger tradition of volunteering and of ‘doing things for themselves’ that exists there. In looking ahead, therefore, the evaluators suggested that urban communities, and especially the most disadvantaged of these, will continue to need greater support with community ownership projects if the potentially greater benefits (particularly in terms of their impact on larger numbers of people) are to be achieved.

A summary of the evaluation findings was e-mailed to all MSPs on 13 September 2013 but it can be viewed at:

http://www.biglotteryfund.org.uk/-/media/Files/Programme%2520Documents/Growing%2520Community%2520assets/GCA%2520eval.pdf?rct=j&frm=1&q=&esrc=s&sa=U&ei=rhfyU5G2Olyy7Aa6_IGYCg&ved=0CBQQFjAA&usg=AFQjCNF-Jxk31dmGnzLeFBNlVRzTMczvYQ

The Big Lottery Fund has also accumulated a significant amount of learning about the capacity of some communities to respond to funding opportunities from developing and delivering the Our Place initiative.

Information about Our Place has been included in previous evidence supplied to the Committee (and to the consultations on the Bill), but members will recall that it is a place-based initiative by the Fund to invest in communities with high levels of deprivation but whose share of Big Lottery Fund investment has fallen furthest behind their share of need. Our Place is committed to focusing on a neighbourhood, offering long term support, pursuing opportunities and reaching out to communities to help us invest in their places. The theory behind the programme is that in doing so, the people and organisations in those neighbourhoods and communities will build stronger connections and relationships, and be empowered to work together to bring about positive changes in their communities.

Our learning from Our Place is drawn both from the positive outcomes it is achieving and from things that have not worked well or which did not complement the initiative’s overall approach. Further information about Our Place and some learning points are given in Annex A to this evidence paper.
4. Are you content with the specific provisions in the Bill? If not what changes would you like to see, to which part of the Bill, and why?

While the Big Lottery Fund generally welcomes most of the specific provisions in the Bill, there are a small number which we think would benefit from further clarification or consideration. However, at this stage it is not possible to recommend that the provisions concerned need changed because in a lot of cases, they are subject to secondary legislation, regulations or Ministerial guidance. In other words, ‘the devil may yet be in the detail’. Three particular examples illustrate this point.

The first example relates to the proposed modification to the Community Right to Buy process whereby Scottish Ministers will arrange for the ballot required after the right to buy has been triggered to be conducted by an independent third party, not the community making the right to buy as formerly. Ministers will also meet the cost of the ballot. Whilst the proposal that Scottish Ministers organise and pay for the ballot has much to recommend it, the Fund’s evidence on the draft Bill previously pointed out that there was a danger that this might also, in a way, divorce the community body wishing to make the purchase from the community whose very support it needs to be assured of. Nevertheless, it will only be once the detail of this proposal is made plain that we will be able to gauge whether or not it will work to a community’s advantage.

The second example concerns Section 52(4)(e) of the Bill which requires the ‘community transfer body’ making an asset transfer request to specify in its request the price it is prepared to pay for the asset it wishes to acquire. In our evidence to the draft Bill, we pointed out that this will entail the community body having to arrange and pay for a survey/valuation at a very early stage. This seems unfair and onerous at this stage of the process. Instead, it would expedite the transfer process if the relevant authority gave prior notice to the community body of the minimum price it would accept. This could prevent the community body having to become embroiled in a costly and time consuming negotiation. However, this particular issue is another that may yet be resolved further down the line because the Bill allows Scottish Ministers to make regulations enabling community transfer bodies to request information from public authorities about the assets they are interested in.

It would be useful for the community body to have the valuation early as it could provide the basis for a negotiated settlement with the owner. It will also let the body know the amount of funding they will need and give them the opportunity to make early contact with potential funders to gauge the likelihood of funding being made available. More ‘realistic’ valuations would also be welcome: that is to say that while a valuer may insist that a property can command a certain valuation on the open market, the reality is that no party other than the local community may actually be interested in buying that property! This issue may take on added importance with the extension of the community right to buy to urban areas where, more generally, there is likely to be a more competitive market for relatively more expensive land and buildings.
The third example concerns a community’s right of appeal where its request for the transfer to it of an asset held by either Scottish Ministers or a local authority is refused. If such a request by a relevant public authority other than Scottish Ministers or a local authority, the Bill provides for the community body to appeal to Scottish Ministers. The Bill currently makes no mention of any right of appeal against a refusal by Scottish Ministers to agree to an asset transfer request. Local authorities on the other hand, being democratically accountable in their own right, are required by the Bill to make separate arrangements for the review of decisions to refuse asset transfer requests. Here again, however, the Bill empowers Scottish Ministers to make regulations about the form these arrangements must take.

The Fund supports the proposal in the Bill to require local authorities to provide detailed waiting lists, annual reports and strategies in relation to allotments. However, in our responses to consultations on the Bill, we indicated that we would like to see Councils being required to produce registers of all their land assets - not just allotment sites - and to make them publicly available. We also suggested the minimum information that these registers should contain. We believe that the production and existence of asset registers would greatly assist both sides involved in community right to buy transactions involving public sector assets.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

Equal rights

The Fund welcomes the fact that in making decisions under the provisions of the Bill, public bodies will require to constantly be mindful of their duties under the Equality Act 2010. We would also support suggestions that public authorities be required to carry out an Equality Impact Assessment when developing policies in relation to the provisions in the Bill. This is because in addition to our fundamental, intrinsic belief in equality, and our commitment to our own equality principles, we also believe that the promotion of full accessibility, diversity, equality of opportunity and inclusion, and the reduction of disadvantage and exclusion can all have practical benefits for communities and community projects too. So, for example, in our experience, most community-based service provision aims to ‘rectify wrongs’, or fill a gap or deficit. And on a very practical level, the opening up of community asset projects to as many people and different groups as possible could increase usage, business, and thereby sustainability.

Impacts on island communities

We have seen contrasting responses to the opportunity to take on community ownership of land across the three island local authority areas reflecting the relative importance, differing patterns of use and availability of land in these areas. Moves to improve the operation of the community right to buy will be especially helpful in Eilean Siar (as well as in the island communities in Highland and Argyll and Bute Council areas). In our experience, Councils in these areas are generally well disposed to community engagement.
in assets ownership and service provision. Consequently, all three island Council areas have high levels of community ownership in terms of buildings and other assets, including renewable energy resources. This underlines the point made earlier in response to Question 3. about how crucial local authority support and encouragement can be in facilitating community ambitions. The Community Empowerment Bill may create further opportunities in island communities, as well as important opportunities for these communities to share their considerable and valuable experience and expertise more widely.

Sustainable development

At a project level, and specifically for community asset ownership projects, our experience suggests that the provisions in the Bill relating to this activity are likely to have a positive impact on sustainable development.

The GCA1 evaluation tells us that the projects funded under the investment area have had a positive impact on the local, and thereby the global, environment. This is because environmental concerns have been an important part of most of the projects supported and their efforts have taken a variety of forms.

17 GCA1 community energy projects are now in operation and generating roughly 9.8MW of renewable energy. These projects have, in turn, inspired other communities to generate their own power and therefore income, while at the same time making a major contribution to reducing CO2.

Thanks to the shops, post offices and petrol stations saved or created by communities, there has been a positive impact on reducing fuel consumption. And there is evidence that involvement with GCA projects leads households to reduce their household energy consumption too.

Almost all the new build and refurbished projects use environmentally friendly heating systems and building materials. For example, the new centre built with GCA funding by the Gairloch and Loch Ewe Action Forum (GALE) was the first public passive building in Scotland, and The Big Shed project in Loch Tay won a Carbon Trust Scotland Low Carbon Building Award in 2013.

A number of recycling projects (such as RECAP’s Community Recycle North Lanarkshire and the Ballantrae Recycling Workshop and Retail Outlet) not only save users money but also divert waste from landfill.
BIG LOTTERY FUND EVIDENCE ON THE COMMUNITY EMPOWERMENT (SCOTLAND) BILL

OUR PLACE

What is Our Place and what do we want to achieve with this initiative?
Our Place represents a different way of investing Lottery funding based around priorities and a vision statement set by local people. It is a place-based initiative from the Big Lottery Fund that aims to build stronger connections and relationships in communities, empowering local people and organisations to bring about positive and lasting changes in their neighbourhoods.

Our Place 1 launched in five neighbourhoods in 2010 and has since invested approximately £11 million across 25 projects that positively contribute to their neighbourhood vision. In addition to grant funding, we invested in support contracts that built the capability of local people and organisations, supporting them to develop their own neighbourhood vision statement and providing them with the best possible opportunity to make effective applications to us that reflected both local priorities and the outcomes the Big Lottery Fund wanted to invest in.

A project team at the Fund has developed Our Place 2 and our learning from the first initiative has been built into our approach. The new Our Place delivery framework essentially splits the initiative into two phases. Phase 1 is focused on asset based community development work, which will be ongoing throughout the life of the programme, and phase 2 is focused on project development, grant making and project delivery, which will start approximately 12 months into the process.

Our Place 2 will work in seven neighbourhoods across Scotland and will adopt an approach that is flexible, long-term and locally determined in a way that focuses on the assets within each neighbourhood. The initiative will also explicitly aim to have more impact on the way the public sector works with communities. All of these developments are reflected in the outcomes that Our Place 2 will be working towards, and projects funded through the initiative will be required to meet all three of these outcomes.

Our Place 2 Outcomes

- Communities have more influence on decisions taken locally
- Communities have more sustainable services and facilities that reflect their local priorities
- People say their community is a better place to live
The Big Lottery Fund is investing in five year support contracts to provide intensive, asset based community development to develop the skills and confidence of local people and organisations. There is a support contract for each Our Place 2 neighbourhood.

What will support contractors be doing in each neighbourhood?
The focus of the support contractors’ work will be less about funding in the early stages and more about doing the right groundwork in neighbourhoods, building connections, strengthening relationships, facilitating asset mapping and visioning, and developing skills and confidence. We expect the early stages of Our Place 2 to take up to 12 months, depending on the local context.

Support contractors will then support neighbourhoods through the project development and grant making stage of Our Place 2 and we will expect them to be aware of every application that is submitted through the initiative. A Community Chest of £20,000 will be administered by the support contractors and available to each community to be accessed in small amounts as and when required. We anticipate that the Community Chest will be used to run events, pilot activities, undertake research and learning visits, or to deliver community capacity building in the first year or two of the initiative. The final stage of the support contracts will be focused on supporting grantholders through project set-up and the early stages of project delivery.

It is essential that the support contractors work closely with key agencies operating in these neighbourhoods throughout the lifetime of their contract - sharing information and learning, complementing existing initiatives, facilitating joint-working and avoiding duplication of efforts will be of critical importance.

What kind of projects will Our Place 2 fund?
The Fund has set broad outcomes and eligibility criteria for this initiative, but we have not specified any particular types of projects that we would like to fund. All projects should stem from the community and fit with their vision for their future. Although we cannot know for sure which types of projects will emerge from each of the seven neighbourhoods, our learning from Our Place 1 tells us that they are likely to include a variety of revenue and capital. Funding through the first initiative has been invested in projects around community transport, community gardens, community food, financial inclusion, Development Trusts, community health, family support, community facilities, additional capacity building support to voluntary and community sector organisations and much more.

What have we learned from Our Place 1 and how has it influenced Our Place 2?
Our Place 2 aims to get in alongside communities through support contractors, helping people and organisations to form ideas by supporting them over a long period of time and in a neutral way. The Our Place journey thus far offers a number examples of how citizen-led activity has been enabled, increasing people’s confidence and empowering them to come together to deliver community-led projects. However, the journey also offers examples where community groups perhaps feel that they are taking on too much too soon, and other examples where groups are delivering successful projects but struggle with sustainability and therefore remain dependent on Our Place funding.
The following key learning points appear to be particularly important for any discussions around community-led approaches to empowering communities:

- Genuine community empowerment, and asset based community development in particular, takes a long time and is very resource intensive. The Fund did not fully appreciate how long until Our Place 1 delivery was underway. We extended Our Place 1 support contracts from two to three years. As we embark on taking the Our Place approach to seven new neighbourhoods, we have committed to five year support contracts from the outset.

- Genuine community-led approaches require a depth and breadth of consultation that goes beyond most of our expectations for our other funding programmes. The community must be in control of the consultation and every effort must be made to bring people from the margins into the centre of the process as citizens and not as a member of a specific policy group.

- Small amounts of money can make a huge difference to encourage citizen-led activity. Our Place 2 will include a community chest that can distribute small amounts of cash (approximately £250) to enable things to happen quickly and build momentum at a pace that is right for a community.

- Good things can happen when citizens are in a position to sit at the table and influence decisions that affect their community. Our Place 1 offers a good example in Newmains where Newmains Development Trust are leading a significant £2 million capital project to build a new community hub, and the local authority have agreed to base the local library and housing services within the new building. The discussions between people and organisations have not only led to an important revenue stream for the Trust, they have also built people’s confidence in their ability to shape the future of their community.
COMMUNITY EMPOWERMENT (SCOTLAND) BILL
RESPONSE FROM SOLAR TO CALL FOR EVIDENCE

The Society of Local Authority Solicitors and Administrators in Scotland (SOLAR) welcomes the opportunity to respond to the call for evidence issued by the Local Government and regeneration Committee on 26 June 2014. The SOLAR response is solely to question 4 of the call for evidence paper: “Are you content with the specific provisions of the Bill, if not what changes would you like to see, to which part of the Bill and why?

1. SOLAR’s principal point in relation to the Bill as published concerns Part 6 of the Bill which deals with common good property. SOLAR’s view is that the Bill misses the opportunity to deal with the legal issue identified by the Court in the Portobello Park Action Group Association v City of Edinburgh Council case.

2. That issue arose from the court’s view, supported in a more recent case involving East Renfrewshire Council that it is not possible for a council to change the use of land that is viewed as being inalienable common good land. This contrast with the position of a council wishing to dispose of inalienable common good land where the legislation provides that this may be possible but only with the approval of the court.

3. SOLAR’s position is that a proposed change of use of or appropriation of inalienable common good land should be subject to the same controls as those that already exist for a disposal of the same property.

4. Such a change would avoid the need for an Act of Parliament to be promoted should another case arise where a council wished to appropriate common good land for another council function. The approval by the Scottish Parliament of the City of Edinburgh Council (Portobello Park) Act 2014 earlier this year demonstrates that there will be circumstances in which councils will legitimately wish to apply land held on common good for purposes different to the purposes for which the land was given to the council’s predecessors. Therefore, it is right that there should be a process short of promoting legislation to enable this to happen.

5. It is acknowledged that any proposal that could be perceived as weakening the existing legislative restrictions on changing the use of common good may be viewed with suspicion by some. However, the SOLAR proposal would not allow any appropriation of land to take place without the approval of the court. This, combined with the provisions in the Bill relating to consultation would give ample opportunity for scrutiny and challenge of any proposed appropriation.
6. The change could be accomplished by some minor, technical amendments to section 75 of the Local Government (Scotland) Act 1973.

7. SOLAR, in line with its response to the earlier consultation which closed on 24 January 2014, believe that the current provisions in the Bill relating to common good miss the opportunity to provide clarity on the interpretation on some key terms used in the 1973 Act. These include:

   - How and in what circumstances moveable assets held on the common good account could be disposed of. The legislation is currently silent on this point
   - Definitions of “alienable” and “inalienable” common good. The lack of clarity on these definitions has resulted in the Keeper of the Registers of Scotland refusing to issue a full title indemnity on the sale of any common good land, even where the property is clearly alienable.
   - Ideally, the Bill would attempt to define common good rather than having to rely on less than perfect common law definitions.
Local Government and Regeneration Committee

Community Empowerment (Scotland) Bill

Response to call for evidence as part of Stage 1 consideration of the Bill

Introduction

The Scottish Fire and Rescue Service (SFRS) commenced on 1 April 2013, and replaced the previous eight Fire and Rescue Services in Scotland. The main purpose of the SFRS, as articulated within the Fire and Rescue Framework for Scotland 2013, is to work in partnership with communities and with others in the public, private and third sectors, on prevention, protection and response, to improve the safety and wellbeing of people throughout Scotland.

The SFRS is supportive of the Community Empowerment (Scotland) Bill and welcomes this opportunity to provide evidence. We believe that the Bill will facilitate the SFRS’ purpose to work in partnership with communities, affording the opportunity for services to be co-produced in a manner that reflects local circumstances, within the context of a national organisation.

The aforementioned Fire and Rescue Framework for Scotland 2013 sets out the overarching strategic direction for the SFRS. It contains 58 priorities for the Service including such areas as working in partnership with local communities, prevention, protection and emergency response. The SFRS has created a Strategic Plan 2013 – 2016, which articulates how the Service plan to deliver against the priorities within the Framework, in a manner that supports the Scottish Government’s National Outcomes.

To support local scrutiny and engagement, the SFRS has appointed a Local Senior Officer (LSO) for each of the 32 local authority areas across Scotland. By working in partnership, LSO’s have developed Local Fire and Rescue Plans for each local authority area. These plans set out the priorities and objectives for the SFRS within the local authority area, the reasons
for their selection, how they will be delivered and measured. The plans also articulate the contribution that the SFRS will make to other relevant local outcomes that have been identified through community planning. These plans are widely consulted upon and must be submitted to the relevant local authority for approval.

To what extent do you consider the Bill will empower communities, please give reasons for your answers?

The SFRS believes that the Bill provides the landscape within which communities can become empowered. This is due to the strengthening of Community Planning Partnerships (CPP’s), placing them on a statutory footing. The SFRS contributes to all CPP’s within Scotland, and welcomes the opportunity to strengthen them that the Bill provides.

In addition to the enhancement of CPP’s, the SFRS also supports the other aspects of the Bill that will empower communities. This is due to the opportunity provided by the Bill for communities to have a greater say in the delivery of public services and local decision making processes. The SFRS is very supportive of a bottom-up approach to empowering communities, through collaboration and co-production, using all the assets within a community, including those from the public, private and third sectors as well as the inherent skills all communities possess. The SFRS considers that the Building Safer Communities Programme will be a vehicle for mobilising communities in this manner.

The SFRS recognises that improving outcomes cannot be done by organisations working in isolation, or indeed without the involvement of communities themselves. This is an approach that the SFRS already takes, for example in relation to our partnership approach to engagement with communities from a prevention perspective. We recognise that we cannot make people safer without working in partnership with others, and have also successfully utilised ‘community calls to action’ to assist safeguard more vulnerable members of society from fire. We therefore welcome the opportunity to strengthen these principles, which the Bill will provide.

What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

The SFRS believes that the Bill will have a positive impact upon public sector organisations. As an organisation within the public sector we recognise that our purpose, as articulated above from the Fire and Rescue Framework for Scotland 2013, is to improve the safety and wellbeing of people throughout Scotland. We are organised as a Service to fulfil this purpose, and measure our success in terms of improving outcomes for communities.
The SFRS supports the sentiment within the Community Empowerment (Scotland) Bill Policy Memorandum that communities can achieve significant improvements by doing things for themselves. This is because communities invariably know what would work for them, and will grow in confidence and resilience when their endeavours have positive results. By working with communities, right from the point of design, services can be co-produced, which we believe will have an enhanced impact on outcomes. This is to be welcomed by the SFRS as our purpose is to improve all outcomes for communities, particularly those associated with safety and wellbeing.

Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Many successful initiatives undertaken to date demonstrate the ability of communities to take advantage of the provisions of the Bill. Notwithstanding this, some communities will face greater challenges than others in becoming proactive.

The strengthening of legislation around community planning should be welcomed, as it will further enhance the imperative around CPP’s engaging with communities in identifying and prioritising the local outcomes that should be delivered.

Public services should ensure that their engagement with communities promotes the building of capacity within [community] organisations. This will promote community participation, and should be done in a way to address inequalities. In doing so, those communities that may require additional support to mobilise their own resources should be identified and appropriate support given by all relevant partners in the public, private and third sectors. It is not suggested that the Bill requires to be amended to meet this imperative, but rather practical support should be given locally to develop the necessary skills, confidence and resilience within communities.

Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Part 1 – National Outcomes

The SFRS welcomes the enshrining of national outcomes in legislation and looks forward to making a continued contribution across them.
As stated above, the SFRS welcomes the strengthening of community planning via this legislative route. We would also advocate the benefits of engaging the third sector and anchor organisations through this process to strengthen the connection with communities.

Part 3 – Participation Requests

No comment

Part 4 – Community Right to Buy Land

The SFRS welcomes the inclusion of this provision within the Bill, particularly in relation to the positive impact it could have on the vibrancy of communities, and the reduction of fire-related and other antisocial behaviour, which can have significant impacts upon areas.

Part 5 – Asset Transfer Requests

No comment

Part 6 – Common Good Property

No comment

Part 7 – Allotments

The SFRS welcomes the inclusion of this provision within the Bill, particularly in relation to the positive impact it could have on the vibrancy of communities, and the reduction of fire-related and other antisocial behaviour, which can have significant impacts upon areas.

Part 8 – Non-Domestic Rates

No comment

Part 9 – General

No comment

What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

No comment
NHS Ayrshire & Arran

Call for Evidence – Community Empowerment (Scotland) Bill

General points:

There is much that is good in the proposed Bill; it is well thought out and is aspirational in its content. It also reflects feedback from the previous consultation; in particular it places Community Planning Partnerships (CPPs) on a robust statutory basis.

The Bill includes a lot of detailed information which requires time to fully understand the content and context. It would have been helpful to have a summarised version of the Bill contents for consultation purposes. This would generate a greater and wider response. However, the policy memorandum was considered to be very helpful.

In broad terms it is felt that among the many stakeholders in this agenda the public health function can make an important contribution particularly in relation to tackling health inequalities.

Outcomes:

It is considered that creating outcomes is a good idea and sets out a robust outcome focused approach. Indeed, delivering local outcomes stemming from national outcomes is an appropriate focus. However the national outcomes as currently stated leave much room for improvement to make them more specific and ensure they complement one another. Consideration should also be given to the skills and capacity required to support outcome focused planning and delivery.

So, yes to outcomes and the right to change them, but they need to have inputs which describe more sophisticated and SMART outcomes which can be measured and reported on.
Community ownership:

This is well intentioned. However the part that allows communities to be defined by any characteristic could result in requests by specific religious groups to run their own services on a non-geographic basis which would undermine area-based accountability. Additionally, area based measures to establish the impact of inequalities on health or health determinants would be undermined.

Business rates relief:

This should be amended that CPPs may NOT create business relief schemes to apply to businesses which have a negative impact on health.

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

The Bill will empower communities to the extent that councils actively engage with the Bill in the spirit it is being written. However the context and language of part two ‘Community Planning’ raises concerns about the overall approach. The imperative of local community engagement from the outset within this section is absent. CPPs are requested to ‘make all reasonable efforts to secure participation’ from ‘appropriate’ community bodies and ‘take steps to enable them to participate to the extent they wish to’. This mitigates against a co-production approach where local community members are integral to any planning or development within their communities. Without key engagement from the outset, how else are communities going to plan outcomes, build capacity and develop their own community assets? Consultation on the ‘Local Outcomes Improvement Plan’ is not enough.

Part three highlights that a ‘community participation body’ can make a request to participate, but the right to participate is set against tight criteria and can be declined. Additionally there is a fear that some councils will see elected representatives and their executives as the only credible method for community engagement and empowerment. However, this risk can, perhaps, not be legislated for.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

The development of national outcomes is seen as a benefit as public sector organisations are already familiar with outcome focused approaches (although some skill development may be required). The Bill advocates that there will be flexibility as
to how the national outcomes will be presented and measured. This will support local approaches. Consultation on the outcomes will include a wide section of public sector and partner organisations, including private and third sector; this will only enhance the final content. The outcomes will be reviewed within a given timeframe. This means challenges can be addressed expediently.

An engaged community is seen as a benefit, however the wide definitions for community bodies which can be defined by characteristics such as common interest or personal characteristics such as gender, sexuality, religion etc could lead to fragmentation of public services and an inability to monitor the safety and effectiveness of any such services. For instance if a religious community sought to take on a public service, the fact that the service might be delivered in a non-geographical way, would prevent measures of deprivation, which are all area-based, from being used in assessing the impact of that service. It would seem preferable to ensure that any services which exist must retain a geographical basis. Additionally, there are concerns about any vulnerable group who are not fully engaged within “communities” and their ability to be able to access any of the potential benefits that the proposed legislation may bring. There is the potential of the unintended consequence of increasing inequalities.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities to ensure this happens?

A provision of the Bill which may empower communities is extending the communities’ right to buy (part four). This power will support the development of the local environment and infrastructure. The extension of this provision to allow purchase of neglected and abandoned land will only facilitate this outcome.

Whether all communities have the capacity to take advantage of this provision will need to form part of the review. However, the Bill will need to be explained to communities and individuals through pathways which are additional to and do not rely upon local authorities alone. This could involve work through the third sector and support from the NHS and other public bodies as they will need to fully understand the aims of the Bill and not simply the impact of the support requests which they receive.

The provision of more allotments is welcome.

4. Are you content with the specific information in the Bill, if not what changes would you like to see, to which part of the Bill, and why?
The following changes should be made:

- CPPs should be required to collaborate across local regions to share costs and learning to ensure effectiveness and efficiency.

- Ensure the need for community-owned services to be limited by the need to provide on a geographical basis to allow good governance. This is to ensure equity, fairness and governance.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the policy memorandum?

It is not felt that the memorandum advances the equality agenda. Defining communities and community-owned and operated services by equality determinants such as gender, sexuality, religion etc seems to be a retrograde step which could lead to segregation. However, the memorandum is positive in that it recognises people as the country’s best assets, plus the importance of them influencing what is happening in their own country.

It is not felt that this overview is well reflected in the community planning section (part two) of the Bill with the content and language regarding community engagement that is used.

John Burns, Chief Executive
NHS Ayrshire & Arran
5 September 2014
Introduction

Co-Cheangal Innse Gall is the Third Sector Interface for the Western Isles and a partnership of 5 organisations. Our remit is to promote, support and develop the third sector, social enterprise and volunteering, and to provide a bridge between the third sector in the islands and the Outer Hebrides Community Planning Partnership.

We do not make representation on all parts of the Bill, but only on those parts which most affect our communities, our sector and our role as a TSI.

While welcoming the Bill, there are issues which are of concern as they have particular relevance in rural, peripheral and island communities and which should be noted in any future iterations of the Bill. Similarly, the role of TSIs in engaging with, and advocating on behalf of, communities needs to be further defined.

Part 1 National Outcomes

The inclusion of setting national outcomes in to primary legislation is welcome but this must be underpinned by a commitment to a consultation process which is fully inclusive and which has co-production with the third sector and communities at its core. The National Standards for Community Engagement should be reviewed and adopted as a code of conduct for engagement, as at present, there is no definition of who or what should be consulted, on what matters, nor is there an effective mechanism for ensuring consistency. Review of the Standards will have desired outcome of allowing true priority setting within communities and enhancing local democracy.

Part 2 Community Planning

The Bill focusses on the duties of statutory partners and makes little mention of Third Sector Interfaces; rightly so, as it should be remembered that TSIs are not statutory bodies, nor is it in the interest of either national government or local community planning partnerships that they be required to adopt the duties imposed in the legislation. However, it is crucial that TSIs are recognised as a mandatory partner within Community Planning Partnerships and there is scope for closer definition of the role of TSIs as advocates for the third and community sectors in the guidance, particularly as it relates to any review of National Standards for Community Engagement. This should be aligned to a programme of community capacity building around issues such as participatory budgeting and the setting of local priorities. TSIs are the natural vehicles for these mechanisms and should be defined as such in the guidance. Properly briefed and resourced TSIs are vital if community
planning and community engagement is ever to be truly effective and the guidance should reflect this. This can only result in a strengthening of the community planning process.

Similarly, if the spirit of the Bill is to be upheld, the diverse nature of island communities and their very specific needs must be recognised. There is a long history of community engagement within island communities and if the final Act, in its aspiration to the effective utilisation of all the assets of a community, is to be effective, then there needs to be a recognition at this stage that there is much to learn from the experience of small, island communities and that this represents a considerable community asset.

Part 3 Participation Requests

If the final Act is to have any hope of realising a community’s aspiration to true and equal say in the design and delivery of services, then the legislation must give it some teeth to participation requests and impose a duty on statutory agencies to be proactive in their engagement with the community and third sectors, backed up by the mechanisms through which this will be achieved within the guidance.

There is still an assumption that statutory agencies will have the right to invite participation to those organisations or communities as they see fit. In fact, the spirit of the Act demands that this top down approach be reversed. Only through recognition of this will a culture change across all agencies and sectors – including the third sector – be realised and it is scarcely in doubt that such a change is necessary. The Bill as it stands at the moment does not fully articulate this duty and is very woolly on how it will work in practice. If allowed to proceed to the Act, this will represent a significant “watering down” of the spirit of the legislation and if this is to be restored, there needs to be a commitment to a programme of capacity building within communities and smaller third sector organisations in order that the third and community sectors can fully engage with the process. Without this, progress will be slow and may never be effective. It will be “business as usual”.

Part 5 Asset Transfer

Much of what is contained in this section of the Bill is already in practice in the Western Isles and in other rural areas of Scotland, and Comhairle nan Eilean Siar maintains an asset register and encourages asset transfer. However, this is not the case for all public bodies; other agencies are more reluctant to pass assets into community control as a first option, even when there is an existing leasing arrangement, and the Bill needs to address this.

There is, at present, no clarity on the process for asset transfer, on regulation of transfer to ALEOs or on transfer to consortia of community groups within either the Bill or the guidance. There needs to be further consultation on these issues. At present, the onus is on the community to ensure that these issues are addressed but this is against a background of lack of capacity within some communities to fully realise this, meaning that there is inherent disadvantage. Law is supposed to address fundamental inequalities and the lawmakers, as was pointed out in the previous section on
participation requests, require to give the Bill teeth and apply similar solutions in providing for community capacity building within the guidance.

**Part 6 Allotments**

The Bill makes no mention of the particular landholding issues of rural and crofting communities and in the Western Isles, where 75% of the population live on land which is in community ownership, it makes absolutely no sense for the local authority to acquire land for allotments when much of it is already in community ownership. The Bill should recognise the particular arrangements in crofting and community landholding communities and extend the definition to include use of community owned land for allotments. The local authority could retain the duty to maintain the list of requests and to work with community land owners to deliver allotments. The current provisions in the Bill do not allow for this.

**Anne Sobey**

Chair

**Co-Cheangal Innse Gall**

5th September 2014
I understand the proposed Community Empowerment Bill is open for evidence from the public.

Question 1 - To what extent do you think the Bill will empower communities?

I would like to draw attention to the anomaly which exists between the Town and Country Planning Act (Scotland) 1997 and the Electricity Act 1989. "Section 36" applications for Wind Farms greater than 50MW are determined under the Electricity Act 1989, these applications by-pass the Local Planning Authority, going directly to the Scottish Ministers for determination.

Wind farms under 50MW are covered by the Town and Country Planning Act (Scotland) 1997 and provide a statutory pre-application consultation for the public. Under the Electricity Act, there is NO statutory requirement for developers to hold a pre-application consultation (PAC) with our communities.

Scottish Ministers have recently opened up the National Forest Estates, allowing Forestry Commission Scotland to enter into joint venture partnerships with commercial Wind Farm developers. FCS manage this land on behalf of the Scottish Ministers. The Scottish Ministers own this land on behalf of the public. Section 36 applications determined under the Electricity Act, result in Scottish communities having no statutory right to be consulted on the proposed use of our own land!

This is surely a sad reflection on what passes as democracy in modern day Scotland!

In this year of the Referendum, when Scotland's people are being asked to vote on the future of our Nation, it seems inconceivable to find that at grass roots level, we have no legal right to be consulted on how Scotland's own land is to be utilised.

England already has compulsory pre-application consultation for Wind Farms greater than 50MW under their Planning Act 2008.

Scotland has "Government Guidelines" highlighting community engagement methodology - why should Scottish communities find themselves reliant on guidelines, when what we actually require is "statutory" legislation in place to ensure we have a right to be consulted and guaranteed a right of public participation in these important planning issues?

If the Community Empowerment Bill can achieve this, then it will obviously have justified the time, money and effort which has gone into it's inception - otherwise, it could be seen by many as a parody of it's own name.

I sincerely hope this Community Empowerment Bill is successful - the people of this country need to have faith in an open, transparent and
democratically robust planning system, and our communities need legislation in place which "guarantees" them a statutory right to be consulted on the proposed use of our own land and the power to have our collective voices heard.

Lynn O'Keefe
Bluebell Cottage
Kilmun
Argyll PA23
Local Government and Regeneration Committee

Submission Name: Glasgow City Council
Submission Number: 115

Written Submission on Community Empowerment (Scotland) Bill

In response to the invitation to give evidence to the Scottish Parliament's Local Government and Regeneration Committee's call for evidence on the above Bill, Glasgow City offers the following comments.

In general, the Bill presents a package of measures designed to encourage community empowerment and create conditions that will encourage active citizenship and participation in civic life. Many of the provisions in themselves are helpful. However, the Council, has concerns as to whether the measures in the Bill will, on their own, achieve these aims.

In earlier submissions to this Committee (the Inquiry into the Flexibility and Autonomy of Local Government March 2014) we presented evidence to argue for a reinvigorated local government, able to effectively exercise a broad range of powers on relevant local issues and properly resourced to do so. In that submission we set out the range of powers or issues where we believe it is essential they are returned or devolved to more local decision making. These include raising local income and taxation, enhanced local economic powers, transport; and welfare. We continue to believe that a significant increase in local decision-making powers is essential to achieve the Bill's stated objectives.

In relation to responses to the specific parts of the Bill, we offer the following comments.

1. To what extent do you consider the Bill will empower communities, please give reasons for your answers

PART 1 – National Outcomes
Dependent upon how the Scottish Government intends to “consult on” a set of national outcomes for Scotland, this may increase involvement and engagement. Further details would be helpful.

PART 2 – Community Planning
CPPs should already be engaging with their communities in identifying and prioritising the outcomes that are to be delivered, and working with communities to develop their capacity to contribute to community planning and to their achievement of better outcomes. However, this is not currently a clear statutory requirement.

PART 3 - Participation Requests
Glasgow City Council welcomes the Bill’s recognition of points raised by the City Council in the earlier consultation in early 2014 in relation to:
- Representativeness and accountability of community groups
- The inclusion of “communities of interest”
- The inclusion of groups without a constitution but with a statement of aims and purposes. GCC welcomes this, and suggests that the Bill or Guidance nonetheless suggest that it would strengthen such bodies position if they worked towards becoming constituted.

However, in relation to the specific matter of empowerment, the City Council remains concerned regarding the detailed process which will ensue following refusal of a participation request. Whilst this may be included in regulations or Guidance, until there is clarity in this area, the effect may be disempowering, as in having raised expectation and then having hopes dashed. This could impact on working relationships and may be counter productive to establishing longer term collaboration and trust on which effective community planning and community empowerment should be based.

PART 4 – Community Right to Buy Land
Whilst some communities may be able to take advantage of this provision, the mere introduction of a community right to buy will not, of itself, empower communities. It is what
can be then done with the building/land through self sustaining use that could allow a community take decisions for themselves. If the new ownership relies on significant ongoing financial and capacity building support from the public sector then, the community will, in practice, be no more empowered than before. If reliant on such support, and vulnerable to its withdrawal due to other competing locally expressed priorities taking precedence, this is not being truly empowered.

PART 5 - Asset Transfer Requests

Comments as above for “Community Right to Buy.”

In addition:
- The timescales (and stages) involved each have associated costs. The level of costs incurred at stages could be significant if organisations are to be properly empowered by local authorities and other bodies.
- The interested organisations may incur costs in preparing their case – e.g. producing business plans and provision of technical advice.
- If organisations take over assets but did not wish to TUPE staff or use maintenance services previously provided then this could have cost implications.
- Paragraph 52 (4) should perhaps also make explicit that a community transfer body should provide when making a request:
  1. a Business Case (possibly as part of a Business Plan) outlining its credentials and expertise (whether internally or sourced) including but not limited to its ability to execute and monitor delivery of the services
  2. a timetable for when it expects to start delivering the benefits it consider will arise if the authority were to agree the request

PART 6 – Common Good Property

As above for “Asset Transfer”.

PART 7 - Allotments

Glasgow City Council is in general supportive of the Bill in relation to Allotments. However, GCC would question extent to which the Bill increases the opportunities for empowerment currently in place through devolved management to allotment associations.

PART 8 - Non- Domestic Rates

Not applicable.

2. What will be the benefits and disadvantages for the public sector organisations as a consequence of the provision of the Bill

PART 1 – National Outcomes

If the National Outcomes are co developed in consultation with local authorities and CPP partners, there may be an opportunity to rationalise priorities.

PART 2 – Community Planning

The new formulation of community planning - “planning that is carried out with a view to improving the achievement of outcomes in relation to the area of a local authority resulting from, or contributed to by, the provision of services delivered by or on behalf of the community planning partners.”

This is a much clearer statement than the current one in the 2003 Act.

S. 8 lists those partners who must “facilitate Community Planning” and take reasonable steps to ensure that the CPP “carries out its functions … efficiently and effectively.”
S. 9 sets out the duties of these “core” partners. These are clear. However, it is not clear what steps will be taken to make it easier for partners to meet them in particular how they will be assisted to commit “appropriate resources to the achievement of local outcomes set out in … (the Local Outcomes) … plan “

Whilst the change in duties addresses perceived problem of lack of accountability of other public bodies for their contribution to Community Planning, the question arises as to whether this new formulation alters the role of local authorities in Community Planning. On one reading the new duties offer a shared leadership model. However, how will this work in practice, if partners don’t agree roles and responsibilities. In addition does it meet the test of accountability?

The summary of consultation responses published with the Bill states that -

“The predominant view amongst respondents was that local authorities should retain their statutory duty to initiate, facilitate and maintain community planning on account of their democratic mandate, but structural and cultural changes are needed to shift perceptions away from CPPs being seen as extensions of local authorities. “

Rather than simply end local authority leadership the summary of consultation responses suggests that the consensus was to seek “robust accountability frameworks, in which individual CPP partners are held to account for their contributions, coupled with statutory duties on different public bodies, supported by guidance on their roles” This was to “help to address perceptions of council dominance.”

Neither the Policy or Explanatory Memorandum are clear on the rationale behind the wording of the Bill on this point.

PART 3 - Participation Requests

Benefits

There may be the opportunity for groups not currently involved to become involved and bring different perspectives, expertise and knowledge to bear.

Disadvantages

Unspecified or unknown costs for staff time to deal with participation requests and asset use/transfer requests. Depending on Guidance, costs for staff time building community capacity may be significant. Staff development in relation to working with communities and costs to improve assets for handover would also be significant additional burdens.

GCC proposes that for the aspirations of the Bill to be achieved, for community empowerment to become part of the culture of organisations a programme of organisational/staff development would be helpful, even essential. We suggest that the Scottish Government initiate discussions with Local Authorities and community planning partners on how to support this and delivery of the Bill’s aspirations.

PART 4 – Community Right to Buy Land

Benefits

It potentially allows the City Council to work with community bodies to take over surplus assets and undertake community owned and backed projects or deliver some public and/or provide services required or not currently provided in a community.
Part 3A: In the circumstance where Council and/or Council ALEO land is identified there will be the financial implication of putting a process in place and of utilising resource from a range of services in order to enable a response to be made within a very short timescale. In addition, the financial implications for Glasgow may be significant in the circumstance where the proposed acquisition may deal with a short term issue but is not aligned to the Council’s longer term strategy. As a precaution the Council and/or Council ALEO will require to resource a search in the Register of Community Interests in Abandoned and Neglected Land in advance of both marketing and disposal of property which could potentially fall within this category.

Part 4: The financial implications for Glasgow may be significant in the circumstance where a registered interest has a negative impact on potential investment in the City. The Council and/or Council ALEOs will require to resource responses to applications and the cost of searches in the Register of Community Interests.

PART 5 - Asset Transfer Requests

Benefits

Disadvantages

Local authorities may incur costs in getting assets into a state where they are transferable. Local authorities would incur costs in supporting the empowerment of organisations to participate in the process of community asset transfer and beyond. If organisations take over assets but did not wish to TUPE staff or use maintenance services previously provided then this could have cost implications. As indicated earlier Q3 abortive costs, which may be substantial, could be incurred by both the applicant and the local authority. However each party would require to bear these costs with no re-imbursement. If an organisation purchased an asset from Glasgow City Council and then, for whatever reason, the organisation failed or ceased to exist, then GCC may, for wider public interest, be compelled to buy the asset back.

PART 6 – Common Good Property

Benefits

If a Register was definitive this could reduce the chances of disputes re Common Good. It is not clear this will be achieved.

Disadvantages

One of the main difficulties encountered by Local Authorities in dealing with Common Good issues is determining what actually constitutes ‘Common Good land’. The existing law on Common Good is obscure and uncertain due, mainly, to the lack of legislation in the area and the absence of definitive and clear case law. The Bill does not attempt to define ‘Common Good land’ and no guidance is given as to which assets ought to be included in the Register.

Therefore, the Council will be required to make its own assessment, based on the existing case law, as to which assets should be included in the Register.

In establishing the Common Good Register, the Council will be required to review the title deeds to all land which may potentially form part of the Common Good. If the title is silent on Common Good, or the position is unclear, other information may have to be looked at, such as the Minutes of the Council meeting at which the acquisition was authorised or historical Common Good accounts - these may give an indication as to how the property was intended to be used and whether it was considered to be Common Good.

In compiling a Common Good Register, the Council will require to review the status of all property in its ownership. This not only involves a detailed review and interpretation of the title
deeds, but also an at times resource-intensive review of available historic and current information.

Given the high number of properties owned by the Council, reviewing the status of all of them will be a time-consuming exercise and will have significant cost and resource implications. In the absence of a definition of ‘Common Good’, the Council will require to make its own judgement as to which assets should be added to the Register. This adds to the complexity of the task.

Due to the time and resource required, Local authorities tend to consider common good on a case by case basis should they be intending to dispose of, or otherwise deal with, a property. Glasgow has an approved policy to this effect: any assets have to be reviewed against the law of common good prior to disposal.

The lack of definition of ‘Common Good’ also means the completed Register will not be definitive and will still be open to challenge. In the event of any Court decisions which clarify, or change, the law on Common Good, the Register will have to be reviewed.

The duty to consult with and take into account representations made by community bodies and community councils, and anyone else, when compiling the Register, and again when disposing of, or changing the use of, Common Good assets will also have significant time, cost and resource implications for the Council.

This definition of ‘community bodies’ is very broad; it includes groups which are not formally constituted, there is no requirement that they are of a minimum size or that they can demonstrate that they are representative of the wider community.

Given the broad definition of ‘community bodies’, there will potentially be a high number in any ‘community’, with the result that the Council will be required to liaise with each of them, and take into account representations from a potentially wide range of parties.

PART 7 - Allotments

Benefits.

Empowering allotment communities with ambitions to take responsibility for their local assets

Ability to engage in a more productive dialogue with wider communities on potential innovative use of assets which could assist in the delivery of health and well being and other national outcomes.

Disadvantages

The detailed policy proposals in regards to allotments will come with a significant requirement for capital investment to meet the demands of Section 72 (Duty to Provide Allotments). See sub section 1 ie where sub section (2) or (3) applies, each local authority must take reasonable steps to ensure that the number of persons entered in the list maintained under section 71(1) is no more than one half of the total number of allotments owned and leased by the authority.

There will potentially be capacity issues within the local authority to comply with Section 71 Duty to maintain list
Section 77 Duty to prepare a food growing strategy
Section 78 Duty to review food growing strategy
Section 79 Annual Allotments Report
All may require additional financial support.
Local Government and Regeneration Committee

Submission Name: Glasgow City Council  Submission Number: 115

PART 8 – Non – Domestic Rates
Benefits- No comment

Disadvantages
The Bill proposes powers for local authorities to create local NDR relief schemes from 2015/16 onwards. The scheme would not be funded by the central NDR pool. Therefore any local relief scheme would have to be funded by the local authority and so would therefore have to be built into the budgeting process.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions of the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

PART 1 – National Outcomes
See comments above

PART 2 – Community Planning

Neither the Policy or Explanatory Memorandum are clear on the distinction, if any, between the Local Outcomes Improvement plan, and the local Single Outcome Agreement. If there new plan is additional, there are clearly implications for community engagement and for resources required to undertake the consultation required.

PART 3 – Participation requests
GCC welcomes the Bill whilst recognising that resources are limited. Giving public bodies the capacity to prioritise those communities with greatest need (poverty, barriers to participation, etc) for resourcing, in the form of capacity building support, contributions to improving assets before handover, etc would be essential. This would help with the risk of the Bill unintentionally increasing inequalities by helping only those communities who are already empowered.

PART 4 – Community Right to Buy Land
It would be useful if examples of what “conditions” might cover were identified (probably in Guidance) in order that the Part 3A community body might have an idea of their responsibilities re eg timescale for delivery of their objective; and in the event of a failure of sustained delivery of their objectives by the Part 3A community body (or its permitted nominee), would a right of pre-emption in favour of the owner be a way forward?

PART 5 – Asset Transfer Requests
No comment

PART 6 – Common Good Property
No comment.

PART 7 – Allotments
Allotment communities are run on a voluntary basis. Allotment communities have varying capabilities, skills profiles and capacity. There may be skills gaps. The impact of the Bill could perversely lead to disadvantage communities effectively becoming more isolated and further disadvantaged. A challenge to achieving the purpose of the Bill would be to ensure all communities have access to training in capacity building and personal skills development with the appropriate financial commitments being attached to the Bill.

PART 8 – Non – Domestic Rates
No Comment

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill, and why?

PART 1 – National Outcomes
As above details of consultation process would be helpful.
PART 2 – Community Planning
As above, clarity on the future role of local authorities in relation to co-ordination of Community Planning would be helpful and avoid potential confusion. In addition, clarity of relationship between SOA and Local Outcomes Improvement Plan would assist.

PART 3 – Participation requests
GCC remain unclear to what extent the Community Learning and Development Regulations and the requirements of the Bill fit with the existing requirement to engage local communities in the development and delivery of CLD services. Clarification of this is essential to ensure we avoid confusion and competing expectations.

PART 4 – Community Right to Buy Land
Issues are -
- Definition of what is wholly or mainly abandoned or neglected land is unclear and may be the subject of litigation;
- the interpretation of sustainable development will be a subject of debate;
- Council (including Council’s ALEOs) land may fall into this category which may have an adverse impact on the delivery of Council strategy;
- the 60 day period for owners to respond is an extremely short timescale and we query whether this is compatible with the preservation of human rights;
- right to compensation is not available to the owner if the decision is to refuse – surely a fairer outcome would be that the owner is not out of pocket. Is it possible for this to be reconsidered?

In addition,
- there is no reference to the proposals being required to be consistent with planning policy. It would be useful if Guidance were to confirm the need to liaise with Planning Authorities; and
- it might be useful in Guidance to suggest that there be a liaison with Police/Council etc in order to find out whether there is any evidence of the condition of the land causing a public nuisance.

The Council has a concern that in a still fragile economic environment, when the role of the public sector in enabling development is of increased significance, the additional layer of potential problem which this register creates for proposed investors may deter them. Clarification is required regarding the interaction between Parts 3A, 4 and 5 of the Bill.

PART 5 - Asset Transfer Requests
The Bill refers in Paragraph 54 to the possibility that Scottish Ministers may by regulation make further provision about asset transfer requests. Glasgow City Council would caution against any measures in this regard without first seeking input from authorities experienced in administering such processes.

Glasgow City Council has a process in place in relation to Community Asset Transfer. Its emphasis is on the pre-application stage and providing support to organisations empowering them to advance their case in a coherent manner. Our experience thus far is focused on enabling organisations to submit proposals in the form of an Expression of Interest (covering many elements outlined in Paragraphs 52 and 55) and allowing the request to progress at a pace which enables both parties (authority and community transfer body) to work together. This does not mean that all requests are approved but it does generally mean that in working with the community transfer body is better able to understand the context and reasons for why a request has not been progressed.

Glasgow City Council’s experience is that community transfer bodies have different levels of expertise. Even with a well established body the process can be complicated (e.g. technical and legal considerations) and more costly than first anticipated which may not be in line with their expectations.

Consideration also requires to be given to the consequences of where the Bill interacts with existing legislation, for example:
Local Government and Regeneration Committee

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- Local Government (Scotland) Act 1973, Section 74(2), which places local authorities under a duty to achieve best consideration – it will be essential to clarify that in responding to an asset transfer request, it is deemed to have complied with this duty
- In relation to Common Good, clarification is required on whether the law pertaining to disposal of Common Good property prevails over the Local Authorities statutory obligations
PART 6 – Common Good Property

The Common Good Register will not be definitive; it will still be open to interpretation and challenge. Anything omitted from the list could still be held to be part of the Common Good. What is “all property held [by a local authority] for the common good” will be open to interpretation unless a definition is provided. Certainty as to what property is included and what restrictions there are to be on that property cannot be achieved without also setting out which type of dealings or disposals are permissible, and which are not. The Council could incur significant cost and resources in establishing a Register only for the law to be overturned by a court decision.

Likewise, although community bodies or members of the public would still be able to object if they disagree, the new legislation will not give the public any greater certainty that their contention is correct than they have at present.

The likelihood of delay, expense and ultimately contentious litigation will remain the same – whether as regards what is common good property and what is not, whether that property is alienable or not, or as regards which types of dealing amount to alienation (or disposal) and which do not.

By addressing the definition of common good in the legislation, the difficulties with the current position could be resolved, or at least significantly reduced. Once there is a clear definition, the goals of increasing transparency and increasing community involvement in the use of common good assets can be properly addressed. Until there is a clear definition, there will continue to be disputes about what is and what is not part of the common good, and what can be done with such assets.

With regard to the terms of the draft Bill, as noted above, the definition of ‘community bodies’ is broad and the exercise of consulting with all of them could have significant time, cost and resource implications. Therefore, the definition of community bodies should be such that only community bodies which are formally constituted, have a reasonable level of support from the community (e.g. can demonstrate a minimum number of members with an identifiable connection to the locality, such as residency or a business interest) and have expressed an interest in a property to the local authority should be consulted.

PART 7 – Allotments

The Financial Memorandum attached to the Bill would put the Capital Invest required to comply with the Section 72 Duty to provide Allotments at £3.4m. Glasgow City Council's own estimates are significantly higher. It is essential that the Financial Memorandum which accompanies the Bill makes adequate provision for the costs of implementing the provisions. It is also unclear whether conversion of existing green space to Allotments by the Local Authority constitutes permitted development.

Regarding Section 77 Duty to prepare a food growing strategy, this appears to be an attempt to add on community gardens to allotment legislation. Both are specific legal constructs, with very different rights and responsibilities attached to them in law. Recognition of this should be given in the Bill and it may be separate legislation is required to address community gardening.

PART 8 – Non – Domestic Rates

The council welcomes the provision of powers to local authorities to create local non-domestic relief schemes. This is in keeping with the wider localisation agenda, and will help the council respond to local needs.

5 What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

No comment.
West Dunbartonshire welcomes the opportunity to provide evidence on the Community Empowerment (Scotland) Bill, particularly in relation to the likely empowerment of communities, their capacity to take advantage of this and the benefits and challenges to public organisations.

**To what extent do you consider the Bill will empower communities, please give reasons for your answer?**

Through provisions in the Bill communities and community groups will have a clear role and clarity of purpose for their involvement in localised community planning. The model is inconsistent in Scotland at the moment so the ‘minimum standard’ defined in the Bill gives more consistency and allows communities to understand their role more fully.

The focus on the role of local residents and community groups will also facilitate a more comprehensive approach to community led regeneration across Scotland with a focus on priority setting based on ‘place’. Within West Dunbartonshire we are testing a model of neighbourhood management which dovetails well with the provisions set out in the Bill and would allow for more accountability at a local neighbourhood level.

It is important however that while we ensure a focus on local residents at the heart of decision making, we also recognise that this level of involvement is not wanted or required for all community groups seeking involvement. We must work on a spectrum from informing through to full empowerment and coproduction. It is critical that a suite of models and mechanisms for engagement are available and that these are determined based on local need and capacity.

While we welcome the Bill and the desire to strengthen empowerment of our communities and residents we would urge caution around the assumption the Bill will fully address need in this area. While the Bill fully sets out the additional ‘delegated authority’ communities will have through provisions it does not address the supports required by communities to take up this ‘delegated authority’. There is a need to full investigate and scope the requirements of communities to become stronger and more confident in assuming the provisions of the Bill.

**What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?**

West Dunbartonshire welcomes the proposed widening of the Local Government (Scotland) Act 2003 to all agencies. This shared leadership of
the CPP extended to all partners gives stronger governance and accountability to the partnership.

The provisions of the Bill will support public sector organisations to drive forward the pace of reform. The shared responsibility and accountability will support the national focus on joint planning and resourcing for CPPs. The statutory basis for the SOA guidance going forward is also helpful and will strengthen the focus from all agencies on improving wellbeing.

The support on offer through What Works Scotland will be invaluable for progressing the early intervention and prevention focus inferred from the Bill, and will support empowered and involved communities as the route for consultation and engagement from all partner organisations.

The role of the National Performance Framework as a supporting structure for the direction of CPPS in building and strengthening empowerment is also welcome, particularly within a streamlined and focused outcomes framework model.

There are however areas where caution is required and further scoping and detail needed when exploring the provisions of the Bill. There is a significant cost associated with capacity building and responding to participation requests, it is critical that this resource requirement is met to enable local areas to deliver on the provisions of the Bill and give it ‘teeth’ within local communities.

There are also a number of practical challenges for CPPs likely to arise in implementation, such as the timely availability or data to show progress and the likelihood of localised data being available from all partners for each small community given the lack of coterminosity of key agencies across Scotland.

There will also be a challenge in each area, linked to the use of the NPF, in relation to how progress is shown annually given the generational nature of the outcomes being addressed. It is critical that progress and direction of travel can be shown and reported regularly to fit with the strengthened model of accountability to local communities.

Do you consider communities across Scotland have the capabilities to take advantage of the provisions of the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

While there is appetite and desire in local communities to take advantage of provisions in the Bill there is a need to provide national support to allow CPPS to support communities in building capacity and resilience. Community led regeneration is welcomed and perhaps there could be more public social partnerships funded to allow this model to grow further. Support around the
challenges and process of procurement will also be needed, both for agencies and for community groups if delivering a new model of commissioning and regeneration.

It is important to note that not all community groups want involvement and engagement at the same level. It is important that groups can fit into a framework at the appropriate level for their needs and that this Bill does not assume a single model of engagement and participation.

The national work currently underway to build the role of Community Councils is welcome as they will be a key mechanism for representation and for the dissemination of information locally. Community Councils will also be an ideal vehicle for developing and strengthening local community involvement and engagement and may act as an umbrella organisation for many smaller groups in the local area.

Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

While the provisions of the Bill appear to give communities greater encouragement to become more involved and engaged in local planning, design and delivery of services much support would be required to enable this. There is also a significant lack of direction around long term sustainability, particularly in relation to transfer of assets.

Additional clarity could also be added on the relationship between the Bill and other existing legislation and policy areas. This would be of particular assistance in relation to the Local Government (Scotland) Act 2003 and the 2012 specific duties of the Equality Act 2010.

Given the focus on empowering local community groups it would also be helpful if the provisions in the Bill provide clarity and are written in a manner which is easily accessible to all readers.

What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

The policy memorandum notes that the legislation will be in line with the Equality Act 2010 and the 2012 specific equality duties. It would be helpful if the eventual guide that accompanies the legislation takes account of evidence and positive practice such as using Equality Impact Assessment as a key tool for ensuring inclusion fairness and effectiveness.

The memorandum highlights the desirability of Local Authorities having impact assessed policies and procedures in place for transfer of allotments and
assets, and we would be highly supportive of this. Ensuring that Equality, Human Rights, Health and Social Economic impacts are assessed at the same time would add value to the process, and this is already the direction of travel for many Local Authorities in terms of their impact assessment processes.

Among Local Authorities and to a lesser extent other public bodies it is common to have an equality outcome on increasing participation and involvement based on local evidence of a deficit for some groups. This is one way to help ensure that the eventual legislation is brought to life with fairness and inclusion at the fore.

**Specific Comments:**

**Non Domestic Rates**
In general the intention to permit the rating authority to introduce a scheme for the reduction and remission of rates is well founded. This would be particularly helpful in areas of deprivation or where incentives are required to stimulate economic development and the creation of jobs. However the concept may cause difficulty where localised works are affecting the short term trading ability of businesses. Under the previous regime it the Assessor would have dealt with the matter under a material change of circumstances appeal. It would be helpful for the legislation and provisions to be more specific and make strong reference to an economic benefit rather than a generalised scheme.

**Community Right to Buy**
The Bill and provisions provide clear guidance on the procedures to be undertaken by all parties when a community body wishes to acquire a property. This includes a clear definition of the size and scale of the acquiring organisation. The definition of abandoned or neglected land relies wholly upon the dictionary definition. Land however need not necessarily be abandoned or neglected just because it has not been worked. This could be the case where a developer has banked land for future development. Clearer definition and guidance should be included; failing which there is a risk that issues will have to be referred to the courts for clarity.

**Asset Transfer**
While the Bill provides clear guidance on the procedures to be undertaken it may be prudent to all detail to ensure that in the situation where the body with acquired interest is the subject of a winding up order the disposing party should be considered as part of the process for the onward transfer or return of the property.

**Allotments**
The detail in the Bill and supporting provisions in relation to allotments is welcome. Trigger points are particularly welcome, as is the simplification of duties and increased transparency in relation to cost recovery powers.
Community Empowerment (Scotland) Bill

Written evidence for the Local Government and Regeneration Committee

Scottish Youth Parliament
September 2014

Introduction and background to the Scottish Youth Parliament

The Scottish Youth Parliament is the democratically elected voice of Scotland’s young people. Our vision is of a stronger, more inclusive Scotland that empowers young people by truly involving them in the decision-making process. In working towards our aims, we support the following values:

- **Democracy** - All of our plans and activities are youth-led, and we are accountable to young people aged 14-25. Our democratic structure, and the scale of direct participation across Scotland, gives us strength and sets us apart from other organisations.

- **Inclusion** - We are committed to being truly inclusive. The Scottish Youth Parliament believes that all young people have a right to a voice, it doesn’t matter who we are or where we come from; we celebrate our diversity.

- **Political independence** - We are independent from political parties. Only by working with all legitimate political parties can we make progress on the policies that are important to young people.

- **Passion** - We believe that drive and energy are key to successful campaigning. We are passionate about the key issues and believe that young people are part of the solution, not the problem.
The Scottish Youth Parliament welcomes the opportunity to respond to the Local Government and Regeneration Committee’s Call for Written Evidence for the Community Empowerment (Scotland) Bill.

As an organisation, we exist to provide a platform for young people to discuss the issues of importance to them, and affect the change in society they wish to see. We believe that young people are active, engaged and passionate citizens who are keen to engage positively in their local communities. As such, we welcome that the Scottish Government has brought this legislation to the Scottish Parliament with the view to strengthening community engagement in local decision making.

However, in recognising the opportunity that this legislation presents to improve the ability of young people to engage in local decision making, we believe that the legislation could be strengthened in a number of crucial areas, specifically with reference to Parts 2 and 3.

The Context to our response

Our submission is based on the policies selected and passed by our democratically elected Members of the Scottish Youth Parliament (MSYPs) at our tri-annual National Sittings, where MSYPs meet in plenary to debate policy issues of importance to their constituents. Our contribution is further grounded in the policy statements contained in our youth manifesto “Change the Picture”, which received almost 43,000 consultation responses. Therefore, our remarks are shaped by the genuine views of young people.

In addition, we carried out a piece of small scale primary research to ascertain the views of young people to inform our response to the initial public consultation. This response will also form the basis of our evidence.

The Scottish Youth Parliament holds the following pieces of policy that directly impact upon this legislation:

All young people should be involved in the services which affect them and should have the opportunity to get involved in local decision making opportunities.

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1 You can see the list of SYP Policy, including our youth manifesto here: http://www.syp.org.uk/policy-W21page-340.
In addition, the following Members’ Motion was passed by the Membership of the Scottish Youth Parliament:

*The Scottish Youth Parliament believes that young people must be given the opportunity to contribute to civic life if Scotland is to achieve its potential. A strong commitment from Government must be given to achieve genuinely effective youth participation.*

Through our engagement work locally, and the experiences shared by our Members of the Scottish Youth Parliament, we know that the level of engagement with young people in local decision making is extremely variable.

There are a number of fantastic examples of how local authorities, and their decision bodies, engage with young people through youth representative bodies. Conversely, we are also aware that the quality of genuine engagement with young people is of a very low standard in other areas.

We believe this legislation represents an opportunity to improve the quality of engagement with young in community decision making, but crucially, in a more systematic and consistent manner.

**Recommendation:** We believe that the Committee should consider how wider principles or minimum standards for representative community engagement could be included on the face of the Bill, or through provision for additional statutory regulation or order making powers. Public bodies should have to provide evidence as to how they have met these standards.

**Part 2: Community Planning**

Part 2 provides a statutory basis for Community Planning Partnerships and imposes duties on them to secure the participation of local community bodies. However, we believe that the provisions could be strengthened to ensure that efforts must be made to ensure such participation is representative.

In addition, we believe that the provisions pertaining to the Local Outcomes Improvements Plans could be strengthened and be made more representative.

Presently, Section 5(3/4) places requirements on Community Planning Partnership to “consult” with appropriate community bodies. Similar to other organisations, we believe in the principles of co-design. Such plans should be established by the community together, rather than a simple obligation to consult. In our experience working with young people, we have found that where the principle of co-design is implemented, improved policy outcomes ensue.
In addition, we believe that this Section could be strengthened to ensure Community Planning Partnerships are representative in their consultation, with a particular emphasis on young people who often face additional barriers to engagement.

**Recommendation:** Specifically, in relation to Section 4(5), we believe that this should be considerably strengthened by outlining a requirement to ensure that efforts to secure participation are representative, including age, gender, sexual orientation, ethnicity, socio-economic background etc.

**Recommendation:** Specifically, in relation Section 5(3/4), we believe that a duty to consult should be strengthened to a duty to collaboratively produce Local Outcome Improvement Plans, ensuring that any community bodies involved are representative of the whole community.

**Part 3: Participation Requests**

Part 3 provides additional mechanisms for communities to be more proactively involved in decisions as to how public services are planned and delivered. While we welcome these provisions, the young people we consulted with made a number of recommendations for improvement.

In relation to Section 17, the young people felt that there needed to be a duty on public service authorities to make available information about participation requests, notably, how they can be made, and what opportunities exist that could entail a participation request. It was felt that this was very important in order to ensure accessibility to organisations that work with, or are run by, young people.

In addition, the young people consulted also felt that there public authorities should be required to make information available about the process in which participation requests are considered, and decisions are taken. Specifically, as part of Section 19, there should be a duty on public service authorities to make information available detailing the process for deciding whether participation requests should be accepted.

Furthermore, similar to other organisations, we believe that where a participation request has been declined, there should be an appropriate appeals procedure in line with the basic principles of due process and transparency. The young people we consulted with felt that this procedure should be independent.
Recommendation: As part of Section 17, there should be a duty on public service authorities to make information widely available about participation requests, how they can be made, and the opportunities where a participation request may be applicable.

Recommendation: As part of Section 19, there should be a duty on public service authorities to make information widely available about the process used to assess participation requests.

Recommendation: As part of Section 19, there should be additional provisions detailing an appeal mechanism.

Contacts

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Local Government and Regeneration Committee: Community Empowerment (Scotland) Bill

September 2014

Introduction

The FSB is Scotland’s largest direct-member business organisation, representing around 20,000 members. The FSB campaigns for an economic and social environment which allows small businesses to grow and prosper.

Small businesses are at the heart of Scotland’s communities. Micro and small firms account for almost all of our businesses and provide almost half (42%) of all private sector employment.¹ These businesses provide local jobs and training, sell goods and deliver services in communities across Scotland, from city centres to remote villages. Accordingly, the role of small businesses needs to be considered in any discussion about empowering local communities.

Some of the measures in the Bill will directly impact upon local businesses but more likely are indirect opportunities or threats for firms. Our response discusses this in more detail, as well as setting out thoughts, from the small business perspective, on the community planning process.

Background: community planning and businesses

From the beginning, the FSB has been involved in the community planning process across Scotland. A number of FSB members attended Local Economic Forums, the remnants of which often formed economic sub-groups or partnerships at local authority level. We now have a number of FSB members and staff representing the small businesses community on such groups, which are usually the main input of economic development issues to the community planning process. In a very limited number of cases, FSB representatives have been invited to sit on the community planning partnership (CPP). Broadly, the FSB continues to support the principle of community planning and recognises the efforts made to embed an evidence based, outcome focused approach. However, we have some concerns about the effectiveness of the process and the involvement of the private sector:

- Feedback from our members suggests that business involvement still largely relies on the traditional approach of inviting them to attend committee-style meetings. Business attendees express frustration that meetings can be process-driven and high-level; focusing on updates on strategies and SOAs (we have been told that 100+ pages of paper is not unusual in some areas). They often feel they have little to contribute to such discussions and that meetings achieve little.

- While such processes are probably unavoidable, they are perhaps not the best way to get local businesses involved. Busy small businesses can be difficult to engage with, so a number of approaches will be required. In our experience, small businesses prefer to get involved in specific projects or groups, such as Leader or traders groups, and it might be better to consider how such groups can more effectively contribute to the community planning process. In recent years, and particularly following criticisms made about economic development and community planning by Audit Scotland\(^2\), local authorities have placed greater emphasis on improving business involvement.

- We are very disappointed that, based on our experience from different parts of the country, community planning has failed to deliver a more co-ordinated approach to services for small businesses from the public sector. For example, multiple new initiatives to encourage employment developed and deployed by public bodies in isolation. The development of binding ‘plans for place’ are welcome, but whether they encourage local and national partners to overcome the apparent clash of priorities and funding issues remains to be seen.

- It may no longer be possible for representatives from the FSB, or similar non-delivery or community organisations, to sit on CPPs if formal requirements are placed on these bodies without a guarantee of exemptions from certain

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\(^2\) “The role of community planning partnerships in economic development”, Audit Scotland, November 2011
duties. For example, our representatives cannot make any commitment to provide resources to the CPP.

The Bill

1. Community planning

As outlined above, the Bill should avoid placing any unnecessary restrictions on certain community planning partners. Further guidance on partners which should be excluded from certain duties e.g. community representatives may be helpful.

2. Participation requests

We welcome these provisions and believe there may be opportunities for local business groups (e.g. tourism groups) to consider the opportunity to become involved in an outcome improvement process in relation to relevant local services.

3. Right to buy and asset transfer

The FSB understands the rationale behind efforts to simplify how communities can use vacant or underused public sector assets. In some areas, such as town centres, this approach could have a positive impact. We would also like to see greater consideration of the opportunities for small businesses to be given the opportunity to manage or occupy certain assets. In some areas, supporting a business to run a service from a public asset may be a more sustainable option since the business might have experience and could provide employment. However, transferring assets to communities could also present a threat to small businesses.

Firstly, if the transfer of an asset is accompanied by any form of public funding, a rigorous test of displacement is required when assessing the proposed activity. For example, using a vacant building to fund community-run commercial activity which directly competes with existing businesses (or may do so at some point in the future) is particularly unhelpful for our high streets.

Secondly, it should be a statutory requirement that the asset owner must identify and consult with any business or organisation using the asset, prior to agreeing any transfer request. We are aware of concerns from businesses that this does not always occur and a change in ownership or conditions may have a huge impact on businesses which rely on the asset. This might include assets such as parks or open spaces, filling stations, halls, cafes/visitor centres or piers. Notwithstanding the business impact, problems arising from lack of consultation and agreement, can lead to community breakdowns, especially in small communities.

Lastly, while recognising the potential community benefit of purchasing neglected land, small business owners who own local land or buildings might be alarmed at the prospect of losing what is often a significant medium to long term investment. The
Scottish Government should ensure that small landowners, without the means to afford expert legal support, are not left unprotected.

4. Non-domestic rates

In our response\(^3\) to the Scottish Government’s 2013 consultation on non-domestic rates we highlighted the need for relief schemes in an arbitrary property-based system.

We suggested that the current system of reliefs is varied and complex but, without question, the key relief for small businesses is the Small Business Bonus Scheme (SBBS). Having long argued for a scheme to address the disproportionate burden of rates for small businesses,\(^4\) the FSB warmly welcomed the introduction of the SBBS in 2008. This relief has been a lifeline to small businesses in exceptionally challenging economic times. A survey of our members, published in 2013, indicated that 75% of respondents are receiving some level of discount to their rates bill as a result of the SBBS. Indeed, 52% of FSB members told us they now pay no rates at all because they receive 100% relief.

In our comments to the Scottish Government, we highlighted two categories of small business often excluded from the SBSS. Firstly, those whose business model requires larger (and usually higher value) premises, such as hotels and nurseries. Such businesses may operate on tight margins, with relatively modest turnover yet their RV excludes them from support for small businesses.

Secondly, small businesses operating in higher value locations, where RVs are higher, like city centres, are also excluded from support. We understand that the system has to have thresholds and some businesses will always be on the wrong side of the upper limit, but many businesses currently feel they are denied assistance intended to support small firms.

We suggested that local discretion over extending reliefs may be one way to support small, independent businesses. However, we remain cautious about the likely impact of this new power, particularly if they have to be fully funded by the local authority. In England, where similar powers already exist for local authorities, there has been virtually no introduction of relief. A recent report by the FSB in Wales, also found that where local authorities have power to grant relief (using discretionary rates relief), only half had granted any discretionary relief in the previous 3 years.\(^5\)

Nevertheless, we hope that local authorities will consider how they can build on the foundation of the SBBS to support business start up and growth in communities.


\(^4\) As a percentage of profit, rates are around 3 times higher for small businesses, compared to larger firms. See: “Evaluation and Effectiveness of the Small Business Rates Relief Scheme”, DTZ Pieda, December 2004.

5 September 2014

Dear Sir

COMMUNITY EMPOWERMENT (SCOTLAND) BILL

The Cairngorms National Park Authority welcomes the opportunity to respond to the Committee’s call for written evidence as part of its Stage 1 consideration of the Community Empowerment (Scotland) Bill. We have sought to provide some contextual information, before answering the specific questions in turn.

The principles of sustainable, community-led local development are central to the management of the Cairngorms National Park. CNPA considers that the Bill will support us in helping communities take an even more active role in managing the Park.

Over the last 11 years CNPA has developed a number of approaches, in partnership with other organisations, to help communities to identify their own priorities, principally through a process of community action planning. This has been tremendously productive, both in the development of the National Park Partnership Plan – the overarching management plan for the Park – and its delivery.

The story does, of course, vary across the National Park with each community at different stages and with varying priorities. However, community-led activity has covered a variety of themes, including: the acquisition or creation of assets; the development of locally-tailored solutions to specific issues such as provision of broadband, affordable housing and local food production; and the establishment of trading subsidiaries, or social enterprises to develop sustainable income streams. The additional resources provided by the dedicated Leader programme for the Park – the only one of its kind in Scotland – have been of considerable assistance.

We are aware from the number of specialist and professional visits from overseas, and especially Scandinavia, that our approach to community-led development in a protected area of national significance is both innovative and stimulating at an international level. We were pleased recently to celebrate this approach and share experience though hosting the first Regional Preparatory event in Scotland for the
Scottish Rural Parliament. CNPA would be happy to share information about our other examples of good practice, or to supply further information on request.

At a strategic policy level, we view the proposals, particularly those around strengthening community planning, as opportunities to improve collaborative working across Scotland. Collaboration between all sectors is at the very heart of Scotland’s unique approach to National Parks, as set out in the National Parks (Scotland) Act 2000. We feel that to realise the ambition, some further work is required to ensure that community planning arrangements are working well in National Parks and in our response to the consultation, we comment on the relationship between the National Park Partnership Plan and Single Outcome Agreements/Local Outcome Improvement Plans in more detail.

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

As the supplementary guidance and other information surrounding the Bill makes clear, the legislation alone cannot empower, but it can create the conditions to do so. By formalising, extending and giving additional weight to a number of existing processes around asset transfer, right-to-buy and service planning, CNPA considers that the Bill provides a good framework through which appropriate community groups and public agencies can work collaboratively and in partnership to empower communities.

One of the concerns that CNPA highlighted during the consultation process for the Bill was the limited focus on the provision of support for community capacity building. There is relatively little information about this in the Bill and associated guidance on this topic. If the intention of the Bill is to empower the most disadvantaged communities then capacity building is essential and additional support for agencies which provide this role (particularly through the voluntary sector) will be central to this success. This issue is not specifically picked up and our concern would be that those communities who stand to benefit most from the Bill will be unable to take advantage of the provisions.

In addition, those communities who are in a position to take advantage of the provisions will also require support to ensure that they understand the advantages and possible drawbacks from any activity they take forward. For example, it would be in nobody’s interest for a community to take on a potential liability as opposed to a sustainable asset.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

As an organisation, CNPA is committed to the principle of community-led local development as described above. As a result, we foresee three several advantages as listed below.
a. The provisions place greater emphasis on communities in the National Park having opportunities to take forward their own ideas and ambitions for their communities. This approach is extremely welcome.

b. The Bill provides additional opportunities for some of the most rural communities in Scotland to have a greater say on the delivery of public services which are most important to them and which are often tailored to suit more urbanised communities.

c. One of the issues that CNPA has highlighted previously about community planning in the National Park is that there are essentially two key processes about partnership working in particular places (or regions), the Single Outcome Agreements (proposed to be supplemented by the LOIP) and the National Park Partnership Plan. CNPA considers that while there are many good examples of strategic joint working around priority themes in National Parks that draw on both SOAs and the National Park Partnership Plans, there is still some scope for confusion and duplication of effort. The difficulty is in seeking to integrate or align these strategic processes and identifying where the National Park Authority should engage with the relevant CPPs (five CCPs in the case of the Cairngorms NP).

Within the Park priority attention is now being given to the coordination of partnership delivery around certain key themes including planning, biodiversity management, economic development, active lifestyles and community-led development. CNPA has recently agreed a process with each of the CPPs based on a mutual exchange of monitoring information to inform a joint annual review. It is intended that this will help to coordinate strategic planning around the SOA or NPPP and demonstrate how activity in the National Park helps to deliver the SOA and how activity in the CPP helps to deliver the NPPP.

CNPA considers that with the provision of appropriate guidance and encouragement, the requirement for Local Outcome Improvement Plans (LOIPs) as an annual supplement to the three year SOA provides an opportunity for partners to work towards closer alignment of our strategic plans, using the process set out above.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Some communities are much better placed than others to take advantage of the provisions of the Bill and it is likely that the most disadvantaged (i.e. those who may stand to benefit most) will be the least well placed. As referred to in answer to Question 1, support for community capacity building will be essential in the most disadvantaged or least prepared communities. CNPA has sought to address this within the National Park by working with partners and communities to create a structured process for community empowerment through engagement and community-led local development. The process has varied to reflect the context of each community, however, the
general principles focus on intensive community engagement to agree the priorities for a geographic area; identifying the partners that need to be involved; and supporting communities through the creation of Community Development Officer projects to build capacity and deliver community-led projects and initiatives which address local concerns and support the delivery of the National Park Partnership Plan. The required capacity building support may be very basic, but has the potential to be very intensive, requiring some significant resource commitment. Key issues are likely to include:

- Governance – from getting the best legal framework in place for a particular organisation (e.g. SCIO or other) to how various community groups work together on an agreed set of priorities;
- Building skills in terms of running meetings, taking minutes, establishing partnerships and effective relationships; and
- Identifying initial funding and how to run a sustainable project/initiative for long-term viability.

Supplementary guidance should seek to achieve a situation in which resources are targeted at the most disadvantaged communities and may require regular review to check progress. Guidance should also provide additional clarification on where ultimate responsibility for ensuring adequate capacity building support sits, for example it may be the local authority as the local democratically accountable body. The new CLD Regulations indicate that this is the case, but confirmation of this would be helpful in determining the role of other key partners, in order to avoid duplication of effort and provide the best chance for adding value.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

CNPA is positive about the main provisions and the overall intention of the Bill and feel that it will help to create the conditions necessary for positive community empowerment. The balance between clear provisions and providing flexibility in terms of local interpretation is about right and the guidance should seek to address:

- Integration of National Park Partnership Plans and SOA/LOIP processes;
- Prioritisation of investment of resources to support capacity building; and

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

The key impact from a CNPA point of view will be that around sustainable development. The National Park Partnership Plan sets out clearly how the aims of the National Park will be delivered through partnership working and with sustainable development at its core. The provisions in the Bill around asset transfer and participation requests already refer to public benefit and public sector agencies are required to consider the impact on sustainable development as part of their deliberations. Therefore, this is generally covered; however, a specific requirement for the community-controlled body or community participation body to demonstrate how their proposal contributes to sustainable development may be helpful in this regard.
Should you have any questions regarding any of the points laid out here, or if you would like more information on any of the examples given, please do not hesitate to contact me.

Yours sincerely

MURRAY FERGUSON
Director of Planning and Rural Development
NFU Scotland is encouraged by the Bill, and considers that encouraging partnership working with communities has wide ranging benefits for the rural economy.

However, NFU Scotland is concerned that there is not a concrete definition for what constitutes ‘wholly or mainly abandoned or neglected’ in the context of land. Parcels of land may be out of regular ‘use’ for periods of time when they are involved in an agricultural enterprise. Reasons for this are numerous, but could include the following:

- Land which has been sown in crop which has subsequently become unviable, for example in years of extremely wet weather conditions.
- Where changes have occurred to an agricultural enterprise, for example reduction in stock, or change in type of stock.
- Where fields are grazed on a rotational basis and are empty for extended periods of time.
- Reduced levels of activity on parcels of land due to farms establishing Ecological Focus Areas under the new CAP.

NFU Scotland considers that where land is classified as agricultural land it should not be possible for a community to purchase that land as ‘abandoned or neglected’ unless it can be proven that it fails to meet GAEC requirements. Under the scenarios listed above, a community could make an application to buy a parcel of land as neglected or abandoned, when in fact this is not the case.

NFU Scotland is also concerned that there are no timescales in relation to how long land has to be considered ‘abandoned and neglected’ for before a community could attempt to purchase it. Again, in relation to the scenarios listed above a time scale would recognise that land could appear to be abandoned or neglected for a period of time, but ultimately not qualify as a subject of a community purchase.

Without clearer definitions and timescales, NFU Scotland is concerned that those who own land may erroneously stand to lose it in the event of a community wishing to purchase it.

Ends.
1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

Given the strength of the voluntary sector within the North East, Aberdeenshire Community Planning Partnership is supportive of the overall direction of the Bill. In many cases the Bill will place into statute many approaches which are already well established in Aberdeenshire, such as in community planning and asset transfer. It should be recognised that many of the best examples of empowerment we have seen have taken place where community bodies have had the opportunity to grow through time to develop the confidence and capacity to take on large-scale projects.

It is significant that much of the current good practice around asset transfer has been enabled through a variety of different national grant and investment schemes. There are numerous examples in Aberdeenshire of active community-led organisations that have developed assets as a result of this:

- Fraserburgh Development Trust worked to renovate a blight sight in the town centre and funded this through Town Centre Improvement funding. This asset has since been used as security to purchase a bakery in a rural community thus sustaining existing jobs and leading to the creation of further training opportunities.
- Huntly Development Trust have recently purchased a farm with Scottish Land Fund support and are developing renewable energy projects.
- Udny Community Trust have set up a community grant scheme with the funding from a wholly owned turbine. They now have a Big Lottery (Growing Community Assets) funded Development Officer and are delivering on needs identified through ‘Planning for Real’ completing a virtuous cycle of identifying and meeting need.

2. What will be the benefits and disadvantages for public sector organisations as a consequences of the provisions in the Bill?

Aberdeenshire Community Planning Partnership is committed to community engagement and partnership working and as such welcomes the thrust of the Bill. Ensuring that all partners will support and allocate resources towards the delivery of a shared plan is an important step in empowering community planning partnerships.

In terms of disadvantages, it is possible that the Bill will be perceived nationally as a means of dumping responsibilities on to community bodies. ‘It is important therefore that there is sufficient support in place
for communities to get what they need out of the Bill. On that note, there are resource implications arising from the provisions in the Bill. Aberdeenshire Community Planning Partnership through its Single Outcome Agreement and Local Community Plans remains committed to focusing on outcomes and it is important that the administration of certain provisions within the Bill do not take resources away from delivering improved outcomes for communities. While specific concerns raised by officers of Aberdeenshire Council are set out in section 4, the Bill will require additional resources to implement.

## 3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

There is an ongoing process of capacity building that happens as organisations grow. This process of building capacity involves a range of partners and agencies but to succeed must be driven by the vision of local people themselves.

Clearly, access to funding streams is an important factor in this as the examples in Fraserburgh, Huntly, Udny mentioned earlier demonstrate. The long-term process of creating anchor organisations has also been evident through the work of some local Rural Partnerships such as Buchan Development Partnership who were case studied in the original Community Empowerment Action Plan.

The Policy memorandum makes reference to Participatory Budgeting and the desire of the Scottish Government to see this approach more widely utilised. There is an opportunity to link a new national participatory budgeting seed-corn fund to support the implementation of this Bill – perhaps utilising the ‘Change Fund’ approach which has previously been used in relation to enhanced outcomes for older people.

Inevitably some communities will be better placed to take advantage of the provisions in the Bill than others. To reduce against any potential for increasing inequalities between communities, it is important that public bodies continue to target resources to the areas of greatest need.

## 4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

The proposed core duties are welcomed and support the high-level messages expressed in the Christie Commission and Statement of Ambition. It is important that these duties are placed on an equal footing with other duties that partner organisations hold. Driving a shift
from participation at meetings to participation in delivery and resourcing is a significant step forward. There will of course remain a tension between the existing lines of accountability that public bodies hold with the newer responsibilities funnelled through the Community Planning Partnership. There is no easy way around this and it has proved a barrier to partnership working so far.

For the provisions relating to common good, the Bill as drafted requires the Council to consult every community council in Aberdeenshire for every possible sale, rather than the local community council. Given the number of community councils in Aberdeenshire, this would be very time consuming for both the Council and community councils. It may be beneficial to amend the wording of the legislation to focus on the local and relevant community council. In addition, there are significant resource implications arising from the creation of a register of common good assets. While there is an existing audit obligation to maintain such a register, CIPFA acknowledges that current practice of dealing with common good issues as title queries rise is acceptable. The geographical area of Aberdeenshire Council and volume of titles means it would require significant resources and time to complete a full and comprehensive review of the Council’s titles. This is the position reported to, and accepted by, the Council’s Policy and Resources Committee. The draft provisions relating to common good have financial implications for the Council as these would require significant legal and archivist resources to take forward.

There needs to be clear links between any wider Scottish Government work to develop the role of community councils and the contents of the Community Empowerment (Scotland) Bill. It should be acknowledged that community councils along with other community bodies have a role to play in supporting the implementation of the Bill. The capacity and will of community councils to take on these provisions can vary significantly across Scotland. Further clarity on the role of community councils in the context of the Bill would be welcomed.

5. **What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy Memorandum?**

It is worth highlighting that equalities considerations will need to be built into future policies and practices that emerge to help implement the provisions in the Bill. Aberdeenshire Community Planning Partnership has previously responded to the consultation highlighting the need to carefully manage the implementation of the Bill. This is important to ensure that those areas well placed and capable of taking advantage of the provisions do not further pull away from areas with less capacity and knowledge of community development.
Local Government and Regeneration Committee

Call for Evidence
Community Empowerment (Scotland) Bill

The Angus Community Planning Partnership welcomes the development of this important legislation and the opportunity to provide written evidence to the Local Government and Regeneration Committee.

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

We believe that the legislation alone will not empower communities, but will help to create the right culture for partners to engage with communities and for communities to take control themselves.

We believe that this legislation has the potential to create conditions that further empowers those communities who are already empowered and that as partners we need to ensure that the whole community can benefit. This is a key concept about the breadth and depth of empowerment.

It is our contention that empowerment flows from relationships and that it is up to people themselves what they take or do in respect of empowerment.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

We welcome the broadening of the Duty of Community Planning however the Third Sector Interface or the Regional Transport Partnership, are listed as key partners. Councils are also not listed in the appendix, but are provided for earlier in the legislation. It would be a significant disadvantage if all key partners were not able to play a significant and named part in the delivery of community planning in Angus, either at a strategic board level, or at a local level.

We do wonder about the provisions in the legislation. It would appear that it is trying to sort out some ‘known’ problems and is therefore very specific about allotments and community right to buy, whereas other parts of the Bill are rightly establishing a vision and framework for the future, which we welcome. It is almost as if the Bill has different authors and therefore the expectations in each section are not consistent.

It is not difficult for the Council to publish a list of common good assets, but understanding the legal rights and properties of each takes more time and significant resource. With respect to allotments, we are supportive of the concept, but find the number on the waiting list a bit arbitrary at 48. We would rather work with and support communities to develop their own community gardens and allotments which we have already established locally. This requires a change in thinking that the local authority must always ‘provide’ rather than ‘facilitate’.

We believe that the Bill has the opportunity to support the development of Community Planning, but it will be for partners locally to put the effort in to develop the relationships necessary to deliver better outcomes. Fundamentally this is also about a new relationship with
individuals and communities and therefore the culture of public sector organisations needs to change.

We need to become more comfortable with managing risk and look for opportunities that open up through, for example, community asset transfer. We need to find a way to shift our resources which can make both the asset and the community more sustainable. But we also need to know what will happen if something fails over time, when community energy, commitment or relationships break down. Clearly this requires thought and a balanced approach to risk.

We note the key connections to other legislation such as Community Learning and Development and Health and Social Care Integrations in particular. We will need to manage these connections locally, but currently the Community Empowerment Bill is silent on these matters.

We do not envisage a great sea change in Angus following the introduction of the Bill as we are already striving to improve our partnership arrangements and the way in which we work in and with communities, as well as supporting communities to do more for themselves. However, enshrining these key principles in legislation is a positive step towards a bigger goal of shifting resources towards prevention and collective outcome activity.

3. **Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill or to assist communities, to ensure this happens?**

Partnership working takes on many forms and it is essential that partners, including local communities, find the approach that suits them best.

As previously mentioned, we believe that many communities are already empowered and the Bill will provide further opportunities for them. However, people and communities are often at different starting points and we believe that the Bill could have gone further in terms of recognising learning that is sometimes needed to build individual and community capacity. This can often be resource intensive and requires investment by partners to release capacity in communities. The Bill could be more ambitiously linked to tackling poverty. A connection with the Community Learning and Development regulations and guidance needs to be articulated and understood.

Partnerships need to provide assistance to local communities need to provide assistance to local communities who are struggling to take control and help themselves. Coaching/leadership is one approach, but communities will often need public finances to help run a service. Community officers from local authorities is another approach, but many have been lost owing to funding cuts. This is the aspect of community planning that is most difficult; least supported, but has most to. Indeed, this does need a radical change to local ways of working which will be much more challenging than the current, mostly centralised approach.

We believe that it would be beneficial for the Bill to also focus on peoples’ strengths and ability to empower themselves. There are many empowered communities in Angus and sometimes they require very little, if any, input from the local authority or public sector organisation. We are also seeing evidence of empowered individuals through, for example, Self Directed Support.
This is also about relationships, understanding people’s stories and building from there. We remain unsure that we can legislate and expect that people will be empowered as a consequence, but we do also recognise the positive intent in the Bill.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

4.1 Partnership Governance

We are particularly pleased about the section on the Duty of Community Planning and its articulation of outcomes linked to an improvement plan. This will help us enhance our governance arrangements and use our resources more effectively which should in turn lead to better outcomes. But would make the following observations: -

9 Community planning partners: duties
3) Each community planning partner must, in relation to a community planning partnership, contribute such funds, staff and other resources as the community planning partnership considers appropriate—
   (a) with a view to improving, or contributing to an improvement in, the achievement of each local outcome referred to in section 5(2)(a), and
   (b) for the purpose of securing the participation of the community bodies mentioned in section 4(5)(a) in community planning.

With regard to 9.1, we have no difficulty with the concept of CPP members challenging each other’s expenditure, but to give the CPP powers actually to stipulate the sum to be spent by each partner is perhaps a step too far.

12 Establishment of corporate bodies
(1) Following an application by a local authority and at least one other community planning partner for the area of the authority, the Scottish Ministers may by regulations establish a body corporate with such constitution and functions about community planning (including in particular its conduct and co-ordination) as may be specified in the regulations.

Likewise with 12.1, it is questionable to give the power to the Council, with only one other partner, to make an application to Ministers to establish a body corporate.

4.2 Common Good

Firstly, we would wish to reiterate the comments I made in the earlier consultation. No cognisance has been taken of our concerns with our perceived inadequacies of the drafting. The Bill’s wording is identical to the draft consulted upon in January 2014. Thus, our original comments stand. We do not think that the provisions go far enough to address the current difficulties faced by councils in dealing with their common good assets. Proposals to use the land in a manner which is in the public’s best interests are stymied by the delays and costs involved in disposing or alienating the land where a question arises under Section 75 of the Local Government (Sc) Act 1973. Moreover, the recently reported Opinion of Lord Tyre in the hearing of East Renfrewshire Council’s Petition confirms that section 75 does not cover appropriation and thus the court has no power to authorise such appropriation. Thus, the council
has no means to promote or have authorised an appropriation other than Act of Parliament. A process which could be time consuming and expensive. We appreciate that there would be difficulties in defining common good but would urge the Scottish Minister to take this opportunity to use this Bill to advance proposals which would empower councils to deal effectively with common good property. There are also issues with determination of common good assets and where these assets should be held. Angus Council submitted a petition to the Scottish Parliament “Calling on the Scottish Parliament to urge the Scottish Government to introduce an amendment to the Community Empowerment (Scotland) Bill or to introduce legislation relating to common good property providing any asset which has been regarded and managed as common good property for 50 years without successful legal challenge shall be treated for all legal purposes as common good property” in late 2013. No response has been received.

As regards the specific provisions relating to common good:-

Section 22(3) – It would be preferable if the Scottish Ministers were to determine how the proposed register should be published to any argument as to the perceived insufficiency of publication.

Section 63 (6) – No details are provided as to how local authorities should deal with representations. Para 23 of the Improvement Service Report “The Management of Common Good Assets and Funds” published June 2008 proposed a public testing of the register “This should be for a specified period only, after which the register would be taken as definitive and unchallengeable”. The Improvement Service recommended that statutory provision should be made that any asset that has been regarded and managed as common good for 50 years without successful legal challenge will be treated for all legal purposes as common good. We support this principle of a fixed period for holding assets as is evidenced by our petition to the Scottish Parliament.

Section 63 (8) is unnecessary as details of land and buildings managed by a local authority should be published under class 5 of their publication scheme as required by the Freedom of Information (Sc) Act 2002.

Section 65 (1) – clarity is required to ensure that “disposing of “ or “changing use to” would encompass alienation as the terms has been developed in recent case law arising from the disparate interpretations of section 75 (2) of the 1973 concerning the property arrangements arising from PFI/PPP/SFT projects.

The provisions relating to common good should cover all the necessary aspects of this important area of property law to local authorities. Full and effective provisions would mean that section 75 of the 1973 Act could be repealed.

Turning to the Financial Memorandum, it is noted that “local authorities [had] expressed some concern about the potential resources involved in establishing registers”. The Memorandum then addresses the issues in terms of the consultation process. Whilst we agree with the statement that councils would be starting “from a very firm foundation”, it is our view that the full costs of any check or audit which would be necessary prior to any effective public consultation has not been taken into account. Angus Council recently commenced an audit of common good property. It took a number of months to check the
title deeds of over 50 properties in one burgh and minutes of meetings etc located in archives against with the conclusions reached by Andrew Ferguson in his book “Common Good Law”. Without such an audit, we would suggest that public consultation alone may not result in an improved register. Following this audit, we sought public consultation on one particular property, namely Arbroath Library. It is held on the common good account but was acquired for a statutory purpose and thus, should not be treated as common good. This view was confirmed in a Senior Counsel Opinion. This consultation failed to resolve the issue as the representations received supported the position that it should continue to be held on the common good account. No representation took cognisance of the legal position.

4.3 General Points

We are particularly concerned about the language used about participation. We see communities as partners and there is a connection missing to the Local Government in Scotland Act 2003 in this respect. The intent may be to replace some or the entire 2003 Act, but this is not clear and would in our view diminish community empowerment in legislation.

We also need to think about power deprivation and our vision for local education and learning linked to our values and aspirations for the future in respect of, for example, new infrastructure and economic inclusion.

Also, some partners operate at a national or regional level and creating some difficulty for participation in a range of partnerships with the knock on consequences of servicing arms length companies that are sometimes created. The Bill could give further consideration to enable partnerships to have direct employment by a public body possible.

The Bill is definitely more strongly worded where it talks about physical assets but less so when dealing with creating a new culture of participation. It comes across as people/communities having to make a request rather than an expectation of a way of working. We believe that this does not provide the right environment for growing empowerment through changing cultures within the public sector. The Bill needs to be ‘future proofed’ and it could be clearer in saying that communities should not only have their voice heard, but be influential and part of decision making.

We also believe it would be helpful to consider how we will know if the legislation will have made a difference. We believe it can help us move towards greater empowerment but the ‘proof is in the pudding’ and monitoring will be important. We think communities would welcome knowing how that will be done.

We think allotments are too narrowly defined. Use of green spaces, planning for place, pride in place are better i.e. our environment needs to link outcomes and be part of a bigger vision.

5. What are the views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

We note the Policy memorandum and imagine that much of the content of the Bill will hinge on either guidance or how partnerships embrace the change required through the Bill.
The issue of rurality also applies to many parts of Angus.

6. **Conclusion**

We hope that you find our comments and observations useful.
Comments by the Scottish property federation on the Local Government & Regeneration Committee’s call for Stage 1 Evidence – the Community Empowerment Bill

Introduction

1. The Scottish Property Federation (SPF) is a voice for the property industry in Scotland. We have some 150 corporate members with interests in Scottish real estate including; property funds, major institutional investors, lenders, developers, landlords of commercial and residential property, and professional property consultants and advisers.

2. We are pleased to submit comments to the Local Government and Regeneration Committee on the Community Empowerment Bill. We recognise that our views will be made public and shared with other authorities at the Committee’s discretion.

General Comments

3. The Scottish Property Federation supports the principle of greater community engagement, empowerment and involvement in the delivery and use of local community assets and services. We believe it is important that communities are properly represented and that due processes, safeguards of property rights and checks by local authorities or Ministers applied where necessary. It is crucial in our view that major investment is supported and not frustrated. In particular, we are keen to ensure that the Bill does not interrupt or disable the many positive and important partnerships and joint ventures achieved by public authorities, or publicly supported authorities, that have been established with the aim of securing development and investment, jobs and regeneration in major urban areas of Scotland such as the east end of Glasgow.

4. On this last point we assess that the Bill has evolved over the past two years to ensure that public authorities and Ministers have a right to reject proposals for Community Right to Buy (CTRB) and Asset Transfer. This will be an important safeguard for their private sector partners engaged in joint ventures or similar arrangements. Notwithstanding this progress we feel there remain a number of publicly supported bodies who are outside this zone of protection, such as Urban Regeneration Companies (URCs) and we would like to see this rectified. Similarly, we believe uncertainty remains regarding the status of assets previously compulsorily purchased by public authorities yet subsequently unused.
and therefore potentially subject to CRTB or Asset Transfer applications. The Crichel Down rules would suggest that the previous owners should remain entitled to a first opportunity to re-purchase these assets but we see no clarification of this position within the Bill or its supporting documents.

5. We believe that the government may also have underestimated the extent of complexity that may be involved with the CRTB and additional asset transfer powers being extended to urban areas. We suspect that questions of ownership and interests over land will prove to be much more complicated with much higher values involved than has hitherto been the case where CRTB has been invoked under the existing 2003 powers. We comment on this further under paragraph 12.

Questions

To what extent do you consider the Bill will empower communities, please give reasons for your answer?

6. The Bill significantly expands the scope and extent of community empowerment in Scotland. The current restriction on Community Right to Buy to communities of 10,000 or less will be replaced by a provision extending this right to all communities across Scotland. In addition, new powers to participate in the provision of local services or to initiate asset transfer of public sector land and property to a community group is enabled. CRTB is also extended to include ‘abandoned’ and ‘neglected’ land within its parameters. In addition the Bill continues to enable Scottish Ministers to support processes for community right to buy financially, relieving some of the financial burden of the processes involved.

7. Beyond the property aspects of the Bill (CRTB and Asset Transfer) there are also significant provisions for the inclusion of community bodies within the community planning partnership process. This requirement may impose significant demands upon local authorities. It could however feasibly lead to greater community involvement in local decision-making than the enhancements to ownership and rights to property powers (CRTB and Asset Transfer) that the Bill bestows.

What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

8. Public sector landowners will be subject to the same provisions as private landowners in relation to community right to buy. There is an additional right for community bodies in relation to asset transfer although the revised Bill includes safeguards for Ministers and local authorities to reject a request for asset transfer of their assets. Other public authorities will not have this power of veto and therefore will be subject to appeal by a community body even if they initially reject a request.

9. It is possible that one benefit would be to encourage a community group to take responsibility for an asset that has lain unused for some time and has no alternative or better use or value to that which a group might propose. Disadvantages could include the potential loss of valuable sites earmarked for investment or development, or the
potential loss of interest in sites by the development community as a result of perceived
due diligence issues. For example, where the risk that land earmarked for development
will become subject to CRTB/Asset transfer rights deters a developer from pursuing their
interest in a site.

10. Our members have questioned the relationship between the Bill’s provisions for CRTB
and the application of the Crichel Down rules, whereby a public sector asset that may
have been compulsorily purchased must be offered to the original owner if the public
authority decides the land is surplus and therefore moves to sell the asset for a different
purpose to that which the land was originally purchased for. Scottish Ministers have
produced a Planning Circular (5-2011) which explains the obligations of public authorities
in relation to the disposal of surplus land previously subject to CPO yet the Bill is silent
on this issue and it would be helpful to see some clarity from the Scottish Government in
relation to this aspect of the CRTB process. It seems to us that this is a matter of public
law which the government cannot simply ignore.

Do you consider communities across Scotland have the capabilities to take advantage of the
provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to
ensure this happens?

11. The example of a number of Development Trust projects across Scotland suggests that
communities are certainly able to take on projects successfully. The sustainability of
successful applications will inevitably be on a case-by-case basis to see if the
appropriate case has been made for the asset in question. However, there is already
significant government support for the development trust association (Scotland). This
could be further improved and made ready as a vehicle to advise aspirant community
groups before they embark upon what could be complicated arrangements for CRTB or
Asset Transfer under the much more expanded scope of this Bill.

12. Each case will clearly need to be decided on its own merits and it will be important for
the Scottish Ministers to be appropriately advised. We would welcome any clarification
the LGR Committee might be able to secure from the Scottish Government about its
intentions regarding resourcing the Community Empowerment section within the Scottish
Government. Hitherto the demand for CRTB has been limited by the extent of the 2003
statute and therefore the resources required by the government have been relatively
minor. This must be expected to change radically with the expansion of the CRTB and
Asset Transfer powers to cover all communities in Scotland, regardless of size. Not only
is the scope much wider but we believe the complications involved with delivering the
due process involved with CRTB can be extensive. In discussion with one developer it
was explained to us how even in the case of one building this can involve tracing owners
and trustees from around the world and ensuring that due notice is provided and legal
rights respected.

13. Property investment and redevelopment is a capital intensive business and the
maintenance and rejuvenation of listed buildings in particular may add to this cost. Even
without the community empowerment measures some local authorities have been
actively encouraging the creation of community trusts to take charge of disused buildings
which could play a positive community role. The motivations for this may be to try and
divest the authority of financial burdens and liabilities but the ability of community groups
to take advantage of this willingness to make such assets available to community groups
has not always been forthcoming. The appetite for taking on major liabilities such as old
buildings for the purposes of regeneration may be less than expected.

14. This begs the question of what happens to a community group asset where the group
ceases to exist or is unable to continue to function. It appears to us that the asset will fall
into the ownership of Scottish Ministers, or authorities, who may find themselves
burdened with unexpected liabilities and responsibilities that are not budgeted for.

Are you content with the specific provisions in the Bill, if not what changes would you like to see,
to which part of the Bill and why?

15. The Bill has been amended since its original incarnations but a number of outstanding
issues remain to be considered.

Appeals – Community Right to Buy (Part 4)
16. Our understanding is that a community body will be able to re-apply for asset transfer or
CRTB within two years of a previous failed application. We would like to see the Bill
specify that such re-applications should not occur within two years of the Minister’s
Notice of a decision. With CRTB enabled for up to 8 months it is in our view important to
ensure there is significant gap between CRTB applications in order to avoid unfair delay
and restriction upon the landowner.

17. We are also keen to see further clarification of the obligations upon land and property
owners in relation to notification of intention to sell land or property. Commercial
property sales will frequently be unadvertised in order to protect commercial sensitivity.
Does the Bill really require, where a major property asset is set for sale by its investors,
that they should notify all communities within their area and be forced to wait 8 months
before being able to dispose of the asset or seek permission from Scottish Ministers if a
sale is achieved (as it would be) within 8 months?

18. We do not think that it is the intention of Ministers to interfere in the normal workings of
the Scottish commercial property market through the Bill but it would be helpful to see
some clarification within the legislation in order to prevent any future misuse of the CRTB
powers. The legislation is far too open to interpretation in this light and needs to be
tightened.

19. The government could consider introducing a maximum valuation, say of £500,000,
above which CRTB could not apply. In reality this would simply clarify market reality as
few community groups would be able to participate in purchases of valuable commercial
land (however see our later comments on the beneficial ownership of companies limited
by guarantee). While we accept this could be done via secondary legislation it would be
better to be achieved via primary legislation.
Local Government and Regeneration Committee

Submission Name: Scottish Property Federation
Submission Number: 123

Duty to provide information under CRTB – commercial confidentiality

20. We are concerned to ensure that where landowners provide information to Ministers that such information as is deemed to be commercially confidential is not publicly available. This might include the relative value of a property company and its land-holdings and the related impact of these holdings on their funding facilities for example. The recent recession demonstrated the sensitivity of changes in valuation to the survivability of a property company and we would not wish to see CRTB as a trigger for companies to be put into administration (which would in addition potentially complicate the CRTB process). There is already a power for a community body to ask for information to be not made public in relation to a register of Community Interests in Abandoned or Neglected Land (S48(97F)(3)), so this request for commercial confidentiality does not appear to be against the spirit of the Bill.

21. We are aware of concerns raised by members and other organisations about the imposition of costs on the landowner to cover the expenses of the government-appointed valuer, in the event of land being withdrawn from sale because of a CRTB notification. A withdrawal of sale may occur for reasons other than the application of a CRTB. It will be important for Scottish Ministers to exercise discretion where expenses are charged.

Proportion of ballot required for a valid application – S36

22. We note the 2003 Act is amended so that it is no longer required that more than half of the balloted community support the intention to CRTB. This is now replaced in S36 (a)(i) by simply a majority of an undefined proportion. However the Bill expands the scope of CRTB to more heavily populated communities than under the 2003 Act so if anything the concern that a relatively small number of people may initiate a CRTB is if anything increased. It will be important that the proportion is not set at a level that would undermine the credibility of a community body.

Abandoned or Neglected Land (S48)

23. We remain concerned with the potential scope of the CRTB measures and the notions of abandoned or neglected land. In the first instance these are subjective terms, so government guidance will need to be definitive and consequent decision-making robust. Of greater concern is the possibility that applications for land by community groups based on grounds of abandonment or neglect when in fact the land in question is part of a complex development process that could take many years to unfold. For complicated mixed used development schemes this length of time is not unusual and the land itself may be comprised of several smaller plots or existing buildings which may form an important part of the whole value of the site. This wider picture could be important for the landowner or the investors behind a scheme and we feel that affiliated land interests ought to be a consideration for Ministers in deciding the merits of an application for transfer to a community transfer body. Although we acknowledge that the landowner will have the ability to make representations about the assessment of value under S48 (97S) we would like to see it specified that these factors should be taken into consideration by Ministers in making their determination. Any uncertainty caused by land being subjected to applications for CRTB, or asset transfer if the asset is in public hands, will prejudice this process and will make investors more reluctant to take on such sites or to invest significant sums in the development process.
24. Neither does the legislation clarify the position of applications for land that might be the subject of a CRTB application on the grounds of abandonment or neglect when in fact the land is owned by an entity which is in administration or other insolvency process with the land. This could in itself result in inevitable delay but absolutely does not mean the land is abandoned or neglected. There are numerous examples of this in towns and cities throughout Scotland with land possibly ‘owned’ by banks as the senior debt lender or other creditors. This situation does not appear to be considered in the Policy memorandum, the Bill or its Explanatory Notes and we feel it is important that there is appropriate and clear policy in relation to this issue. Indeed the relationship between a developer and their funders, onward investors and any pre-completion lease agreements are also issues which we believe it would be important for Ministers to be aware of in the context of making a decision over abandoned or neglected land.

25. The Bill is silent also on the issue of what happens when a successful CRTB for abandoned or neglected land does not deliver the re-use of a building within a reasonable period of time. Surely Ministers do not intend that a successful community transfer body should then not be required to deliver their state-aided purchase for community benefits, or should be able to sell it on for some other use for a profit? Again we see no account taken of this issue.

Companies Limited by Guarantee – S48

26. The Bill expands the definition of the 2003 Act to include charities regulated by SCIO as well as companies limited by guarantee. In addition it is required that the community body should be comprised of 20 persons (or less depending on S48 (97D)) and that the body should be connected to the local area. The definition of ‘connected’ has been specifically watered down from the term ‘substantially connected’ for reasons we do not perceive and we believe this could be considered by the Committee. In addition the legislation requires that the individual members of the Board may have the liability of its members limited to such amount as the members undertake to contribute to the assets of the company in the event of it being wound up’. This suggests unequal interests will be allowed in the company and the extent of individual contributions to the community body may be an issue to be considered under subsection (4) where Ministers have to be satisfied as to the intentions of the community body.

Option agreements and other interests relevant to the land – S32

27. We were concerned during the consultation process at the prospect of option agreements not being respected in the process of CRTB. The consultation appeared to recognise this concern and support the view that option agreements made by investors should be respected. We welcome the government’s decision to introduce S32 although we believe that other pre-agreed rights over the land that may be extent between the landowner and a third party should also be considered by Ministers.

Asset Transfer - notifications

28. We would wish to see some form of public notification upon a request for a public sector asset or leased asset to be transferred to a community transfer body. We would certainly wish to see a requirement for interested parties in the asset to be notified that a
request for asset transfer is outstanding – not to do so could cause significant cost to interested parties in the site.

Rights of third parties with interests in land subject of asset transfer request – S55

29. We believe it is important for the position of third parties with interests in land that may be the subject of an asset transfer request to make representations to the authority or seek appeal to Ministers. There is significant scope under S55 for authorities to reject a request for asset transfer but the rights of other parties are not specifically covered other than by implication and even in the event of an authority being obliged to compensate a third party for the effective loss of the asset due to asset transfer it is not certain that this would support an ability to refuse the request.

Asset Transfer – leased properties

30. We seek clarification whether assets leased – even if not used – by a public authority from a private owner are within the scope of this Part of the Bill. If so that would have significant issues for the owner who might see their asset transferred from a strong public sector covenant to a much weaker community body covenant, possibly also seeing the use of the property changed with little or no consent.

Position of ALEOs and URCs

31. We are particularly concerned with the position of local authority ALEOs (Arm’s Length External Organisations) and URCs (Urban Regeneration Companies) within the context of the Community Empowerment Bill. Clyde Gateway and other URCs have worked tirelessly and with a major degree of success to regenerate areas of abandoned, neglected or simply vacant and derelict land: this is requiring a significant effort to attract private investment and indeed public sector occupation. Clearly, in the case of URCs there has been substantial public resource put towards these regeneration initiatives and we find it bizarre that they should not have the same rights as local authorities in relation to rejecting applications for CRTB and asset transfer. If anything this underlines our view that there should be a maximum value level above which CRTB and Asset Transfer applications should not be eligible.

Other Areas of the Bill

Part 1 National Outcomes

32. Our only remark in this area is to ask how these statutory national outcomes will reconcile to the democratic process and the Scottish Parliament’s electoral cycle in particular? It would seem odd if a party(ies) is elected to government on a particular mandate but then finds it is left with a series of national outcomes that are contrary to the electoral mandate it had just secured. It may be better to stipulate that national outcomes will be set at the onset of each parliament, as proposed by the government of the day.

Part 2 Community Planning

33. The committee will know that one of the major changes to the Scottish Planning Policy passed earlier in the year is the requirement for development plans to have regard to the
proposals of community planning partnerships. This Bill’s requirements go further with a broader definition of community planning and engagement in the planned delivery of local services. Local authorities are in the best position to comment on the extent of this engagement but it will be important to ensure as with all other aspects of the Bill that community groups are appropriately representative of their communities.

34. Under S5 the Bill requires that every community planning partnership ‘must’ prepare a local outcomes improvement plan. This could impose considerable support costs on a local authority and the community bodies that may make up the partnership. In many ways the requirements of this part of the Bill offer many challenges for local authorities and we will be interested to see the response of COSLA to the proposals. The stipulation of an annual report by the community planning partnership in particular is one that we fear will prove difficult to deliver consistently.

Part 6: Common Good Property

35. We think this is a good initiative and that it will help to resolve any uncertainties about parcels of land and buildings that are the subject of community speculation or private speculation. We welcome the transparency associated with the proposal.

36. S65 requires local authorities to consult with community groups that the authority knows will have an interest in a particular asset before it is considered for disposal. Again we see no problem with this approach although there may be concerns from some companies about commercial confidentiality in relation to potential purchases of common good assets. We think that the parties to such consultations should be obliged to respect such confidentiality if it is requested.

37. It would be helpful to know how this part of the Bill interacts with the CRTB process. We assume that if consulted and notified of a disposal of a common good asset that the community would be able to initiate a CTRB or an Asset transfer request.

Part 7: Allotments

38. We have no comments on Part 7.

Part 8: Local Rate Reliefs

39. During the course of engagement with the Scottish Government at the time of the Empty Property Rates legislation SPF highlighted an example of partnership working with landlords by Manchester Council, whereby the Council and local landlords contributed to rates support for businesses seeking to start up in their locality. Our members continue to highlight the burden of rates which can far outweigh rental values in many parts of Scotland and as a consequence are a major burden on start-up businesses and entrepreneurs. We support partnership arrangements and initiatives to alleviate this burden and therefore we support this part of the Bill.

What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the policy memorandum?
40. The Bill clearly impacts on property rights and this is recognised in the policy memorandum. The government argues that it interprets Article 1, protocol 1 of the ECHR as relating to rights that are not absolute and that the ‘use of property can be controlled where it is in accordance with law, justified in the public interest and is proportionate’.

41. We have no comments on this interpretation but would add the caveat that while it may well be right - and indeed the processes of compulsory purchase orders proves that this is not a new concept - then the government would also wish to maintain the high regard for property rights that is enjoyed in Scotland and the wider UK. Because of the differing member state interpretations of the ECHR Article 1, protocol 1 this cannot always be said to be true of all EU members’ and a number of UK citizens have indeed found this to be the case to their cost. It is important therefore that robust and transparent processes are formed where CRTB or asset transfer (or CPO for that matter) is involved and that proportionate and fair compensation is enjoyed by owners whose assets are compulsorily transferred to a community transfer body.

42. We find it bizarre that no mention or statement has yet been made by the Bill team or Ministers in relation to how the Bill interacts with the Crichel Down rules. The Crichel Down rules relate to the position whereby land that has been compulsorily purchased and is later to be disposed of by the relevant public authority. The rules stipulate that where this is the case the authority must first make an offer for the land in question to the former owners. CRTB and asset transfer (which is for sale or lease) process will clearly impact on the Crichel Down rules where an asset is the subject of State-enabled compulsory acquisition, yet we have seen no mention of this in the consultation or the policy memorandum. We ask the committee to seek to clarify the relationship of Crichel Down with the Bill as soon as it can during the process of parliamentary scrutiny. To fail to do so may be to set the Bill’s procedures up for challenge on grounds of wider public law principles.

43. The SPF would be pleased to answer any further enquiries from the Committee at its convenience.

David Melhuish
Director, Scottish Property Federation
Introduction

Skills Development Scotland (SDS) welcomes the opportunity to respond to the Local Government and Regeneration Committee’s scrutiny of the Community Empowerment (Scotland) Bill.

SDS is Scotland’s skills body, focused on contributing to the delivery of the Scottish Government’s Economic and Skills Strategies. Our services are further shaped in response to the Scottish Government’s Career Information, Advice and Guidance Strategy and the Youth Employment Strategy. We set out our vision, future development and delivery plans in our Corporate Strategy (2012-15) and annual Operating Plan.

SDS’s key aims include the delivery of support to young people and small and medium sized businesses. SDS has a key role in supporting people towards and into employment and to progress within their jobs. SDS is working collaboratively with individuals, employers, training providers and partners throughout Scotland to raise aspirations and create a more skilled workforce and thus contribute to Scottish Government’s overarching purpose of increasing sustainable economic growth with opportunities for all to flourish.

SDS partnership work and service delivery arrangements at local level

SDS’s ambitions can only be delivered through collaboration with partners. We continue to work with national and local partners to improve, further integrate and make our services for customers more accessible and deliver them in response to their needs.

The SDS contribution to improved outcomes in Community Planning Partnership (CPP) areas is delivered through a range of resources provided on a national, regional and local level. Although SDS is not currently a member of all CPP Boards we are members of the Employability/skills related sub groups in all 32 areas.

At a local level, we currently work with local authorities and contribute to Single Outcome Agreements enabling us to translate our national offer into a local context. Going forward, we would plan to articulate our contributions to local services through the CPP local improvement plans and Youth Employment Activity Plans.

A key part of our work is the delivery of Careers Information, Advice and Guidance (CIAG) services by local staff to meet the specific needs of local areas, enabling SDS to make a significant contribution to key policy drivers such as Opportunities for All as well as wider employment and economic development priorities within each local area. Our work is augmented by offerings such as My World of Work, Scotland’s careers information and advice web service, and Our Skillsforce, our web service for employers, with information on the national and local skills support available to them from the public sector.

We are committed to the principles of shared planning and the move towards shared outcomes; our co-commissioning approach for the Employability Fund with CPP partners in each area is an example of this. Working with CPP partners aims to ensure that our provision fits with the local employability skills pipeline and complements the provision from other CPP partners in local areas in order to help improve outcomes.
Proposal for SDS to become a formal Community Planning Partner

Part two of the Bill (Community Planning) proposes that SDS formally becomes a community planning partner for the first time. SDS welcomes this. When CPPs were established, SDS was not in existence, and therefore SDS is not a core member of all CPP Boards. However, we would like to highlight that despite not being an official community planning partner in all CPPs over the last five years, SDS has been strongly committed to working with CPPs and individual partners to support the delivery of Single Outcome Agreements and optimise public sector resources to improve outcomes for local people. A move which reflects the importance that SDS places on its continued engagement with CPPs is the recent suggestion posed by our Chair to the CPP Chairs, in the areas where SDS is not currently a board member, that SDS strengthens its strategic engagement on CPP Boards, by having a senior SDS representative sit on each Board.

Although the majority of CPP boards in Scotland have invited SDS to nominate a representative to join their Board, we welcome the proposal for SDS’s inclusion as a statutory member of CPPs as this will provide more scope for SDS to input to local strategic outcomes. The provisions of the Bill would allow SDS the opportunity to work more closely, strategically and consistently with all CPPs across Scotland.

Suggested points of clarification to the Bill

Establishment of Corporate Bodies

The Bill gives CPPs powers to make an application to become a body corporate by regulations, following an application made by a LA and at least one other community planning partner in the area. As we understand it, a CPP could hold its own budgets and assets and employ its own staff. SDS would therefore welcome clarification as to whether all community planning partners would be obliged to be members of the body corporate if they were not the partner making the application with the LA, and what legal and financial obligations could be placed on community planning partners should they be amongst the members of the CPP body corporate. Any financial implications associated with the establishment of a body corporate do not appear to be taken account of in the Financial Memorandum to the Bill.

Governance

SDS welcomes the Bill’s clarification of the definitions of “Community planning”, “community planning partners” and “community planning partnerships”. However, the Bill does not clarify how CPPs should be structured and the specific membership of separate governance groups within CPPs by partners.

More specifically, there appears to currently be various approaches to CPP governance arrangements including a two-tier model involving e.g. a scrutiny group or “Board” (chaired by the Leader of the Council and including elected council members and the local commanders of fire and police) and a strategic group or “implementation/management” group (chaired by Chief Executives of the LAs).

It is unclear going forward which partners should sit on which group(s) and indeed if it is possible to sit on both, or even another separate management group or sub-group at the same time. It is important that all partners are represented on CPP subgroups, such as an implementation group, as this is where the bulk of activity will take place at a regional and local level. We believe partners should be able to sit on both the strategic and implementation groups. As an example, although SDS is more involved in operational
activities and local service delivery with CPPs and other relevant partners we believe we can make a valuable contribution to the strategic direction of CPPs. SDS’s unique position as a national agency with a local remit, means that we can help other partners to look at local issues in a national context and provide a strategic perspective on how national activity can have an impact locally. We would welcome clarification of this point either in the Bill or guidance to the Bill.

**Local outcomes improvement plan**

SDS assumes that the aim of the Bill is to avoid the duplication of effort and resources at local level. While we welcome the proposals for each CPP to prepare a local outcomes improvement plan, as this will be a tangible plan around which to plan local service delivery, we would be grateful for clarification as to whether these plans are expected to replace the existing local Single Outcome Agreements, or if they are expected to continue to be implemented in parallel.

SDS would also value clarification, either in the Bill or in accompanying guidance, as to who will have responsibility for final sign-off of the local outcomes improvement plan and its annual report, and how all CPP partners (and community interest groups) will be invited to comment and agree upon it, in order to ensure all views are taken into account.

**Duties on community planning partners**

The Bill places responsibilities on community planning partners, including the obligation for each community planning partner to provide the partnership with information about local outcomes in the plan. SDS has existing management information reporting arrangements in place which meet SDS’s individual business needs and our ability to produce reports are constrained by the functionality of the systems we already have in place. We would welcome further clarification as to what our duties, and other partners, will be in terms of the provision of information to the CPP and whether this may have financial implications for SDS. The Financial Memorandum does not appear to take account of any additional costs which may be incurred by community planning partners as a result of having to comply with this duty.

**Conclusion**

SDS is delighted that the Bill recognises the valuable contribution we can make to community planning by being proposed as a statutory community planning partner; this would allow SDS to formally engage in CPPs and integrated planning work at local level across Scotland for the first time. At the heart of the Bill is the intention for appropriate community bodies to be given the opportunity to, and be encouraged to, participate in community planning by the CPP, and crucially, that CPPs should have to take steps to enable them to participate to the extent they wish to. SDS welcomes this positive, inclusive approach to community engagement, as well as the proposal for a structured approach to the agreement of measurable local outcome plans. We look forward to receiving feedback on the clarification of the points we have raised about the Bill over the course of its scrutiny.
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<thead>
<tr>
<th>Sections</th>
<th>Part 1 National Outcomes</th>
<th>Part 2 Community Planning</th>
<th>Part 3 Participation Requests</th>
<th>Part 4 Community Right to buy (Land)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Question 1</td>
<td>To what extent do you consider the Bill will empower communities, please give reasons for your answer?</td>
<td>N/A</td>
<td>Community representation on CPPs already exists in many areas, through the funding requirements of third sector interfaces and other routes ie community councils, community land and youth. The Bill will ensure that the Partners have a duty to engage with community bodies which, where participation within CPPs has not previously taken place and may help a more meaningful input from the communities. Enabling communities to have a direct input into the CPP, will influence and shape local outcomes and improvement plans.</td>
<td>Community Organisations will have an opportunity to instigate service improvement reviews where they feel services could be improved. Though currently a community organisation could challenge an outcome there is no formal process for doing so. Knowledge of the legislation may prompt community bodies to make participation requests. Some communities will only be able to take advantage of this legislation if they are supported through the process. Unfortunately it maybe those community bodies who feel most disadvantaged already who are least likely to be able to undertake the participation request process. Communities will only be able to take advantage of the legislation if there is awareness about the opportunity.</td>
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<td>Question 2</td>
<td>What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?</td>
<td>The process outlined within the Bill is similar to what happens in practice already and so there will be no additional benefits or disadvantages.</td>
<td>Benefits: For some partners the provisions within the Bill will only strengthen their current involvement and commitment to the CPP and delivery of local outcomes. One of the benefits of the Bill will be to ensure that all partners are responsible for delivering the outcomes and will take an active role within the community planning process. Disadvantages: For those partners who have a national remit there might be issues with ability to respond at the local level. For those partners who have thus far not engaged fully in the CPP processes there may be additional resources required to enable full participation.</td>
<td>Benefits: Public Sector Organisations may benefit from having an external view of their service. Community input into the outcomes can bring benefit and change that will improve outcomes for communities. Disadvantages: The potential disadvantages may be an increase in workload through unplanned service reviews and the resultant diversion of activities from service delivery.</td>
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<td>Question 3</td>
<td>Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what responses are required to be done to the Bill, or to assist communities, to ensure this happens?</td>
<td>N/A</td>
<td>In the main Community Bodies within the local authority area have the capability to participate within community planning, and locally already do so. There might be training issues for some community bodies</td>
<td>Community Organisations across Scotland will vary in their capacity to participate both on a skills level and resource level. Some Community organisations will not have the skills needed to enable them to take advantage of the opportunities the Bill provides and to enable them to engage constructively in the process. This will require an allocation of resources which may prove difficult to identify. There will be a need to raise awareness of the Bill and the various opportunities it offers.</td>
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<td>Question 4</td>
<td>Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?</td>
<td>The National Outcomes are of extreme importance. We would submit that there should be some further detail in respect of the process for the creation and review of the National Outcomes; we note that there is provision under s.12(2) for Ministers to consult those persons “as they consider appropriate”, there should be greater transparency around this consultation. We would suggest it should include those persons listed as Community Planning Partners per Schedule 1 of the Bill, and possibly the Integration Authorities following implementation of the Integration of Health and Social Care services; at the very least, the Bill and ultimately the Act should provide that Ministers may prescribe by Regulations those persons that must be consulted with in the creation and review of National outcomes, and those Regulations should be consulted upon.</td>
<td>There should be a definition of &quot;Local Outcomes&quot;; s.13 refers to a definition of same as being in s.4(3) (which intern refers to s.4(2), but there should be a clearer definition as to scope. s.14 of the Bill refers to Community Controlled Bodies; in addition to the definition criteria provided, it would be helpful to have a definition of “community” i.e. as to whether this has to be geographical and if so, within the Local Authority area, or indeed whether it could be a community of common interests - eg for particular types of care services/disability. The definition criteria in s.14 should also include a requirement that the body has in place provision for the dissolution of the body as constituted and specifically how assets/liabilities and obligations of that body are to be dealt with in the event of it’s dissolution. Schedule 1 should include representation of the Social Housing Sector, which sector plays a vital role in communities; if not generally then it should be mandatorily included for those Local Authority areas which have completed a Housing Stock Transfer. We are aware of the opportunity to include others within the CP process, but suggest it would be useful if the Housing Sector was asked with the complementary obligations to engage as other CP partners. Schedule 1 should also include local colleges within Island Local Authorities, which have similar status as regional colleges elsewhere. Schedule 1 should also include Community Land bodies where there has been a Community Right to Buy completed.</td>
<td>Content with the specific conditions.</td>
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<td>Question 5</td>
<td>What are your views on the assessment of equal rights impacts on island communities and sustainable development set out in the Policy memorandum?</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>Part 5 Asset Transfer Requests</td>
<td>Part 6 Common Good Property</td>
<td>Part 7 Allotments</td>
<td>Part 8 Non Domestic Rates</td>
<td>Policy Memo - Equalities / Island communities</td>
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<td>The Bill provides a framework for community bodies representing communities across Scotland/Islands to purchase abandoned or neglected land without a willing seller, in order to further the achievement of sustainable development of land. Many communities may wish to take control of assets in their area, enabling them to address local needs and deliver community benefit. In many cases this will also contribute to achieving the outcomes set by public sector bodies, and can lead to reduced demand for public services.</td>
<td>The aim of Part 6 of the Bill is to increase transparency about the existence, use and disposal of common good assets, and to increase community involvement in decisions taken about their identification, use and disposal.</td>
<td>Many community bodies include community growing among their activities, and the community right to buy and asset transfer (including lease or use) may be used to provide space for this. Another key way to provide suitable land for people to grow their own food is by the provision of allotments. Part 7 of the Bill will empower communities to progress this through approaching the local authority.</td>
<td>There are a number of instances where the power to grant local relief for Non Domestic Rates would help support development particularly in the Stornoway area where rural rate relief does not apply.</td>
<td>N/A</td>
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<td>Benefits: promotion of wider social, health, economic and environmental benefits; local democratic participation boosted; better community engagement and participation leads to the delivery of more responsive services and better outcomes for communities. Disadvantages: Possibly longer lead times for Asset Transfers to be concluded</td>
<td>Benefits: promotion of wider social, health, economic and environmental benefits; local democratic participation boosted; better community engagement and participation leads to the delivery of more responsive services and better outcomes for communities. Disadvantages: Provide training of new Bill to appropriate staff.</td>
<td>Benefits: promotion of wider social, health, economic and environmental benefits; local democratic participation boosted; better community engagement and participation leads to the delivery of more responsive services and better outcomes for communities. Disadvantages: Availability of appropriate allotments, acquisition and running costs.</td>
<td>Benefits: will be the ability to set up local schemes for NDR discount and relief. Disadvantages: may require additional resources to set up and administer</td>
<td>N/A</td>
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<td>From previous experience of local community groups it's felt further training/guidance would be recommended for all groups across Scotland to explain the Bill in more detail.</td>
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<td>Content with the specific conditions.</td>
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<td>The retention or even acquisition of land for the purposes of providing allotments would seem contrary to the spirit of Part 5 of the Bill, which is about increasing community involvement in making the best use of heritable assets. Additionally, it should be noted that the nature of land ownership in islands communities means that much is in private or community ownership with the local authority owning very little heritable estate. It would maximise opportunities if Part 7 was drafted permissively and more widely in scope to include the provision of allotments not just by ownership or lease by the Local Authority but also by arrangement with Community Land Owners and others whereby those bodies would have the right and responsibilities pertaining to provision of allotments, as envisaged; this would further enhance community participation, empowerment and benefit with regard to the provision of allotments. The provisions should not be drafted in such a way as to require the Local Authority to provide allotments, but at most to use reasonable endeavours to provide them, for the reasons referred to above: where the local authority has no suitable land within it's ownership it is within the Local Authority's control to acquire land for this purpose, without the risk of the public purse being held to ransom by private land owners. The drafting of subsections 72(1) and (2) do not appear to sit comfortably with one another.</td>
<td>The Policy Memorandum outlines the assessment of equal rights and though an EQIA has been undertaken it is identified policies implemented at a local level may also have to undertake EQIAs. Though the legislation proposes to ensure further empowerment of communities there might be concern that minority groups are further excluded from the benefits of the Bill and may be unable to take advantage of the changes due to lack of capacity and skills. The question of whose responsibility it is to ensure the communities have the capacity, knowledge and skills to take up the opportunities in the Bill, is not addressed at this stage but that would need to be addressed in future guidance. Pleased that it has been recognised that the island communities may have to have a different approach to implementation. Suggestions have been made in relation to question 4 about how this could be further enhanced to ensure that communities can respond appropriately to the spirit of the bill in a way that meets the situations that are particular to island authorities</td>
<td>N/A</td>
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COMMUNITY EMPOWERMENT (SCOTLAND) BILL (as introduced)

Submission by the Federation of City Farms and Community Gardens (Scotland) (FCFCG) to the Local Government and Regeneration Committee of the Scottish Parliament

FCFCG is a registered charity which supports, represents and promotes community-managed farms, gardens, allotments and other green spaces, creating opportunities for local communities to grow. We work with community groups to help empower local people of all ages, backgrounds and abilities to build better communities, and to make a positive impact on their surrounding environment. The FCFCG is a UK wide organisation, and in Scotland has over 70 community gardens and city farms as members, and several more groups and organisations who we work with and support through our network.

1. To what extent do you consider the Bill will empower communities? Please give reasons for your answer.

Part 2 – Community Planning

We welcome the measures relating to Community Planning. However, the principles underlying (Section 4 (5)) are more in line with community involvement than community empowerment, in that the community planning partnership has the power to decide which community bodies can take part in community planning. This is similarly the case for Section 5 (3)(a) which gives power to the community planning partnership to decide who should be consulted. To increase the level of involvement of the community/voluntary sector in the community planning process, Schedule 1 could include a representative organisation of this sector.

Part 3 – Participation Requests

Participation requests have the potential to empower communities. These give the opportunity for community groups to request to improve outcomes relating to use and upkeep of open spaces which are owned by relevant public service authorities. This might in some cases involve a proposal that the community group take over maintenance of the space from the authority or the authority’s private sector maintenance contractors. Several of our members, including Urban Roots in South Glasgow, and Granton Community Gardeners in North Edinburgh provide examples of how members of a community are transforming areas of ground which the local authority previously struggled to maintain against fly-tipping, dog fouling and other anti-social behaviour.

Part 4 – Community Right to buy Land

We welcome the extension of the right to buy to urban areas, and support the right for communities to buy neglected or abandoned land. We would also like to see an absolute right for communities to use land, including neglected or abandoned land, not just to buy it. In our experience, this would benefit many more people than just a right to buy as most of our members are not interested in/able to buy their land. It might also provide a temporary solution in areas where land is not “neglected” or “abandoned”, it is just currently unused.
Following on from this, we are supportive of the proposals for Participation Requests (Section 17) and Asset transfer requests (Section 52) as these support the right for communities to use land, without taking ownership, for purposes such as growing. We are however concerned that these proposals only relate to land owned by those public bodies listed in Schedule 2 and 3 to the Bill, and so do not include land owned by other public bodies or do anything to promote meanwhile use of privately owned land. There are also certain public sector landowners whose functions and governance are reserved to Westminster (such as the Ministry of Defence or Network Rail), who do not appear on Schedule 2 and 3 to the Bill, and so limit the community benefits that might be realised from the use of this land.

Part 6 - Common Good Property

We are pleased to see the proposal for better information available to the public as to what is or is not common good property. The information should be in a clear language accessible to the lay person and state what the rules are as to what may or may not be common good and also what the rules on alienation and appropriation to other uses are.

The rules on common good are a two-edged sword so far as community growing initiatives are concerned. On the one hand, they tend to protect unbuilt land from development and, where a growing project can be established on common good land, help to support its long-term future. However, where the community use is or may be an appropriation to another use, or where a proposed agreement between Council and community group may be considered an alienation, the common good rules stand as a barrier to agreements for community use and also fear of challenge and criticism may inhibit Councils from considering beneficial proposals.

Part 7 – Allotments

Allotments, and other forms of community gardening, can be an important hub for community activity and contribute to empowerment. We welcome the clear re-statement of allotment law and the provisions which will hopefully help to increase local authority provision of allotments and other growing spaces.

In order to remove barriers to allotment growing, we would like to see an additional provision that no separate planning consent is needed for structures such as sheds and polytunnels on allotment sites (they are usually permitted developments when within the curtilage of a dwelling). The current system is expensive and time consuming for poorly resourced community groups. If such features have been permitted and regulated by the local authority within site management regulations (Section 73(4)(a) – (c)), we do not think that a separate planning application should be required.

We are pleased to see that the proposed new duty of local authorities to prepare a food growing strategy involves identification of areas of land suitable for other forms of community growing as well as allotments. All forms of community gardening create community benefits and enhance empowerment, and in some cases other cultivation approaches may be preferable to allotments, for example where a site is small, awkwardly shaped, contaminated or only available for a short period. As the Bill’s proposed new definition of “allotment” restricts it to ground owned or tenanted by the
local authority, this approach also means the strategy will take into account what are presently termed “private allotments”; those leased from a private sector landlord.

We propose that food growing strategies also identify gaps in training requirements for allotment and community gardening. At the moment, there is a significant shortage of skills relevant to food growing in a community context. Providing training is therefore essential to a thriving community growing sector, and there is untapped horticultural expertise in many traditional allotment sites and community gardens. Consideration as to how this training is resourced should also be made in the food growing strategy.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions of the Bill?

Studies have shown that communities can be very efficient and effective at running services, and can save public money in the long run using preventative spending. For example, the FCFCG’s Social Return on Investment (SROI) analysis of the Community Gardening Project at Gorgie City Farm in Edinburgh shows that for every pound invested in the project, £3.56 in social value is generated. There may also be more immediate benefits to Public Bodies in the transfer of ownership or management of land in terms of reduced costs for maintenance and repairs, especially following anti-social behaviour and fly-tipping on neglected or abandoned sites. Understanding the relationship between public body and community as being one in which the later provides a benefit to the former and not vice versa is also helpful to countering any argument that the transaction may be subject to the European State Aid rules.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions of the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure that happens?

For the Bill to be effective, communities need support to build capacity to manage changes to the legislation, including with the assets they acquire or use, and in engaging with community planning partnerships and food growing strategies. Therefore the CE (Scotland) Bill needs to be properly resourced, with a dedicated funding programme (in a similar way to the Climate Challenge Fund accompanying the Climate Change (Scotland) Act, or the Scottish Land Fund accompanying the Land Reform Act).

Such a fund could include loans and grants for the acquisition or management of land and/or assets. Timescales for applications and decisions should take into consideration the timescales stated in the legislation regarding decision and transfer periods. This fund could also include a knowledge transfer and capacity building element such that community groups can visit and learn from other community groups, as well as benefit from support from a range of intermediary organisations offering training and capacity building. There is also a role for intermediary organisations to support community groups with: impartial advice, mediation, and engagement with public bodies.

FCFCG receives several enquiries a week from our members and other organisations for support on community growing projects. The knowledge transfer fund that was available for projects to use to visit other projects was effective in connecting groups and building capacity. Introducing a similar scheme would help to empower communities through connections and skills development. FCFCG
also delivers in depth training through the Community Garden Starter Pack which covers a range of essential considerations for community groups when considering setting up a new community growing space. The availability of resources and training such as this will be essential support for groups wanting to establish new community gardens and allotments in a new legislative framework.
Oxfam response to Local Government Committee and Regeneration Committee’s call for evidence on the Community Empowerment Bill

Oxfam works to overcome poverty at home and abroad. In Scotland we do this in three ways: we work with community groups and people living in poverty to develop projects, improve lives and show how things can change; we raise public awareness of poverty to create pressure for change; and we work with policy makers to tackle the causes of poverty.

We welcome the opportunity to give evidence to the Committee on the Community Empowerment Bill. While supportive of many of the proposals contained in the Bill, we do have a general concern that by empowering the already empowered, the Bill could in fact accentuate, rather than reduce, inequalities.

To address this we believe the Bill, subsequent guidance and related Government strategies and activities need to give more focus to addressing poverty and inequality. As well as providing legislative rights to communities and removing barriers to engagement, we need to provide resources to – and build capacity in – our most deprived communities.

Oxfam’s specific proposals include, ensuring:

- The national outcomes – currently reflected in Scotland Performs – are developed through a genuinely participative process.
- The national standards for community engagement are placed on a statutory footing.
- Community Planning Partnerships develop their local outcomes improvement plans through a genuinely participative process that reaches out to the most deprived communities.
- Participation requests are strengthened by ensuring deprived communities are aware of their rights, supported to access their rights and are able to appeal against decisions.
- Participatory budgeting is taken forward across Scotland.

We also support the submission produced in collaboration with Barnardo’s Scotland, the Poverty Alliance and supported by a range of other organisations entitled ‘Strengthening the Community Empowerment Bill to empower every community in Scotland’.

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

Several of the proposals in the Bill could, potentially, empower communities. This includes Parts 2 and 3 on community planning and participation requests, which along with Part 1 are of particular
interest to Oxfam. We believe the Bill provides an opportunity to further community empowerment in Scotland.

Our main concern is that unless a concerted effort and specific resources are provided to engage and support our most deprived communities, the Bill may:

a) Allow better-off communities to utilise the various mechanisms contained in the legislation to become more empowered, thereby accentuating inequalities.

b) Fail to ensure that public sector planning and service delivery is designed with our most deprived communities at the forefront, thereby reducing inequalities and prioritising prevention.

We would also question the statement contained in the Policy Memorandum that:

"The Scottish Government is clear that it is important that community voices are heard in public sector processes, but that this engagement differs from community empowerment, where communities lead change for themselves."

While recognising that there is a difference between community led activity and public sector led engagement with the community, we do not see any reason why genuinely participative processes initiated or funded by the public sector – such as participatory budgeting – cannot also be empowering for our communities.

Below we outline some specific proposals to ensure we empower all of Scotland’s communities.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

If significantly improved, many of the provisions in the Bill could lead to greater involvement of people and communities in the design and delivery of plans and services. Given that public services that involve their users, and Governments which involve their citizens, are likely to be of higher quality and be more responsive to the people they seek to serve, this would lead to better outcomes for the communities and public sector organisations.

Oxfam believes there is significant potential to improve the Bill in relation to Community Planning. The Policy Memorandum states local outcomes improvement plans should “provide a clear plan for place, focused on prevention and reducing inequalities.” Yet the Bill provides no comfort or guarantee that this will be the case. We suggest that as well as core duties for CPP partners to participate in CPPs, the Bill needs to ensure that the core purpose – and starting point – of CPPs should be to strengthen their engagement with the local community. Such a process of community engagement needs to be undertaken when developing local outcomes improvement plans and could be modelled on the participative approach embedded with the Oxfam Humankind Index.

Oxfam’s Humankind Index for Scotland aimed to find out what really matters to people, particularly the most disadvantaged. Developed through widespread public consultation, including focus groups, community workshops, street stalls and an online survey, the Oxfam Humankind Index enables
Scotland to measure itself by those aspects of life that make a real difference to people, particularly the most disadvantaged. The factors or ‘sub-domains’ that make up the index are detailed in the table below:

These priorities are matched with Scotland-wide data indicators (from a range of sources including the Scottish Household Survey and the Scottish Social Attitudes Survey) allowing progress against the Oxfam Humankind Index to be measured. This shows that efforts to create nuanced performance frameworks – which embed the genuine priorities of individuals and communities – is
possible. More importantly however, it shows that communities and individuals can define what matters to them in a way which is often very different to the priorities of policy-makers.

Of course, what is important to people will differ from area to area, so it is crucial that outcomes are decided by the community for the community. We believe the Oxfam Humankind Index could be replicated for each of the 32 CPPs. Such a process would, as well as identifying what the community thinks is important, have the added benefit of building common ownership of CPPs across statutory partners and community bodies, ensuring CPPs are not simply seen as a local authority led exercise. It also meets many, if not all, of the principles for stronger democracy outlined in the recent Commission for Strengthening Local Democracy report.iii

Specific, additional concerns around Part 2 on Community Planning

In addition to our comments above, we have some specific concerns with the draft legislation:

Section 5 (3) states that: “In preparing the local outcomes improvement plan a community planning partnership must – consult such community bodies as it considers appropriate”. We are concerned about this reference to “consult” and believe this should be strengthened so that community bodies and others participate in the initial process of co-producing the local outcomes improvement plan.

We have a slight concern that certain, admittedly well-meaning, sections of the legislation that aim to increase community engagement in community planning could lead to ‘box ticking’ consultations. For example section 4 (5) seeks to ‘secure the participation of appropriate community bodies in community planning, and to take steps to enable them to participate to the extent they wish to’. While this is not a concern in and of itself – and reference to participation rather than consultation is welcome – we believe that there needs to be a recognition that the ultimate beneficiaries of Community Planning are individuals. While many community bodies do an excellent job of representing individuals, some don’t. There is a risk that CPPs will simply consult a couple of third sector groups and tick the ‘community consulted’ box. While community bodies, the voluntary and third sector are a crucial plank in reaching individuals, we must not lose sight of the main aim of benefiting the lives of individuals and this should be reflected within the provisions of the Bill.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

No, we do not consider that all communities in Scotland have the capabilities to take advantage of the provisions in the Bill. In addition to our comments relating to Community Planning outlined above, we believe a number of further measures should be taken:

National Standards for Community Engagement

The Policy Memorandum states: “There is a strong history of the public sector engaging with communities across Scotland. In particular, local authorities have used a variety of engagement methods over the years and have promoted the use of tools like the National Standards for Community Engagement (Communities Scotland, 2005 – now available, with support materials,
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from the Scottish Community Development Centre). The Scottish Government sets clear expectations that all public sector organisations must engage with communities and support their participation in setting priorities and in the design and delivery of services.”

While this is welcome, as the Audit Scotland report into Community Planning stated: “there is a long way to go before the potential of local people to participate, shape and improve local services is realised”.

We believe the Bill provides an opportunity to place the national standards for community engagement on a statutory basis. This would ensure that during the development of the National Outcomes (Part 1) and Local Outcomes Improvement Plans (Part 2) best practice in community engagement is adhered to.

Such a proposal seems to chime with the Commission for Strengthening Local Democracy report, which states: “The right of individuals and communities to local democracy needs legislative expression through a clear duty in law to support and resource participation in decision making. Democratic innovations such as deliberative assemblies, participatory budgeting and citizen scrutiny of public services should also become the standards by which this is delivered in Scotland”.

Socio-economic and community wellbeing assessments

In order to ensure that the priorities of the Scottish Government and Community Planning Partnerships do not accentuate inequalities, we believe there needs to be a specific socio-economic impact assessment applying to the National Outcomes and Local Outcomes Improvement Plans.

We also believe that for Local outcomes improvement plans to provide a genuinely “clear plan for place, focused on prevention and reducing inequalities” (as stated in the Policy Memorandum) there needs to be an assessment of: which communities make up the local area; who comprises the most vulnerable, excluded or ‘seldom-heard’ communities within the local area; and an analysis of future trends. Such an assessment, which would be undertaken before an engagement exercise to determine local outcome improvement plans, could be modelled on the Welsh ‘Future Generations’ Bill.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Below we set out various concerns and proposals in relation to Parts 1 and 3 of the Bill as well as specific proposals for Participatory Budgeting.

Part 1 - National Outcomes

Oxfam have been involved in a series of Round Table meetings chaired by the Cabinet Secretary for Finance, John Swinney MSP. These have been informal gatherings of interested and relevant individuals and organisations to share views and ideas on Scotland Performs. The Carnegie Trust,
nef, Scottish Environment LINK and members from all parties across the Chamber have been involved. The group is exploring ways in which the presentation and coverage of Scotland Performs can be improved along with considering how best to engage with both the public and the Parliament. As such we welcome the proposals to put the National Outcomes on a statutory footing.

However, we do have some concerns in relation to the proposals – not in relation to the work of the roundtable, which from our point of view has been an extremely positive engagement exercise – but in the context of Part 1 of the Community Empowerment Bill.

There is very little in the Bill that would require Ministers to ensure that the National Outcomes are produced through a genuinely participative exercise. If the National Outcomes are to be the core focus of what Government is working to then it is essential that those outcomes are shaped and determined in collaboration by those who will be affected – the people living and working in Scotland. In the same manner as we believe Community Planning Partnerships should undertake an exercise like the Oxfam Humankind Index we also believe this should apply to the Scottish Government; it should lead by example. Similarly, it should also embed the national standards for community engagement and undertake a socio-economic impact assessment.

We would also comment on the Policy Memorandum which suggests that the starting point for the Bill is delivering the Scottish Government’s core purpose: “to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth.” To Oxfam, this seems to be a bit back-to-front. Our experience from the Oxfam Humankind Index is that for engagement exercises to be genuinely empowering they need to ask open-ended questions about what matters to people and work forward from there. A genuinely participative process to determine the National Outcomes would start by asking people what they thought the core purpose of Government should be, rather than be asked to support a purpose they had little opportunity to influence.

**Part 3 - Participation requests**

We welcome the proposals for participation requests and asset transfer requests. While recognising that these are generally rights to ‘request’/seek permission, they could lead to helpful processes that allow communities greater influence over the direction of public services and the use of assets. We also welcome the manner in which communities are self-defined in this and other parts of the Bill. This recognises that communities are somewhat subjective entities and at times are conflicting, porous, and almost indefinable.

Having said this we have two significant concerns with the participation requests.

Firstly, there is no mechanism(s) in the Bill to support our most deprived communities take up participation requests. This is particularly important given that more than half the people living in Scotland’s most deprived 20% of areas report difficulties in improving local circumstances, compared to less than one-third of people in the least deprived areas. Participation requests therefore risk becoming the privilege of already empowered communities with greater capacity to access, navigate and resource such a process. Consideration should be given to how public bodies can provide clear information and potentially financial resource in relation to participation requests – particularly to
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deprived communities. Section 9 (3) (b) recognises that funds and resources may be necessary for ensuring the engagement of community bodies in community planning and we see no reason why this shouldn’t be the case in relation to participation requests. As such, the Bill should actively remove barriers to engagement.

Secondly, there is no ability to appeal a decision should a participation request be rejected. This seems particularly strange given that a form of appeals and reviews are available for asset transfer requests (through section 58 and 59). We propose that an independent review process be included in relation to participation requests – with a clear route outlined.

Given that part 3 effectively confers a right to request to participate, we suggest that the Scottish Human Rights Commission (SHRC) may be an appropriate body to adjudicate such appeal, recognising that this may require some changes to the responsibilities and functions of the SHRC.

Finally, to ensure that more focus is given to our most deprived communities we believe socio-economic poverty and inequality should be listed under the matters to be considered in reaching a decision in section 19 (3).

Participatory Budgeting

If the aim of community empowerment is to increase the amount of influence or control that communities have over assets and resources and, if public sector spend can be seen as one of those assets (often the most substantial asset in the least advantaged communities), then it follows that communities should have a greater role in deciding how funds should be applied.

One such mechanism for increasing community control of assets and resources is Participatory Budgeting, recognised internationally as a means by which local people can have a direct say in how and where public funds can be best used to address local requirements. In recent years Participatory Budgeting has been used on a small scale in Scotland and there is some evidence to suggest that its application has been catalytic in increasing local democratic participation and community involvement, leading to stronger and more cohesive communities.\textsuperscript{viii}

We propose that community planning partnerships budgets should go towards participatory budgeting.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy Memorandum?

The Policy Memorandum states that empowerment is an important part of a human rights approach. That is welcome. It is also why we believe far greater focus needs to be given to efforts to ensure that the most deprived communities are assisted to make their voice heard.

We would also comment that protected characteristics under the Equality Act don’t include socio-economic factors. Far greater emphasis needs to be given to this if poverty and inequality are to be acknowledged and every community is able to benefit from the measures contained in the Community Empowerment Bill. As mentioned previously, socio-economic impact assessments could be looked at in this context.
See for example: https://allinthistotherwales.wordpress.com/2013/03/14/co-pro-whats-the-advantage-survey-responses/

http://humankindindex.org

These include sovereignty, subsidiarity, transparency, participation, spheres not tiers of Government, interdependency and wellbeing. See: http://www.localdemocracy.info/

http://www.audit-scotland.gov.uk/media/article.php?id=230

http://www.localdemocracy.info/


Oxfam were involved in one such project in Govanhill: http://www.gcph.co.uk/publications/321_participatory_budgeting-learning_from_govanhill_equally_well_test_site
Community Empowerment (Scotland) Bill

The Chartered Institute of Logistics and Transport is the leading professional body representing the supply of freight and passenger transport services. Our membership includes many of Scotland’s most successful community organisations which provide community transport services, community hubs, retail, employability programmes, parcel collection and distribution points, patient and social work transport, and many other related services.

We have been keen supporters of the Community Planning processes which have been managed across Scotland over the last decade and share the government’s concern about weak delivery of the 32 Community Plans. Most of the current Plans identify barriers which communities face accessing essential opportunities and services, but links to effective funded programmes are only partially made. In many cases the relationship is therefore not clear between the Community Plan and the investment which is made in logistics and transport systems.

Our scrutiny of the Bill has therefore viewed the plans through the lens of how much practical delivery of much needed community connections will be enhanced as a result of the new legislation. In particular we have asked whether the Bill becoming an Act will overcome long standing barriers which have frustrated community based delivery. Our answers are below under each of the questions asked in the Committee’s Call for Evidence.

Managing the Transition from Community Aims to Practical Delivery

Q1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

The plans for managed delivery of outcomes are very welcome. We would expect that these will become increasingly important in organising local delivery of community based transport and logistics. This will encourage a wider range of enterprises to become involved.

We recognise the difficulties that commercial and social enterprises have faced in the past when engaging with Community Planning. Therefore the Act needs to be accompanied with guidance and training to explain how enterprises, including all parts of the business community, can be more involved. The explanatory notes refer to co-design approaches, and a similar expansion of how to deliver co-production of transport solutions would be very beneficial to follow through to delivery.

The powers to establish corporate bodies are very welcome. The long standing problems which have been experienced overcoming barriers to more efficient social transport delivery may well be overcome by setting up new corporate bodies offering third party social transport services. We cannot see any problems with the proposed legislation being used in this way, but it would be worth
working through the details of some of the logistics and transport objectives of Community Plans to ensure that the Act includes all of the necessary provisions to secure delivery. The lack of logistics and transport examples in the policy memorandum contrast with other policy areas where there appears to have been more attention paid to details. Ensuring that the details are clear at this stage will be important to ensure that the Bill empowers communities to make the necessary connections.

Q2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

There are great opportunities for public sector organisations to demonstrate their community leadership role, and threats for public sector organisations that perceive themselves as having a monopoly on building stronger communities.

We welcome the widening of the definition of community to make it easier for communities to define their community in a greater variety of ways, not just by postcode. This will now include many types of transport body working to make local connections.

However the business relationships that define the ability of a community to deliver socially desirable changes involves supply chains that cross geographical boundaries. If we look at a typical community transport operation then their activities interface at many geographical levels and across public and private sectors. Access to hospital is identified as a problem in many Community Plans but action to date through these Plans to overcome the problems has been weak. Successful delivery ‘communities’ include elements of nationally funded programmes such as the services of the Scottish Ambulance Service, alongside local authority, community and private providers of health transport services, including for high care transport. Some public sector organisations may perceive disadvantages from working with this broader community but the advantages of doing so will greatly exceed the costs as pilot projects have shown.

If a Community Plan in one local authority area identifies gaps in access, but these issues are not recognised in the Community Plans of other areas who need to be involved in overcoming problems, then there will need to be mechanisms for resolving these differences of perspective. These mechanisms could include arbitration proceedings or hearings to determine whether the proposed community action was reasonable. If community organisations do not think they will be treated fairly when these conflicts need resolution then they will not be empowered.

Mind the gap

Q3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

In order to breed a better understanding between communities and the statutory bodies there is a big cultural gap to overcome. Participating in dozens of meetings will stifle the involvement of doers, and there is a real danger that the new procedures for action plans and progress reporting could lead to “death by planning”. There will need to be pathfinder projects in the logistics and transport sector to demonstrate how the new powers can be used to overcome old problems.
Public bodies are highly skilled at ensuring that only optimal delivery approaches are delivered. Community activists are highly skilled at making good things happen, whether or not they are the optimal solutions. Under the proposed Act the Community Plan should be able to frame the good things needed, whilst ensuring social and political accountability, but whether it can achieve this without stifling community energy is perhaps the greatest challenge for Community Planning.

There are many examples over the last decade where innovative joint working solutions have been designed but when faced with the narrower accountability structures of public bodies they have failed to be sustained leading to losses in both efficiency and effectiveness over time.

Q4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

As noted above the specific provisions of the Bill need to be worked through with specific examples to check how delivery might work in practice for projects like community logistics hubs, social transport, social transport commitments, managed improvements in access to fresh food and many of the types of projects that have been suggested through Community Planning but have failed to overcome obstacles to delivery due to a lack of community empowerment.

Q5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

When assessing community need there are four essential lenses needed for the outcome measures: stated need, social needs, expressed need and comparative/distributional needs. There are weaknesses in many of the current outcome measures being used by authorities as they rely excessively on measures of stated and expressed need which tends to benefit wealthy groups who demand the most.

More attention is needed to understanding social benefits and how these are distributes.

Conclusion

Logistics and transport connects up the economy and society and needs to be enabled by the new Act, as much as for the current focus in the policy memorandum on people and places. The broad definition of community is welcome, but it is difficult to see how the Act will be worked through in practical delivery. As part of the scrutiny of the Bill, the detail of the community empowerment enabled through the Bill should be explained for desirable projects such as community hubs, social transport services, community parcel delivery and other logistics and transport provision identified as needed in Community Plans. Without this detail there is a danger that the Bill may not enable as intended if some barriers still cannot be overcome.

Derek Halden, Policy Lead, CILT (Scotland)

5 September 2014
We thank the Committee for the opportunity to present evidence on the Community Empowerment (Scotland) Bill. Our response to question 4 is as follows:

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

4.1 Types of community body

There seems to be room for confusion over what type of community body can do what and potential for overlap between the various community bodies. As drafted the Bill provides for 6 different types of community body as follows:

1. “Community bodies” in relation to a community planning partnership means bodies, whether or not formally constituted, established for purposes which consist of or include that of promoting or improving the interests of any communities (however described) resident or otherwise present in the area of the local authority for which the community planning partnership is carrying out community planning (Section 4(8)).

2. A “community participation body” which includes a community-controlled body, a community council and a body designated as such which may make a request to a public service authority to participate in an outcome improvement process (Section 15)

3. A “community controlled body” (body corporate or unincorporated) which may also be a community participation body (Section 14)

4. A “community body” which is a company limited by guarantee and / or an SCIO which may register an interest in land (Section 28)
5. A Part 3A community body which is a company limited by guarantee which may apply for consent to buy neglected and abandoned land (Section 48)

6. A “community transfer body” which is a community council and/or an incorporated or unincorporated body designated as such by the Scottish Ministers which may make an asset transfer to a relevant authority (Section 50)

We would question whether it is necessary to have so many different types of community body. Do the community bodies which become involved in community planning include all of the bodies listed above?

We would also query the lack of consistency for the requirements for different bodies. For example, it would appear that an SCIO may be a community body under Part 2 of the Land Reform (S) Act 2003 (“the 2003 Act”) but not under the proposed Part 3A. Is there a reason for this distinction? If the number of community bodies is to remain as it is at present in terms of the Bill, we would suggest that clear guidance on how each body may be constituted and what they can and cannot do should be issued for the benefit of lay persons.

4.2 Amendments to Part 2 of the 2003 Act

4.2.1 Extension of Community Right to Buy to Urban Land

Our understanding of Part 2 of the 2003 Act is that it sought to achieve aims specific to rural land. The justification for the community right to buy was specific to rural areas. The Policy Memorandum states that “A key reason given for the extension to urban land was to provide people living in urban areas with the same rights as those in rural areas”. Whilst we appreciate community ownership brings benefits to a community, there are specific reasons why the rural community right to buy was justified and we have concerns about simply extending the right to buy to urban areas for the purposes of symmetry.

Given that urban land is more likely to be developed, if the community right to buy is extended to urban property, it will be necessary to put safeguards in place to ensure that it is not used to stifle the development plans of competitors.

4.2.2 Extension of Time Period to 8 Months

In terms of the draft Bill, community bodies are to be given 8 months to buy a property. The sale and purchase of a typical commercial property would be completed well within such timescales. The owner of a property subject to a right to buy who intended to sell on the open
market faces a delay of up to 6 months in situations where they may need the sale proceeds to settle bank debt or fund business expansion.

The community bodies which have successfully used the legislation to purchase land have proven that it is possible to complete the transaction within 8 months. We would therefore question why it is necessary to extend the time period, thus increasing the burden on the landowner. Our understanding is that any infringement of the landowner’s Article 1 Protocol must be proportionate and we consider that the extension of the time frame reduces the proportionality of the community right to buy.

4.2.3 Amendments to “late” applications

“Late” applications permit a community body to register an interest in land once the land has been marketed. This concession interferes with the live land market and so the circumstances in which a “late” application are to be permitted should be restricted as much as possible.

The amendments to section 39 of the 2003 Act appear to dilute the criteria required. In particular, the requirement to show “good reasons” why the application was not submitted prior to the land being put on the market is replaced with a requirement to show that an application was prepared or steps have been taken towards community ownership prior to the land being put on the market. Whilst we appreciate that this test would prevent community bodies who are simply reacting to the land being put on the market from registering an interest, our view is that community bodies should be obliged to explain why an application was not submitted prior to the land being put on the market. Otherwise, this amendment to the criteria for “late” applications could make some landowners wary of putting land on the market for fear of “triggering” community interest.

4.2.4 Cost of independent valuation

The Bill reserves the right for Ministers to recover the valuation costs from a landowner if he withdraws from a sale where a community body had planned to buy his property. Market conditions or personal circumstances may have changed in the additional time required to complete a sale to a community body and so we would hope that this discretion is exercised with care.

4.3 Part 3A - Right to buy neglected and abandoned land

We appreciate that land which is left abandoned/neglected can be a barrier to sustainable development. However, we do not consider that the only solution to this perceived problem is
the transfer of land to community bodies and would question whether Part 3A is necessary when local authorities have existing powers of compulsory purchase. The Policy Memorandum confirms that this concern was also raised by local government respondents during the consultation periods.

If it is considered that control of land by community bodies is the best means of achieving sustainable development, the community could be given the chance to lease the property in the first instance. The lease could be for a period of 5 years with an option to purchase the land at the end of that period. This would give the community a fair chance to see if they can make the property work for them and pass the test of sustainable development.

The lease could be for a nominal rent provided the community undertook to make improvements to the property. If the community found that it didn’t work out, the lease could come to an end and the community could remove all equipment and fittings belonging to them and, where appropriate, seek alternative premises. If the community found that they did make a success of the project operating from the property, they could exercise the option to purchase the property at the end of the lease.

4.3.1 Definition of Abandoned and Neglected Land

We note with concern that the Bill contains no substantive provisions regarding the definition of neglected or abandoned land. Leaving the definitions of neglected and abandoned land to the discretion of Ministers and only setting out factors which may be taken into account leaves much uncertainty for all concerned with what may or may not be abandoned and neglected land. This may discourage purchasers from buying land which may be deemed abandoned and neglected if they do not plan to develop or use that land straight away.

We also question whether it will be possible to frame guidance on neglected and abandoned land in regulations which provides sufficient legal certainty. Landowners must be able to look at the regulations and identify whether their land falls within the definition of “neglected” or “abandoned”. They would want to know, for example, how long a property must have been left vacant and unused to be deemed to be abandoned. They would also want reassurance that certain types of property would not be deemed to be abandoned or neglected. For example, there are many examples of rural land which may look abandoned to the naked eye but in fact have deliberately been left as such for agricultural purposes. Some farm buildings may also seem neglected but still be in operation or part of long term plans for the farm. We would hope that Ministers would not consent to the sale of such property.
We note that there is a provision seeking to exclude an individual's home from the provisions. We support this exclusion and, given the protection afforded to a person’s private and family life in terms of the European Convention on Human Rights, consider it to be significant. We are however wary that this exclusion is also subject to further regulation.

It is our understanding of section 33 of Part 2 of the 2003 (as amended by the Bill) that a community body can register an interest in salmon fishings or mineral rights if they are owned by the owner of the land or if they are owned separately from the land. Section 53 of Part 2 provides that Ministers will not consent to the exercise of the right to buy in respect of the salmon fishings/minerals unless the community body is also exercising its right to buy the land (or already owns it).

We do not consider the position with regard to mineral and salmon fishings to be clear in Part 3A. Does the fact that mineral rights and salmon fishings are not specifically excluded mean that they are included in the definition of “eligible land”? Given the possibility for confusion as to whether salmon fishings or mineral rights are included, we would suggest that clarification is given.

If minerals and salmon fishings are included in the definition of eligible land in Part 3A, we are not convinced that the tests of abandoned/neglected land (however they may be framed) may be applied to these rights which, by their nature, are not “used” or occupied in the same way that land is. We would question the justification for including mineral rights and salmon fishings in land which can be purchased under Part 3A if they cannot be “abandoned” or “neglected”.

4.3.2 Criteria for an Application

Ministers must consider whether the owner’s continued ownership would be inconsistent with furthering the achievement of sustainable development. Ministers are entitled to ask the owner to give information about the proposals for the land. This means that even if a landowner proposes to use land in a certain way, if that use is not deemed to be compatible with “sustainable development” the land can be acquired by a community body. In effect, Ministers are being placed in the position of comparing the different proposals for land use and deciding which is preferable for “sustainable development”. We suggest that, if a landowner has a proposed land use (whether that be development in a number of years or planting a crop of turnips next season) which can be supported by evidence, that should be sufficient to prevent a community body from compulsorily purchasing the land.
The final criteria is that the community body has “tried and failed to buy the land”. We would suggest that this should be expanded upon to provide that the community body must have acted in good faith or used reasonable endeavours in their effort to purchase the land.

4.3.3 Points of Process

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

The Bill allows the community body to ask the Minister to keep the community’s funding plans confidential. However, we note that the community body is obliged to send a copy of the application and accompanying information to the landowner in terms of section 97G(7). We assume that this includes any “confidential” information withheld from the register and support the idea that all information should be sent to the landowner for comment. The position could perhaps be clarified for the avoidance of doubt.

Ministers are entitled to make Regulations which will freeze dealings with a property in respect of which an application to buy has been received (section 97N). We would ask that this proposal be considered carefully and that any “frozen” period be short.

On registration of a title to land acquired by a Part 3A community body, any standard security over the land will fall. Will a creditor whose debt will not be satisfied by the sale proceeds be entitled to block the sale of the land to the Part 3A community body? If not, will the creditor be compensated under Section 97T?

4.4 Asset Transfer Requests

Where the land is leased to the relevant authority by another relevant authority or a company owned by a relevant authority, the sub-letting and use restrictions do not apply to the lease to the community transfer body. This could put some authorities in difficult positions if they have agreed to such restrictions to comply with title conditions or tenant mix requirements and so this provision should be qualified accordingly.
4.5 Common Good

The Bill should contain a definition of common good based on the principles established by the 1944 Magistrates of Banff case which are clear and have been established for 70 years. These principles should be formally adopted by any reforming statute.

The drafting appears to allow any party to make representations to the Council that property is common good. This raises the prospect that Councils may be requested to register a large number of properties that are not, in fact, common good. Identification of common good can be a time consuming and complex process. The only way to determine whether property is indeed common good is by forensic analysis of the Council's title deeds, historical committee minutes etc. We would therefore suggest that any representations made to the Council that property is common good must be supported by evidence of this status.

With reference to the intention to register common good property, we would suggest that it be clarified whether it can be assumed that Council owned property which does not appear on the Register is not common good. In theory any asset can be common good. On the assumption that it is not practicable to create or maintain a register of moveable common good assets we would invite the government to restrict common good status only to land.

Does the consultation procedure referred to in Section 65 replace the existing statutory provisions (Section 75 of the Local Government (S) Act 1973)? If so, this is potentially more onerous than at present; Councils are currently entitled to determine that common good land can be alienated without requirement for court consent, depending on relevant circumstances (public benefit, public use of the property etc).

The Bill refers to the disposal and use of common good assets but does not refer to ‘inalienable’ common good; that is common good which a local authority is prohibited from disposing of. We would support the view that all common good should be capable of disposal by local authorities; it should not be the case that any land must be held in perpetuity or require consent of the Scottish Parliament to dispose.

Consent is proposed to be required to any disposal or change of use of land. The Government should consider whether there should be exceptions to this, e.g. in the case of de minimis transactions which do not change the overall or primary nature of use of the land, or grant of leases or licences (which we consider to fall within the scope of a ‘disposal’) which preserve the status / use of the land.
Response to the Community Empowerment (Scotland) Bill

From: Engage Renfrewshire

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

Response: The Bill offers the potential to empower communities, but it will be up to communities themselves to make sure this potential is realised. In the first instance the debate generated by the Bill itself has raised awareness about the potential of community ownership across Scotland. Engage Renfrewshire has worked to raise awareness of its members regarding the possibility of community ownership and has also sought to capture the experience of community groups that have completed community ownership.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

Response: Public sector organisations have an opportunity to benefit substantially from the Bill. The Bill offers the potential for statutory organisations to release the potential of underused and unused assets. This will enable public sector agencies to divest itself of the management and maintenance of assets for which it has no productive use, which would be a saving to public expenditure. More importantly, assets taken over by the community have the potential to strengthen the capability of the third sector to deliver activities and services either independently or as part of a community planning partnership. By investing in support to help communities take over assets successfully, public sector agencies will see a return over the long term in the strength of local third sector organisations and the appearance and capacity of local areas. These third sector organisations will then be better equipped to deliver policy outcomes shared with the public sector, which may result in longer term savings to the public purse.

Possible disadvantages to the public sector of the Bill may be the costs of dealing with underdeveloped requests to take over community assets, both in terms of financial cost and officer time in negotiating with local communities. Public sector organisations may also have concerns about the costs of failed asset transfers being returned to public sector hands. However, this will be mitigated if public sector organisations have a full and clear understanding of the benefits that each individual asset transfer can deliver in the long term.
3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Response: Communities across Scotland may have different levels of capability to take advantage of provisions of the Bill. In Renfrewshire, there are successful examples of asset transfers having taken place and other examples where communities have developed the capability over time with support from local agencies.

COSS and DTAS provide invaluable support to communities to build capacity to enable them to take advantage of the provisions of the Bill. Third Sector Interfaces and the officers of statutory sector organisations transferring assets can play a vital role in ensuring that third sector organisations have a full awareness and understanding of the assets available for transfer and the process by which this can be undertaken. Local TSIs and statutory organisations can also work effectively together to ensure that there is an agreed local framework for asset transfer and provision of advice and support that would make the process easier for a third sector organisation.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Response: The specific provisions of the Bill are supported. The Bill provides a positive policy context for third sector organisations to play a leading role in delivering national outcomes through community planning and the transfer of unused or underused assets from the statutory sector to communities throughout Scotland.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

Response: The assessment of equal rights, impacts on island communities and sustainable development appears to be satisfactory.

6. Any additional comments?

The thrust of the Community Empowerment Bill is to be supported and should now be backed up by positive commitment from statutory sectors and third sector organisations to make this work in practice. Work requires to be undertaken across community planning community planning partnerships to ensure a consistent understanding and approach is shared by all partners.
Local Government and Regeneration Committee

Submission Name: Community Land Advisory Service

Submission Number: 131

COMMUNITY EMPOWERMENT (SCOTLAND) BILL (as introduced)

Submission by the Community Land Advisory Service (CLAS) to the Local Government and Regeneration Committee of the Scottish Parliament

CLAS is a third sector advisory service initially established in Scotland in 2011 to implement a recommendation of the Scottish Government’s Grow Your Own Working Group. Our function is to work with community groups and with landowners (both public and private sector) to facilitate agreements for community use of land for growing projects. Under this remit, we are usually more concerned with leases, licences and other arrangements for community use of land as opposed to community ownership of land. CLAS now also operates in England and in Wales, but with separate funding arrangements in each country. In Scotland, CLAS’ current main funder is Scottish Government Food and Drink Division.

1. To what extent do you consider the Bill will empower communities? Please give reasons for your answer.

Part 2 – Community Planning

1.2.1 That I can see, the expression “community empowerment” does not appear anywhere in Part 2 of the Bill – perhaps it should? Section 4(5) makes some provision for community involvement in the process, but arguably this is merely engagement as opposed to empowerment. I think it sends the wrong signal that, in the way the provisions have been drafted, a community body which does participate in the community planning process is not counted as being a “community planning partner” (see section 4(4)).

Part 3 – Participation Requests

1.3.1 I can foresee community growing initiatives making use of participation requests in seeking to improve outcomes relating to use and upkeep of open spaces which are owned by relevant public service authorities. This might in some cases involve a proposal that the community group itself take over maintenance of the space from the authority or the authority’s private sector maintenance contractors. Granton Community Gardeners\(^1\) in North Edinburgh provide an inspiring example of how members of a community are transforming areas of ground which the local authority previously struggled to maintain against fly-tipping, dog fouling and other anti-social behaviour.

1.3.2 I can see a participation request potentially being preferable to an asset transfer request in this scenario as it makes it clear that the community are providing the public sector landowner with an economically and socially valuable service. Accordingly, if any money is to change hands, it should be the landowner paying the community group. Conversely in an asset transfer, there could be an assumption that the community group would need to pay rent or a capital purchase price. Understanding the relationship between public body and community as being one in which the later provides a benefit to the former and not vice versa is also helpful to countering any argument that the transaction may be subject to the European State Aid rules.

1.3.2 The following discussion is relevant if there is a “no” vote in the forthcoming independence referendum. Section 16(4) of the Bill limits the public bodies to which participation requests can be made to devolved areas of government. I can envisage circumstances in which a community might wish to participate in an outcome improvement process with a reserved public sector landowner – for example the Ministry of Defence or Network Rail. As regards land situated in England and Wales, such public sector bodies are subject to the “Right to Contest” provisions of Part X of the Local Government, Planning and Land Act 1980 (c.65), under which the Secretary of State can order disposal of underused land, but those provisions do not extend to Scotland. In the event of a “no” vote, I consider that the Scottish Government should negotiate with UK Government to ensure that participation requests (and also asset transfer requests) are made equally applicable to reserved public sector landowners.

\(^1\) See https://www.facebook.com/grantoncommunitygardeners
1.4.1 I agree that extending the pre-emptive right to buy into urban areas is likely to lead to some community bodies making successful purchases under the statutory right and that these may support projects that will empower those communities. As has been the experience in rural areas, I expect that the existence of the statutory right in the background will also tend to encourage more non-statutory deals between landowners and community groups with urban land.

1.4.2 However, I would draw to the Committee’s attention that the types of community growing group that I work with may often be more interested in securing use of land in the here-and-now rather than ownership at some unknown future date. Nothing in the Bill as introduced does anything to promote meanwhile community use of privately owned land.

1.4.3 Scottish Ministers have set a target of getting a million acres of land into Community ownership. I am concerned that this target may be counter-productive. Societal benefit is surely measured in terms of numbers of individuals whose life situation is improved and not in land measure. Speaking as a former Civil Servant, I am concerned that the acreage target will lead to target-driven behaviour under which funds and other resources are focused on acquisitions on large areas of remote moorland at the expense of supporting urban projects seeking to acquire small areas of ground. Community use of small areas of ground can make big differences in urban areas; as examples, Gorgie City Farm in Edinburgh only extends to about 2 acres, whilst The Grove Community Garden, which is contributing to the regeneration of the Fountainbridge area of the City, began with just 600m². In saying this, I am not against further rural buy-outs. However rural communities have had the benefit of the Part 2 right to buy for ten years now; it is now important that proposed urban buy-outs should be properly supported.

1.4.4 The provisions of this Part of the Bill are not by themselves sufficient to empower communities. Rural buy-outs to date have been supported both by the availability of funding toward purchase prices and the provision of support, both by officials and by third sector advisory services. I return to these points in sections 3.1 and 3.2 below.

1.4.5 In my view, the policy of the Bill as introduced is wrong in the scenario where a community body seeks to register interest over land which is subject to a prior option in favour of a third party (the details of this are discussed further at paragraphs 4.4.6 to 4.4.8 below.) Under the current terms of the 2003 Act and Bill, a landowner can make land “community interest proof” by granting an option over it, for example to an associate. In my view the correct policy is –

(a) an application may be made to register interest over land which is subject to a subsisting prior option.

(b) in considering whether to permit registration of an interest, Ministers must consult and have regard to the views of the option holder as well as the current owner.

(c) where an interest is permitted to be registered, a subsequent conveyance by current owner to option holder in implement of the exercised option is an exempt transfer.

(d) subsequent to that exempt transfer, action to sell by the former option holder (and now owner) triggers the community right to buy, as does action to sell to a third party by the original owner in circumstances where the option is declined.

1.4.6 In principle, I consider the proposed introduction of an absolute community right to buy abandoned and neglected land to be a good idea with considerable scope for empowering communities and also bringing about environmental improvement. However I am concerned that the scheme has not been adequately thought through, and that this may have the result that the right is in practice not as valuable as it could be. I discuss this further in paragraph 4.4.21 below.
Part 5 – Asset Transfer Requests

1.5.1 I also consider that asset transfer requests are helpful idea which will in practice contribute to further empowering communities. I think it particularly helpful that a community transfer body will be entitled to request a right to manage or to use an asset as well as a transfer of ownership or a formal tenancy. Grants of rights of management or use seem to me capable of being very helpful for permitting community use in situations where the property is earmarked for another use in the longer term and in situations where the public authority is unable to cede exclusive use to the community transfer body. In practice, the agreements for community use which I currently advise and assist with very often take the form of licences rather than strictly leases.

1.5.2 As with participation requests my main issue with asset transfer requests is that the terms of the Bill do not permit a request to be made to public sector landowners whose functions and governance are reserved to Westminster, so limiting the community benefits that might be realised. Standing what I have said about communities in England and Wales already having better rights in relation to such bodies’ assets than communities in Scotland (see 1.3.2 above), I hope that the Committee may seek an assurance from Scottish Government that they will engage with Whitehall on this point.

Part 6 – Common Good Property

1.6.1 The rules on common good are a two-edged sword so far as community growing initiatives are concerned. On the one hand, they tend to protect unbuilt land from development and, where a growing project can be established on common good land, help to support its long-term future. However, where the community use is or may be an appropriation to another use, or where a proposed agreement between Council and community group may be considered an alienation, the common good rules stand as a barrier to agreements for community use and also fear of challenge and criticism may inhibit Councils from considering beneficial proposals.

1.6.2 I favour there being better information available to the public as to what is or is not common good property. However, in addition to the proposed new registers, I think it important that information be made available, in clear language accessible to the lay person, what the rules are as to what may or may not be common good and also what the rules on alienation and appropriation to other uses are. Without this information, I suspect that both local authorities and individuals and organisations within the community may end up embroiled in unnecessary debate as to what should or should not appear in the common good registers. In my experience, the current law relating to common good assets is not well understood. In this respect, I feel the Bill fails to grasp the nettle; in my view it would have been helpful to create a statutory codification of the substantive law.

1.6.2 As the Committee are no doubt aware, The Keeper of the Registers of Scotland has recently undertaken to register all public land in the Land Register of Scotland within the next 5 years. In respect of common good land and buildings, I consider that there should be cross-referencing between that register and the proposed common good register. The common good register should contain the title number of the parcel, and where a parcel is registered in a common good register, the Keeper should note that fact on the Land Register title sheet.

Part 7 – Allotments

1.7.1 I consider that allotments (along with other types of community growing) can be an important hub for community activity and contribute to empowerment. Accordingly I welcome the clear re-statement of allotment law and the provisions which will hopefully help to increase local authority provision of allotments and other growing spaces.

1.7.2 One of the barriers to getting allotments (and also other community growing projects) going is that structures such as sheds, greenhouse and polytunnels require planning consent (whereas often an identical structure sited within
the curtilage of a dwellinghouse would not.) Where in regulations made under section 73 a local authority permits such buildings, I would like to see an additional provision to the effect that no separate planning consent is needed.

1.7.3 I am pleased to see that the proposed new duty of local authorities to prepare a food growing strategy involves identification of areas of land suitable for other forms of community growing as well as allotments. All forms of community gardening create community benefits and enhance empowerment, and in some cases other cultivation approaches may be preferable to allotments, for example where a site is small, awkwardly shaped, contaminated or only available for a short period. As the Bill’s proposed new definition of “allotment” restricts it to ground owned or tenanted by the local authority, this approach also means the strategy will take into account what are presently termed “private allotments”; those leased from a private sector landlord.

Part 8 – Non-domestic Rates

1.8.1 I agree with the proposed introduction of power for local authorities to make schemes for reduction and remission of rates, and hope that Councils would do so for small-scale community activities such a community gardening. This would remove an administrative burden- and in some cases a financial burden – from community growing projects. Community garden projects are not-for-profit and sometimes (but not always) registered as Scottish Charities. Under existing rules, rates reductions of 80 to 100% are often available, but a specific application must be made to the local authority, creating work for both the community group and the Council.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions of the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure that happens?

3.1.1 Funding. As I understand it, most if not all of the successful buy-outs to date under Parts 2 and 3 of the 2003 Act have had significant help with grants or loans toward the purchase price. I think that urban buy-outs under revised Part 2, abandoned and neglected land purchases under Part 3A and asset transfers taking the form of outright purchase will all need similar support. The Scottish Land Fund currently has a rule that it will not lend to communities with populations over 10,000. I think that that rule should be changed, and also that making the change should not be left until the time when the new Act (assuming passed) is about to commence. Now that the Bill is before Parliament and it is predictable that the new statutory rights will soon be available, there may be increased willingness from urban landowners to voluntarily agree community purchases and also from public bodies to voluntarily agree asset transfer.

3.1.2 I believe that discussion needs to start now, amongst the community sector but also involving Scottish and local government about the demand for future funding for community purchases and how this may be met. One of the factors for discussion here is how the relatively short timescales between when a community body gets confirmation that it will be able to proceed with a purchase and knows the price to be paid can be squared with the time it takes to make grant applications or to raise funds through, for example, a community share issue.

3.1.3 Although this may seem a small point, in my experience the costs of carrying out property ownership searches at Registers of Scotland is presently a barrier to community groups seeking to take over unused land. As this is often the first thing that has to be done in an intend project, the costs often have to incurred before the project is in a position to apply for grants or start fundraising. Part of the problem is, to start off with, the community group do not usually know whether title is in the Land Register or the Register of Sasines, and if it is in the latter, the amount of investigation required and so cost involved cannot be predicted. As I discuss in paragraph 4.4.21 below, I think this is an issue in potential take-up of the proposed Part 3A right to up. I do not suggest changing Register of Scotland’s self-funding financial arrangements, under which they must charge fees to meet their operating costs. However I suggest that a small fund could be set up with the purpose of providing grants to community groups to cover such costs.

3.2.1 Support Services. At present there are various support services available to help community groups seeking to acquire and use land. As examples, the Community Ownership Support Service, run by Development Trusts Association
Scotland support community buy-outs whereas my own service, CLAS, provides technical advice and support to promote voluntary agreements for community use of land for growing projects.

3.2.2 I believe dialogue needs to get underway as to what support by way of, for example, capacity building, training, materials and hands on assistance communities will need to take full advantage of the new rights contained in Parts 3, 4 and 5 of the Bill, and how best this support can be delivered. I think that building on the experience and expertise of existing support services, and not re-inventing the wheel, is the way forward, but changes to remits, funding arrangements and perhaps manpower may be needed. There will of course be new things to be learnt; the participation request and asset transfer processes are completely new, and the extension of the Part 2 right to buy into urban areas seems likely to raise new issues that have not so far been encountered in the rural context; and new materials will need to be prepared. On the assumption that these Parts of the Bill are likely to be commenced around a year after Royal Assent, I think the aim should be for agreement on remits and funding by the summer of next year to allow preparations for commencement to get underway.

4. Are you content with the specific provisions of the Bill, if not what changes would you like to see, to which parts of the Bill and why?

Part 4

4.4.1 Section 27(1)(c). I wonder if the specific mention of salmon fishings and mineral rights in proposed new section 33(2A) of the 2003 Act may create an implication that the right to buy is not exercisable in relation to other separate tenements. I consider that the right to buy should also be available for rights to gather oysters and mussels; rights of port and of ferry; and also sporting rights separate tenements created under section 65A of Abolition of Feudal Tenure (Scotland) Act 2000.

4.4.3 Section 29(2). I suggest that in proposed section 35(A1) of the 2003 Act the words “of association” should be added after “memorandum” to conform with sections 7 and 8 of the Companies Act 2006.

4.4.4 2003 Act section 37(4)(b). Given that the Bill intends to make it clear that the right to buy can be exercised in relation to separate tenements, I think that the requirement to affix a notice to the land needs to be relaxed for those cases. It would be impractical to affix a notice to a mineral interest and impossible to affix one to an incorporeal separate tenement.

4.4.5 2003 Act section 38(1)(c). I consider that the policy behind this section is flawed and the opportunity should be taken to change it. It is not necessary to hold a surface/alveus title in order to exercise salmon fishing or mineral rights as such rights may have either express or implied rights of access over the surface. Therefore I see no reason why an aspirant community owner of such rights should also need to have or be seeking a surface title. If this argument is accepted, section 53 of the 2003 Act should also be repealed.

4.4.6 Prior Options – section 31(7) and (8) and Schedule 5 line 35; 2003 Act sections 39(5) and 40(4)(g)(iv). This discussion concerns the scenario where, at the date when Ministers receive an application for registration of a community interest, the landowner has already entered into a binding option agreement with a third party under which that party may elect at some point in the future to buy the land. The 2003 Act as passed contains what appears to me a contradiction on this point. On the one hand, section 39(5) appears to say that the application must be refused (although section 39(1) limits the application of section 39 as a whole to the different situation where a binding option has not yet been conferred.) On the other hand section 40(4)(g)(iv) provides that, following registration of a community interest, a transfer by landowner to option holder under a prior option is an exempt transfer, this suggesting that the intention was that it should be possible to register interest over land subject to a prior option.

4.4.7 Scottish Government’s view appears to be that section 39(5) prevails over section 40(4)(g)(iv); certainly this was the reason given for declining an application for registration of an interest by the Holmehill community group in
In the Bill, Government are proposing amendments to the 2003 Act that would put it beyond any question that a prior option trumps a community interest application. The proposed new wording of 2003 Act section 39(1) and proposed new subsection (4A) deal with the existing tension between subsection (1) and subsection (5). Schedule 5 proposes to simply repeal section 40(4)(g)(iv).

4.4.8 I think that this is the wrong policy choice; I think that it should be possible for Ministers to consider whether in the given circumstances a community interest may be registered over land subject to a prior option — my view of the correct policy is set out at paragraph 1.4.5 above. Given that if the option is exercised that transfer would be exempt, there is no detriment to either the current landowner or the option holder.

4.4.9 Section 34 — proposed new section 44A(1) of the 2003 Act. I wonder if this subsection should also refer to section 39, on the view that a late application is registered under that section and not under section 37.

4.4.10 Section 44 — proposed new section 60A of the 2003 Act. In my view this section is flawed as it gives Ministers discretion whether or not require payment from the owner but gives no clue as to the criteria which Ministers are to take into account in reaching the discretionary decision. In the current terms of the section, I do not see how a Sheriff hearing an appeal under subsection (4) could decide that appeal.

4.4.11 Section 46 — proposed new section 67A of the 2003 Act. I appreciate that Government have inserted this provision in response to consultation responses. However it seems to me a recipe for mistakes and confusion to make it that some of the time periods specified in the 2003 Act include public and local holidays whereas others do not.

4.4.12 Section 48 — proposed new section 97C(1) of the 2003 Act. As indicated above, whilst in principle I am in favour of a community right to buy abandoned and neglected land, I have a number of issues and concerns with the terms of proposed new Part 3A of the 2003 Act. This provision is to the effect that land is susceptible to the absolute right to buy if, in Ministers’ opinion, it is wholly or mainly abandoned or neglected. Aside from some special cases mentioned in subsection (3) any further specification of the concepts of abandonment and neglect is left to be prescribed by future statutory instrument (which would not, if I am reading the provisions correctly, be subject to affirmative procedure.) I have four different concerns about this approach. Firstly, I think that the terms on which the State will take the important and serious step of depriving a landowner of their land without their consent require proper Parliamentary debate and scrutiny. To me, this is clearly a matter of such gravity that it is for the elected Legislature and not the Executive. The second related point is that if too much is left to subordinate legislation and Ministerial discretion then too many attempts by communities to exercise the new right will end leading to disputes that can only be resolved by the Courts, with all the associated delay and expense. Third, I think it important to give this issue due weight because it is not risk-free. Scotland has such a long history of effective security of title that it becomes easy to take confidence in land title for granted. If it becomes too easy for a landowner to find themselves in a position where they are being deprived of title against their wishes, this could have adverse consequences for the land market. Finally, there is the question of fairness to landowners who, in my view, are entitled to see clear rules so that they can know how they must act to avoid risk of losing their land and who should not be exposed to arbitrariness.

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

4.4.14 Proposed section 97C(3)(a) of the 2003 Act. The exception at the end of this paragraph leaves me concerned; apparently Government have in mind some possible situations in which a person’s home will, without consent, be sold to the community. The Explanatory Notes do nothing to reassure. This provision brings a new human rights dimension

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2 See Ministerial decision letter dated 11 May 2007 in the associated documents section of entry CB00072 in the Register of Community Interests in Land.
to bear; whereas to date in considering rights to buy the issue has been compliance with Article 1 of the First Protocol to the European Convention, on this point Article 7 (conferring amongst other things a right to one’s home) becomes relevant.

4.4.15 Proposed section 97C(3)(e) of the 2003 Act. I do not see why land that should or might be administered by the Queen’s and Lord’s Treasurers Remembrancer (QLTR) should be an exception to the general rule. To my knowledge, the QLTR does not maintain sites that have fallen to the Crown bona vacantia or ultimus haeres. Those sites may therefore be considered neglected or abandoned. Proposed section 97H(j) should have the effect that a right to buy application under Part 3A cannot proceed if the community has not already tried to do a deal with the QLTR. However if the QLTR has been unresponsive, dilatory or unreasonable, I do not see why land which is under the QLTR’s power of disposal should be treated differently from any other land.

4.4.16 Proposed section 97D of the 2003 Act. The types of body permitted to acquire a Part 3A right to buy should be the same as those permitted to acquire a Part 2 right to buy under Part 2 as proposed to be amended by the Bill. Accordingly this provision should be amended to permit SCIOs and other bodies prescribed by statutory instrument to be Part 3A community bodies.

4.4.17 Proposed section 97E(1) of the 2003 Act. Consequential to the point just made, this provision should be amended to refer to constitutions as well as memoranda and articles.

4.4.18 Proposed section 97E(3) of the 2003 Act. I think that the word “body” has been omitted after “community.”

4.4.19 Proposed section 97F of the 2003 Act. I do not see the point of creating a Register of Community Interests in Abandoned and Neglected Land and further adding to the proliferation of different registers that contain land information. In my understanding, the creation of the Register of Community Interests in Land for registration of interests under the Part 2 right to buy was at the time expedient for reasons including the following: – (1) As a Part 2 community interest over land may well subsist for a long time, and given the terms of section 40(2) of the 2003 Act (a purported transfer in breach of community interest is of no effect), there was a risk that an innocent third party transacting with land and unaware that it was subject to a Part 2 community interest could part with money for a void title. (2) At the time of development of the policy of the Bill that became the 2003 Act, not all counties were operational for purposes of the Land Registration (Scotland) Act 1979 and further the Keeper had no power to unilaterally transfer the title to a given parcel of land from the Register of Sasines (which is very difficult to search conclusively) to the map-based Land Register of Scotland (which is easy to search conclusively); accordingly there was a requirement to develop a different way of making public the existence of a pending or registered Part 2 application.

4.4.20 As the proposed Part 3A right to buy is absolute and not pre-emptive, the community right will not hang over the land for a long period as it usually does with a Part 2 right Further, as matters now stand, the Land Register is now operational for the whole of Scotland and the Land Registration etc. (Scotland) Act 2012 will be fully commenced shortly, empowering the Keeper to unilaterally register any unregistered parcel. If regulations are made under proposed section 97N of the 2003 Act prohibiting transfer of land subject to a Part3A application, the necessary publicity and warning to would-be transferees can simply be entered in the Land Register (with the Keeper registering the plot at that time if it is not already registered), where it will be disclosed in routine conveyancing searches. Insofar as third parties might have any interest in seeing the various documents listed in section 97F(2), these could be obtained by making a freedom of information request to Scottish Ministers.

4.4.21 Proposed section 97G of the 2003 Act. This section is based on existing section 73 in Part 3 of the 2003 Act, the crofting community right to buy. In practice a crofting community will always know who their estate landlord is, and how to get in touch with that person or their representative land agent or factor. This will not be the case with abandoned and neglected land. I think that communities will often face real difficulties in establishing who owns or has current right to complete title to such sites. Sometimes even with extensive searching and investigation – which costs
money – the Register of Sasines does not provide a conclusive answer (one may either come up with no likely owner or two or more possible owners.) Even where a definite name can be found, it may be a date in the distant past. For example the last transaction on record may show the property to have been owned by a trust in 1919, or to have been bought by a partnership in the 1930s. It can be impossible to get from this information to the identity of the person(s) currently in right of the property. Even where the records show a person who is thought still to be alive (or an entity thought to still exist) as owner, they do not give current contact details, it can prove difficult or impossible to trace and make contact with that person. Accordingly I think that communities would often find it difficult to comply with the requirements of subsections (5)(b)(ii) and (7)(a) to identify the owner and copy the application to them. This is an area where I am concerned that the practicalities of the proposed Part 3A right to buy have perhaps not been adequately thought through. Other situations which I think likely to arise in the context of abandoned and neglected sites, and which may merit thought as they may suggest further needs for changes to the provisions of proposed Part 3A are (a) what is to happen where the owner turns out to be an adult with incapacity, for example with senile dementia and (b) what is to happen where the owner turns out to be a lapsed trust with no surviving trustees who are capable of acting.

4.4.22 Proposed section 97J of the 2003 Act. I think that this should be modified in the same way as the equivalent provision in Part 2 to provide that the ballot is to be conducted by an independent ballotter appointed and paid by Ministers.

4.4.23 Proposed sections 97T and U of the 2003 Act. I note that these are based on sections 89 and 90 in Part 3 of the Act and provide that any claim for compensation has to be raised with the community body, with Ministers having a discretion - but no more - to fund the claim. I note the contrast with section 63 in Part 2 of the Bill where compensation claims are made direct to Ministers. I think that the Part 2 approach may be fairer to landowners in the abandoned and neglected land context. A particular question which arises in my mind – I do not know if it has ever been raised in the context of the Part 3 right to buy – is what is to happen where the absolute right to buy causes the owner a capital gains tax or corporation tax liability on the price which could have been avoided or reduced had the owner had control over the timing of the sale. I certainly do not think that the community should bear this cost, but equally do not think the owner is being properly compensated for the deprivation if they are left in this position.

Part 7

4.7.1 I note that the definition in section 68 restricts the statutory meaning of the word “allotment” to those rented from a local authority. In contrast, the definition used in the Allotments (Scotland) Acts 1922 and 1950 appears capable of encompassing privately owned allotments as well. As in Schedule 5 to the Bill the 1922 and 1950 Acts are repealed in their entirety, I wonder if anything that has continuing significance for private allotments is being repealed without replacement. Section 17(2) of the 1922 Act and sections 3 and 4 of the 1950 Act are perhaps examples.

4.7.3 Sections 77 and 78. As these sections are not solely about allotments, I suggest that either they should be in a separate part of the Bill or alternatively that a change to the title of Part 7 is required.

4.7.3 Section 77(3)(c). Although this provision concerns both allotments and other forms of community cultivation, it is only triggered when unmet demand for allotments reaches a certain level. I suggest it should also be triggered where it appears to the authority that there is a significant unmet demand for land for other forms of community cultivation.
Moray College UHI: Response to Community Empowerment (Scotland) Bill

This paper provides Moray College’s response to the call for evidence by The Scottish Parliament in consideration of the proposed Community Empowerment (Scotland) Bill.

This call for evidence focusses on the following 5 key aspects:

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?
2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?
3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill or to assist communities, to ensure this happens?
4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?
5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

It is considered that the Bill will assist communities in becoming more empowered with regards:

- Community ownership of land and assets;
- Reduction of barriers currently preventing communities taking on more responsibility for assets;
- Enhanced support to provide communities with the potential to own and deliver key local services in the right place, at the right time and which more effectively meets the needs of the community;
- Provision of mechanism to support community capacity building and resilience
- Strengthens relationships and communication between communities, public sector organisations and the Community Planning Partnership.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

Benefits:
Framework in place to enable and empower communities to provide more local service provision, where appropriate;

- Public sector organisations being able to more effectively support remote, or disadvantaged communities to build capacity, resilience and skills;
- More effective use of local assets to deliver services;
- Improves the effectiveness of the Community Planning Partnership through partnership working and stronger link with local communities.

Disadvantages:

- There is the potential that this Bill could introduce additional threats, complexities and disadvantages which could reduce our ability to serve the wider community;
- Delivering the aims and ambitions of the Bill could have significant impact on our costs and current resources to support the management of local community engagement. Further detailed information would be required to provide a more detailed response, and in particular in relation to:
  - Definition of an appropriate community body
  - Grounds for refusal of request
  - The necessity to provide detailed information on request; this could potentially increase the already heavy burden on providing information through The Freedom of Information (Scotland) Act 2005
  - Requirement to assess community bodies proposals.

- This is a time of far reaching, unparalleled change in both the college and university sector and careful examination should be given to ensuring that this Bill enhances and does not detract from our current aims and objectives. Similarly, it introduces another framework to operationally embraced when other new frameworks are still being implemented and evaluated, e.g. implications of The Post-16 Education (Scotland) Act 2013.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Communities vary in that they have different attributes, characteristics, capacities, capabilities which impacts upon the confidence, aims and objectives of each community. Well promoted and understood frameworks would need to be developed to support public sector organisations to engage effectively with individual communities to meet the aspirations of the Bill. These should be
developed, implemented and supported in an integrated manner by the Community Planning Partnership

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Moray College concerns are outlined in Section 2 of this response.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

No specific response.
Mark McLaren  |  Chief Superintendent | Police Scotland  | Email
Local Police Commander, Aberdeenshire and Moray Division, Inverurie Police Station, Blackhall Road, Inverurie, Aberdeenshire, AB51 3QD

1. To what extent do you consider the Bill will empower communities? It will give further opportunity and encouragement to community groups to engage with Police Scotland allowing stronger ties to be created and allow local ideas and wishes to be developed. An opportunity for groups to have a home for their organisation. The Bill recognises the importance and strength of community.

2. What will be the benefits and disadvantages for the public sector organisations? Benefits – it will support and develop stronger engagement with communities, allow innovation to flourish and bring communities closer together. Disadvantages – have Police Scotland the resources and capacity to support such engagement?

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions of the Bill? If not what requires to be done to assist? Disadvantaged communities can struggle to engage with Police Scotland. This can be overcome by positive community work within the area as all areas have individuals or groups able to engage. More advantaged communities have the skills and willingness to engage and embark on projects. But both still need varying degrees of support through the process.

4. Are you content with the specific provisions in the Bill? If not what changes would you like to see? A tighter definition of what a community is, for example defining and confirming the local nature of the group. This could potentially prevent nefarious groups although community groups but not local based moving into an area for their own aims. These aims not necessarily being representative of the local based population.

5. Relates to island population. No return.
The Moray Council response to a call for Evidence on the community
Empowerment (Scotland) Bill 2014

The Scottish Parliament has issued a call for evidence to inform its consideration of
the new Community Empowerment (Scotland) Bill. In repose to the five questions
the Moray Council response is as follows;

1. To what extent do you consider the Bill will empower communities, please
give reasons for your answer?

The Moray Council welcomes and supports the key changes highlighted in the Bill
and those area that will assist empower communities will be as follows;
- Increased community ownership of land and assets;
- The removal of barriers that have held communities taking on more
  responsibility for assets;
- Potential for communities and community groups to own and deliver key local
  services to that population, close to home, and based on clear knowledge and
  understanding of what communities want;
- Direct engagement of communities with Public Sector organisations and
  Community Planning Partnerships and ability to directly influence and suggest
  improvement and change in services; and
- Potential for innovation and sustainability of local services through local
  ownership.
- improved communication between a stronger community planning partnership
  and local communities.

2. What will be the benefits and disadvantages for public sector organisations
as a consequence of the provisions in the Bill?

Potential Benefits to Public Sector Organisations
- Stronger communities
- Communities will to take more responsibility for local assets
- Greater community based service provision;
- An increase in opportunity for dialogue with communities, which will inform
  The Councils and Community planning partnerships in developing strategic
  and operational planning of services to meet the needs and aspirations of
  communities
- Strengthening the role of the Community Planning Partnership and potential,
  through that for innovation through partnership working and with input from
  communities.

Disadvantages / Challenges to Public Sector Organisations

While welcoming the policy intention of the draft Bill the Council had outlined a
number of issues in the consultation that have not been taken on board by the
Government and have some concerns that they will impact negatively

- Capacity will be required of The Moray Council and other public sector
  organisations in relation to supporting the processes enabled by the Bill. For
  example, organisations will be required to put in place processes to manage
  community requests to improve outcomes of services. There will be
implications for the Council in the need to find additional capacity to deal with new and extended responsibilities contained in the Bill (Community Right to Buy, Asset Transfer, Participation requests, Common Good and the new allotment legislation.)

- The Bill is not clear about the need to develop community capacity of groups particularly the more disadvantaged to take responsibility for assets and to participate in services that affect them and their communities. To implement the Bill effectively will require Public Sector authorities to look at additional resource to effectively support the required capacity building.

- If more disadvantage communities are not supported there could be an imbalance of more articulate and affluent communities acquiring assets while these less affluent and vulnerable communities are unable to.

- The provisions of the Bill enable community organisations to request and receive ‘detailed’ information about a property that they are interested in. This is not part of the Community Asset transfer policy and this is likely to include information about the energy efficiency and maintenance costs of any asset. This would require additional capacity to be directed at providing such information, at a potential cost to maintenance and deliver.

- in relation to Public Bodies having to assess community bodies’ proposals. As set out in the policy memo, this work would include: ‘economic, social and environmental benefits of different proposals.’ and goes on to conclude: ‘The authority must agree to the request unless there are reasonable grounds for refusal.’ In Moray we have a Community asset transfer policy which clearly defines grounds for refusal and has a clear and transparent appeals procedure.

- The Bill places the responsibility of organising Community Right to Buy ballots on Ministers to appoint an independent person with knowledge and experience, This could fall to the Council if dealing with non council land this again could have resource implications for the Council.

- The presumption in favour of a Transfer of property regardless of the Councils usage of that asset means that unless an authority has reasonable grounds for refusal a transfer will take place this could lead to a loss of revenue and capital receipts.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill or to assist communities, to ensure this happens?

All communities are different and have different capacities and capabilities. One challenge will be to ensure that all communities, especially those that are disadvantaged and which don’t have the confidence or capability to engage local Public Sector organisations are supported and enabled to do so. This will require increased capacity to ensure those more disadvantaged communities are not disadvantaged further as assets could be transferred to more affluent and articulate groups and communities. Community Planning Partnerships are potentially well placed to support this agenda, as are the emerging Integration Joint Boards which have a duty to engage with local communities. The Bill and associated guidance can
support this work and focus through sharing good practice and research in relation to what organisations can do to maximise community capacity and capability.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

We would like to see the following

- We would like to see a definition of community body as community of interest as well as geographical community needs to be included.

- To assist strengthen communities the legislation should contain reference or a statutory basis for the National Standards of Community Engagement it would provide a degree of quality assurance to the process of community engagement and empowerment in a new and improved context.

- The legislation or guidance should be used to empower local groups, for example to address the issue of Community Councils, membership, roles and powers of Community Councils. Community Councils have a role to play in any empowerment process but there are a number of limitations to their role. Increased powers and a clearer role will add relevance and increase interest amongst a wider constituency.

- Clarity on Timescales for transfers of assets. This would provide both community groups and Authorities with clear parameter which will assist in easing the transfer process.

- We would like to see an “Approval in principle stage” in the Community Asset Transfer section similar to the process contained in the Moray council CAT policy. This provides an important and effective safeguard to ensure community groups have a clear purpose and basis for developing a detailed sustainable business plan for any asset.

- Allowance for a period of dialogue and support prior to submission of an application. The Moray Council would reaffirm our initial response and request that the issues raised in this submission are included when secondary legislation is drafted. Again this provides groups with initial support and clarifies with the group if they have chosen the most appropriate asset and have a clear vision for future and sustainable use.

- We would reaffirm our request that the specific status of Common good is clarified. In terms of the bill freeing up those assets for community benefit may be a simpler solution in future than current processes for Common good. The bill does not provide a clear definition of common good and this leaves each of the 32 local authorities to deal with this issue.

- The Council has concerns that in the absence of a clear definition of “common good” the requirement and the process of creating a “register of common good assets would be made even more onerous.

- The duty to provide allotments would create for moray difficulties in resourcing demand. Our current allotment process is about encouraging and supporting a community based response to the provision of allotments.
In section 7 (paragraphs 75 & 76) This was not mentioned in detail during the consultation and although giving additional protection to tenants, does create an onerous burden on local authorities and could restrict the number of sites within a local authority area which could be used as allotment sites.

In section 8 (paragraphs 83 & 84). Termination of the lease and the resumption of allotment site by the local Authority. Timescales for termination are lengthy at least 4 months where the tenant is in breach of any of the regulations and at least one year when the Local Authority wishes to dispose of or change the use of the land. These timescales will have to be considered when identifying suitable land and could lead to restrictions on the number of potentially suitable sites. This detail was not contained in the consultation and does provide some comfort to Local authorities in that they can resume possession of all or part of an allotment site where that resumption is required for building, or for a variety of other purposes. However, this is now going to be subject to ministerial consent so it is likely that the period of notice required may be longer than the 3 months in the Bill.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

Moray Council has no specific comments in this area other than the need to provide capacity building support to those who may be disadvantaged or experiencing inequality.
tsiMORAY response to a call for Evidence on the Community Empowerment (Scotland) Bill 2014

The Scottish Parliament has issued a call for evidence to inform its consideration of the new Community Empowerment (Scotland) Bill. The response of tsiMORAY to the five questions posed is as follows:

1. **To what extent do you consider the Bill will empower communities, please give reasons for your answer?**

The Bill marks an important step forward in the empowerment of our communities. We are particularly pleased to see the introduction of the following elements:

- the enshrining into legislation of the concept and practice of national outcomes setting and review;
- the requirement for Ministers to consult when setting and reviewing national outcomes;
- the inclusion of community bodies in community planning;
- the provision for participation requests by community bodies;
- the extension of the ‘right to buy’ to all of Scotland’s communities;
- the provision for asset transfer requests by community bodies;
- the introduction of a duty for local authorities to establish and maintain common good registers;
- the introduction of a duty for local authorities to consult before the disposal of common good assets;
- the inclusion of an updated duty for local authorities to provide allotments;
- the introduction of a duty for local authorities to prepare and review a food-growing strategy.

2. **What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?**

While the implementation of the Bill is likely to require a reallocation and refocusing of resources for some public sector organisations, this disadvantage should be more than offset by the advantages which will flow from the development of more capable and engaged communities in the public sector organisations’ operating areas.

3. **Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?**

There are different levels of capacity in communities across Scotland. It is important to include provision for community capacity building in the Bill.
or in associated guidance to ensure the implementation of the Bill results in a reduction, rather than an increase, of inequality across communities. The commitment to community capacity building should include a presumption in favour of such activities being resourced by the public sector and delivered by the third sector.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

While the Bill marks an important step forward in the empowerment of our communities, some elements could helpfully be strengthened, including:

- more specific requirements regarding consultations by Ministers when setting and reviewing national outcomes, so that a broad range of stakeholders, including civic society and communities, is consulted;
- the inclusion of third sector interfaces, or more generically third sector representation, as statutory participants in community planning, albeit without the imposition of the duties which apply to public sector organisations;
- the provision for community bodies to be able to proactively request to be included in community planning;
- a commitment to community capacity building along the lines set out in our answer to question 3, above;
- the review of the processes a community needs to go through to exercise its ‘right to buy’, to make it easier for communities to exercise their rights in this respect;
- safeguards against the pre-emptying of asset transfer requests through the transfer of public assets and services to ‘arm’s length organisations’ by public sector organisations;
- the introduction of a duty for local authorities to engage with communities when preparing and reviewing their food-growing strategies;
- the introduction of a duty for community planning partnerships and public sector organisations to demonstrably engage with communities and the third sector in the planning, development and delivery of services, including a commitment to the principles and practice of co-production, supported by the adoption of the National Standards for Community Engagement as a code of conduct.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

We have no further comments other than those set out in our answer to question 3.

FV - 5 September 2014
Community Empowerment (Scotland) Bill

About Co-operatives UK

Co-operatives UK is the national trade body that campaigns for co-operation and works to promote develop and unite co-operative enterprises. We have a unique role as a trade association for co-operatives. We work to promote co-operative businesses across all sectors of the economy – from retail and finance where co-operatives are most recognised to key growth areas such as renewable energy, agriculture and education. Together the co-operative economy is worth some £36.7 billion, is owned by 15.4 million adult members in the UK and has grown by nearly 20 per cent since the start of the credit crunch. Co-operatives UK has 75 per cent of the UK co-operative sector in membership.

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

We recognise the positive changes the Bill will make to communities across Scotland, in particular by extending the community right to buy to urban areas and by simplifying the process whereby communities can register and progress their interest.

However, as we detail later on in this response, we would like to see a greater diversity in the structures that communities can use to achieve their objectives. Specifically we want to see the Community Benefit Society structure included as a permitted legal form with the Community Interest Company considered as an option.

It must be recognised though that legislation only creates a framework for community empowerment and the success of the Bill’s aspirations rests largely on whether the support is there to allow communities to take advantage of the provisions.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

Our experience tells us that in any co-operative or collaborative action it is necessary for different participants to develop a high degree of mutual trust and understanding. The benefits of greater community involvement in the operation of public services is that the users of the service can provide a greater level of understanding and feedback in order to continually improve the service.
It is our understanding that in order to achieve this level of mutual trust among community and public sector organisations there will need to be a significant culture change. In terms of the implementation and success of the Bill it is vital that consideration is given by Government as to how to effect this culture change in order to allow community organisations and the public sector to deal with each other as equals and to recognise the strengths each brings to the process.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Our view is that communities across Scotland have a range of capabilities and are at different stages of development and capacity. Some are dynamic and ready to take on the challenge of having direct control of the assets and services in their community. Others have the desire but need assistance and support to get to this stage.

A mechanism or programme of peer support between communities, ie those who have already achieved being able to assist those who are starting out on the journey, would help close the gap and build the appropriate knowledge and experience to increase the chances of successful long-term outcomes. It would also assist those successful development organisations by providing them with a possible income stream.

While this may not be within the scope of the Bill itself it is a key component of the Government action that must support the Bill’s introduction.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Our main concern is that in prescribing the legal form of a ‘community body’ the Bill is overly restrictive, and will simply create legalistic and regulatory barriers in a field full of potential innovation. Being too prescriptive on matters such as legal form tends to have unintended consequences that the public then have to work around.

The Bill clearly defines the make-up characteristics and purposes required of any legally recognised ‘community body’. We are satisfied that within the parameters this Bill sets out communities will have ample opportunities to work together in ways that are open, accountable and economically viable. At the same time the definition of a community body provides adequate protections against misuse and abuse.

That said, if policymakers decide to push ahead with restrictions on legal form we would highlight the opportunity to strengthen the Bill by including the right to use the Community Benefit Society (CBS) structure, particularly in reference to Parts 4 (Community Right to Buy) and 5 (Asset Transfer). The inclusion of the option to use a CBS would extend the range of financial options open to communities, primarily through the use of Community Shares, a unique feature of the CBS structure. In this regard including the CBS structure would be entirely consistent with the aims of the Bill and would considerably strengthen it.
Due to their member-based democracy, registered community purpose, access to different forms of finance such as Community Share issues, and, asset lock, CBSs are ideal organisational forms for asset transfers. When communities utilise community co-operative models they are an excellent form of community owned and controlled enterprise serving a community purpose. The co-operative principles of collective ownership and democratic member control will empower communities to a great effect.

We recognise that the Bill provides the Minister with power to recognise other forms of ‘community body’ at a later date through subordinate legislation and we agree with this provision. We believe that at some point in future co-operative societies may also be 'asset locked', and so hope that this power will be used to give communities the option to use this legal form as well.

There is also a case to be made for including Community Interest Companies (CIC) which would provide communities with another legal option to use and potentially broaden the circumstances in which communities are able to take control and operate local assets and services.

5. **What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?**

We see no issue in the Bill that causes concerns in regard to equal rights and have no specific view in terms of the impact on island communities or sustainable development.

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M60 0AS
www.uk.coop
Evangelical Alliance Scotland Response to the Local Government and Regeneration Committee Call for Evidence on the Community Empowerment (Scotland) Bill

The Evangelical Alliance in Scotland is the largest body serving evangelical Christians in Scotland and has a membership including denominations, churches, organisations and individuals. Across the UK, Evangelical Alliance membership includes over 700 organisations, 3500 churches and thousands of individuals. Our members in Scotland include the Baptist Union of Scotland, Vineyard Churches, the Salvation Army, Newfrontiers, Elim Pentecostal Churches, Assemblies of God, The Free Church of Scotland, Brethren, a number of congregations within the Church of Scotland and other independent churches. We have a number of organisations as members in Scotland including Glasgow City Mission, Bethany Christian Trust, Tearfund and Scripture Union Scotland. Within our Scottish membership many of our churches and organisations have considerable experience working with communities all across Scotland.

Introduction

The Evangelical Alliance welcomes the opportunity to submit evidence in relation to the Community Empowerment (Scotland) Bill. The Bill affords a vital opportunity to recognise that the future of Scotland will to a large extent be shaped by the strength of its civic society and community life. As an organisation with a network in almost every community of Scotland we welcome the fact that the empowerment of communities has now risen up the political agenda. For our members in churches and organisations up and down the country this bill offers the possibility of empowering them as they go about their daily business providing community services and serving their communities for the benefit of all who live there.

The Evangelical Alliance would be very happy to share some of our knowledge and experience in this area in oral evidence if that would be of benefit to the committee. We offer a number of brief comments on each section of the Bill that may also be taken as answer to Question 1.

Specific Comments

There are many provisions we welcome in the bill. There are also a smaller number of areas in which we believe greater emphasis should be given to communities and less emphasis given to the public sector. We will comment on each area in turn:

Part 1 – We welcome the emphasis on national outcomes and community consultation contained within the Bill. It is vital this consultation reaches out to all parts of the community and is not just a tick box exercise. Groups such as churches have many community links and can be a useful partner in ensuring the whole community can access consultations and ensure all views may be heard.
Part 2 – We welcome the increased definition of roles for CPPs but question whether there is enough emphasis on the ‘Community’ emphasis of Community Planning Partnerships. Whilst a more joined up approach among statutory bodies is very welcome it is important that this does not override the views of the community in local decision making.

Part 3 – We strongly welcome the provision to enable local community groups to be involved in improving service outcomes. This potentially opens the door for a vast increase in local community activism and volunteering that would not otherwise be available to the local authority or agency.

Part 4 & 5 – We welcome the focus on Community right to buy Land and Asset transfer. There are many example among our members of churches and organisations that have worked with the community to retain or develop use for disused buildings and other assets. In an era of public service spending restraint this gives the opportunity to leverage outside funding and enable true community development to be realised. We also welcome the specific simplification of right to buy processes and the planned framework to purchase abandoned land recognise the value Community Right to Buy can have in stimulating future social and economic development.

Part 6 – We welcome this provision though we are perhaps not best placed to comment on the detail of it.

Part 7 – We strongly welcome the provision on allotments. Many churches and community groups are increasingly involved in community gardens and we have found that particularly for those in vulnerable or difficult social circumstances having access to an allotment can bring not only a sense of connection with the local community but also means of productive voluntary work. We strongly support ensuring Local Authorities having an effective allotment regime that allows reasonable access for those who wish to have an allotment.

Part 8 – We welcome the principle of this provision reflecting the principle of subsidiarity.

Kieran Turner
Public Policy Officer
Evangelical Alliance Scotland

5th September 2014
Mrs Cathy Vincent,

To whom it may concern,

I have read the “easy read” version of The Community Empowerment Bill, and feel that one of the things greatest in empowering anyone or thing involves giving them the means to be empowered.

Community councils may be given the right to acquire land and property but this is a meaningless gesture if they do not have the resources to put this ability into practice.

Throughout Scotland, in recent years we have been inundated with the appearance of wind turbines, whether you love or hate these they are now a fact of life in Scotland.

Some developers gift money to local communities to help ameliorate the proximity and disturbance caused by their presence. This however, is a voluntary gesture. I think that the above bill should make this contribution mandatory, and also, in light of the number of turbines that there are in the country BACK DATE this so that all turbine owners are contributing to local areas and “Spreading the Wealth” that these turbines are generating for them.

Thank you,

M. Cathy Vincent (Mrs).
Community Empowerment (Scotland) Bill (CEB)
Evidence submitted to Local Government and Regeneration (LGR) Committee by the Forest Policy Group 5th September 2014

The Forest Policy Group welcomes this opportunity to submit evidence to the LGR Committee on the Community Empowerment Bill.

Forest Policy Group
The Forest Policy Group (FPG) supports the development of sustainable forestry in Scotland by producing well researched and authoritative policy guidance. Its membership is drawn from woodland management organisations, forestry and land use professionals and timber processors and users. The group subscribe to a view of forestry in which:

- environmental and social issues are treated as core parts of forestry on an equal footing with industrial timber interests; and
- diversity is actively fostered – diversity of tree species and woodland types, woodland ownership, management approaches, timber production and processing, and wider economic opportunities.

The group has produced position papers on a range of topics, including Forest Ownership by Andy Wightman1.

Our response to the Community Empowerment Bill
The Scottish Government is to be congratulated for producing a far sighted and innovative piece of legislation that will allow communities to better connect with, participate in and benefit from Scottish public assets. The FPG commends most elements of the CEB and we are hopeful that the Scottish Parliament will take into consideration our written evidence on the CEB.

FPG points for consideration:

1. The status of Forestry Commission Scotland as a Public Service Authority

We note that Forestry Commission Scotland (FCS) is included in Schedule 3 Relevant Authorities (introduced by section 51(1)) under the heading of Scottish Ministers. However FCS are not included in Section 2 Public Service Authorities (introduced by section 16 (1)).

We would like clarification on the status of FCS and the reason for its exclusion as a Public Service Authority. We recommend that FCS is included in the list of Public Service Authorities.

1 http://www.forestpolicygroup.org/
2. Part 4, Community Right to Buy Land – definition of the meaning of community

FPG believes that the meaning of a community body, as defined in Section 28 of the Bill, is too narrowly defined. Whilst we welcome the broadening of the eligibility of organisational types to include SCIOs, and any other body that Ministers specify in regulations, we believe that a community body should be defined by eligibility criteria, rather than specific organisational types.

Our starting point for criteria to define a community body would include:

- Being an incorporated body,
- Objectives consistent with sustainable development,
- Open membership within defined (usually geographic) parameters,
- Membership control,
- Non-profit distributing,
- Asset locked

Further, we feel it is inconsistent to include SCIOs as eligible community bodies but not other types of community organisation for example a community benefit society.

In Section 28(2) of the Bill, Ministers will be able to make orders allowing other organisational types of community bodies to be eligible. Our concern with this level of non-specificity is that there is no certainty as to when this might happen or what the mechanism for making an allowance order is. Clarification on these points is welcomed.

3. Part 5, Asset Transfer Requests

We believe that the treatment of a Community Transfer Body, as outlined in Section 50, and which includes the definition of a ‘community controlled body’, as outlined in Section 14 of the Bill, is good.

However there is a potential conflict between a community controlled body as defined in the CEB and the definition given in the Public Services Reform (Scotland) Act 2010, which restricts eligibility to companies limited by guarantee (Section 7C). This issue only applies to leasing for forestry purposes from Forestry Commission Scotland (FCS) and it arises from restrictions in the Forestry Act (1967) on FCS’s ability to delegate its responsibilities.

This anomaly in definitions, whereby greater flexibility in the definition of a community body is required, could be dealt with by placing an amendment to the Public Services Reform (Scotland) Act 2010 in Schedule 4 (introduced by section 98(1)), Minor and Consequential Amendments.

We are concerned that there appears to be a catch all in Section 52(3) in respect of requests for transfer by purchase which conflicts with the flexible definition of Community Transfer Body, as outlined above;
Section 52(3) provides that a request for transfer of ownership of land may only be made by a community transfer body which meets the criteria set out in section 53, in addition to being covered by section 50. This means it must be a company, or a Scottish Charitable Incorporated Organisation (SCIO), or a body designated as a community transfer body under section 50, where the designation states that the body may make a request for transfer of ownership. Classes of bodies may also be designated as eligible to make a request for transfer of ownership.

This is a confusing piece of phraseology and it is not clear by what process and what criteria Ministers will designate a community transfer body in Sections 50(2) (a) and 53(1) (c) of the Bill.

The FPG suggest that Asset Transfer Request eligibility be applied to any incorporated community controlled body that has a written constitution as outlined in Section 14, and no restrictions on community definition; the manner of community body incorporation being open for Ministers to designate.

In conclusion, we hope that our submission contributes positively to the LGR Committee consideration of the CEB and we are happy to give further written and oral evidence.
The Scottish Sports Alliance thanks the Local Government and Regeneration Committee for the opportunity to contribute to this call for written evidence. The Bill has the potential to increase the contribution of sport to Scottish society and provides significant opportunities for Governing Bodies of sport in Scotland, sports clubs and others. We welcome the chance to engage with its development.

The Scottish Sports Alliance comprises: the Scottish Sports Association (SSA), the Scottish Association of Local Sports Councils (SALSC) and Scottish Student Sport (SSS). Together the Scottish Sports Alliance represents 52 Scottish Governing Bodies (SGBs) of sport, 40 Local Sports Councils and Scotland’s sizeable student population across further and higher education. Collectively our members provide opportunities for the development and delivery of voluntary sport and provide a formal structure for the over 900,000 individuals in Scotland who are members of one of Scotland’s 13,000 sports clubs. Most of these organisations are run on a not-for-profit basis and are managed by volunteers. They provide coaching, competition and participation development opportunities for their local communities and most of the 150,000 people who volunteer in sport do so within the club structure.

The Scottish Sports Alliance has compiled this response following consultation, as always, with members.

Community Empowerment (Scotland) Bill: Local Government and Regeneration Committee Call for Evidence: September 2014

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

As stated in SCVO’s response, the Community Empowerment Bill is a small part of the change required to enable more empowered communities. Rather, it will act as a framework to facilitate communities in making use of the provisions it provides. However, it will be a willingness and positive attitude both from community groups and local authorities that will ensure communities in Scotland become more empowered.

There are a number of areas which present potential opportunities for sport:

Right to participate

This provides the opportunity for established sports clubs/organisations to have formal dialogue with public authorities to optimise facility use and services. An example of an area where this could really provide benefit would be in ensuring optimal community use of the available school estate. At the moment there is a significant gap between available space/facilities and what is actually utilised by the local community.

http://www.sportscotland.org.uk/Documents/Research_Reports/School_estate_audit_-_overall_report_July_2013.pdf. Discussion of timetabling/programming of such facilities would be a strong example of how dialogue between clubs and public bodies could be productive in improving service delivery. The above referenced school estate report, conducted by sportscotland, highlighted programming to be one of the key areas for improvement in tackling this under-use issue. A range of Community Sports Hub examples demonstrate the efficiencies and optimal usage when community clubs are engaged and involved in facility programming. Utilising such a community approach to engage community clubs in programming for the whole portfolio of local authority sports facilities would be a relatively simple but highly effective development.

It is important that this provision would be complementary to, rather than compromising of, already established positive relationships that exist between local authorities and sports clubs. In local authorities’ reviewing of applications to participate, the Alliance would see this provision being most effective where the participation of a range of community bodies is facilitated (ensuring a wide representation of the sporting community, rather than overly sport-specific). The focus should be on demonstrating wider community
interest and sustainability, rather than personal interest. Perhaps bodies such as Local Sports Councils could be highly effective in supporting and facilitating this process.

Ultimately community sport bodies have a great deal of knowledge which, if further shared in partnership with local authorities, could see significant service improvement. This could then result in increased usage, improved efficiencies and enhanced services. The potential provided by the right for community sports clubs to be involved in enhancing the programming of facilities and delivery of services is highly significant and greatly welcomed.

Requesting rights in relation to property & community right to buy
Where requests are successful and if a community has an active desire to do so, community management – as well as ownership - of facilities could also provide the opportunity for more efficient facilities and services for some communities. Facility costs could be reduced with good management of a previously under-performing property/land. This increased quality could attract higher use of facilities resulting in savings, which overall increases community engagement. It is worth considering the potential impact on Leisure Trusts, were a sports group to rent/purchase land/property from them. Could this create new competition in the sport facility market and potentially bring user costs down (but at risk of reducing maintenance income to facilities)?

However, serious concerns remain around exactly what local authorities will be labelling ‘assets’. For the most part it is unlikely that it will be facilities that are profitable and in a good state of repair, therefore concerns remain around whether an ‘asset’ would actually be a long-term liability.

Furthermore, in the case of management rather than ownership of facilities/land, for community group stability there needs to be provision for long term lease arrangements. A more detailed breakdown of what management would mean for a community group and the benefits it could provide would be welcomed.

Rate Relief
The Bill proposes that rate relief be managed at local level, allowing each local authority to allocate relief based on its own budget and areas where relief is proven to be most needed. Increased rate relief for established sports clubs who currently, or in the future through community empowerment, manage/own facilities will make this more appealing. For example, the current proposed review of the Water and Sewerage Exemption Scheme would only be open to charities and CASCs; there are a lot of structured, efficient clubs who are neither of these and so would not benefit from the proposed change to these exemptions. Therefore, schemes which take into account the reality of sports club structures in Scotland are welcomed. Clubs/organisations demonstrating social benefit to the community from voluntary sport, should be able to demonstrate this and receive rate relief.

The vague language of this part of the Bill does, however, raise concerns – although it provides the opportunity for rate relief to be reflective of local needs and increase those who benefit from it, it also presents a risk in that a local authority could drastically reduce rate relief to the detriment of community groups. This provision should not be seen as an opportunity for local authorities to make cuts to this particular area.

Community Planning Partnerships (CPPs)
Our members support the opportunity for increased dialogue between CPPs and sportscotland. Improved communication in this area will ensure CPPs are aware of what sportscotland, and sport more widely, is doing to deliver a breadth of local outcomes (including outcomes beyond sport) and how these contribute to CPP outcomes more widely. In addition to this, our members continue to advocate for greater involvement of community sport and voluntary sports clubs through the wider Community Planning process. Whilst we support increased communications between sportscotland and CPPs, our members could not more strongly
advocate the involvement of local sports clubs and other voluntary sports organisations within wider integrated CPP networks; the potential of this in relation to the Right to Participate provision and more integrated approaches to prevention is significant.

Participatory Budgeting

Our members support the principle of participatory budgeting. As suggested by SCVO and the submission from Barnardo’s Scotland/The Poverty Alliance/Oxfam, a certain budgetary percentage could be set aside to act as a further trial in the development of this principle. Managing competing interests between community groups would be the key challenge.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

The overall effect should be positive. Through right to participate especially, facilitated involvement of community sports groups could feed in useful information to improve service delivery and optimise the use of the portfolio of a local authority’s sports facilities.

Effective partnerships and collaborations have regularly been shown to be key in improving local outcomes – the Bill provides a framework to establish new effective relationships and improve dialogue for existing ones.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Awareness: Most important is accessibility to and awareness of such processes, allowing a level playing field, particularly for community groups who may not be legislatively aware. Local authorities have the key role in ensuring groups are aware of the opportunities the Bill presents. The Bill should have in place appropriate timescales to allow community groups to draw on all available resources. Local authorities should clearly outline how they plan to raise community awareness of the Bill, indicating how partners such as ourselves at the Scottish Sports Alliance, and others, can assist in ensuring the opportunities it presents are widely publicised and facilitated.

Capacity: The role of effective capacity building in community empowerment will be key. For sport there is an opportunity to strengthen local clubs but the right support needs to be in place for this to happen. Although recognising the need for this capacity building, the Bill does not pinpoint any statutory measures that would facilitate this. As stated by SCVO, different communities have different capacities and will therefore need different types of support to realise their ambitions.

Assets versus Liability – covering costs: There is a significant degree of risk in handing over the management or ownership of buildings/land – which may result to be a liability, not asset – to community groups who then rely on national grant bodies (ie sportscotland) to support refurbishment or improve a service. What is the situation where a community group has taken on ownership/management that then suffers damage through force majeure with repair costs beyond the capacity of the group? What mitigation plans for such a situation will be in the legislation to protect both the facility/land and its community group buyers/management? Facility repairs can be further complicated too when involving property/land of historic significance. The Bill is strongly lacking in an explanation as to how groups are to be funded – this needs to be addressed.

There are costs too potentially, in ensuring clubs/groups are well enough equipped and have the capacity to participate to the level that the legislation may allow. Upfront costs may be needed to support community groups for longer term gains.
Employer Supported Volunteering: Volunteers are critical to the success of this Bill; they are its key enablers. The Bill can help to empower them but we also need to enable their involvement. They will drive projects from their conception through to delivery and then maintain them. As such, we believe that the Scottish Government should lead by example, supported by businesses across the country, and should strongly encourage measures to support their staff to help to increase the numbers of volunteers and ensure individuals are able to commit support to such projects. These measures should also enable a constant wave of new volunteers, whilst also leaving a monumental legacy for volunteering following the recent Commonwealth Games in Glasgow. As such, our members seek wider backing for Employer-Supported Volunteering to sustain regular (week in, week out; month in, month out) volunteering, which is the lifeblood of sport in Scotland and of civic and social society.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Areas where clarity is required:

Right to participate: where there is disagreement with a local authority’s decision to allow a request or not, who will arbitrate this? There is a need for a neutral body.

Like SCVO, we too are concerned that the legislation as drafted wouldn’t permit a community to initiate an outcome improvement process for a service that does not already exist. This could prevent communities from working with public bodies to design and develop a new service in their area that is a priority for them.

Asset-transfer and funding: how will the local authority decide between competing groups’ proposals, both claiming ‘community interest’ – what are the specific criteria that define community interest?

As stated earlier in this document, the risk of local authorities listing liabilities rather than assets, is a strong concern. The knock on costs of a community group taking on management or ownership of property/land that requires high levels of investment presents an issue in itself in terms of how this will be funded – the financing of this aspect of community empowerment needs to be clear. Where is this likely to come from? What are the likely sources?

Defining a community group: from a sports perspective it is unclear where Leisure Trusts sit in terms of definition. Leisure Trusts commonly refer to themselves as social enterprises – does this therefore put Trusts in the running alongside much smaller (and lesser resourced) community groups to manage or take over ownership/management of properties? By counter to the aforementioned prospect of increased competition, the risk of Leisure Trusts themselves taking over facilities on a large scale could actually decrease competition in the sports market and cause participation costs to rise.

Rate relief – although a potentially positive provision, the language on this isn’t clear and further clarification is required to ensure that existing resources will not simply be spread more thinly or compromised.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

There is a likelihood that those most likely to take up community empowerment opportunities are those already actively engaged and well-resourced in the community. Local authorities need to ensure opportunities are well publicised in the community, especially to those groups who may benefit but need it to be brought to their attention that community empowerment is a means of achieving such benefit.

Asset-grabbing: Increased community empowerment could lead to those with the most resources taking over facilities/land. Systems/legislation need to ensure that local facilities continue to be available for the whole community and that access is not restricted. Community owned facilities should be widely sustainable and not overly advantage one group over another.
Volunteering: Although it makes reference to the importance of volunteers in Scotland’s communities and its commitment (non-legislative) to funds such as the Volunteering Support Fund, the Bill does not propose any measures to support the role of volunteers in facilitating community empowerment. With increased community empowerment will come an increased demand on volunteers. See our point about Employer-Supported Volunteering in Question 3.

All community applications regardless of location/interest should have to demonstrate wider community benefit. Facilitation from local authorities to equip those most in need with the necessary tools/training will be key.

The Scottish Sports Alliance thanks the Committee for the opportunity to contribute to this call for evidence. We take this opportunity to register the interest of the Alliance in being called for verbal evidence on this issue. Please do not hesitate to contact us if we can be of further assistance.

Scottish Sports Alliance
September 2014
Local Government and Regeneration Committee

Call for Evidence on the Community Empowerment (Scotland) Bill

Response from Orkney Islands Council

1. **To what extent do you consider the Bill will empower communities, please give reasons for your answer?**

We welcome the empowerment of our local communities, particularly the emphasis on subsidiarity – the Bill echoes the important messages set out in the ‘Our Islands Our Future’ Campaign and endorsed by the Scottish Government in their response: ‘Empowering Scotland’s Island Communities’. Orkney Islands Council already has a range of initiatives underway which contribute to local community empowerment and has an existing culture of welcoming community bodies wishing to participate in an outcome improvement process.

For these reasons we assume that a community body wishing to participate in a local authority process would still be able to simply pick up the phone and ask, and not be statutorily bound to follow the prescribed process. Given their limited capacity, it could be that this requirement might put off local bodies, rather than empower them. Ideally the legislation should be there to be resorted to if the simpler route to participation were to be blocked, rather than being obligatory on every occasion.

With regard to the Community Right to Buy, we are not aware of any instance since the introduction of this legislation in 2003 when it has been used in Orkney. It is unlikely that the changes in the current Bill will have much impact due to local circumstances, partly as the Council provides existing support to local communities through its assets.

With regard to Allotments, most of the provisions in the Bill relate to new duties for local authorities. There is little new empowerment for communities in Orkney since the Council already consults and invites representation on new policy. The new entitlement to grow and sell food is the most significant new empowerment.

2. **What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?**

With regard to community planning, the statutory bodies already participate willingly and the Bill will enshrine in statute the Orkney status quo. Where it might make a difference, however, is in empowering the statutory partners to devote as much time and resource to community planning as they would like to do, but have on occasion found to be incompatible with competing demands.

Parts of the Bill will generate more bureaucracy for public sector authorities, especially if, as explored above, following the prescribed statutory processes is to be obligatory for community bodies and not simply available for their use if required. Any additional bureaucracy carries a cost.
The Allotments legislation will benefit both local authorities and communities, not least by clarifying their responsibilities. However, it will create additional workload such as the development of a food strategy, annual reports, development of websites etc.

3. **Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?**

Orkney’s communities are relatively well empowered already, with a thriving network of community councils supported centrally by the Council. Several islands have Development trusts and are supported by community planning partners to employ Local Development Officers. Others have done so in the past, using the resource to compile local development plans and raise funds for local economic development, notably wind turbines. This has helped many of the islands to become more resilient. The Partnership is now piloting a new initiative – the Community Empowerment Scheme – in two of the smaller isles, with the aim of enabling them to take on more contracts locally, and we look forward to rolling this out to other island communities in due course.

Quieter local voices may need advocacy to ensure that they are heard by decision makers. Orkney’s Third Sector Interface, Voluntary Action Orkney, has many years’ experience in supporting local voluntary bodies and social enterprises, offering a range of professional and support services and representing their interests on local and national forums. The value of this work has long been appreciated in Orkney. We are therefore disappointed that the Community Empowerment (Scotland) Bill not only fails to include Third Sector Interfaces (TSIs) among its list of statutory community planning partners at Schedule 1, but does not make any reference to the Third Sector at all. This is doubly disappointing given that the 2012 consultation asked specifically: "How can the third sector work with Community Planning partners and communities to ensure the participation of communities in the Community Planning process?" We feel that the Bill has missed a vital opportunity to acknowledge and embed the essential contribution of the Third Sector to empowering communities. To do so would have helped to empower the TSIs themselves by giving them legitimacy as equal partners in the community planning process.

4. **Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?**

**Part 2**

4. **Community planning**

(3) Outcomes of the type mentioned in subsection (2) (“local outcomes”) must be consistent with the national outcomes determined under section 1(1) or revised under section 2(4)(a).
The meaning of "consistent" in this clause will need clarification, either here in the Bill or in the accompanying statutory guidance. In our response to the draft Bill in January 2014, we endorsed the Scottish Government's adoption of national outcomes but advised that they should not be cascaded to CPP level as every CPP will have its own local priorities. As it happens, Orkney's current SOA lists key local priorities aligned to each one of the 16 national outcomes, and is therefore perfectly consistent with them, but as a result has been criticised for being too lengthy and losing its local focus. Sixteen outcomes is too large a number for an SOA.

Part 2

8. Governance

(1) For the area of each local authority, each community planning partner mentioned in subsection (2) must—
   (a) facilitate community planning,
   (b) take reasonable steps to ensure that the community planning partnership carries out its functions under this Part efficiently and effectively.

(2) The persons are—
   (a) the local authority,
   (b) the Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978 whose area includes, or is the same as, the area of the local authority,
   (c) Highlands and Islands Enterprise where the area within which, or in relation to which, it exercises functions in accordance with section 21(1) of the Enterprise and New Towns (Scotland) Act 1990 includes the whole or part of the area of the local authority,
   (d) the chief constable of the Police Service of Scotland,
   (e) the Scottish Fire and Rescue Service,
   (f) Scottish Enterprise.

The Bill does not specify that Scottish Enterprise and HIE are alternatives, i.e. HIE will be the responsible partner body in the Highlands and Islands and Scottish Enterprise elsewhere. This should be clarified. Scottish Enterprise is not a relevant body in Orkney.

SCHEDULE 1
(introduced by section 4(1))
COMMUNITY PLANNING PARTNERS

The list of community planning partners does not include Third Sector Interfaces. As noted above at question 3, we see this as a major omission and would ask that this be remedied before the Bill progresses any further.

PART 7

ALLOTMENTS

Part 7 of the Bill is helpful in such that it makes clear who is responsible for what, what can be challenged and the way in which that should be done.
5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

There is very little in the assessment of impacts on island communities in the Policy Memorandum. As noted in our response to the 2012 consultation, the protected characteristics enshrined in the Equality Act 2010 do not include the key equality consideration for island populations, which is geographical access. We would like to see this addressed as a matter of course in all assessments of impacts on island communities.

In relation to Part 7, and the impact on island communities, we do not foresee there being a shortage of land in Orkney to provide additional allotments. The problem here could be providing sites within a short travelling distance from the two towns.

It would be helpful if the Bill could be screened to ensure that the potential future developments set out in the Island Areas Ministerial Working Group report of June 2014, "Empowering Scotland’s Island Communities", could be accommodated by future legislation within the broader provisions of the current Bill.

Orkney Islands Council
5 September 2014

- **To what extent do you consider the Bill will empower communities, please give reasons for your answer?**

The intentions behind the Bill of making it much easier for communities to take more of an active role in local public services are clearly articulated and positive. However the Bill is limited in terms of specific measures proposed and how they will be achieved. The quality of any secondary legislation introduced will be key to successful implementation and this needs to be developed with strong input from the COSLA Working Group and input from others who are at the heart of working with communities and fully understand what works or doesn’t work.

Overall, language and terminology could be more clearly defined and explained in the Bill making it more accessible and easy to understand for communities and to broaden active participation. The Bill should reflect the fact that the landscape of community engagement and empowerment is fast evolving, and not just in Scotland.

- **What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?**

The Bill provides opportunities for public authorities to strengthen and improve service design and delivery through ongoing dialogue with communities about aspirations, priorities and needs. Transferring physical assets and more effectively meeting need in high demand communities will reduce public spend. However this can only take place where asset transfer and community capacity have been developed to a sufficient level to improve outcomes. There will be organisational and skills development needs for staff who need support to work with communities differently. The public sector will need new wider approaches to community engagement and empowerment to ensure that new approaches to local public services are genuinely representative of communities as a whole. There will be a challenge to ensure that the most deprived communities benefit from the Bill as they can require the most support to affect change in their locality, and this will have resource implications for public sector organisations.

At the same time, public sector organisations will need to think about risk appetite and overall risk management when working in new ways. An organisational mindset which sees communities as often best placed to develop local solutions to local issues will be critical. Equally there is a need to maintain accountability to the wider public in how local services are run, and the reasons for approving or refusing asset transfers or other community-led approaches to running local services must be transparent. If local asset transfers or other community-led schemes fail, all the risk and cost will return to the public sector and there may be damage to relationships within partnerships and communities as a result, with local assets becoming potentially unused and unusable by communities and public sector alike.
Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

There is no single answer to this: what works in communities will always be context specific and driven by the issues which communities themselves have identified as important for them. What is clear is that legislation alone won’t bring about the changes required. The levels of capacity and willingness within communities to get more involved in doing more for themselves is a key consideration, and effective dialogue between public service organisations and communities about who can provide what will also be central.

Generally those communities experiencing the most inequalities will require the most support to take advantage of the Bill provisions, some of which are very technical in terms of the process to be followed. In the case of asset transfer requests there has to be a honest and open appraisal of what community capacity exists at the outset; how best public authorities (and other partners, including the voluntary and private sector) can help develop that capacity; what social enterprise model is most appropriate for managing the asset to be transferred; and what risk apportionment is appropriate between the transferring public authority and the community, particularly during the transition phase and initial operating period.

Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

We welcome the explicit duties on all public authorities to participate in Community Planning. We have no objection in principle to making the establishment of CPPs a statutory requirement, but we are not clear about what specific value this will bring. CPPs already exist within every local authority area and it is quite clear to Councils and CP partners that their existence is an imperative. The issue is not the existence of the CPP. The issue is the effectiveness of Community Planning as currently provided for within the LGISA 2003. The accountability of individual CP partners remains a critical success factor for Community Planning in Scotland. We recognise that accountability lines can never be simple in a world of complex public service requirements. There is insufficient detail about accountability and reporting requirements on CP partners and how these would be strengthened in practice to ensure a shift of emphasis away from process (attending meetings, contributing to the drafting of the SOA, etc) and towards effective collaborative action focussed on place based preventative delivery which improves outcomes for communities. It is not clear how new reporting mechanisms would be monitored, or intervention/enforcement would be affected in relation to CP partners which did not meet their new accountabilities.

We are not convinced that increased focus on Common Good (CG) is the most effective way to achieve the Bill’s policy aims. CG is an inefficient administrative burden on local authorities, and can divert resources from wider good work done by local authorities to deliver local services in partnership with communities. If, however, CG is here to stay, encouraging Community Councils and other community bodies to input to decisions relating to the identification, use and disposal of a CG property will be of benefit if undertaken in the spirit of openness and togetherness, and not as a token gesture. The parameters in relation to CG do need to be made clear. CG land is owned by the Council and local authorities have existing responsibilities to ensure it is used effectively. For
example, Community Councils are often under the impression (wrongly) that the CG land belongs to them.

There are a number of excellent examples of effective community engagement and capacity building in the North Perth area and we would welcome any visits as part of the evidence collecting process.
Consultation on the Community Empowerment and Renewal Bill 2014
Evidence from Strathblane Community Council

A Real Future for Community-level Democracy in Scotland?
Strathblane Community Council is pleased to take this opportunity to comment on the draft Bill. In making our comments we draw on our experience as an active and relatively effective Community Council in a rural/commuting community of about 1000 households which has an increasingly active, membership based Community Development Trust with whom we have good working relationships.

Of the five questions we are asked to address, therefore, we will focus on the following two in our evidence:

1. To what extent do you consider the Bill will empower communities— please give reasons for your answer? ........

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Some Valuable Proposals but an Opportunity Missed
We welcome the Bill and support its general objectives and, despite some concern over its ‘omnibus’ and ‘catch-all’ form, we see most of the specific changes proposed as potentially beneficial for the empowerment of local communities. We consider, however, that a major opportunity to establish a clear structure of democratic governance at the local community level is being missed. In what follows we therefore focus our comments on a set of core aspects of the Bill which we feel are insufficiently defined. Whilst it is good that the policy draws on principles from the report of the Christie Commission, we also wish to highlight the seven principles from the equally important recent report of the Commission on Strengthening Local Democracy. In particular we would stress one principle not much highlighted elsewhere, that of interdependency — ‘spheres not tiers of government’.

Community Councils as the Anchor Institution for Community Building
For community engagement to be successful in a local area requires, first, a real feeling of community identity, of belonging, on the part of its residents and, second, a democratically answerable anchor institution. For that institution to be effective it must have substance beyond the representation of community views to planning partners and other parts of government. We believe it should have autonomous responsibility for a designated set of provisions for its community for which it is only answerable to its local electorate: that is it should be a separate sphere of governance. Missing from the present proposals are measures to establish real community-building along these lines. The only realistic starting point for this type of democratic ‘anchor’ institution in Scotland is the Community Council (CC).
The Present Limitations of Community Councils

Many CCs are already effective in representing community views to local government and other planning partners and in campaigning, along with other groups in their community, on vital issues. Strathblane can illustrate success in both respects. Most notable is the case of a wholly successful campaign—which reached the UK national media and brought action from both UK both Scottish and UK governments—in support of a local residents association to ensure that blameless residents did not suffer the cost of rectifying contaminated land.

And yet the limitations to our potential effectiveness are also easily demonstrated. First, we discover we have no right of representation on the Management Board of Mugdock Country Park, a public facility which lies in our area and is extensively used by our residents, who in various ways may be affected by decisions taken by the Board. As a CC we also find have no power to refer a planning application which the community feels is detrimental to its general welfare to a Planning Panel.

We recognize first, that the working of CCs, and indeed their very existence, may be extremely uneven, both over time and throughout Scotland, and, that as presently constituted they cannot adequately take the step of becoming, in the Commission’s terms an autonomous sphere of government. In practice CCs can neither independently raise significant funds for projects, nor employ their own staff.

These limitations have led to the growth of a range of Community Development Trusts (CDTs), admirable in most of what they do and, like many local groups, drawing in volunteers who may not wish to fulfill a community wide democratically elected role on a CC. Although many have close relationships to their Community Councils (as currently in Strathblane) CDTs are not anchored by democratic accountability to their communities as a whole.

Community Councils Must Be the Anchor institution of Community Governance

There are many places throughout Europe to which we might go for examples of effective community level government. Visitors here from France and Germany look askance at the lack of any formal institutions of community governance in a community of the size of Strathblane. But we need not go to the extent of the French Commune system in attempting to rectify things. Much closer to home the English Parish/Town Council regime gives us examples of what might be done. There a Parish Council, often in a community much smaller than Strathblane, has designated revenue and a set of powers for which it is not answerable to ‘superior’ levels of government and, at the same time the institutional set-up is flexible enough to recognize the different character and needs of different types and sizes of community – village, small and larger towns, and cities. Subsidiarity does not necessarily mean hierarchy.

We are pleased that the Bill envisages the possibility of local authorities devolving responsibility for the delivery of services for which they are responsible to CCs (or other community organizations). But that is not sufficient. As in most other countries in Western Europe our community governance institutions should form an autonomous sphere of democratic government with its own appropriate share of
funding as a right, rather than remain as mere creatures of local authorities as at present.

Whilst they must certainly continue to fulfill their function of collecting and passing on to other spheres of government and public service providers the views of community members on the planning and delivery of services — and on all issues affecting the commonweal of their community, in addition, CCs should be wholly responsible for the provision of that more limited range of local facilities and services whose form and shape is entirely a matter for local community members. These might include grass cutting and the maintenance of public space and footpaths, community halls, public toilets and similar facilities. In many areas the experience and expertise of the volunteers that CDTs and other community groups can mobilize could be important here but democratic accountability is vital and CDTs should therefore become, in one form or another, ‘arms’ of their local CC.

The lack of definition in the Bill of the ‘community organisations’ to be empowered is a significant cause for concern. It is all very well for a community controlled body to have a constitution and a majority of Board Members from the community but there remains every chance it would not represent the whole community which CCs in their constitution must. What is proposed could very divisive in communities — the very opposite of what is intended (and something we have suffered in Strathblane in the recent past).

Genuine empowerment of CCs as a sphere of community-level government would increase their standing and do much to bring forward more volunteers for election. There would be a need to adapt the some features of the operation of CCs to the varying conditions of communities of differing size and character: cooperation between CCs in rural groupings of small village communities is one obvious possibility.

The Bill should specify that Community Councils would be the ‘anchor’ community organisation throughout the country, and only where exceptional local circumstances dictated otherwise would some alternative body be considered. In addition it should raise the standing of Community Councils as autonomous sphere of government with their own funding and powers.

The very possibility of genuine community-level democracy in Scotland is at stake!

Strathblane Community Council
September 5th 2014
Overview

Faith in Community Scotland (FiCS) welcomes the opportunity to respond to the Local Government and Regeneration Committee’s call for evidence on the Community Empowerment and Renewal Bill. This response is based on the insights and expertise of the local communities we have worked with, as well as the observations of our community development practitioners and discussions we have had with a range of other interested parties including Oxfam, SCVO and the Third Sector Forum.

Key Points

- A wider cultural change is necessary for effective community empowerment in Scotland, with legislation being a small, but not insignificant, part of it.
- People are our greatest assets.
- Communities empower themselves. Local and national governments, public service bodies, politicians third sector and voluntary organisations should all play a supportive, not a directive, role in building the capacities of communities towards this.
- Power cannot be given to one section of society without another party losing it. This needs to be clearly articulated in the bill.
- More participatory models of decision making are required. Participatory Budgeting and other schemes have a proven track record of enhanced outcomes, not least for areas with low engagement and constrained finances.
- A human rights and equalities based approach should be adopted, which places tackling inequality in particular as a core objective of the legislation.

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

Whilst recognising the importance of legislation for the promotion of community empowerment, it should be placed within a wider need for seismic change in our decision making culture. What is lacking from the legislation in this regard is a genuine commitment to more participatory models of decision making and clear transfers of power to local communities.

Agendas which are top down will not empower communities and can often in fact disempower them. Instead, what is required is a bottom up approach with governments, civil servants, politicians and those in the third sector playing a supportive, rather than a directive, role.

Communities empower themselves. In discussion with some of its commissioners, the Poverty Truth Commission has heard the successes and broad appreciation for previously participative mechanisms, such as the Neighbourhood Forums. Participatory Budgeting was strongly welcomed by the commissioners, who saw it as an opportunity to overcome many of the barriers which currently prevent them from meaningfully engaging.

We support the SCVO’s call for 10% of the total public sector budget in each local authority to be decided by Participatory Budgeting. The predicted benefits are numerous, including:

- Better decisions being made and improved outcomes
- Outcomes which authentically reflect people’s priorities
• Improved collaboration between public agencies
• Greater participation in democratic processes
• Greater transparency and accountability in public spending decisions
• Improved trust between communities and public bodies
• Greater understanding of the public’s views
• Greater understanding of the reach and limitations of local authorities
• Increased Social Capital

FiCS welcomes the Commission on Strengthening Local Democracies’ commitment to participatory democracy:

‘The right of individuals and communities to local democracy needs legislative expression through a clear duty in law to support and resource participation in decision making. Democratic innovations such as deliberative assemblies, participatory budgeting and citizen scrutiny of public services should also become the standards by which this is delivered in Scotland.

‘Implementing arrangements for participatory budgeting that go beyond a consultation on predetermined options for budget cuts, and instead focus on local tax and spend priorities.’

Power cannot be given to one group in society without another section losing out. This must be more clearly articulated in the legislation.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

Better decisions and thus improved outcomes will only be achieved through genuine engagement which places local communities at the heart of the design and delivery of services. Public sector organisations, as well as broader society, must recognise that people are our greatest asset and not a hurdle to decision making to be overcome.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

In the legislation as it stands there is an underlying risk of increased inequality. Without recognising communities of interest, and providing resources accordingly, the bill could favour those communities already well-resourced and currently better placed to act.

Significant capacity building is required to overcome this. Needs, however, must be identified by the communities themselves. Development Trusts or similar mechanisms are vital to properly support local groups to both make a bid to take control over services and to call local authorities to account.
Development Trusts and Community Land Trusts have been successful examples of a community coming together collectively and pursuing shared objectives. There seems to be a lack of recognition of these already functioning positive structures in the bill.

FiCS supports Asset Transfers in theory but these must only be followed when communities genuinely desire them. Vital information must be provided to communities as prior to purchases, with details such as the predicted maintenance costs and requirements being outlined.

A key litmus test for the bill would be to measure if participation has increased for areas currently experiencing low engagement rates.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

In keeping with the findings of the Christie Commission, there should be a deeper focus on ensuring meaningful participation during community planning. The ‘right to request participation’ needs to be made stronger, in order to reflect the inherent right of communities to participate in the decision making process.

FiCS supports the call from the Poverty Alliance and others for the creation of statutory regulations for engaging and empowering communities. These would be for all public bodies to follow and report on.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

A human rights and equalities based approach should be adopted. This places tackling inequality in particular as a core objective of the legislation, not as merely a welcomed addition as the bill currently implies it to be.

Notes about Faith in Community Scotland

Faith in Community Scotland walks together with people of faith in support of our economically poorest communities. We are committed to working hand in hand with all who share the desire to challenge and overcome poverty and exclusion.

http://www.faithincommunityscotland.org/

Contact

Allan Young
Research and Development Worker
COMMUNITY EMPOWERMENT BILL – CALL FOR EVIDENCE

SUMMARY OF CONCERNS

➢ No obligation for councils to work with community groups beyond consultation. This is a very tokenistic approach to community empowerment; one which does not put enough emphasis on involving under-represented groups.

➢ Too great a focus on Asset Transfer. Whilst some community groups could benefit from such legislation; access funding and also upskill their volunteers to take on a bigger responsibility, it fails to address the real needs of the thousands of youth groups, community groups and other organisations, let alone the individual volunteers who are constantly fundraising to full capacity for their group and also developing their employability skills through volunteering. Such groups would struggle to maintain additional Assets. Therefore, Asset Transfer maybe seen as being service led and not needs led. This may be seen as privatisation of the third sector.

➢ No requirement for Local Authorities to support under-represented groups, for example ethnic minority groups, non-Christian faith groups, youth run organisations or LGBT groups.

➢ Whilst it is good that multiple organisations are working together such as Community Planning Partners. These do not seem to effectively include the third sector as true partners.

➢ Scottish Ministers seem to be granted too much power by the Bill. There should be a grass roots approach to community empowerment which cannot be fully achieved from a top down approach or centralised powers.

Though not specifically to do with the Bill, I am curious why the call for evidence from the Scottish Government asks respondents to consider the ‘advantages and disadvantages’ for public sector organisations, but not for third sector/community organisations?
SUGGESTED ADDITIONS:

- Grant additional powers to community councils. For example, allow a community council representative to all council planning meetings that affect their area.

- Raise funding given to community councils to allow them to have a greater impact on local communities.

- Identify under-represented groups and create an obligation for Local Authorities to meet with representatives to discuss ways that the Community Planning Partners could work to improve the representation and conditions of these groups.

- Make funding applications from Government/Community Planning Partners easier to understand, or create an obligation for Local Authorities to assist community organisations to help with funding applications or similar forms.

- Create a greater emphasis on Community Learning and Development staff working to support existing community groups and projects.

- Creation of community hubs, where Social Workers, Nurses, CPNs, Community Wardens, etc. are given a specific area to work in. They could all use a community centre or a similar building which is accessible to the community. This could allow for the community to raise concerns they had more easily, strengthen partnership working across third sector and public sector organisations, and allow services to focus on the individual needs of an area.
Dear Sir/ Madam

COMMUNITY EMPOWERMENT (SCOTLAND) BILL

The Royal Town Planning Institute (RTPI) is the champion of planning and the planning profession. We work to promote the art and science of planning for the public benefit. We have around 2,200 members in Scotland and a worldwide membership of nearly 23,000. We:

- support policy development to improve approaches to planning for the benefit of the public
- maintain the professional standards of our members
- support our members, and therefore the majority of the planning workforce, to have the skills and knowledge they need to deliver planning effectively
- maintain high standards of planning education
- develop and promote new thinking, ideas and approaches which can improve planning
- support our membership to work with others who have a role in developing places in Scotland
- improve the understanding of planning and the planning system to policy makers, politicians, practitioners and the general public.

The Institute is grateful for the opportunity to provide written evidence to the Local Government and Regeneration Committee on the Community Empowerment (Scotland) Bill.

RTPI Scotland welcomes Scottish Government's commitment to taking forward the Community Empowerment (Scotland) Bill. RTPI Scotland fully supports the principles of
community empowerment. Democratic accountability has been at the heart of planning for over sixty years, and direct public engagement for over forty. Planning and planners have a duty to all those involved in, and affected by, planning to meet their needs and aspirations, balanced with meeting social and economic objectives while protecting our built and natural heritage.

In submissions to Scottish Government on the then Community Empowerment and Renewal Bill in February 2012 and September 2012, RTPI Scotland suggested ten tests that should be met in taking forward the Community Empowerment Bill, which we still feel are good tests for taking forward the Bill:

1. It allows for a clearly stated and democratically agreed vision of national spatial priorities, including meeting needs for housing and infrastructure, and addressing the challenges of climate change;

2. It takes a broad view of sustainable development that requires all involved to place economic, social and environmental sustainability on an equal footing;

3. It does not assume that the Government’s agendas for sustainable economic growth, for meeting targets for reducing emissions and increasing renewable energy, for social inclusion and housing delivery will be achieved simply because there is the freedom of choice to do so;

4. Any duties placed on local government and others are clearly defined, are resourced and are enforceable where necessary;

5. Any rights given to communities are not token rights unsupported by resources, expertise or democratic challenge;

6. The understandable desire among communities for immediate investment in local facilities does not prejudice longer term investments to meet larger-scale needs such as hospitals, waste facilities and transport infrastructure;

7. Approaches to planning within neighbourhoods not only serves to provide what local communities desire, but also allows for what wider communities need;

8. In exercising powers over the future of their areas, communities accept and fulfil the responsibilities attached to doing so and community groups recognise that they will need to consult as well as be consulted;

9. It gives an equal opportunity for all communities to be involved in shaping their own futures, including those communities and groups whose engagement has often been neglected and have been served by Planning Aid for Scotland in the past and we hope will continue to do so in the future; and

10. It does not hamper the ability of RTPI members to continue to provide a professional, independent, un-biased, evidence-based service to all those involved in, and affected by, planning.
THE ROLE OF PLANNING
One of the key aspects of the ongoing planning reform and the introduction of the 2006 Planning Act was to create a more inclusive planning system. This Bill therefore supports and complements the Planning Act and subsequent regulations and guidance to encourage meaningful engagement of communities, and finding effective ways of engaging communities in developing the vision for their area, including through Main Issues Reports for development plans and Pre-Application Consultation for major planning applications.

Planning is an important mechanism in community engagement and in creating a vision for the future of places, including developing an understanding of the assets that they have. In particular, the Development Plan provides an opportunity for the community to discuss and openly agree its views about the future. Non-statutory planning mechanisms are also such as Supplementary Guidance and Management Plans. Planning has good practice guidance to offer in the shape of Planning Advice Notes and a tradition of community engagement, especially in the context of Development Planning and given this planners use a range of techniques to engage communities in developing an understanding of and an implementable ‘vision’ for their area. However, there is still a need for decision making on planning issues to be guided by professional expertise rooted locally.

COMMUNITY PLANNING
RTPI Scotland welcomes and supports an outcomes based approach in legislation where clear and measurable outcomes are set out and monitored to transparently set out the strategic objectives of Scottish Ministers. We support an outcomes based approach to community planning and spatial planning and we strongly believe in the importance of a more connected and integrated approach between Community Planning and Land Use Planning. If these were to be better connected in terms of outcomes, processes and procedures, it would allow for a more integrated approach and would ensure a more effective articulation of the spatial dimensions of many public sector initiatives and programmes. We welcome the references outlined in the recent Circular 6/2013: Development Planning and would support Scottish Government and COSLA to build upon this.

RTPI Scotland believes that Community Planning is too often seen as an alignment of priorities, programmes and resources among public agencies (and, sometimes, third sector organisations). Although this is important, it can often be something that isn’t articulated in terms of how it will impact on specific places. There has been community engagement in the land use planning system for over forty years, which has allowed communities to shape and influence decisions on the future of their neighbourhoods, towns, cities and regions. If Community Planning Partnerships worked more closely with the development plan process it would enable them to connect decisions on investment to particular places, which in turn could help communities to gain a better understanding of the implications of Community planning for their area. This could also embrace concepts such as ‘Total Place’ which provide a better articulation of the impacts of investment and policy on specific places.

The Institute is of the view that there is a need to ensure that a culture of subsidiarity of decision making to the right level ‘governance’ is adopted in taking forward community empowerment. This requires assessing what level will be most effective in making decisions and giving the people at these levels the power and resources to do this.
Good planning relies upon early and effective public engagement in auditing communities, analysing their needs, planning their short and long term management for community benefit, monitoring action programmes and outcomes on the ground, and reviewing circumstances. This analysis and its associated evidence base should be key considerations also for Community Planning and the development of Single Outcome Agreements.

COMMUNITY RIGHT TO BUY
RTPI Scotland supports the extension of Community Right to Buy where it can be demonstrated that it is possible for that community to own and successfully manage such land and buildings for the public benefit, and this should only be where an acceptable scheme has been identified, carefully worked up and can be afforded in both capital and revenue terms into the future. Funds will require to be identified for capacity building in communities, feasibility studies, acquisition, capital works and maintenance thereafter. Provision for professional fees should be part of the calculations. Where appropriate, local charitable Building Preservation Trusts or Community Development Trusts should be established. There should be reversion clauses which clearly explain disposal procedures in the event of Trust failure.

COMMUNITY RIGHTS
RTPI Scotland believes there is a need for clarity in the definition of "best value" and "best public benefit" in terms of the disposal of public land. This should not only be about financial value, but should also take into consideration social, community and environmental aspects, particularly in terms of the transfer of land to community or voluntary organisations. This would help to bring some consistency across Scotland. With regard to rights in relation to property, we believe that this should be framed within, or linked to the Development Plan where possible.

RTPI Scotland suggests that the Bill should consider not only the right to buy, but the right to manage as part of the community rights, and furthermore detail how this might be facilitated.

We suggest that the process would benefit from the introduction of a preparatory phase, allowing the public authority and the community or voluntary organisation to explore how these community rights might work, hopefully minimising the exposure of community organisations to risk. This could be contextualised through the planning system in the Development Plan.

SUPPORT FOR COMMUNITIES
RTPI Scotland believes that communities need to be able to understand what their powers are and to be proactive in establishing a spatial vision for the future of their area. It might be that there are more pressing issues and community requirements in certain areas than allotments. Meaningful engagement between local authorities and communities, through community groups and Community Councils is key to develop an understanding community needs, aspirations and opportunities.

Given this, RTPI Scotland believes that communities must be supported to ensure that process is not a barrier to action, making the process simple to encourage communities to develop a spatial vision for the future of their area. Communities need to be able to understand what their powers are: if they do not have appropriate expertise within the
community then it should be provided externally. The upskilling of communities as to the potential power and opportunities of community groups and Community Councils to deliver local spatial aspirations will have a resource implication, but for the aspirations of the Community Empowerment (Scotland) Bill, and also the modernised planning system to be achieved, communities must be encouraged and inspired to take a more positive and proactive approach.

There is a need to help people navigate through the process. Planning can play a role in providing this guidance, at the local planning authority level. We consider there is a case for creating a one-stop shop for best practice in innovation in empowerment. RTPI Scotland and Planning Aid for Scotland could contribute to discussions and actions on this.

I trust that you will find these comments useful. We would be happy to provide oral evidence to the Committee if they so wish. Please do not hesitate to contact me if you would like to discuss on craig.mclaren@rtpi.org.uk or 0131 229 9628.

Yours faithfully

Craig McLaren
Director of Scotland and Ireland
COMMUNITY EMPOWERMENT (SCOTLAND) BILL

NORTH LANARKSHIRE COUNCIL – EVIDENCE SUBMISSION

To: Clerk to the Local Government and Regeneration Committee
   Scottish Parliament
   Edinburgh
   EH99 1SPT

QUESTION ONE
To what extent do you consider the Bill will empower communities, please give reasons for your answer?

1. The Bill reflects the introduction of a wide range of duties on both Scottish Ministers, Community Planning partners and local authorities and provides access to a range of involvement mechanisms and opportunities for community controlled bodies to become more directly involved in the management of services and property in their local area.

2. The Bill will empower communities by embedding in legislation the right of involvement and also the mechanisms to directly impact on their geographic communities and services through the right to purchase neglected land; to purchase, lease or manage local authority land and buildings and access allotments. Communities will benefit from the clarity in process relating to asset transfer from the public sector to the third sector. The Bill creates a framework of understanding between the public and voluntary sectors and will support and inform policy develop.

3. However, alongside these rights and benefits come responsibilities and obligations (legal and otherwise) which need to be fully understood by the community organisations wishing to exercise them. It will therefore be important to ensure that resources are available to provide such support, thus ensuring that the undoubted empowerment potential of this legislation can be fully and properly realised. Similarly, the requirements of the Bill are being introduced alongside additional demands on local services through a generally ageing population, economic and resources pressures; and wider public sector reform. The challenges that all of this presents alongside achieving community empowerment should not be underestimated.

4. Notwithstanding the above cautionary notes, North Lanarkshire Council is committed to actively involving communities in the shaping and delivery of public services and an outcome based approach to regeneration. Traditionally this has been achieved via North Lanarkshire Community Planning Partnership (NLP) and a programme of consultation via our citizens’ panel, resident’s survey, subject specific consultation exercises and recent community participative budgetary exercises.

5. North Lanarkshire Council is committed to developing and growing the social economy, and specifically opportunities for social enterprise, as a vehicle to empowering communities. Our new social enterprise framework 2013-2018 sets out how the Council and partners will work with communities to develop capacity, realise opportunities, develop community assets and build responsive purchasing arrangements. The Council is currently developing a new Community Asset Transfer policy and is piloting three projects to inform the final policy. The new Bill will support us in this process and provides a mechanism for communities to make informed decisions and have their say about local service delivery.

QUESTION TWO
What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

6. There are potential benefits arising from more clearly defined rights and responsibilities in community planning and participatory democracy; however there could be some additional and un-quantified costs for local authorities as referred to in paragraph 3 above. For example direct costs associated with the need...
for professional services, such as legal advice, or capacity building to support community involvement and participation.

7. There is also a real risk that the Bill could widen inequalities by creating further opportunities for those communities who already have the capacity to take action. Ensuring that people in the most deprived and marginalised communities have the same opportunities and can exercise their rights effectively will be a significant challenge for the Bill. Some communities will need additional support and guidance to progress their ideas and develop projects. There is a risk that any regulations and duties emerging will encourage a culture of minimal requirements for compliance rather than a culture shift towards co-production.

**QUESTION THREE**

Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

8. There is considerable and extensive expertise within the third sector which positions some community organisations to take advantage of the Bill’s provisions. These capabilities, both within and between communities, however, are variable. There are excellent examples of organisations that would be capable of taking advantage of the Bill’s provisions but these skills levels are not universal. It will be necessary to ensure that all community organisations have access to the appropriate level of legal and developmental support to allow them to utilise the provisions of this Bill. This support could be provided through organisations such as the Third Sector Interfaces and/or Law Centres or through direct financial support to community organisations themselves but it will require additional resources to be made available from Scottish Government as it will be unlikely that this work can be accommodated within existing resources. Where capacity needs to be improved community development support will be key to achieving sustained success within communities and projects.

9. North Lanarkshire Partnership has a long history of working with communities to shape and deliver local services and structures and arrangements are kept under review to ensure that they remain fit for purpose and make the best use of opportunities available. It is recommended that the Bill incorporates sufficient flexibility to enable community planning partnerships to review existing structures and put in place improvement actions as part of its local outcomes improvement plan review. All partners and community bodies should sign up to this plan and the underlying principles of cooperation and partnership working to deliver the agreed outcomes.

**QUESTION FOUR**

Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

10. No additional comments other than those expressed elsewhere.

**QUESTION FIVE**

What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

11. The assessment of equal rights, impacts on island communities and sustainable development appear considered and measured.

**SPECIFIC BILL PROVISIONS – PART ONE**

**National Outcomes** Places a duty on Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, which builds on The national outcomes must be reviewed at least once every 5 years. They must also regularly and publicly report progress towards those outcomes.

12. This duty would seem appropriate given the community planning duties being proposed for other public sector bodies.
13. In terms of Part 1, subsection (2), the list ought to be more prescriptive (i.e. it should identify who Scottish Ministers will consult with in terms of determining the national outcomes and any associated, subsequent revisions). Or, at least, public bodies ought to be able to apply to ministers to have their views considered. In terms of subsection (5), once again, the list ought to be more prescriptive or alternatively provision ought to be made to allow public bodies to have their views considered.

**SPECIFIC BILL PROVISIONS – PART TWO**

Seeks to put **Community Planning** Partnerships on a statutory basis with defined roles and responsibilities, and place new duties on public sector partners to play a full and active role in community planning and the resourcing and delivery of local priority outcomes.

14. This provision will reinforce the importance of the community planning process and provide the necessary legislative support should partners not be engaging fully in the process. In addition the inclusion of provisions in respect of Single Outcome Agreements (or local outcome improvement plans) will also ensure that these plans have a similar status to other strategic planning arrangements for public sector organisations. In addition the Bill places responsibility on public bodies to commit appropriate resources to achieve these outcomes by ensuring that the mechanisms and processes for community planning and joint resourcing are embedded in legislation. It is, however, still not clear how these powers will blend in practice with existing accountability and audit mechanisms.

**SPECIFIC BILL PROVISIONS – PART THREE**

**Participation Requests** This provides a mechanism for communities to have a more proactive role in having their voices heard in how services are planned and delivered. Schedule 2 lists “public service authorities” to whom participation requests can be made.

15. Whilst the principle of a mechanism to support communities’ proactive involvement in service delivery and planning is to be welcomed, it is not clear how effective the process outlined in the Bill will be in delivering truly effective involvement. All public bodies have a long history and well developed involvement and participation processes in place to facilitate both service planning and delivery. For example, North Lanarkshire Housing Service takes a pro-active role in ensuring the voices of tenants and residents are considered by virtue of Tenant Participation legislation introduced in the Housing (Scotland) Act 2001. In addition the Scottish Social Housing Charter and regulations introduced to promote Tenant Scrutiny ensure we are constantly engaged with the Tenants Federation and Registered Tenant Organisations (RTOs) on service planning and delivery issues. Any additional participation requests will be considered and aligned within that framework.

16. North Lanarkshire Council would therefore suggest that it is likely that almost all existing organisations, fitting the definition of a “local community controlled body,” will already be involved as routine based on previous and current good practice. It would also be necessary as part of any participation request process to ensure that any community controlled body asking to be involved does not assume that by using such a process their involvement/ perspective carries greater weight than through normal involvement processes.

17. Consideration is also required for inclusion of arms-length bodies whose primary purpose is the provisions of services on behalf of local authorities.

18. Consideration should also be given to the merits of inclusion of the range of public sector authorities in Scotland covered by the Public Sector Equality Duty.

19. As part of the outcome improvement process any participation request should demonstrate that participation will promote or improve service delivery. In North Lanarkshire, our Third Sector Interface, Voluntary Action North Lanarkshire (VANL), will be key to this engagement and is a full partner in NLP.
20. This provision could be helpful to local authorities if the land in question is considered to be a blight or hindrance to development and investment proposals. Housing Services should be included in the list of consulted bodies when any application to buy is lodged to ensure the intended use of the acquired land is consistent with the aims and objectives of the Local Housing Strategy.

21. In terms of section 29, consideration should be given to a prescriptive list whereby articles of association or memorandum can be altered, without consent, if they adhere to the matters contained within the list.

22. Under Section 28 (3) (c), where information contained in the minutes is to be withheld and a reason is to be given, it should be specified that the reason must be a reasonable one.

23. In connection with the late applications procedure (Section 31 (9) (7)), it would appear to be unreasonable that the definition of land to which “relevant work” and “relevant steps” may have been taken does not have to be the same land as that which the landowner is intending to dispose of.

24. The Council understands the potential for Community Asset Transfer to provide a useful vehicle for improved service delivery and effective community empowerment. Working with local community organisations to deliver successful Community Asset Transfers empowers communities and contributes to building resilient communities as well as bringing in additional resources to the local area. Community Asset Transfers should be delivered within a local context to support community regeneration.

25. North Lanarkshire piloted the establishment of Development Trust Associations in 2011 and valuable lessons learned may be applied to Community Asset Transfers. Any potential Community Asset Transfer to a third sector organisation should:
   - Take place via an application process (supported by a robust business plan), which demonstrates clear benefits to the Council, third sector and communities;
   - Ensure appropriate capacity building and business support arrangements are to be in place to support organisations through the Community Asset Transfer process and ensure long term viability and sustainability;
   - Take forward further policy developments required to deliver strategic priorities on asset transfer.

26. Specific recommendation must be made in relation to Section 55 (5), Section 59 and Section 60 where it states that the relevant authority must agree an asset transfer request unless there are reasonable grounds for refusing it. There is to be provision for review of a local authority’s decision by the local authority.

27. If a relevant authority leases land as a tenant and to transfer or share occupation of the land would breach the terms of the lease it must be considered reasonable to refuse a request. This would be without prejudice to the provisions of Section 60. It would be better to legislate to exempt land held on lease in these circumstances.

28. As highlighted in Question One, North Lanarkshire Council is currently developing a new Community Asset Transfer policy.
**SPECIFIC BILL PROVISIONS – PART SIX**

**Common Good Property** Places a statutory duty on local authorities to establish and maintain a register of all property held by them for the common good. It also requires local authorities to publish their proposals and consult community bodies before disposing of or changing the use of common good assets.

29. North Lanarkshire Council would reiterate the points made previously in our response to consultation on the draft Bill submitted in January 2014. It will be unclear until Guidance is produced as to what does and does not constitute a disposal for the purpose of the legislation. Leases, especially shorter terms (less than 20 years) should be excluded, as should change of use for public use and benefit and alienable common good property.

30. It is acknowledged in the Explanatory Notes at point 276, that it is sometimes difficult to know whether property is part of the common good and that in some cases this has to be decided by the courts. The Bill does not define or redefine common good or remove or alter any restrictions on the use or disposal of common good property and an opportunity has been missed to assist with the acknowledged difficulties.

31. There is recognition in the Financial Memorandum at point 89 that the new statutory duties will have associated costs. This was not quantified during the consultation process but there is an assumption that the process required to establish an accessible register will be starting from a very firm foundation. Local authorities are currently required to account for common good assets separately and it is for this reason that the assumption of a firm foundation is made. This is at odds with the recognition that it is difficult to know whether property is common good and that in some cases the decision has to be made by the courts.

**SPECIFIC BILL PROVISIONS – PART SEVEN**

**Allotments** Updates and simplifies legislation on allotments. It requires local authorities to take reasonable steps to provide more allotments if waiting lists exceed certain trigger points and ensures appropriate protection for local authorities and plotholders. This replaces the provisions of the Allotments (Scotland) Acts 1892, 1922 and 1950, which are repealed in their entirety by schedule 5, and some provisions of the Land Settlement (Scotland) Act 1919.

32. The provisions within the Bill will involve local authorities in the administration and provision of allotments, publication of a food growing strategy and potential for compensation. These may or may not presently be provided by a local authority; either wholly or in part, and as such could have resource and land provision consequences. It can also potentially affect the council’s future use of sites used for allotments, e.g. requiring Scottish Minister consent for change of use or disposal.

33. In terms of section 70 (2) it would be beneficial for regulations to specifically include what information is to be included in the request.

34. Section 72 may be onerous to the local authority particularly if sub sections (4) and (5) are used.

35. Section 75 (2) may restrict the ability of the authority to provide allotments in sites that are temporarily available, an approach that has been successfully tried in other local authority areas, and could provide a mechanism to increase provision.

36. Sections 77, 78, 79 regarding producing strategies, reviewing and providing an annual report may prove onerous on the staff resource. A longer reporting cycle in particular would reduce this burden and still provide adequate information for users.

**SPECIFIC BILL PROVISIONS – PART EIGHT**

**Non Domestic Rates** Provides for a new power which will allow councils to create and fund their own localised business rate relief schemes to better reflect local needs and support communities. It does this by inserting a new section into the Local Government (Financial Provisions etc.) (Scotland) Act 1962.
37. At present the strength of the Non Domestic Rates taxation system is that it provides a consistent, and reasonably non-discriminatory, tax on business regardless of the location of that business within Scotland. There is a danger that the proposal may create a ‘race to the bottom’ where businesses will look to the local authority to better the scheme on offer elsewhere and the cost of the relief granted will be met by the Council Tax payer. This may favour larger / Council Tax rich local authorities in their ability to fund such schemes at the expense of other local authorities.

SPECIFIC BILL PROVISIONS – PART NINE

General Provisions Makes general provisions in relation to the Bill, including provision about subordinate legislation, ancillary provision and commencement. Schedule 4 makes minor and consequential amendments to other legislation, and schedule 5 provides for repeals.

38. No further comments.

Evidence submitted by:
North Lanarkshire Council
Chief Executive’s Office
Civic Centre
Motherwell
ML1 1AB

For further information please contact: Jennifer Lees or Alison Meenagh, Senior Corporate Development Officers. Telephone: 01698 302442 / 302376. E-mail: leesj@northlan.gov.uk / meenagha@northlan.gov.uk
The Children's Wood Project is located in one of the last community wild spaces in Glasgow: the North Kelvin Meadow. The project is designed to provide children with the opportunity to experience the natural environment, learn within it, and to build resilience and well-being. The project also brings the entire community together by organising a wide range of community activities and events. The project has participation from sixteen local schools, over 100 local volunteers and provides numerous activities for pre 5s' – in support of Scottish Government policy.

We have experienced difficulties in ensuring that the land is preserved for future generations, and we have experienced a lack of consultation with regard to the land, and barriers to the community making change.

It is within this context that we respond to the Local Government and Regeneration Committee's call for evidence on the Community Empowerment Bill, which aims to support communities and improve the processes of Community Planning.

Though we fully support the Community Empowerment Bill, we believe that there are certain areas within the proposal, which could be made more robust to better achieve the aims of the Bill. In particular, we believe that greater emphasis should be given to the principle of reducing inequalities through empowering and building self-sufficiency within local communities. Key to this, in our view, is the issue of community ownership and lease, the legislation for which should be framed to focus on the interests of the communities the legislation is supposed to serve. We hope that the Bill will ensure that communities like ours will have a voice.

Consultation
1. To what extent do you consider the Bill will empower communities; please give reasons for your answer?

It is accepted that the Community Empowerment (Scotland) Bill sets out and has the potential to empower communities by placing the community planning partnerships (CPP) on a statutory footing. This will place a stronger emphasis on delivering better outcomes for people using public services and should complement outcomes established in the Public Bodies (Joint Working) (Scotland) Act 2014.

However, the legislation is somewhat weak. It records that a:

CPP must make all reasonable efforts to secure the participation of any community bodies considered likely to contribute to community planning, and take reasonable steps to enable them to do so.

Given the recommendations of the Christie Commission on the Future Delivery of Public Services, legislation should be made more robust by including a significant focus on communities coming together not only to participate, but to co-produce services. We would like to see more communication and co-production between the local authority and the community. We support the proposal put forward by Oxfam, Barnardos and the Poverty Alliance who suggest that each Community Planning Partnership set aside a percentage of their yearly budget “to be decided upon through an appropriate community participation process or processes, and assess the impact of doing so.
Co-production both recognises the skills and assets of people in designing and delivering services and helps technically inexperienced community members develop those capacities. This kind of ‘full engagement’ is critical for the people who use the services, and the third sector more generally to be able to meet the needs and requirements of people in their communities. The Community Empowerment (Scotland) Bill needs to ensure that individuals are meaningfully engaged in this process. To that end, mechanisms should be established to monitor and report on levels of engagement, and to address any difficulties.

A key concern of ours is that the Community Empowerment (Scotland) Bill does not detail the support needed to allow communities to take advantage of its provisions on an equal basis. The policy memorandum acknowledges that, to date, there have been variable levels of empowerment and engagement between public sector organisations and community groups, stating that:

Where communities want to do something for themselves this has often been facilitated by good practice guidance, funding being available and the attitudes, skills and commitment of many people working in many different organisations.

The positive view expressed in the memorandum, conflicts with our experiences of running the Children’s Wood which have often been more negative. While this legislation seeks to address issues like this, and promote best practice throughout Scotland, it is vital that all community groups are supported at local levels by public sector partners to ensure that the most vulnerable groups are not further marginalised, and in turn, inequalities are not strengthened by the legislation.

Our concern is that there are no provisions for how public bodies should support less empowered community bodies, or those who are unable to mobilise their own participation to take advantage of the routes of engagement. We support the addition of provisions to ensure that there are mechanisms and resources in place to support, empower and capacity-build with local communities and organisations to support them to engage adequately with the process.

We would like to see provision for increased communication and co-production between the local authority and the community. We agree with the proposal put forward by Oxfam, Barnardos and the Poverty Alliance who suggest that each Community Planning Partnership set aside 1% of their yearly budget or something similar “to be decided upon through an appropriate community participation process or processes, and assess the impact of doing so with a view to further embedding this approach. “

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

Whilst the development of national outcomes is well received, as it provides a clear focus and conduit to public bodies, it is singularly important that communities have the opportunity to contribute to the shaping of those outcomes.

The policy memorandum states that:

Scotland’s people are its greatest asset: they are best placed to make decisions about our future, and to know what is needed to deliver sustainable and resilient communities.
We believe that by empowering and engaging local communities that has major dividends, which will strengthen the community planning processes and provide a significant focus on all outcomes, but particularly local ones.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Although we broadly welcome the provisions in the Bill, our concern is that the legislation may unintentionally have a negative impact on inequalities. Clearly community entities that are already empowered or have the capacity to engage will benefit the most from these opportunities, but little provision is made for those communities where such entities don’t exist, or are too disadvantaged to get the greatest benefits from the Bill. For example, even though the Children’s Wood as an organisation has the advantage of being based largely in a community with many socio-economic strengths, we have struggled with getting any formal assistance from the statutory sector, and do feel somewhat marginalised even though the statutory sector make use of our programmes. Thus, even more vulnerable marginalised even though the statutory sector make use of our programmes. Thus, even more vulnerable groups might find it particularly difficult to take advantage of the Bill unless greater social value is placed at the core of decision mechanisms the legislation is concerned with.

Consequently, we strongly support the addition of provisions to ensure that there are mechanisms and resources in place to support, empower and capacity-build with all local communities and organisations, particularly those from disadvantaged communities, to support them to engage adequately with the process. The legislation must also ensure that there are transparent mechanisms in place to monitor and report on community involvement.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

In general we are encouraged by the provisions of the Bill, but would like to see a genuine focus on what we would refer to as a ‘human rights based approach’ with a real commitment to reducing, preventing and reversing health inequalities. The Children's Commissioner for Scotland, Tam Baillie, visited us recently and gave strong support to our activities, our approach to the wellbeing of children, the attendant positive outcomes for teachers and parents, and community involvement and participation. Mr. Baillie was asked if we could state in our response to the bill that he was supportive and believed that it should find a manifestation of policy position for pre-5s. He was happy to confirm this.

Based on our experience over the past three years we recommend the inclusion of provisions to ensure that there are mechanisms and resources in place to support, empower and capacity-build with all local communities and organisation, particularly those from disadvantaged communities, to support them to adequately engage with the process.

We particularly welcome Section 25 of the Bill, which deals with reporting, and believe this reporting requirement will ensure a robust planning and evaluation process. However, we would also like to see a provision to ensure that people and communities have the opportunity to report on their experiences of their involvement and engagement in the process and whether this has contributed to delivering national outcomes.
In conclusion, our direct experience of attempting to involve the Local Authority in supporting our endeavours both within the Children's Wood set in the North Kelvin Meadow in Glasgow has been one in which, at best, we have experienced indifference and at worst a complete disregard in the face of controversial evidence that bringing children into their natural environment is vital for their wellbeing and that of the community.

We are not the only stakeholders in what happens here. If getting outside into nature is duplicated across the City, this will have an impact on health, well-being and success. Places for children to play and learn in are an important part of the jigsaw in delivering immediate and long-term benefits to society. It challenges perceptions that all fun is to be found indoors, on screens or in sedentary activity, while also addressing some of the most serious immediate and long-term issues within society.

The Bill in its general profile reveals for us a realignment of community ownership which can deliver a human rights that every child no matter who they are or where they live, has the right to grow up safe, happy and health. The Community Empowerment Bill is a signal towards that and we ask that our contribution be part of that endeavour.
Community Empowerment (Scotland) Bill – Call for Evidence
Local Government and Regeneration Committee of the Scottish Parliament
September 2014

Planning Aid for Scotland
Planning Aid for Scotland (PAS) is a national charity operating on social enterprise principles, working across Scotland to improve the way people engage with the planning system, helping people to contribute to their communities, and thus building active citizenship.

Through its impartial advice, training and education services, PAS is pro-actively involved in raising awareness of the opportunities for all people to be involved in shaping their places and communities. PAS believes that facilitating public involvement in forming a community vision for the future of their areas is a key aspect of civil engagement in creating empowered communities.

PAS considers that the land-use planning system has an important enabling role in delivering the intended outcomes of the Bill, and that better outcomes will be achieved through a closer alignment of land use planning and community planning.

In responding to previous Scottish Government consultations on the Bill, PAS has focused on the following matters:

- community councils* and other community organisations
- community planning
- accessibility of information
- access to training support and advice

*although the role of community councils is not significantly altered by the Bill, PAS believes that their role must continue be re-examined as a key stakeholder who can help deliver the aims of the Bill.

Committee’s Call for Evidence - Questions

1. To what extent do you consider the Bill will empower communities – please give reasons for your answer.

- PAS has supported the Scottish Government’s proposal for a Community Empowerment (Scotland) Bill since the idea was incepted; and has been pleased to contribute to the Scottish Government Reference Group which has supported development of the Bill.

- PAS welcomes the Bill as a demonstration of the Scottish Government’s commitment to devolving, where appropriate, powers and decision-making to
communities; and believes - if implemented successfully - the Bill can indeed have a positive impact on empowering communities. A community taking ownership or management of a local asset can be the starting point for the development of community pride, self-reliance and confidence, and thus empowerment.

- Throughout the consultation process on the Bill, PAS has emphasised the importance of focusing on delivery. This needs to happen pro-actively at grassroots level and there are two key aspects: awareness raising and ease of access to information; and training and support for communities. Focus on this will help ensure that the aims and spirit of the Bill are actualised.

- PAS – with its focus on building active citizenship, is ideally placed to provide information and support to ensure the outcomes of the Bill are achieved.

2. **What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions of the bill?**

- The provisions of the Bill offer public sector organisations the opportunity to work more closely with third sector organisations in promoting community empowerment and effective and innovative engagement, as well as performing their key regulatory functions.

- They also offer the opportunity for public sector organisations to work across departments and to pool resources more effectively.

3. **Do you consider communities across Scotland have the capabilities to take advantage of the provisions of the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?**

- Within every community there is a high level of local knowledge and insight which should inform communities to make decisions about their own future.

- With appropriate access to information, and where required support and training, PAS believes that all communities in Scotland can benefit from the provisions of the Bill. Utilising more fully the provisions of the Curriculum for Excellence, primary school children and secondary children can learn about citizenship and learn about the opportunities for participating in key decision making.

- It is well documented that communities in Scotland are varied and diverse. Some communities may require a high level of support, guidance and up-skilling to enable them to take advantage of the provisions of the Bill, whereas others may be able and ready to act on their own. There will be no one-size-fits-all approach but PAS would like to see public authorities taking a pro-active and creative approach to engagement around the new opportunities that will arise.
• Part 1 of the Act, with its provision that Scotland’s National Outcomes should be reviewed every 5 years, and consulted upon, will allow local communities to have a voice at strategic level. Combining this with other potentially much more localised outcomes of the Bill sets a strong vision and a robust framework for community empowerment.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

PAS would like to comment on the following aspects of the Bill:

Community Planning
• PAS welcomes the provisions of the Bill which will establish Community Planning Partnerships (CPPs) on a statutory basis. However, it is essential that CPPs take a pro-active approach to engagement and ensuring that they are as representative as possible of their communities.

• PAS welcomes the Bill’s requirement for CPPs to undertake consultation-based Local Outcomes Improvement Plans. However, CPPs will only be effective if they are predicated on genuine engagement with communities and pro-actively bring together communities and agencies in a partnership approach. This would represent a co-production approach that will bring about genuine empowerment.

• PAS has commented previously on the need for Community Planning and Land Use Planning – with inherently shared outcomes – to work in closer alignment as part of delivering empowerment.

• PAS’s guidance on effective engagement is a valuable tool which can help CPPs engage effectively with communities.

Community Right to Buy Land
• PAS supports the extension of a right to buy land to urban communities, whilst also recognising that the challenges and issues in urban areas may be different from those in rural areas.

• PAS does not, however, wish to comment on the technicalities of this aspect of the legislation.

Allotments
• PAS sat on the Scottish Government Working Party Group on Allotments and Community Gardens, and is aware that in some areas of Scotland demand outstrips supply.

• The placing of a duty on Local Authorities to provide allotments and hold waiting lists is a positive step in facilitating the provision of a community asset that can promote sociability, as well as health and well-being. Whilst noting the duties to be
placed on Local Authorities, it would also seem in the spirit of the Bill to empower communities to take the initiative to propose sites, with appropriate support in terms of skills and finance.

**Common Good Property**

- PAS supports the provision in the Bill to provide a register and for Community Councils and other recognised community bodies to be consulted about any plans to change the status of Common Good Property.

- PAS would also add that with regard to the land use planning system, there can be confusion as to the status of Common Good Property. Whilst outwith the scope of the Bill, it would be useful for this matter to be addressed.

5. **What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the policy memorandum?**

PAS would like to respond to this question with some concluding thoughts on the content and future implementation of the Bill.

- It is essential to ensure that the spirit of the Bill can be enacted upon by all and this means encouraging communities across Scotland to embrace a can-do attitude.

- There is a need to create a level playing field of opportunity through an increase in access to training, support and information to ensure all communities can benefit. Only with this approach will all of Scotland’s communities have the opportunity to benefit from the Bill.

- It is recognised that a large swathe of individuals, communities and communities of interest in Scotland are still excluded from participating in land-use planning and community planning. Two such groups that PAS is currently working with to promote their engagement in building a more inclusive society are young people and Gypsy/Travellers.

- To achieve the delivery of services that meet the needs of all groups in our society, PAS would encourage measures which will promote awareness, knowledge and access to the opportunities that the Bill provides.

**CONTACTS**

PAS would be pleased to respond to any queries with regard to these representations and is always willing to consider a joint venture with the promoters of the consultation document to take forward further research or training on any aspect of the subject which relates to the core business of PAS.

Petra Biberbach
Dumfries and Galloway Strategic Partnership – response to the Local Government and Regeneration Committee consultation on the Community Empowerment (Scotland) Bill – September 2014

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<tr>
<th>CE(S)B Proposed Legislation</th>
<th>Dumfries and Galloway Strategic Partnership response</th>
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<tr>
<td>Section 4 sub section 1 of the Bill outlines a requirement for each local authority area to participate within Community Planning.</td>
<td>Amendment of the statutory duty for community planning to place a stronger emphasis on delivering better outcomes is helpful as this gives a clear message to all partners about the purpose of partnership working.</td>
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<td>Section 4 subsection 3 references that the “Local Outcomes” must be consistent with National Outcomes. Section 5 requires each community planning partnership to prepare a local actions improvement plan. To that end the community planning partnership must identify the local outcomes to which it is to give priority with a view to improving the achievements of the outcome. Sections 6 and 7 refer to reviewing local outcomes and publishing progress reports on the improvement plan.</td>
<td>It is appropriate for the CPP to ensure that there is a plan in place but it is for the individual CPP to determine the format of the shared plan for outcomes. There should therefore be no statutory requirement for the production of any Plan other than the SOA.</td>
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<td>Section 5 sub section 3 requires the Community Planning Partnership to consult (a) such community bodies as it considers appropriate (b) such other persons as it considers appropriate. Sub section 4 requires the community planning partnership to take account of (a) any representations received by virtue of sub section 3 and (b) the needs and circumstances of persons residing in the area of the local authority to which the plan relates.</td>
<td>CPPs already undertake community engagement and involvement of the third and business sectors and work to improve their arrangements. Sharing of good practice and support from national and expert bodies is an effective way to support relevant partnership forums in these areas.</td>
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<td>CE(S)B Proposed Legislation</td>
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<td>Section 8 sub section 2 relates to the governance requirements for Community Planning Partnerships detailing the statutory persons are; local authority, health board, Police Scotland, Scottish Fire and Rescue and Scottish Enterprise. Section 4 subsection 5 requires the Community Planning Partnership to (a) consider which community bodies are likely to be able to contribute to community planning, (b) make all reasonable efforts to secure the participation of such community bodies in community planning, and (c) to the extent (if any) that such community bodies wish to participate in community planning, take such steps as are reasonable to enable the community bodies to participate in community planning to that extent. Section 9 sub section 3 requires each community planning partner to contribute such funds, staff and other resources as the community planning partnership considers appropriate, with a view to improving, or contributing to an improvement in, the achievement of each local outcome.</td>
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<td>Sharing of good practice, support from national and expert bodies and a consistent approach from all Ministers to promoting community planning/SOA is an effective way to ensure all relevant partners play a full role in community planning within their locality. Our CPP has participation from all relevant listed bodies in the appropriate forum(s) so we are happy with the proposals.</td>
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<td><strong>CE(S)B Proposed Legislation</strong></td>
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<td>Section 4 sub section 1 “Each local authority, the persons listed in Schedule 1 and any community bodies must participate with each other in community planning.” (Schedule 1 is at the end of this document). Section 9 outlines the duties on the Community Planning partners which states that despite the duties imposed on the Community Planning partners a Community Planning Partnership may agree (a) that a particular Community Planning Partner need not comply with a duty in relation to a particular local outcome, or (b) that a particular Community Planning partner need not comply with a duty in relation to particular local outcome only to such extent as may be so agreed.</td>
<td>Setting out a list could potentially exclude relevant bodies although the key partners are included here. The statutory requirement will ensure it is easier for our Community Planning Partnership to ensure relevant partners are they are involved in relevant local outcomes.</td>
</tr>
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<td>Section 8 subsection 1 requires each community planning partner mentioned in Section 8 sub section 2 (detailed in Q55) to (a) facilitate community planning, and (b) take reasonable steps to ensure that the community planning partnership carries out its functions. This replaces the previous requirement detailed within the Local government in Scotland Act 2003 where section 15 “Community Planning” sub section 1 details that it is the duty of a local authority to initiate and having done so maintain and facilitate a process of community planning.</td>
<td>The changes to the core duties for all public bodies, and stronger participation of third and private sectors, and the way in which local partnerships are structured and operate, will ensure that leaders of all partners have a shared responsibility through the CPP for community leadership.</td>
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Scottish Disability Equality Forum
Shaping and Leading Disability Equality in Scotland

SDEF Response
Call for written evidence
Community Empowerment (Scotland) Bill

Scottish Disability Equality Forum (SDEF) works for social inclusion in Scotland through the removal of barriers to equality and the promotion of independent living for people affected by disability.

We are a membership organisation, representing individuals affected by disability, and organisations and groups who share our values. Our aim is to ensure that the voices of people affected by disability are heard and heeded within their own communities and at a national and political level.

About this call for written evidence

The Community Empowerment (Scotland) Bill was introduced into the Scottish Parliament, on 11 June 2014. The Scottish Parliament's Local Government and Regeneration Committee launched a call for written evidence at the end of June as part of its Stage 1 consideration of the Bill.

This call for written evidence allows organisations and individuals the opportunity to comment on the Bill.

SDEF responded to the Scottish Government Consultation in January 2014. Our response can be downloaded from our website: http://tinyurl.com/mmbkr7t

General points
- SDEF are largely in favour of what the Bill sets out to do, but there are areas that could be strengthened to ensure communities are fully engaged and supported.
- Our members feel that many people may not understand the legalities within the document.
- Members feel that those involved in the decision-making process may not necessarily be representative or reflect the needs of the whole community. Additional mechanisms and resources are
required to ensure that wider community involvement is encourages and supported.

Answers to specific questions

Before completing this response, SDEF polled its members, made up of individuals, organisations and Access Panels, with a shorter version of this consultation. We have used these to help develop our response.

Question 1
To what extent do you consider the Bill will empower communities? Please give reasons for your answer.

SDEF agrees with the requirement to establish a Community Planning Partnership (CPP), and strongly supports the proposal for a stronger emphasis on outcomes.

Whilst we welcome the focus on addressing inequalities in the consultation, we are concerned as to how the needs of equalities groups will be met in practice by CPPs.

Historically, disabled people do not believe their needs have been well recognised in the Community Planning Process.

The role and function of the thematic and neighbourhood groups that support CPPs has lacked some transparency and this is not good for democracy.

We are concerned that the requirement to ‘develop and agree a common understanding of local needs and opportunities’ is separated from the requirement to work with local communities and the third sector.

We welcome an outcome improvement process approach.

Members comment “Local empowerment with actual influence on the use of limited local resources must be good”

Question 2
What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

We fully support the “Scotland Performs” plan for all public services in Scotland to work towards, as it provides a clear direction for all public services. However, we suggest when asking people what they want for Scotland that it is considered how disabled people in communities can contribute to the outcomes. By ensuring full inclusiveness in the engagement process, will strengthen the community outcomes.
Members comment “Those who are interested in this decision making process, may not reflect the aims and wishes of the majority of the community”.

In the draft Bill, it is proposed that the public service authority will decide whether a request will provide significant benefit to the community.

Whilst the community applicants can show how a request might improve outcomes in health, regeneration, social or environmental wellbeing, the impact of request can only truly be felt by the community. It is therefore vital that the decision-making process involved disabled people from the outset.

**Question 3**

*Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?*

We recognise the important role of local government in facilitating local decision making and delivery local services. We also note the challenges that disabled people face in taking part in the democratic process.

Many local authorities have also moved towards restricting support provision to those in the most serious physical need. This means that those with lower levels of need are left without the support they need to gain work, education, relationships or take part in local democracy.

A simple belief in the purity of democracy is not sufficient to ensure democracy is provided. Passing democracy further down the chain to community councils is not the answer. Without a significant improvement in the way that all democratic bodies take into account disabled people’s needs, such a move would be likely to increase the problem.

We believe that any impact on equality groups should be measured as part of the mainstream process of policy creation.

We feel that many disabled people within their communities may not be fully represented or heard within their local community groups. Therefore we suggest that mechanisms and resources are implemented to assist disabled people to be fully engaged in their community.

**Question 4**

*Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?*

The bill is a start to ensuring that communities can participate more readily in decisions which affect them, but must be fully transparent and
allow for those affected to make informed contributions in a meaningful way.

This is why the process of engagement itself should be part of the plan – true co-production requires a willingness on all sides to take into account the needs of others to contribute fully.

Members comment “This is a legislative process and covers the ownership of land and buildings. In my experience, the typical community does not possess the skills and knowledge to suddenly make the right decisions which they may face, and it may end up that a few ‘pressure group’ members make a decision which really doesn’t benefit the community at large.”

If the Community Empowerment Bill is to benefit communities, it must be provided in a language which is accessible to all. Currently, the information within the Bill is high level, containing jargon and concepts which would not be understood by the average layperson; this must be changed if communities are to gain benefit from the Bill.

If the Community Empowerment Bill is to benefit communities, it must be provided in a language which is accessible to all. Currently, the information within the Bill is high level, containing jargon and concepts which would not be understood by the general public, this must be changed if communities are to gain benefit from the Bill.

Contact

Thank you for considering the comments in this response paper to the Local Government and Regeneration Committee’s call for evidence on the Community Empowerment (Scotland) Bill.

Please contact Scottish Disability Equality Forum, Morven Brooks, Information and Communications Officer morven.brooks@sdef.org.uk Tel: 01259 272063 regarding the contents of this response.
Dear Kevin

I am very pleased to attach a copy of the Commission on Strengthening Local Democracy’s Final Report for consideration by the Committee. Over the last year, the Commission’s work has led it to consider a number of issues that the Committee has also focused on in its recent inquiries, particularly in relation to its work around the Flexibility and Autonomy of Local Government, and its current scrutiny of the Community Empowerment and Renewal Bill.

As a Commission we have endeavoured to be evidence led, and think holistically about the opportunities to strengthen local democracy in Scotland. Our final report tries to emulate that approach, and for that reason the Committee may wish to consider the report as a whole.

Our focus has not been on any particular Governments or Ministers, but on tackling a 50 year trend in how we ‘do’ democracy here in Scotland. As a country we have tried taking power to the centre over that period, and the evidence that I have received suggests that this has failed to address the deep rooted social problems facing Scotland, and has led to substantial disaffection with our current democracy. As a Commission, we believe that a major transformation is therefore now required if we are to turn that situation around.

COSLA is not scheduled to consider the report until late October, and the following comments are therefore made in my capacity as Chair of the Commission. COSLA will also be providing separate written evidence to the Committee in relation to its call for evidence.

**General Comments**
The Community Empowerment and Renewal Bill is, in many ways, part of a growing movement that recognises that a different approach to power and decision making is required in future. I welcome its development as a refreshing decentralising step in
contrast with the centralising mind-set that has become the dominant policy driver of recent decades.

The Bill itself contains a number of interesting ideas that are designed to push change forward within the system of democracy that we have in Scotland and the UK. However, there are also some key points where its approach stops short of the kind of local democracy that I want to see in this country.

In particular, it is important that we do not lose sight of the fact that Scotland is on many measures now the most centralised country in Europe. In our report, we set out 7 principles around which democracy in Scotland can be made stronger, alongside a number of options where we believe the vital preconditions can be put in place.

Above all, we are clear that democratic power must lie with people and communities, who give some of that power to governments and local governments, not the other way round. To us, strengthening local democracy is therefore firmly about empowering (a subsidiarity mind-set) not “decentralising” (a centralist mind-set).

While I support the aspiration of the Bill, it is built on a relatively centralist approach to democracy in this regard. For example, communities have the right to take proposals for asset transfer or outcome improvement to national or local government, but it is for them to decide. In other words, communities have to persuade government and local government to “cede” powers.

For that reason I am anxious that we do not allow ourselves to believe that bringing forward legislation that allows some power to be ‘handed down’ by the centre is sufficient to challenge the overall direction of travel that has taken place in Scotland over the last 50 years. Ultimately that do little to fundamentally transform democracy in Scotland.

While the Commission was not remitted to review the provisions of the draft Bill in detail, it may also be useful for me to set out some specific observations that may assist the Committee:

**National Outcomes**

I welcome the Bill’s emphasis on embedding outcomes not inputs and processes as the basis for improving lives effectively in Scotland. So too do I recognise that nationally elected government has a clear locus to set out the national priorities and rights that everyone in Scotland is entitled to. This very much reflects our work as a Commission.

However, the Bill provisions appear to be less clear about the wider interdependencies that are needed for this system to flourish. In my view, the ability to set national outcomes is only one part of the end to end focus on outcomes that is
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required. To be delivered effectively, communities and their representatives must be much more empowered to address local priorities in ways that suit their local needs and preferences. Indeed, the international evidence we collated suggested that outcomes are best, and inequalities lowest, where national policy interacts effectively with highly localised, empowered and participative democratic arrangements. In our vision for democracy, both are necessary to improve wellbeing and reduce inequalities for the whole of Scotland.

I believe that this means looking at the whole system of governance, not parts of it in isolation. As it stands, the Bill is focused on improving national choice and control around outcomes, but is not equally weighted towards handing over the levers required for effective local decisions and choices around these.

A further element of the Commission’s work may be relevant to the Committee in this regard. Internationally, it is clear from the evidence we gathered that macro-economic and fiscal policy has a critical impact on inequalities and outcomes. It follows that developing these policies, and the national outcomes that drive them, requires significant analysis and scrutiny. Our suggestion has been that an Office of Wellbeing, akin to the Office of Budget Responsibility, is created to independently monitor and report on the wellbeing impacts of fiscal and macro-economic policy in this regard. “Wellbeing” would be defined in social, economic and environmental terms, with a particular focus on inequalities of wellbeing. I believe that this is necessary to ensure transparency and accountability for national decisions at local level.

Community Planning
As a Commission, we have recognised the helpful shift towards local outcomes and partnership working that community planning has sought to put in place. The strengthening of Community Planning has focused on the need for public services to come together to focus on local outcomes, and usefully created Health and Care Partnerships, Community Justice Partnerships, and other developments that are challenging pre-existing silos between different public services, albeit sometimes at the cost of creating organisations that lack a clear line of sight to local democratic accountability. Our report makes a number of recommendations about how participation and accountability around community planning partnerships can be improved now.

Nevertheless, as a Commission our objective has also been to push subsidiarity as far as it can go, and for local governance to be empowered by, and accountable back to, local communities in ways that are not possible at the moment. For that reason we have also suggested that the current architecture of public services and governance in Scotland is out of alignment, and recommended a fundamental review of the structure, boundaries, functions and democratic arrangements for local governance of all public services in Scotland. We believe that this review should be based on
strengthening local democratic accountability, subsidiarity and public service integration in order to localise and simplify how all public services are governed and accountable to local communities. Our ambition would be for such a review to create an integrated system of local democratic governance built around the opportunities and identities of different parts of Scotland.

**Participation Requests**

Notwithstanding my overarching ambition for a much more significant shift in power, I support the principle of a ‘right to challenge’ to take on new responsibilities where this would reduce costs or improve outcomes for communities. However, I believe that the same logic should run throughout the democratic system; including the right for local government to challenge for functions currently delivered by national agencies where it can be shown that doing so will improve local outcomes more effectively or efficiently.

I am also clear that these kinds of processes need to enable the effective participation of every community Scotland, not just the wealthy or articulate. One of the issues that concerned the Commission most in its own evidence gathering was the unequal capacity of individuals and communities across Scotland to participate at the moment. The danger is that if requests are simply dealt with according to demand, affluent communities who may already be relatively well ‘heard’ could gain the most, rather than those communities that could derive the greatest benefits. Enacting the provisions of the Bill will therefore need to be done in ways that actively guard against this and ensure that those facing multiple social and economic challenges, particularly in terms of deprivation, are able to get extra support to help them release their potential. Without effective capacity, delivering the policy aspirations of the Bill may well be compromised.

**Non Domestic Rates**

The evidence generated in the Commission’s work repeatedly drew attention to the weak state of local fiscal empowerment in Scotland at the moment. We found that national governments, not communities, tend to have held the purse strings in Scotland. The key issue is not only that this disempowers local government, but that it disempowers communities.

I believe that much greater local fiscal empowerment is therefore vital if we are to strengthen local democracy in Scotland, and I support the steps set out in the Bill to allow councils to create localised relief schemes for non-domestic rates in this regard. I believe that doing so is one of the ways in which greater fiscal empowerment would help boost local economies and jobs.

It is important to note, however, that this is far from the only step that is required. In our report, we outline a suite of options that we believe would give local communities the democratic power to look after their own financial affairs, stimulate
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Local Democracy economies, and bring new thinking and capacity to bear on improving outcomes. Fundamental change is required, and I look forward to working with the Committee to deliver that over the coming period.

Other Issues
My final observation is that the Bill does not contain the legal or constitutional underpinnings that I believe are required to strengthen local democracy in Scotland, and which would provide communities with the rights that other countries have long enjoyed in this regard.

Rather than depend on powers being handed down from ‘higher’ levels of governance, I am committed to a system of democracy that is based on spheres not tiers of governance, and in which different spheres have distinct jobs to do that are set out in ‘competencies’. Of course, this is insufficient if it stops at local government: subsidiarity is ultimately about communities’ right to be full partners in local democracy and to be actively involved in local decision making about the places in which they live.

It seems to me that the Bill presents an ideal opportunity to develop this approach and guarantee a commitment to subsidiarity, local choice and control, and community empowerment, not least of all by putting the European Charter on Local Self Government on a statutory footing in Scotland. Again, the Commission’s report makes a series of recommendations in this regard.

I hope that this information is helpful, and as always I would be pleased to discuss the work of the Commission, or any of specific points with you in further detail.

Yours sincerely

David O’Neill
Chair of the Commission
The Scottish Parliament and Regeneration Committee

Community Empowerment (Scotland) Bill

The Law Society of Scotland’s written evidence
September 2014
Introduction

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members, but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

To help us do this, we use our various Society Committees which are made up of solicitors and non-solicitors and ensure we benefit from knowledge and expertise from both within and outwith the solicitor profession.

Both the Law Society of Scotland’s Planning Law and Rural Affairs Sub-Committees have considered The Scottish Parliament’s Local Government and Regeneration Committee’s call for evidence and should like to respond on behalf of the Society as follows:

General Comments

The Society while welcoming the policy intent of the bill to empower community bodies through ownership of land and buildings in order that people can meaningfully participate in decisions that affect their lives, expresses some concern with regard to the complexity of this bill.

In particular, the Bill itself in terms of Part 4 (COMMUNITY RIGHT TO BUY LAND) modifies Part 2 of the Land Reform (Scotland) Act 2003. There are multiple amendments to certain sections of the 2003 Act of the Bill which are rather difficult to follow and this does not seem to sit well with the aim of empowering communities. The Society suggests that it would be simpler to repeal and re-enact part 2 of the 2003 Act.

For these proposals to work effectively, community empowerment requires to be easily acceptable and workable by the very communities it seeks to empower. The Society expresses a concern that if a community body requires to undertake much in the way of
initial groundwork then there is a risk that enthusiasm will be lost if the proposals appear overly bureaucratic.

The bill is intended to extend and increase the powers of communities in involving them in community right to buy in both urban and rural settings and also to provide them with a form of compulsory purchase order as outlined at part 4 of the bill (COMMUNITY RIGHT TO BUY LAND) in respect of abandoned and neglected land at section 48 of the bill which appears to be undefined.

The Society also notes that there are already in place a wide range of controls and powers ready for use where councils are so minded and that the justification exists. In general policy terms, the Society notes that the general swing towards de-regulation in order to assist business and increase competiveness has an equivalent in a system in local government to do more with less.

Accordingly increased bureaucracy and managerial control is not always conducive to this. The Society believes enacting new measures which councils may find difficult to prioritise could have the unintended consequence of detracting from the credibility of the policy intent of this bill.

The Society also notes that a lot of the detail will be set out in subsequent regulation and also guidance and this makes it difficult at this stage to anticipate the overall effect of these provisions.

With particular reference to the questions set out by the Scottish Parliament’s Local Government and Regeneration Committee, the Society should like to respond as follows:

**Question 1: To what extent do you consider the Bill will empower communities, please give reasons for your answer?**

The Society refers to its general comments.
While the Society that in terms of the Land Reform (Scotland) Act 2003 has assisted in bringing communities together in rural Scotland implementing a community right to buy, the Society questions the proposals as set out at Part 4 of the bill which extends the right to buy to the whole of Scotland and also provides a framework for community bodies to purchase abandoned or neglected land.

The Society highlights the marked differences between a right to buy exercised in rural Scotland and one now to be exercised with regard to land in an urban setting which may well have a higher acquisition and development consequent costs.

The Society highlights the unintended consequence of urban land in respect of which community interests may be registered where this land may already be subject to a redevelopment proposal (for example allocated in a development plan and/or subject to an extant planning permission). While the Society notes that Scottish Ministers may in those circumstances conclude that registration is not in the public interest, the uncertainty with such an application could have an adverse impact on investment decisions for developers.

The Society respectfully suggests that there requires to be clearer rules on how Scottish Ministers will deal with such an application where there are active development proposals and accordingly suggests that land subject to an active planning permission will, for a limited period of time, not be subject to registration under Part 4 of the bill. The Society also questions the lack of certainty as to whether the community purpose will be implemented and, in the case that it not being so implemented, what provisions are to be put in place with regard to “clawback”.

**Question 2: What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?**

Again, the Society refers to its general comments.
Question 3: Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill. If not, what requires to be done to the Bill, or to assist communities to ensure this happens.

The Society notes that at present Highlands and Islands Enterprise assist communities by awarding grants and assuming an advocacy role in the direction of other organisations which have exercised the right to buy.

The Society suggests that a central organisation could be set up in order to steer community bodies through the provisions of this bill.

Question 4: Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

The Society's response to Question 1 identifies a requirement for further amendments to section 33 to restrict the application of community right to buy in urban areas where there is an active development proposal. If such provision is not made then an unrestricted community right to buy could have unintended but significant adverse effects on investment decisions. For example, it would not be uncommon to have a situation where planning permission is obtained for a redevelopment proposal with the aim of subsequently selling or leasing parts of the development to individual developers. There would currently be nothing to prevent an application for registration of a community interest being made in these circumstances as there would be no existing concluded missives or option in place. The risk of such an application being made, even if it is rejected by Scottish Ministers, may be a disincentive to investment in a Scottish development. At the very least, it would cause delay.

The Society submits that the primary legislation (as opposed to guidance) should provide greater certainty in the circumstances in which the community right to buy would operate in relation to active development proposals. In particular, the Society suggests that consideration is given to allowing for a mechanism to obtain a certificate exempting a site from community right to buy for a certain amount of time. This would allow investment
decisions to be made with a degree of certainty but would also retain the community right to buy in the event that the development did not proceed as envisaged.

The Society makes specific reference to section 48 of the bill (abandoned and neglected land) and notes that this term has not been defined but rather, land is eligible in terms of section 97C of the 2003 Act as amended by section 48 of the bill, if in the opinion of Ministers it is “wholly or mainly abandoned or neglected”. The Bill provides that in determining whether land is eligible, ministers “must have regard to prescribed matters. ”.

The lack of a definition for abandoned or neglected land gives rise to considerable uncertainty in relation to what land would be within the scope of section 97C. The Society believes that there should be a proper definition of abandoned or neglected land. There is a particular concern about how the Part 3A process would operate in relation to long term development projects which may take a number of years to come to fruition.

The Society further notes that the procedure with regard to the community right to buy abandoned or neglected land appears to be a similar procedure to compulsory purchase and accordingly believes that the tests should also be similar. Accordingly, there should be a requirement for a viable business plan and robust development proposals in respect of any community right to buy abandoned or neglected land.

From a more practical point of view, the Society notes that, in terms of section 97Q of the 2003 Act as inserted by section 48 of the bill, there is an ability for Ministers to impose statutory real burdens on the land and accordingly questions the relationship of these burdens with the ultimate decision of the Clerk to the Land’s Tribunal to confer title. The Society believes that it would be helpful to know what was to be envisaged here, e.g. what types of burdens and, in particular what types of clawback provisions should be put in place if the development contemplated by the community authority is not taken forward?

The Society further notes that the Clerk to the Lands Tribunal cannot grant better title than that possessed by the owner or person entitled and that accordingly title to be transferred to the community body will be subject to the same title conditions as that of the previous owner. This may cause difficulties for any project going forward and is to be distinguished from the provisions for a Compulsory Purchase Order which provide for a clean title to be
obtained by way of a General Vesting Declaration. Accordingly, it may then follow that title transfer to the community cannot be used to fulfil its intended purchase with the consequent issues around funding.

The Society further highlights the practical issue with regard to the intent of the community bodies’ right to buy against the provisions of the Local Development Plan and whether their proposal conflicts with the Local Development Plan or otherwise.

The Society highlights a further practical issue with regard to any owner who begins to maintain abandoned or neglected land once the provisions of section 48 of the bill are enacted.

The Society makes particular reference to section 97D (4) of the 2003 act as inserted by section 48 of the bill and note that the term “sustainable development” is undefined. The Society also notes Part 5 of the bill (ASSET TRANSFER REQUESTS) and questions how this should apply to local government trusts, companies, joint organisations, or ALEOs (Arms Length External Organisations). The Society questions why there is no appeal to Scottish Ministers against a refusal by a local authority for an asset transfer request.

The Society notes the provisions at part 6 of the bill (COMMON GOOD PROPERTY) and questions how an asset transfer request would work in relation to common good land. The Society would also suggest that the opportunity could be taken to simplify the law on common good land.

The Society makes particular reference to the recent Petition of East Renfrewshire Council for an order under section 75 (2) of the Local Government (Scotland) Act 1973 in respect of certain land at Cowan Park, Barrhead, East Renfrewshire [2014] CSOH 129 where that a PPP arrangement in respect of a new school to be built on common good account was held not to be a disposal and accordingly the Petition was refused as unnecessary. The case illustrates the current uncertainty on what constitutes a “disposal” as opposed to an “appropriation” in relation to common good land.
The difficulty is that whilst a local authority can submit a petition to court for alienation of common good land, the process cannot be used to authorise appropriation of common good land. The only alternative for a local authority in these circumstances is to petition for a private bill as was done with the recently enacted City of Edinburgh Council (Portobello Park) Act 2014.

The Society would suggest that the current bill could be used to clarify the law on alimentation and appropriation of common good land. It is suggested that a requirement to resort to Private Bill procedure is not necessarily the best use of public resources and that the Bill should include a mechanism to authorise alienation or appropriation. Such a mechanism could, as is currently the case for alienation of common good land, be through a court petition. However, as the bill elsewhere vests public interest decisions on the use of land in Scottish Ministers, consideration could also be given to the authorisation procedure for alienation or appropriation of common good land similarly being through Scottish Ministers.

Question 5: What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy Memorandum?

The Society has no comments
Dear Mr Wixted

Community Empowerment (Scotland) Bill – call for evidence

This is a joint response from the Accounts Commission and the Auditor General for Scotland to the Committee’s call for evidence on the Community Empowerment (Scotland) Bill.

We responded in September 2012 to the Scottish Government’s previous exploratory consultation on its proposals for a Bill. We also responded to the later 2013 consultation on the ten topics which had been identified for possible inclusion in the Bill. We therefore welcome this opportunity to provide a further response to the Bill itself, and are prepared to offer further input as required as the Bill progresses.

The Committee will be aware that the Commission and Auditor General carried out audits of the Aberdeen City, Scottish Borders and North Ayrshire Community Planning Partnerships (CPPs) during summer 2012. Our audit reports were published in March 2013 along with a national overview report drawing on the common messages from the three reports.

We are undertaking a further five audits of Community Planning Partnerships during 2014. Three of the audit reports have already been published (Glasgow, Falkirk and Moray) with the remaining two (West Lothian and Orkney) due to be published in October.

We will also be publishing a further national report on community planning in Scotland in November of this year. That report will not only summarise the findings of this year’s local CPP audits, but will also assess and report on the progress that has been made at a national level in supporting improved community planning since our March 2013 report Improving Community Planning in Scotland.

We will be happy to brief the Committee on the findings of that report once it has been published.
Our response to the Committee’s call for evidence is framed around the first four questions upon which the Committee is seeking responses. We have not commented on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum.

1) To what extent do you consider the Bill will empower communities, please give reasons for your answer?

In our response to the Committee’s inquiry into public service reform and local government in Scotland: Strand 3 (Developing new ways of delivering services) we highlighted the fact that new approaches to delivering services need to be designed with the user in mind and should focus on delivering the highest quality of services within the available budgets. Local people potentially have an important role to play in public sector service redesign. We noted at that time that the community empowerment and renewal agenda highlights the important role that communities can play in participating in new models of service delivery and developing models of co-production that draw upon the knowledge, skills and experience of local people in ways that maximise the impact and value of public assets (people, buildings, knowledge, etc.).

We made the point in that response that we believe that the public sector should consider extending collaboration and joint working with communities to deliver more efficient and effective services in the future where there is a strong evidence based case to do so. The proposals within the legislation to provide for community bodies, or groups of bodies, to request to take part in a process to improve outcomes are a useful addition to existing requirements on public bodies to consult and engage with communities and users of services. The practicalities of such collaboration will require careful thought, to reduce the risk of community disaffection as a result of over bureaucratic arrangements.

Similarly, the proposed extension of the right to buy legislation in the Bill to cover urban areas and the proposed introduction of a right for communities to request to take over a public asset should all give greater power to communities than currently exist.

It is useful that the Bill provides definitions of community bodies to help fulfil its purpose. The Christie Commission referred to the “myriad of overlapping ways in which people come together through a common set of needs, both as communities of place and communities of interest” and to the “benefits of working with service users at a community level to decide what will work for them”. This will be a complex undertaking for public bodies. Delivering the ambitions set out in the Bill will require a commitment to levels of consultation and engagement with communities and users of public services beyond those that we have seen by public bodies to date.
2) **What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?**

The requirement for each CPP to prepare a local outcomes improvement plan will have significant impact on those organisations being given increased duties in relation to community planning. In our response to the Scottish Government’s previous consultation on the Bill, we noted that “the challenges involved in CPPs demonstrating a difference in outcomes will be substantial” and that “progress will require strong and sustained shared leadership and changed behaviours as much as good plans”. We have already noted in our March 2013 report *Improving community planning in Scotland* the improvements needed to single outcome agreements. Any shared plans will need to specify what will improve, how it will be done, by whom, for whom, when, what resources will be needed, and how progress will be measured and reported.

The proposed introduction of a range of new rights for communities will mean that many public sector organisations will need to establish new administrative systems and processes to support these changes, for example to deal with community participation requests or right to buy assets. This will have resource implications for the bodies concerned. More significantly, there will also need to be a willingness by public bodies to adopt fundamentally different ways of working with communities in the redesign and delivery of public services. Implementing the proposals contained within the Bill may challenge current ways of working within and across organisations and raise legal issues which may not be simple to resolve.

3) **Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?**

In our report *Improving Community Planning in Scotland* we reported that many CPPs were rethinking how they consult with local communities with the aim of tailoring services around a clear understanding of local need by involving local communities in identifying local issues and deciding how best to respond to them. However, much of the focus was still on consultation and getting people involved. Therefore there is a long way to go before services are truly designed around communities and the potential of local people to participate in, shape and improve local services is realised.

It is crucial therefore that the Scottish Government and COSLA work effectively with local authorities and other public bodies to ensure that a culture that promotes effective engagement with and empowerment of communities is established. In addition, as the readiness and capacity of communities and service users to participate in contributing to improved public services is likely to vary widely, it is essential that appropriate support (guidance, training and financial resources) are made available to communities to enable them to participate effectively in contributing to improved public services.
4) Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

There are a number of aspects of the Bill that we would bring to the Committee’s attention:

- Part 1 of the Bill and its related policy memorandum are both clear that Scottish Ministers must prepare and publish reports about the extent to which the national outcomes have been achieved. But they do not specify who might receive these reports or what role, if any, the Scottish Parliament might have in holding Ministers to account for their achievement.

- Further in relation to Part 1, in our response to the previous consultation on the Bill, we noted that whilst the proposal to set national outcomes is, on the face of it, sensible, there are risks that the national focus of much recent reform activity can create tensions between national and local priorities for change. Further, if the commitment to set national outcomes is intended to provide greater clarity about trends in national performance, it is important to recognise that national outcomes can mask significant local variation in performance. Given this, it would be important that any national indicators that are set help assess how reductions in the wide inequalities of outcomes (health, life expectancy, educational attainment, etc.) that persist across Scotland are being addressed.

- Further in relation to Part 1, we note that the Bill commits Scottish ministers to prepare and publish reports about the extent to which the national outcomes have been achieved, and that these reports must be prepared and published at such times as the Scottish Ministers consider appropriate. We would suggest that there is benefit in being clearer about the frequency of such reporting, especially given the likely influence of such reports on the proposed annual reports of progress by community planning partnerships against their local outcomes improvement plan, as required under Part 2 of the Bill.

- Part 2, section 8 (governance) of the Bill does not in our opinion clearly set out how the governance and accountability arrangements for the proposed community planning partnerships are expected to operate, not least in relation to auditing arrangements. This includes in particular how the performance of CPPs as partnerships will be assessed, and how they will be held to account for the discharge of the duties set out in the Bill, including their progress against outcomes. This seems a significant gap.

- In its previous consultation on the Bill, the Scottish Government asked “how might the legislation best capture the community leadership role of councils without the CPP being perceived as an extension of the local authority?”¹ The Bill seems silent

¹ Scottish Government, Consultation on the Community Empowerment (Scotland) Bill, 6 November 2013, question 58, p.38.
on any community leadership role of a local authority, given its repeal of the duty on a local authority to facilitate community planning in the 2003 Local Government in Scotland Act. In our response, we stated that “it is difficult to predict what might happen were the specific duty on councils to ‘initiate, facilitate and maintain’ the community planning process to be repealed”. The Committee may therefore wish to explore the implications of this.

- At present, for many CPPs the resources to support the community planning process are predominantly provided by the local authority through community planning officers and/or teams employed by and working within the council. Section 9(3) of the Bill requires partners to commit resources to support community planning. But the Bill appears to be silent on the extent to which the resourcing of the administration of the community planning process should be seen as a partnership task. reporting

- In relation to Part 5 of the Bill (asset transfers), in our response to the Scottish Government’s previous consultation on the Bill, we noted that it would be necessary to be clear about what would happen in case of failure by the community to make effective use of the asset. The Bill seems silent on this issue.

We hope that this response provides a useful reflection of our experience so far from our Best Value audit work and scrutiny of community planning, and of our responsibilities in holding public services to account and encouraging improvement. We are of course willing to share further reflections as appropriate, as the process for the Bill continues.

Yours sincerely

Douglas Sinclair
Chair, Accounts Commission for Scotland

Caroline Gardner
Auditor General for Scotland
The Scottish Wildlife Trust1 welcomes the opportunity to submit evidence to the Local Government and Regeneration Committee regarding the Community Empowerment (Scotland) Bill.

We have concentrated our evidence on the questions which could impact on Scotland’s natural capital2.

Q2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

As stated in explanatory notes: Schedule 1 to the Bill sets out a list of public sector bodies which will be required to participate in community planning. Some of these bodies (including NHS bodies, Scottish Enterprise and Highland and Islands Enterprise) are already statutory community planning partners. Others (including Skills Development Scotland, Scottish Natural Heritage and the Scottish Environmental Protection Agency) are not statutory partners at present but as a matter of practice frequently participate in community planning.

We welcome the inclusion of SNH and SEPA amongst others as statutory partners in community planning. We believe this will help mainstream the environment in community planning and will enable the delivery of better outcome. This accords with the Scottish Biodiversity Strategy which states:

Public bodies are urged to play their part in realising these [2020 Challenge] outcomes, with a more collaborative approach between sectors and connecting single outcome agreements, community planning and health partnerships.

However, we do have concerns regarding present capacity for such government agencies to engage with 32 CPPs. As this will not be cost neutral, will this divert resources away from these agencies performing other functions? This could have a detrimental impact on protecting and enhancing biodiversity and ecosystem services.

That said, there is merit in having such agency expertise in helping influence local outcomes; a high quality environment is essential for a flourishing Scotland and safeguarding Scotland’s natural capital will help deliver the Government’s national outcomes. Indeed, we believe work still needs to be done to mainstream biodiversity amongst decision makers as demonstrated by the agreed six national priorities3 in Single Outcome Agreements which lack an environmental outcome amongst the six.

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1 The Scottish Wildlife Trust’s purpose is to advance the conservation of Scotland’s biodiversity for the benefit of present and future generations. With over 36,000 members, several hundred of whom are actively involved in conservation activities locally, the Trust is the largest voluntary body working for all wildlife of Scotland. The Trust owns or manages over 120 wildlife reserves across Scotland and campaigns at local and national levels to ensure wildlife is protected and enhanced for future generations to enjoy.

2 Natural Capital can be defined as the world’s stocks of natural assets which include geology, soil, air, water and all living things. It is from this Natural Capital that humans derive a wide range of services, often called ecosystem services, which make human life possible

3 †economic recovery and growth; ‡employment; ‡early years; ‡safer and stronger communities, and reducing offending; ‡health inequalities and physical activity; ‡outcomes for older people
Q4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

*Duty on Ministers*

We note Part 1 of the Bill places a duty on Ministers to develop, consult on and publish a set of national outcomes for Scotland, which builds on the “Scotland Performs” framework.

The Trust support the statutory consultation process for determining national outcomes as well as the increased transparency regarding reporting progress towards achieving national outcomes.

*Abandoned or neglected land*

The Trust notes Section 48 inserts a new Part 3A into the Land Reform (Scotland) Act 2003 Act to give communities a right to buy land that is wholly or mainly abandoned or neglected, for the purposes of the sustainable development of that land, where there is no willing seller.4

We also note that the new Section 97C of the 2003 Act defines land which is to be classed as eligible for the purposes of Part 3A of the 2003 Act. Subsection (1) provides that eligible land is land which is wholly or mainly abandoned or neglected in the opinion of Ministers.5

With regard to Part 3A, the Trust is concerned that there is no definition of what is meant by abandoned or neglected land. A definition would aid the scrutiny of the Bill, even if such a definition were not to be included in the Bill.

We believe a definition is important because land which has high biodiversity value and delivers ecosystem services may give the appearance of being abandoned or neglected; indeed some of the land the Trust manages for wildlife across Scotland, including internationally and nationally protected sites, may appear to the ‘uninformed eye’ to be abandoned or neglected when in fact natural processes, which need little intervention, such as woodland and scrub regeneration are being encouraged. Without this clarity, one could also argue that active blanket bog (outwith a protective site – see below) which is delivering public benefits through ecosystem services such as carbon sequestration, increased biodiversity, water retention and filtration, is neglected or abandoned – purely because there is no active management.

For this reason, the Trust would like to seek assurances that land owned, managed or designated for nature conservation purposes or being of value for nature conservation either within itself or as part of the surrounding ecosystem, is excluded from any definition of what constitutes abandoned or neglected land.

The Trust believes that for land that is not included in the above categories, the opinion of Ministers regarding the value and contribution to sustainable development of ‘abandoned or neglected land’ in its current state should be informed, *inter alia*, by consideration of the role the site makes in terms of providing ecosystem services e.g. flood prevention, biodiversity, carbon sequestration, pollination, improved water or air quality.

It should also be borne in mind that previously abandoned or neglected land will naturally become colonised (a process known as succession) and thus has the potential to increase in value, *because of the fact that it has been left unmanaged*. This type of habitat is recognised in the UK Biodiversity Action Plan list of priority habitats e.g. *Open Mosaic Habitats on Previously Developed Land*. Under this priority habitat, notable features present may include:

- increased species richness especially for invertebrates and birds
- an unusual assemblages of plants

In the context of an intensively managed lowland landscape, such habitats may be an oasis for wildlife.

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4 Extracted from explanatory notes
5 *Ibid*
However, the Trust also recognises that ‘derelict’ land can be blight on local communities. Indeed, the Trust working in partnership\(^6\) in the Edinburgh Living Landscape initiative has a project aimed at rejuvenating ‘stalled sites’ in Edinburgh to deliver benefits for local people and wildlife.

**For further information please contact:**

Dr. Maggie Keegan  
Head of Policy and Planning  
Scottish Wildlife Trust  

September 2014

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\(^6\) Edinburgh Living Landscape partnership consists of Scottish Wildlife Trust, City of Edinburgh Council, Royal Botanic Garden Edinburgh, Green Surge and Edinburgh and Lothians Greenspace Trust.
COSLA’s response to the Local Government and Regeneration Committee’s call for evidence on the Community Empowerment (Scotland) Bill.

Introduction

COSLA welcomes the opportunity to submit written evidence to the Local Government and Regeneration Committee on the Community Empowerment (Scotland) Bill. Please note that COSLA is submitting evidence to the Finance Committee on the resources issues created by the Bill separately.

Having worked closely with the Minister and the Scottish Government Bill team there was little surprise in the proposed legislation. COSLA is supportive of the Scottish Government’s ambition to empower communities and as such welcomes the Bill. In this spirit, there are several areas in which the Bill could be strengthened and we have outlined these below.

General Remarks

COSLA’s vision statement seeks to put the position of local self-government on a constitutional footing as soon as practical. The constitutional debate elicited by the forthcoming Referendum has already been identified as a key opportunity to strengthen local government and democracy, regardless of the outcome of the vote itself. COSLA welcomes the Scottish Government’s willingness to enter into discussion on this matter.

COSLA strongly believes that the most practicable way to do this in the short term is by giving life to the European Charter of Local Self-Government through the enactment of domestic legislation. The Charter is a part of the binding Council of Europe treaty framework intended to protect human rights and democracy across the 47 members. It is a requirement for candidate members of the European Union to sign up to. The European Convention on Human Rights (ECHR) is another element of the same treaty framework. All existing members of the EU have signed and ratified the provisions. In the majority of cases the provisions are reflected in the member states’ constitutions.

As is well known, the United Kingdom is unusual in not having a written constitution. The position of local government is defined in a myriad of pieces of legislation, and there is no right to local self-government in Scotland or the UK. We accept that there is evidence of both the UK and Scottish Parliaments being prepared to take forward legislation that enacts some elements of the Council of Europe treaty frameworks. For example, the ECHR provisions are embedded in UK legislation through the Human Rights Act 1998. It places obligations on public bodies to observe its provisions, and is binding on the legislation from the Scottish Parliament. However, the main issue here for COSLA is how local democracy is protected, and in particular how the European Charter on Local Self Government is made available through the Scottish domestic courts, as a means of fully enacting its various articles.
We recognise that the Scottish Government has repeated its commitment to embed local democracy and the Charter’s provisions in a constitution should there be independence. However, regardless of the outcome of the referendum, COSLA strongly argues that local government should be protected. Protection within a constitution would be our preferred method as we believe that a legislative approach could, theoretically, be eroded through later Parliamentary decisions. Nonetheless, the protection conferred through legislation is still significant and something that we firmly support. We recognise a willingness to take such action is hugely symbolic and the political cost to a party or coalition wanting to overturn rights to local democracy would be significant and in all likelihood make it deeply unpopular.

Consequently, COSLA’s position has been, and remains, that the European Charter should be reflected in domestic legislation and that the natural place for this to happen is through the Community Empowerment (Scotland) Bill. Should there at some point in the future be a written Constitution for Scotland or the United Kingdom it would be our expectation that the Charter provisions would be reflected in such arrangements.

Meantime, placing the right to local self-government on a statutory footing in Scotland would give the whole of the Charter a formal legal status in Scotland, ahead of the rest of the UK. While this would fall short of the longer term constitutional embedding we would ultimately argue for, it would set an important precedent and demonstrably reflect the Scottish Parliament’s commitment to local democracy. COSLA suggests including something like the following in the legislation as an intermediate step:

“Ministers of the Scottish Government while exercising their functions must observe and promote the principles and provisions of the European Charter of Local Self-Government (1985) - ETS 122”

This would be a simple way of giving effect to the Charter’s provisions, allow steps to be taken incrementally to consolidate the right of local people to a greater degree of autonomy in the way our communities manage their own affairs, and ultimately allow the possibility of a legal challenge to be made, should the need ever arise. By placing a duty on Scottish Ministers that refers to external treaties / legislation, Scotland would be adopting a similar approach to that already used for the European Charter of Human Rights in UK legislation.

We acknowledge the work that may be required in this area and are keen to develop this in partnership with both the Scottish Parliament and Scottish Government. Furthermore, we are aware that the Commission for Strengthening Local Democracy have provided helpful recommendations in this area which will help inform debate.

Any part of the legislation proposing new duties on Local Authorities would require to be appropriately financed and resourced by National Government and cost neutral to local government.

Part 1 – National Outcomes

While in principle COSLA recognises the right of National Government to set outcomes for Scotland, we have a number of concerns around the proposed legislation.

COSLA very much welcomes the outcome focus approach taken in this part of the legislation. However, we are disappointed to note that while service delivery is undertaken by local government, this is not reflected in the legislation or policy memorandum. Local government
remain committed to an outcome focused approach through Community Planning Partnerships and Single Outcome Agreements and already have a good strategic framework in place. COSLA would welcome explicit recognition of the importance of partnership working between national and local government when setting outcomes which affect locally delivered services.

Part 2 – Community Planning

COSLA welcomes the proposals to improve the Community Planning process by requiring all statutory partners to participate equally and fully in the process, through legislation. Given the joint working COSLA and the Scottish Government have undertaken, culminating in the Joint Statement of Ambition, we very much welcome and are supportive of the Scottish Government choosing this Bill as the route to deliver new duties.

COSLA continues to welcome the opportunity to level the playing field, recognise that Community Planning is a genuine joint endeavour that encompasses the whole of the public sector and believe that the democratic mandate of councillors underpins the lead role of local government in the arrangements.

COSLA welcomes the additional partners named in the legislation as statutory community planning partners. However, we still question whether the legislation includes all the relevant partners that should be at the Community Planning table. While we advocate that local Community Planning Partnerships would be best placed to make these decisions, we feel that other NDPBs, such as the Scottish Prison Service and Regional Colleges, should also be considered as statutory Community Planning Partners, wherever they are necessary to delivery of particular agreed outcomes in CPP areas. In particular, with reference to the forthcoming changes in the area of community justice, COSLA notes that under the lists of Relevant Authorities and Public Services Authorities, key justice partners are not explicitly listed.

Community Empowerment, in relation to improving justice within communities, will fall short without the critical input from partners within justice, in particular the Scottish Prison Service, the Crown Office and Procurator Fiscals Office and the Scottish Court Service. More generally, the duties regarding CPP Partners are welcome, including the encouragement to commit resources to the delivery of CPP outcomes, however, it is difficult to see how this can be effectively enforced.

Part 3 – Participation Requests

COSLA notes that some of the proposed provisions here concerning community engagement significantly reflect the content of the Protocol to the European Charter of Local Self-Government. The charter protocol seeks to increase the local accountability of government through the adoption of measures such as citizens’ panels, community petitioning, and similar measures. In essence, while Scottish Ministers are extending the application of the protocol to all parts of the public sector a legitimate question is raised over whether it is right that Ministers should progress this area without protecting the services and representative democracy that the engagement is trying to influence.

Nonetheless, COSLA agrees that public bodies should consider requests, so long as they are reasonable, give reasons for their decisions, where granting those rights to state what
conditions are attached to them, and, when declining to grant, stating reasons for not doing so.

It is difficult to predict what the implications of this new requirement on public bodies will be. At one extreme it could lead to large number of requests coming to councils. In particular, in areas of public service change where difficult decisions are being made by elected members such as opposition to the closure of local facilities or services which are a result of the financial pressures being experienced by councils. This could be similar to the current Freedom of Information process and we therefore have some concern over the potential administrative burden that these new duties could create. COSLA is clear that the cost emanating from these new duties require to be fully funded and cost neutral for councils. As indicated earlier in our submission, COSLA will be responding separately on the financial memorandum to this Bill directly to the Finance Committee, however, it is important to stress that we have concerns around being able to quantify the demand for this legislation and in turn the costs that will be incurred by Local Authorities.

Part 4 – Community Right to Buy Land

Part 5 – Asset Transfer Requests

The legislation is increasingly relevant and important to Local Authorities, in particular in the areas of culture and leisure. Given the current fiscal challenges presenting local government many Local Authorities are already working on the development of the Community Sports Hub model with sports clubs, teams and joint management arrangements. In addition to developing community empowerment in the sports sector, the culture sector have also started to consider these types of approach in looking at property rationalisation in terms of community halls, village facilities and cultural facilities, such as museums.

This work is highly reliant on council support and provision of community capacity building assistance, which can be resource intensive. Initial capital investment is also required to cover the cost of the standard lease arrangements required for asset transfer.

COSLA notes that under Part 5, section 53 (2)(b) of the Bill that on the winding up of the company and after the satisfaction of its liabilities, its property (including any land, and any rights in relation to land, acquired by it as a result of an asset transfer request under this Part) passes to either another community body, a charity, a community body approved by Scottish Ministers, a crofting community body, or should no such body exist, to the Scottish Ministers or a charity of choosing by Scottish Ministers. COSLA are very firm in the view that should the asset have been acquired from a Local Authority, then that Local Authority should have a first refusal option to have the asset returned to them. COSLA considers that this section precludes Local Authorities far too early in the process. After all, the Local Authority would be the continuing body with the experience, knowledge and skill around the management and ownership of the asset.

We are supportive of the differentiated approach between Local Authorities and other public bodies outlined in the legislation. COSLA are firmly of the view that as local government is democratically accountable to the electorate there is no need for the requirement to have their decisions appealed, where community requests are declined, via an appeals process involving Scottish Ministers. However, Part 5 Section 56(7)(b) suggests that Scottish Ministers could still override the decision of a Local Authority should a Local Authority and community body be unable to agree a timescale between themselves regarding agreement to an asset transfer.
request. This would appear to go against the intention of section 58(2)(b) and on this basis, therefore, we would welcome changes in the wording of this section of the legislation which is reflective of the Bill’s intention.

It is clear that there is a currently unquantifiable administrative and financial impact on councils with this part of the legislation. However, it is imperative that these new duties on Local Authorities are appropriately financed and resourced by Scottish Government and cost neutral to local government.

Part 6 – Common Good Property

In line with current accounting good practice guidelines, Local Authorities should already hold a register of their common good assets therefore COSLA do not consider that this aspect of the legislation should be overly onerous for councils. However, COSLA repeats the point made in regard to other legislative proposals in the Bill, whereby the administrative burden around the consultation with Community Councils and Community Groups in the establishment of the register and any disposal or any change in use of common good property is unknown and we seek assurances that the cost of this would not fall on the shoulders of the Local Authority.

Given that the Bill has a section dedicated to the issue of Common Good, it would appear to be an oversight that the legislation does not seek to address what is commonly referred to as the “Portobello School” issue. As the Committee will be aware, in the case of Portobello the Court decided that where land is identified as inalienable common good land a Local Authority cannot appropriate it for another function. In this specific case the proposal was to convert the use from a park to a school site. This contrasts with the position on the sale of common good land where councils are able to dispose of common good land with the approval of the court. To enable the land in Portobello to be used for a new High School it has involved an Act of Parliament, which seems somewhat disproportionate and time consuming.

COSLA therefore supports SOLAR’s view that a very straightforward change to existing legislation (Section 75 of the Local Government (Scotland) Act 1973) would enable the use of common good land to be approved by the courts in the same way as a sale can be. The change to section 75 of the 1973 Act would require an additional provision being included in Part 6 of the Bill. To achieve the change would actually involve minimal amendments. All that would be required would be the words “appropriate or” to be inserted at four locations in section 75(2) and in one location in section 75(3) of the 1973 Act.

While COSLA appreciates that the Minister may be wary about being seen to make it easier for councils to change the way common good land is being used, all the above suggestion does in practice is to bring change of use into line with the existing provisions for disposal.

Part 7 – Allotments

COSLA are firm in the view that individual Local Authorities are best placed to respond to the detailed legislation proposed in the Bill. In assessing the legislation, consideration needs to be given to the very great range of circumstances, including geography, of Scottish Local Authority areas. We recognise that Scotland is a diverse country made up of Islands, urban, rural, and city areas. Demand for allotments and potential availability of land therefore differs significantly between Local Authority areas. On this basis COSLA feels strongly that the
trigger point requiring Local Authorities to take reasonable steps to provide further allotments is arbitrary and not practical for all Local Authorities.

Furthermore, while a trigger point for the creation of more allotments is specified within the legislation we feel it is important to stress that any proposed new allotments would be subject to the normal, rigorous planning process. Therefore, it is important to note that the provision of additional allotments is not determined by the trigger point specified in the Bill alone.

The Bill proposes that allotment users will be able to sell on surplus produce. COSLA considers that, on this basis, the cost of remediation of contamination should be an explicit ground for refusing a request for land to be given over for allotment use. We have significant concerns around the potential legal implications this could cause Local Authorities.

We note the duty on Local Authorities to produce an annual allotments report. While COSLA does not disagree with this measure, we consider the level of detail set-out within the legislation to be too prescriptive and micro-management.

We again stress that caution should be exercised around the proposed new duties which place an additional administrative burden on councils. COSLA is clear that the proposed duties require to be adequately resourced by the Scottish Government.

Part 8 – Non-Domestic Rates

We note that this section of the Bill contains proposals outlined in the recent consultation on business rates reform “Supporting Business, Promoting Growth”, which includes a new power for local reliefs. COSLA continues to welcome this, as it is very much in line with COSLA’s vision for increased local flexibility on funding and local taxation powers.

Conclusion

Overall, COSLA’s main concerns focus on the lack of opportunities provided by the Bill to secure the statutory protection of local democracy and local government.

Scottish Local Government is also concerned that all the proposals are properly funded and cost neutral for councils. It is imperative that any new duties on local government be fully funded by national government. Furthermore, COSLA continues to stress the importance of ensuring that a reasonable time period be set aside for changes and transition to take place.

The Bill makes repeated reference to numerous regulations and guidelines and COSLA welcomes the opportunity for officers to work closely and constructively with Scottish Government officers around the detail and production of these. We look forward to participating in the ongoing debate and discussion in an active and constructive manner and recognise that it is in all of our interests that we get this legislation right.
I am Secretary of Stromeferry and Achmore Community Council. At our meeting of the 26th August, 2014 we went through the provisions of the bill and it was decided, we would pass comment and object to the proposal to allow local communities to acquire assets through compulsory purchase against owner's wishes if the land is not 'put to good use' or buildings are 'run down'.

Regards

Mary MacBeth, Secretary Stromeferry and Achmore Community Council

Community Empowerment Bill - Easy to read version page 8, section Community Right to Buy.

In some communities there is land that may not be put to good use and buildings that may be run down. The Scottish Government wants to change the law so that community organisations can buy this type of land or buildings so they can do something useful with them. This new law would allow that to happen even if the owner does not want to sell their land. This could make local areas better places for everyone to live.
LOCAL GOVERNMENT AND REGENERATION COMMITTEE: CALL FOR EVIDENCE ON THE COMMUNITY EMPOWERMENT (SCOTLAND) BILL

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

Given the strength of the voluntary sector within the North East, Aberdeenshire Council is supportive of the overall direction of the Bill. In many cases the Bill will place into statute many approaches which are already well established in Aberdeenshire, such as in community planning and asset transfer. It should be recognised that many of the best examples of empowerment we have seen have taken place where community bodies have had the opportunity to grow through time to develop the confidence and capacity to take on large-scale projects.

It is significant that much of the current good practice around asset transfer has been enabled through a variety of different national grant and investment schemes. There are numerous examples in Aberdeenshire of active community-led organisations that have developed assets as a result of this:

- Fraserburgh Development Trust worked to renovate a blight sight in the town centre and funded this through Town Centre Improvement funding. This asset has since been used as security to purchase a bakery in a rural community thus sustaining existing jobs and leading to the creation of further training opportunities.
- Huntly Development Trust have recently purchased a farm with Scottish Land Fund support and are developing renewable energy projects.
- Udny Community Trust have set up a community grant scheme with the funding from a wholly owned turbine. They now have a Big Lottery (Growing Community Assets) funded Development Officer and are delivering on needs identified through ‘Planning for Real’ completing a virtuous cycle of identifying and meeting need.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

Aberdeenshire Council is committed to community engagement and partnership working and as such welcomes the thrust of the Bill. Ensuring that all partners will support and allocate resources towards the delivery of a shared plan is an important step in empowering community planning partnerships.

In terms of potential disadvantages, it is possible that the Bill will be perceived nationally as a means of placing additional responsibilities unreasonably on to community bodies. It is important therefore that there is sufficient support in place for communities to get what they need out of the Bill. On that note, there are potentially significant
resource implications arising from the provisions in the Bill. Aberdeenshire Community Planning Partnership through its Single Outcome Agreement and Local Community Plans remains committed to focusing on outcomes and it is important that the administration of certain provisions within the Bill do not take resources away from delivering improved outcomes for communities. While specific concerns raised by officers of Aberdeenshire Council are set out in section 4, the Bill will require additional resources to implement.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

There is an ongoing process of capacity building that happens as organisations grow. This process of building capacity involves a range of partners and agencies but to succeed must be driven by the vision of local people themselves.

Clearly, access to funding streams is an important factor in this as the examples in Fraserburgh, Huntly, Udny mentioned earlier demonstrate. The long-term process of creating anchor organisations has also been evident through the work of some local Rural Partnerships such as Buchan Development Partnership who were case studied in the original Community Empowerment Action Plan.

The Policy memorandum makes reference to Participatory Budgeting and the desire of the Scottish Government to see this approach more widely utilised. There is an opportunity to link a new national participatory budgeting seed-corn fund to support the implementation of this Bill – perhaps utilising the ‘Change Fund’ approach which has previously been used in relation to enhanced outcomes for older people.

Inevitably some communities will be better placed to take advantage of the provisions in the Bill than others. To reduce against any potential for increasing inequalities between communities, it is important that public bodies continue to target resources to the areas of greatest need. Public bodies will have to support all communities to be able to become more empowered.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

The proposed core duties are welcomed and support the high-level messages expressed in the Christie Commission and Statement of Ambition. It is important that these duties are placed on an equal footing with other duties that partner organisations hold. Driving a shift from participation at meetings to participation in delivery and resourcing
is a significant step forward. There will of course remain a tension between the existing lines of accountability that public bodies hold with the newer responsibilities funnelled through the Community Planning Partnership. There is no easy way around this and it has proved a barrier to partnership working so far.

For the provisions relating to common good, the Bill as drafted requires the Council to consult every community council in Aberdeenshire for every possible sale, rather than the local community council. Given the number of community councils in Aberdeenshire, this would be very time consuming for both the Council and community councils. It would be beneficial to amend the wording of the legislation to focus on the local and relevant community council. In addition, there are significant resource implications arising from the creation of a register of common good assets. While there is an existing audit obligation to maintain such a register, CIPFA acknowledges that current practice of dealing with common good issues as title queries rise is acceptable. The geographical area of Aberdeenshire Council and volume of titles means it would require significant resources and time to complete a full and comprehensive review of the Council’s titles. This is the position reported to, and accepted by, the Council’s Policy and Resources Committee. The draft provisions relating to common good have financial implications for the Council as these would require significant legal and archivist resources to take forward.

There needs to be clear links between any wider Scottish Government work to develop the role of community councils and the contents of the Community Empowerment (Scotland) Bill. It should be acknowledged that community councils along with other community bodies have a role to play in supporting the implementation of the Bill. The capacity and will of community councils to take on these provisions can vary significantly across Scotland. Further clarity on the role of community councils in the context of the Bill and how they can be appropriately and proportionately empowered would be welcomed.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy Memorandum?

It is worth highlighting that equalities considerations will need to be built into future policies and practices that emerge to help implement the provisions in the Bill. Aberdeenshire Council has previously responded to the consultation highlighting the need to carefully manage the implementation of the Bill. This is important to ensure that those areas well placed and capable of taking advantage of the provisions do not further pull away from areas with less capacity and knowledge of community development.
## APPENDIX 1: IMPLICATIONS FOR ABERDEENSHIRE COUNCIL

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<thead>
<tr>
<th>PART</th>
<th>SECTION</th>
<th>IMPACT</th>
<th>RESOURCES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>National outcomes: a set of national outcomes must be developed, consulted on and published by Ministers</td>
<td>No impact. Aberdeenshire Community Planning Partnership has a Single Outcome Agreement in place with the Scottish Government.</td>
<td>No additional resources required.</td>
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<tr>
<td>2</td>
<td>Community planning: partnerships are placed on a statutory footing and partners must deliver and resource a shared plan for outcomes.</td>
<td>The Council will have to show the resources it is contributing towards the delivery of the Single Outcome Agreement.</td>
<td>No additional resources required.</td>
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<td>3</td>
<td>Participation requests: a community body will be able to put forward a case to participate in the delivery of a service</td>
<td>The Council will have to agree to the request for dialogue unless there are reasonable grounds for refusal. If it refuses the request, it must explain the reasons. At the end of the process the Council must publish a report on whether the outcomes were improved and how the community body contributed to that improvement. It is recognised that this will potentially create opportunities for local communities to become more empowered to help meet local needs. We also note that there is the potential for fragmented service delivery in different areas of Aberdeenshire and the Council should at least have regard to any implication this may have.</td>
<td>Process will need to be supported and administered. Further resource implications beyond that are difficult to quantify at this point.</td>
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<td>4</td>
<td>Community right to buy: the right to buy will be extended into urban areas with a population greater than 10,000.</td>
<td>The towns of Ellon, Fraserburgh, Inverurie, Peterhead, Stonehaven and Westhill will now be included within the community right to buy legislation. The legislation has not been created as a means to transfer land at significantly below market value.</td>
<td>Staffing resources will be required to process applications.</td>
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<td>5</td>
<td>Asset transfer: community bodies will have a right to request to purchase, lease, manage or use land and buildings belonging to local</td>
<td>The Council already has a Community Asset Transfer policy. These provisions could increase the number of applications for asset transfer. Community bodies must</td>
<td>2 FTE posts to enable and evaluate applications during</td>
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<td>PART</td>
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<td>6</td>
<td>Common good: local authorities must establish and maintain a register of all property held by them for the common good and requires local authorities to publish their proposals and consult community bodies before disposing or changing the use of common good assets.</td>
<td>The Bill as drafted requires the Council to consult every community council in Aberdeenshire for every possible sale, rather than the local community council, which would be very time consuming. There are significant resource implications arising from the creation of a register of common good assets. It may also be challenging to fill the posts necessary to fulfil this duty.</td>
<td>first year, reducing to 1 FTE post thereafter.</td>
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<td>7</td>
<td>Allotments: local authorities must hold and maintain a waiting list for allotments. It must take reasonable steps to provide more allotments if waiting lists exceed certain trigger points.</td>
<td>Local authorities must publish an Annual Allotments Report and a food-growing strategy, setting out land that has been identified for allotments or other community growing in the local authority’s area and how it will meet demand. They are required to make regulations about allotments (which was previously optional). These will cover issues such as allocations, rent, maintenance, and whether tenants are allowed to keep livestock or sell surplus produce.</td>
<td>2.5 FTE posts to set up and maintain register over two years</td>
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<td>8</td>
<td>Non-domestic rates: local authorities can create localised relief schemes to reflect local needs and support communities.</td>
<td>This duty is optional for the Council.</td>
<td>No additional resources expected to be required.</td>
</tr>
</tbody>
</table>
Hi
I hope I am not too late to have these notes discussed.

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

I think there needs to be more emphasis on also to engage BME and other groups into the discussion of community empowerment. I believe these communities will not be able to participate due to many issues:- lack of knowledge of the system/ Bill, language and cultural barriers, not seeing it as their Right to be involved, especially in things they do not understand.

1. Do you consider communities across Scotland have the capability to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

and similar answer to this section

Thanks
Kousar Javaid
Consultation response

Community Empowerment (Scotland) Bill – Call for Evidence

Response from the Chartered Institute of Housing Scotland – September 2014

www.cih.org/scotland
Introduction

CIH Scotland (CIH) welcomes this opportunity to respond to the Local Government and Regeneration Committee’s call for evidence on the Community Empowerment (Scotland) Bill.

The Chartered Institute of Housing is the professional body for people involved in housing and communities. We are a registered charity and not-for-profit organisation. We have a diverse and growing membership of over 22,000 people – both in the public and private sectors.

CIH Scotland has more than 2,500 members working in local authorities, housing associations, housing co-operatives, Scottish Government and Government agencies, voluntary organisations, the private sector, and educational institutions. The CIH aims to ensure members are equipped to do their job by working to improve practice and delivery. We also represent the interests of our members in the development of strategic and national housing policy.

For more information on the contents of this paper, please contact the Policy and Practice Team:

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Community Empowerment (Scotland) Bill Call for Evidence

Response from the Chartered Institute of Housing Scotland – September 2014

General comments

CIH Scotland welcomes the opportunity to contribute to the debate surrounding the Community Empowerment (Scotland) Bill. We recognise the importance of community participation in developing sustainable neighbourhoods and organisations that deliver services which are tailored to meet the needs of local communities.

Housing is at the heart of each and every community and it is important that the housing industry continues to build better working relationships to deliver homes that are warm, safe and well managed within communities where residents feel that their participation is valued.

There are already many good examples of tenant participation in the social rented sector and the importance of the relationship between social landlords and their tenants has been recognised through the development of the Scottish Social Housing Charter and enhanced performance scrutiny under the Scottish Housing Regulator. It is hoped that the provisions within the Bill relating to community planning, service delivery improvements and community ownership will present opportunities for more people to become involved in creating successful communities that people want to be a part of.

Responses to the specific questions in the Local Government and Regeneration Committee’s Call for Evidence are outlined below.

To what extent do you consider the Bill will empower communities, please give reasons for your answer?

The provisions within the Bill will create opportunities for people to become more involved in developing local services that are tailored to the needs of local people. However, the extent to which the powers are actually used will ultimately be driven by demand from within communities.

For example, social tenants already have the opportunity to become involved in the management of their homes but to date there has been little interest in this option. In some cases, perhaps social landlords could do more to highlight the opportunities available to their tenants. However, experience suggests that in the majority of cases, tenants simply do not want to manage their own homes. Tenants expect the rent that they pay to cover the cost of an efficient and professional tenancy management service.

Giving local residents the option to take on ownership or management of underused assets presents an interesting and exciting opportunity for local groups to become more involved in the revival of areas or buildings which might otherwise have fallen into disrepair. When local people are involved in regeneration projects, such as the creation of a community garden or play park, they are more likely to become engaged in the management and maintenance of the project over the longer term.
What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

Benefits
Supporting people to become more involved in their local community helps to foster a sense of ownership and responsibility. Strong communities are less likely to suffer from antisocial behaviour.

Building a sense of community cohesion, encouraging co-operative values and local informal support networks can prevent social isolation and the need for more formal intervention from housing, health and social services.

Involving service users in policy development and review can help to identify efficiencies and better ways of doing things. People who are using services are in an ideal position to comment on how well the service is being run and how to make improvements.

Becoming involved in community projects and local service delivery can help people to build up skills and social networks improving employment prospects which can help to increase household income and quality of life.

Disadvantages
Supporting greater involvement from communities may be resource intensive for public services. However, as demonstrated above, the positives that can be achieved in terms of creating informal support networks, reducing antisocial behaviour and identifying efficiencies in service delivery will help to balance out the financial costs associated with supporting community involvement.

The transfer of land and assets may be more difficult to support in areas where land is at a premium, for example, in densely populated urban areas. Local authorities may also find some conflict if assessing a request for the transfer of HRA land or assets, especially if the community group’s proposal is to buy or lease the asset at below market value. Local authorities will be tasked with making difficult decisions about balancing value for money with the possible social benefits of any proposals involving HRA assets.

Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Community groups will have different levels of skills and expertise and so will require different levels and types of support.

It is likely that the most disadvantaged groups, who would probably benefit most from increased community involvement, will be the ones who need the most help in making their voices heard. We need to ensure that support is in place to facilitate participation for people with different skill bases.

It may be difficult for public sector organisations to provide the required level of support to properly facilitate community groups given that no additional financial resources are being made available. It would be helpful if the Scottish Government provided a platform for community groups to access information and share their ideas and experiences of involvement in service delivery or taking control of assets.
Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

The provisions set out in Section 61 which will allow authorities to refuse to consider a request for the use an asset within two years of refusing a similar request seem to be at odds with the intention of the Bill by creating barriers for community groups. It does make sense to have some clause in place to prevent local authorities from having to deal with repeat requests but it does not seem fair that a community group could be denied the chance to take on an asset based on the failures of a previous group.

Perhaps the legislation could be updated to state that an authority would not have to consider a request from the same group within two years. This would ensure that a different group would not be denied the chance to put forward a request to use the same asset.

There may be some issues with definitions in the Bill, specifically how “neglected and abandoned” land is defined and what would constitute “reasonable” grounds for an authority to refuse an application for sale or lease of assets. These will need to be clearly set out in Scottish Government guidance.

What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the policy memorandum?

We are confident that equality and human rights issues are adequately summarised in the policy memorandum.
To: Local Government and Regeneration Committee of the Scottish Parliament

5/09/2014

Dear Sirs / Madams,

Permaculture Scotland welcomes this opportunity to comment on land and community as relevant areas of focus in Permaculture. In regard of responding to a call for evidence for the Community Empowerment Bill (as introduced), I am the nominated person within the Association to make response and would be grateful if you directed any enquiries or replies to me.

The Permaculture Association in the UK has some two thousand members. We are an Association of a design science, called Permaculture (derived from permanent agriculture) and part of a global network of tens of thousands of graduates of permaculture courses, who practice disciplines of design, teaching, consultancy, and realisation of diverse projects. In Scotland our events attract as many as 200 attendants, as at our national Year of Natural Scotland event in 2013. The basis of our association and practice is to achieve sustainable projects best by understanding natural processes and design, where reuse of all outputs within a system and maximizing all use of inputs is effective practice in an environment in which all natural living forms have their place, and where a vibrant society and economy is based on valuing people and place. We support people in specific sectors and professions to understand the value of the permaculture design approaches and activities.

One of our members draws on relevant experience and connections that inform as regards important community stakeholder issues in community empowerment. Such as in: Community Allotments, Community Partnership with LA and Developers, Meanwhile Land Use, Urban Gardens, Community Education, Active Community, Positive Health Initiatives, Asset Transfer, Participation in Public Consultations, Resource development, personal development, mentorship with disadvantaged groups, and community systems; and through participation with organisations such as Bridgend Growing Communities, Bridgend Inspiring Growth, The Grove Fountainbridge Community Gardens (Founder Member), Scottish Allotments and Gardens Society (co-opted committee member), Rural Skills Academy & Access to Industry (Oatridge), Venture Scotland (Mentor, Team Leadership), ICARB Scotland.

We support the Scottish Government’s commitment to the Bill. We feel community empowerment can have a direct and positive relationship with Government purposes right across all indicators, and outcomes that reflect a vibrant society, healthy living, and thriving natural, rural and urban environments, and we believe Permaculture can be of valuable assistance towards reaching Government targets in sustainability and economic resilience, food security and ecological footprints, and welcome further engagement.

Yours sincerely,

Ruby Alba,
Wildroses Permaculture: wildroses.alba@gmail.com
scotland@permaculture.org.uk, www.permaculture.org.uk/scotland
1. Community and Community Empowerment:

It is noticed that core basics of Community Empowerment have little direct legislative counterpart in the Bill as introduced. Recognition that Community Empowerment, like Community Planning, is a process that can be strengthened with legislative frameworks is necessary. The Scottish Government's commitment to the highly focused CLD and SOAs need to converge well with bottom-up processes of input, whereby people in communities and policy makers both are enabled in improving understanding, policy and action towards community empowerment. It is this process that can be strengthened by legislation. Community Empowerment, itself, needs to be formalised so that consulting deeply with community is enabled well, and for diversity that communities represent. To 'consider which community bodies are likely to be able to contribute', to 'make all reasonable efforts', to 'take such steps as are reasonable' and 'to consult such persons as considered appropriate' may not be enough for communities to feel connected to the Governments stated expectations of CPPs or to feel that the CPP's have any actual concept of communities. 'Those likely to engage' is not comprehensive as an understanding of communities, where only those likely to engage become representative. A 'community body' is defined by 'that wish to participate in community planning'. Participation relates to community planning, 'any community bodies must participate with each other in community planning' where community planning relates to 'provision of services delivered by or on behalf of the local authority or the persons listed in schedule 1("community planning")'. Participation is with community only by that community bodies engage in planning and services carried out for communities, not with communities. As specified, this is significant limiting detail that is not directly empowering. This does not empower communities themselves. Courses of action are very much placed within the comfort zone of planning. Where commercial interests integral to planning tiers are more engaged than communities this is not very robust towards communities. There is plenty left to goodwill in our society, leaving much open to disregard also, requiring that guidance assists, and ensures, respectively, that action in community empowerment results. The key may be in legislating for a clear duty of government and public bodies to cohere with community empowerment through a direct address of Community Empowerment. This requires flexibility towards a wide diversity of approach, matching the diversity of communities and their relative capacities, in extending opportunities to communities to access information and choice.

It is understood that in stating that CPP make 'reasonable steps' there is no danger of representative bodies occupying themselves too directly with the self determination of communities. That is very good, what is missing is that this is not very far reaching in terms of being the legislative address towards Community Empowerment. It is apparent that for Community Empowerment to be effective Community Empowerment must be set out for effectiveness in cohesion with the way an Equality Act or Scottish Legislation to protect rights and welfare in Scotland is set out. It may be necessary for legislative purposes that Community has status as a Person, included in a Schedule, and proposed here thereby, that includes Community, as a Schedule Category in addition to the Community Planning Partners, the Public Service Authorities, and the Relevant Authorities, given legislative status in Schedules 1, 2 & 3. While it is understood that communities may be too diverse to be listed in Schedule, including a Schedule for Community as a legislatively recognised category at least should be able to go some way towards protection of equality, rights and welfare extended generically also to communities, including duties of direct community empowerment by bodies towards communities. Legislation best support a dynamics that underpins both a top down and bottom up approach, without increasing complexity for communities, or diverting their actual interests through excessive focus on meeting needs of planning bodies. Stepping down a Government approach through concordat still needs a bottom up approach direct from community for the local and regional tiers to be effective in community empowerment.

Community Planning Partnerships, including any community bodies and anybody corporates established in relation to community planning must be specifically enabled to act as facilitators for Community Empowerment at local and community level by enabling regular forums and gatherings locally and centrally for discussion and agreement through forms of Participatory Democracy. Processes of participation must be accessible, widely known and openly available. Places and times of participation must be regularly enabled and hosted to enable Communities and People within Communities to come forth and participate effectively and often and in open agendas that allow for communities to bring their interests and concerns. Participation needs to mean via participatory democracy, and that CPP's and LA undergo a process of moderation via communities. It is recognised that CPP's ‘over-arching partnership framework acting to rationalise and simplify a cluttered landscape’ is a key principle for the success of the CPP and the Concordat between National Government and Local Government, and COSLA. Here is a reminder, also, importantly, that communities do form a landscape that is naturally complex, and in ways that need to be embraced. In the way that many streams run down the many hillsides of an landscape in Scotland that is forever changing its directions. This
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cannot be legislated, but can be embraced by legislative measures towards resiliency of these. There is caution here; to pause, and reflect that in developing resiliency in actual communities, as part of single and national outcomes, developing flexibility in Government makes for a necessary counterpart in the highly developed planning initiatives set forth that will bring so much to Scotland. A dedicated portal for communities that have little requirement to be fully immersed in CPP service level participation but who are connecting to their communities to engage in participatory democracy for engaging with policy, outcomes, and initiatives can be useful to enable widest bases, and smallest endeavours of community to recognised as relevant in their initiatives towards outcomes arising at community level. Intense focus on planning for community and lack of positive affirmation legislatively for working directly with or at the behest of community can prohibit ease of communication by direct forms of equality. There is a need for a culture in which developers, planners, community bodies each, can interact with communities therefore equality for communities is highlighted as to be legislated for.

A key question is: Is this a Bill that communities can understand? Approach and engagement in the very Bill: It is understood that simplification of detail would be decreasing full knowledge of this Bill, thus not empowering. Making the bill available in accessible formats, while enabling understanding with full accessibility of detailed information is, of course, important. A big part though, is one of approach and engagement in the very Bill. CPPs, LAs, Public Bodies, need to be empowered to recognise diversity, and ensure best outcomes for all. Communities are empowered where all other parts of Society can address, and have an approach to community that engages with community empowerment, and not least embraces full and comprehensive community empowerment as an outcome. This is where the Bill needs to address core basics of Community Empowerment. Part 2, 5 Local outcomes improvement plan, (3) (a), and (b), (4), (b); 8 Governance (1) (a) and (b); 9 Community planning partners: duties (3)(b); any other similar sections, clauses need to refer to such in addition to the participatory service provision mainly referred to. There is this need for planning bodies to be able to support, respond to community, and plan with community, in addition to the planning for community with participation. The Community Schedule, proposed in this document, is a suggestion towards that any Community, Individual within Community, that comes forth via accessible, open and participatory democracy be firmly recognised by the structure of Community Partnerships as statutory consultees within the framework of the Community Empowerment Bill, with or without their being a formally constituted body, and also representing self, as a part of community, or a community, or part of one, and as a community body as defined in part 2, 4, (8), while not being part of community planning necessarily. Role as a statutory consultee as community/ individuals in community must be simply enabled through participatory democracy. This in addition to and differently to anybody established for purposes which consist of or include that of promoting or improving the interests of any communities. The principle of a key over-arching partnership framework helping to co-ordinate other initiatives and partnerships is understood, yet must include intents for community empowerment towards the reality of plurality and diversity of community so that equality is practised and genuinely engaged in the decisions made not only on public services, but equally also in working together with initiatives that arise within community. A stepped down approach of Government, which remains in disconnect hovering just above community, can be made effective with mechanisms which allow for community and government to engage, and where structures such as CPP facilitate participatory democracy and the outcomes of engagement.

The Bill contains no direct reference to community or empowerment, or definitions for the purposes of the Bill, making it clear that the duties to be performed by Ministers, Local Government and Public Body Partnerships are not being focused through this Bill on community, or community empowerment, as the frameworks being established have planning for community as a leverage. This means that legislation in the Bill as introduced cannot be as forwards looking as National Outcomes, SOAs, CLD, and other forward looking well intentioned policies. This as an imbalance, needs addressing.

Community, Subsidiarity, Social Contract, Relationships and Representations: Community empowerment as process is evidenced by responses to the draft Bill, where the questions of what is community arose. To understand Community and present a working definition that does not detract from the breadth of, or specifics of what communities are and can be, it is effective to focus on the common denominators; as follows. Community is people. Community is connection to Place and/or Identity and/or Interests and/or Needs. Community can be said to be interests and needs arising of people, place, identity. Community is sharing on any of these. Community is self-determining by these. Community can consist of a community of one, or of thousands. Community is the natural self-determining unit of one or many that exists before representative democracy first comes into effect. Hierarchical constructs, such as local, regional, national levels do not determine community. Level constructs such as partnerships, neighbourhoods also do not define community. This is reflected in that community initiatives and local communities define themselves best, and outcomes result of self-determination more than imposed boundaries.

A consideration towards effective relationships between representative bodies and communities, where recognition of a communities ability to map itself, may benefit a community in more far reaching ways than that community solely benefiting from participation within planned services. This is subsidiarity at community level which requires legislative support for multiple representations by communities / people within community. Where communities benefit from
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planned services, social contract has place. Releasing need for excessive provision to communities, as per subsidiarity, also has place. A good example is food banks versus community growing projects that can provide more in terms of community empowerment, and sustainable outcomes. Community empowerment – the ability of people to do things for themselves – has not been directly addressed. The relationship between Government, national and/or local, and communities across the country has not been directly addressed. A key way of complementing representative democracy – has not been directly addressed. Strategic approaches to community asset and land ownership in terms of community empowerment have not been addressed. Open, democratic, inclusive and competent communities connecting as community, where is there support in the Bill for these? Where there is support for Models that provide focus for community led action, and involve, in a participatory way actual communities? The Bill must make provisions making the unfolding of process of an approach that is empowering to communities explicit at outset in how the Bill is stated. Scope for developing for as yet not fully understood needs and outcomes for community empowerment is necessary. Recognition that Community Empowerment is a process is realistic.

Individual Development Trusts & Federations, and their related Project Managed Services, Societies, and Affiliated Member Groups are good examples of organisations focused on community, and are best placed to address matters of community empowerment. These representative groups do not so much service the communities they represent but enable these to get on with their actual goals by providing access to enabling expertise, and by addressing larger issues through dedicated representation. There is need to acknowledge their capacity in community empowerment in a Bill that is about community empowerment. There is no direct acknowledgement of these in the Bill, in regards to this capacity, or with reference to Schedules, unlike CPPs. Furthermore, importantly, in the process that is community empowerment, organisations like these, could be best placed to facilitate. The Federation of City Farms and Community Gardens, The Community Land Advisory Service, project-managed by the Federation of City Farms and Community Gardens, SAGS, a society affiliated to NSALG, and some Transition Towns are all good examples of umbrella organisations currently active in beneficial ways empowering the communities they represent. These are not CPPs, and these are not the organisations Government addresses. These are organisations specifically empowering community.

Community as recognisable society form: Community is a basic core recognisable societal form yet to be enabled with very basic socio-economic legal forms for simplest functioning, and as contender in an equality act, and in the Bill for community empowerment. There is need to acknowledge that communities can function. Welfare/ Service Provision is one national concern, another needs to be including support for self-definition, self-sufficiency and sustainability. For community to be enabled to function without being diverted into the pressures that representative, charitable, trade or business forms bring, adaptations directly relevant and accessible to community can be explored. Placing liability on individuals on behalf of community is not a suitable method of dealing with community empowerment, as per the simplest form of constituting. Even simplest of forms are structured towards creation of an organisation with committees and members rather than enabling and empowering communities, and people. The limit would need to be defined as community or individual and include a mix of community and individual activity as a best driver for community, rather a focus on trade, business, or charity in ways unrealistic for communities and individuals when operative as community or as individual pursuing interests. A generic template could form the basis of simple constituting enabling those who do not wish to engage in creating organisations but do need in basic ways to access land and assets, and be developing their spaces, resources, skills, people and groups, and do wish to and may need to function socially and economically to so do. Propositions could be listed under generic templates, and organisations that empower communities could be empowered to develop acceptable templates for specialist communities, and with regard to common interests, common good and common land and assets, and their use, and individuals, and their needs. A template that includes individual interest, innovation or enterprise would be sensible, so as not to limit community in developing individuals with abilities or interests, or particular projects in communities. A 'community entity' based on simple template and registration with the organisations representing their interest groups could legally be declared a kind of 'exempt' entity where these organisations, either individually or in partnership with relevant organisations take on the steps for people and communities to get on with activities in tenable ways. Working Groups made of people with relevant expertise would be well placed to tackle the requirements of legal and economic questions, including that of liability in communities, towards creation of the form and template and registration process of simple 'community entity', and represent the needs of community. Banking bodies, like credit unions could enable something like a 'community account', or individual accounts 'for community activity', and enable receipt of funds, basic trading at community level in monetary terms and so on. Community based forms of trade, monetary via community banking, or otherwise, and self-help/caring via community entities enabled as beneficiary of funds via community banking, or otherwise. To form, register, and dissolve within small community scale & context, with adequate ease, approval could occur, in place of via committees and boards, within events enabled for purpose, held with mediating organisations, and specialists in attendance. A template that includes individual interest, innovation or enterprise is sensible, not to limit where community contexts empower initiative, in fully functional ways, people or the communities or groups themselves may then choose to take up business or charitable interests and constitute into full organisations accordingly where this is a suitable development onwards. These would be likely to invest back into the communities that sustained their development, where successful. These need not be mutually exclusive, and could develop in relationship. This proposal here is to empower people to register their interests, groups or communities, and represent
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themselves in simple ways for self-empowering activities, with organisations providing the structural support in terms of socio-economic legal and environmental templates, accounts, forms, liability.

A proposition processed into a generic template for a particular use could include set of related activities, which a community entity could include for their particular proposition. Example: To grow crops, flowers, herbs, forest gardens, biodiversity. To set up land/asset use, community resources, shelters, activity and learning spaces, individual and /or community use spaces. Farmers / flea market styled activities. Engendering self-funding, being beneficiary of funds and engaging in community level transactions, community level trade and enterprise within set limits, enabling basic functional cash flows and resourcing. A template could enable community in a whole variety of growing projects without the encumbrance of business or charitable organisation. Expertise could place adequate legal and economic extents that cushion community within local, regional and national contexts and enables larger commercial enterprise in delivery to sustainable communities. There may be implications in all this that a novice is not suggestions, therefor it is important to highlight the need for working groups of experts to bring this about by way of serious application. The sole main communication in all this here is to empower communities and individuals of locality and/or of interest and/or of circumstance/context as active within their contexts, communities, areas and lives and to be recognised and functionally empowered to contribute significantly, in place of being dis-empowered, and inactive service users and communities, with little voice in strategy and policy, and interests significantly at community level.

Note: Unincorporated Association -- leaves ‘committee trustees’ taking big risks while enabling great projects by taking on assets with personal liability on behalf of a membership community, beyond their personal means and often beyond the means of the entire community. CIC -- safeguards assets/incomes and profits towards community but causes burden of having to trade at levels that are beyond embryonic and may not be continuously sustainable at all times within some community contexts for community empowerment. SCIO- places a requirement to uphold specific charity goals as the main aim and entails running a complex organisation. Memberships and customer or client bases are created around these entities, and this in place of actual community represented or empowered communities. Each form lacks in some capacity towards community and therefore a community entity is suggested. One that enables trade, charitable acts, without either redefining community round these entity types, and one that enables community and/or individual and their stated interest within community as the mainstay of attention. The post office ‘bank accounts’ which replaced giros, may serve purpose, but with no other bank functions than receipt of giro, reflect servicing in very non empowering ways.

National Outcomes & Community Empowerment: Before Scottish Ministers determine review, revise and report on National Outcomes, Communities and People within Communities must be consulted on whether National Outcomes have been achieved in the context of these communities, areas local to communities, and interests communities and individuals within communities find relevant, what further forms of community empowerment may be required to achieve the National Outcomes in local and community based ways, whether any additional requirements and outcomes that have not been set are identifiable as necessary towards Community Empowerment by communities, and People within communities, and how community envisage achieving National Outcomes locally, or as relevant to their communities. The Scottish Ministers, Local Authorities and Community Planning Partnerships must be enabled to consult with Communities, and People within Communities, and any community bodies that are not directly part of CPPs through forms of Participatory Democracy. Legislating a clear structure enabling Participatory Democracy as a function of Government in relation to Communities would be useful. This through Participatory Democracy relevant to Communities as a portal and a series of engagements facilitated and hosted by CPP's and led by communities. This document suggests no less than that Community Empowerment be made a national Outcome. And that Community Empowerment be supported by an Act, that delivers equality directly to communities by making communities statutory consultees, through presence of a schedule that enables Communities to exist, as legal Person, without further formality of organisation. This document also suggests that relationships between bodies are as relevant as the bodies themselves, and by this way formal organisation by communities can be simplified, so that representative bodies can provide legal channels by which smaller bodies do not have to take complex forms in order to be safeguarded from personal liability for community initiatives. There is a need to address various forms of empowerment for different purposes. Have already addressed distinction between participating in services and being recognised as a community initiative and supported in that. In many Community Empowerment issues land is of importance and the bill addresses that, as does this document, in the next section below. In addition to that new forms must be enabled as potential so these can be explored and followed up on via the Bill, both for legal forms, and landuses, to enable new ways appropriate to the issues and needs of our times.

'Acts of Community Empowerment': The Bill gives attentions to some needs and interests that exist in community. It is of practical use to describe these attentions as 'Acts of Community Empowerment'. There are needs addressed by the Bill ad there are additional needed 'Acts of Community Empowerment' suggested in this document. It is necessary and useful to ascertain their value in terms of Community Empowerment. With any of these, whole host of events occur, and at different levels, to different bodies, and in relation to sets of values. Example taken here is Asset
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Transfer: To be considered as follows: Asset Transfer Sets of Values: Market Value of Assets. Value of Building Maintenance Costs. Value of Eligibility for Funds. Value of Cost of Fund Raising. Value of Services. Value of Cost of Services. Value of Community Initiatives. Value of Sustainability. Value of Achieving Outcomes and Targets (Council, Statutory, Single, National). Value of Commercial Viability. Equation of Balance of those Values: Loss in market value / Gain in asset at less than market value. Decrease / Increase in building maintenance costs. Decrease / Increase in costs of provision of services. Associated decrease / Increase in funding and costs of obtaining funding. Achievement of Council Outcomes, Single Outcomes, Statutory targets / Services or Initiatives provided and achieved + Decrease in Services provided, and Decrease community initiatives achieved due to increased attentions on becoming building caretakers. Funds that may be required that support: Skills in management and maintenance of buildings and land, and in ownership. Bringing buildings and land into new uses. Development of these into places of abundance, Sustainable ways for communities to be self-responsible towards the buildings and land use. Changing patterns of building/landuse to effect changes beneficial to community / outcomes. Sustainable ways forwards: Examples: LAs to develop skills in identifying, allocating and maintaining buildings and land for common good, and for LAs and communities to work together for Sustainability and be part of balancing overall Sustainability accounts together. Specialising in helping other communities who wish to use land and buildings and not manage these may be something that these communities and LA’s wish to invest in.

Equations like this can be set up for any kind of act of community empowerment to evaluate what works. Overview of gain and loss between Local Government, National Government, Public bodies, Community bodies, and Communities and for assessing outcomes and capacity-building that can ensure that communities and LAs are empowered, not burdened is essential. Legislation can ensure this. A perceived reduction in income with Assets not being sold at market value is a gain when offset against the cost of achieving other values, and when seen against reductions in costs associated with releasing the Asset, and when seen as basis for community initiatives fully enabled and understood as a productive part of society and local economy. Enabling communities, which are often voluntary, to accrue reward or gain resource for productive management and use of land need to be understood within the Bill. Reduction and remission of rates as empowering is essential. Affordable concessionary lets that are set at levels to purely enable is a good precedent in Edinburgh. Landowners paying community for the benefits of the community of land can also be enabled as possible. Highly productive projects reinvesting back into community is also a possibility where community empowerment is enabled sufficiently in the first place. Strengthening Legislation so Community Partners have decision making clout and status when working alongside Local Authority and Commercial Partners, and CPPPs, may be what brings positive effects in an area greening up, and by via community initiatives, regenerating, and being the interest that is enabling. Beneficial implementations of community empowerment, national outcomes and statutory targets are values that balance where commercial and economic concerns do not lead regeneration. Setting out fully relevant values, both in monetary/financial terms and as part of an evaluation balances in values effected, accrued or released in interactions, for all bodies and across all bodies, including ‘persons; such as community. This will facilitate overview and understanding that Community Empowerment has a practical relationship to every other National Outcome and that Community Empowerment itself can be considered an Outcome of value. Legislation needs to be put in place to ensure that what the Bill enables in context of community empowerment, as ‘acts of community empowerment’ (as described above) translate to actual community empowerment. There are many examples of balances where community empowerment as included is effective, overall. Food banks/ growing crops is another.

2. Sustainability:

There is need for recognition of the contribution to Sustainability that is made and is possible at Community Level. Sustaining communities is about sustaining initiatives within community and the vision to support the sustainability that communities bring. Development strategy including community and sustainability within the same approach towards empowerment is necessary to enable community initiative to be including sustainability at community level as essential. The 2 dynamics of subsidiarity and social contract, both, must be made explicit and supported by legislation, and vision to support dynamics towards sustainability. Focus on service provision, or on social enterprise, or on community evolving into 3rd sector representative organisations do not do what is required so that a community initiative itself flourishes, and sustainably. These lead rather than bring about leadership by community. Bodies that service Communities are different to community bodies that empower Community Initiatives within their own Communities. It is important that Community Initiatives not be out-competed by business, or be dependent on charitable effects in order to take steps towards sustainability and to be thinking in terms of sustainability throughout, and thereby making the most out of all supports in place by maximising input towards sustainable outcomes. It is important that CPPPs do not practice disengagement towards supporting sustainability in Communities that can be resilient in their initiatives. Legislation aligned to practical effectiveness locally that empowers development that enables sustainability right across use and or ownerships of land and/or assets is necessary. Assets, Buildings and Land effective by community use of these, community benefiting from effective use of these, and communities sustaining sight of their actual goals and contributions, all these must align via dedicated funds and developmental strategies at community level to achieve a sustainable workable base that does not collapse through transience in policy, economy, people, thus bringing longer term regeneration, built up by sustainable steps as led by the communities, which in itself enables learning and empowerment, followed by revenues at community level. While communities may need to be sustained, the key to the sustainability of communities, and community initiatives, is to empower sustainability at community level. This is policy
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that supports initiatives in becoming sustainable. Communities or community initiatives are often under pressure to perform as a business, or to function as a charitable project, and often under pressure to maintain land and assets as a business, or as a charity, in place of maintaining their actual goals more fully, and significantly, and developing sustainable projects. Community bodies which engage in provision of or access to services, can benefit from sustainable communities, who use their services/buildings. LAs and bodies corporate must allow communities to thrive at their feet, by social, economic, place based, and environmental activities that bring sustainability. The key issue is integrating Sustainability as a legislative concern in planning. Local Authorities, as will CPPS, and other bodies, have need to balance priorities, and requirements, when involved in multi-tiered decision making. Capacity building for the ability to participate, to take on legal forms, and maintenance of buildings and land is one part. The other part is a development strategy that includes empowering community initiatives in land and asset use and ownership via supporting any intents in the sustainability of their projects. Insight as to what can be developed, can be shared by successful projects and where these are struggling, sustainable thinking can be applied. Developing sustainability in as a central organising principle is essential. Communities and services to communities are often understood as being about social welfare and wellbeing of people. The sustainability of community initiatives are just as important to these. Within a supportive developmental environment community initiatives en mass can lend well to single and national outcomes, and can bring regeneration, and revenues that are community led, and bring context for developing enterprise that leads to business, and organisations, and the skill sets needed within these, as well as provisions locally by community to sustain a continuing context for community. Maintaining community as well as servicing people in organisational and corporate or welfare worlds is key. The actual ideas in sustainability can be explored by communities and be supported by bodies that also benefit. LAs and other bodies will need to deal with the time consumption, administration and decision making with regards to community empowerment and need to be empowered to bring in the Bill well without over taxing local people or themselves with excess administrations, financial pressures and controls, or lack of controls. Local people need to be empowered to understand government policy and funds. This is essential. It is sustainable land and asset use that enables empowered communities. The question is of empowerment + Land/asset Use + Sustainability. Whether Land / Buildings be through ownership or through access and use, or both ( as in current crofting law) the key is communities are empowered when community initiative is sustainable and their relationships with land and their initiatives have a legal and economic and social foundation that is also sustainable. Participatory democracy with Government is key.

3. Delegated Powers:

The context of community empowerment may be totally missed with regulation and guidance not being addressed, via delegated powers and little detail in relevant procedures which have an effect on Allotments, and by extension any growing spaces. Where a bill is primary legislation there is need to develop detailed regulation and guidance. With regard to Allotments the statement 'Detailed matters relating to procedure are not considered appropriate to be included in primary legislation' is sensible for the reasons stated but there is still requirement for deeper attentions to regulation and guidance. Reasons given as regards detailing procedure include administrative, fair distribution amongst leases and people on waiting lists, LAs having best oversight with regard to local land. Much of this makes sense on the ground, locally, yes. Reasons given for Choice of Procedures include not changing Primary Legislation. Much of this will perhaps make sense with regard to other larger Policy. There is a need to build capacity for knowledge on how this bill CEB relates to other Policy in context, so communities are empowered to understand this. The argument for Taking Power is variability and with an important proviso it is a good argument. That proviso is so long as there is no reduction of the size of Allotments as a result in any other ways than as put forwards by SAGS, who are leading on understanding of the needs of Allotments, and on effective rationales of historical precedents for their recommended minimum sizes for Allotments. The emphasis on the rationale behind variability in the Bill/delegated powers memorandum, is on individual tenants needs and abilities to maintain and grow on an area, and this is given without clear guidance that is effective for these needs. Food growing strategies, on an individual, local level, and communities growing food locally with the foresight to enable growing regionally and nationally through community empowerment are best written more securely into detailed procedure / primary legislation as part of the CEB. This also applies to community empowerment as to creating and maintaining sites of biodiversity and mixed plots, gardens, landscapes, in joined up ways at community level. Decision makers on land allocations regarding allotments, and any land uses that relate to communities, need to have to hand specific guidances on what makes allotments effective in relation to food growing needs for sharing produce, growing for communities, enabling thriving biodiversity that encourages productivity in crops at the small scale, across communities, and over the larger areas in which allotments are situated. Up-sizing land is necessary with reference to 77(3)(d) in the Allotments section, which allows the Scottish Ministers to make regulations setting out additional information that is to be included in a food-growing strategy. Small scraps of unused or available land can be effectively used in a co-ordinated ways by communities active across areas, who may tend numerous sites of varying sizes and justify a community plan for these. Communities do also need sizeable Gardens, but can justify using smaller unused lands within a wider context, unlike Allotments which certainly need sizes not smaller than any historically rationalised minimum sizes, and given increased population, food scarcity/high food prices and carbon accounting, need to be scaled up, both in size and in quantity above any precedents.
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4. Land & Community: New Models of Land Use/Ownership:

Our cities and our environments afford land which can be regenerated and preserved through community use. Examples in Edinburgh are Granton Walled Garden, The Orchard at The Royal Edinburgh, areas around Craiglockhart Woods, larger areas around Drum Street, the Royal Infirmary, Canal side sites in Westerhailes, and corridors along these and other waters, in an around Edinburgh, to name just a few. These are fabric of green spaces and connections in urban environments for community. Growing space and biodiversity can allow for peaceful active connected communities where these are recognised as irreplaceable sites, and where seen as vacant spaces, these are still the uses of best value long term for cities that can be proud of themselves. In particular where there are possibilities of biodiversity or green corridors, there is need to value these as otherwise irreplaceable both for reasons of connected biodiversity and connected green spaces that bring fresh air and health in urban areas. Equally, at Fountainbridge, a concentrated area where vacant spaces as used by community demonstrate need for long term green and growing space. In rural areas similar mosaics or partially disconnected wild spaces, and/or vacant spaces can bring about community empowerment by engagement with biodiversity or by development of spaces by community for community. At the same time dedicated spaces based on entirely new models like wholesale inner urban forest crop gardens, or on highly productive farms within inner and outer peripheries very much focused on their local communities and areas of highly concentrated urban needs or new empowerment to crofting models as highly productive newly interpreted rural empowerment, all lend to a wider fabric of really assessing land use based on what does empower locally. The case stands for the bill to empower clearly for many types of land being necessary for very large scale as well and small scale community acreages and for a re-evaluation of land in terms of combined yields of community and food security and thriving areas that give rise to and attract bigger trade, business and investment, that would otherwise be more solely administered within priority to more immediate commercial values. Enough detail, procedure, guidance and regulation needs to be in place to encourage that the many types of land uses for food growing with biodiversity that supports crops are not forever planned around other interests when decisions are made at planning levels. These land uses need to begin to form the very fabric of our rural, inner and outer city planning, so that we have food landscapes implemented via empowered communities, that sustain natures plant and animal communities, with a nurture of nature, including such relevancies as butterfly corridors, as response by community to the major environmental themes encouraged by environmental bodies, and towards developing wellbeing through connection with nature, access to outdoor green spaces that are diverse and thriving in a joined up way. The mix of public bodies making social, commercial and economic decisions on land-use need to be significantly empowering a greener healthier Scotland, where smaller scale activities are productive towards all these goals, and where we develop a landscape within and connecting our cities that makes sense for productivity of small scale food growing and makes sense for biodiversity. There are many are organisations like the Forestry Commission Scotland, some LA’s and some Health Boards, even some developers and private landowners, some housing associations, who have a positive attitude to mixed landuses being effective, including community use of land, and we welcome the Bills support of these, but do strongly suggest that some of these bodies are do need to have the legal backing to really enact positive directions, nor build ways in which priority of use of land for community can be given above commercial uses, by establishing symbiotic relationships with communities and their productive inputs and outputs, whereby a diversity of values can contribute to local, regional, and national outcomes. Other types of land, such as Crown Estates, many housing associations, public trusts and landowners, public and private, rural and urban, are resistant, where land could clearly be responsibly and beneficially used by community and need to be helped with guidances to make land available for people to plant grow and harvest their own food. Some good projects exist already showing this is the way forwards as more than very effective.

There is an opportunity with this Bill to empower people and communities to communicate on land needs, and to form by this a basis for fresh land use models. Community empowerment must allow for community ownership in terms of living and use of the environments that are called home, or are the familiar places of our lives, and as being local and regional, and having collective functions that are deeper than public spaces per se and which can bring positive results like food security, general health and well-being, spaces for activity and learning, that go beyond the public park and recreational spaces model, and which still involve opportunities for direct stewardship for the environment by community. Common land, community based land, green spaces, and general land, in whatever type of actual ownership, or of whatever type of nature, be it public, private, commercial, local, can through their use, be tied into individual integrated landuses for communities and purposes which serve communities, like food growing, or creative activities.

Originally land, alternate rigs of which belonged to different users, served a function within communities such as maximisation of available human resources, and alleviating good land for crops and fresh pasture. Apportioned runrigs and common lands were based on needs. Later these were conveniently re-apportioned into divisions, larger than rigs, of several acres each, adjacent to one another, also taken in turn to work and crop, sustainably. Needs today, based on relevant rationales, including effective community empowerment in how communities use land through rights to land ownership and use, can newly apportion land for functional uses that are well thought out and make sense like in smaller communities that had connection to land. Land can for example be apportioned as set into new woodland
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models through the SRDP, within national planning for biodiversity and requirements set by statutory bodies for protection of environment, while reducing inequality in determining ownership and use in relation to all needs in community, locally, regionally and nationally.

A system of variable needs can be applied like a grid to all available land uses. Communities can be empowered to produce their own grids based on such system, where lacks and excesses identified can be utilised through community empowerment to develop, explore and implement sustainable workable patterns of use along broad nationally applicable guidelines. Legislative support would include policy around land and assets of all available types, integrating sustainable development around food security including crisis planning with resilient local food supply via empowered communities, giving strategic support for alternative food systems to flourish in community based systems through connecting food production and procurement with people and land. The Bill needs to empower community to bring about evidence and rethinking about land access where people, biodiversity and food-growing flourish simultaneously and locally. Grow your own projects, or any diversity of projects that do grow crops and plants can also be a statutory consultee to better identify best use of available land to maximise functionality, yield and co-ordination over an area in terms of community, in equal standing with those bodies which deeply understand our natural heritage, as well as our built heritage, and futures which are carbon friendly, nature connected and sustainable, and defined as per how local conditions define the needs of the natural environment, and the variable needs of people that variously belong to those environments, through locality, use, heritage and so on.

A crofter may wish to develop their land, but may not be empowered to do so, where remote locations and the effects of previous eras leave an area requiring decades of input to bring land back up to sustainable living, and full environmental health. Native woodland and the ability to make livelihoods being obvious example. People returning to or taking up the crofting way with sufficient wherewithal to stay on the land, exist alongside others who have hardship in that. Funds from SRDP to build up and maintain woodland for example may not cover survival needs to do so, especially when a crofter may be inspired enough to pay for assistance in making the application by not having the requisite skills to do so, nor having the requisite understanding of funds, nor have the cashflows to consider such funds by way as is sometimes required. A form of empowerment is then needed that enables such a crofters to engage in development of the croft. The system needs to be able to address where community and/or any individuals in that community need empowerment either through funds, facilitation, expertise, land access, land use, or through participatory democracy in issues of concern, and such like. Or indeed in building up new models for creating balanced environments in which both nature and man can survive and have livelihood. The Bill best support the creative power of community and individuals within or of community, with the positive intentions of bodies like SNH, the frosty Commission and so on. Financial pressures and regulations that do not make effective crofting communities is a real danger, and the Bill needs to empower communities and individuals each and all to be able to maintain their livelihoods and fulfil their needs, as well as their environment and crofters duties in their diversity. A chartered forester may know how to make an application for funds, while a crofter may not. CPPs and bodies in rural and Highland areas best have a duty to provide the additional services of assisting with applications towards Government funds that enable effective landuse environmentally and support local livelihoods as part of the developmental processes of community empowerment. A person able to afford to develop their inherited croft, may no longer be connected to community and environmental understanding of the land, while the person who does may not be able to afford to use their crofting lands. Community Empowerment is also a capacity to act economically, socially, and legally, and the Bill must be effective here to, and for variable needs of individuals in community as well as communities per se. A community is empowered also by empowered individuals, where community empowerment does address variable needs and equality within that.

Again, empowerment may be the right to buy, or use, or see on a register, and that is a very important part, that needs to be fully upheld yes. These additional perspectives of empowerment are equally significant and it is the combined understanding of community empowerment that really makes intent in community empowerment fully effective, and well. Upholding common land, obtaining funds for livelihoods are empowerments directly applied to where there is need, use, Crofts have a complicated history some of which is enabling and some of which isn’t. Where crofts are to come into a time where people can using the crofting model to survive, real facts need to be addressed. Like that modern crofting needs to be developed, and this will not happen swiftly where crofting communities have to make a living while their crofts provide no ready livelihood, or where loss of connection means dispute amongst crofters who are people who understand little of the land, or needs addressed in community. Community empowerment needs to be realistic about people and the complications that arise that set people apart in communities. Support must not only be available, but also accessible to all circumstances that people may have to deal with, and the problems that may arise when communities are disparate, without working models of landuse that are effective in joined up and up to date ways. Where landowners who own vast tracts of land, are permitted to be absent while having wealth enough to develop ways living on the land, are not overseen by any governing body while crofters are, this needs an overhaul. Legislation for community empowerment must assess legislation across different land uses that may be contradictory in terms of broader or coherent national policy, and remain inequitable in terms of sense. The bill may need to provide for ongoing openness to ongoing amendments where older laws are yet discovered to be dis-empowering.
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Common land usage may include re-establishment of native woodlands, running hydroelectric, creating shelters in addition to such needs as the grazing needs of old. In parks, these could include forest gardens and designed spaces by community, and so on. These uses best serve community, and single and national outcomes, while retaining general public benefit. In rural and remote places, allowing people to address their needs in terms of their livelihoods, wellbeing and immediate or wider responsibilities as required to build up capacity to remain in rural areas is essential. This could mean enabling livelihoods, for those who have crofts, or for those who need only responsible access to land, this could mean modernising the concept of the old shielings, with the already thriving Reforesting Scotland’s solution based 1000 huts campaign, in alignment with environmental principles.

At the very least the Bill needs to legislate so that community empowerment leads to an understanding of the needs of communities, and individuals on the land, so that combined land uses within community becomes a real possibility for generating sustainable communities and landuses which are effective socially, economically, and environmentally for communities and individuals within communities. Not least to empower to engage with policy as well as rights, in order to represent their needs.

Direct legislative underpinning of mechanical procedures like extending right to buy, asset transfer, maintaining comprehensive accessible registers across Scotland and in coherence with universal rights, is so very important, and the Bill as introduced makes very welcome steps in those directions. I cannot underline enough, the need to include well supported contexts in the Bill that provision participative sense, understanding, accessibility to mechanical procedures. Such as appropriate community entity forms, community relationships with environmental bodies, which understand our natural environment, community in connection with public and ecological infrastructures given by the built environment and the wild environments, which maintain the realms between unrelated and also connected communities, and initiatives that can sustain communities / be sustained by community in carbon friendly and sustainable ways, and not least with respect to resources and uses of land in relation to resources (example, salmon, minerals, and farming, mining and also foraging, portage) that community not only respect barriers with regard to these but also have right of responsible use/ownership/say/stewardship duties, in addition to right of access, along with other stakeholders, like landowners, and economic interests, and that input of community/individuals in community as productive in variable/ multiple ways includes recognition, and support to livelihoods, and that services in wellbeing, local sustainability include support for community initiative, self care, and developing fresh positive environmentally friendly models of landuse and understanding that enables community use of common good land where such use need not be considered an alienation, while also protecting common land against any uses via community that clearly are or would be an alienation, and also how lands can be considered in good balances, as to use, abandonment, vacancy, and as to appropriate use redefined in ways that do protect the environment and resources, but also community with that, with participatory democracy, to effect community empowerment, where community is the best source of understanding on issues of community. Quite a lot is suggested here, the main import, is for the introduction of a Bill which can underpin forwards looking community empowerment that can be functional to and within society in beneficial ways for individuals and the public alike, can be upheld by and in balanced harmony with our larger environments such as the national economy and the natural environment, and also the tapestry that is community with the very fabric of everything.

Community Example in Capacity to Lead: Incredible Edible TodMorden, while not a Scottish example, is a nearby community accessible to Scottish understanding, and as a community empowering itself specifically through growing on any tiny bits of available land and then as self-enabled taking on larger landuse challenges with aims for sustainability in what was started, and becoming a sustainable community by that process. In Scotland, The Grove Fountainbridge Community Garden started on a small plot of approx 600m2 and then went on to successfully develop extensions and further gardens, leading the way to show what can be done, if on meanwhile land as reliable community in excellent relationship with high end developers as well as community, where private developers (Grosvenor) and Partnership Developers (EDI) and LA’s (City of Edinburgh Council) have been exemplary in positive response to community, and can show the way. Where community is engaged in its own skill and land use, individual and collective planting aims enable greater numbers within community to pass on knowledge about growing. This leading to a sustainable outcome for community, as well as enabling those who through leadership in that can be active for their own development. People who are active in community leading the way can be empowered to benefit from CLD as recognised leaders by representing their journey. Pilton Community Gardeners and Granton Community Gardeners in opening up unused wasteland for food production have led the way in taking action and action that led to affordable concessionary lets. "I am particularly pleased that there is recognition that we can't do things to communities; rather we must work with communities, involving them in their priority issues, and in identifying solutions. This is why the community food movement has such a pivotal contribution to make.'"
Comments on this:

The main body answers the questions as regards the Bill. Answers to the questions, affirms these. The Last question is not a comprehensive re-iteration of the Policy Memorandum, It is clear that it contains important detail that is suggestive of more empowerment than is contained in the bill per se, and therefore needs to be made relevant in underpinning legislature.

To what extent do you consider the Bill will empower communities, please give reasons for your answer?

Putting in place and extending mechanisms such as asset transfer, right to buy, service provision participation, creation of registers, and so on is very helpful indeed, however community capacity in accessing these mechanisms and sustaining use of these affordably, requires a commitment to enabling the development of a comprehensive cohesive approach to land and resources in terms of access/use/ownership as understood in the context of all balancing needs and equality between all stakeholders in land/resources/built and natural environments, which is everybody and all bodies in our society. A developed depth of understanding of impact on land, livelihood needed to sustain land, obstacles faced where use and ownership of land is made possible, equitable land distribution decision making and laws that underpin varying ranges of land use, types and ownership, is also needed for empowerment in land ownership and use to be effective, or for registers to be well understood and maintained. Reduction in non domestic rates is an excellent help towards sustaining community empowerment. CPP frameworks make much sense, yet, true success is dependent on participative democracy, and the arena for community participation needs to be set out as wider than planning done for communities, to include enabling recognising and facilitating active community and community initiative as leading the way. Recognition that community Empowerment is a process, that needs to be developed, just as community planning is, is essential. This Bill makes an essential start, yet, as yet, as introduced, needs to widen the vision and understanding to underpin community empowerment legislatively enough for policies, and strategies to develop a process in government, public, organisational and community realms that is empowering for all parties to work together with, as much as for community, and with individuals and initiatives within empowered communities, as much as anchors. True social contract that understands true subsidiarity at community level.

What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

The ability of established bodies to engage in planning for community with other bodies within a more localised framework, and to include more newly establishing community based bodies to join the decision making tiers.

Disengagement of decision making tiers, even those closer to community, with community via a planning for approach rather than a planning with approach. Danger of cementing an understanding within society that community is about communities of organisations, or people within organisations, and public realms, rather than communities of people in connection with their environments. Creation of a huge middleman tier, that fails to connect communities with empowerment through with livelihoods, sustainability, participatory democracy and fails in recognition of and response to community initiative, self-definition, and communication of actual circumstances and obstacles faced.

The policy memorandum does mention community facilitator bodies such as development trusts but the bill does not. There is need to focus on these types of bodies as facilitators of community.

Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, to assist communities, to ensure this happens?

People with advanced skills and backgrounds remote from communities can benefit from positions and opportunities arising through needs of disadvantaged communities, and this can be mutually advantageous. The danger is where communities are not empowered themselves, even where capability is latent, these are often represented rather than facilitated taking a lead in taking up the type of provisions in the bill. Sustainability, Participatory Democracy, Bodies that are facilitating community in own initiatives and in Engaging with Policy on with communities, Access to Expertise and Funds suitable to connecting with policy and funds that support community goals, Recognition of community leaders, and expertise developed within community, and learning from community rather than relying on anchors more connected to organisations, socioeconomic functionality applied to community as discussed in the main body of response here, such as the establishment of simple enabling templates and entities at community levels supported organisationally by facilitator bodies and working groups of experts that specifically facilitate, and support goals, rather
than distract communities with organisational issues. Communities need to make sense of their own circumstances, and communicates and receive support and infrastructure leading to sustainable outcome based on these.

Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Very good, Just aware, that community empowerment as part of provisions is not directly addressed and that extensive looking at the detail, is necessary. I suggest the bill recognise that community empowerment is a process, and set out for further process, and for further amendments as feasible in ongoing ways therefore at outset.

What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

Good. Still, A Focus on Participation with Communities having status of Equality is necessary to understand real needs and impacts of communities, everywhere, including island communities. New Models of landuse is necessary. Community Empowerment stated as a National Outcome to establish community empowerment as equal in our society All that stated in item 54 appears to be very much going in the right direction. 55 is a good target from which much can be learned, and the transformative power of community landownership best be fully supported through attention to community empowerment as an approach as well as the provisioned approach. Item 53 highlights capacity that is already leading and needs support, specifically within an approach of communities establishing sustainability, and for bodies to include enabling communities to pursue sustainability within provisioning. Item 57, this new part 3A in the 2003 Act needs to include that communities and bodies that facilitate communities have that right to buy. The question refers back to the creation of Schedules, Community entities and templates conjunct with organisations that can facilitate communities with socio economic and legal function, in order to secure such rights for community. Item 69 does state communities rather than community bodies, and so should the Acts. Ownership of use, that is based on reduction of non-domestic rates, reward to communities who tend land, not least in enabling livelihoods in multiple ways to remove barriers in relation to tending and stewardships of land. Sustainability as a central focus as led by communities and communities supported in that approach by policy and bodies are essential. Item 59 applies same rights to urban areas, as valid. Item 65 correctly infers a direct relationship between access and ownership fo land with development of facilities by community. Again communities rather than community bodies ( as defined in the bill) need to be empowered to have positive impact on their lives by having right of development of land within a balanced framework of nature stewardship, public realm awareness, and needs of communities directly. Provision of land directly to communities is part of a sustainable approach, where communities develop resilience, given sufficient intitial empowerment and support.

Comment on Policy Memorandum and a possible Participatory Democracy between community and bodies and forms of government:

Highlight: 8. Scotland has a long and proud tradition of people coming together to use their energy and creativity to make a difference for their communities. Comment– To be more fully embraced. Highlight: 10. Community empowerment means different things for different communities. Comment –Including communities being interested in being community as well as participating or taking on guise of service provision and representation. Highlight: 4. In line with trusting the people who live and work in Scotland to make decisions about the nation’s future, the essence of self determination, the Scottish Government is also committed to supporting subsidiarity and local decision making. Comment – great Concordat… Local authorities have a key role to play in providing leadership, and in promoting and supporting community empowerment. Comment – by supporting community to lead. They have a strong understanding of the needs and aspirations of local communities, comment -Not without participatory democracy. …. together with a democratic mandate to make decisions which balance the needs and aspirations of people across the local authority area. Comment – Communities themselves need to have mandate in own decision making. Highlight: 5. Communities can often achieve significant improvements by doing things for themselves, because they know what will work for them. They become more confident and resilient; there are often opportunities for people to gain new skills comment - Policy needs to understand this literally.

Final Comment:

Particularly interpretation and emphasis on community is necessary as to community empowerment, and empowerment that comes from effective land use by effective access, and that all forms of access to land need to be fully facilitated towards community empowerment be that through ownership or be that through highly appropriate facilitation via land owners and facilitator bodies as duty bound towards community with direct community empowerments in a balanced society that includes all Government purpose targets and national and single outcomes, as well as biodiversity targets, along with community empowerment with equality to communities and as an additional national outcome.
23 September 2014

Local Government and Regeneration Committee
The Scottish Parliament
Edinburgh
EH99 1SP

Dear Sirs

Scottish Parliament Local Government and Regeneration Committee
Written submission on the Community Empowerment (Scotland) Bill

Thank you for the opportunity to give evidence to the Local Government and Regeneration Committee as part of Stage 1 consideration of the Community Empowerment (Scotland) Bill. We welcome the opportunity.

There are two elements of the bill which are relevant to Scottish Water:

Community Right to Request Rights in Relation to Property

Scottish Water is supportive of the principle of communities being given the opportunity to submit “Asset Transfer Requests” to public sector bodies whereby they can request a transfer of ownership or use of land belonging to such bodies. We believe there will be situations where such transfers will be mutually beneficial.

Scottish Water would welcome more detailed guidance when the Bill is enacted regarding the framework within which decisions over transfer requests are to be made by the relevant authorities, although we recognise that guidance cannot cover the myriad of circumstances that may apply to specific requests. We would highlight some areas where there could be strong drivers for Scottish Water to wish to retain an asset and would welcome guidance in areas such as:

- How public authorities with a pan-Scotland remit should seek to balance local community interests with their wider customer base in dealing with transfer requests.

- How to balance transfer requests which may be less than market value/rent with obligations under the Scottish Public Finance Manual and Section 48 of the Water Industry (Scotland) Act 2002 to achieve market value for disposals.

- The appeals process to Scottish Ministers, including sufficient detail and safeguards to prevent the appeals process from being used for spurious or vexatious purposes. In addition, if the relevant authority only wants to lease out a site rather than sell it or does
not accept the purchase price/rent offered by the community, will these in themselves be grounds for an appeal?

• In the case of assets which have renewables potential, balancing Scottish Water’s duties under the Water Resources (Scotland) Act 2013 to promote the use of its assets for the generation of renewable energy against a desire by a local community to utilise such assets for a different purpose.

**Improve and extend Community Right to Buy**

Scottish Water is supportive of the proposals to improve and extend the Community Right to Buy and the principle of urban communities being given the opportunity to exercise right to buy powers broadly similar to those enjoyed by rural communities in Scotland at present. We have however highlighted the need for clear and unambiguous definitions of what is a “community” in urban areas and believe that community bodies require to be underpinned by strong governance provisions.

I hope this information is helpful and I am very happy to provide further information if that would be useful.

Yours faithfully

Archie Macgregor

Land and Property Development Manager
Dear Mr. Cullum

Community Empowerment (Scotland) Bill - Part 6 Common Good

Thank you for your letter of 5 December 2014 asking for information on my policy on common good and land registration.

In broad terms, I deal with three types of registration applications that are related to common good. The first is where it is clear that no question arises as to the right of the local authority to alienate the land in question. These cases are processed in the same way as any other transfer of land, and title will have been indemnified under the Land Registration (Scotland) 1979 Act or, from 8 December 2014, be warranted under the new provisions in the Land Registration etc. (Scotland) Act 2012. The second is where it is clear that a question does arise and appropriate Court authority for the sale is in place. Again, these cases will be processed without issue, and the title indemnified or warranted as appropriate. The third category of case is where difficulties can sometimes arise because it is not entirely clear whether the common good land can be alienated. In such cases, the local authority involved may have taken the view that it is sufficiently clear that no question arises. At registration stage, I may, on balance, take a different view, perhaps on the effect of the specific wording in the prior title deeds, or perhaps on questions of fact around whether the land in question has been put to public use. It is not unusual in such cases for applicants to seek advice from my staff prior to submitting their application, precisely because they expect that there may be those in the community who also take a different view to the authority.
My approach to this third type of case has until now been influenced by the Land Registration (Scotland) Act 1979. As the Committee will be aware, one of the difficulties with the 1979 Act is that rectification of the Land Register was only available in very limited circumstances. Indeed, the only way I could ensure that rectification remained possible was to exclude indemnity. Accordingly, in cases of doubt, I have used my discretion to exclude indemnity. This does not mean that I am certain the local authority had no power to alienate, but simply that there is doubt and I wish to preserve the possibility of the register being rectified if there is a challenge to the transfer.

One of the changes made by the coming in of the 2012 Act is to make rectification of the register more straightforward, by breaking the link to the warranty scheme (which replaces indemnity). Accordingly, the consequences of a wrongful registration decision are easier to correct. I anticipate that this may shift the balance in dealing with these borderline cases. In particular, I will be less likely to limit warranty in the majority of cases where the applicant for registration is able to certify the validity of the deed implementing the transfer, bearing in mind that I am entitled to be compensated by the applicant if they fail to comply with the new duty to take reasonable care to ensure that I do not inadvertently make the register inaccurate.

I hope this information is of assistance to the Committee.

Yours sincerely

SHEENAGH ADAMS
Keeper of the Registers of Scotland
Submission 163

Written submission from Environment LINK Marine Taskforce

Summary

Scottish Environment LINK’s marine taskforce outlines the potential of Community Empowerment Bill to consider issues of public participation in marine planning and decision-making, namely:

- how the process for participation requests could be adopted in the future by Regional Marine Planning Partnerships
- how broader measures in marine planning governance could assist with community empowerment in Scotland

Background:

The members of Scottish Environment LINK’s marine taskforce collectively engage on a number of marine policy issues relating to the implementation of the Marine (Scotland) Act; specifically the legal framework for marine spatial planning and marine conservation in Scotland via the development of a National Marine Plan, Regional Marine Planning Partnerships and an ecologically coherent network of Marine Protected Areas.

The main interest of LINK’s marine taskforce in the CE Bill is the potential for its provisions to enable community empowerment in relation to marine planning.

The context:

Marine spatial planning is an emerging area in Scotland. It is commonly understood that marine planning in Scotland is 40 years behind the terrestrial planning system, insofar as there has to date been no statutory system that plans, balances and coordinates marine activities in line with national level objectives and commitments to achieve sustainable development. A strategic and responsive marine planning system is urgently required due to the growing competition for limited marine resources: the increasingly varied, interconnected and often competing uses of the sea are occurring within the context of severe ecological decline, documented in the Scottish Government’s own Marine Atlas. Coordinating activities to ensure sustainable development and fulfil a legal duty to “enhance” Scotland’s seas is therefore critical. The role of communities to help drive this sustainability agenda should not be under-estimated – coastal communities can be the agents of change in marine management and often experience before the wider public the consequences – both positive and negative - of marine policy and planning decisions.

Marine governance in Scotland is complex. The Scottish Government is a signatory to the UK Marine Policy Statement. The Scottish Government has consequent jurisdiction over marine planning matters from 0 -12 nautical miles and has executively devolved powers (from the UK Government) for marine planning matters from 12 – 200 nautical miles. Marine Scotland takes overall responsibility for most marine planning matters; Transport Scotland is responsible for ferry services, ports and harbours; and Scotland’s local authorities currently have responsibilities for aquaculture. This work is also supported by Local Coastal Partnerships. There are

1 http://www.scotland.gov.uk/Topics/marine/seamanagement/regional/Scottish-Coastal-Forum
also considerable overlaps with components of the terrestrial planning system via statutory arrangements such as the River Basin Management Plans of the SEPA-led Area Advisory Groups. In short there is a complex multi-agency governance framework for policy and decision-making in the development, management and conservation of the marine environment. This framework has developed organically and is still developing.

A more regional approach to marine planning issues is now on the near horizon. The Marine (Scotland) Act gives Scottish Ministers powers to establish Regional Marine Planning Partnerships (RMPPs), but this is a work in progress and therefore the development would benefit from strategic join up with a community empowerment agenda. Efforts to ‘engage’ communities in policy-making via public consultations in recent years has been notable, but for the reasons set out in response to Question 1 below there is currently reduced scope for meaningful and genuinely community-led policy-making.

This response therefore focusses simply on two aspects of the Community Empowerment Bill:

1. Outcome Improvement processes
2. The future role of Regional Marine Planning Partnerships

(1) To what extent do you consider the Bill will empower communities, please give reasons for your answer?

We do not attempt to consider whether the Bill will empower communities generally. We also recognise that the Bill was not designed to empower communities in relation to marine planning. However, for many coastal communities decision-making around the use and development of the inshore marine area is of vital importance to the health of those communities. Participation in those processes is therefore a wider requirement of their empowerment. The development of Scottish Marine Regions (and their RMPPs) is understandably a work in progress – such a major administrative change cannot be effected overnight. The continuing lack of clarity around regional marine planning therefore remains a significant blind-spot in the community empowerment agenda. The Clyde and Shetland Scottish Marine Regions will likely develop as ‘pilot areas’ for the roll-out of regional marine planning. This is an approach we support, as both regions will identify a wide spectrum of different challenges owing to the fact that Shetland comprises just one local authority, whereas the Clyde encompasses seven local authority areas.

Section 12 of the Marine (Scotland) Act provides that Scottish Ministers may develop regional marine plans and delegate functions in relation to those RMPPs to a ‘delegate’ (or Regional Marine Planning Partnership). A commissioned report for the Scottish Coastal Forum suggested that the delegate be supported by a technical group; and consultative/advisory groups. The consultative and advisory groups would appear likely to be the only mechanism for community involvement in decision-making and there is no obvious recommendation that would ensure communities have a transparent procedure to proactively request participation in the work of the RMPP. “The Scottish Ministers’ direction should require the establishment of general, topic or geographically based advisory or consultative groups to assist in preparation of the Regional Marine Plan. The
number, remit and administrative arrangements of such groups should be decided by the delegate.”

LINK MTF members therefore suggest that procedures for participation requests in outcome improvement processes outlined in sections 17-24 the CE Bill could be considered as a mechanism for giving communities a clear right to participate in regional marine planning. This would indeed contribute to the wider National Performance Framework. One of the 50 key indicators of the Scotland Performs framework (designed to track progress towards achieving Scotland’s National Outcomes) is “Improve the state of Scotland’s Marine Environment.”

(2) What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill

No comment

(3) Do you consider communities across Scotland have the capabilities to take advantage of the provisions of the Bill? If not what requires to be done to the Bill, or to assist communities, to ensure this happens?

No comment

(4) Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Section 16 & Schedule 2 set out the definition and list of “public service authorities” respectively. Regional Marine Planning Partnerships (because they do not yet exist) are not listed in Schedule 2. LINK members note that this list can be modified by Scottish Ministers in the future, but suggest that it would be a strategic time to consider how regional and national marine planning processes can be integrated with community planning processes more widely and whether this would have any implications for the draft Bill.

(5) What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

No comment

This response was compiled on behalf of LINK Marine Taskforce and is supported by:

Hebridean Whale and Dolphin Trust
Marine Conservation Society
National Trust for Scotland
RSPB Scotland
Scottish Ornithologists Club
Scottish Wildlife Trust
Whale & Dolphin Conservation
WWF Scotland

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2 http://www.scotland.gov.uk/About/Performance/scotPerforms/indicator/marine
SUPPLEMENTARY WRITTEN SUBMISSIONS TO THE LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Community Empowerment Unit, Scottish Government
Dumfries Community round-table event (note taking provided by Scottish Parliament officials)
Scottish Borders Council
Scottish Older People’s Assembly (note taking provided by the Scottish Parliament officials)
Fort William round-table event (note taking provided by Scottish Parliament officials)
Response from the Community Empowerment Unit, Scottish Government

On 23 October 2014, the Clerks wrote:

We have had a few queries regarding the position of certain organisations and the potential impact for them in using the legislation.

One such query concerned community councils and other similar unincorporated organisations’ ability to make use of the provisions in the Bill, particularly in acquiring assets and delivering services, although submission 56 from Fife community Safety Partnership make a similar point. It considered there is a danger that members of such organisations may be sued if something goes wrong and incur personal liability as not all activities can be fully covered through insurance. The correspondence also pointed to a report by the Scottish Law Commission a few years ago which covered the issue:


Some other written submissions have also raised points as to the status/treatment of various organisations i.e. Industrial & Provident Societies (see submission 94) and Community Interest Companies by their exclusion from the Bill’s provisions unlike SCIOs.

It would be helpful if you could clarify the position in the Bill regarding the treatment of unincorporated organisations and other legal entities

On 24 October 2014, the Scottish Government responded:

The only points in the Bill which stipulate that a community body must have a certain corporate structure are where the body is seeking to take ownership of a property, either under asset transfer (section 53) or under the Land Reform (Scotland) Act 2003 (section 34 of that Act, amended by section 28 of the Bill, and new section 97D of that Act, inserted by section 48 of the Bill). In these cases the community body must be incorporated as a company or a SCIO. There is no requirement for the community body to be incorporated to make any other type of asset transfer request, or to make a participation request.

The issue raised about members of unincorporated associations being at risk of incurring personal liability is an important one, and a key reason for requiring a community body to be a company or a SCIO if it is seeking to take ownership of an asset. These structures also ensure the body has proper governance and financial management, regulated either by Companies House or by OSCR. There are many resources and model articles of association etc available, and becoming incorporated is not overly onerous in the context of the other responsibilities of owning land or buildings.

We do recognise that Community Councils are not corporate bodies. They can in some cases own property, but this is normally vested individually in the Chair, Secretary and Treasurer, in line with the Model Constitution provided by the Scottish Government, raising the issue of personal liability again. One solution is for the
community to establish a development trust or similar incorporated body alongside the Community Council, where they want to take on property ownership. I know some communities have done this and the two bodies work closely together.

If an asset transfer request is made for lease, management or use of a property, it will be up to the relevant authority to satisfy itself that the community body has an appropriate structure to take on the responsibilities involved. For a 25 year lease it may be appropriate to require the body to be a company or SCIO; for a short lease or use agreement, an unincorporated association may be fine.

A participation request is simply a request for dialogue about how to improve an outcome, and therefore the legal structure of the body making the request should not be relevant. If it is decided that the way to improve the outcome is for the community participation body to take on or contribute to delivery of a service, again it would be for the public service authority to consider whether that body is appropriately constituted to meet the relevant responsibilities, as it would when placing any contract.

In relation to Industrial and Provident Societies, the legislation establishing these has recently been updated by the UK Government, in the Co-operative and Community Benefit Societies Act 2014, and we are considering how to respond to those changes in the Bill. As a general principle, we would normally expect community bodies to reinvest any profits to the benefit of the community rather than distributing them, so this would exclude co-operatives and Community Interest Companies, but it might be possible to include Community Benefit Companies (BenComs). It may, of course, be possible for other organisations to be designated as community transfer bodies for ownership if Ministers consider it appropriate.

It might be helpful in this context if I also mention the requirement for community-controlled bodies to have a written constitution, under section 14 of the Bill. Section 14 sets out a number of requirements to ensure that a body is truly controlled by the community it represents and has aims which include promoting a benefit for that community. A written constitution is simply necessary to record that the body meets those requirements and to help its members be aware of the body’s aims, rules and decision-making procedures. Again, there are many model constitutions available and this is not an onerous requirement.
Local Government and Regeneration Committee
Community round-table event, Dumfries, 27 October 2014
Notes of workshop sessions with community groups

MSP Chair – Mark McDonald MSP
Scribe – Allan Campbell

NB – these notes are not intended to be an exhaustive account of every aspect of the group’s discussion, but are an attempt to capture the main points which arose.

The main points from the group’s discussion were as follows—

Community Planning Partnerships

- Overall, area committees of the CPP seem to work well in Dumfries and Galloway, and have good community input and representation from the local area. But, consultation by the local authority is seen as patchy. In particular, participants were unsure how (if at all) results of consultations fed into council decisions, and often they were seen as “tick-box” exercises. Linked to this, it was suggested that a lot could be learned from what had previously worked well locally, and that often there was no need to “reinvent the wheel”.

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• There was a view that there needs to be more emphasis on how to empower communities, and to move more to public bodies working with communities – this would require culture change across the public sector. And, that having the right to do something in legislation (like participation requests, asset transfer requests) was very different to being actually able to do something.

Marginalised Communities

• Following on from this, there was a detailed discussion of the opportunities for “marginalised” communities to take advantage of the powers in the Bill. Without resources and support, the group wondered whether the new powers could exacerbate inequalities, as those affluent communities could take advantage of many of the Bill’s opportunities while less affluent/able communities could possibly struggle. It was felt that there needed to be awareness-raising programmes on the Bill once in force, possibly on traditional/social media. Most important to helping marginalised communities use the powers was a clear, transparent process. Equally though, there needed to be management of expectations to go along with this, as it was recognised that not every project or request would be successful.

Community Councils

• Linked to this, there was some discussion of community councils, which while they were seen as generally working well, were very much populated by the “usual suspects”, often older, affluent people who were not representative of the population, although they tended to be very committed to the role.

Asset Transfer

• The group also talked about current difficulties with the community asset transfer process, including one case which had been going on for 15 months. There was a feeling that the current processes were not working well, and hope that the Bill could help. However, there was some recognition that councils need to be careful in disposing assets as communities could take on overly ambitious projects. There was a feeling that, in terms of assets, it was better for communities to take on buildings that only needed minor physical improvements, rather than those that needed significant, major improvements. It was also noted that, if councils do unload assets with too many complex issues on to community groups then councils should be prepared to take them back.

• The group also discussed the Sustrans project currently on-going in Dumfries town centre, and the positive impact of that project on the local community.
Public Body Budgeting

- The group moved on to discuss the impact of budget reductions on public services. It was recognised that councils had, while budgets were increasing, provided a wide range of non-statutory services that people had got used to and now expected to continue. It was felt that there needed to be a more imaginative approach to budget allocations and that it was crucial that local people felt they could influence these decisions and that their voices would be heard. They also felt that council officers should recognise that they didn’t always have the right answer.

Common Good

- There was also a detailed discussion of common good in the area, and the progress that had recently been made by one individual in driving through reform of the way in which the council dealt with common good issues.

- This led on to a discussion of the importance of committed people who were able to drive change and deal with council departments. However, without this, local people often felt frustrated and lost in trying to find the right person to speak to at the council about an issue. It was felt that generally a single point of contact would be useful, and the group was attracted to the Dundee system.

- Finally, the group also touched on allotments, and were keen to note the positive impact of allotments on physical and mental wellbeing in the community.
MSP Chair: Cameron Buchanan MSP

Scribe: Claire Menzies-Smith

NB – these notes are not intended to be an exhaustive account of every aspect of the group’s discussion, but are an attempt to capture the main points which arose.

The main points from the group’s discussion were as follows:

Asset transfers

- What is the position when an asset has been acquired but the membership of the body which acquired the asset dwindles – there should be some monitoring of the asset to ensure it is sustainable?

- There have been examples where a group has failed to ensure the viability of an asset and this has then been sold into private ownership for a nominal sum.

- It should be more transparent to the community which assets a public body holds. A publicly available register would help in this respect.

- Needs to be dedicated support (named person) from the outset to those wishing to take over assets. Any person providing support should have sufficient knowledge. Had to speak to 17 people to get information on a single matter.

Community Planning Partnerships (CPPs)

- CPPs aren’t the problem, it is engagement at local level. There is a disconnect with the middle management – they don’t know what is expected of them.

- Needs to be a commitment from the very top (Chief Executive/Council Leader) for community involvement in decision making.

- Insufficient resources could be a barrier to meaningful engagement.

- Better use of existing resources is the answer.

- Consultation is difficult; it always end up being same active members in the community or in other words the “perennials”.

- They are not engaging well, need to go to where people are e.g. supermarket, pubs.

- When consulting you have to manage the public’s expectations.

- Needs to be an outcome from any consultation and the outcome has to be communicated properly so that people understand why their views weren’t implemented.
• Council used to have monthly public forum meetings where people could put forward suggestions. Contributions were thoughtful and sensible. Now we have themed meetings so people cannot raise wider issues important to them.

• We want regular meetings where the public have an opportunity to address their councillors.

• Multi-member wards mitigate against local participation

• Community planning should be at local level and not strategic level.

• No easy explanation of how to engage with the council – meetings are publicised at the back of the paper in the public notices section – hard to find and not motivating.

Community participation

• Important to note that resource is not just about money, but people.

• “Need to find ways of keeping them fired up”.

• Apathy from the general public – “what’s the point it’s a fait accompli”.

• Activists need to be given support to provide peer support (possibly financial support to recompense for the time they spend away from their project).

• Take resources out of the council and into the community.

• Should be a duty on public bodies to provide support to participate

• Easy to engage primary schools, much harder to engage secondary pupils.

• Compared to the national volunteer rate of 29%, Dumfries has a higher volunteering rate – 36%.

• Number of small isolated communities who have to do things for themselves.

• Volunteering can’t be taken for granted need to be given help: skills; resources; training and information.

Participation requests

• Without a constitution the system could be open to abuse, particularly if the group is seeking funding for their activities.

• Could be argued that the community council should take forward any requests.

• The right to make a participation request has to be publicised and information provided in the simplest form possible.
• Shouldn’t need to be part of a group to make a participation request, as an individual - I should have a right to “lobby”.

• There should be an appeal process – there should be a right to respond.

• Any appeal process should be independent of the public body.

**Community right to buy**

• Clear information is needed on the buying of abandoned or neglected land – this could apply to some housing schemes.

**MSP chair: Kevin Stewart**

**Scribe: Jon Orr**

**NB** – these notes are not intended to be an exhaustive account of every aspect of the group’s discussion, but are an attempt to capture the main points which arose.

**Main points from the group’s discussion were as follows:**

• Bill presents tremendous opportunities if local authorities think differently and innovatively. They need to show leadership and take responsibility for improving community engagement.
• Should the work be process driven?

• LAs work differently to one another and adopt different approaches. How will it be possible to ensure consistency across the country, so that the bill’s aim to enhance community engagement is met?

• Past measures have included co-production and public private partnerships but what has happened to those approaches? Will the bill lead to further flash-in-the-pan measures?

• The regulations in place are a major stumbling block. They are interpreted differently, so different areas take different approaches. Some apply the regulations rigorously; others are more flexible in their interpretation.

• Some see the bill as an attempt to offload public services from councils to community or third sector organisations. That misconception needs to be tackled.

• Community groups are set requirements that are too rigorous. For example, a community group may lease part of a property and want to upgrade it and other parts of the property that are not in use, but it is not able to because it does not have ownership of the building.

• The community asset transfer process can be very lengthy – the timescales can be in years, but council personnel do not remain static. One group experienced a situation whereby the council contact changed each year. Although having a named person was welcome and valuable, time is invariably lost as the new person gets up to speed with the discussions. Therefore, the knowledge transfer process needs to be improved.

• DG One (A leisure and entertainment complex) is temporarily closed. Participants were unclear about whether the council had consulted let alone spoke to anyone on the matter; rather, it was thought that the matter was dealt with internally.

Improving community participation

• A need to change people’s mindset. Most people do not want to engage - the referendum is the obvious exception - and it is not known how to energise them. However, the view was also expressed that, on the back of the referendum, there was the opportunity to enhance and encourage community-level engagement. Indeed, there was a need to tap into that enthusiasm to the benefit of all.

• Two interrelated issues are at play: the perception that the provision of many services is a council duty; and the desire on the council’s parts to control the services. Indeed, it was considered that the council did not want to relinquish control as it considers that many of the services fall within its sphere of influence.
At the same time, the prevalent attitude among many was “I pay council tax, so why should I or another organisation get involved in providing that service?”

- There are high levels of fatigue among those who choose to participate, because they are not seeing the benefits of their work. That point must be recognised and dealt with.

- Loreburn hall was cited as an example of how community empowerment can work. People need to have the opportunity to engage and to have the confidence to ask questions and then pursue a course of action to its natural conclusions.

**Community capacity building**

- Giving people a helping hand and providing them with the relevant knowledge and training was seen to be vital.

- There is a big mismatch between community groups. Some are very confident – for example, the members may have a professional background and/or have a wider experience; while others lack that and do not have similar skills or life experiences.

- An area’s demographics are important, because that may determine involvement.

- Some argued that having in place a formal process helps, particularly given the need to deal with formal bodies such as councils. However, there is a need to help people to take the initial step and inform them how to proceed.

**Case study**

- Young people wanted a skateboarding and BMX-ing park but had no idea how to progress the idea or what it involved. An initial group of 25 rapidly expanded to 245. With support, they learned, among other things, how to make presentations; they also designed their own website, and met an engineer to discuss their plans. Two and a half years and £180,000 later, the park was built.

- However, it took another group in Stewartry/Castle Douglas 10 years to achieve similar plans. Why? The levels of bureaucracy were completely different. Furthermore, given the area’s demographics, it is possible that older peoples’ views held greater sway, which led to delays.

**Funding**

- During the community learning and development review, groups were funded year on year, which is very disruptive – there is no ability to plan for the future. Furthermore, community involvement in the review was minimal, with only two and a half week consultation period, which took place over the October holidays.
Access to council information

- Groups need to know how to access council papers. They also need someone on the ground to explain the process and to help them to understand what questions they should ask.

Consultations

- Council consultations need to be full and honest. There is a feeling that only lip service is being paid by the council. Appropriate deadlines are also key. The driver for the council’s single outcome agreement consultation was seen to be the council’s need to set up the SOA by a specific time

- The local council asked residents where they should make cuts. However, that approach assumes knowledge of what services are provided. The reality is that people are, on the main, familiar only with those services that they access. Even so, it was considered that, post-consultation, the council was overproviding certain services. It was unknown what happened to people’s input. Demographics are important, too, because they can skew the results in favour of certain groups.

Single outcomes agreements

In addition to the above:

- Community’s/people’s priorities are either not or only slightly reflected in SOAs.

- Many seem related to HEAT targets.

- Police ward plans should be the building blocks for the SOAs

- The council has its head in the sand. Is it simply taking on the Scottish Government’s priorities or does it want to genuinely consult people? It needs to decide what approach to take and be honest about its decision.

- The SOAs may be, in part, relevant to the people, but they were not devised by the people.

- Example of council attitude: “The community will get a bucket of sand and like it.” The council has no desire to let the community decide for itself whether it wants that bucket of sand and, if it does, to allow the community to put out that bucket of sand.

General points on the bill

- An idiot’s guide on how to deliver the bill should be provided.
• Huge efforts may be required to get the help of someone (in the council, for example) who may not be that interested in what a community group wants. The bill should help to challenge that situation and make the process easier.

• The bill should shift the power balance away from councils to community groups etc and make councils more accountable to communities for the delivery of services. That would be a good thing, but a culture change is required to make that happen, and people need to be provided with the necessary skills to allow them to progress projects.

• Local council does not have a common goods registers, so the bill will be helpful in that regard.

Post-legislative scrutiny

• Only by carrying out this work will it be possible to determine whether the bill is having the desired effect. If authorities and/or councillors, for example, are not held to account, they will carry on as before and the historical lack of transparency and openness will continue.

The need to improve processes

• They are overly complicated.

• The profusion of committees. Committees are set up when none are needed – for example, to agree how to spend as little as £1,000. Where is the value for money? What cost benefit analysis has been carried out?

• Several committees dealing with the same issue. The example cited was that four committees deal with common good land. Not only is that wasteful, but it makes it extremely difficult for people to know who to talk to or to understand the subject.

Councils

• Council has an 80-page constitution. In what way is that accessible for the people?

• Councillors do not reflect the people in the community; they also seem to represent their own interests. For example, how budgets are devolved seems designed to make councillors popular in their areas, so the operating environment is one of pork barrel politics. In addition, some councillors appear to use budgets to fund their pet projects.

• Local authorities fund groups and third sector organisations. There is always a tension present and a fear about the consequences of rocking the funding boat. Groups need the confidence to be able not only to put in requests, but to do so without any fear of a backlash for making such requests.
Elected members’ responses to community groups and their ideas have included:

“The community doesn’t know what’s good for it”.

“We can’t let them try, because they will probably fail.”

“If we let them try, they might fly.”

The council and NHS are risk averse. A good example is the continuation of the belief – both by GPs and some members of the population – that general practitioners “know what is best for you.” The system remains patriarchal and some people devolve power to the GP.

Reform

- Concern expressed about the constant restructuring of services, which was not necessarily beneficial and certainly not driven by local communities.

Young people

- Two pupils were at the table. They said that they have a school council, but council members do not seek pupil’s views; rather, they have to approach the council. Therefore, there is much to do in the school environment to embed full and proper consultation.

- No work is under way to inform school pupils about the bill. That seems to be a missed opportunity. Given that many schools held referendum debates, perhaps pushing at an open door for the continued exploration of political issues. An idea would be to encourage debate on all major bills.

- It seems clear that early engagement would lead to a better understanding of community involvement and what can be achieved. The hope would be that pupils would take what they learn at school and be more actively interested in their community and participate in improving it.

Other points to note (and perhaps to research further)

- Dumfries and Galloway Council is working on a new lobbying council

- The Scottish Rural Parliament’s inaugural meeting in Oban is taking place in the w/c 3 November. Norman McAskill, SCVO is heavily involved. Perhaps worth checking on whatever flows from the meeting as many of the themes discussed at the community event will be raised there, too. Perhaps also worth alerting RACCE committee clerks to the event, although I imagine that they know about it.
Air weapons etc

- Very little discussion took place as the group’s interests lay in the Community Empowerment (Scotland) Bill. One person, who had air weapons experience, commented on air weapons. He was supportive of the bill.

- One general question was raised about whether the bill was restrictive or would allow local authorities the ability to interpret it flexibly, to meet the needs of local circumstances.

Chair: David Cullum
Scribe: Stuart Kay

NB – these notes are not intended to be an exhaustive account of every aspect of the group’s discussion, but are an attempt to capture the main points which arose.

The main points from the group’s discussion were as follows—

**Community Empowerment (Scotland) Bill**

Some communities are more able to participate than others.

- It is important to support communities to build capacity.
- Outcomes should be policed.
- Third sector interfaces have an important role in the process.
- Culture change is needed.
There are five community councils in Dumfries, but how many of them are active?

“Every community council has to come into the 21st century.”

There has been more engagement in local politics since the referendum, which could represent a big change.

East Ayrshire Council looked at engagement with communities two years ago (not doing things to or for them), and it has seen a change in people’s interest.

It is important that community councils work together.

In the arts, participation, venues, getting people engaged and artist-led rather than council-led initiatives are important.

A concern about the bill is that bodies have to be incorporated. Perhaps its scope should be broader.

The public sector must get into organisations.

The council should have named persons in every community.

There are problems with a lack of resources and “volunteer burnout”.

Whether participation requests make a difference to communities will depend on councillors listening. Councils can cherry pick what they want to do.

Local authority budget consultation can be about where people would like them to cut less.

Are participation requests registered? It would be interesting to know how many are successful.

The bill should mean a cultural shift. A more open culture to learning and improvement is needed.

There are three allotment sites in Dumfries. People are interested in allotments, and there is a lot of spare land. Allotments bring many community benefits, such as local produce and clean air.

The importance of land being used for community projects, such as land art projects, was discussed, and the Summerhill land art project was referred to.

The bill should reach more widely, beyond allotments. It is too restrictive. It is up to communities what they want to do with land.

Burdens on local authorities should be reduced through meaningful and sustainable projects.

People who live in the centres of towns need access to land, and there are plenty gap sites.

The difficulties of converting agricultural land, which could be used for the community, were discussed.

On common good property, the point was made that consultation can be tokenistic, and there is the issue of accountability in large areas.

The possibility of community councils vetoing local authority decisions was discussed.

A register of who owns what is needed.

Community councils are the most directly accountable bodies for communities.

It is important to publicise proposals.

Hard decisions are ahead, and everybody must work together.

More open, efficient and streamlined common good processes are required.
• Councils have a duty of care for buildings.

**Air Weapons and Licensing (Scotland) Bill**

• It is estimated that there are half a million air weapons in Scotland.
• Respondents to the consultation tended to be those with an interest in opposing the proposals.
• Black cabs are expensive and are preferred in the NHS, for example. They have prestige and the service is skilled.
• In Edinburgh and Glasgow, black cab drivers must pass a knowledge test, but is that required?
• There are no wheelchair-accessible taxis in the area, which is a gap in the service.
• There are different taxi regimes across the country. The question whether there should be consistency was raised.
• Many cultural organisations in the area are not in traditional venues and there is a six-month turnaround for licences. Temporary and quick licences are needed.
• If six different events take place over a year—perhaps in the open air—it would be good to get an overarching licence for them.
• It is important to make Dumfries more vibrant by granting entertainment licences.
• A coherent approach to licensing is needed.
• In rural areas, many events go on “under the radar”. Processes should be as flexible, understandable and simple as possible.
• The question whether an entertainments licence should be attached to the venue or the organisation was raised.
MSP Chair – Stuart McMillan MSP
Scribe – Seán Wixted

NB – these notes are not intended to be an exhaustive account of every aspect of the group’s discussion, but are an attempt to capture the main points which arose.

The main points from the group’s discussion were as follows—

Community Planning and Community Councils

- Considering the role of community councils, the Community Empowerment (Scotland) Bill ("the Bill") doesn’t empower communities. If we want it to empower we should give Scottish Community Councils the same powers as English ones such as the power to raise their own money etc;

- On the reform of community planning in the Bill; there was concern that community councils are not really representative of their communities, in terms of age, gender, ethnic profile, social and employment status and minority groups;

- There are too many community councils. For example there are over 150 in Dumfries and Galloway ("D&G") of which only about 87 are active. Most are very poorly attended by the councillors and public;

- Part of the reason for this is that community council have such little power, no one is motivated to attend;

- There was concern that D&G Council doesn’t consult with community councils when its undertaking work which affects their communities and which they get complains about;

- The was a feeling community councils should focus on the major issues which affect their local communities such as care of the elderly, rural housing etc, not small village issues or parish pump politics;

- There is a lack on knowledge by community councils about their power or duties and how they are exercised. They also have too few resources to do their current role;

- One issue which hampers community councils is the fact that the media don’t address major policy issues which affect people (like care for the elderly, rural housing provision) in an accessible way. Instead they focus on small issues which are easy to report on, so that what is raised in the minds of the community and they focus on;

- There is a need to give some consideration to the introduction of a minimum ratio/size of population to practically support a community council. Often they are made up of older retired people as they are either the only ones with the time, or are over represented in certain communities;
• Another point was made about the fact that D&G may have the smallest ration of people to community councillors in Scotland this that many villages and communities in D&G are not covered by a community council at all;

• Younger people are especially underrepresented on community councils;

• The debate focusses too much on the structure of community councils and other bodies, when it should focus on how the community is engaged with;

• More creative ways need to be used to engage by community councils and the community, but also this needs to include development trusts and 3rd sector groups;

• There was a strong feeling the community councils need to be rebranded for the 21st century to attract a more representative cross-section of the community they serve. As they stand just now most people don’t see the point of community councils;

• One suggestion to make community councils more relevant to their communities was to reorganise them around school and educational districts;

The 3rd sector

• The wider 3rd sector community must move away from being grant dependent on funding from the public sector and become more socially enterprising and independent by generating their own revenue. This is especially relevant in taking on assets from the public sector;

• There was a lot of concerns to whether the Bill can facilitate the structures needed for the development of a more socially enterprising 3rd sector community base;

Community Planning Partnerships

• Most of the participants in the discussion stated that they did not know what Community Planning Partnerships (“CPPs”) did or who was on them;

• Following a description of D&G CPP, who was one it and how it worked, there was agreement that is was especially under representative of young people. One suggestion was that local members of the Scottish Youth Parliament should automatically be members of their local CPPs;

• The group discussed several examples of issues around right to buy land that have affected communities in D&G, such as the ownership of the harbour in Port Patrick by an absentee landlord. Dalry Community Council recently worked to prevent the sale of a community allotment to a housing developer, and were successful in this;
Community Right to Buy

- On right to buy provisions of the Bill, there was strong agreement that the existing right to buy legislation should be extended to urban Scotland and that the political and legislative focus for the last 15 years on this issue in ‘rural’ Scotland has been “quite unfair”;

- There was concern over the definitions set out in the Bill on abandoned and neglected land, vs. abandoned or neglected land. There was a view that the Bill will to clearly define what constitutes ‘abandoned’ land and what constitutes ‘neglected’ land and in what instances either or both of these criteria must be met before the power of the Bill can be utilised;

- There was also a strong view that definitions of ‘abandoned’ and ‘neglected’ land must be on the face of the Bill, and not in regulations as this is the only to ensure the get the level of public and parliamentary scrutiny which will be required for such contentious concepts. It was felt that Government consultations on regulations get very little attention and scrutiny either buy the Parliament or by the public in general;

- Concerns were raised about the level of second/holiday home ownership in rural communities in Scotland and their impact not just on house process and access to the housing market for first time buyers, but also on the provision of key services in the community such as school places etc. Some felt that there should be thresholds defined as to the level of second home ownership allowed in a community before certain community provisions could be activated to ensure that the level of second home ownership doesn’t have a disproportionate impact on the community. One suggestion was to have second homes reclassified under the Used Classes Order of land use planning system as a way of addressing the problem. (The chair said the clerks would bring this issue to the attention of the RACCE Committee as they were examining Part 4 of the Bill);

Participation Requests

- On the participation requests aspects of the Bill there was an acknowledgment that the 2007 single interface decision was very welcome but that this development now needed to be built on;

- The was agreement that if the Bill make it easier for communities and people to navigate the complexity of the local government system in terms of getting decisions made, or identifying who to engage with, would be very welcome. One participant described their experience of engaging with a local authority in terms of getting a decision on a community project as “like wading through treacle”;

- There was a feeling that more needed to be done to ensure that communities and the 3rd sector has more resources to engage with much clearer lines of communication with the public services;
• There was a hope expressed that participation requests may assist in bringing about the culture change which many of the community groups identified was necessary in the public service, and at local authority staff level in particular;

• There was, however, also an acknowledgment that community groups and the 3rd sector also need to undertake culture change in terms of the way its engages with the public sector, and what its expects the public sector to achieve for them;

• It was felt that community groups and the 3rd sector need clear understandable guidance to assist it in achieving culture change;

Asset Transfers

• On the asset transfers provisions of the Bill, there was an acknowledgment that local authorities are facing funding shortfalls and, as such, their ability to maintain and operate a host of buildings and other assets will be put under great strain;

• There was a concern that the asset transfer aspects of the Bill might be seen by some in local government of an opportunity to offload burdensome assets onto community groups and others, with all the negative implications that could have for such groups;

• Community council member outlined the current process they are engaged in in terms of trying to purchase a local community hall and summed up the experience as “painful”. Elaborating on this process one of the main issues was the continually shifting goalpost’s in the process. This was largely dependent on the succession of different council officers the community council has dealt. Some have presented contradictory information on the process of acquiring the hall, with ‘problems’ appearing and disappearing with the person in question.

• Also the estimated timescales for the process have expanded and contracted, again largely it would seem with the council officer in charge of the process. This overlying message was that the community council had to “fight all the time” to get anywhere;

Local Authority Services and Culture

• There was a clear acknowledgment from many in the group that there were many services and functions that D&G Council did very well. But in certain area, especially any area which have a commercial aspect to them, the processes of the council were described as “lethargic”;

• Having said this, however, the group did state that there was also a pressing onus on the 3rd sector and community groups to get their forms of governance and forward planning right in terms of taking on commercial entities and producing viable and sustainable plans for projects;

• One participant described the cultural mind set in local government as a “disabling” one (e.g. what your group needs to so as to allow this to happen is....)
rather than an “enabling” one (e.g. we’ll make this happen and just need to find a solution to....);

- It was felt that part of the reason for this was that council officials often see council assets as ‘their’ assets, perhaps on which the perceive they job depends. So those seeking to take over such assets are an inherent threat, or at least a risk to be managed;

- There was a feeling that elected councillors on local authorities are often themselves disempowered in helping communities as they are dependent on the council bureaucracy for information and action to make things happen. And if the culture amongst the council officials is a hostile, stressed or disengaged one, the councillors can thwarted despite their best efforts;

**Common Good Property**

- In relation to common good property there was a strong feeling that much more clarify was needed on public sector owned/managed buildings and land, and whether it is common good property or not;

- There was universal agreement that a publically available common good register is vital to the success of the common good provisions of the Bill;

- One issue which needs to be addresses in the culture of certain communities which see common good property in their locality as exclusively for the use of ‘their’ local community, as opposed to the whole community of a local authority area;

- There was a strong feeling this was especially true in relation to the communities with access to assets which were inherited from the former Royal Burghs. Some of these assets were the subject of local debate as to ‘whose’ asset they were. The Bill needs to be clear that assets held by council for the common good are for the good of the entire community of the local authority in questions, not just a section of that community which may formerly have constituted a Royal Burgh;

**Allotments**

- Finally, on allotments, there was a feeling that while the provision of allotments was an important function which local authorities should provide to the community, there was a wider need to ensure the entire community has access to the ability to grow their own food;

- It was felt that this was especially important for vulnerable sections of the community, such as those of economically deprived backgrounds; people with health issues (such as mental health needs), immigrant and minority communities, people with disabilities and age-specific communities (such as young people or the elderly);
• It was agreed that, in terms of the provision of allotments or land for growing food, local authorities should look to give priority to such groups in terms of providing access to growing land.

MSP Chair: John Wilson MSP

Scribe: Francis Bell

NB – these notes are not intended to be an exhaustive account of every aspect of the group’s discussion, but are an attempt to capture the main points which arose.

The main points from the group’s discussion were as follows—

Community Empowerment (Scotland) Bill

General

• Questions about what definitions of “community” and “empowerment” were being used in Bill. Noted that communities of both interest and geography were covered; empowerment could mean many things – what did participants feel would empower communities?

• Capacity building in communities essential for success of many provisions in the Bill – and this needs to be resourced. Also, need to recognise how much time needs to be allowed for proper community capacity building. Even with this,
concern noted about the sustainability of community groups once key members cease to be involved.

- Concerns about decisions being made in name of a community without sufficient community engagement. But also noted the possibility of engagement raising expectations too much if views are then disregarded.

- People feel not being listened to by councils – opportunity for public to pose questions at start of council meetings?

- Communities will take on more responsibility if they own land/assets.

- Need to find new ways of organising community involvement – “clickicism” (examples in Australia?), that is, people using social media to engage in brief bursts. People don’t have time to attend meetings at certain times every week or to read lengthy consultation documents – but might have time to participate in shorter discussion on particular topic via social media, to share or like proposals, or consult a community noticeboard to see if they can volunteer for something at a time that suits them. Such approaches would engage young people much more.

**Community planning**

- Bill should allow more of a bottom-up approach to community planning. There was a successful community planning pilot in Dumfries in 2001 which involved lots of groups. This was prior to the creation of a community planning department within the council – now that there is such a department it was felt that there is not enough communication between different departments/groups at any level.

**Asset transfer**

- If assets are transferred, how will councils ensure that assets are operated properly (e.g. run safely with proper public liability insurance etc; run according to relevant restrictions if asset is a common good asset)? How will community groups access the funds the needed to manage assets – costs considerable in some cases?

- Public authorities shouldn’t be handing over problematic assets to community groups to run just because money is tight (and community groups may be able to access funding sources that public authorities can’t, especially for capital projects), especially if the community group involved is not yet properly prepared for the size of the task. Not transferring assets until community groups properly prepared to take them on protects community/asset in the longer term.

**Common good**

- Dumfries and Galloway Council already has fairly robust common good register. Even so, the status of some assets is not known (and establishing status where
common good is in play is difficult and expensive). If such an asset was transferred to a community group, how would they deal with any legal challenges concerning the status of the asset?

Community councils

- Variety in community councils noted – some stretched because of large area covered, some areas have no active community council, some community councils not very representative of community (need for younger people). Little investment in or support for community councils. Need for more consultation on definition of community council areas. Perception that community councils don’t do anything (and lack of formal powers noted – statutory consultee on planning applications main formal role) – come up with a more defined description of community council role?

Air Weapons and Licensing (Scotland) Bill

Air weapons

- Mixed views on licensing of air weapons. Agreement that should only introduce new licensing system if truly necessary. Is there existing legislation (e.g. on carrying of air weapons in public) that could be better enforced before resort to new licensing system or any alternatives (e.g. tracking weapons from manufacturer onwards)? Would licensing necessarily have prevented cases where people have been killed or injured by air weapons? And if perpetrators in such instances caught, what does licensing add?

- More specific concerns/questions about costs compared with shotgun or firearm licences, transitional arrangements for people who already own air weapons and on how police will apply “fit to be entrusted with air weapon” test.

Alcohol licensing

- Too easy for under-18s to drink in public places currently – but whether or not introduce further measures to try to reduce this, will still happen.

Taxis and private hire cars

- Greater use of private hire cars as opposed to taxis in rural areas. Concern, at certain times of week at least, is short supply rather than overprovision. Prices vary between private hire cars for same journey – should be greater consistency. In general, some support for idea that same regulations should apply regardless of whether the service is procured by hailing on street or pre-booking.

Metal dealers

- General support for proposals in light of problems, but concern about costs on small business and also about new rules making it difficult for people to get rid of
small amounts of scrap metal (dealers won’t take things if costs of recording where it came from etc. are too high).

**Public entertainment venues**

- Support for local flexibility in licensing arrangements. Question about whether school plays covered?

**Sexual entertainment venues**

- Support for community consultation prior to sexual entertainment venue being established.
c26 – the timelines for asset transfers by Scottish Borders Council varies according to the complexity of the project. Sometimes it can take 2/3 months but it could extend to several years due the need to work with communities to ensure that they have robust and sustainable business plans which enable them to be ready to take on the asset.

c28 – there has been around 23 asset transfers since 2003, by Scottish Borders Council.

c34 - the power of well-being has not been explicitly used in relation to asset transfers.

c38- Scottish Borders Council has 86 individual plots in our allotments that we directly manage.
Community Empowerment (Scotland) Bill

Note from the Clerk

1. On Friday 31 October 2014, the Scottish Parliament hosted the 2014 plenary of the Scottish Older Peoples Assembly ("SOPA"). During the day, delegates undertook a series of workshops and panel discussions, as well as meeting in plenary session.

2. One of the six workshop groups for the day focussed on the topic of community empowerment and the issues which are especially relevant to older people.

3. As the Local Government and Regeneration Committee is currently scrutinising the Community Empowerment (Scotland) Bill at Stage 1 ("the Bill"), the Clerk and Assistant Clerk to the Committee facilitated this workshop. This allowed discussion of the Bill and its relevance to older people.

4. Attached is a clerk’s note summarising the discussion in the workshop and the three key issues reported back to the plenary session from the group.

Seán Wixted
Assistant Clerk to the Committee
6 November 2014
SCOTTISH OLDER PERSONS ASSEMBLY
(“SOPA”)

FRIDAY 31 OCTOBER 2014

BREAKOUT GROUP – COMMITTEE ROOM 5

1.30pm – 2.30pm

THEME: COMMUNITY EMPOWERMENT

Chair – David Cullum (Clerk to the Local Government and Regeneration Committee)

Scribe – Seán Wixted (Assistant Clerk to the Local Government and Regeneration Committee)

Speaker – Donald McLeod, Highland Senior Citizens Network

Plenary reporter - Tim Puntis, LGBT Age and SOPA Board Member

Participants –
Parveen Haider         Milan (Senior Welfare Organisation) LTD
Michelle Harrity         Scottish Government
Helen Ford
Carol-Anne Kennedy Macmillan Cancer Support – Associate Macmillan Involvement Coordinator for the West of Scotland
Valerie Egdel Edinburgh Napier University
John Thompson          Gay Men’s Health
Deirdre Flanigan Scottish Human Rights Commission
Joan Wilson             East Berwickshire U3A
Catherine Bishop Senior People’s Forum
Marguerite King 3Ls University of Strathclyde
Sheena Wurthmann
Katherine Brookfield University of Edinburgh
Robyn Wardlaw Scottish Social Services Council (SSSC)
Margaret Tait Inverclyde Elderly Forum
Dave Davies          LGBT health and wellbeing
Margaret Mitchell Dumfries and Galloway Seniors Forum
John Parkhill 3Ls Student Association at Strathclyde University
Margaret Edridge Individual elderly woman
Samuel Gibson Unite the Union affiliated to NPC
Barbara Barnes Alzheimer Scotland
Kristofer Watt ELREC
Agenda Item 1  
12 November 2014

Natalie Dalziel            Macmillan Cancer Support – Associate Macmillan Involvement Coordinator for the South and East of Scotland
Rohini Sharma Joshi    Trust Housing Association (Equality Scotland)
Eileen Cawley             Scottish Pensioners Forum
Maureen Rodger        Fife Elderly Forum
Shona McIntosh          Scottish Government
Iris Mayhew                U3A East Kilbride
Alison Clyde                Generations Working Together
Evelyn Fraser              Scottish Women’s Convention
Ian Turner                   Scottish Government
Lesley Irving                Head of Equality Policy, Scottish Government

Summary

The group was required to report three key action points back to the SOPA plenary in the Debating Chamber after their discussion. The following were the action points reported on community empowerment—

ACTION POINT 1 - ENGAGEMENT WITH THE COMMUNITY MUST BE CLEAR; IN A FORMAT PEOPLE CAN UNDERSTAND; ALLOW ENOUGH TIME FOR PEOPLE TO ENGAGE; AND HAVE MEANINGFUL ACTIONS WHICH ARE THEN REPORTED BACK TO THE COMMUNITY

ACTION POINT 2 - THE SCOPE AND WIDTH OF THE OPPORTUNITIES PROVIDED BY THE COMMUNITY EMPOWERMENT BILL TO ALLOW COMMUNITIES TO EMPOWER THEMSELVES NEEDS TO BE CLEARLY COMMUNICATED TO ALL – ESPECIALLY THROUGH PARTICIPATION REQUESTS

ACTION POINT 3 - WHILE RECOGNISING THAT THERE ARE MANY DIFFERENT KINDS OF COMMUNITIES – BOTH OF PLACE AND OF INTEREST – THE COMMUNITY EMPOWERMENT BILL MUST EXPLICITLY RECOGNISE COMMUNITIES OF AGE, SUCH AS OLDER PEOPLE, AND THE NEED TO EMPOWER THEM DIRECTLY.

NB – these notes are not intended to be an exhaustive account of every aspect of the group’s discussion, but are an attempt to capture the main points which arose. Summary of group discussion—

• Donald McLeod of the Highland Senior Citizens Network briefed the group on feedback from 12 SOPA engagement events conducted across Scotland between June and September this year. These meetings engaged with over 400 older people and discussed the issue of importance to them. It was noted that the second most frequent issue raised at these events was the subject of community empowerment, with 68 people raising the subject. SOPA participant’s
responses were grouped into three key areas of community empowerment (a) access; (b) mindfulness and (c) resources. A copy of the feedback summary from these events is attached in the Annex to this paper.

- The group discussed the difficulty official documents like consultations from national and local government pose for older people, being full of acronyms and “official speak”. Older peoples groups can only meet on monthly bases - or less frequently as resources are scares, and are staffed by volunteers. Often the timescales for public consultations for these groups to respond are too tight. They have to discuss a consultation, draw up a response, and agree to the submission, which may take three meetings, by which time the deadline for consultation has passed. There is also a strong view that officials pay only “lip service” to consulting older peoples groups and they never get feedback on their input.

- Another delegate said that older people find ‘official’ language very hard to understand and confusing.

- This view was also supported by another delegate who told the group official consultation documents are too long for volunteers to read and understand. Older people from minority groups, whose first language is not English, were especially disadvantaged in this regard.

- Government needs to look at ways people can respond to consultations other than in writing.

- One delegate was very confused by the acronym TTIP,¹ which was referred to in plenary session and did not understand what this was. He pointed out that even at an SOPA meeting, ‘official speak’ was abundant and this turned people off.

- A delegate questioned how the Government and civil servants decide which groups to consult as he was unaware of ever having been consulted.

- Following a brief discussion on the public consultations on the Community Empowerment Bill (“the CE Bill”), a member of the Government’s Bill Team explained the two consultation processes held on the Bill (each 12 weeks in length). An easy read version of the Bill has not been produced.

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¹ TTIP is the Transatlantic Trade and Investment Partnership also known as the Transatlantic Free Trade Agreement (TAFTA). This is a proposed free trade agreement between the European Union and the United States which is currently under negotiation: [http://ec.europa.eu/trade/policy/in-focus/ttip/](http://ec.europa.eu/trade/policy/in-focus/ttip/)
One representative of a group stated that community empowerment meant the people should have easy access to government, however she said her groups had been refused a direct meeting with a Scottish Government minister.¹

The Chair informed the group of the Local Government and Regeneration Committee’s scrutiny of the Community Empowerment Bill and the problem it has with “gobbledygook”;

Another delegate stressed the need for community groups to have access to community education - especially older people in deprived areas. His local Further Education college has downgraded community education recently.

A delegate said it was easy to arrange meetings with MPs, MSPs and councillors and they listen to concerns. But people never seem to get outcomes from these meetings and rarely get feedback on information on action.

Liaison with public representatives and other public services, like GPs, the NHS, councils, is very hard for people who speak minority languages. Older people from these groups need careers with language skills to help with this.

Another delegate told of the difficulty older members of the LGBT community have in engaging with public services, especially when so much of the engagement seems to be aimed at people who live in a community, rather than people from a social group. Because of the CE Bill didn’t seem to have much relevance to people from the LGBT community.

Another delegate recognised the need for all communities (either of place or of interest/need) to be treated equally. However, given the breath of need of older people across all parts of society, she felt that the CE Bill should specifically make reference to empowerment for older people. For example, certain cost-saving decisions by councils to services which may seem to have a minimal community impact, have a disproportions impact on older people (e.g. access to public/accessible toilets for care and hygiene needs, access to public seating and park benches for rest etc.).

Also, another issue of concern was the need for access to space for socially activity older men, who are an especially isolated group (e.g. men’s shed movement etc.).

¹ This issue was raised in the Q&A with Cabinet Secretary Robison during the plenary session. The Cabinet Secretary was unaware of the issue and apologies for any offence caused. She undertook to look into this issue.
• The SG Bill team explained how the CE Bill could assist both older people in the LGBT community and older men (e.g. land/asset transfers for men’s sheds/meeting space etc.)

• Concerns were expressed over the lack of a published Equality Impact Assessment on the CE Bill. The issue of age discrimination was discussed and the fact that since 2012 this has been a defined category under the Equality Act. However, age discrimination is still widespread in society, especially in healthcare/NHS/GPs etc. The CE Bill needs to facilitate more community-based supervision of ‘the professions’ such as surgeons, doctors etc. Also governing/regulating bodies like the General Medical Council need more community input.

• There was discussion as to how the Government takes the view of many and condense them into one idea. How is the ‘minority’ voice included in the priorities of the majority.

• There was a call for clear and highly visible guidance to ordinary people on how to use the powers in the CE Bill. The SG official stated this was being developed.

• A delegate spoke about the difference between ‘engagement’ and ‘involvement’ when it comes to making decisions. The Government and Parliament may be good at engaging people, but not involving them. Devolution has now been around for 15 years, so it shouldn’t take a referendum to get this kind of improvement in the way the system works. Parliament and Government should be improving year-on-year on involving people in decision making.

• One delegate asked if there would be a time limit on participation requests made under the CE Bill once it become law? A member of the CE Bill team explained that once the ‘outcome’ to which the participation requests relates has been achieved by the action in question, then the process would come to an end.

• One delegate asked how individual people who are not members of a community or voluntary-based group could find out about such consultations and bills? If you don’t have access somehow, how can you know what’s going on?

• It was stated that all people who are SOPA delegates and have email addresses could be informed of such development. SOPA would look at this.

• Another delegate spoke of the public cynicism about engaging with officials and government, as often people don’t hear back on the input
given. How can this issue be addressed? It makes it harder for community activists to get people interested and involved when this cynicism is so widespread.

- One participant spoke of older people living in remote and rural areas, being especially isolated compared to those living in towns. Low levels of access and knowledge to the electronic world makes emails and e-literature useless to them. They need face to face engagement. The Scottish Government need to work with all 32 local councils on this issue and “up its game” on engaging with isolated people.

- One delegate asked why all 32 local councils didn’t have an Older Persons Champion (“OPC”) to coordinate all these efforts? Also all other public agencies should have an OPC.

- A delegate expressed fears that funding pressures and cultural resistance will means council will “find excuses” to knock back a participation request from community groups. The agreement that “we don’t have the funds for this” is impossible to argue against if a council says no. The delegate asked about what sanctions the CE Bill will have to stop councils using ‘lack of funds’ as an excuse to get rid of participation requests.

- Discussion was held about the need to have access to more allotments and the ability of people to grow their own food and plants. Reference was made to the example of the Growing Your Own Community initiative in West Lothian and being a good example.

The meeting concluded at 2.35pm
ANNEXE

Responses to the SOPA question: Community Empowerment
A summary of the highlighted points below.

This topic covers accountability of organisations, Government support, intergenerational work and the desire of many active older people for schemes to enable greater involvement as volunteers in sustainable projects. The latter would involve the reshaping of services. Inclusiveness and equal respect of all sectors and individuals within the older population is vital – for example, those in the Lesbian, Gay, Transsexual, Bisexual (LGBT) or ethnic communities who often remain hidden on the margins of society.

Access
☐ Financial support of older adults who wish to engage in further education

Mindset
☐ Use the life experience of older people to help younger people
☐ See the person as a unique individual, not solely defined by age
☐ Valuing seniors in the same way that younger people are valued
☐ Ensure that organisations representing the older population are accountable
☐ Fully and explicitly acknowledge the LGBT community and its older members
☐ Be treated with dignity and not as second-class citizens
☐ Encourage rights and responsibilities for all as part of the Human Rights agenda

Resources
☐ Ensure the needs of people of all ages are met equally with no discriminating services
☐ Government support for community development and empowering older citizens

Examples of Propositions
(Different subject matter and wording can be easily substituted.)

SOPA welcomes the Scottish Parliament’s wish for the Assembly to contribute ideas towards the Community Empowerment (Scotland) Bill and asks that the Act will explicitly benefit the older population and that funds will be allocated to support the legislation’s implementation.

SOPA calls on the Minister for Pensioners’ Rights to ensure that the energy and engagement of older people at local level is harnessed through supporting good quality local news media. This is important in terms of democratic engagement in the community as it provides a key pathway to recruiting volunteers, supporting local campaigns and maintaining momentum.

SOPA requests that the Scottish Parliament ensures that the Community Empowerment Bill (Scotland) encompasses Human Rights and Equalities legislation to create a new standard of democracy in Scotland which embraces the older population.
Local Government and Regeneration Committee

Fort William - community engagement event – 24 November 2014

Notes of workshop sessions with community groups

MSP Chair: John Wilson MSP

Scribe: Seán Wixted

NB – these notes are not intended to be an exhaustive account of every aspect of the group’s discussion, but are an attempt to capture the main points which arose.

The main points from the group’s discussion were as follows:

Community planning / participation requests (also Air Weapons and Licensing (Scotland) Bill – Taxis)

CPPs

- The local community in Caol had a very bad experience of dealing with the planning application for the GaelScoil in Caol as Highland Council undertook very little consultation with the public. As a result the community had just established a new Community Council for the area as it didn’t have one.

- People don’t know who is involved in community planning. In Doura just now the Forestry Commission is objecting to a local farmer who has applied for planning permission for a visitor attraction around his farm business. This is widely supported by the local community. Forestry Commission forced him to change his plans as his farm was visible from Forestry Commission land. This was done under an SRDP bid. There was a lot of disagreement between the Forestry Commission, SNH and HIE on this and it caused a lot of local disagreement. So don’t know how this shows community planning is working.

- Need to ensure the right CPP representative are around the table as just now the local Third Sector Interface (TSI) representative may not be truly representative of a specific locale to a thematic group of interest. Reps may need to be plugged in as CPP sub-group level as that is these the strategic decisions are discussed in their impact on local development plans.

- More things should be localised as people in the community know what’s best and what’s need for their communities. The TSI representatives don’t engage with local people. Questions need to be asked as to how they engage with local people and how representative they are?

- It is very had for ordinary people to understand consultation document on plans and developments, especially in terms of getting a sense of the scale of a development from technical drawing and graphic images. This is especially true for older people. The GaelScoil has had a major impact on the homes of four elderly people. Highland Council should have gone to the lowest level possible to
explain the proposals to them, instead of such sending them official consultation document.

- Highland Council is very Inverness-centric in its decision making and most of the critical planning and development decision for all of Highland is made in are around the Moray Firth. Because of the population base in Inverness, Moray Firth representatives are disproportionally over representative on the Council, especially on committees making critical decisions for other ward areas like Lochaber.

- There seems to be a CPP level missing at community council area which can feed up to area CPPs and then council-wide CPP.

**Community right to buy**

- Community right to but should be extended Scotland wide.

- If public bodies are proposing to sell land, they should at least be required to inform the local community – of not have a duty placed on them to offer first refusal to the local community to buy.

- Public land could be used for affordable housing land rather than selling it off to private interests with local community knowledge.

**Participation requests**

- How does a local community put in a participation request if they are unaware that a particular event or development is happening or a service changing?

- Participation requests under the Bill must be an effective system and not lead to “death by bureaucracy”. It must have a very streamlined process.

- Funding organisations are disconnected from local communities today much more so that they were, say 20 – 25 years ago. The LEADER programme is managed by business gateway and other finds are managed differently. So it is very hard for local communities and community groups to track where funding is coming from or from what it might be available.

- There used to be a local advice centre called ‘Lochaber Ltd’ which had all the information on all funding streams under one roof, e.g. Rural Development Fund, LEADER Fund etc. This was a great local resource but at some point the Council and (HIE we think?) got rid of it.

*In response to this comment, John Wilson MSP gave an undertaking the Committee would highlight the complex and confusing nature of the funding landscape for local communities in our Stage 1 report on the Bill.*

- It was also recognised that different public agencies can have different priorities for the same communities and often these priorities, and the funding and plans that go with them, can actually act in opposition to each other.
• **Common Good**

• The new GaelScoil in Caol was built on land which was part of the local Common Good fund and this caused “uproar” in the local community.

• Some common good land is so old that there is nobody alive locally who know anything about the terms on which the land came into the trust of the old burghs (now the council). So a public register of common good assets would be welcome.

**Allotments**

• A lot of people in Caol would like to have access to an allotment but there is not enough land available so public waiting lists for allotment applications would be good. This would show the level of demand.

• People don’t necessarily need a fixed size of plot; they should be given a starter size as a “taster”. However, there should be a standard plot size defined so that people could work up to a ‘full’ plot size and they developed.

• Local groups should be allowed to sell food and produce from their allotment sites via market stalls and the like. The allotment rules should be amended to allow allotment users to develop orchards and keep bees for honey and some animals/poultry as well. Allotment law doesn’t allow this just now.

• Groups spoke about the Skye Food Network. People were ¼ acre sites and this was very successful. There are very few local food producers in the Lochaber area and there is not enough growing. Highlands and Islands local food network should work to ensure that allotments and a stepping stone for local communities in the H+I to develop their own local networks into a food growing economy.

• The Lochaber area needs a food growing strategy which includes targets for people to grow food for themselves but also moved them up to food producer status.

**Other issues**

• The CE Bill need to ensure there are community action plans in place and this needs to be a “bottom up” approach in the Bill with local accountability for the plan build into the Bill.

• The Scottish Rural Parliament has just been established and hopefully this will help focus on a bottom up approach to these issues, especially in areas like the H+I.

• Where are strategies plans published? How can ‘Joe Punter’ be aware of what’s in his local community plans and how to influence it?

• The Independence referendum led to a huge upsurge in public meetings in the Lochaber area. Members of the group attended many meeting and were
surprised at the level of interest amongst young people about what's happening in their local community and how to get involved.

- The issue of how active (or inactive) local community councils are needs to be addressed (maybe by the Bill)?

- Often people ate “informed” about what their local plan is (especially in terms of the Council's local development plans in the planning system). This is not good enough.

- Adverts should be put in local newspapers and local media to explain to people how local plans are drawn up and what’s in them and how people can find them.

- Years ago the old Highlands and Islands Forum has a great initiative of public engagement and consultation called 'Planning for Real' where they asked local communities what they wanted. But then Highland Council started its own version, also called 'Planning for Real' and this ruined the Highlands and Islands Forum initiative, because whereas the H+I Forum version was a true bottom up initiative run by volunteers, the Council version was totally top down and run by officials from Inverness. This ruined the level of public engagement and people lost interest. This left a void in real community-driven engagement. Hopefully the Scottish Rural Parliament will address this void?

- One size does not fit all for a rural area like Lochaber.

- There was a lot of discussion around care services, especially for the elderly. The overriding question asked was “who ultimately decided on care services for the elderly in Lochaber”?

- Care workers in Lochaber often only work as care workers during the winter months, as during the summer months there is more money to be earned in the local tourist industry. This is a big problems for the area.

- The local Lochaber area need more control of budgets at local community level, if the Bill delivers this then local communities will have more power to deliver their own local services.

**Air Weapons and Licensing (S) Bill**

- Having an air weapons licensing system for air weapons is a good thing as long as it is not too cumbersome a system

- One member of the groups has children in a pony club who do decathlons, which involve using air weapons, so they wondered how this would work under the bill?

- Given the nature of the Lochaber economy, and the number of police, if was felt it will be very hard for the police to enforce a licensing system for air weapons in the Lochaber area given the volumes of people using air weapons.

- The group did not feel there was a major issue with public safety and air weapons in the Lochaber area. One of the group was GP who had just retired,
and in 20 years of practice in the Lochaber area he had only had to remove air
gun pellets twice from patients.

- The group ran out of time to discuss any of the other provisions of the Bill.

**MSP Chair – Anne McTaggart**

**Scribe – Allan Campbell**

**NB** – these notes are not intended to be an exhaustive account of every aspect of
the group’s discussion, but are an attempt to capture the main points which arose.

**The main points from the group’s discussion were as follows—**

- The success of a number of valuable local community projects, including “men’s
  sheds”, projects for disadvantaged children, and “nimble fingers”. The group
  also talked about a project involving experienced knitters learning to join together
  fibre optic cables as a good example of using the skills of the community to deal
  with local issues.

- The group had a long and detailed discussion about the role of community
councils, especially given the wide coverage of the community councils in the
Highland Council area compared to the rest of the country. It was suggested
that the regional associations of community councils could be include as
mandatory community planning partners in Part 2 of the Bill. However, some
participants warned that this could lead to further burdens on already stretched
volunteers. And, it was recognised that community councils were not as
prevalent across the country.

- The group also highlighted perceived anomalies in the treatment of community
councils – that they could not own assets nor apply for lottery funding. By giving
them these powers, the group’s view was that community councils would
become more interesting and relevant to the local community.

- Specific issues with the current consultation practices of Scottish Canals were
raised. As with other consultations it was felt that the community was not
listened to, despite three separate consultation exercises on the same topic.

- On a similar topic, the group also talked about Highland Council’s consultation
practices, and noted that the current budget consultation was very poorly set up.
There was also the sense, as the Committee heard elsewhere, that Inverness
was seen as a remote centre by those in the periphery of the council area.
NB – these notes are not intended to be an exhaustive account of every aspect of the group's discussion, but are an attempt to capture the main points which arose.

The main points from the group’s discussion were as follows:

Community planning / participation requests (also Air Weapons and Licensing (Scotland) Bill – Taxis)

- Lochaber Action on Disability (LAD) was concerned to ensure members were aware as regards taxis “one size doesn't fit all” - taxis in rural areas were essential life lines. Representative disability organisation within the central belt did not always reflect this rural dimension in their submissions.

- Eligibility criteria for patient transport was having an impact on the service provided by LAD and community taxis. Many more people were being assessed as not requiring patient transport which increased reliance on public transport or community transport to get to hospital, for example, the journey from Mallaig to Raigmore Hospital in Inverness. There were not enough taxis to cope with the demand.

- Further complications were highlighted in respect of this particular journey: firstly lack of integration between the bus and rail timetables; inadequate accessibility for disabled people by public transport to the hospital.

- LAD explained buses from Mallaig to Fort William arrived 10 minutes after the train from Fort William to Inverness had left. On investigation, it was identified by LAD public transport operators were willing to amend their timetables but Highlands and Islands Regional Transport Partnership (HITRANS) would need to be involved. LAD had written to HITRANS seeking better integration of the route but had had no response.

- Other examples of transport issues were discussed including the lack of transport available afterschool in the Argyll and Bute Council area which meant children could not attend afterschool activities. Another was given of an 18 year old non-driver who lived in Plockton and worked in Applecross. There were no buses and so he was reliant on community transport, should this service be cut he would be unable to work.

- Each community taxi operates according to different criteria depending on the nature of the funding, so for instance some may only provide a service for older people or within a certain geographical area. If a community taxi was to take on a bigger role such as transporting non-emergency patients to hospital this would require more funding but it was considered in any event demand would exceed capacity.
• There was some discussion about whether community planning partnerships could play a greater role in planning services for communities. It was also suggested the new Participation Request powers in the Community Empowerment Bill might offer a solution. There was a concern public bodies were not accountable, and a myriad of legislation already exists but not enforced, e.g. the Blue Badges Scheme.

• The inclusion of Skill Development Scotland (SDS) as a statutory partner on Community Planning Partnerships (CPPs) was welcomed as currently SDS were only represented on around 20 of the 32 CPP's.

• Accessibility of public transport was discussed. It was suggested operators were using the definition of “accessibility” as set out the Disability Discrimination Act 1995 rather than the Equality Act 2010 in order to delay updating the facilities available to disabled people, including toilet facilities.

• Taxi apps were discussed briefly and whether it was considered these would affect the Highland area. It was believed Inverness could face an issue as there was already increased numbers of unlicensed taxis during festivals i.e. Rockness.

• It was also highlighted that taxi drivers were already finding it difficult to make a living, as those who had day jobs would work at night as part-time drivers making it more difficult for full-time taxi drivers to make a living.
6 November 2014

COMMUNITY EMPOWERMENT (SCOTLAND) BILL

I look forward to giving evidence to the Committee on the Bill on 12 November. I thought it might be helpful if I outline before our meeting some areas in which the Scottish Government plans to bring forward amendments at Stage 2. I hope this will assist the Committee in its scrutiny.

In accordance with the commitment made by the Cabinet Secretary for Culture and External Affairs, we propose that Historic Environment Scotland should be added to the list of community planning partners set out in Schedule 1.

We will bring forward amendments to include Community Benefit Companies (BenComs) as a type of body which can make an asset transfer request for ownership of land, under section 53. BenComs are now defined under the Co-operative and Community Benefit Societies Act 2014.

We will put in place an appeal process for asset transfer requests made to the Scottish Ministers, in line with the provisions already included for requests made to local authorities or other relevant authorities.

I believe there is benefit in requiring relevant authorities to publish their registers of assets, to help community bodies understand what land or buildings may be available for asset transfer. My officials are considering how such a requirement might be constructed.
As noted in the letter from the Minister for Parliamentary Business to you and the Convener of the Rural Affairs, Climate Change and Environment (RACCE) Committee, we propose to use the Community Empowerment Bill to make changes to Part 3 of the Land Reform (Scotland) Act 2003, on crofting community right to buy. A “Call for Evidence” to consult stakeholders on the proposed changes was issued on 13 October and is available on the Scottish Government website at [http://www.scotland.gov.uk/Topics/farmingrural/Rural/rural-land/right-to-buy/crofting](http://www.scotland.gov.uk/Topics/farmingrural/Rural/rural-land/right-to-buy/crofting).

We will also be seeking to make further amendments to Parts 2 and 3A of the Land Reform (Scotland) Act 2003, although the detail of these is still under discussion.

I and my Ministerial colleagues will also, of course, pay close attention to the views of your Committee, the RACCE Committee and the Delegated Powers and Law Reform Committee when you report on the Bill, and consider what further amendments might be brought forward to improve the Bill.

I am copying this letter to the Convener of the RACCE Committee for their interest in Part 4 of the Bill.

Yours,

DEREK MACKAY
2 December 2014

Dear Kevin,

COMMUNITY EMPOWERMENT (SCOTLAND) BILL

When my predecessor, Derek Mackay, gave evidence to the Committee on the Community Empowerment (Scotland) Bill on 12 November, some questions were raised about timescales for asset transfers. Members of the Committee have heard that some local authorities are currently not dealing with requests timeously, which can cause problems for community groups, particularly in relation to funding.

The previous Minister said at the Committee meeting that there is provision in the Bill to set timescales in secondary legislation, if that is felt necessary. We thought it might be helpful to provide more detail of those powers in writing.

- Section 55(7) and (8) state that the relevant authority’s decision on a request must be set out in a decision notice which must be issued within a period prescribed in regulations, or such longer period as may be agreed between the relevant authority and the community transfer body.
- If a decision notice is not issued within the prescribed period, the community transfer body may bring an appeal or seek a review to have a decision made, under section 58(1)(c) or 59(1)(b)(iii).
- If the request is agreed, section 56(3) requires the relevant authority to give the community transfer body at least 6 months to submit an offer for the property in response to the decision notice.
- Section 56(5) and (7) allow a further 6 months for a contract to be concluded. This period can be extended, either by agreement between the relevant authority and the community transfer body, or at the direction of Scottish Ministers at the request of the community transfer body (for example to allow time for fundraising).
- Ministers will also have powers to make regulations specifying the procedures to be followed in relation to asset transfer requests, under section 54(2)(b), and in relation to appeals (s.58(3)) and review (s.59(3)). These regulations could also include time limits for different parts of the procedures.

I should also emphasise that the Bill will, for the first time, introduce a statutory right for community bodies to make asset transfer requests, and a duty for public authorities to respond to requests reasonably and transparently. It will no longer be a discretionary issue for local authorities, and that will make a difference to the approach they take.

MARCO BIAGI
Minister for Local Government and Community Empowerment
Marco Biagi MSP

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Kevin Stewart MSP
Convener
Local Government and Regeneration Committee
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The Scottish Parliament
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17 December 2014

Dear Kevin,

COMMUNITY EMPOWERMENT (SCOTLAND) BILL

Thank you for your letter of 9 December regarding the timescales pertaining to asset transfer requests. You asked for clarification on section 56(5) and the requirements on a relevant authority to conclude a contract within 6 months.

The scenario you outline in your letter is that a relevant authority has agreed to an asset transfer request, given notice of its decision to the community body, specified the terms of the transfer, lease or other arrangement and has received an offer from the community body. The relevant authority then deliberately delays the conclusion of the contract so that the process ends and is treated as if the asset transfer had not been agreed.

While I believe that this scenario is unlikely to happen in practice it is useful to outline how the provisions in the bill as it stands could deal with such an event. As set out in sections 56(5) and 56(7) the period for concluding a contract is 6 months, or a longer period which is agreed between the relevant authority and the community transfer body. If the relevant authority does not agree to extend the period, the bill allows the community transfer body to apply to the Scottish Ministers under 56(8) to direct that the period should be extended. This can be done more than once. This would allow the period to be extended should there be any delay in concluding the contract – arising either from the relevant authority or the community transfer body – so that the offer would not lapse. It is also worth noting that section 57(2) would apply so that the authority could not dispose of the land to which the request relates to any person other than the community transfer body during the period from the decision notice being issued to the day the period specified in a direction expires.

Victoria Quay, Edinburgh  EH6 6QQ
www.scotland.gov.uk
We have no plans to amend these provisions. Property transactions can be complex, and issues may arise which take time to work out, or which ultimately make the transfer unachievable, despite the best intentions of both parties. While I am always ready to listen to any views and look at new proposals if they improve the Bill, I am not sure that it would be practicable to introduce a timescale for relevant authorities to adhere to, with sanctions, which could be applied in all cases. That is why the Bill provides the flexibility of Ministerial direction in these circumstances.

MARCO BIAGI
Rural Affairs, Climate Change and Environment Committee

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

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

EXECUTIVE SUMMARY

1. The Rural Affairs, Climate Change and Environment Committee considered Part 4 of the Community Empowerment (Scotland) Bill and reports to the lead committee as follows.

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

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

4. The Committee is concerned about the level of detail provided in the Policy Memorandum and in the Financial Memorandum. The Committee believes that the significance and complexity of the provisions within Part 4 of the Bill would have merited further explanation and clarification within the Policy Memorandum. The Policy Memorandum could also have provided further consideration of sustainable development and human rights could have been brought into the wider context of the Bill which may have assisted, and might still assist, in establishing an environment which would facilitate a more constructive dialogue between landowners and communities.
5. Whilst the Committee understands that community right-to-buy will be demand-led, the costs for communities and landowners and the costs to public bodies of providing support to communities are unclear and the Committee is of the view that the Financial Memorandum ought to have given greater consideration to this. The Committee recommends that the Scottish Government monitor the cost implications of the Part 4 provisions closely over the coming years, in terms of both the direct costs to communities and landowners and the indirect costs to public bodies and keep the funding requirements under review.

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

7. The Committee heard the views of those who would prefer the Bill to define the characteristics of an eligible community body rather than specify the eligible legal structure. However at this time the Committee remains unconvinced of this approach. The Committee welcomes the commitment of the Cabinet Secretary to consider potential amendments at stage 2 to extend the list of eligible community bodies and recommends that the Scottish Government bring forward amendments to include Community Benefit Societies and Community Interest Companies.

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

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

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

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

12. The Committee is aware that for many communities and applications late registration will continue to be the norm. The Committee considers that the process for late registration should reflect the practical reality for communities and should be redesigned to accommodate this. The Committee remains unconvinced, where there is a late application, of the need to impose a requirement on communities to show either good reason or demonstrate relevant work.

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

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

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

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

17. The Committee considers that there are convincing arguments that the tests of ‘furthering sustainable development’ and of being ‘in the public interest’ are capable of testing all requirements. On that basis, the Committee recommends that the Scottish Government reconsider the requirement that eligible land be restricted to land which is wholly or mainly abandoned or neglected and recommends that the Scottish Government consider a definition that relates to the wider circumstances which can be a
barrier to sustainable development, such as the lack of achievement of the use and/or development of land that could deliver greater public benefit.¹

18. In the absence of an unambiguous and acceptable definition² of abandoned or neglected land produced by the Scottish Government which both removes the barrier that the present proposal is likely to erect, and which avoids the problems of interpretation giving the existing legal concept of abandoned land, then the Committee is likely to ask the Scottish Government to remove the term ‘abandoned or neglected land’ and bring forward a proposal which will allow the widest possible opportunity for community purchase. The Committee reserves the right to take evidence on this issue at stage 2.

19. Should the Scottish Government wish to retain this provision, the Committee recommends that the Scottish Government bring forward amendments at stage 2 to the following effect—

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

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

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

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

20. The Committee considers that there may be a differentiation in urban and rural circumstances and there could be challenges in measuring neglect and abandonment in rural areas. Should this provision remain the Committee considers that it should apply uniformly outwith crofting land. However, further consideration to the criteria for determining neglect or abandonment is necessary and should be set out on the face of the Bill. The Committee considers that land which is classified as agricultural land should be exempt from this provision unless it is determined that it fails to meet ‘good agricultural and environmental condition’. The Committee is also

¹ Alex Fergusson MSP and Jim Hume MSP dissent from paragraphs 14 to 17.
² Sarah Boyack MSP and Claudia Beamish MSP dissent from paragraph 18 on the basis of the evidence to the Committee which suggested that the requirement on communities to demonstrate that land is neglected or abandoned is likely to present a barrier which would undermine the aims of the Bill.
concerned about the possibility that land that is under a low intensity/zero management regime for a valid reason (e.g. natural regeneration for biodiversity or natural flood protection) could be considered ‘wholly or mainly abandoned or neglected’. The Committee considers that land which is intended for recognised conservation or environmental purposes should be exempt from the provision.

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

22. The Committee recognises that there can be very real practical difficulties in identifying land owners and considers that there ought to be a mechanism in this Bill, similar to the existing provisions in the Land Reform (Scotland) 2003 Act, providing for communities to be able to register an interest in land without knowing who the owner is.

23. The Committee agrees with those stakeholders who consider that the mapping requirements for community right-to-buy are excessive and strongly believes that there is a need to streamline the mapping process, simplify the information requirements and align the eligibility criteria with those for Parts 2 and 3A of the amended Act.

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

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

26. The Committee recognises the difficulties faced by communities in seeking to exercise their right-to-buy and is keen to ensure that appropriate support and funding is available to all communities across Scotland to facilitate meeting their aspirations. The Committee considers that public sector bodies have an important role in that regard and welcomes the Scottish Government’s commitment to establish a community land unit to provide support and advice to communities.

27. The Committee understands that the Scottish Government intends to bring forward amendments at stage 2 to include provision for crofting community right-to-buy. The Committee considers that it would have been preferable had consultation on the crofting community right-to-buy been
undertaken alongside consultation on the existing part 4 provisions, and that amendments to the crofting community right-to-buy had been included in the Bill as introduced, rather than at stage 2. The Committee considers that the introduction of significant new provisions by way of amendments at stage 2 is undesirable in terms of effective parliamentary scrutiny, as the time available at stage 2 to consider new evidence is limited.

INTRODUCTION

Parliamentary scrutiny

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Witnesses

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

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

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

BACKGROUND TO AND PURPOSE OF THE BILL

Legislative background


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

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

Contents/purpose of the Bill

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

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

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

43. The Bill is in a number of parts—

- Part 1 aims to provide a statutory basis for the issue of ‘National Outcomes’;
Part 2 contains a number of reforms to the system of community planning; 
Part 3 provides for a process to allow community bodies to become involved in the delivery of public services; 
Part 4 makes a range of changes to the community right to buy land; 
Part 5 provides for a process to allow community bodies to take on assets from the public sector; 
Part 6 makes a number of reforms to the system of common good 
Part 7 is concerned with allotments; and 
Part 8 allows local authorities to set their own reliefs for business rates.

Part 4 Community Right to Buy

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

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

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

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

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

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

Scottish Government consultation

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

51. The Committee explored the effectiveness of the consultation process on the Bill with stakeholders. Many stakeholders who had been actively involved in the issue of land reform; who had engaged with consultations issued by the Land Reform Review Group; who had participated in consultations on the Bill and; who were also used to dealing with legislation, stated that they were reasonably satisfied with the level of information that was provided. However, the Committee heard that some who were perhaps less used to dealing with legislation found it
confusing and would have welcomed further information. Some stakeholders who had been engaged with the land reform agenda considered that there could have been further consultation on some elements of the Bill. In oral evidence to the Committee, Sarah-Jane Laing of Scottish Land and Estates stated—

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

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

GENERAL ISSUES CONSIDERED BY THE COMMITTEE

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

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

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

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

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

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

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

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

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

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

Has the Bill been appropriately drafted?

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

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

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

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

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

Will the Bill solve the problem?

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

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

63. Oral evidence to the Committee suggested that the 2003 Act could be viewed as enabling legislation, the benefits of which were challenging to quantify. However, there was broad consensus that community confidence and cohesion in
rural Scotland had been transformed in the last 10 years. Jon Hollingdale, of the Community Woodlands Association, stated—

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

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

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

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

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

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

15 Appearing in an individual capacity.
amended as recommended by the Committee, the Bill should resolve many of the problems of the 2003 Act.

SUPPORTING DOCUMENTATION

Policy Memorandum

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

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

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

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

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

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

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

17 Correspondence from the Local Government and Regeneration Committee to the Scottish Government (June 2014). Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/20140109-KS_to_Minister_LGP_on_Comm_Emp_bill_Policy_Memo_20140625.pdf.
18 Correspondence from the Scottish Government (1 August 2014). Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Kevin_Stewart_MSP_Letter_-_1st_August_2014.pdf.
73. John Mundell, Chief Executive of Inverclyde Council, stated—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

83. Professor Miller went on to state—

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

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

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

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

26 Written submission. Community Land Scotland.
27 Scottish Parliament Rural Affairs, Climate Change and Environment Committee. Official Report, 3
December 2014, Col 45.
28 Scottish Parliament Rural Affairs, Climate Change and Environment Committee. Official Report, 3
December 2014, Col 36.
29 Written submission. Equalities and Human Rights Commission.
30 Scottish Parliament Rural Affairs, Climate Change and Environment Committee. Official Report, 10
December 2014, Col 6.
86. The Committee was interested to hear the views of Professor Alan Miller, Chair of the Scottish Human Rights Commission, and considers that human rights could have been brought into the wider context of the Bill. The Committee believes that a wider consideration may have assisted, and might still assist, in establishing an environment which would facilitate a more constructive dialogue between landowners and communities.

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

Financial Memorandum

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

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

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

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

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31 Community Empowerment (Scotland) Bill. Explanatory Notes (SP Bill 52-EN, Session 4 (2014)) Available at: http://www.scottish.parliament.uk/S4_Bills/Community Empowerment (Scotland) Bill/b52s4-introd-en.pdf.
likely to generate more applications than anticipated which will generate additional costs for Scottish Government”.  

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

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

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

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

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

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

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

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

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

97. The Committee is also concerned that the costs for communities and landowners (e.g. legal costs arising from appeals, costs to communities in preparing and developing proposals and bids) and the costs to public bodies of providing support to communities are unclear. The Committee is of the view that the Financial Memorandum should have better reflected this.

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

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

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

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

36 Written submission to the Finance Committee. Sport Scotland.
Secretary responded saying “…our initial view is that there is not a conflict and it should not present a problem.”

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

SPECIFIC ISSUES CONSIDERED IN PART 4

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

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

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

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

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

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

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

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

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

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

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

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

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“... greater certainty in the circumstances in which the community right to buy would operate in relation to active development proposals. In particular, the Society suggests that consideration is given to allowing for a mechanism to obtain a certificate exempting a site from community right-to-buy for a certain amount of time. This would allow investment decisions to be made with a degree of certainty but would also retain the community right to buy in the event that the development did not proceed as envisaged.”

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

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

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

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

**Meaning of community (section 28)**

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

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42 Written submission. Law Society of Scotland.
43 A tenement is defined as any type of property of a permanent nature, including land, houses and other buildings and attached rights.
44 Written submission. Community Land Scotland.
114. Oral evidence broadly supported the amendments to extend the type of bodies that can be considered to be a community body and to provide greater flexibility in the definition of community. However stakeholders expressed concerns in relation to the way in which community bodies were defined and some stakeholders suggested that the Bill should specify the characteristics of a community body rather than list the types of legal entity that can apply to register. Opinion was divided on the focus on geographic communities and on the inclusion of communities of interest. Some stakeholders considered that their inclusion could be ‘a good deal more complex’, and others considered that a way had to be found to put the emphasis on people rather than place.

**Defining community bodies**

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

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

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

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

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

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

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45 Written submission. The Development Trusts Association Scotland.
46 Written submission. The Scottish Federation of Housing Associations
47 Written submission. Church of Scotland Trustees.
48 Written submission. Brodies LLP.
certainty as to when this might happen or what the mechanism for making an allowance order is. Clarification on these points is welcomed.\textsuperscript{49}

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

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

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

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

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

123. The Committee recommends that the Scottish Government also give consideration to the proposals of the Scottish Federation of Housing Associations and the Church of Scotland that the Bill should mention

\textsuperscript{49} Written submission. Forest Policy Group.
\textsuperscript{50} Written submission. Plunkett Foundation.
housing associations and co-operatives, and charities such as the Church of Scotland, as community bodies.

Membership requirement for Scottish Charitable Incorporated Organisations (SCIO’s)
124. John Mundell, Chief Executive of Inverclyde Council, commented on the membership requirement for SCIO’s. He stated that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Detailed procedures - Sections 29 - 47

135. The Scottish Government’s letter of 1 August\(^56\) states that sections 29 to 47 of the Bill make a number of changes to “the detailed procedures and requirements of the community right-to-buy process, including streamlining and increasing flexibility."

136. Evidence to the Committee indicated some areas of concern in relation to the detailed procedures. In written evidence, John Randall\(^57\) noted a need to simplify procedures so that “genuine and strong applications cannot be thwarted by legal action on technical issues contrary to the wishes of Parliament when they passed the legislation”\(^58\).

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

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

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

139. Community Land Scotland\(^59\) and the Community Woodlands Association\(^60\) raised practical concerns in relation to the proposal for a six-month limit precluding

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

\(^57\) Writing in an individual capacity.

\(^58\) Written submission. John Randall.

\(^59\) Written submission. Community Land Scotland.

\(^60\) Written submission. Community Woodlands Association.
Ministers considering any community support that is dated earlier than six months before the date an application to register a community interest in land is received. They both stated that registration of a community body can take in excess of 6 months itself in certain circumstances and feasibility and other studies may date back before that period. These bodies believe that Ministers should be free to take account of anything they consider relevant in indicating approval.

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

Procedure for late applications (section 31)

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

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

- allowing Ministers to request further information from the current owner (or a creditor in a standard security), to be provided within seven days of receipt of the request, to ensure that Ministers have the necessary evidence to determine whether an application is “late”;

- where further information is requested, extending the time that Ministers have to make a decision on whether an application is “late” from 30 days to 44 days;

- removing the requirement to show “good reasons” for not submitting an application before land came on the market and replacing it with a requirement that such relevant work as Ministers consider reasonable was carried out by a person, or such relevant steps as Ministers consider reasonable were taken by a person. Section 31(9) inserts a new subsection (6) into section 39 of the 2003 Act to define relevant work and relevant steps;

- setting out the timescales in which the relevant work or steps must have been taken. Allowing Ministers to request further information from any relevant party within the relevant timescale;

- providing that where missives have been concluded or an option conferred in respect of the land Ministers must decline to consider the application; and

- land in respect of which the relevant work or steps have been carried out does not need to be the same land as that to which the application relates.
143. Many stakeholders commented on the registration process and the need for a process at all and/or the need for simplification of this. The Committee also received considerable comment on the process for late registration. Evidence noted that whilst many communities only start to take an interest in land acquisition when land comes on to the market, there was also a need to encourage a degree of proactivity because of the difficulties in supporting community bodies at short notice. Difficulties have also been noted with the need to re-register every five years. The Committee considers the need to register; the registration process, including pre-registration; late registration and re-registration in paragraphs 144 to171.

The requirement to register

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

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

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

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

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

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

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

“...The first right that we suggested was a “right lite” whereby a community
could simply register an interest. Under the 2003 act, there is a right of pre-
emption. However, if there was a right to register an interest and to be
notified when land was coming on to the market or ownership was changing,
that would trigger the process of the “heavier” right of registering a right of
pre-emption. We thought that that might be a way of getting round everything
becoming a late registration”. 63

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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66 Written submission. Scottish Community Alliance.
67 Written submission. Community Land Scotland.
68 Written submission. Highland Council.
69 Written submission. Community Land Scotland.
initial work was undertaken by a community council or working group with the intention that another body would pursue the community right to buy application, it suggests that consideration be given to de-coupling the requirements for relevant steps/relevant work and the practical application being made by the same community body.\textsuperscript{70}

160. Contrary to these views, the Historic Houses Association for Scotland\textsuperscript{71} and Scottish Land and Estates\textsuperscript{72} considered that the legitimacy of the process is undermined where late applications become almost standard. These organisations suggested that the late application procedure could be improved if a landowner could obtain exemption from a late application by giving forward notification (of six months) of a potential sale of land by advertisement in a local newspaper, giving the community body four months to organise itself and register an interest in the land, after which time Ministers would not consider a late application. They also suggested that they would welcome the introduction of a monitoring system into delays in the process for (Ministerial) consideration of applications.

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

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

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

164. If the Scottish Government decides not to amend the Bill to remove the requirement on communities to demonstrate relevant work/steps, the

\textsuperscript{70} Written submission. Highlands and Islands Enterprise.
\textsuperscript{71} Written submission. Historic Houses Association for Scotland
\textsuperscript{72} Written submission. Scottish Land and Estates.
\textsuperscript{73} Written submission. Brodies LLP.
Committee urges the Scottish Government to de-couple the requirement for the work and application to be made by the same community body.

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

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

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

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

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

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

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

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76 Written submission. Highland Council.
77 Written submission. Scottish Community Alliance.
We do not think that ten years would be a wise approach. The five year period was our judgement of a good timescale. 78

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

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

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

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

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

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

174. Scottish Land and Estates, 79 the Historic Houses Association for Scotland 80 and the Community Land Advisory Service 81 comment on section 33, which introduces a requirement for an owner to inform Ministers within 28 days of an exempt transfer being made of this taking place. They considered this to be at odds with the transfer being “exempt” and suggest that as the Registers of Scotland maintain both the Land and Sasine Property Registers and the Register of Community Interests in Land, it would be sufficient to include a declaration in the disposition detailing the exemption rather than placing what they consider to be an unnecessary additional burden on the owner to notify.

79 Written submission. Scottish Land and Estates.
80 Written submission. Historic Houses Association for Scotland.
81 Written submission. Community Land Advisory Service.
175. The Committee questions the rationale for the requirement for an owner to inform Ministers of an exempt transfer being made and considers that it should be sufficient to include a declaration in the disposition. The Committee recommends that the Scottish Government reflect on this and consider whether amendment to this provision is required at stage 2.

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

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

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

82

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

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

83

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

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

82 Written submission. Community Land Advisory Service.
83 Written submission. Helensburgh Community Woodland Group.
84 Written submission. Scottish Property Federation.
Approval of members of community to buy land (section 36)

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

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

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

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

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

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

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

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

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

85 Policy Memorandum. Paragraph 63.
86 Written submission. Highlands and Islands Enterprise.
“Given the Bill intends to make it clear that the right to buy can be exercised in relation to separate tenements, I think that the requirement to affix a notice to the land needs to be relaxed for those cases…”

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

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

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

190. Both Scottish Land and Estates\(^88\) and the Historic Houses Association Scotland\(^89\) suggest that as the ballot is at the initiation of the community body, the community body should meet the expenses of this rather than the public purse.

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

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

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

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

\(^87\) Written submission. Community Land Advisory Service.
\(^88\) Written submission. Scottish Land and Estates.
\(^89\) Written submission. Historic Houses Association Scotland.
\(^90\) Policy Memorandum. Paragraph 63.
194. The Committee considers that the requirement on the valuer to consider the views of both parties when undertaking the valuation should increase confidence in the process.

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

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

196. The Historic Houses Association for Scotland\(^{91}\) and Scottish Land and Estates\(^{92}\) raised concerns in relation to section 44. In particular, they highlighted that under community right-to-buy an owner has a right to withdraw his or her land from a sale to a community body after the right-to-buy has been activated, provided the appropriate notification has been given. They sought comfort that this section would not be used arbitrarily to penalise a landowner who, for a variety of reasons (such as where family or financial circumstances of the landowner change or where the land is held in trust, not all of the trustees being made aware of the sale) decide not to proceed with the sale. They sought further clarification on the criteria that would form the basis for Ministers’ decisions on recovery of expenses. They suggested, as did Brodies in its written submission,\(^{93}\) that Ministers should exercise their discretion with care.

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

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

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

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

\(^{91}\) Written submission. Historic Houses Association for Scotland.

\(^{92}\) Written submission. Scottish Land and Estates.

\(^{93}\) Written submission. Brodies LLP.

\(^{94}\) Written submission. Pinsent Masons LLP.
200. The Community Land Advisory Service\(^95\) commented on section 47 (the proposed new section 67A of the 2003 Act) highlighting that some periods specified in the revised 2003 Act would include public and local holidays and some would not and this could potentially cause confusion and lead to mistakes.

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

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

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

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

> “Land that is neglected or abandoned can be a barrier to the sustainable development of land. In some cases it may prevent the community from developing or improving facilities. There are also cases where derelict or neglected sites become a blight on the surrounding area, and the community could bring the land back into productive use. The Scottish Government considers that in such circumstances, where all other options fail to achieve improvement, communities should be able to acquire the land without having to wait for it to be put on the market.”\(^96\)

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

**Meaning of Land (Section 97B)**

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

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\(^95\) Written submission. Community Land Advisory Service.

\(^96\) Policy Memorandum. Paragraph 65.
Eligible land (Section 97C)

- “The new section 97C of the 2003 Act defines eligible land as land which is, in the opinion of Ministers, “Wholly or mainly abandoned or neglected”. Factors which Ministers must have regard to when deciding whether land is eligible will be set out in regulations. Land which is not eligible includes –

  - land on which there is an individual’s home, though this can be subject to exceptions set out in regulations;
  - land pertaining to an individual’s home as may be set out in regulations;
  - eligible croft land (as defined in section 68 of the 2003 Act) or croft land which is occupied or worked by its owner or members of their family;
  - certain land that is owned by the Crown (because no owner or heir to the previous owner exists or can be identified); or
  - land of such other descriptions that Ministers may set out in regulations.

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

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

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

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

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97 Policy Memorandum. Paragraph 68.
98 Written submission. Community Woodland Association.
99 Written submission. Community Land Scotland.
concerns in relation to the operation of the provisions. Community Land Scotland\textsuperscript{100} and the Community Woodland Association\textsuperscript{101} stated that, in their view, the significant qualifications on the new right would probably make it impossible to exercise in practice. The Community Woodland Association stated—

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

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

210. Community Land Scotland also stated that it did not believe that there was a clear and fundamental difference between the sustainable development of crofting land (as required by the crofting community right-to-buy in the 2003 Act) and the sustainable development of other land which necessitates the additional requirements of abandonment or neglect in order for it to be eligible for the potential exercise of these new powers.\textsuperscript{104}

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

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

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

\textsuperscript{100} Written submission. Community Land Scotland.
\textsuperscript{101} Written submission. Community Woodland Association.
\textsuperscript{102} Written submission. Community Woodland Association.
\textsuperscript{103} Written submission. Highland Council.
\textsuperscript{104} Written Submission. Community Land Scotland.
214. In oral evidence, Peter Peacock stated—

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

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

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

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

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

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107 Alex Fergusson MSP and Jim Hume MSP dissent from paragraphs 216 to 219.
219. In the absence of an unambiguous and acceptable definition\textsuperscript{108} of abandoned or neglected land produced by the Scottish Government which both removes the barrier that the present proposal is likely to erect, and which avoids the problems of interpretation giving the existing legal concept of abandoned land, then the Committee is likely to ask the Scottish Government to remove the term ‘abandoned or neglected land’ and bring forward a proposal which will allow the widest possible opportunity for community purchase. The Committee reserves the right to take evidence on this issue at stage 2.

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

Definitions of abandonment and neglect

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

222. The Law Society of Scotland stated—

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

223. Scottish Land and Estates\textsuperscript{110} considered that an owner is entitled to know, prior to the Bill becoming law, what is meant by the separate terms “abandoned” and “neglected”. This concern was shared by the Scottish Community Alliance which stated—

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

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

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

\textsuperscript{109} Written submission. Law Society of Scotland.

\textsuperscript{110} Written submission. Scottish Land and Estates.

\textsuperscript{111} Written submission. Scottish Community Alliance.
“that more consultation and discussion is needed on the sorts of land susceptible to the proposed right to buy. This should include consideration of (1) land land-banked for future development, (2) farmland left fallow as a matter of good agricultural practice and (3) spaces deliberately allowed to go wild for good environmental reasons”.\textsuperscript{112}

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

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

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

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

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

229. The Church of Scotland General Trustees stated—

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

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

\textsuperscript{112} Written submission. Community Alliance.
\textsuperscript{113} Written submission. Malcolm Combe.
\textsuperscript{114} Written submission. Historic Houses Association for Scotland.
\textsuperscript{115} Written submission. Church of Scotland General Trustees.
“In terms of the process set out in the Bill, we believe that deprivation of ownership is not the appropriate final outcome and it is questionable in ECHR terms whether this is in fact a proportionate response. Where there is “abandoned and neglected” land, the key issue the Bill requires to address is land use, not land ownership.”

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

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

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

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

- the term “abandoned” is sub-optimal and should be removed entirely, leaving the legislation to relate to “wholly or mainly neglected land;”
- the definition of neglected should relate to the sustainable development of the land and not solely to a description of its physical condition and there should be a clear justification for the inclusion of the term;
- if prescribed matters in relation to eligible land are to be set out in regulation these regulations should be laid under the affirmative procedure; and
- owners and communities are entitled to know, prior to the Bill becoming law, what is meant by the separate terms. The Committee

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116 Written submission. Scottish Land and Estates.
118 Alex Fergusson MSP and Jim Hume MSP dissent from paragraphs 216 to 219.
119 Sarah Boyack MSP and Claudia Beamish MSP dissent from paragraph 220 on the basis of the evidence to the Committee which suggested that the requirement on communities to demonstrate that land is neglected or abandoned is likely to present a barrier which would undermine the aims of the Bill.
considers it is not appropriate to deal with the transfer of fundamental property rights through secondary legislation. The Committee recommends that any definition of terms be set out on the face of the Bill.

**Impact of the provisions in urban and rural areas**

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

235. Some stakeholders including Scottish Land and Estates\(^{120}\) and the Historic Houses Association Scotland\(^{121}\) raised the question as to whether the provisions relating to abandoned and neglected land should apply only in an urban context if the focus was on small parcels of land which prevent sustainable development or cause blight.

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

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

238. The Committee shares the concerns of the National Farmers Union of Scotland (NFUS) in relation to the possible impact of the provisions on agricultural land that may be out of regular use for periods of time. The Committee considers that land which is classified as agricultural land should be exempt from this provision unless it is determined that it fails to meet “good agricultural and environmental condition”. The Committee recommends that the Scottish Government bring forward amendments to that effect at stage 2.

**Timescales**

239. Some stakeholders, including the NFUS and Community Land Scotland suggested that consideration be given to the timescales in which land would be considered to be abandoned or neglected and proposed that a minimum timescale be set out.\(^{123}\)\(^{124}\)

240. The Committee recommends that, should the provision relating to abandoned or neglected remain, the Scottish Government give consideration to the issue of appropriate timescales in which land could be

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\(^{120}\) Written submission. Scottish Land and Estates.  
\(^{121}\) Written submission. Historic Houses Association Scotland.  
\(^{122}\) Written submission. National Farmers Union Scotland.  
\(^{123}\) Written submission. National Farmers Union Scotland.  
\(^{124}\) Written submission. Community Land Scotland.
Other potential impacts of the provisions

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

242. The Scottish Property Federation\textsuperscript{125} highlighted significant concerns in relation to land that may be part of a complex development process (possibly comprising several small plots or buildings) and the impact of potential uncertainty on investor decisions. It also raised concerns in relation to land owned by an entity in administration or other insolvency process connected with the land and suggested that there was a need for appropriate and clear policy in relation to this issue.

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

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

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

Management of land

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

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

\textsuperscript{125}Written submission. Scottish Property Federation.
that is not being used in line with the defined planning designation and where there is a clear community need.”

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

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

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

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

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

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

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

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126 Written submission. Holmehill Community Buyout.
127 Written submission. Scottish Land and Estates.
128 Written submission. Historic Houses Association for Scotland.
130 Written submission. Scottish Natural Heritage.
“...there is nothing in the Bill which would suggest that land or buildings held for conservation could not be considered to be abandoned or neglected. The Scottish Wildlife Trust\(^{131}\) and the National Trust for Scotland would like all land held for conservation to be excluded from the statutory provisions. In addition the National Trust for Scotland requested that the Trust’s inalienable land should be deemed to be held for conservation. “Should this not be accepted by the Committee, we would suggest that the Scottish Ministers should have the power to reject an application where land is held for conservation and the Trust’s inalienable land should be presumed or (preferably) deemed to be held for conservation. If the Trust’s inalienable land is not absolutely excluded from the statutory provisions, then we would seek a special parliamentary process to be built into the legislation to allow the Trust to appeal any compulsory sale order (in the same form as in the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 and the Crofters Acts...”\(^{132}\)

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

253. The Historic Houses Association for Scotland stated that—

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

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

\(^{131}\) Written submission. Scottish Wildlife Trust
\(^{132}\) Written submission. National Trust for Scotland.
\(^{133}\) Written submission. Scottish Environment Protection Agency.
\(^{134}\) Written submission. Historic Houses Association for Scotland.
255. The Committee recommends that, should the definition of abandoned and neglected land remain in the Bill, land which is intended for recognised conservation or environmental purposes be specifically excluded from that definition. The Committee recommends that the Scottish Government bring forward amendments to that effect at stage 2.

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

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

257. The Delegated Powers and Law Reform (DPLR) Committee reported on the Delegated Powers Memorandum and made a number of specific comments in relation to this, as well as some general observations about the quality of responses received from Scottish Government officials and the detail of the Bill. One of the DPLR Committee’s main concerns relates to the new section 97c(3)(a) on eligible abandoned or neglected land, which states—

“Eligible land does not include land on which there is a building or other structure which is an individual’s home unless the building or structure falls within such classes as may be prescribed”. In its report the DPLR Committee stated that it “[…] remains in a position, having considered both written and oral evidence, whereby it is unable to form a view as to how this power is intended to be used. The Government has not provided an explanation for taking this power beyond a need to retain flexibility within the Bill. The Committee considers that explanation to be inadequate in light of the significance of this power and what it appears to permit. The Committee further finds it concerning that the thinking behind a power of such significance to the scope and application of the Bill appears still to be in the early stages of development”. 135

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

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

136 Written submission. Brodies LLP.
137 Written submission. Community Land Advisory Service.
260. No detailed information on the thinking behind the power or examples of how it might be used in practice or how it was intended to be used were offered. The Cabinet Secretary stated that he was aware of concerns in relation to the power and undertook to review those concerns but stated “We will still have to have the power to exclude homes…”

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

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

*Bona vacantia land and Crown land*

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

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

*Queen’s and Lord Treasurers Remembrancer (QLTR)*

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

266. The Committee would be interested to know why it is proposed that land which is under the Queen’s and Lord Treasurers Remembrancer power of disposal should be treated differently from any other land and asks the Scottish Government to provide further information on the decision to treat land which is under the power of the Queen’s and Lord Treasurers Remembrancer differently. The Committee recommends that the Scottish Government...

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

140 Written submission. Community Land Advisory Service.
Government reflect on this and, if appropriate, bring forward amendments at stage 2 to remove this power of exception.

Part 3A community bodies (section 97D)

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

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

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

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

271. The Community Land Advisory Service states that—

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

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

273. The Committee considers that there should be consistency in the Bill and in subsequent regulation with respect to the definition of an eligible community body for the purposes of all community right-to-buy provisions.

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141 Written submission. Community Land Advisory Service.
142 Written submission. Scottish Land and Estates.
143 Written submission. Historic Houses Association for Scotland.
The Committee therefore recommends that the Scottish Government bring forward amendments at stage 2 to address the current inconsistency.

Section 97E(1) of the 2003 Act

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

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

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

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

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

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

Right to buy: application for consent – Section 97G

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

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

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

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

\(^{144}\) Written submission. Community Land Advisory Service.
why it considers the land to be wholly or mainly abandoned or neglected. This application must also be sent to the land owner and any creditor. On the invitation of Ministers, owners and creditors would then have a 60 day period to provide written comments on the application. There is also a 60 day period for public notice and for receipt of the comments from the community body which is provided with all views received by the Minister.

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

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

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

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

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

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

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

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

289. In its written submission, Brodies LLP proposed—

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

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

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

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

148 Written submission. Brodies LLP.
150 Pinsent Masons LLP, submission number 50.
151 Written submission. Scottish Property Federation.
293. The Finance Committee also invited the RACCE Committee to seek clarification of how the expansion of community right-to-buy might interact with the Crichel Down Rules.\textsuperscript{152}

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

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

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

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

*Mapping requirements*

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

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

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


\textsuperscript{154} Written submission. Community Woodland Association.

\textsuperscript{155} Written submission. Community Land Scotland.
boundary of the land or lease to be acquired, but also all sewers, pipes, lines, watercourses or other conduits, and fences, dykes, ditches or other boundaries. This goes far beyond what is required in other land or lease transactions and there seems no functional reason to require this information. It is particularly onerous when the area to be purchased extends to several thousand hectares. Yet similar detailed requirements are proposed in Section 48 of the Bill (Clause 7G(6)(d) and (f) for the new proposed Part 3A”.

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

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

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

Criteria for consent (section 97H)

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

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

156 Written submission. John Randall.
that a Part 3A community body meets the requirements in section 97D;

that a significant number of the members of the community which the Part 3A community body represents have a connection with the land or the land is sufficiently near to land to which those members of the community have a connection;

that the community which the Part 3A community body represents has approved the proposal to exercise the right to buy under Part 3A; and

that the Part 3A community body has tried and failed to buy the land, other than by making an application under Part 3A.

Ownership inconsistent with the achievement of sustainable development

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

303. In its written submission, Community Land Scotland stated that this “appears a very high and most probably impossible hurdle to overcome and unnecessary to meet ECHR requirements”. It was of the view that the tests under the provisions that Ministers have to satisfy themselves that the land is eligible, that is that purchase by the community body is in the public interest and would be consistent with the achievement of sustainable development in relation to the land, were sufficient. Community Land Scotland highlighted that there was no equivalent of this requirement in Part 3 of the 2003 Act and in their view this further requirement was unnecessary.\(^\text{157}\) This view was echoed by the Community Woodland Association\(^\text{158}\). In oral evidence, Peter Peacock referred to this as “a killer clause.”\(^\text{159}\)

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

\(^{157}\) Written submission. Community Land Scotland.

\(^{158}\) Written submission. Community Woodland Association.

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

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

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

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

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

Community demonstration of trying and failing to purchase land

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

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

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

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

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

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

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

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

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

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

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

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

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161 Written submission. Anonymous.
162 Written submission. Anonymous.
provide that the ballot is to be conducted by an independent balloter appointed and paid for by Ministers.\textsuperscript{163}

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

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

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

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

**Detailed procedural matters (Sections 97K – R)**

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

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

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

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

*Consent conditions (Section 97L)*

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

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

\textsuperscript{163} Written submission. Community Land Scotland.

\textsuperscript{164} Written submission. Fife Community Safety Partnership.
Agreements or Conservation Burdens with a provision relating to conservation agreements similar to those in the Crofters (Scotland) Act 1993 (p.5). 165

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

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

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

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

Completion of purchase (Section 97Q)

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

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

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

Assessment of the value of land (Section 97S)

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

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

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

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

335. The Big Lottery Fund suggested that it would be useful for the community body to have the valuation early, as it could provide the basis for a negotiated settlement with the owner. It would also give an early indication of the amount of funding needed and provide an opportunity for the community body to make early contact with potential funders to gauge the likelihood of funding being made available.

336. The Committee considers that the valuation procedure should ensure that both parties are treated fairly by giving each the opportunity to comment on issues raised in the other’s representations and draw attention to anything inaccurate or potentially misleading. The Committee recommends that the Scottish Government bring forward amendments at stage 2 to provide both the owner and the community body the right to comment on the valuation and other party’s representations.

337. The Committee agrees with the Big Lottery Fund’s suggestion that it would be useful, for a number of reasons, for the community body to have the valuation early and recommends that the Scottish Government reflect on this and the merit of amending the Bill to this effect at stage 2.

Compensation and grants towards Part 3A community bodies’ liabilities to pay compensation (Sections 97T and 97U)
338. The new sections 97T and 97U are consequential to the main policy in section 97S and relate to further regulations setting out amounts of compensation payable, who is liable, and how this may be claimed. These sections also provide that Ministers may, in certain restricted circumstances, pay a grant to a Part 3A community body to assist it in meeting the compensation it is required to pay. Ministers are, however, not bound to pay a grant even when all the circumstances specified arise.

339. The Development Trusts Association Scotland raised concerns about this section, which provides owners with a right of compensation from the community body stating that this should be limited to situations where the application is approved.\textsuperscript{176}

340. The Community Land Advisory Service raised a question in the context of the Part 3 right-to-buy—

"...what is to happen where the absolute right-to-buy causes the owner a capital gains tax or corporation tax liability on the price which could have been avoided or reduced had the owner had control over the timing of the sale. I certainly do not think that the community should bear this cost, but equally do not think the owner is being properly compensated for the deprivation if they are left in this position."\textsuperscript{171}

341. The Committee concurs with the view of the Development Trusts Association Scotland that the right of compensation should be limited to situations where the application is approved, and recommends that the Scottish Government bring forward amendments at stage 2 to clarify the provision in this respect.

342. The Committee shares the concerns of the Community Land Advisory Service in relation to owners’ tax liabilities and the timing of the sale and agrees that the community should not bear this cost. The Committee recommends that the Scottish Government reflect on this and clarify the appropriate source of compensation for this deprivation by way of amendment at stage 2.

Appeals (Sections 97V, 97W, 97X, 97Y, 97Z)

343. The new sections 97V, 97W and 97X set out the rights of appeal to the sheriff and the Lands Tribunal, and the right of reference to the Lands Tribunal in relation to decisions made by Ministers, valuations and questions relating to Part 3A applications.

344. Section 97V provides that the landowner, a member of the community to which a Part 3A community body relates and a creditor in a standard security may appeal against the Ministers’ decision to consent to the application. Subsection (2) allows the Part 3A community body to appeal against a decision to refuse an application and, where there is more than one community body wishing to

\textsuperscript{170} Written submission. Development Trusts Association Scotland.

\textsuperscript{171} Written submission. Community Land Advisory Service.
purchase the land, subsection (3) provides that Ministers’ decision on which body’s application will proceed is final and cannot be appealed.

345. Section 97W sets out the rights of appeal to the Lands Tribunal in connection with the valuation under the new section 97S. The new section 97X sets out rights of appeal to the Lands Tribunal on a question relating to a Part 3A application. The new Section 97Y provides that parties to a Part 3A application are not prevented from settling or agreeing on a matter which is subject to an appeal under sections 97V or 97W between them. The new section 97Z clarifies some matters of interpretation.

346. The Committee has no specific comment to make in relation to appeals. However, the Committee considers that a process of mediation should have been built into the Bill to ensure that effective discussion between a landowner and a community is facilitated. The Committee considers that Ministers should have the powers to facilitate negotiation, and where necessary appoint, and provide financial resources to support, a mediator. The Committee recommends that the Scottish Government give consideration to an appropriate mediation process and include provision for this within the Bill by way of bringing forward amendments at stage 2.

Other issues considered by the Committee

Community use of land
347. The Community Land Advisory Service commented on communities which may have more of an interest in securing the use of land rather than securing ownership at a future date. The Royal Town Planning Institute Scotland suggested that the Bill should consider not only the right-to-buy, but the right to manage as part of the community rights, and provide detail on how this might be facilitated.

348. Brodies LLP suggested that communities could be given the chance to lease property in the first instance to establish whether they could make the property work to pass the test of sustainable development.

349. The Committee was interested to hear the views of stakeholders in relation to land use and the right to manage land and recommends that the Scottish Government consider the scope to include provisions in relation to management rights in this Bill by way of amendment at stage 2 and/or in the forthcoming land reform legislation.

Best value and best public benefit
350. The Committee heard oral evidence that suggested that some local authorities’ interpretation of “best value” (under the Local Government in Scotland Act 2003) might hinder a number of aspects of the proposed legislation.

172 Written submission. Community Land Advisory Service.
173 Written submission. Royal Town Planning Institute.
174 Written submission. Brodies LLP.
351. John Mundell, Chief Executive of Inverclyde Council, stated—

“...If we are disposing of assets, we are always required to obtain best value, and that normally means market value, whether we use the district valuer or another mechanism to value assets. That is a key issue, but it is not one that the Bill addresses.” 176

352. The Royal Town Planning Institute Scotland suggested that there was a need for clarity in the definition of ‘best value’ and ‘best public benefit’ in terms of the disposal of public land. It stated that this should not only be about financial value, but should also take into consideration social, community and environmental aspects, particularly in terms of the transfer of land to community or voluntary organisations. 177

353. Wendy Reid, of the Development Trusts Association Scotland, stated—

“There is a reason why there has been less movement of other public sector assets into community ownership. According to the Scottish public finance manual, those other public sector bodies have to get the best financial return from assets, whereas local authorities have a bit of dispensation, in that they can dispose of assets at less than market value under the Disposal of Land by Local Authorities (Scotland) Regulations 2010. Communities are very interested in other assets, but up until now, it has been easier to negotiate transfers of local authority assets, because of that flexibility for local authorities to dispose of land at less than best consideration. It would be interesting to see whether the Scottish public finance manual will be reviewed to allow other public sector bodies the same flexibility.” 178

354. The Committee was concerned to hear in oral evidence that Glasgow City Council had bonded some of its land to Barclays Bank which may mean that it would be difficult to release that land for communities. The Committee was concerned that the same situation might exist in other local authority areas.

355. The Committee explored the issue of best value with the Cabinet Secretary and questioned whether some local authorities might consider the best value of the land they hold to be the financial value that they can obtain rather than value to the community being the number one priority. The Committee notes that if that were to be the case it could be a potential hindrance to some communities that might wish to access local authority land or the land of other public bodies. The Cabinet Secretary stated that as local authorities had the power to dispose of land at lower than market value and could treat the public interest as having a value, the issue should not be an obstacle. The Committee subsequently agreed to write to all local authorities in Scotland to ask for confirmation of their policy and practice in relation to the holding and disposal of their land-holdings. The Committee awaits receipt of all the responses from the local authorities in relation to their policy and

177 Written submission. Royal Town Planning Institute.
practice in relation to the holding and disposal of their land holdings and their approach to best value.179 Responses received to date180 are available on the Committee’s website. The Committee will review the responses received and consider what further action it wishes to take.

356. The Committee recommends that the Scottish Government give consideration to what more can be done to address the issue of best value, best public benefit and, the approach taken by local authorities and other public sector bodies. The Committee recommends that the Scottish Government identify further measures to address this issue, through a review of the public finance manual, by the inclusion of related provisions within the proposed land reform bill and by the provision of further guidance to local authorities in relation to their assets, their considerations of best value, and supporting communities to acquire land.

357. The Committee also recommends that the Scottish Government give consideration to an appropriate mechanism, such as the proposed land commission, to adjudicate in cases where there are suggestions that local authorities may be seeking to frustrate local communities. The Committee asks the Cabinet Secretary to reflect on this issue and consider what further amendments could be brought forward at stage 2 to address the issue of best value, best public benefit and the practical impact of the approach taken by local authorities and other public sector bodies.

Provision of support to communities

358. The Committee heard evidence about the importance of providing ongoing support to communities to enable them to take full advantage of the community right to buy provisions. Many stakeholders expressed concerns in relation to those communities most likely to benefit from the provisions (the most affluent) and suggested that more disadvantaged or more marginalised communities could be left behind without investment (including financial support; support to strengthen skills and confidence; knowledge and training; and access to professional advice and support). Many stressed the need for capacity building. The Committee also heard from Susan Carr of the Community Alliance Trust who stated—

“I hear about capacity building all the time, but quite frankly this is not about building capacity; it is about releasing it. That is what really needs to happen. The capacity is there; it is just not released. There are too many barriers for people to get past.”181

359. The Plunkett Foundation echoed the views of many when it stated—

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180 Correspondence from local authorities regarding best value. Available at: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/82153.aspx.

“It is critical that communities are properly supported to take advantage of opportunities the Bill presents… Outwith this area (the highlands and islands), in lowland and southern rural Scotland, the support is much more fragmented, and communities face a patchy landscape of advice and signposting. Marginalised and disadvantaged communities will need a lot more support in capacity building and confidence raising to realise the potential opportunities.”

360. The Children’s Wood referred to its experience and suggested that mechanisms should be established to monitor and report on levels of community engagement and report on any difficulties.

361. The Committee understands that the broader issues in relation to empowering communities and capacity building are being considered by the LGR Committee and, on that basis, has sought to limit comment to the difficulties faced by communities and the need for support in relation to the provisions in Part 4 of the Bill.

362. The Committee raised concerns about the difficulties communities encounter when faced with issues such as state aid rules, public finance regulations and a range of other matters with the Cabinet Secretary and sought further information on what steps the Scottish Government is taking to put the necessary support in place.

363. The Cabinet Secretary responded by stating—

“... your point about equipping communities with more information about and understanding of the issues is a good one. We have to give much more thought to that. The Land Reform Review Group recommended that we set up a community land agency, and we responded by saying that we will set up a unit in Government, which will look at the issues and work with communities, giving much better advice and operating as a huge support mechanism that facilitates community buyouts. An important function of that new unit will be to explain state aid and the pathway....and I will ensure that it does that.”

364. The Committee questioned the Cabinet Secretary on HIE’s social and land remit and whether the Scottish Government had plans to extend the remit of Scottish Enterprise. The Cabinet Secretary responded by stating that all agencies, including Scottish Enterprise and HIE, must play a role in taking the agenda forward. The Cabinet Secretary also suggested that the Scottish Government should give further thought as to how the social remit should be taken forward outwith the Highlands and Islands.

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182 Written submission. Plunkett Foundation.
183 Written submission. The Children’s Wood.
365. The Committee recognises the difficulties faced by communities in seeking to exercise their right-to-buy and is keen to ensure that appropriate support and funding is available to all communities across Scotland to facilitate meeting their aspirations. The Committee agrees that public sector bodies have an important role in that regard.

366. The Committee is familiar with the role of Highlands and Islands Enterprise in supporting communities to acquire land to date and requests further information on the role that the Scottish Government envisages for Highlands and Islands Enterprise and for Scottish Enterprise in taking the land reform agenda forward. The Committee also asks for the Scottish Government's view on how best to take forward the social remit outwith the Highlands and Islands.

367. The Committee welcomes the Scottish Government’s commitment to establish a community land unit to provide support and advice to communities. The Committee seeks information on how the Scottish Government anticipates the new community land unit will utilise the expertise and interact with the existing unit within Highlands and Islands Enterprise.

368. The Committee also requests that further information be provided on the remit and resourcing of the unit; the timescale for its establishment; the location of the unit; the ways in which the unit will work with, and practically support, communities at a local level; and how the work of the unit will be monitored and evaluated.

369. The Committee welcomes confirmation that fresh guidance which takes a more relaxed view of state aid issues has been issued and recommends that the Scottish Government actively promote this guidance to local authorities across Scotland.

Relationship between applications under Part 4 and the Part 5 asset transfer provisions

370. The Community Woodland Association stated that the interaction of Part 3 of the 2003 Act and the asset transfer provision contained in Part 5 of the Bill require to be addressed. Specifically, it questioned whether communities, having failed with an asset transfer request, can then attempt a Part 3A acquisition and, if so, sought clarification as to what the decision-making process would be in cases where Scottish Ministers are the landowner.\(^{186}\)

371. Having considered the Bill, it does not appear to the Committee that there is any restriction on communities seeking to use the provisions within Part 3 and Part 3A of the 2003 Act, and the part 5 provisions of the Bill; however, the Committee would welcome clarification from the Scottish Government that this is indeed the case. The Committee would also welcome further information from the Scottish Government on the decision-making process where Scottish Ministers or Scottish Government agencies are the landowner.

\(^{186}\) Written submission. Community Woodland Association.
ISSUES NOT INCLUDED IN THE BILL

Crofting Community Right to Buy (Part 3)

372. Many stakeholders expressed concern in relation to the apparent omission in the Bill of any measures amending Part 3 of the 2003 Act. They stated that they welcomed the correspondence from the Scottish Government responding to the concerns of the LGR Committee and providing notification of its intention to use the Bill to simplify Part 3 of the 2003 Act.

373. The Committee questioned stakeholders on the consultation on the crofting community right-to-buy. Simon Fraser, of Anderson MacArthur, stated—

“The consultation on the crofting community right-to-buy was fine. The suggested changes to part 3 of the Land Reform (Scotland) Act 2003 have come along pretty late in the day, and it will be essential to ensure that the enhanced community right-to-buy—which, in a way, mirrors the current crofting community right-to-buy—is brought into line with whatever is done to the crofting community right-to-buy as a consequence of the new measures.”187

374. The Committee considers that it would have been preferable had consultation on the crofting community right-to-buy been undertaken alongside consultation on the existing part 4 provisions and that the amendments to the crofting community right-to-buy had been included in the Bill as introduced, rather than at stage 2. The Committee considers that the introduction of significant new provisions by way of amendments at stage 2 is undesirable in terms of effective parliamentary scrutiny, as the time available at stage 2 to consider new evidence is limited. The Committee would welcome the opportunity of early sight of the proposed Scottish Government draft amendments.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
MINUTES
25th Meeting, 2014 (Session 4)
Wednesday 8 October 2014

Community Empowerment (Scotland) Bill (in private): The Committee agreed its approach to scrutiny of Part 4 of the Bill at Stage 1.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
MINUTES
29th Meeting, 2014 (Session 4)
Wednesday 19 November 2014

Community Empowerment (Scotland) Bill: The Committee took evidence from—
Dave Thomson, Head of Land Reform Policy Team
Ian Turner, Community Empowerment Team Leader
Rachel Rayner, Lawyer, Scottish Government.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
MINUTES
30th Meeting, 2014 (Session 4)
Wednesday 26 November 2014

Community Empowerment (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Peter Peacock, Policy Director, Community Land Scotland
Sandra Holmes, Head of Community Assets, Highlands and Islands Enterprise
David Prescott, Chair of the Board, Holmehill Community Buyout
Duncan Burd, Rural Affairs Sub-Committee, Law Society of Scotland
John Watt, specialist in community land ownership.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
MINUTES
Community Empowerment (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from:

- Jon Hollingdale, Chief Executive, Community Woodlands Association
- Simon Fraser, Solicitor, Anderson MacArthur
- Malcolm Combe, Lecturer in Law, School of Law, University of Aberdeen
- Rory Dutton, Development Officer, Development Trusts Association Scotland
- Sarah-Jane Laing, Director of Policy and Parliamentary Affairs, Scottish Land and Estates
- Wendy Reid, Development Manager, Development Trusts Association Scotland
- John Mundell, Chief Executive, Inverclyde Council
- Dr Colleen Rowan, Membership and Policy Officer, Glasgow and West of Scotland Forum of Housing Associations
- David Cruickshank, Executive Director, Lambhill Stables Development Trust
- Susan Carr, Community Alliance Trust
- Professor Alan Miller, Chair, Scottish Human Rights Commission.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

32nd Meeting, 2014 (Session 4)

Wednesday 10 December 2014

Community Empowerment (Scotland) Bill

The Committee took evidence on the Bill at Stage 1 from:

- Richard Lochhead, Cabinet Secretary for Rural Affairs, Food and the Environment
- Dave Thomson, Head of Land Reform Policy Team, Scottish Government.

Community Empowerment (Scotland) Bill (in private): The Committee considered evidence heard earlier in the meeting.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

2nd Meeting, 2015 (Session 4)

Wednesday 14 January 2015

Community Empowerment (Scotland) Bill (in private): The Committee
considered a draft stage 1 report on Part 4 of the Bill and will consider a revised draft at its meeting on 21st January 2015.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

3rd Meeting, 2015 (Session 4)

Wednesday 21 January 2015

Community Empowerment (Scotland) Bill (in private): The Committee considered a revised draft stage 1 report on Part 4 of the Bill. Various changes were agreed to, and the report was agreed for publication. The Committee will consider the responses to its letter to local authorities on best value at a future meeting.

ANNEXE B ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

29th Meeting, 2014 (Session 4), Wednesday 19 November 2014

ORAL EVIDENCE .............................................................................................................................

Dave Thomson, Head of Land Reform Policy Team
Ian Turner, Community Empowerment Team Leader
Rachel Rayner, Lawyer, Scottish Government.

30th Meeting, 2014 (Session 4), Wednesday 26 November 2014

ORAL EVIDENCE .............................................................................................................................

Peter Peacock, Policy Director, Community Land Scotland
Sandra Holmes, Head of Community Assets, Highlands and Islands Enterprise
David Prescott, Chair of the Board, Holmehill Community Buyout
Duncan Burd, Rural Affairs Sub-Committee, Law Society of Scotland
John Watt, specialist in community land ownership.

31st Meeting, 2014 (Session 4), Wednesday 3rd December 2014

ORAL EVIDENCE .............................................................................................................................

Jon Hollingdale, Chief Executive, Community Woodlands Association
Simon Fraser, Solicitor, Anderson MacArthur
Malcolm Combe, Lecturer in Law, School of Law, University of Aberdeen
Rory Dutton, Development Officer, Development Trusts Association Scotland
Sarah-Jane Laing, Director of Policy and Parliamentary Affairs, Scottish Land and Estates
Wendy Reid, Development Manager, Development Trusts Association Scotland
John Mundell, Chief Executive, Inverclyde Council
32nd Meeting, 2014 (Session 4), Wednesday 10 December 2014

ORAL EVIDENCE .............................................................................................................

Richard Lochhead, Cabinet Secretary for Rural Affairs, Food and the Environment
Dave Thomson, Head of Land Reform Policy Team, Scottish Government.

SUPPLEMENTARY WRITTEN EVIDENCE ..............................................................

Dave Thomson, Head of Land Reform Policy Team, Scottish Government

ANNEXE C LIST OF OTHER WRITTEN EVIDENCE

SUBMISSIONS RECEIVED IN RESPONSE TO CALL FOR VIEWS

Bill

- Community Land Scotland (172KB pdf)
- Glasgow and West of Scotland Forum of Housing Associations (217KB pdf)
- Holmehill (Dunblane) Community Buyout Group (235KB pdf)
- Scottish Land Fund Committee (202KB pdf)

OTHER WRITTEN EVIDENCE

Additional Information

Correspondence regarding the Bill:

- Letter from Joe FitzPatrick MSP, Minister for Parliamentary Business on the Community Empowerment (Scotland) Bill - 21 August 2014 (862KB pdf)
- Letter to the Local Government and Regeneration (LGR) Committee regarding its agreed approach to consideration of Part 4 of the Community Empowerment (Scotland) Bill Part 4 Community Right to Buy at Stage One - 8 October 2014 (53KB pdf)
- Letter from the LGR Committee following the RACCE Committee's agreed approach to the Bill - 8 October 2014 (109KB pdf)
- Letter from the Minister for Local Government and Planning, Derek McKay, to the Local Government and Regeneration Committee Convener outlining areas which the Scottish Government plans to bring forward amendments at Stage 2. This letter was copied to the RACCE Convener - 6 November 2014 (834KB pdf)
- Letter from Minister for Local Government and Community Empowerment, Marco Biagi, to the Delegated Powers and Law Reform Committee on the Scottish Government's Community Empowerment (Scotland) Bill on its report on the Bill. This letter was copied to the RACCE Convener - 19 December 2014 (1499KB pdf)
- Letter from Convener of the Delegated Powers and Law Reform Committee on Bill 20 January 2015 (93KB pdf)
On resuming—

Community Empowerment (Scotland) Bill: Stage 1

The Convener: Under agenda item 5, the committee will take evidence on the Community Empowerment (Scotland) Bill from the bill team. We welcome Dave Thomson, who is head of the land reform policy team, Ian Turner, who is community empowerment team leader, and Rachel Rayner, who is a Scottish Government lawyer. I refer members to the relevant papers.

I will kick off with a question. Land reform is a specific policy area, many aspects of which sit outside the public sector reform agenda, so is the bill team satisfied that the dialogue and consultation with stakeholders on community right to buy and crofting community right to buy has been timely, sufficient and proportionate?

Dave Thomson (Scottish Government): I think that Ian Turner would be best placed to comment on the consultation process, having been involved with the bill team as a whole.

Ian Turner (Scottish Government): As regards consultation on the bill and community right to buy as it was originally set out, an exploratory consultation was held in 2012. A paper was produced and the minister and officials went on a series of visits, conferences and road shows, which were done in collaboration with the Convention of Scottish Local Authorities and involved a range of people and organisations. The consultation was not just on the community right to buy—it was on community empowerment as a whole, in which the community right to buy has been timely, sufficient and proportionate?

Dave Thomson (Scottish Government): I think that Ian Turner would be best placed to comment on the consultation process, having been involved with the bill team as a whole.

Ian Turner (Scottish Government): As regards consultation on the bill and community right to buy as it was originally set out, an exploratory consultation was held in 2012. A paper was produced and the minister and officials went on a series of visits, conferences and road shows, which were done in collaboration with the Convention of Scottish Local Authorities and involved a range of people and organisations. The consultation was not just on the community right to buy—it was on community empowerment as a whole, in which the community right to buy was included. We received 447 responses and the analysis was published in 2013.

Following that, a second more specific consultation was done in late 2013 on the topics for inclusion in the bill. Those included improvements to the community right to buy process, extension of the right to all Scotland and the potential to include provisions on abandoned or neglected land. Again, a series of meetings and events were held throughout that consultation, and 424 responses were received overall. An independent analysis was commissioned and was published on 12 June 2014. The majority of the responses in that consultation were in favour of the community right to buy elements being taken forward in legislation. We got to the introduction of the bill at that stage.

We gave evidence to the Local Government and Regeneration Committee in September and we provided further details to the clerk in a letter to that committee following our evidence session. I am not sure whether this committee has seen that letter; I am more than happy to provide a copy of it, as well, if you would like more details.

The Convener: That would be very helpful. The draft bill did not contain any sections on the community right to buy, which we are discussing in respect of part 4 now.

Ian Turner: The consultation included questions on the community right to buy. The draft bill did not have that element.

The Convener: When you said that a majority were in favour, what size was the majority and what sort of detail is there?

Ian Turner: Ninety-three per cent of responses were in favour of extending the community right to buy to all Scotland and 83 per cent agreed that there should be a right to acquire land without a willing seller. There was a set of questions about improvements. The majority were in favour of all the improvements to the bill.

The Convener: Was it a large majority?

Ian Turner: The majority varied, depending on the question, but there was a large majority for most of them.

The Convener: In that case, because it sits more generally in the land reform agenda, why are the part 4 provisions not being included in land reform legislation?

Dave Thomson: In the initial phase, there was a commitment to include the changes in the then proposed community empowerment bill. The changes were included because there is a very clear connection between community empowerment and the right to buy. Various studies have provided examples of where it works. It was included in the bill largely because, over the 10 years of using what were parts 3 and 2 of the Land Reform (Scotland) Act 2003, various areas that need improvement had been highlighted and it was felt that it would be better to take action to improve those now, while we have this chance, than to wait until some potential future chance arrived. The community right to buy fits in very nicely with community empowerment as a whole, as a theme.

The Convener: Okay. That is fine for a start.

Alex Fergusson: I have a wee supplementary on one specific aspect that Mr Turner mentioned: the percentage of respondents who said that they approved of the community right to buy without a willing seller. Did that refer to the terms and conditions that are detailed in the bill, or was it just a general statement?
Ian Turner: It was a general statement in response to a question rather than to specific provisions.

Alex Fergusson: Right. So because there was no detail—

Ian Turner: There was no draft bill at that point, so the answer was just in those terms.

Alex Fergusson: The respondents were not aware of the provisions.

Ian Turner: No.

Alex Fergusson: That question was answered not in relation to the bill, but purely as a general question.

Ian Turner: Yes, that is correct.

Alex Fergusson: I just wanted that to be clarified.

Our job is to scrutinise part 4 of the bill effectively. Last June, the convener of the Local Government and Regeneration Committee wrote to the minister in fairly critical terms about the policy memorandum, stating that it was “little more than a superficial overview.”

Some more detail has since been provided.

On part 4, the policy memorandum contains only three pages in which a large amount of detail is précised in just seven bullet points. Do you feel that enough information has now been provided to explain fully the bill’s purpose and intentions in order to allow us properly to scrutinise part 4?

Dave Thomson: The short answer is yes.

Alex Fergusson: I thought that you might say that.

Dave Thomson: Given the additional information that has come through the Finance Committee, the Delegated Powers and Law Reform Committee and the Local Government and Regeneration Committee, and through continued engagement with stakeholders, we have expanded on what was originally in the policy memorandum to allow this committee to undertake a high level of scrutiny.

Alex Fergusson: How do you strike a balance between encouraging public dialogue and participation—which has been a buzzword lately—by making the information simple enough for people to engage with, and providing enough detail to make the intentions clear?

Dave Thomson: Along with the policy memorandum, the bill team produced an easy-read guide.

Ian Turner: We produced an easy-read guide that works alongside the policy memorandum and covers all parts of the bill. It has been broadly welcomed by stakeholders as representing, alongside the accompanying documents, an easy way into the bill.

Jim Hume: The financial memorandum states that “there is a large degree of uncertainty on the level of costs”.

What is anticipated as the largest potential cost area for communities and landowners? Why does the financial memorandum not provide a range of potential costs in different areas?

Dave Thomson: The overall gist is that the bill as a whole will introduce a much wider range of options for communities. As Derek Mackay told the Finance Committee, the fact that there is such a wide range—the options are not endless, but they are numerous—makes it very hard to say that there will be X instances of one type of community action and Y instances of another type.

On the specific right-to-buy element, we have included an estimate for the additional number of cases that we think will come through. It is only an estimate—it suggests that there will be five to 10 cases a year. The costs of those cases will obviously vary depending on what the community is wishing to purchase. We have based the costs for that particular part of the bill on the previous year’s experience of cases coming through. For example, there is a range of costs for a ballot of between £1,000 and £5,000, but the actual cost would vary depending on how many people were balloted.

Through adding up all the elements, which are all just ranges, it is hard to put a cost on the provisions. Ian Turner may be able to go into more detail on the process for the bill as a whole.

Ian Turner: That is right. Part 4 contains a demand-driven element, much like the participation requests in part 3 and the asset transfer element in part 5. There is a right for communities, but it depends on what they want to do and how they want to proceed, and which assets they want to acquire in that way.

Local circumstances will dictate how far the legislation will be used. The extension into the urban arena will no doubt lead to a rise in the number of right-to-buy cases, but we do not know what the rise might be, or what the common features might be with regard to asset transfer, which involves acquiring public assets in that way.

The financial memorandum tries to put a unit cost on the various elements, and those costs will apply in each case, but we will not know an overall cost because of the demand-driven elements.
Jim Hume: Obviously, we are always concerned about the unintended consequences of any legislation. What funding schemes are available to help communities with that work? Do you think that an increase in applications may have the unintended consequence of eating into another budget, if there is one?

Dave Thomson: There are a number of funding openings for community bodies through the likes of Highlands and Islands Enterprise, Community Land Scotland and the Scottish land fund. A commitment to extend the land fund was made at the Community Land Scotland conference this year. We are actively looking at how and to what extent that might be done. Obviously, the community right to buy’s move into the urban situation brings various funding streams that were not available through the community right to buy’s being rural only. There are various options out there, so we are ensuring that, as we actively monitor demand and the types of requests that are coming through, we tailor the funding to suit them.

It is not just about funding; there is also support for and advice to communities to ensure that they take the right options in the first place. It is not necessarily about ownership; other options will be available through the bill. Support and funding for them are actively being looked at, and they will continue to be monitored.

Jim Hume: Okay.

I want to consider the costs for public bodies. Obviously, there will be some resource issues for them. Do you have a good estimate of what potential costs there could be for public bodies? What support might there be if demand exceeds expectations?

Dave Thomson: That issue was raised through the Finance Committee, as well. We do not have clear estimates because we do not know what demand will be or what types of action communities will take. For the same reason, we cannot estimate what additional resource will be required from local authorities. Ian Turner will correct me if I am wrong, but they could not estimate that in their submissions, either, if I remember rightly.

Ian Turner: No. The local authorities generally could not provide individual figures, which was part of the difficulty in costing the bill as a whole. COSLA has said that individual elements of the bill will not be overly onerous for local authorities.

Jim Hume: Section 72 says that local authorities “must take reasonable steps to ensure that the number of persons entered in the list” for allotments is provided for. Have there been any thoughts on going a little bit further and putting a limit on the time that local authorities have in which to provide an allotment? I believe that, currently, it can take up to three years to get an allotment and that the Scottish Allotments and Gardens Society is interested in making it a duty that the maximum wait be three years.

Dave Thomson: I am afraid that the allotments part of the bill is not particularly my strong point. Ian Turner may be able to give some detail on that.

The Convener: To be fair, I say that it is the Local Government and Regeneration Committee that is looking at that.

Ian Turner: Yes. Allotments are in part 7 of the bill. We will get back to you properly in writing to ensure that we get the answer right.

The Convener: Okay. Thank you. We will move on to the delegated powers memorandum.

Cara Hilton: Good morning. The Delegated Powers and Law Reform Committee has raised concerns that proposed new section 97C(3)(a) of the 2003 act, which is on eligible abandoned or neglected land, is very vague in respect of how the power will be used. It also said that the Government’s explanation was “inadequate in light of the significance of this power and what it appears to permit.”

I would be interested to hear more about what the thinking behind that power is and, in particular, examples that demonstrate how the power might be used in practice and how ministers intend to use it.

Dave Thomson: The range of powers in that proposed new section is quite wide. We are still actively discussing them with stakeholders to ensure that we cover all the nuances. I am sure that everybody can come up with ideas on what should or should not be included at certain points; views will differ and more will emerge as we go on. At the moment, we are ensuring that we can cover such areas as much as possible.

Rachel Rayner is better placed than I am to comment on what specific powers cover in a legal sense.

Rachel Rayner (Scottish Government): Proposed new section 97C(3)(a), which the bill will insert into the Land Reform (Scotland) Act 2003, states that land on which there is a building that is someone’s home is not eligible land, and there is a power to make exceptions to that. Whether there is a need for that is a question that is being actively considered; it is the power about which there was most concern.
Other powers concerning eligible land will be set out in regulations pertaining to land that is someone’s home. That could include private gardens or outbuildings, and we have some examples of how we intend to use that power, but whether it is still appropriate to take the power in section 97C(3)(a) is still under active consideration.

The Convener: When will we get more detail about that? I sense that you are saying that we might well get more detail, since the matter is under discussion.

Rachel Rayner: The Government needs to respond to the Delegated Powers and Law Reform Committee’s report at the beginning of December.

The Convener: We will bear that in mind.

Claudia Beamish: Ian Turner has already touched briefly on the nature of the land in which an interest may be registered. At present, as I understand it, the right-to-buy provisions in part 2 of the 2003 act apply only to community bodies that represent rural areas that have a population of less than 10,000. Section 27 of the bill will amend the definition of registrable land and the power of Scottish ministers to define excluded land, which has been mentioned in relation to housing, but there may be other categories as well, so the community right to buy would now apply across Scotland.

I would like to explore further with the bill team how community confidence, cohesion and sustainability will be affected by extending the community right to buy, and what evidence demonstrates that. Although the 2013 consultation demonstrated widespread support, as has been highlighted, for extension of the community right to buy, what evidence is there that the new right to buy will be used? That is a neutral question.

Dave Thomson: I will hand over to Ian Turner to comment on what emerged during the consultation process. In general, submissions on the bill that have been sent to the Government or through the likes of the land reform review group give us the overwhelming feeling that the power is exactly the kind of thing that communities would like in order to—to use a buzzword—empower themselves. Essentially, it will give them the right to decide what they want to do with their future and the means to effect that. Ian Turner will be able to comment more specifically on what was found during the consultation.

Ian Turner: It is a difficult question to answer with evidence, because it depends on what communities themselves want to do with the power. Community empowerment as a whole is about devolving as much power as possible to communities so that they can take the decisions that they want to take. However they want to do it, we want to ensure that it is for them, and not for authorities or other people, to set their agenda. In general, the community right to buy in the 2003 act has been seen as a success for rural Scotland, so it could also be a success for the rest of Scotland. During the consultation and discussion with stakeholders, it felt as if people see it very much in that way. As for actual evidence of whether that will happen, we will see that in practice only when the legislation is in use.

Claudia Beamish: I have two brief supplementary questions. First, are there any practical problems with extending the community right to buy to urban areas? For example, how will ministers differentiate between conflicting applications for the same piece of land or building?

Dave Thomson: The more obvious practical issues are that there will be more people in an urban situation than there might be in a rural one, so more people will need to be balloted, and there is more likely to be more than one owner in a block of offices or whatever. Practical difficulties such as that may occur, but they are recognised and they are by no means insurmountable.

The bill allows for duplicate applications to be dealt with, essentially by putting the two applications that come in side by side, comparing them and seeing which will produce the better public interest and, at the same time, benefit the community. Such overlap may well occur more often in urban areas than it would in rural areas, simply because there are allotment societies, toddler groups, local councils, village councils and whatever else. We cannot say for sure that it will happen, but the bill allows for it to be dealt with through side-by-side consideration of the two applications.

Rachel Rayner: I can add a little more detail. In new part 3A of the 2003 act, on the right to buy neglected and abandoned land, new section 97K sets out what will happen where two bodies have applied to buy the same land. It requires ministers not to decide on one application until they have considered all the views that they have had on both. They then have to make a decision and tell both bodies what they have decided. As Dave Thomson said, the process is reflected in the bill.

Claudia Beamish: That clarification is helpful. Thank you.

My other question is about the time within which community bodies must re-register. The land reform review group suggests in its written evidence that re-registration be required every 10 years rather than every five years. Do you have any comments on adopting that longer timeframe? Are there any other ways in which we might make
re-registration of land less onerous, bearing in mind that we are talking about community groups?

Dave Thomson: We are certainly taking steps to make the re-registration process less onerous, which might involve simplifying the form somewhat. On the timescale, however, we feel that five years is about the right length of time for us to take account of any changes in what the community needs and how it wants to take things forward. Ten years might be too long, as there might be too many changes. If we were sticking with what the community agreed 10 years ago, we would need to ask whether the position was the same 10 years on.

We feel that the five-year timescale is adequate, but we are still taking stakeholder opinions on that. Some say that it should be five years, some that it should be 10 years and some that it should be less. We are considering it, but at the moment we are sticking with the five-year timescale.

Claudia Beamish: So it is still under consideration.

Dave Thomson: Yes.

Claudia Beamish: Thank you.

The Convener: It seems appropriate for us to move on to questions on the meaning of “community”. Angus MacDonald will lead on that.

Angus MacDonald: Good morning, panel. We know from our briefing that section 34 of the 2003 act provides that the only type of legal entity that can apply to register a community interest in land is a company limited by guarantee. The 2003 act also provides for the use of postcode units in order to define the community that a community body can represent. Section 28 of the bill allows for Scottish charitable incorporated organisations—or SCIOs—to be included, stipulating that they must have no fewer than 20 members.

What are the practical implications of the extension to include SCIOs? What other types of bodies might ministers specify by regulation?

11:45

Dave Thomson: First and foremost among the practical implications of the extension to SCIOs is that community bodies will be given flexibility in how they wish to go about the business of setting themselves up. There are considerations in relation to the protection of individuals on a community body in ensuring that assets are dealt with appropriately should that body be dissolved, for example.

We have sought the opinion of stakeholders on the additional bodies that could be included. Those that have been suggested include bencoms—community benefit societies—and community interest companies. We are considering what other bodies could be included but, as you said, there are provisions that allow bodies to be added. If there is a strong desire for specific bodies to be added, we can look at that again. Apart from SCIOs, bencoms are the other main type of organisation that has been put forward for consideration.

Angus MacDonald: Is the use of postcode units too general or too restrictive a way of defining a community, particularly in light of the proposed extension of the community right to buy to urban Scotland?

Dave Thomson: That is certainly the opinion that we have been hearing. We propose to allow other options, such as settlements or locations as defined by the General Register Office for Scotland. We are talking about not a more general term but an alternative to identifying all the postcodes. For example, a village is a location or settlement. The same is true of urban areas—parts of the city of Glasgow are settlements or locations in their own right and can be identified in that way.

Essentially, the idea is to give communities some flexibility in how they define themselves. There is provision in the 2003 act for a community to use some other means, but a community must let us know what means it is using and why, and that will have to receive ministerial approval.

In relation to the requirement that a body must have a minimum of 20 members, there is provision, in particular circumstances, to have a smaller number of members, but the body would have to explain why that was the case. That is probably more relevant to a rural body than it is to an urban one.

Rachel Rayner: Those changes will be made to section 34 of the 2003 act. As Dave Thomson said, ministers will have more flexibility to make regulations that prescribe a type of area. The fact that that does not have to be done by postcode will provide more flexibility. However, it will still be done by area.

Angus MacDonald: I want to explore the definition of “community” a bit further. Are there other methods by which a community might be defined? I am thinking of arts organisations, for example. An arts organisation in my constituency is a keen supporter of the bill. Charities and ethnic groups are other examples of communities of interest. I think that you have already mentioned allotment societies, and I would be interested to hear your view on the inclusion of community councils or common grazings committees, which might have some abandoned land nearby.
Dave Thomson: Rachel Rayner is probably better placed to answer on what is and what is not allowed.

Rachel Rayner: At the moment, new part 3A of the 2003 act just provides for a community body to be a company limited by guarantee. It is always an option for an existing group to form a specific company. As Dave Thomson said, we are considering what other bodies could be added. As has been mentioned, there is a power for ministers to make regulations that set out other bodies, should that be considered appropriate. In addition, that power allows ministers to set out the requirements that a body needs to meet to ensure that it is an appropriate community body to own land.

Dave Thomson: At this stage, the definition is still based on a geographic community, rather than a community of interest.

Angus MacDonald: Should the definition that is acceptable to ministers be in the bill?

Dave Thomson: Do you mean a definition of “community” in general?

Angus MacDonald: Yes, and the specific organisations that would be acceptable.

Dave Thomson: Some element of that would be acceptable in the bill, but it would depend on how many organisations would be listed, because the length of the list could be significant. If ministers were minded to do that, it might be more relevant to list the acceptable characteristics. We are not considering doing that at this point, but as more and more bodies are added to the list the issue might come back.

Rachel Rayner: Flexibility is useful. A few years ago, SCIOs did not exist. We need flexibility to deal with changes and types of entity that will exist in future.

The Convener: I know of communities that have attempted to buy land and found several chapters in the approach that required them to change their constitutions to meet the funding criteria. Can that be addressed in this context? Have you taken the issue into account?

Dave Thomson: The terms that a community body must meet are largely dictated by the type of entity under which it chooses to function. For example, a company limited by guarantee will have a different set of regulations from a SCIO or a community benefit company—or bencom. Equally, different funders will have different requirements that must be met if funding from them is to be obtained. I do not think that that is something that we can try to cover across the board in the bill.

We are changing one element in relation to the rules on the memorandum and articles of association, for bodies that are not actively involved in an application. Currently, if a body changes its articles of association during the period between approval of registration and the point at which the right to buy under part 2 of the 2003 act is triggered—during which period, in essence, registration is there but not active—it has to inform the minister, and we have to approve every change. We are removing that element. There is therefore some movement to allow bodies to change their articles of association in that period, as long as they are not actively taking forward an application.

The Convener: It would be interesting to know whether the time that it takes to purchase land has increased significantly because community bodies have been required to change their constitutions by the bodies from which they have sought funding. I can think of at least three changes in constitutions in a 10-year period, in Evanton in Ross-shire, where I live.

Dave Thomson: I can certainly find out about specific cases. You mentioned three, so if you pass them on, that would be great. I can take that forward.

The Convener: It would be handy if you knew of some, too.

Dave Thomson: I do not, off the top of my head. I will ask the community right to buy team for examples that they have. They have been dealing with the issue day in and day out for the past 10 years, so if there are examples they will know about them.

The Convener: Okay. We move on to late applications.

Dave Thomson: I want to pick up on two or three points. First, will the panel explain what the reasoning is behind the requirement to register in the first place? Would it not simplify things a great deal if communities did not have to register early and could just get involved when they became aware that land was available, which often happens quite late in the process? Why do we need a registration process at all?

Dave Thomson: The main thrust is to do with interference in the land market and the individual’s right to sell land. There are European convention on human rights considerations in that regard.

Rachel Rayner might know exactly where the rights and obligations lie in terms of the ability to pause or freeze the process of selling land and at what stage that is appropriate and balanced.

The application allows us to consider whether the community has a valid—for want of a better word—plan, so that the registration is not simply
being used as a blocking measure, for example. If the application is valid, it will proceed. It is, in essence, a way for us to gauge whether the registration is not just a knee-jerk reaction but a viable prospect.

Dave Thompson: There is lots of land all over the place—hundreds and thousands of hectares of buildings and land—and communities will often think that a particular piece of land will never come on to the market because it has not done so for 500 years and there seems to be no likelihood of it coming on to the market in the next 500 years. There might be some obvious examples of a community being able to anticipate a bit of land or property coming on to the market, but there must be numerous situations in which communities would have no legal reason to believe that that would happen. Therefore, why would a community spend a great deal of time putting together a registration and planning what it would do with the land if, in 99 per cent of the cases, there is no real chance of that land coming on to the market?

You mentioned blocking. People could block with a pre-emptive registration just as easily as they could with a reactive, knee-jerk registration. That is not a strong argument. I want to tease out why we need early registration. Why not allow communities to register an interest once they see that land has come on to the market? That might spark in their minds the thought, “Oh my goodness, we never thought that that bit of land...” You have actually done some work on something that might not have actively started the application. After all, although the community might not have actively started the application process, it might have undertaken relevant work—for example, it might have identified a need for land but not exactly which land, or it might have sounded out funders on whether there is potential in an application. Some element of work will still be required, but it is right that the focus will move away from having started the application process to having started relevant work.

Ian Turner: Yes.

Dave Thompson: We are expanding it slightly, but there is a point at which we have to balance the owner’s right to sell the land and the community’s aspirations to obtain it.

Rachel, are you any better placed to comment?

Rachel Rayner: No, I do not have anything to add.

Dave Thompson: That neatly moves us on. I hope that ministers and you will think about whether the bill could be simplified by taking out the need to register early but, if it is felt that there is good reason for it, it is needed and it should stay there, we can talk about that later on.

You mentioned the need for a community to show that it has done earlier work—that “such relevant work as Ministers consider reasonable” has been carried out—before it makes a late application. You propose to remove the good-reasons test, which is in the current legislation.

It strikes me that it might be awful onerous to show that you have carried out “such relevant work as Ministers consider reasonable”. How has the good-reasons test been used in the past, and why do you feel that we need to change things and move to what looks like a more onerous test that might prevent communities from being able to buy land?

12:00

Dave Thompson: Our intention is certainly not to make things more onerous; in fact, it is exactly the opposite. It might be that in guidance and further regulations we can clarify our exact intention, but the idea is not by any manner or means to make things more onerous.

On why we are moving away from the good-reasons test, I point out that it has been used in quite a few applications—off the top of my head, I think that a third or 50 per cent of applications are late ones—and we certainly recognise that the system needs to be more reactive in its application. After all, although the community might not have actively started the application process, it might have undertaken relevant work that would lead up to that stage, and that is something that we can take into consideration. However, that does not address the kind of light-bulb moment that you have referred to, and we are still talking to stakeholders about what they feel on that issue.

Dave Thompson: I do not know how the good-reasons test has been applied up to now, but surely one of those good reasons might be that the community just did not know and had no reason to expect that a particular property was going to come on the market. Having to show that you have actually done some work on something
that you had never expected to happen will basically be impossible.

Dave Thomson: If it would be helpful, I could provide examples of cases involving late applications that were either accepted or rejected. That might clarify our thinking behind our approach to the good-reasons test.

Dave Thomson: That would be helpful, but the general principle of the effect of such a move is important.

The section in question also refers to identifying the owner of the land in question. That, again, might be impossible in certain circumstances, because there could be all sorts of ways in which an owner might not be identifiable. It makes me wonder whether we need earlier registration at all, and it strikes me that, compared with, for example, the provisions that have been in place for some time now for crofting communities, things will be made more difficult for communities.

Dave Thomson: That is certainly not our intention. With regard to the crofting community right to buy, we are actively talking to stakeholders; in fact, we will be in Inverness tomorrow and in Harris and Skye next Monday and Tuesday talking to particular stakeholders about the changes that they feel could or should be made to that element of the bill. The good-reason and relevant work provisions will be developed and refined as the bill progresses and as we talk more and more to stakeholders about difficulties, issues and, indeed, opportunities that can be taken.

Dave Thomson: Finally on the issue of late applications, is the timescale for communities complying sufficient for them to be able to put together a coherent and reasonable bid for land if, up until then, they have done only the absolute minimum of the relevant work—whatever that means—that is required under the act?

Dave Thomson: Obviously we think so, but we can look to change that as we monitor how the provisions are used; indeed, we are already extending the valuation period from six to eight weeks. Even now, we are monitoring whether the time periods in the bill are sufficient.

We think that we have allowed enough time based on the previous 10 years’ experience of what communities can and do, but we will monitor that as we go. At the moment we think that it is sufficient.

The Convener: Cara Hilton has a supplementary question on that point, and then we will go to Claudia Beamish.

Cara Hilton: What would happen to an application to register or buy land if, despite its best efforts, a local community could not find the landowner? Would that kill off the application, or might there be a way of allowing it to proceed if the community could show that it has taken all reasonable steps to identify the owner?

Rachel Rayner: A community would need to identify the owner so that their views could be taken into account and to ensure that the land could be transferred. There are other ways of trying to find owners. I do not know whether the team has come across that problem in practice.

Dave Thomson: I do not recall any specific examples of not finding the owner at all, but I can double-check that.

Cara Hilton: It would be interesting if you could check that. The ownership of some areas of land in my area is in dispute so it would be helpful to have that feedback.

The Convener: That would indeed be helpful. We do not know who owns some large areas of land—even some of the largest landholdings in Scotland—so the question of ownership is pretty important.

Claudia Beamish wanted to ask a supplementary earlier but I forgot.

Claudia Beamish: I want to go back to the definitions of community bodies that can apply. Have you looked at groups that come under the Equality Act 2010? For instance, have you looked at ethnic minority groups who have a wider geographical spread? Has there been any discussion of that sort of issue?

Dave Thomson: In general terms, yes. What I call interest groups or communities of interest have certainly come up in discussion. At the moment, however, we still require a geographic element in the definition of a community.

Claudia Beamish: I am aware that it has been an issue for other things such as the climate challenge fund.

Dave Thomson: Yes.

The Convener: We will move on to talk about abandoned or neglected land.

Nigel Don: I would like to start with those words “abandoned or neglected”. As I understand it, those terms are not defined in the bill. Presumably they have some kind of legal usage or possibly even a definition. Could you clarify that and confirm why it is appropriate not to define them in the bill?

Dave Thomson: Although the approach is to be finalised, we have two things to consider when deciding whether to use “abandoned” or “neglected”. It is whether the land has been cared for and what the effect of that care or lack thereof has had on the land’s condition. That is the issue
in the broadest terms. We want to make sure that we get that right and that we do not include or exclude completely inappropriate areas of land.

It might be better to give you some examples of what we think might be covered. Let us take the example of someone who owns land on an island, which has a slipway that has deteriorated to the point at which it cannot be used. If the landowner is not willing or able to address that issue but the community can—either because it has the resources or volunteers to do so or because it has access to a different funding stream—it should be allowed the right to do that. If it means buying and developing the area that includes the slipway, so be it.

Another example might be an open area of land that is overgrown and full of broken glass. These might be extreme examples, but I just want to give the committee an idea of where we are going. Such land is a blight on the communities that surround or are adjacent to it. If all it needs is the grass cut, the glass cleared up and some improvements made, and the owner is not willing or able to do so while the community has made the case that it can make that land into something much more sustainable, we think that it should be able to do so.

We are aware that some circumstances should not be considered to be neglect. There is the case of biodiversity, for example: just because something is not actively being done to a piece of land, that does not necessarily mean that it is abandoned or neglected. There are reasons for not cutting grass or not seeding particular areas. Equally, we are not asking conservation heritage sites to rebuild a ruined castle all of a sudden because the castle is abandoned or neglected. It is a heritage building and it should be kept in an appropriate state. We also need to look carefully at land being held or assembled for future development, for example.

There are various nuances in the definition; that is why we are taking time to make sure that we get all the representations and get it right as much as possible.

**Nigel Don:** Thank you—that confirms that there is an issue here. It suggests that there is a definition to come but it is not there yet. Is that a fair interpretation? Otherwise, the lawyers are going to have some fun with this.

**Dave Thomson:** Rachel, do you want to comment, as a lawyer?

**Rachel Rayner:** The words have a meaning. The issue is more, as Dave Thomson said, that we are considering whether any refinement would be appropriate or whether what is in the bill is sufficient.
land that has fallen to the Crown because there is not a known owner. Not all Crown land is excluded.

Nigel Don: Again, if I have understood correctly—I also do not want to go into the Latin—either it is land that is of unknown provenance or we have no idea who should own it, due to failure of succession, so it falls to the Crown. I still come back to the question: why can the community not buy it?

Rachel Rayner: There are alternative ways of dealing with land that falls to the Crown, so that issue does not need to be included in the bill.

12:15
Nigel Don: In that case, I will push on.

One of the areas of interest is that a community might do exactly what Mr Thomson alluded to earlier, which is to take over an area of land and do nothing with it, apart from cleaning it up. In other words, as far as the community is concerned development might simply be conservation and keeping an area in a natural state. Is that sustainable development? It does not sound like development to me.

Dave Thomson: I suppose that it would depend on the state of the land beforehand. However, there is a balance to be struck. What we are not trying to do is compare uses, as in “My use is better than your use.” The issue is the sustainable development of the land.

The World Commission on Environment and Development defined sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

That seems to summarise it. Land that is just sitting there but is, for example, overgrown or concreted over and has broken glass on it is not meeting the needs of the present. Those needs could be met if, for example, the grass was cut, some benches with a lick of new paint appeared or a nice path to walk on was provided. There is also a health and wellbeing aspect to a community having a nice space that is no longer a blight.

Nigel Don: Forgive me, but can I stop you there? I can credit putting in a path or a bench being regarded as development, even though it might be minute. However, a community could decide that it wanted, in effect, wild land—I do not want to define that—so a space could be cleared up but nothing more would be done to it and any paths would be made only by people walking through. Would that be sustainable development? I suspect that in the context of what we are trying to do it ought to be, but I am not sure that the words in the bill have that meaning.

Dave Thomson: Probably the best answer is that it could be. It would have to be decided on a case-by-case basis. I do not know what the legal or dictionary definition of “sustainable development” would be, but to my mind it means an improvement, even if it is not sustainable. That might not cover particular cases—I do not know.

Nigel Don: I suggest to Rachel Rayner that policy is one thing but that the challenge legally is that the bill has validity only if sustainable development has a clear meaning.

Rachel Rayner: The sustainable development of land was considered in the Pairc case with regard to the crofting community right to buy, and the court was confident that sustainable development had a clear meaning.

You gave the example of a community only building a path or putting a bench on a piece of land. The community right to buy being compatible with “furthering the achievement of sustainable development” in relation to land is only one test, because it also has to be in the public interest. There are a number of tests that have to be satisfied. It is not the case that showing just that what will be done with land will “further ... sustainable development” will be enough to get a group over the threshold so that ownership of the land is transferred; there are additional tests that have to be satisfied.

Nigel Don: Yes, there are. Okay, I need to—

The Convener: Can we come back to that point in a minute, as Dave Thompson has a supplementary question?

Nigel Don: Of course.

Dave Thomson: The Pairc decision is very interesting because the community was told initially that it was not complying with sustainable development requirements for the crofting right to buy, but eventually the minister said that it was doing so. There was a list of reasons why the minister agreed that that was the case, including that

“there was a credible sustainable plan ... new activities ... potential to diversify”

and

“power to negotiate”.

Following the Pairc case, therefore, there is a model of what constitutes sustainable development, which is a very good guide for us as we move forward.

Having mentioned the crofting right to buy, I want to pick up on the reasons why we need changes. With that right to buy, only two tests apply: it must further the achievement of sustainable development and it must be in the
public interest. The bill states that another test is that the land must be

“wholly or mainly abandoned or neglected.”

Another test is added on as well. It has to be shown that,

“If the owner of the land were to remain as its owner, that ownership would be inconsistent with furthering the achievement of sustainable development in relation to the land.”

Therefore, not only must the land be “wholly or mainly abandoned”—and we have had all the discussion about that definition—communities have to show that the current owner would not improve the land. It strikes me that those additional tests, which do not apply to the crofting right to buy, are very onerous and might make it almost impossible for communities to buy.

My worry is that, if this bill goes through in its current form, it could affect the crofting right to buy. I am not a lawyer, but it would be reasonable for folk to say that, if in order to comply with the European convention on human rights we need to put in the bill two tests on top of those that are in the crofting right to buy legislation, maybe the crofting right to buy legislation is not sound in ECHR terms and those same tests need to be added to it. That is my worry if we go down this road. It seems to me to be way over the top.

Rachel Rayner mentioned the Pairc case. The Government won that case; it challenged the decision in court on the basis of the two simple tests that the purchase of the land must further the achievement of sustainable development and must be in the public interest. I fail to see why we have to make the hurdles so high and add in extra tests for the general community right to buy. I worry that, if we do that, it will be an acceptance that we did not really win the Pairc case and that we might need to revisit the crofting legislation. I have a number of concerns around that.

Rachel Rayner: We are content that the crofting community right to buy works and that the current test is appropriate. As you pointed out, the court has upheld that.

Proposed new part 3A of the 2003 act, on neglected and abandoned land, is about deciding the appropriate test for the problem that you are seeking to address. In part 3A, the concern is that neglected and abandoned land can in certain cases be a blight or a problem. It is about deciding what the appropriate mechanism is and when it is appropriate for ministers to decide that that land should be sold without the consent of the owner. It is about making each of the rights to buy fit for purpose for the particular issues that they are dealing with.

I do not think that the test in new part 3A will have any crossover to the crofting community right to buy. The tests for that legislation are thought to be sufficiently robust for that issue.

Dave Thompson: I am glad that we have that reassurance. However, will the panel comment on the ownership test, which it seems to me would be very difficult to apply in practice? Communities would have to prove that, if the owner of the land were to remain as its owner, that ownership would be inconsistent with the sustainable development of the land. How would they do that? It seems bizarre and almost unproveable.

Dave Thomson: I will give you an example of what that element of the bill is trying to address.

If the owner currently has a plan in place or on track for a piece of land—a plan that may have been made only recently—and they are waiting for funding, the approval of a planning application or whatever when the community application comes in, that element allows the owner to say, “This is what I am trying to do with the land and here is the proof of that.” It is about saying that the land cannot be taken out of their hands just because there is a delay in planning or funding.

Of course, everything is relative. If the plan was put in place five minutes before the community application came in, it would be considered as part of the application; if the plan was put in place five years ago and it could be shown that planning permission was being sought but had continually been blocked, that would show that the owner was trying to develop the land sustainably.

It is a matter of allowing the owner to put the case that they have been trying to do something with the land or that they are planning to do something with it, as long as they are not just paying lip service to that and can provide sufficient proof that that has been taking place.

Nigel Don: Forgive me, Mr Thomson, but I think that I understood the opposite of what you intended. It seems to me that a landlord putting in an application for something that he is never going to get planning permission for is a wonderful way of securing the land and ensuring that it is never bought out by the community. A landlord applying to do something else for which he will not get planning permission could be part of the very process of not allowing sustainable development.

I wonder what on earth the proposed new section 97C is doing. I still do not think that I have heard a reason why it is there. I understand the logic of why it might be there, but I have not heard a practical reason why you would want it there. The reason that you have just given actually works against the intention.
Dave Thomson: It is not intended to do so. I suppose that it is a case of looking at the plan and its viability. I hope that it would be obvious if, as you say, a landlord put in a planning application for something that was never going to work, and the issue would then be whether that planning application was put in five minutes before the community application came in.

It is a matter of deciding whether the ownership by the current owner is "inconsistent with" sustainable development. As you say, the fact that a planning application has gone in for something that will never happen does not point to the sustainable development of the land. Proposed new section 97C allows us the time to consider that, as much as anything else.

Nigel Don: I seriously suggest that you might like to reflect on what the proposed new section is really trying to achieve. I could take you to the middle of my constituency and show you the land that is involved in the longest-standing planning application in Aberdeenshire Council's history. It is a large area of land that the owners reasonably want to develop in a way that would probably prevent the local communities from doing anything—i.e. it is not an unreasonable planning application. I think that the provision is going to give us problems.

Dave Thomson: We welcome that view.

The Convener: We have explored the issue quite a bit.

Claudia Beamish: I have a brief question on the same subject. The witness talked about the land being held for future development by an owner. As we know, land can sometimes be held as an investment to be sold rather than for future development. Will any timescales be set or considered for how long land can be kept that is not being developed but which might fall into other categories, which would enable communities to buy it? How long can the situation that I have described go on? I know of cases that have gone on for decades.

Dave Thomson: We will have to consider carefully whether that type of land being held for development would be excluded under the definition. The point that you make is a good one. At the moment, we are not thinking of specifying timescales, as what would be reasonable varies quite widely from case to case and from location to location. However, it is something that would be taken into account in deciding whether an application should be allowed for an area of land. As you say, if the land has been held for 10 years and is not moving or being actively marketed, that is a completely different scenario from that of a piece of land that has been on and off the market for five years, with the price being reduced over those five years in an attempt to sell it. We want the opportunity to consider such matters on a case-by-case basis.

The Convener: On the other hand, it would give the community time to register an interest to buy.

Dave Thomson: Yes.

12:30

The Convener: We move on to the meaning of community. We need to clarify whether the amendment to section 53 to include community benefit companies will be extended to legal entities that can use the provisions on community right to buy in part 4 of the bill.

Dave Thomson: In addition to the inclusion of SCIOs, that is one of the most frequent suggestions for inclusion that is made to us. We are certainly looking at that.

The Convener: So that would be development groups, for example.

Dave Thomson: I do not know, off the top of my head, whether they are included—that is just my ignorance of what a bencom is or is not.

Rachel Rayner: In the same way that the articles of companies limited by guarantee have to meet certain requirements, the constitution of a SCIO has to meet certain requirements if it is to be a community body, and if bencoms were to be added, consideration would need to be given to what would be the appropriate requirements of a bencom.

The Convener: Okay. We will see where that goes.

Given the importance that the land reform review group placed on amending part 3 of the 2003 act, on crofting, why was there not a full consultation on that? Is the bill team satisfied that the dialogue with stakeholders has been sufficient and proportionate? Would it not have been more helpful to introduce these amendments in the forthcoming land reform bill?

Dave Thomson: The reason why the changes to part 3 of the 2003 act, on the crofting community right to buy, were not included in the initial phase of this bill was largely because all available resources were focused on improving the community right to buy in part 2 of the act and developing provisions for neglected or abandoned land. As the pace of land reform in Scotland increased, with the likes of the land reform review group, it became more and more clear, in conversations with stakeholders, that the changes to part 3 should be included in this bill rather than in any land reform bill that may come along in future. We thought that it was best dealt with now.
The need for consultation is one of the reasons why we have written to stakeholders on the changes that we are considering to part 3. As I said, we met stakeholders last week in Edinburgh, and we are meeting them tomorrow in Inverness and next week on Harris and Skye.

The land reform review group took evidence that we have looked at; for example, Simon Fraser had some very good points to make. We are speaking to Simon next week to get his thoughts on our proposals. Although the changes to part 3 were not part of the first phase of the bill, we are actively pushing that now and getting stakeholder opinions on the issue.

The Convener: As there are no further comments on that, we move to amendments to parts 2 and 3.

Dave Thomson: The letter from the Minister for Local Government and Planning to the Local Government and Regeneration Committee states that he “will also be seeking to make further amendments to Parts 2 and 3A of the Land Reform (Scotland) Act 2003”.

Given that the land reform review group and others have identified flaws in part 3 of the 2003 act, why is the proposed new part 3A based on it?

Dave Thomson: Based on what?

Dave Thomson: On part 3 of the 2003 act. There has been criticism of that. The minister has said that amendments will come along. Have those already been taken into account? If so, why is the minister, in his letter to the Local Government and Regeneration Committee on 6 November, saying that further amendments are coming? I am a bit confused by that.

Dave Thomson: The simple issue is one of timing, as much as anything else. Part 3A was based on part 3 in the first place because of the compulsory element of the purchase. It was felt that the process for the crofting community right to buy was a much better template than the process under part 2, which is pre-emption, so we used that template.

Because the changes to part 3 of the 2003 act are coming in after stage 1 of the bill, yet the proposed new part 3A of the act is in the bill at stage 1, it will be necessary to tie up the two elements where a change is made to part 3. We will need to balance part 3A up to mirror that change, where relevant. It is really an issue of timing—it is almost a catch-22 situation. If you change one, you need to make sure that an equal and relevant change is made in the other. There will be changes, and it will depend on what changes to part 3 are approved.

The Convener: I think that I follow.
(Scotland) Bill and then consider its letter to the Scottish Government on the wildlife crime 2013 annual report.

Meeting continued in private until 13:08.
On resuming—

Community Empowerment (Scotland) Bill: Stage 1

The Convener: Agenda item 5 is evidence from stakeholders on the Community Empowerment (Scotland) Bill. I welcome the panel: Peter Peacock, policy director for Community Land Scotland; Sandra Holmes, head of community assets, Highlands and Islands Enterprise; David Prescott, chair of the board, Holmehill Community Buyout; Duncan Burd, rural affairs sub-committee, Law Society of Scotland; and John Watt, specialist in community land ownership. Welcome to you all.

The sound system is operated by the sound technician, so you do not need to press any buttons. I will indicate whom I am asking to speak; if you want to speak on a particular area, please indicate to me. We look forward to gaining the benefit of your wide experience in these matters.

I will kick off by asking about how the dialogue and consultation on the community right to buy and the crofting community right to buy have been conducted. We are told that there have been various elements to the consultation but, as far as we know, the provisions in part 4 have not been consulted on in the same way that provisions in other parts of the bill have been. Has the consultation on the part 4 provisions been suitable?

Peter Peacock (Community Land Scotland): Community Land Scotland has been making submissions about part 3—the crofting community right to buy—since 2012, when the first consultation on what was to become the Community Empowerment (Scotland) Bill took place. We made representations on the need to undertake work on part 3, which was followed up by our representations in the more formal consultations. We have actively made the case for change for about two and a half years, and we have had dialogue with officials and the Government on that.

As you will be aware, the Scottish Government has published a short consultation paper on part 3. We have made written submissions and I know that others have, too. A series of meetings have been taking place—Sandra Holmes was probably at one in the past week. There was one in Inverness and there was one in Harris earlier this week.

That consultation has been happening and we are not unhappy about it at all. We are very pleased that the matter has been picked up in the bill, because it requires attention. The consultation
is well targeted and what is proposed seems pretty spot on, although one or two things need to be tidied up.

The Convener: I point out that you are talking about part 3 of the Land Reform (Scotland) Act 2003.

Peter Peacock: Yes, that is what I am talking about.

The Convener: I know that you are, but I am explaining that for the benefit of my members, since we are dealing part 4 of the Community Empowerment (Scotland) Bill. That is why it is necessary for us to have a copy of the Land Reform (Scotland) Act 2003 beside us.

Does anyone else want to comment on the process so far?

Sandra Holmes (Highlands and Islands Enterprise): Since the Community Empowerment (Scotland) Bill was first talked about and before it was drafted, Highlands and Islands Enterprise has engaged strongly and actively in the process. I have lost count of all the submissions that we have made at various stages. We very much welcome the bill and, like Community Land Scotland, we welcome the recent proposals to include amendments to the crofting community right to buy at stage 2. Last week, along with civil servants from the Scottish Government, I took part in a discussion on those proposals that was hosted by Highland Council. We have submitted written evidence on the crofting community right to buy amendments. We think that it makes a lot of sense to pull everything together, particularly given that parts of the community right to buy in proposed new part 3A of the 2003 act are based on the existing crofting community right to buy.

The Convener: Very good. That opens up the question whether those provisions should be part of the proposed land reform legislation, but Sandra Holmes says that they are naturally part of the bill. Are we agreed?

Peter Peacock: Yes—absolutely.

The Convener: In that case, we can move on to the policy memorandum.

Alex Fergusson: This is really just a background question. Back in June, the convener of the Scottish Parliament’s Local Government and Regeneration Committee wrote to the Minister for Local Government and Planning to seek clarification on some points relating to the policy memorandum. In what could be seen as fairly critical language, he said that the policy memorandum appeared to be little more than a “superficial overview” that did not supply sufficient material to allow for part 4 to be properly scrutinised. Correspondence took place and further detail was provided, but at the end of the day the policy memorandum devotes fewer than three pages to part 4 and at one point summarises 20 sections of the bill in just seven bullet points. Are you truly content that you have been provided with enough information to fully explain the purpose and policy aims of the bill? My guess is that you will say yes.

Peter Peacock: As I said to the convener, there has been dialogue on the issue since 2012. To be frank, I was quite surprised by that letter from the Local Government and Regeneration Committee to the Government. That was principally a surprise to me in the sense that, although I can understand why the Local Government and Regeneration Committee might have been less sighted on the matter than this committee, as Mr Fergusson knows, in a past life I sat roughly where he is now, and the then Rural Affairs and Environment Committee carried out an independent inquiry into the workings of the Land Reform (Scotland) Act 2003. In effect, the debate has been going on since 2010-11.

Community Land Scotland was not unhappy with the policy memorandum. It gave us enough to work on and it clearly reiterated the purpose of the Land Reform (Scotland) Act 2003, which is to further the achievement of sustainable development and to remove barriers to it. That is the core concept. Once we get that, all the provisions in the bill make sense. Therefore, we were not unhappy with the policy memorandum at all in that sense.

Alex Fergusson: Some members obviously felt that a case could be made that there were not enough details but, basically, you guys in the field were content with what came your way.

Peter Peacock: Absolutely.

Alex Fergusson: That is fine—thank you.

Sandra Holmes: It is complex to look through the proposed changes and the existing act, as that involves cross-referencing and looking at lots of documents. However, we are satisfied that there is a lot of good stuff in the proposals and we are keen for them to progress. After going through the details of what is in, what is out and the proposed changes, we see the outcomes as helpful and enabling and we are keen for them to be taken forward on the proposed timetable.

The Convener: In that case, we will move on to the financial memorandum.

Jim Hume: There seems to be a degree of uncertainty regarding the financial memorandum. Highlands and Islands Enterprise has stated that it agrees that there are difficulties in estimating demand, for example. Bearing that in mind, what specific costs does the panel anticipate for
communities and landowners, and what costs might public bodies have to bear?

**John Watt:** I will wear my hat as the chair of the Scottish land fund committee. The committee has the responsibility of managing the Government’s Scottish land fund, and many of the cases of communities wanting to acquire property and land assets come to us.

Prior to this meeting, I submitted information about where we are and the number of cases that have come to the land fund that have gone through the community right to buy process to date. I included the national forest land scheme, which is a kind of community right to buy of a public asset.

The detail is in my paper, but I can tell you that we have £9 million over three years—the last tranche being £3 million for the next financial year. There is pressure on the budget, but we are managing that at the moment. Some of the changes that will happen if the bill is enacted might increase the pressure. For example, the extension of the community right to buy to urban areas will have an impact.

However, at the moment we are projecting that we will manage the pressure on the budget. We are careful about assessing the outcomes that each case will bring in relation to sustainable development and resilient rural communities, and we will continue to do that.

**Jim Hume:** Committee members have your paper, which gives a broad outline of what the budget is, but I want to bore down into where the budget goes. I want to know what types of costs—rather than the overall budget, which we appreciate—public bodies, community bodies and landowners face.

**John Watt:** Do you mean the applicants or the landowners?

**Jim Hume:** I mean applicants, landowners and public bodies. My question is for the whole panel.

**John Watt:** I will stick to the land fund for the moment. A team of public sector officials assists communities in the development of good projects. Sandra Holmes heads up the team. There are obviously costs to the public sector in relation to the development and application process—Sandra might comment on that.

**Sandra Holmes:** We put in a submission to the Finance Committee on HIE’s corporate perspective on the part 4 provisions on the community right to buy. We see no significant direct costs coming to HIE. We will update some of our guidance and there will be a modest one-off impact on the organisation.

We support communities in their aspirations to own and manage assets, and that is where the bulk of our efforts go. We are already doing that, and most of the support that we offer goes to communities that are not planning to use the legislation because they have other routes to ownership.

John Watt mentioned that we support the Scottish land fund. That is a Scottish Government programme, which we deliver on the Government’s behalf in partnership with the Big Lottery Fund. The Scottish land fund currently applies only to rural areas—that is, communities with a population of up to 10,000.

The bill will extend the application of the community right to buy to all communities, so it will take in communities with a significantly higher population. Our sense is that there will be a rise in interest in using the community right to buy, with a knock-on effect on demand. Some of the difficulties in trying to articulate the overall cost lie in the fact that the system is so demand led.

The key thing is to put the issue in perspective. The Land Reform (Scotland) Act 2003 was enacted in 2004, so we have had its provisions for a decade. I believe that there have been about 18—fewer than 20—applications under the provisions but, from my rough calculations, I think that there have been 110 acquisitions in Scotland on top of that. The 2003 act is enabling and it creates a positive environment, but most stuff happens outwith its provisions.

However, the extension from rural communities to urban communities is a key change, and it is pretty challenging to quantify the demand that is likely. If communities require public funds to enable acquisitions to progress, that will be a limiting factor. The right to buy is one thing; communities must then secure funding.

Since the Scottish land fund came on stream in 2012, there has been, as John Watt said, a very healthy pipeline. That is the enabling factor that instigates communities to be proactive and to see a route and a means to generate the finances that are required to enable a purchase. Within that, private financing is featuring to an increasing extent. Communities are getting commercial borrowing to make up the funding packages.

11:15

**Peter Peacock:** In previous evidence, we have said that we want to see all of this advance but, as John Watt and Sandra Holmes indicated, urban communities will come into the equation under what is proposed, which will mean that the potential demand on the land fund will grow. We are under no illusions, because we know that that must be cash limited at some point—that is a
budget matter for Governments over time. We are not arguing for an open-ended chequebook, because we recognise that there are public expenditure constraints. Although we might argue for the budget to be nudged up, we recognise that it competes against other things.

Jim Hume: That is useful.

The Convener: As no one else wants to comment on that, we will move on to Cara Hilton, who has a question about the 2003 act.

Cara Hilton: Good morning, panel. Given that the primary objective of land reform is to remove land-based barriers to the sustainable development of rural communities, how well has the 2003 act worked in practice? Have aspects of rural Scotland changed as a result of the act? Have the experiences of the 2003 act and land reform to date informed the drafting of the bill?

David Prescott (Holmehill Community Buyout): We tried to buy land, but the legislation did not work for us. However, it made us form a group, which was a huge positive. We will celebrate our 10th anniversary in January with a ceilidh—we are not giving up yet.

The legislation did not work for us for a variety of reasons, which I can go into but which are well documented on our website and which there is a bit about in our submission. I am no expert but, as far as I can tell, the changes that the bill proposes seem to deal with some of the problems that we had when we failed to secure our registration.

I admit that some of the things that have come out subsequently have made me worry about how we will go forward. We are continuing to go forward positively but, unless we can secure ownership of the land, we will have no community control over it at all—I can go into that in more detail. However, we have been through the planning process and have retained the original designation of the land as public open space in case somebody wants to try to buy it for its development value. The valuation is a big concern financially.

We have secured the land in the local plan as public open space, defeated one planning application and had another one withdrawn, as we had the support of Stirling Council’s planning department. However, we have not been able to move forward and use the land, which we would like to do for the community. We would like to engage with the community and have a dialogue about how it can best deal with the land. We have ideas, but there will be lots of other ideas.

The bill is a good start, and the group and I are really pleased that the committee invited us to the meeting, although it is a bit frightening. However, we would like to work with the committee on the basis of our experience and help if we can.

The Convener: Will you briefly tell the committee about the couple of things that got in the way of the legislation working for you?

David Prescott: The first one was that we were refused in the first instance because we were not timeous and did not register beforehand. The land was in the local plan as public open space and it was always treated as that. However, the owner sold it as land with development potential and somebody bought it for that. He thought that he was on about a 5-1 win, but he had to overcome a group. Our first failure, though, was not securing the use of the land. As you probably know, we used the appeal process, but it was pretty hairy and did not take us very far forward.

In fairness, we were encouraged to reregister. I would not say that the process was easy—I did not do most of it—but we managed it. What killed it for us was that the owner had sold an option. We saw a piece of paper with “Option” on the top and practically everything else redacted, apart from the solicitor's name. We know not to whom that was sold, for what value, when that happened or whether the option is still extant. As a result, we have taken the view that we will not seek to reregister until we are in a position to know that we will not end up in the same situation. The stuff that has to be done—going out to the community, going through all the support processes and writing the document—is a big exercise. It is not a good idea to go to the community too often. People should really go to the community only when they have to.

Those are the two big issues that our experience has identified. I believe that the bill seeks to address them, but I am not qualified to say whether it will be successful in how it is framed.

The Convener: Your evidence is extremely valuable.

Peter Peacock: Cara Hilton asked about three points: whether the 2003 act has worked, whether it has changed rural Scotland and whether the bill has been informed by that. My experience of community land owning goes back to a past life, when I was involved with the Assynt crofters in the buyouts of Knoydart and Eigg before the 2003 act was passed. As you know, I got diverted into other things.

I have come back to the issue 15 years later, and I can honestly say that the landscape—in the broadest sense—has been transformed from the position at the time of the Assynt crofters buyout. In certain places, community confidence is much higher than it used to be. People are doing the
most remarkable things that, frankly, I would never have believed were possible back then.

That has happened partly because the 2003 act gave consent to communities to own their land and gave them a legal framework to do so. In a sense, through the act, Parliament and Government said, “We want you to do this and here’s the law to help you do it.” From that point of view, the act has been transformational. Notwithstanding that a lot of people do not use it, it has changed the environment in which such matters are dealt with, which has been excellent.

However, we know from experience that the 2003 act is hugely cumbersome, difficult and bureaucratic in a variety of ways, to the extent that communities find it almost impossible to deal with. That is why we now have a bill to revise it. For the most part, the bill is well targeted and picks up on the issues that communities have expressed concern about over time.

I have quite strong reservations about aspects of proposed new part 3A of the 2003 act, which might not be as helpful as they could be. We will undoubtedly come on to that. Part 3 of the act purports to provide an absolute right to buy. It is not actually an absolute right to buy, but it gives a community a chance to buy land that is not for sale.

The crofting community right to buy has completely changed the environment in the Western Isles. We have moved on from communities thinking about exercising their rights to compulsorily buy land and going through the process, which is horrendously complex. The mapping requirements in particular are horrendously complex; the committee might want to come back to that.

Nonetheless, one community took forward its case and another one started to take forward its case. That has led to a complete change in the environment. Now, landowners and communities in the Western Isles negotiate the future; they do not use the act, but they would not be negotiating but for the act. It has become hugely important as a backstop to allow negotiation to continue. I can pick up other points of detail, but that is the context.

The Convener: We will come to some of the detail very soon.

Before I bring in John Watt, Dave Thompson wants to ask a quick supplementary.

Dave Thompson: My question relates to Peter Peacock’s references to complexity. I noticed that, in its submission, the Law Society of Scotland said:

“There are multiple amendments to certain sections of the 2003 Act of the Bill which are rather difficult to follow and this does not seem to sit well with the aim of empowering communities. The Society suggests that it would be simpler to repeal and re-enact part 2 of the 2003 Act.”

It is slightly concerning if the Law Society finds the provisions difficult to follow.

Duncan Burd (Law Society of Scotland): I do not think that Law Society members find the provisions difficult to follow, but we have tried to put ourselves in the position of the common man in Scotland. When he sits down to look at such a cumbersome piece of legislation that cross-references different acts, that becomes difficult. We encourage the Parliament to make the legislation as simple as possible so that the man or lady in the street can pick it up. If the legislation for a bureaucratic process is heavy and cumbersome, it will frighten off a lot of people and you really do not want to do that.

Dave Thompson: Do you stand by the suggestion or recommendation that the 2003 act should be repealed and re-enacted rather than amended?

Duncan Burd: I recently attended the WS Society and crofting law group conference in Lochmaddy, at which we looked at the problems caused by the Crofting Reform (Scotland) Act 2010. When layers and layers of amendments are made to legislation, it eventually breaks down and becomes a money-making exercise for my profession. I take it that you do not want that.

The Convener: Most certainly not.

John Watt: Peter Peacock has said almost everything that I was going to say. I am almost as old as him, so I remember the Assynt crofters process.

The Convener: So am I. We should have an Assynt fest.

John Watt: When the 2003 act came in, the process was soon found to be difficult. My colleague Sandra Holmes has helped a lot of communities through the process, especially under part 3. Many of the big projects did not even attempt to use the act but, as Peter Peacock said, it was a useful piece of legislation to have in the background as a backstop if other things did not work.

I do not have the exact statistics in front of me but, under the first Scottish land fund, which was established in the early noughties, very few projects went through the community right-to-buy process. Most were negotiated settlements or sales. As the committee can see from the figures for the more recent Scottish land fund, only four or five out of 28 projects have gone through the process. It was useful to know that it was there,
but it was complicated to use and it is good that some of the difficulties with it are being addressed.

**The Convener:** Indeed. I suspect that we will have to talk about that in more detail.

**Alex Fergusson:** I thank any of you who have found something positive to say about the 2003 act, as I was convener of this committee’s predecessor when the act was passed. I assure you that any impediments were not placed there on purpose. That is just a light-hearted comment.

What Duncan Burd just said highlighted that it might have been better to introduce the proposed provision as a separate piece of land reform legislation rather than to tack it on to the bill.

**Duncan Burd:** The bill’s overall aim is such that it is the appropriate place for the provision. It does not need another piece of legislation that will simply frighten people away.

**Alex Fergusson:** Correct me if I am wrong, but you said that we are adding amendment on amendment to existing legislation and that that is not very satisfactory.

**Duncan Burd:** That is not ideal. From my experience of acting in a lot of buyouts, I know that people are incredibly nervous of the explanations that we lawyers give, whether it be to the landowner or to the prospective community group.

**Alex Fergusson:** That is fine. I just wanted you to clarify that.

**The Convener:** Let us move on to more detailed issues about land in which interests may be registered.

**Angus MacDonald:** The panel will be aware that the right-to-buy provision in part 2 of the 2003 act applies only to community bodies that represent rural areas. Section 27 of the bill will amend the definition of registrable land and the power of Scottish ministers to define excluded land to allow the community right to buy to apply throughout Scotland.

Duncan Burd might wish to expand on the written evidence from the Law Society of Scotland, which states that there are

“marked differences between a right to buy exercised in rural Scotland and one now to be exercised with regard to land in an urban setting which may well have a higher acquisition and development consequent cost.”

Furthermore, there is a requirement to

“restrict the application of community right to buy in urban areas where there is an active development proposal. If such provision is not made then an unrestricted community right to buy could have unintended but significant adverse effects on investment decisions.”

How will community confidence, cohesion and sustainability be affected by extending the community right to buy? Could there be different issues in an urban context?

11:30

**Duncan Burd:** The Law Society’s membership includes landowners from across the rural and urban spectrum. The concern is that a small community in an urban environment might be interested in a particular asset that is part of a larger asset that is capable of development. In such a case, the development could become blighted and there could be a scenario of competing interests. It is important for the committee, as legislators, to include a safeguard to balance out the greater development good to the community. We have suggested one or two technical measures that could be added to give developers comfort. Development projects can take time to reach fruition; in the commercial world, time is important.

**Angus MacDonald:** That is clear.

**Sandra Holmes:** Highlands and Islands Enterprise would like parity of opportunity to be extended to all—communities are communities, whether they are rural or urban. It seems right that the opportunities should be open to all communities. We welcome the proposed amendments, which offer more flexibility in the structures to extend the opportunities even further.

It could be argued that land and building costs in an urban area might be at a premium in comparison with those in a rural area, but that is a secondary issue. We are talking about giving communities their rightful opportunity to engage, become empowered and, where they can, take control of assets to add to their empowerment.

**Peter Peacock:** The community right to buy seems to be working in many rural areas and, if that is so, why should the same opportunity not be available more generally? I see no reason in principle why it should not be available to all, and I see a reason in principle why it should be.

The community right to buy is almost certain to play out differently in an urban context. The situation is more complex, as it is more difficult to define the boundaries of an urban community and we are probably talking about much smaller landholdings and about sites that might be abandoned, neglected or in need of further development. I am sure that we will come back to this point, but I am thinking of individual buildings or gap sites that might fall into that category. The right will play out differently but, in principle, there is no reason why it might not play out properly in an urban context.

Blight is an interesting issue. When I spoke at a conference last week, a question about it was put
to me. I answered in this way: the blight that we experience in the areas that have bought their land in rural Scotland is not being caused by the community purchase; rather, the community bought the land to get round the blight that it felt was there, because the land was not being developed to its full potential by the current ownership structure. The communities that Sandra Holmes and John Watt help, through their roles, are interested in developing their assets, because they feel that that has not happened in the past. I am sure that the technical points that Mr Burd raised are worth considering, but it would be wrong to characterise the communities as causing blight, because that is not necessarily the case.

David Prescott: I will follow up on the point about blight. The land that we sought to buy, along with certain other sites in Dunblane, has been blighted by inactivity by the owners, in some cases over many years. I am thinking of sites in the High Street that have been left completely empty for the 17 years that I have lived in Dunblane. That is a key issue.

On the rural-urban split, we are considered to be a rural community—I think that we have just under 9,000 inhabitants—although I do not think that we thought of ourselves as a rural community until we engaged with the 2003 act. Certainly, the population is not substantially involved in rural activities. We were fortunate; a slightly bigger community would not have been in the same position, although I cannot see why such a community should not have had the same role. The fact that the issue is addressed in the bill tells us why the provision should be there: it is a means of enabling communities to empower themselves.

The planning process governs the value of a site. In our case, we think that the value has reduced. I would perhaps like to explore at some point how value is reflected, against planning provision, given that a gamble by a developer can inflate the price.

We are talking about ensuring that the community engages in the wider process of managing its community. In all fairness, a number of us who have become involved in the process have done that and are continuing to do so, including in the context of aspects of built development around the site in which we have an interest. We are trying to work with the developer—a housing association—to secure the best outcome for all parties. The process has become much more inclusive.

The Convener: It will be interesting to hear more about that in response to subsequent questions.

John Watt: I am wearing another hat now as a member of the Scottish committee of the Big Lottery Fund. The fund’s growing community assets programme assists communities to acquire properties in urban contexts, through negotiated purchases. We are seeing that that approach has significant benefits in communities. The properties are usually small—sometimes they are even single buildings—but the community thinks that they can be put to a more positive purpose than is currently the case.

I agree with Peter Peacock that defining the community is more challenging in urban areas. We need structures that are broadly representative of the community, and acquisitions must be in the public interest—they must be for a positive community purpose. The cases that we process through the Big Lottery Fund are assessed on public interest and positive community benefit. If communities are given more rights to register an interest in properties in urban areas, it will be interesting to see whether there is a significant increase in demand.

Angus MacDonald: You said that defining communities in urban areas is a challenge. Do you foresee unintended consequences—if such things can be foreseen—or practical problems as a result of extending the community right to buy?

John Watt: One always has to deal with a legal entity in such situations, and there are basic rules about the nature of the legal entity, which bodies must and do follow. For example, there are rules to do with having open membership, having democratic control, not bringing about personal gain, not distributing profits to one another and the like. Such principles have to be there.

Communities in urban areas can begin to define their boundaries, as they do in rural areas, although doing so is more challenging because there are a lot more people in urban communities. I suppose that minority interest groups might try to usurp the process, but we can build safeguards into the system, in relation to who can apply and the structures that they use to apply, to overcome that particular unintended consequence.

Angus MacDonald: Can you give examples of safeguards?

John Watt: I meant in the type of legal structure that the applicant must have: open membership, democratic control, non-profit distributing—those kinds of principles.

The Convener: We might continue in that vein with Claudia Beamish.

Claudia Beamish: Thank you, convener, and good morning to the panel. The definition of community is a very complex issue, and it would be helpful for our discussions if we explored it.

I will build on what John Watt said. The panel will know that section 34 of the 2003 act provides...
that the only type of legal entity that can apply to
register a community interest in land is a company
limited by guarantee. What type of entity should
the bill enable to register a community interest in
land? What are the practical implications of
extending the bill to Scottish charitable
incorporated organisations? What other types of
bodies should be included by regulation or
specified in the bill?

After the panel has answered those questions, I
would like to move to issues of the extension or
limitation of postcodes.

Sandra Holmes: We welcome the proposals to
include SCIOs, because the SCIO structure can
exhibit the characteristics that are exhibited by
existing communities. As John Watt mentioned, a
key tenet of companies limited by guarantee is
their open membership.

We have been advocating that two-tier SCIOs
should be included. There are two kinds of SCIO
and a two-tier SCIO has a wider membership,
which elects the board of directors for the day-to-
day running of the organisation. That approach
parallels companies limited by guarantee.

We are aware that there have been discussions
about including bencoms—community benefit
societies. We are definitely seeing more
community groups considering becoming a
bencom. We have not fully thought through the
issue, but we will do if including bencoms is
discussed at stage 2. We welcome in principle the
extension of the provisions where that is
appropriate and where there are safeguards of
democratic and community control.

A benefit of a bencom is that it can generate
private finance for its members. Currently,
communities are looking to raise funding to
develop the funding packages that are required for
their purchases. A significant local benefit of
funding from bencom structures is that they build
in loyalty and give people a stake in the overall
success of the business. People feel connected to
and part of something when they have contributed
to it.

Although we have not looked at the suggestion
in detail, we welcome it in principle. We will give it
further consideration if it appears at stage 2.

Claudia Beamish: Perhaps it will make the
discussion easier if I highlight a couple of the other
definitions of community, such as communities of
interest, or wider definitions in relation to
geographic area, equalities groups such as ethnic
groups, or definitions of place such as allotment
societies or community councils. Should those
definitions be considered for use in the bill? How
do they compare to postcode definitions that have
been used in the past?

It is important for us all to understand how we
can empower communities. I throw that comment
in at this stage.

David Prescott: We have a company, and I am
the chairman of the board. We are also registered
as a charity. Our main fundraising is to pay the
accountants to do the accounts for the company
and the charity. We looked at becoming a SCIO
and we concluded that, given our position, it was
not worth us changing.

We have managed with the current system. It
casted us a few problems; we had to change the
memorandum and articles of association at one
stage to meet one requirement, and for people
who are not routinely involved in the bureaucratic
processes that can be quite hard work.

On the definition of community, we took
Dunblane as the community because the land that
we have sought is right in the heart of the town. It
was not easy to translate that into postcodes.
Achieving 10 per cent of the people on the open
register—we were not allowed to include people
who had taken themselves off the register—was,
in itself, a major task. Several people spent quite a
long time in the library going through the electoral
roll knocking out people who had signed who were
not eligible under the definitions.

11:45

I believe that you should try to define the
community in a more free-form fashion. It might be
entirely acceptable to use postcodes, but perhaps
it could also be defined by community council
wards, for example.

This all comes back to something that I think
important. I declare a slight interest: I am an
honorary member of the Association of
Community Rail Partnerships, which will tell you a
little about where I come from. You have to leave
the community to define the community interest.
You then have to say whether it is the right
definition and whether it represents vested
interests or something inappropriate—I will not try
to define that in any way.

You should set a much more diverse framework
rather than say that the community has to tick
certain boxes. It should enable people to
understand that they must be inclusive, follow
equality legislation and have open membership
but also enable them to define their community by
the need that they perceive and the way in which
they would progress matters.

I will not try to be clever and say how that
should be done; I leave that to others. However, if
anybody wishes to develop any of those ideas and
there is a dialogue about it, we would be happy to
participate. It is a matter of coming up from the
bottom and not down from the top. The bill should be entirely enabling legislation. I genuinely think that the bill is groundbreaking, which is why I have spent quite a lot of time trying to contribute to it.

**Claudia Beamish:** That is helpful.

**Peter Peacock:** I echo everything that has just been said about helping communities to define their own place. The bill seeks to address the criticism that the postcode definition is too restrictive, open up more possibilities and give ministers power and flexibility to consider other things for which a community might argue. That is right and helpful.

On SCIOs and bencoms, SCIOs did not exist when Alex Fergusson dealt with the matter as convener on the Rural Development Committee. They now exist and it is right that the bill recognises that. However, it is equally right that other forms evolve. The sector is dynamic, and who knows what will emerge in the next wee while? Again, ministers are rightly giving themselves powers to update the legislation on that constantly.

The question on communities of interest is a good deal more complex. The bill comes from a concept of place and how we develop it; it is not about interest. However, within a place—in particular but not only in an urban context—if a local dramatic society or whatever wanted to purchase a piece of land to develop something or a building to convert it, it would be able to try to move that through the processes that are being developed. There would be no inhibition to that, but ministers would ultimately have to define whether such a registration of interest in the land was in the public interest.

Communities of interest are not excluded, but the bill comes from a different perspective: it is about place, not interests.

**John Watt:** The structure of the bodies that can apply for funding and use the right has evolved over time. For a long time, it was almost exclusively companies limited by guarantee. That was in a period in which public funding was perhaps more available. Some of the changes to bencoms, for example, are designed to allow such companies to raise private capital as well as to apply for public funding, which we all welcome given the difficulties with public funding. There are ways of achieving both flexibility in capital-raising ability and the community and public interest, and the challenge is to find them.

The bencom model is evolving. Again wearing my lottery hat, we have recently funded the community shares Scotland service, which advises communities on how to raise community shares for a variety of activities. You will probably see various prospectuses from community organisations that are raising money through that mechanism for projects. In many cases, there is a remarkable degree of success.

I ask Sandra Holmes to keep me right if I am wandering, but I recently came across one case in which the company that raised the shares was a bencom—it was an industrial and provident society—but it had built into its memorandum and articles of association the objective of transferring its surplus profits to a community-based charitable organisation. That link between a trading activity, which could be based on owning a land asset, and a community benefit charity is important. There are more complex models than those that have been seen in the past, but we have to look at them carefully, and the legislation should enable that to happen.

Sandra Holmes can correct me now.

**Sandra Holmes:** There is nothing at all to correct.

As time has moved on and communities have become more innovative, we need more sophisticated approaches. It is difficult to be prescriptive in primary legislation about entity types. We have advocated that, rather than limiting the provision to companies limited by guarantee, SCIOs and bencoms, the bill should set out the required characteristics. If we get the characteristics right, it will then be up to each applicant to demonstrate that its structure fits with the characteristics that are detailed in the legislation.

That approach would be more enabling and would accommodate future developments that we cannot anticipate at this stage. It would also allow communities to see clearly what is needed and it might help to take into account communities of interest.

Communities of interest have a legitimate role but, under the existing structure, the definition of “community” is centred on a geographic community. Currently, the geographic community has to be described using postcodes—although that might change—and the membership of the community has to be established to demonstrate that a majority of them are in favour. It is difficult to get a constituency of voters for a community of interest—how do we determine where the community of interest is and who would get a vote in a ballot?

The current provisions are based on a geographic community, but it might be more enabling and accommodating of future needs if the bill referred to the characteristics.

**Claudia Beamish:** To follow up on the issue of bencoms, would the bill have to be amended to enable the transfer of assets if something came to
a different organisation, such as a charitable organisation, as Mr Watt described?

On Sandra Holmes’s point about a community of interest, I can give an example from my region, where there is a choral society in one town and people travel a considerable distance to it because of its reputation. If the society was to consider purchasing a building to be a venue for an arts hub, we would not want to restrict it. Therefore, Sandra Holmes’s description of a way forward is useful.

John Watt: Some of my colleagues have probably read the bill more carefully than I have—

Claudia Beamish: They have certainly read it more carefully than I have.

John Watt: I think that it contains a provision that gives ministers flexibility on other legal structures, which we should welcome.

David Prescott: The emphasis should be on the people rather than the geographic place. The real community is the people, and the place that they live in is secondary, although I hate to say that and I do not mean it like that. The guiding principle should be to look after the people, and the rest will follow.

The Convener: I have a point that follows on from something that David Prescott said earlier. We have the kinds of constitution that are demanded of different sorts of organisations, and we have the kinds of constitution that are acceptable to the Big Lottery Fund. For example, a body in Evanton, where I live, had to change its constitution three times in order to access the funds that it finally got. Our discussion has not touched on that issue, but I wonder whether the bill will make the process involved simpler and whether we can recommend ways to make it simpler.

Peter Peacock: That is a very challenging question. I have two thoughts about it, one of which is that the issue could be dealt with by administrative means in the sense of getting together the Big Lottery Fund, Government officials and the Scottish land fund and ensuring that they are all asking for broadly the same thing.

Secondly, the flexibility that, as I understand it, ministers will have to add to the bill’s proposed list should not be used sparingly when there is a need, as it would help to avoid the need for people to have to do very cumbersome and difficult things. In fact, one part of the bill that we might come to implies that people have to do more of those things in order to comply with the bill’s requirements, which will take up a lot of energy and effort. However, I think that flexibilities are emerging that will help.

John Watt: I am on slightly dangerous ground defending the Big Lottery Fund.

The Convener: Definitely.

John Watt: However, we have always attempted to ensure that our programmes are aligned with the legislation. Therefore, if the legislation changed and constitutional models that were more flexible were to be used, I am sure that the Big Lottery Fund would be enthusiastic in entering into dialogue about alignment.

The Convener: That would be very helpful indeed.

Sandra Holmes: We hold template articles for communities. HIE set up that facility and manages it—we update the articles if there are any changes to company law. We went to some lengths to consult the Scottish Government to ensure that our template articles fitted with the community right to buy provisions. We also checked them with the Office of the Scottish Charity Regulator because of certain provisions in charity law.

We have a template on our website that anybody can access. If people do not deviate significantly from the template, it will meet the community right to buy provisions and should get an organisation a long way towards getting charitable status if it believes that that is appropriate for it. If any changes come through from the process of this bill, we will update the template accordingly. We can do quite a lot of enabling activity outwith the legislation. Clearly, we are all looking to smooth the path as much as we can.

The Convener: Thank you. That is a helpful point that we will bear in mind as we go along. Have you finished your questions, Claudia?

Claudia Beamish: Yes.

The Convener: We have a question from Dave Thompson on detailed procedures and requirements.

Dave Thompson: A number of the witnesses mentioned in their submissions issues to do with registration. Holmehill Community Buyout said that “The requirement to pre-register for a right to buy is unrealistic”

and HIE stated that

“late registrations are very much the rule rather than the exception.”

Community Land Scotland said that

“It would be best to accept late registration as the likely norm and of itself need not be justified by any prior action or lack of action”.

I am interested in all of that because I wonder whether we should have early registration at all.
Should we not just have a registration system that kicks in when a community is made aware that land might be available, rather than communities having to do an awful lot of work beforehand in trying to identify what land might be available in the future, which would be pretty difficult? I would like to hear your views on whether we need early registration. I think we should still have quite tough rules on registration. Perhaps they should be even tougher—which, I think, Community Land Scotland recommended in its submission.

12:00

Peter Peacock: It is a hugely important issue, because what is emerging—Sandra Holmes will be able to comment on this much more than I can, because she has seen an awful lot more cases—is that communities do not approach the world by thinking about the land around them in the abstract. They do not think, “Is there anything that we need to think about here?” or, “What land do we have to register an interest in?” That would be quite cumbersome for the reasons that we have heard, and it is not the real world of communities. Experience shows that. It seems to me that the norm will increasingly be that communities will pay attention to such things only the minute that the land comes on the market. We should accept that as the norm. Therefore, the challenge is in finding the right tests and hurdles while not ruling out that situation.

I was interested in the dialogue that went on last week between Dave Thompson MSP and the bill team’s Dave Thomson—it became a bit confusing. Dave Thompson MSP asked why early registration is necessary. I went back and read the policy memorandum to the 2003 act, and it became clear to me that there were two things at work in requiring early registration. First, at the time when the policy memorandum was written, there was real concern that having a free and open right to buy without people having to register would have a universal impact on property rights and the property market. The logic of having people register was that the right to buy would apply only to those who had registered—it would not be a universal right. Secondly, it is bureaucratically tidy to know in advance what land is likely to have to go through the process. I think that those are the two reasons for that requirement.

The other thing that was interesting in the dialogue between Dave Thompson and Dave Thomson was that the bill team’s Dave Thomson made it clear that the situation that Dave Thompson MSP was referring to—which I think you called a “light-bulb moment”, when people suddenly think, “We’re going to have to do something about this”—is not provided for in the bill. The key question is, how do we provide for that situation? Also during the dialogue last week, I was struck by the thought that what is now proposed—that a community must show that it has taken prior steps or done prior work sufficiently in advance of the land coming on the market—is potentially difficult and damaging because that requirement will be impossible to meet. I think that the bill team has constructed a mechanism simply to deal with situations in which a community has taken prior steps and done prior work, which makes it easier for that community to get registered. However, the key question is this: what about communities that have not done that? They will be the norm.

In my view, late registration must be allowed to happen in that situation, but there must be suitable tests to make sure that it does not just happen automatically. The challenge is in finding the right tests. Two of them are in place already: an application has to show both greater community support than would be required for a normal registration, and that the proposal would be in the public interest and would further sustainable development. Another test could be added, as we have suggested. It is a very important issue. If we do not get it right, communities will automatically be excluded from using the provisions in the 2003 act.

Alex Fergusson: I was going to raise this issue later, but Mr Peacock has raised it just now. Community Land Scotland has suggested that the 2003 act could be amended to state that “eligible land would be land, the sale of which to a community body, would contribute to the achievement of a greater diversity of ownership of land in Scotland.”

I assume that that is the additional test that he just referred to.

Peter Peacock: No. That would be further on in the process.

Alex Fergusson: In that case, I will leave my question until later. I am sorry—I thought that that was what you were referring to.

Peter Peacock: I am glad that we have got advance warning of that question.

David Prescott: The light-bulb moment for Holmehill was when the “For Sale” sign went up on a piece of land that was in the planning process and that we had free rein to wander over. Everybody regarded the land as being ours—that is, as belonging to the community. When the land suddenly went up for sale with development potential—whatever the term is—we thought, “Hang on a minute—that’s not what we’ve got.” However, there is no way that the community would have found a way to register, particularly as it needed to get a petition, membership and voting numbers. Also, it would need to register again
every five years, with everything that goes with that. Ours was a typical experience.

I am quite sure that many communities, if we expand the provision to urban environments, will start to have those light-bulb moments, as community facilities that they have enjoyed for many years are suddenly turned off or shut. I can think of a few examples—I am sure that all of you can, too—in which something has been provided to the community by the private sector and suddenly the private sector stops providing it. It might be of community value and the community might wish to retain it, but it cannot register somebody else’s property. People do not go out registering somebody else’s property on the off-chance that such a thing might happen.

I think that you are going to see an awful lot more such responses. If a community is going to be empowered to look after itself and develop itself and therefore to become much more financially, emotionally and generally sustainable, you genuinely want those facilities to be taken into a form of ownership that may be able to survive when the private sector has not been able to survive because that form of ownership uses a different form of provision of labour through volunteering, and all the things that go with that.

Sandra Holmes: I can offer a slightly different take on things. We would certainly support communities being proactive and putting steps in place in advance of something coming on to the market. That is how things have been in relation to the 2003 act. The reality, as has been borne out, is that communities respond to opportunities. That is partly because the process of timely registration is quite onerous; it means forming a company and getting support from 10 per cent of the community. Also, the application pertains only to one asset—it could be one building or one bit of land—when it might need multiple assets. If the community just wanted to get a couple of acres of land, it would have to do multiple applications. It is a lot of work to go through when the community is not guaranteed success in the process.

The difficulty with a late registration is that when a community applies late, it has at the moment to satisfy the good reasons test. My understanding is that the good reasons test was put in to enable the 2003 act to work in the earlier stages of the process. Good reasons were used later that had perhaps not been envisaged. We welcome the removal of the good reasons test, but we are a bit concerned about the proposed replacement provision, which talks about “relevant work” and “relevant steps” being needed to show that a community is being proactive.

We envisage that there could be a bit of a hybrid. If a community is being proactive—if it can demonstrate in community council minutes or through a development plan that it has aspirations to own a building or a development plot and it can articulate that—later on, if that asset comes up for sale, the community has put that marker down. That would hopefully enable the community to demonstrate that it has taken relevant steps and carried out relevant work because the process of responding to a late application is quite challenging. Within a very short period, the community would potentially have to form a company and get members of that company. It would also have to get signatures from more than 10 per cent of the community, because it would be a late registration, and then the community would have to make an application.

Assuming that a late registration application is accepted, the community is then straight into having to raise the funds for the purchase. That is where the current part 2 of the 2003 act gets quite a lot of bad press because that is a very onerous process. I think that something can be done to change that. We can still ask communities to be proactive but from a more general, strategic point of view. Those “relevant works” and “relevant steps” requirements could fit in with that approach, so the community could have that marker down. That would open up greater opportunities. I think that approach would be more workable for communities—as well as for the supporting agencies, because it is quite difficult for us to be able to respond very quickly when something is going through a late procedure. At the moment, there is a good chance that late procedures will not be successful.

Peter Peacock: I want to come back on that and to answer Mr Fergusson’s question that I did not answer. The issue is sortable; indeed, it is not too difficult to sort. Sorting it would require— notwithstanding what Sandra Holmes said, which would be the preferable position—that when a community has not registered its interest it should nonetheless be allowed to make its case to the minister, and there should be criteria against which the minister can judge such cases. For example—I know about this because I attended a meeting about it—we had phone calls from people in Blairgowrie when suddenly, overnight, the Co-op’s farms came on the market. No one would have expected that, so why would they have registered an interest? As soon as the farms came on the market, people thought that they should do something about it.

I also had an email from someone in Donside who said that a piece of land that was central to the community had suddenly come on the market. They had never in their wildest imagination expected that to happen and they were now thinking about what they could do about the situation.
All that we are arguing for is an opportunity for such matters to be properly considered, and for there not to be just a simple test. To look at the matter from a landowner’s point of view, they may have done a lot of work to prepare the ground for a farm to come on the market, so they would want the sale to be expedited. There must be some pressure to do that.

We suggested to the bill team an extra test that might be put in the bill to cover such circumstances. Applications have to satisfy a requirement for high support in the community and must be strongly indicative that they are in the public interest, in the current basic test. We also wanted something to be included about there being a reasonable likelihood that the community could conclude the deal. The last thing we want is for a community to go through a process in which there is no reasonable likelihood that it will be able to raise the money, or whatever. That test would be another little hurdle that we think would be fair. We can find a workable answer, which is the important thing. We have not got that yet.

**John Watt:** I want to table an idea. As you know, the land reform review group of which I was a member produced a menu of rights for communities. The first right that we suggested was a “right lite” whereby a community could simply register an interest. Under the 2003 act, there is a right of pre-emption. However, if there was a right to register an interest and to be notified when land was coming on to the market or ownership was changing, that would trigger the process of the “heavier” right of registering a right of pre-emption. We thought that that might be a way of getting round everything becoming a late registration.

**The Convener:** We will be taking quite a bit of evidence on that matter, but it is important to get views on it now as we are getting suggestions for amendments. It is a good idea to get those in at an early stage for the committee to consider before it reports.

**Claudia Beamish:** I understand that the land reform review group’s written evidence recommended that re-registration of an interest in land should be needed only every 10 years rather than every five years, given how onerous registration is and the complexities for communities. Does the panel have any comments on that?

**John Watt:** I reiterate that the process of re-registration every five years is onerous and that 10 years would be a more appropriate timescale.

**David Prescott:** Holmehill Community Buyout looked at the issue, too. With re-registration communities must, in effect, do the same thing again, so there is a risk of registration fatigue. An issue that we have not perhaps understood properly is refreshing—which is how I would prefer to describe it—of registrations rather than redoing them. In doing that, we would need to ensure that we had obvious community support. It would not necessarily be about finding another 10 per cent of the community who were prepared to sign things, and completely redoing the documentation. In Holmehill’s case, for example, I would expect that to include support from the community council, as elected representatives. If they did not support the case, we would have more difficulty. There is also the general issue of what reflects community support and what reflects community opposition, both of which are equally valid. I see the need to refresh registrations and to make sure that people are still supportive, because of the impacts on someone’s private property, but the measure needs to be proportionate.

12:15

**Peter Peacock:** I agree entirely with that. CLS argued in our submission for a 10-year period before re-registration, too. I noticed that, last week, the members of the bill team signalled that they plan to simplify the form and the process. That will be welcome, but that does not negate the point that there should be a longer period. It might be that there should be an honourable compromise.

**Dave Thompson:** Another thing in the same area is the bill’s requirement for a community to identify ownership. In some cases, that will be extremely difficult for the community to do. Does the panel have any comments on that?

**Sandra Holmes:** I agree that identification can be challenging. We would seek a modification to the requirement: the community should be required to try to achieve identification of the rightful owner but, if that cannot be done, it should be sufficient for it to demonstrate the steps that it has gone through to try to identify the rightful owner. That should be deemed to be reasonable.

**The Convener:** The issue relates to wider issues in the land reform agenda. It will be interesting if that point is made later today or in detail.

**Peter Peacock:** I agree with that entirely. My understanding—I stand to be corrected—is that, with regard to compulsory purchase orders, there is a procedure that allows a local authority to proceed with a compulsory purchase even if the owner cannot be identified, as long as all reasonable steps to identify the owner have been taken. Clearly, however, it is best to identify the owner.

Last week, the members of the bill team talked about an absolute requirement to identify the owner. In response to that, I direct them to the
argument that I have just made. However, they also suggested that there is an alternative procedure. I think that they were referring to the Queen’s and Lord Treasurer’s Remembrancer, to whom bona vacantia land falls. The suggestion was that if the owner could not be found and the land were declared bona vacantia, you could approach the Queen’s and Lord Treasurer’s Remembrancer to purchase the land. However, I do not know whether that would work—perhaps it would, but that would have to be checked out. I would prefer it if we sorted out the arrangements in the bill.

David Prescott: Subsequent to Holmehill trying to deal with the registration and so on, I happened to be in Edinburgh, so I went to Registers of Scotland. The system there worked extremely well and was extremely user friendly, and I got all the information that was held there. That information does not necessarily correspond with the owner’s claimed ownership, but my view is that a reasonable test of reasonableness for a community body should involve whatever is on the public record and that, if people want to hide their land ownership, that should not be a way of avoiding being part of the community.

I know that people can get professionals to access the land register if they cannot get to Edinburgh, which costs a little more, but it struck me that that was an extremely good way of moving forward. I was genuinely quite impressed and feel that Registers of Scotland is one of the places where options should be registered. That would mean that options would be held on the public record even if—as I accept might happen—they were redacted in the interests of safeguarding confidential information.

Alex Fergusson: It might be a bit unfair to ask for a lot of detail on the Queen’s and Lord Treasurer’s Remembrancer, but I have a question with regard to a constituency issue that I very much hope will become the subject of proceedings under the community right to buy. My understanding is that, since the establishment of the Scottish Parliament in 1999, land that falls to the ownership of the QLTR effectively falls to the Scottish Government, as Scottish ministers now have control—if that is the right word—of the QLTR. Am I wrong about that?

Peter Peacock: I simply do not know the detail of that. If it is being suggested that you must know who the owner of the land is or go through the QLTR route, I think that you would have to check out all the details around taking the QLTR route in order to confirm that that would be robust. On the face of it, if the QLTR owned the land, it could perhaps give a first right of refusal to the community, which might satisfy the matter. I do not know whether that is possible.

The Convener: We will take that on board.

Alex Fergusson: I am sure that we will explore the matter in due course.

Dave Thompson: Peter Peacock, you mentioned this point; I think is also in your submission. When we get through this process, there will be an act and that is fine. However, you said that a lot of negotiation is going on, with the bill in the background. My point is that, rather than have people go through strict legal processes and procedures, which would make a lot of money for lawyers and take longer, we should facilitate mediation. There are a lot of good mediation organisations in Scotland. Last week, I was at an excellent event, run by John Sturrock with American mediator Ken Cloke, here in the Parliament. We should build mediation into the bill to enable HIE or whoever to facilitate discussion between a landowner and a community so that they are not at legal loggerheads.

Peter Peacock: I absolutely agree. It is striking that, where a landowner and a community can sit and work things out, that is by far the best way of doing things. However, there are examples where that is really difficult. I will not labour this, but a case has been running for a long time that, ultimately, has been sorted out—I hope it has been sorted out—by bringing the parties together with a trusted third party. That has been done purely on an ad hoc basis, though. The third party happened to live locally to the two other parties and it seems to have worked—or it has certainly added to the process. We have to be much more deliberate.

My understanding is that, although HIE and the Scottish Government team that deals with these things will recommend to a community that it is better that it negotiates, they do not have powers to do anything about that. I would have thought that a simple power to enable a minister to facilitate negotiation would help enormously. That could be by ensuring that a mediator was appointed, or whatever.

The Convener: There is the Arbitration (Scotland) Act 2010 and the organisation that has been set up to arbitrate in business. That might be something that we can take on board in our report—we could see how that organisation fits in with the concept of mediation in a more formal sense.

Sandra Holmes, you talked about demonstrating reasonable behaviour. There are issues to do with periods of activity, interest, time limits, the appointment of balloters and so on. We have detailed evidence from you on that. Do you want to make any other points on the procedures and requirements?
Sandra Holmes: I have got one point. It is in our evidence, but I would like to raise it briefly. It is to do with section 31(4)(aa)(iii), which I will put into plainspeak. When communities look at taking forward a project, the starting point might be a community council or a group of individuals. It is sometimes later on before the entity—the community body—is set up. Section 31(4)(aa)(iii) says that any work that was done would have had to be done in the name or under the guise of a community body that had not yet been set up. We would really welcome that being decoupled, because it is common for a sub-group of a community council, or interested people who come together, to do the foundation work and the initial feasibility study. That often happens for projects outwith the legislation, but it is tried and tested practice.

We support organisations in those formative stages and our sense is that the work of that organisation or that group of individuals coming together on behalf of the community is no less valid than had it been done under the community body that might be formed later on. There is a time and a place to form the community body, but there will always be preparatory work. It is a minor issue, but it could have quite significant consequences if it stays in the bill.

The Convener: Thank you for that. We move on to abandoned and neglected land.

Nigel Don: We have heard a lot of talk about processes and aspirations, but I would like to look at the text. For the record, I am on page 29 of the bill, which is section 48. However, numbers such as 97C refer to the section that the bill will put into the 2003 act. I hope that anybody reading the Official Report will have a clue about what we are doing.

New section 97C(1) of the 2003 act states:

“Land is eligible ... if ... it is wholly or mainly abandoned or neglected.”

In light of the discussion that we have had and the discussion that we had last week, it is still not obvious to me why those criteria should be in the bill. First, can anybody explain or justify the rationale behind them? Secondly, what on earth do they mean anyway?

Peter Peacock: I will kick off. We very much welcome the principle of part 4. We welcome section 48, because it fills a gap in the current provisions, which is that the public interest in ownership of land cannot be tested other than with crofting land. It is therefore an important principle and we welcome it. We see it very much as a power of last resort, rather than one of first use.

However, as you suggest, the devil is in the detail and we have some serious reservations. I am not clear why the “abandoned or neglected” provision has been introduced. There was a dialogue about that last week between Mr Thompson, Mr Thomson and the solicitor who was at the meeting. I have thought further about it, and there are probably two potential reasons for the provision. One is that it is there for a European convention on human rights reason—to try to ensure that what is, in effect, an interference in a property right is less challengeable under the ECHR than would otherwise be the case.

If that is the case—and I am not clear that it is—I am not clear that the provision is required, because it seems to me to be a substantially greater hurdle than is required, for example, by the crofting right to buy under part 3 of the 2003 act, which is simply founded on whether further sustainable development is in the public interest.

The other reason is an innocent one, if I can put it in that way—not that the other one is sinister. It is simply that the provision is there only to provide for what is abandoned or neglected land. If that is the case, it is not unreasonable. The problem is that, because it is the only definition in the bill, it could lead to the unintended consequence that land that is not “wholly or mainly abandoned or neglected” but is nonetheless in need of sustained development is ruled out of consideration. That is the big trap in the bill.

It is important to clarify precisely why the provision is there. I do not think that it is impossible to work through it, but at present it is not entirely clear why it is there.

David Prescott: Until June last year, we could well have defined our land as neglected by the landowner, who had done absolutely nothing for several years. When he came up and chopped down all the trees and suchlike, that was not neglect. What he did was pretty awful. It was illegal and various other things, but it would not fall into the “neglected” definition, and the land was certainly not abandoned, because he did know his property rights.

I agree with Peter Peacock. This is a small and specific example, but my concern is that, in our case, the land is not able to be used in the way in which the planning designation and the community at large have defined that it should be used. The community has set out its stall, but the value of the land is being damaged.

This is an entirely personal view, but I have an issue with the ECHR. There are property rights, but property owners also have responsibilities to their communities, and rights and responsibilities need to be somewhat balanced. I know that this sounds terribly bold. I am not saying that we
should be able to take over everybody’s land, but if someone is part of a community, they have a responsibility to try to live and work with it—all of us do. There has to be some kind of balance there, rather than property rights exclusively swamping everything else.

The Convener: Indeed. Thank you. John Watt wants to comment.

John Watt: I, too, was surprised to see such a restriction of potential rights. I would prefer to have something in the bill about fulfilling the greatest potential for sustainable development, rather than a requirement that land should be proven to be “abandoned or neglected”.

As Peter Peacock said, the ECHR may have been in the back of the minds of those who drafted the bill. I suspect that they may also have been thinking about the urban situation, in which abandonment and neglect can be identified more easily than it can in a rural situation, especially for larger tracts of land.

12:30

The Convener: So we are talking about gap sites. The provision was probably written when the drafters were considering extending the bill to cover urban buildings.

Nigel Don: I have jumped on to the new section 97G(6)(ii) to be inserted in the 2003 act. I wonder whether the comments that have been made so far also suggest that sustainable development ought to include leaving land wild. There may be areas where one might want a meadow and other things around it to be left alone. Could that be part of the current definition of sustainable development?

Peter Peacock: Sustainable development is defined in three ways. That is the problem at the heart of the definition of “abandoned and neglected”: it deals with one of the three definitions of sustainable development but not necessarily with the other two.

As the committee will know better than I do, given that it deals with sustainable development all the time, the concept relates not only to the environmental component that Nigel Don has just described, but to economic and social development.

The difficulty with sticking to a definition of abandonment and neglect is that it appears to relate to the physical construct of the land rather than to sustainable development. The whole policy purpose of the bill, and of the original 2003 act, is about furthering sustainable development.

There is a bit of a trap here, given the way in which sustainable development is currently defined. The issue can be sorted—for example, it would be possible to have a third criterion. If the aim of the requirement for a building to be proven to be “abandoned and neglected” is as the convener described—which I can readily see that it is—the bill could specify that a building can also be proven to be in need of sustainable or sustained development. That would allow the social and economic considerations to be taken into account.

There is another way to do it. The bill as it is currently drafted seeks to define some of the factors to which ministers must have regard in relation to “abandoned and neglected” buildings. However, there is a problem, because the phrase “abandoned and neglected” suggests only the physical element and not the wider parameters that I have just described. A third criterion could be added, or abandonment and neglect could be defined in the text of the bill.

Such a definition would allow us to consider economic and social development as well as the physical attributes of the land. There are problems with the definition as it stands, but I think that it can be sorted. The members of the bill team, in their discussion with Nigel Don at committee last week, seemed to say that they were looking at how some of those elements are defined in the text of the bill. The situation will depend on where that consideration takes us, I guess.

Nigel Don: I hope that others may have some comments on that aspect. I read the meaning of my discussion with the bill team in the same way as Peter Peacock did, but I think that the team probably needs a bit of help. To be honest, my interpretation—which came up in that discussion—is exactly what we have just discussed.

If there is a gap site in a town, we think that we know what it looks like. It may in fact be an old coal yard or something similar, with a wooded area behind it. It has not been abandoned: that is just the way it has aye been. One can see how, although such a definition would work in many environments, it might have absolutely nothing to do with other environments.

We need to expand the definition, and I guess the bill team would like some help on that. Does anyone else have any comments as to where the team might go?

David Prescott: The view that was presented to us when we started was that development is all about steel, concrete, tarmac, bricks and all the rest of it. That was an issue, because our view was that development is about environmental and social benefit and providing a facility for the community.

We did not intend to leave the land to go wild—in fact, our aim was quite the opposite. We
recognise that most of the trees will, in time, need to be cut down because they are reaching the end of their 200 to 250-year lifespan. Therefore, we need to develop, in as much as we need to change and move on and try to maintain and improve the environment.

We had this very real problem: sustainable development is what we wish to do and we believe that is what we should achieve, but unfortunately we cannot get it through the current planning process. Although we have land that is public open space, the only protection that we can secure is a tree protection order. That does not do anything to address the other issues—it just stops the trees being chopped down without informing the council. There is no development capability.

We have a long history of this issue and trying to improve the land and I could explain it in detail if you wish, but now is probably not the time.

The Convener: Indeed, this is a long and involved process as it is.

Nigel Don: May I move on?

The Convener: Dave Thompson has a supplementary question to ask before we move on.

Dave Thompson: I want to raise a related point about the ownership of the land. I am referring to new section 97H(c) of the 2003 act:

“that, if the owner of the land were to remain as its owner, that ownership would be inconsistent with furthering the achievement of sustainable development in relation to the land”.

That will be almost impossible to prove. Given that we now have the Pairc judgment in relation to crofting and the minister has approved the criteria laid out to define sustainable development, do we need the section at all?

The Convener: Rapid comments, please.

Peter Peacock: Frankly, this is a killer clause. It is a matter of interpretation, but on the face of it, one could demonstrate that a piece of land, in current terms, was “wholly or mainly abandoned or neglected”. yet it could also be found that, in itself, the ownership of the land by the current owner was not inconsistent with furthering sustainable development and therefore the minister would be bound to reject the application. That is why it is potentially a killer clause.

I do not understand, although it probably can be explained, why the test is necessary if there is already a series of criteria that the minister must use—such as agreement that it is abandoned or neglected land—to judge whether it is in the public interest to further sustainable development. Would it be wise to leave open a situation where it has been proved that land is abandoned or neglected, but the application could still be rejected because the current ownership was not, of itself, inconsistent with furthering sustainable development?

The two tests seem to be in opposition to one another. There is some tricky stuff in that.

Roderick Campbell: The Law Society of Scotland draws a parallel with the procedure for compulsory purchase. Can you expand on that point and tell us whether there is any guidance on compulsory purchase that might help us in dealing with the question of abandoned or neglected land?

Duncan Burd: If you are unable to identify the true owner of the land, compulsory purchase involves an advertising mechanism. Something as open and transparent as that mechanism might help under community right to buy.

Roderick Campbell: That would not specifically address the point about abandoned or neglected land, per se, as it relates only to ownership.

Duncan Burd: It would in effect identify the owner through advertisements in The Edinburgh Gazette and local newspapers.

Roderick Campbell: Yes, but it does not help us with the definitional aspect of “abandoned or neglected”.

Duncan Burd: No, and I do not think that the Law Society of Scotland wants to comment more fully on those definitions at this time because it is a minefield.

Roderick Campbell: Okay.

Duncan Burd: If the committee is willing to grasp the nettle and provide a definition then we will comment on it at that stage.

Nigel Don: That is fascinating. We give you minefields, although not intentionally.

New section 97G(5)(b)(i) requires us to specify “the owner of the land”. In the light of what has just been said, is that not a problem in itself?

Peter Peacock: That goes back to the point that we made earlier about identifying the owner. It runs through part 32 and new part 3A. If I understand what Mr Burd said, as long as the community makes every possible effort and follows all the procedures to identify the owner but cannot, that should not be an impediment to the community getting permission to pursue the purchase of the land. It is in the bill.

Nigel Don: We have already discussed section 97C(3)(e). I do not want to try the law in Latin. Why should land that falls to the Crown because
the owner cannot be identified or because it falls in succession and there is no successor be exempt? Can anybody explain that to me? The answer I got to that question last week was that it is about process, but I do not really buy that. It might be about process, but surely it should be open to the community to have access to that land.

Peter Peacock: That is my view, but it is in the bill because, by definition, the owner cannot be defined, so the land falls to the Crown. That is why bona vacantia is mentioned. The land is excluded because nobody can identify the owner and if the owner cannot be identified, the land is excluded. The point would be whether a community can exercise any rights over land if it is in the ownership of the Queen's and Lord Treasurer's Remembrancer.

Nigel Don: Forgive me, but that is the policy point that I want to address. We tend to leave out the Crown. Almost the first lesson we learn in law is that the Crown will be excluded. Why? Why on earth should it matter that the land is known to be in the possession or occupation of the Crown? Can anyone rationalise why that should be the case? No? Thank you. Okay, I will push on.

New section 97G(6)(d) requires us to say that we know about all the rights and all the interests in the land—I am glad that there is a lawyer here—and to say anything we know about the "sewers, pipes, lines, watercourses" and other stuff that is under the ground. Why is that a good idea? Why is it in the bill? Can anybody convince me that it is not a daft idea because it is almost impossible to know what is under the land until it has been dug up, which is a stupid thing to do?

Peter Peacock: I do not understand it. In our written submission, we made the point that that requires clarification, and that such land should be eligible rather than not eligible.

Nigel Don: I am sorry; I am rather feeding you the words, but I am hoping that people will disagree with me.

The Law Society’s submission talks about clean title under a compulsory purchase order and suggests that a community would not get clean title under the bill. Do you have any further thoughts on whether a community should get clean title if it has gone through the proposed process?

Duncan Burd: It would guarantee that the title was immune to subsequent challenge.

Nigel Don: Apart from the obvious opportunity of business for lawyers, is there any real downside to that?

Duncan Burd: No.

Alex Fergusson: If we remove all the criteria that we have been talking about, how do we ensure that this is the policy of last resort that Mr Peacock referred to in his opening remarks?

Peter Peacock: We are not arguing that we should remove all these criteria. Mr Thompson made a particular point about one part and having to demonstrate that keeping the land in its current ownership would be inconsistent with sustainable development. It is just not possible to prove that.

Our hope is, and the bill specifies, that the community would also have to show that it had tried all other means to get the land before it made the application. Other means would be things like seeking to negotiate or discuss matters with the landowner, making an offer for the land and so on. Those are entirely appropriate tests. That puts this test at the end of the queue. If the community could not show that it had tried to get the land by other means, it would not be able to progress with the application under the new section 3A. That makes it very much a fallback power. Nonetheless, it is that power that focuses people’s minds and, as we saw in the context of the crofting right to buy, gives rise to the climate in which debate and discussion about negotiated land purchases can proceed. I hope that that answers your question.

12:45

The Convener: We move on to the interpretation of “sustainable development”, which might offer an escape tunnel to get us away from this debate. Nigel Don will kick off questions on that.

Nigel Don: We have probably covered everything that I thought that we needed to cover. I was particularly concerned about wild land meeting the sustainable development test, which I think might be the case in some places.

The Convener: If no one wants to comment on that, Dave Thompson wants to come in.

Dave Thompson: I just wanted to reiterate the point that the crofting legislation and the Pairc judgment give us a clear steer on the issue.

Duncan Burd: I declare an interest, because I have been involved in Pairc—I have dragged it out for 11 years. [Laughter.] It is still in court, so it is sub judice. The 2012 ruling was simply a sideshow to a sheriff court action that is still on-going.

The Convener: Right. We will not get involved in Pairc—

Duncan Burd: I think that that is proof in itself that the 2003 act is full of pitfalls.

The Convener: Yes.
We have teased out issues to do with sustainable development quite well, but it strikes me that we still need to know whether the panel thinks that if ministers are going to find it difficult to satisfy the sustainable development test in relation to land, that will be inconsistent with the aim of furthering sustainable development. Should we put something in the bill about how land is defined in that regard? In the past, there has been a sense that we have not been talking about development of the sort that we discussed in relation to Dunblane. We have to be clear about what we are talking about. There is a much wider approach to defining land that should be in community ownership.

**Peter Peacock:** This is really difficult legal territory. The whole technical of the 2003 act was to promote and remove obstacles to sustainable development. Notwithstanding what Mr Burd said, in the Pairc case the judges commented that sustainable development is a well understood term, which relates to "the use and development of land."

I suppose that what it comes down to is how we describe the use and development of land. What ministers thought about that is openly revealed in the early decision letters about Pairc, both when they refused an application and explained why it did not meet the sustainable development test, and later when they approved the application and showed why it did meet that test.

There is quite a lot of case law—I mean that in the general rather than the technical sense—about what sustainable development means. In that sense, the issue is not too difficult. The key thing is to allow a community to make the case that what it proposes would advance or further sustainable development. The problem with the current definitions around abandoned and neglected land is that it appears that such a case cannot be made. However, that can be dealt with.

**David Prescott:** I feel, having been through it all, that the planning process sets out a framework for the development concepts in a physical community—whether it is truly sustainable development, I will not try to argue. However, certainly in the urban environment the issue is whether the use of the land is in line with the planning designations on the land, which are democratically derived and fully consulted on and picked over, and whether a community’s proposed changes recognise that the current usage is no longer the right one and a second stage is sought—that is probably a bit complicated to work through.

The planning process has a lot to offer in urban areas. I will be quite honest: if the land that we wanted to buy had already been designated as land for building, I would not have expected us to have got the right to buy, and we would not have started. I freely admit that. The land was designated as open space, and that is what we wanted it to be, for the community to use.

There are interesting cases of planning applications for developments that in effect would blight the land, which will keep being rerun—for ever. Such things need to be thought through. The planning process is an extremely strong place from which to start in a more urban environment.

**The Convener:** That is a good point for us to take on board. We rely on the planning process to get things right, having taken on board the community’s views. We all know that sometimes planners use wider criteria to override what communities want. I can think of examples of appeals in that regard.

I think that we agree, in general, that the agreed local plans are materially helpful and can back up what ministers have to do when they must make a decision.

I do not know whether we will see all the witnesses again. It is entirely possible that we will do, at another stage in the process. A point that I want to make is that the bill will amend part 3 of the 2003 act with regard to crofting, and I hope that the changes at stage 2 are not so major that they affect the proposed use of part 3 in relation to the community right to buy.

**Peter Peacock:** We have seen what the Scottish Government proposed in its consultation, and I know from meetings that have taken place over the course of the past week or two that a pretty clear consensus is emerging across all the interested parties. I hope that I can reassure the committee that it need not worry too much about the issue, which looks like it is heading in the right direction. The Scottish Government is dealing with the matter entirely appropriately, by the looks of things.

**The Convener:** Thank you.

We have had a long session, which I will bring to a close, because the committee has other business to deal with.

At our next meeting, on 3 December, the committee will take evidence from the minister on a draft affirmative Scottish statutory instrument—the Public Water Supplies (Scotland) Regulations 2014—and will take evidence on the Community Empowerment (Scotland) Bill from two panels of stakeholders.

12:52

*Meeting continued in private until 13:01.*
On resuming—

Community Empowerment (Scotland) Bill: Stage 1

The Convener: The next agenda item is evidence on the Community Empowerment (Scotland) Bill from two panels of stakeholders. With the first panel we will focus on the rural context of the bill, and with the second we will focus on the urban context and European convention on human rights issues.

I welcome the first panel, which consists of Jon Hollingdale, who is the chief executive of the Community Woodlands Association; Simon Fraser, who is a solicitor from Anderson MacArthur Ltd; Malcolm Combe, who is a lecturer in law in the school of law at the University of Aberdeen; Rory Dutton, who is a development officer for the Development Trusts Association Scotland; and Sarah-Jane Laing, who is director of policy and parliamentary affairs for Scottish Land & Estates.

I refer members to the papers. We open questions with Graeme Dey.

Graeme Dey: Good morning. My questions are more scene-setting questions than anything else. Are panel members satisfied with the extent of the dialogue and consultation on both the community right to buy and the crofting community right to buy? Would it have been more appropriate if the part 4 provisions had been included in separate land reform legislation?

The Convener: The microphones are controlled centrally, so the panel need not switch them on and off. You can just indicate to me that you want to speak, and I will bring you in. Who wants to kick off?

Jon Hollingdale (Community Woodlands Association): In general, we were happy with the extensive consultation process. We concentrated more on part 2 of the bill than on the crofting community right to buy—we did not respond on that.

On which bit of the legislation should go in which bill, a year or two ago, when it became apparent that there was a double stream—the land reform review group and the Community Empowerment (Scotland) Bill—several of us asked whether the community right to buy would be better in the land reform work. At that time, we did not know that a new land reform bill would be coming, so we were happy that something was being done on some of the issues with the community right to buy. If the Community Empowerment (Scotland) Bill was to be the
vehicle to make that happen, we were happy with that. With the benefit of hindsight, I can say that it might perhaps be better in the proposed land reform bill, but we did not know about that at the time.

**Simon Fraser (Anderson MacArthur):** The consultation on the crofting community right to buy was fine. The suggested changes to part 3 of the Land Reform (Scotland) Act 2003 have come along pretty late in the day, and it will be essential to ensure that the enhanced community right to buy—which, in a way, mirrors the current crofting community right to buy—is brought into line with whatever is done to the crofting community right to buy as a consequence of the new measures.

**Malcolm Combe (University of Aberdeen):** There was an exploratory consultation and a follow-up consultation, so there has been plenty of chance to get involved.

On the positioning of measures within a bill that might be headed “land reform”, we might hark back to the passage of the 2003 act, when some people thought that the access provisions should not have been in part 1 of that act but in an access act. However, to some extent, as long as the law is on the statute book, it is fine. It would be optimal if the bill had a better and clearer title, but as Jon Hollingdale mentioned, because of the way in which things have developed, we can see why it has ended up under the heading of community empowerment as opposed to land reform.

**Rory Dutton (Development Trusts Association Scotland):** We are happy with the consultation. We were interested primarily in the other elements of the Community Empowerment (Scotland) Bill in its early stages. Perhaps, with hindsight, part 4 of the bill could have been part of the broader land reform agenda, but we have no complaints so far.

**Sarah-Jane Laing (Scottish Land & Estates):** On the crofting community right to buy, we are more than happy with the consultation that is taking place throughout the country at the moment; the discussions on the Community Empowerment (Scotland) Bill have been lengthy and extensive. We would probably have liked more consultation on the definitions of abandoned land and neglected land, which I am sure we will talk about later.

On where the community right to buy should be placed, we have all agreed that land reform is a process. It is not necessary for all land reform measures to be in one bill: land reform is affected by various pieces of legislation. However, we need to ensure that people have clarity about what is happening. Simon Fraser referred to how changes impact on other changes; I worry that there might be some confusion if we have parallel pieces of legislation dealing with the same issue.

**The Convener:** Part 3 of the 2003 act, on the crofting community right to buy, is almost a live issue in terms of court proceedings, so it is important that changes to that, which we will investigate further and debate at stage 2, be dealt with before amendments are made to the community right to buy so that we are at that stage up to date with what the regulations will say. It might address Simon Fraser’s point if things are dealt with in that order. If we are agreed about that, it is something to note for the future.

**Alex Fergusson (Galloway and West Dumfries) (Con):** Good morning, panel. This question, too, is a bit of a scene setter. Back in June, the convener of the Local Government and Regeneration Committee wrote to the Minister for Local Government and Planning expressing a few concerns about the information that was provided in the policy memorandum. In fact, he described it as “little more than a superficial overview”, which is quite a criticism. Correspondence went back and forth and a few things were clarified.

However, at the end of the day, the policy memorandum devotes fewer than three pages to part 4 of the bill. At one point, it summarises 20 sections in a mere seven bullet points. My question is simple: does anyone feel that they were not provided with enough information to explain the bill’s aims, policy choices and provisions fully, or were you satisfied that enough information was provided?

**Sarah-Jane Laing:** As a Community Empowerment (Scotland) Bill stakeholder, Scottish Land & Estates got quite a lot of information, but that information was not fully reflected in the policy memorandum. The Scottish Government did a great job in developing the plain English guide, which was very useful. However, I am not sure that we have had enough information. I have come to that conclusion having discussed elements of the bill, because we have different people saying provisions mean different things. That means that, somewhere along the line, the explanatory notes and the policy memorandum are not providing enough information on what is to be delivered.

**Jon Hollingdale:** I would largely echo that. On a policy level people who are involved regularly in the subject all understood what was meant and probably what was intended. What was missing—we will probably pick up this later—is how certain provisions are expected to deliver the outcomes in the policy memorandum. On a line-by-line basis, there are gaps. Although the Government wants to achieve X, it is saying Y. That does not appear to work for us.
Malcolm Combe: I start from a slightly different position from most people because I am really interested in such matters and I engage regularly with legislation. I do not find the approach to be too problematic, but I appreciate that my starting point is perhaps a little bit different. I thought that there was a fair amount of explanation that allowed me to understand the bill.

Alex Fergusson: By the sound of it, the differences will come out in further discussion.

The Convener: I think that they will.

Alex Fergusson: I am happy to leave it at that for now.

Jim Hume: Good morning, panel. On part 4 of the bill, the financial memorandum states:

“It is not anticipated that the provisions should impose any significant additional costs on the Scottish Government.”

However, it also goes on to state that “there is a large degree of uncertainty on the level of costs that may be incurred”

by communities and landowners. What costs do panel members anticipate will come from the legislation for rural communities, landowners and public bodies?

Rory Dutton: I point out that you need to view the cost of part 4 in the wider context in which the Community Empowerment (Scotland) Bill sits. If there is to be significant community empowerment and more transfers of assets and land ownership, greater support will be needed for community anchor organisations in capacity building, training support and financial support. You cannot look at the cost of that measure alone or look at the bill’s financial implications in isolation because they are part of a wider community empowerment agenda.

Sarah-Jane Laing: Many of the provisions are demand driven, so it is very hard to gauge the costs to the Scottish Government—especially if it is to take on the costs of running ballots and other elements. We do not know what demand will be for use of the provisions, especially if they are extended to urban Scotland. It is very hard to pinpoint the exact costs.

Jim Hume: To develop the issue, could we look at some of the related costs, such as legal costs and the cost of setting up plans? It would be useful for us to know about the specific costs.

Simon Fraser: In general, the costs that fall on the community—if I can look at the issue from that end—will tend to be met if not from public funds, then from lottery funds and other such sources. In the early stages, there may be a bit of pump priming from Highlands and Islands Enterprise, but that will not be a vast amount.

Inevitably, costs will have to be met. The average community seeking to take on a project will not necessarily have the funds to do so itself, even in the initial stages. In the past, HIE was able to assist substantially, but such assistance seems in the main to have been moved to the Scottish land fund purse. However, there will be a cost that must be met from some source.

10:00

Jon Hollingdale: The biggest cost, overwhelming everything else, is acquisition of assets at the end of the process. If we have a Scottish land fund of £10 million a year, then there is £10 million of Government money at the moment going towards acquisition. I am sure that that money would be spent, but it is very difficult to predict what proportion of those acquisitions would come through the new provisions. Even if there were no community right to buy, or it did not work at all, it is still quite likely that there would be £10 million-worth of community acquisitions coming through the national forest land scheme, local authority asset transfers or private sales. Picking out the impact of the provision is hard: the community right to buy purchases so far have been a relatively small proportion of the overall big picture. It is difficult to give clear numbers.

The other direct costs are those on whichever branch of the Scottish Government ends up administering the scheme—on-going staff costs, ballot costs and so on. Even if there were 100 ballots a year, which seems to be highly unlikely, at £3,000, £4,000 or £5,000 each, that is still equal only to the cost of one acquisition of 100 hectares. Those costs are relatively small, but are demand driven and difficult to pick out exactly.

Jim Hume: We do not have a crystal ball, but we have to try and think about these things. Will we need additional support for applications, especially if there is an increase in applications, and if so, what form of additional support?

Jon Hollingdale: Yes—additional support will possibly be needed. Rory Dutton and I both work for organisations that provide such support to our members. If, as a result of the legislation, the floodgates open, we would be swamped by demand. However, I do not think that that is very likely: we expect a gradual increase in demand, although we might need some help to meet that. It is not a vast task, and it is not likely to be an extra vast task for HIE or whichever part of the Government is supporting and administering the scheme.

Malcolm Combe: Some support already exists. A community might have to incorporate as a company limited by guarantee: that already had to be done under the 2003 act, so it can look to the...
sources of help that already exist. It is just a case of beefing up the available support.

An analogy might be the recent introduction of the crofting register, which obviously has some administration costs, but—to quote a phrase—you cannot make an omelette without breaking eggs. There will be costs somewhere, but if the policy aim is to be met, the costs will have to be met.

Claudia Beamish (South Scotland) (Lab): I have a quick supplementary. One or two panel members have mentioned HIE. I wonder about support beyond the Highlands and Islands in relation to communities and costs, especially in view of the fact that the land reform review group has made recommendations about the different bodies that might be set up. Of course, that might not happen, despite the announcements about the consultation, but we should not to pre-empt the new land reform bill. Do you have comments on support for communities beyond the Highlands?

Rory Dutton: The Scottish Government is funding a strengthening communities programme, which we are helping to deliver in partnership, for a relatively small number of communities outwith the HIE area—about 25 groups that are already established. That sort of capacity building is very welcome and we would like to see it rolled out further.

There are also small grants schemes—for example, investing in ideas, which is funded by the Big Lottery Fund. I concur that where there is opportunity but no established group, there is a deficit in support to get an organisation up and running in order for it to then be able to take advantage of the legislation. It is a lengthy process.

Jon Hollingdale: There is a distinction to be made between financial support and the support of helpful folk in talking people through the application process. To some extent, the latter is less of an issue because there are organisations such as ours and DTAS to do that across Scotland, and if there is less of that support outside the HIE area that is less of a problem. The big issue is that HIE has also been able to support the development of community groups financially in a way that Scottish Enterprise has not—or in a way that has not happened in the Scottish Enterprise area. That is a gap that the CWA and DTAS are not in a position to fill. A long-standing issue has been whether Scottish Enterprise, or whatever body works outside the HIE area, should have a strengthening communities remit, but that has not come yet.

The Convener: Yes—what Scottish Enterprise does in that respect is a long-standing issue that has been raised in committee after committee. We take that point on board.

Let us move on to the Land Reform (Scotland) Act 2003 and the removal of land-based barriers.

Cara Hilton (Dunfermline) (Lab): Good morning. An objective of the 2003 act was to remove land-based barriers to the sustainable development of rural communities. How well has that worked in practice, and how has rural Scotland changed as a result? In its written submission, the Community Woodlands Association states that

“the complexities and hurdles contained within the act have severely limited its use on the ground”.

Does the panel agree with that statement?

Jon Hollingdale: The number of successful acquisitions under the 2003 act is pretty low; I think that there have been about 16 in 10 years, which does not seem a hugely positive track record, although the act has a wider symbolic value. The act sets a framework, and it has been easier to negotiate settlements for other transfers to community ownership because the act is there. In that respect, the act has had a very positive effect.

Nevertheless, it is probably fair to say that there has not been a step change in the rate of community ownership. Our membership is roughly 150 organisations, and the median date of establishment is 2002 to 2003—in other words, half of them were around before the 2003 act was passed. A lot of the big, iconic buyouts predate the 2003 act, so it did not completely change the practical delivery or extent of community ownership in a radical way. It has definitely helped, but perhaps not to the extent that we had hoped it would.

Malcolm Combe: I echo a lot of what Jon Hollingdale said. I checked the register of community interests in land yesterday, and it currently contains 175 registered interests. Some of them have been deleted and a few have been activated, and 40 of them relate to Fife. There were a lot of registrations around Kinghorn loch, where there was individual ownership, so some of the registered interests can be discounted because five applications could represent one community, if you know what I mean.

As Jon Hollingdale said, the 2003 act has maybe not had a marked effect. Symbolically, it has some value but, bureaucratically, not many changes have been effected because of it. For example, there were a lot of attempts to take on the old Krystal Klear bottling factory in Lochwinnoch, but nothing really happened. The 2003 act may not have been effective in that particular instance, but whether it has been effective overall is a more difficult question to answer.
Rory Dutton: As Jon Hollingdale said, it is important that the 2003 act is in the background even if things do not appear in the statistics. For example, local authorities are aware that a community might register to buy a property under the community right to buy if things do not start to move.

The absolute numbers are low, but the bottom line is that it is not a right to buy so much as a right of pre-emption if a property comes on the market. Tied to that is the fact that registration expires after five years. Volunteer organisations already find the registration process quite onerous, and the question is whether they can go through it every five years. For me, the bottom line is that this is a right of pre-emption, and a lot of assets that communities will be interested in simply do not come on to the market.

Sarah-Jane Laing: I do not disagree with anything that has been said so far. As Jon Hollingdale pointed out, the transfers that have happened through the 2003 act are only one part of the picture, but I think that everyone will agree that the act itself has probably not delivered on the aspirations that many people had when it was introduced.

Cara Hilton: As a wee supplementary to that, how have the experiences to date informed the bill as currently drafted?

Sarah-Jane Laing: One of the things that come through in the bill is that ownership is only one aspect of empowering communities. The bill takes into consideration the need to understand how community planning works, what a community’s needs are and whether ownership will actually meet those needs, and it starts to look at community ownership in the round of an effective local decision-making and community planning framework.

I do not think that the bill goes far enough, but it is a start. A lot of the problems about relationships and communication and other barriers to development have been drawn out because of the problems that people had with the 2003 act, and they have been recognised in the bill.

The Convener: But it still does not go far enough.

Sarah-Jane Laing: No.

The Convener: Please explain.

Sarah-Jane Laing: You cannot legislate for all aspects of community planning and local decision making. I would have liked the bill to include something about the role of community councils and the effective part that communities play in local decision making by local authorities and other agencies. For me, the community planning aspect seems like it will be just be the same agencies around the table; it does not feel like a bottom-up approach that involves communities of geography and communities of interest. We have made the same comments about the community planning parts of the bill to the Local Government and Regeneration Committee but I think that the framework within which community ownership sits is very important, especially from a rural point of view, and the community planning partnerships will need to be working effectively.

The Convener: Indeed.

Jon Hollingdale: First, I agree with Sarah-Jane Laing that ownership is not the only means by which communities can achieve their objectives, and the fact that the community right to buy has been put into the bill’s broader scope is a useful recognition of that. After all, many other bits of the bill support community aspirations without the need for ownership.

Although the bill contains a lot of positive amendments to the Land Reform (Scotland) Act 2003, they are at some level a bit cosmetic and do not address certain structural problems in the legislation. They will undoubtedly smooth the process and ease matters, but it is a bit like putting airbags and a catalytic converter into a car with only one gear at a time when petrol is being rationed. It is not going to go very much better, and to my mind it is a bit of an issue that the bill has not addressed some of the fundamental structural problems with part 2 of the 2003 act and the ways in which it does or does not work.

The Convener: Such as?

Jon Hollingdale: The good things include allowing Scottish charitable incorporated organisations to be community bodies. However, even if your community body is an SCIO or a company limited by guarantee, that will not change the fact that you will still have to go through the registration process, sit there for five years and then reregister endlessly until the landowner decides to sell, if they ever do. Questions such as whether we need a two-step registration process that is very much at the seller’s whim are far bigger and more fundamental than what form of community body is sitting there, waiting for the land or whatever to become available.

The Convener: We will come back to the issue of registration in a bit more detail.

Jon Hollingdale: The other week, I made a point of looking at the register to get the up-to-date statistics, and I found that of the 175 or so registrations that had been listed, 124 were deleted. We are not talking about 124 separate communities—as we have said, a single community can make multiple registrations—but we are still talking about 124 out of 175 instances in which the community has done a lot of work to
get to a certain stage in what is not an easy process, and it just has not happened. Another 30 or so are sitting there waiting for the land to come up, and in another 16 cases, the registration has gone through. If the majority of communities are not able to progress through the scheme, that suggests that there is a structural issue to deal with.

10:15

The Convener: Did you want to come in here, Dave?

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): I was going to pick up on a general issue. I am happy to deal with it just now, if you would like.

The Convener: Well, it might be an idea, since we are talking about registration.

Dave Thompson: Okay.

Good morning, panel. I am interested in your views on whether pre-registration is needed at all. A lot of the evidence that we have taken indicates that a great number of registrations have been what might be called “late”—I put that in inverted commas—what with the work that communities have to do to register an interest. They also have to anticipate what is in the minds of the landowners, which is basically impossible. How is a community to know whether a particular piece of land that has been under one ownership for hundreds of years is suddenly going to come up? Why would a community register an interest in property that has not been on the market for a long time? Should we just simplify the process and, as the norm, allow communities not to have to pre-register or register early, which would mean that they would not need to reregister?

Moreover, if reregistration is required, I think that five years seems like a very short time. Perhaps the period should be extended, with a much simpler process in which people simply say something like, “I want to reregister.” I want to hear your views on the matter, because I wonder whether there is any need to register early.

Rory Dutton: I agree that we need to take a good look at the issue. After all, registering in the first place is a big job, and some people get scuppered and give up at that stage. You are also right to suggest that five years soon pass, and then people have to think about reregistration. It would be great if we could extend the period to 10 years or whatever, or if we could consider options for doing away with the process altogether.

I do not have any stats for late registrations, but in a lot of those that we get involved with and speak to people about—as you said, people cannot anticipate what land will come up, and there are probably several different assets that could make a key difference to their community—the question is whether they register interest in all the assets just in case one of them comes up. Moreover, there might be several different ownerships involved, and I think that greater emphasis on what are now being called late applications would certainly help.

As for pre-registration, I can see why it exists, but I think that options for doing away with it are definitely worth exploring.

Jon Hollingdale: As I understand it, the idea behind pre-registration is to encourage communities to be proactive, and I think that we will agree that being proactive and thinking ahead are generally better than simply being reactive to opportunities. However, having been encouraged to be proactive and make those registrations, communities are then not rewarded for doing that. As you suggested, once we get past the individual iconic sites—this particular lighthouse, say, or that disused military base, which the vast majority of communities do not have—the process becomes much more generic.

If I were designing things from scratch, I would have a system in which communities, however they might be structured or defined—whether, for example, they had community anchor organisations or whatever—would carry out community development planning and identify the sort of land and buildings assets that they needed to deliver the things that their community wanted, whether that be land for allotments, affordable housing, a children’s play park or a community woodland. If they had specified that they needed land for affordable housing, clearly certain types of land would fit that specification; after all, the 1,000 hectares out on the moor would not be useful in that respect. A specification would be laid down and when land came on to the market, communities would have the possibility of pre-emption if that land fitted their previously announced specification.

France has a system—you will be pleased to hear that I will not give you the French name—for land development and rural settlement associations that has standard pre-emption on land when it comes on the market. When someone sells land in rural France—I do not know where they draw the line around rural France—those 20 or so organisations that are run on a regional basis decide whether they want to pre-empt, to buy in and then sell on if it is in the public interest to do so. I do not know how public interest and sustainable development are framed, but if it is for the good of the community, those organisations will buy and then sell to the local farmer or whatever.
I do not see why we cannot have a similar system that has an automatic right of pre-emption so that someone can at least have a look at the sale and decide whether it fits with an existing community development plan; if it does, the community can be given the option and if it does not, the open market sale can go on. That does not breach European human rights rules, otherwise the system would not have run like that for 40 years in France.

The Convener: But it makes a difference when you have got local government and regional government to focus on the plans that you are talking about.

Jon Hollingdale: Yes. It is a whole different structure, but the principle would be workable.

Malcolm Combe: One of the purposes of registration has been alluded to. It focuses the community, singles out an asset and programmes what the community will do. The second role of registration is publicity for the landowner, who has the legitimate expectation that they should know what is happening to their land. Registration puts the landowner on notice that the community is interested and that is fine.

However, to a certain extent, publicity could be achieved in another way. A comparison has just been made with France, but in Scotland you could look at part 3 of the 2003 act on the crofting community right to buy. Under that, there is no need to register because the publicity relates to the fact that the land is under crofting tenure, is part of the common grazings or is certain eligible additional land. Whether an owner of rural land should just be on notice that any land that they own could be susceptible to a right of pre-emption, whatever right that might be, is a policy question.

Doing away with registration would do away with the focal point of getting the community mobilised and might do away with some publicity aspects, but that is not necessarily a bad thing in and of itself. There are other models.

On the point about late applications, the first big bit of litigation under part 2 of the 2003 act was to do with Holmehill near Dunblane. When the community saw the “For sale” signs, it realised that the hotel development was suddenly happening and it tried to go through the section 39 late applications route, which has bigger hurdles in the form of sustainable development and public interest tests.

The Convener: We have heard evidence on that case.

Malcolm Combe: I will gloss over it; that will have told you more than I can.

My third point is about the five-yearly renewal. Having a from-scratch five-yearly renewal is probably an unnecessary administrative burden. It should be a quick question about whether the community still wants to have a registered interest. Assuming that the register is to stay, it could be a lot simpler and the renewal system could be part of that. A fast-track system would certainly help.

Sarah-Jane Laing: The driver for registration should be the community’s needs. Whether the landowner is likely to put the land on the market at any time in the future should not be irrelevant, but it should be a secondary driver. We have talked about rural housing and rural buses and how you do not stand in the road if there are no buses coming. That does not mean that there is no need for a bus. It is the same with registering an interest. A community that registers its interest is indicating that it has a need that it feels will be met by that piece of land. That is quite a positive step.

Malcolm Combe talked about the owner being put on notice. In some cases, registration has been the first step in a dialogue with owners that has often led to asset transfers outwith the terms of the 2003 act. I agree that if we are going to look at reregistration, there is no reason why it should not be simplified.

The Convener: A couple of members have supplementary questions.

Dave Thompson: May I just come back on that, convener? I understand what is being said, but the Holmehill example is interesting in that it was a public area, to all intents and purposes. The local people thought that it was public and they had used it for decades or more. Why would they ever think that they would have to register an interest in something that they thought was theirs anyway, although legally it was not? The legislation caused them problems; the evidence that we heard last week was that the conditions about late applications and all the rest of it made it virtually impossible for local people to get in there and do anything about it. There are obviously serious problems and issues.

Convener, can I ask a question about the good reasons test and what is replacing it, or would you rather take the supplementaries?

The Convener: I will take the supplementaries from Alex Fergusson and Graeme Dey, and then you can move on to that.

Dave Thompson: Okay.

Alex Fergusson: I will be as brief as possible. Sarah-Jane Laing has just put much more eloquently than I would have done some of the point that I was going to make. Personally, I am inclined to the view that some sort of process is necessary, albeit a simplified one—I am very open to that argument, particularly when it comes to reregistration. A process of some sort would help
to underline and strengthen a commitment by the community and alert the owner to the possibilities that might exist through a right to buy.

My question is for Jon Hollingdale. You said that, having gone through the process, people would have to hang around and wait for the land to come on to the market, or words to that effect. Forgive me if I have put words into your mouth. I would be interested to know what your answer to that is, because it seems to me that, if people are not going to hang around and wait for the land to come on to the market, we are talking about an absolute right to buy as opposed to a pre-emptive one. Will you expand on that? Is that what you are advocating?

The Convener: Just before Jon Hollingdale answers, Graeme Dey has a supplementary to the supplementary.

Graeme Dey: It very much fits in with Alex Fergusson’s point. Malcolm Combe commented that, instead of a full, five-year reregistration process, we could simply go back and say, “Do you still have an interest?”, but “you” might be a different entity. I have a planning application in my constituency that, if it is granted, would see a community’s housing footprint increase from 100 homes to 300 homes within four to five years, so the nature of that community could fundamentally change.

The Convener: I ask Jon Hollingdale to respond to those two points.

Jon Hollingdale: On Alex Fergusson’s point, we agree in principle that there should be an absolute right to buy, but I suspect that we will talk about the part 3A bits. My concern is more about why communities do not use the part 2 registration process as part of proactive planning.

As you say, as the bill is constructed, there is no mechanism to make anything happen once people have achieved their registration. If a landowner suddenly becomes aware that there are community interests and aspirations, they can either say, “Let’s go through the process”—that has happened with a few landowners where the right to buy has worked—or they can say, “Let’s come to a negotiated settlement.” However, if they are not interested, there is nothing that people can do.

The reality of community bodies is that they are set up to do a range of things and to deliver community aspirations, and they will choose the routes that appear to achieve things for them. A community body is not going to sit there with existing registrations and nothing happening. It will focus its attention. If it has five ways to try to achieve the multiple things that it wants to do—few communities come up with a single issue—it will focus on the things that look achievable. It will say, “We know how to do that. We can go to the lottery and get a grant.”

Communities that have gone into and through the registration process tend to be those with a single, iconic, stand-alone project that is an obvious thing to fix. For example, I think that the process has been gone through for two lighthouses and military bases. Those were one-off things in particular communities. There was enough value in those single sites for the community to register an interest. In general, communities have not used the process for run-of-the-mill developments such as affordable housing and allotments. Communities either try to achieve that in other ways, or they give up and say that they will do it when the opportunity arises.

10:30

The way in which the 2003 act is structured makes it difficult to register an interest in multiple sites. The community in a small town might want affordable housing and there might be 20, 30 or 40 available gap sites, but the community will have no idea which one will come up first. Should it register an interest in all of them? It would be much more sensible to have a system in which a community that wants affordable housing, allotments or whatever can say that it would like a right of pre-emption on any piece of appropriate land that comes up in its area, and it can then pick the first one that comes up. As part of that process, one of the landowners might well step forward and say, “Actually, you know what—this bit here would work,” so the community would not have to go through the process at all.

That would be my way of trying to broaden the scope of the way in which communities can use the 2003 act. If they can register an interest in any bit of land that fits—obviously, someone would have to run the rule over that—that would be a much better approach than their having to specify a particular site and go through the process with each separate landowner, with a very uncertain outcome.

The Convener: We will put that question to the urban panel that comes next.

Simon Fraser: I do not have any particular expertise on part 2 of the 2003 act, but I have a general comment. I was involved professionally in the acquisition of a number of large holdings, particularly prior to 2003, I have to say. I also have to say that the 2003 act provisions would not have assisted with any one of them; in fact, those provisions probably would have acted as a major barrier to progress in every single one.

I can well understand how part 2 might be of assistance for those who want to acquire the odd surplus lighthouse or something like that but, if the
whole estate that a community lives on suddenly comes on the market, the current provisions are practically useless in relation to being able to intervene at the required level, scale and time. A community might not realise that the whole estate and people’s whole personal world is going to come on the market. The community might have an aspiration to acquire something but, when the whole thing comes on the market, that is an entirely different ball game. My view is certainly that the act as it stands would be of no avail to them whatsoever.

Malcolm Combe: After that rather seismic comment from Simon Fraser, I move to matters more mundane. On who is “you” and whether “you” still have an interest, the question would be: who is “you” now? To an extent, that is answered by saying that an immortal body—a company limited by guarantee—has been set up. The office-holders might have changed, but the “you” is the company limited by guarantee. In that regard, registration focuses who the “you” is. If we moved to a situation in which there was no registration, there might be different questions as to how to identify the community if it did not have to take that pre-step.

In the present scheme, there is provision for overlapping registrations, and that has happened in Assynt. Therefore, it is possible that there could be two “yous”, and it would then be for the Scottish ministers to decide which one to go for. The question about who is “you” is shrewd, but it can, I hope, be answered.

To respond to the point about putting the landowner on notice, I agree that it can be a good thing to give a signal, but I am aware of some communities that have been in dialogue and which think that registering an interest might be seen as inflammatory. If they were to register an interest, that might lock the landowner into a process that might not be as good as a consensus-driven approach. Obviously, those are just two things in a dialectic—there is one thing about the registration process that could be good and one that could be bad. Some people think that registering an interest might change the dynamic of what could have been a consensual negotiation by making it a bit more legal. I am not sure that there is an answer to that; I just mention it as a counterpoint.

Sarah-Jane Laing: I have a quick and simple response to Graeme Dey’s question about changing circumstances. I think that all that is necessary is for it to be asked at the point of reregistration whether there have been material changes. If the answer is yes, those involved would go down one route, and if it is no, they would go down another. I do not think that it would be a problem to have a dual process for reregistration. Graeme Dey is right—a material change such as a huge swell of opinion in the community, which could have different views and different needs, must be taken into consideration, but it would be possible to have a dual registration process.

To pick up on what Malcolm Combe and Jon Hollingdale said, I feel as if I am banging on about community planning, but a lot of this is about that. A registration is often viewed as inflammatory in circumstances in which there is no community planning process, no dialogue and no engagement, so it feels as if it is a case of, “We want that off you,” but the reality is that there have never been any discussions about what “that” is, what it would be used for and whether the landowner would consider giving it to the community in the first place. The situation becomes adversarial.

In our submission, we suggested that, rather than looking at pre-emption, consideration should be given to proactivity on the part of the landowner. All of us feel that there is a need for greater proactivity on the part of landowners in engaging with communities. We also suggested that there could be a requirement for a landowner to give notice to an established community body prior to any sale, which would mean that the community got notice before land went on the market and that people would not find out only when they drove down the road and saw the “Estate for sale” signs. I feel that that would put the onus very much on engagement and having a positive relationship rather than on a right of pre-emption, which always feels adversarial.

Rory Dutton: There are quite a lot of balls in the air at the moment. I make the point that we should bear in mind at all times the fact that, in many cases, we are dealing with volunteers. Going through the process puts a huge demand on volunteers, and people get burned out and organisations lose their steam. If, for example, the assets are withdrawn from the market at the last minute, that has a devastating impact on the morale of the community. We are talking about volunteers’ time and very precious human resources, which can easily be wasted.

I go back to whether the bill has addressed the main issues and whether it will result in a transformational change. The committee will discuss the urban context later in the meeting. The provisions that relate to urban areas could well make a big difference. Many proposals have been made to ease the process. The other big issue is that of abandoned or neglected land, on which the bill provides a right to buy rather than a pre-emption right. In the interests of efficient use of community volunteer time, we would like the bill to make it possible—whether through a planning route or through an absolute right to buy that was
based more on sustainable development than on abandoned or neglected land—for far more effective use to be made of what is a very scarce and precious resource in communities to make things happen and to help those communities to move forward.

The Convener: We will discuss abandoned or neglected land quite soon.

Dave Thompson will now pursue the issue of registration.

Dave Thompson: What the witnesses have said is all very interesting. It strikes me that, as I think Jon Hollingdale mentioned, a much simplified registration process, which could involve some kind of general registration for a purpose rather than the identification of a piece of land, might be desirable. The purpose for a community might be the creation of more general community land, housing land or whatever, and it could put in a general interest in any land that came up that it could use for that purpose. That might be one way forward. The community could do that at an early stage or it could do it once a piece of land came up—although, up until now, such registrations have been called late registrations.

I was also interested to hear that communities can be devastated if after they go through the process the land is withdrawn. Perhaps we should consider a provision that says that once land has gone on the market and the community has shown an interest in it, that land cannot be withdrawn. I would be interested to know whether that could be added, as it would prevent a landowner from putting land on the market and then withdrawing it again to usurp the community.

I am sorry to go on for so long, convener, but there are a lot of issues to address. For example, I note that, with regard to late registrations, the good reasons provision has been withdrawn. As I have said, I am not keen on this talk about early and late registration; I think that the registration system should allow different people to come into the process at different times.

With regard to the proposed new sections on late registration, we have heard evidence from Community Land Scotland about how the phrase “such relevant work as Ministers consider reasonable was carried out” might be interpreted. Given that such work has to be done sufficiently in advance, how easy would it be for a community to prove that it had undertaken it earlier? It brings us back to the question of why we need early registration. Why can we not just have registration along the lines that I have suggested?

Jon Hollingdale: Precisely that point was made in our evidence. The interpretation of “such relevant work as the ministers decide is very unclear to us. According to the bill, “the relevant work was carried out ... in respect of land with a view to the land being used for purposes that are the same as those proposed for the land”, which could be interpreted as meaning that the community will have defined that it wants to register land for specific purposes or that it will have identified specific purposes for which it wishes to acquire land. If that is understood as meaning that, once a bit of land that fits that specification and which is fit for those purposes comes on to the market, ministers will accept that it meets that test, we will be very happy. However, it is not clear to us that that is understood, and I am not sure whether the phrasing in the bill or in the guidance that will come behind it locks in that interpretation. There is certainly a possibility that that might happen, but it is not clear to us that that is exactly what the bill team were thinking of when they wrote those lines.

The Convener: We will reflect on that for sure.

I do not think that we need say anything more on this matter, so we will move on to Claudia Beamish and the meaning of “community”.

Claudia Beamish: Jon Hollingdale has already touched on the complex issue of the meaning of “community” in relation to SCIOs, and such definitions are very much in the air. I am not going to go into the detail of section 34 of the 2003 act, with which the panel will be familiar, but I am happy to cover that if needed. I will do my best, anyway.

It is important that we consider the ways in which the definition of “community” can be widened in the bill. For example, I am interested to know how the panel—beyond Jon—view SCIOs. Last week, for example, the Development Trusts Association Scotland questioned why community benefit societies had been excluded.

Perhaps if I cover the main points, we can then have the discussion—I hope that that will be useful. Other issues that we could consider include the question whether postcode units are too restrictive; how we can define rural communities, if not through their postcode; and defining communities of interest, such as arts organisations, charities, ethnic groups and so on. In that respect, I saw something earlier in the week about sports organisations such as those with responsibility for golf courses. Moreover, last week’s panel referred to communities of place.

It would be very helpful if the panel could comment on that, as they feel appropriate.

Rory Dutton: I should confirm that in our submission we asked why, if SCIOs were being brought on board, community benefit societies
were not being brought on board as well, particularly with the resurgence of interest in them and the way in which they raise finance through community share issues. In fact, lottery funding has recently been awarded to our consortium to promote that option. I understand that ministerial regulations might extend the definition beyond SCIOs and companies limited by guarantee, but we would ask why community benefit societies have not just been included from the outset.

10:45

Another point is whether the legislation has to specify particular legal structures. Why could it not just specify the criteria that any such structure must meet? That leads us on to the issue of complexity and how prescriptive we want to be about articles of association and constitutions. For example, how often would a society have to hold a general meeting if it had to change the articles to keep the Scottish Government happy? We welcome the broadening of the definition, which is long overdue, but I wonder why community benefit societies have not been included.

I absolutely agree that the postcode unit is an issue. Some postcode areas in the Highlands are very large, and it is difficult to keep to the area that you want to define because you end up straying into other areas. The proposal to allow the discretion to define areas in another way is very welcome.

However, there are still issues in that regard. As I understand it, the area that is served by a community body is the same as the area that would be balloted on a particular community asset. That would mean that if a community body served a large area, a ballot would pertain to that whole area, even if the interest in a community asset were quite local. That is another issue that brings us back to the question of what we mean by community. If a very effective community anchor organisation served a wide area, could a ballot be held in a smaller area instead of the whole membership of the wider area being balloted?

My final point is about the inclusion of communities of interest. That is a community regeneration tool, and it relates to Sarah-Jane Laing’s point about planning and what is best for an area. If it fitted with the local priorities for an area that had been agreed by the local people, and if it made a difference to the area, a community of interest might be the best vehicle. Again, the actual body would carry that forward.

Malcolm Combe: With regard to the form that an organisation needs to take, which I touch on in my submission, another way of approaching the issue might be to make it clear that, whatever the organisation, the important elements are the rules by which the organisation abides and its constitution. A comparator jurisdiction in that respect is South Africa, which in the 1990s introduced a system of what are called communal property associations, which have to register their constitution. Obviously, whatever the registration process might be—and I am afraid to mention the term “registration” in this discussion—an organisation would not be able to get its constitution registered; however, it would still act as a repository to enable those community organisations to see what the rules are, and irrespective of whether an organisation was a SCIO, a bencom—community benefit society—or a company limited by guarantee, it would comply with those rules. The stipulations would be there, and an organisation would not be hamstrung by its not being a company limited by guarantee. That might be another way to do it.

The Convener: On that point, Sandra Holmes suggested last week that HIE’s community land unit, or whatever it is called now, had a stock constitution. Are you suggesting that we try to adopt some particular basic off-the-shelf constitution?

Malcolm Combe: I suspect that any stock constitution would be for a company limited by guarantee, so one would want to carve out the bits of it that pertained specifically to a company limited by guarantee and leave in the things that related to the community asset. That could be the way forward, provided that the community was able to form whichever vehicle it chose as most suitable. In some cases, it might even involve a local charity with a similar interest, such as the John Muir Trust or the RSPB, coming on board.

This is an emotive issue, because at present the definition of a community is limited to a postcode unit. I am not saying that we would want to open things up in this way, but if the underlying community, in whatever form it took, was able to say, “We have these rules, we can comply with them and they are on record”, that might be a more flexible approach.

Sarah-Jane Laing: I do not have anything to add to the comments that have been made about community bodies, but I want to pick up on the definition of a community as a community of geography rather than a community of interest. A community of geography should include a number of communities of interest. When we look at a community’s needs, we should be able to weigh up the needs of the different communities of interest and take a holistic view.

Of course, the problem with going down the community of interest route is that each will have a different interest and will have the sole purpose of furthering the interests of its community. That is what leads to lots of tensions. To go back to the
issue of community planning, I think that if everyone, no matter whether they be sports clubs, environmentalists or those with housing needs, has a seat and an equal voice, everything will be looked at in the round. That is what a community of geography or place does, and I therefore support the retention of the community of geography as the definition of “community” with regard to the community right to buy.

Claudia Beamish: Are you arguing that a community of interest should not be part of the definition in the bill?

Sarah-Jane Laing: Yes. I do not think that a community of interest should have the same right to buy as a community of geography.

Rory Dutton: With regard to Malcolm Combe’s point, the legislation needs to set out only the criteria required to safeguard the public investment or benefit. We can quickly rattle up model articles of association or constitutions for community right to buy or not community right to buy, as the case might be; like Highlands and Islands Enterprise and the Community Woodlands Association, we already have them. We also have a model SCIO constitution and no doubt we will have a model SCIO constitution for community right to buy. Given that we can quickly rattle up those model constitutions, we do not need that aspect in the legislation; instead, we need the criteria that must be built into governing documents.

The Convener: Thank you, Jon Hollingdale wants to comment.

Jon Hollingdale: I cast my vote, too, for a fundamental look at the characteristics that we want in a community body. Obviously, it will need to be incorporated, open and non-profit distributing, have appropriate wind-up or dissolution clauses and so on. Those characteristics are well understood and models are available for different forms of company. The problem is that as soon as the legislation changes, the existing model constitutions need to be amended again, and that is what would happen with the provisions in the bill as it stands.

With regard to communities of interest, it is dangerous for me to say this because I am sitting next to two eminent lawyers who might contradict me but as far as I can see, the existing legislative provisions do not exclude what I would consider local communities of interest from using them. Clearly, national bodies such as the RSPB and the Scottish mountain biking association, if there is such a thing, are ruled out. However, an organisation such as the Thurso amateur dramatic society—again, I have no idea whether that exists—would not be ruled out. It seems to me that, if it rented its local playhouse from a private landowner and it became concerned that the building was going to be sold, the organisation could register an interest. It would have to demonstrate that the use of the land fitted with its objectives, which I think it would have no trouble doing, and make the case that its taking ownership would be compatible with sustainable development.

Those of us who write such applications would be quite happy to write that the society would, say, do some theatre drama work with a local school; after all, it would be a brave person who stepped in and said that local cultural development was not compatible with sustainable development. Perhaps the biggest issue facing such a body is that if the property that it rented came on the market, it would have to ballot the whole town. There are about 8,000 people in Thurso, which means that there is an electorate of about 6,500. The society would therefore need to get a significant number of people in the town to turn out to vote for it, but I do not think that that would be insurmountable.

I believe that there is a mechanism to allow that scenario to happen, but it has not been picked up. I also suspect that things would get much more difficult if we tried to scale it up to a bigger urban setting. Again, I do not know whether there is such an organisation, but I would imagine that the membership of the Glasgow Muslim women’s cultural centre, say, would be a fairly small proportion of Glasgow’s population. If it were expected to ballot the whole of Glasgow, that would not work.

However, as far as the legislation sits with relatively local communities of interest, I think that their registrations of interest could go through. Indeed, some existing registrations are, to an extent, examples of what I have described. In Forres, a town of almost 10,000 people, there is a registration for the football pitch; however, the registration is not in the name of Forres Mechanics, the team that plays there, but in the name of Mosset Park Protection Company Ltd. It is fundamentally a sports interest with a community development bit stuck on.

Claudia Beamish: Would it be more appropriate to have such a definition on the face of the bill or in secondary legislation?

Malcolm Combe: My own preference would be for the definition to be in primary legislation rather than buried in regulations.

The Convener: We will move on to a point about procedures and requirements. We did not cover the question of mapping when Dave Thompson was asking about registration. Mapping was a problem in some cases under the 2003 act. Do panel members have any views about the detail of the mapping? The registration of croft
land requires virtually the same detail of mapping as for sales of house plots or whatever, but does it need to be so precise? We have seen problems with that in terms of the interpretation of part 3 of the 2003 act, on the crofting community right to buy—in the Pairc case, for example.

Malcolm Combe: I have a quick comment on one bit of litigation that happened in Kirkcaldy sheriff court—the Hazle case involving Kinghorn Community Land Association. There was an issue with the land association’s application, which did not quite comply with the mapping requirements. Even though there was a grid reference in the application form, it was not written on the plan—or something like that—so it did not quite meet the requirement in the legislation. In the end, the application was bounced. Therefore, it was a case of, “Community, go away.” That is one of the deleted interests in Fife. That does not seem satisfactory to me. There were other issues in that litigation; it was not solely on that point. However, that is something to think about. Fundamentally, assuming that registration is a good thing as it gets everything on notice, we need to know what bit of land it relates to. However, at a time when a community and volunteers are expending a lot of energy to comply with a lot of different things, a degree of relaxation and/or discretion over strict mapping requirements might help.

Simon Fraser: I take it that we are still talking about part 2.

The Convener: Yes.

Simon Fraser: The lesson has been learned from part 3 of the 2003 act that it is pretty much impossible to comply with the mapping requirement. In fact, for the two major applications on the island of Lewis—Pairc and Galson—they decided to map only the common grazing element, not the element with all the houses and people and everything else on, simply because that would have been utterly impossible. Even mapping the common grazing proved extremely difficult, with a requirement to map every fence, watercourse, ditch, and goodness knows what. That is certainly an issue.

I also encourage the committee to consider Malcolm Combe’s point. One of the difficulties that crofting communities came up against was the sudden-death element if they made any mistakes—there was an inability to rectify mistakes. In my submission, I go into how that difficulty could be addressed. We certainly want to allow communities to be able to amend the application in the event of something inadvertently being missed out that would otherwise kill off the application.

11:00

Jon Hollingdale: I second the point about the part 3 crofting mapping being seen widely as completely over the top and impossible to deliver perfectly the first time round given the scale of these estates. On part 2, it is noticeable that if you look through the documents on the register of community interests you see that there is not a standard specification for how these maps are pulled up. They all look a bit different, different base maps are being used and they are demarcated in different ways. That is because no one has said, “This is how we want maps presented. This is how you would map an area of 1,000 hectares and this is how you would map an area of 0.01 hectares.” The smallest area that someone has gone through the registration process for is probably about the size of this committee room. Not having a standard model means that people are very much in the dark and wondering, “Is this going to be good enough?” and “Is this what they need?” Even having a standard specification setting out what you need to do to satisfy the requirements would be really helpful.

The Convener: We will explore that with ministers in due course. We will move on to the subject of abandoned and neglected land.

Michael Russell: A common theme among all the submissions has been abandoned and neglected land. Certainly the submissions that I have had a chance to read so far have expressed views on that. Malcolm Combe described the term as “suboptimal”. I would be interested in your reflections on what would be an optimal term to describe such land. The “wholly or mainly abandoned or neglected” definition is not included in the 2003 act on the crofting right to buy. What is the motivation for including it in the bill? I would welcome some reflections on the difficulty of defining such land in circumstances where it does not penalise owners, tenants or others who might have different views on how to operate their land. I am simply interested in hearing those views, to help the committee come to some mind on it.

Malcolm Combe: I did say that the term “abandoned” is sub-optimal, but there are four key words: “wholly”, “mainly”, “abandoned” and “neglected”. My use of the word “sub-optimal” was specifically in relation to the technical meaning of the word “abandoned” in Scots law. When an owner abandons something, that means that they are surrendering any right to it. It is most easily visualised in the case of a corporeal moveable object. If I was to discard my jacket after this session in a fit of rage, I would lose title to it. Under the rules of Scots law, such abandoned property would go to the Crown.
Abandoned land is an issue at the moment. Obviously you cannot throw away land in the way that you could throw away a moveable item. There was a recent case in which the liquidators of a Scottish coal company tried to walk away from certain liabilities linked to the land. The question whether you can leave land abandoned with a non-owner or whether the Crown would step in via the Queen’s and Lord Treasurer’s Remembrancer is difficult. I am not going to give you a seminar on that just now. However, the very fact that “abandoned” might have a technical meaning to Scots property lawyers in that context means that using it in legislation immediately leads to a little bit of ambiguity. I would ask for careful consideration of whether you need to explain what you mean by “abandoned” or whether you need to use a different word. The terms “unused” or “underused” introduce different subjective tests, but at least they do not have the ambiguity factor. Do I have an optimal word? I was careful not to offer one in my submission.

There is then the issue of the phrase “wholly or mainly”. I suspect that the “wholly” category is easier to identify than the “mainly” one. It seems to me that there is a spectrum, with “wholly” at one side and “mainly” being a little bit less than “wholly”. We do not want to say that the provision is a charter for lawyers, but we can imagine people having fun arguing about it.

“Neglected” is an interesting word, too. If a landowner says that they intend to create some kind of wilderness wildlife haven and it is his or her conscious choice to let the land go back to its native state, can we say that the land is neglected?

It is difficult to propose an optimal word—it is always easier to heckle. However, I think that the term “abandoned” needs to be carefully considered and that the other words need to be talked about.

Sarah-Jane Laing: A lot of our comments were made prior to the discussions that we have now had with the Scottish Government about how “abandoned” and “neglected” might be defined. I think that the Government plans to include definitions in the primary legislation, rather than in subordinate legislation.

Like Malcolm Combe, we had concerns about “abandoned”, because we thought that it referred to abandonment of ownership. My understanding is that we are talking about abandonment of the original use. For example, if someone says that they intend to create allotments, but the land is still a wildflower meadow after five years, they have abandoned the original use, although they have not neglected the land, because it has been managed as a wildflower meadow. The provision says “abandoned or neglected”, not “abandoned and neglected”, so a lot of confusion remains about the circumstances in which it will be used.

When we talked to community empowerment stakeholders, we talked a lot about blight sites. I think that we all agreed that there are blight sites throughout Scotland, which must be addressed. Those are sites that are derelict and which have a significant detrimental impact on the environment and community safety, so they are quite easy to identify.

I was talking to a small-scale farmer from the Borders recently, who runs a tiny wee flock of sheep on a very large field—just enough to meet his good agricultural and environmental condition requirements, if I am honest. His community has told him that it thinks that he neglects the land. The community would like the field to be ploughed up to the margins, so that people can see that the farmer is actively managing the land. He is actively managing the land; he runs pedigree Jacobs. However, people see a scrubby field and a few sheep.

We are talking about a very significant provision, and I am concerned that we have not had time to work out exactly what it means in detail. We talked about the policy memorandum. We can think that we know what we are getting with a provision but, when we start to pull it apart, it seems to indicate something entirely different.

Jon Hollingdale: We welcome proposed new part 3A on the absolute community right to buy, but I think that everyone agrees that these are provisions that will be used very sparingly. They are not there to be the run-of-the-mill approach; they are the backstop. Ideally they are strong enough and credible enough that they will facilitate negotiation and compromise, so that settlements happen in that way rather than through forced sales. For that to happen, people need to think that it is in everyone’s interest to negotiate; if the provisions are not credible and appear to give too much wiggle room, no one will take them seriously.

It is fair to say that part 3, on the crofting right to buy, has not been a huge success. It sets two tests for communities, which must demonstrate that what they want to do is in the public interest and furthers sustainable development. Part 3A will add two more tests: the land must be abandoned or neglected; and the current ownership must be inconsistent with sustainable development. We struggle to see what kind of evidence would be needed on the latter test.

On the “abandoned or neglected” test, I think that “abandoned” is the one word in the bill with which everyone to whom I have spoken has a real issue. It is very difficult to see how the provision would work. I am not convinced that the test is
necessary; most issues can be dealt with under the sustainable development test.

I think that everybody agrees that non-intervention or very limited intervention in land management for nature conservation purposes is, in appropriate circumstances, completely compatible with sustainable development. If it is not, we need to have a word with Scottish Natural Heritage, because it is certainly working under that understanding.

If a landowner genuinely sets aside land, which is not managed because he wants it to be wilderness or for nature conservation purposes, we would assume that that could be assessed with a sustainable development test by reference to whether it is a designated site and whether he has any kind of agreement or even dialogue with SNH about the management or non-management of the site. It seems to me that that could happen under the test that we already have, which fits with parts 2 and 3 of the 2003 Act. The issue is whether the community proposals for the land would be in the interests of sustainable development if it has already been agreed that sustainable development on the site involves non-management or very limited management because it is deep peat or a precious wildflower meadow. The community proposal would then not make any progress at all; it would stop at that point.

It strikes me that there is another big issue with the word “neglected”. You are not dealing with the majority of private landowners at proposed part 3A; you are dealing with a very small minority element of landowners who are entirely refractory and will not compromise or negotiate. The community might wish to acquire 100m² to extend the village graveyard, because it is full. Does the community have to demonstrate that the landowner, who owns 10,000 hectares—everything around the village—is abandoning or neglecting the entirety of that estate in order to get that area, as the landowner simply refuses to sell a tiny plot of land at any price? Most of us would probably say that it is in the interests of sustainable development and certainly in the interests of the community that that happens, but it is very difficult to see how the “abandoned or neglected” approach could be made to work in any circumstances.

Rory Dutton: Jon Hollingdale has stolen most of my thunder. Basically, our question is whether the approach is really workable. We can see how, in an urban context, which you are talking about later on, the neglect may be more evident, but we are struggling to see how the approach can possibly be workable in a rural situation.

I was going to suggest what Jon Hollingdale has already suggested. If you moved the basis in rural areas away from abandoned or neglected land to land where the sale of perhaps a small area would have compelling rural development benefits relative to the impact that there would be on the owner’s greater landholding, that would be a far more useful mechanism than trying to define “neglected”, “abandoned” or anything like that.

Simon Fraser: I, too, find it difficult to understand how this could be applied to the rural context. In the crofting community right to buy, the test is, of course, the sustainable development test. That was tested in court, and I am sure that the committee is aware of Lord Gill’s judgment. In essence, the community was able to meet the sustainable development test as applied to a very extensive area, not a very small area. On the one occasion when that has been tested in court, the case was able to be made. I cannot begin to imagine how the case could be made with the additional hurdle of abandonment or neglect.

Sarah-Jane Laing: I think that we have said before when we have talked about rural and land issues that we do not always need a one-size-fits-all approach. If we all agree that an approach works in urban areas but not in rural areas, perhaps we should look at having a different approach in urban and rural areas to deal with the specific issue.

Michael Russell: Thank you. That has been very helpful. You have raised the question, even if you do not have the answer to it, and that is a useful step forward.

On neglect and operation, one issue that concerns me most greatly is land that is held by the public—by ministers and a variety of non-departmental public bodies and local authorities. Local authorities are bound by best-value requirements. They have no obligation to maintain buildings, but they have an obligation to try and get best value from them. We have seen some celebrated cases of that, for example at Castle Toward in Argyll. It is a neglected building, and it costs a lot of money, but Argyll and Bute Council seems to have adopted a dog-in-the-manger attitude towards it.

11:15

It strikes me as important to address the concept of who owns such buildings, and the question of how they might be transferred to community or other ownership without paying a full purchase price to the public purse—allowing money to circulate within the public realm—if we are to enable more communities to take control. It is difficult to see how that fits into the current legislation, but the issue will have to be confronted. Do any of you have any thoughts about how we might confront that point? It seems to be the biggest barrier for many communities.
Rory Dutton: We do quite a lot of work with local authorities on asset transfers to communities. We try to present such transfers as being on a different scale of public ownership. As you are probably aware, there are regulations from 2010 that allow local authorities to dispose of assets for less than the full consideration, in the light of the wider value that they bring to the public or to communities. We would like that to be expanded to other owners.

That said, it is becoming increasingly hard for us to persuade local authorities that that is indeed the way forward. More and more local authorities have been seeking something more like full market consideration for the products concerned, particularly since the Scottish land fund came back on board.

Community asset transfer, according to the Scottish Government’s definition, is transfer from the public sector to the community sector at less than full market value. We would not like the emphasis on that to be lost, as it is starting to be even in the wider community asset transfer scene.

The Convener: Sarah-Jane?

Sarah-Jane Laing: I have nothing to add—I was going to make the same points as Rory Dutton.

Simon Fraser: On the big difficulty with transfers from Government—public finance money—I understand that they have recently been overhauled. However, I am not aware of the details and I am not sure how far that has gone.

Mr Russell still bears the scars of west Harris and the attempt to pass across the assets there from agriculture to the local community. We could probably do with something in the primary legislation. In that instance, public ownership was inimical to sustainable development, yet the community still had to pay full value to get the assets. The hurdles in that case were the public finance manual and the ogre of state aid. If those factors can somehow be squared with the policy purpose and covered in the primary legislation, that might offer a way through.

The Convener: Malcolm Combe is next, followed by Jon Hollingdale.

Malcolm Combe: Simon Fraser has covered everything that I was planning to say. I was going to make that point about state aid.

Jon Hollingdale: In the Community Woodlands Association, we are very familiar with the operation of the national forest land scheme, which in some ways mirrors, but also goes beyond, what is available under the community right to buy, with communities attempting to acquire from the Forestry Commission. As that scheme is voluntary, it has been possible to shape and change it over the eight years of its operation to make it more fit for purpose, rather than having to worry about primary legislation not allowing people to do things.

However, the scheme has always run up against money issues in the end. The Forestry Commission’s expectation was that full market value would be paid. That has become increasingly difficult as forestry land has appreciated in value, which is partly as a consequence of the economic difficulties in 2008. That is a huge issue.

I know that this comment takes us into the parts of the bill that this committee is not considering, but the asset transfer provisions are pretty silent. One of the Forestry Commission’s issues with those parts of the bill is that they do not really explain how land will be valued, whether it will be at full market value and whether its value will take cognisance of what the community intends to do. In other words, we have to ask whether there is a credit for the additional public benefit that all communities have to demonstrate that they will deliver when they are going through community right to buy and whether that can somehow be factored into the price. There are some big issues there.

The other point that I wanted to make about the Land Reform (Scotland) Act 2003 is that, to date, the majority of the acquisitions that have happened using community right to buy provisions have been from public bodies. I think that the figure is nine out of 16, and a number of the registrations that are still sitting waiting to be activated are also on public bodies, such as Argyll and Bute Council, Moray Council, Scottish Water and the Northern Lighthouse Board. I am not sure how many of those registrations will be covered by the asset transfer part of the bill. Schedule 3 of the bill gives a list of some public bodies that will now be subject to the asset transfer provisions, but I imagine that some of them, particularly United Kingdom bodies, will stay within community right to buy.

We need to tease out how the bill will operate with respect to public bodies, who goes where and whether the part 3A rules will also apply to public bodies, because that is not clear. A community can start by attempting an asset transfer process under part 5 of the bill, and if they are rebuffed by a local authority that says, “No, we aren’t neglecting the land,” it is not clear whether there is a mechanism or transfer process that means that they can then use part 3A.

Dave Thompson: It is not only the various criteria that have already been mentioned that will
give difficulty. I would like the panel’s opinion on proposed new section 97H(d), which states that the applications must also show

“that the owner of the land is accurately identified in the application”.

Do you see any difficulties there? Trusts can be set up and there may well be other methods of hiding who the owner is, so does that need to be changed or looked at again?

Jon Hollingdale: As the 2003 act stands, the current community right to buy provides for communities to be able to put a registration on land without knowing who the owner is, although they have to demonstrate, and the minister has to accept, that they have taken reasonable steps to find out who the owner is. If it is not possible to find out, a registration can still stand.

At the very least, there ought to be a similar mechanism in the Community Empowerment (Scotland) Bill. It strikes against the whole abandonment issue. If the land is abandoned, that suggests that we would not know who the owner was because they had run away.

That is one thing that reveals a procedural problem in the way that the bill was constructed, as most of the provisions in part 3A seem to have been borrowed wholesale from part 3 of the 2003 act. In crofting communities, I assume that it is taken for granted that people know who the landowner is. That may not be the case, but it seems to me that part 3 of the act has been taken and transferred across to the new bill. There should be an answer in part 2, which is that the community needs to demonstrate to the minister’s satisfaction that reasonable steps have been taken to discover who the landowner is.

Malcolm Combe: I have a few points to make in response to what John Hollingdale has just said.

If I were an advocate running an argument about whether or not the land was abandoned and I did not know who the landowner was and could not find that person, that would be a useful aid to my argument, whether the word used was “abandoned” or something else.

The point about finding out who the landowner is also has to be set in the context of the current land registration reforms that are going through at the same time. On 8 December, the new rules for the land register will become operational, and there is a 10-year target for the transparency of the land register, which we hope will assist in working out exactly who owns what.

I also note in the programme for government the idea that an owner has to be a European Union entity. That is something that the land reform review group proposed, so maybe the concern could be mitigated in future years, dependent on completion of the land register.

Sarah-Jane Laing: To echo what Malcolm Combe said, a lot of steps are being taken to improve identification of landowners across Scotland. Similar to the point on mapping, it is not fair to a community for its application to be thrown out because it listed the owner as Mr J Smith, when in fact it is Mrs S Smith. It must be taken into consideration that there should be some ability to rectify a situation in which the wrong member of the family has been identified, but the community knows that the land belongs to that particular family.

My understanding, after having spoken to Registers of Scotland about the issue, is that that will be more of a problem in urban areas than in rural ones. There are issues in rural areas about identifying owners, as we are all aware, but many of the inquiries that Registers of Scotland receive relate to what it calls fag ends of land in urban areas, where companies have either been wound up or subsumed into a bigger company, and no one is sure who currently owns the piece of land. Those cases will be very problematic.

Rory Dutton: A lot of the communities do not employ staff; they just have volunteers. I can think of an example that was about access to a block of forestry land where we ended up going transnationally to Asia to try to find out who on earth owned the land. The community group was established in 2009 to undertake that asset transfer, but it is only happening this year.

Where there are multiple owners, or owners who live abroad, it can be very challenging to find out exactly who they are. I am not familiar enough with the detail of the forthcoming legislation to know whether the problem of identifying owners will all be addressed, but it can be a major issue.

Simon Fraser: To give a brief example, I had an experience of successfully acquiring land from a Panamanian trust. That is the kind of thing we are up against. If a company chooses not to respond to inquiries, there is nothing to be done—it would be hard to prove that the company had even been contacted.

There could be a longstop provision, to enable some form of edict or citation to be made, or some notice posted on the land if all else fails. That is the kind of thing that is used in other circumstances.

Sarah-Jane Laing: There are lots of precedents set in other legislation, which comes under “all reasonable steps”. I see no reason why a similar provision cannot be inserted into the bill.
The Convener: Okay. We move on to our final set of questions, which is about the interpretation of sustainable development.

The double approach of using public interest and furthering the achievement of sustainable development is being built into the plans. The inclusion of that double requirement for community bodies requires careful handling. Ministers have to be satisfied that some activities might take place if ownership were to remain in the same hands, but that could make it difficult for community bodies to further the achievement of sustainable development in relation to the land. Do you think that there is jeopardy in the way in which the bill is currently framed? Community bodies could find themselves caught up in a situation in which an owner says that they are about to make some sustainable development.

Malcolm Combe: It is an interesting question. I refer back to Holmehill briefly—in that case, I understand that planning permission had been granted and the landowner was able to say that his plans were in the public interest because they had received planning permission. Of course there is a difference between an individual planning application and the wide offsetting within the land but, yes, the idea that a counter development might be sustainable could be an issue.

It is a situation that can never be shut down, because someone else might have a valid sustainable development plan, and that would be fine—we should not be discouraging someone else from putting that up as a counter argument. In fact, it would be great if we encouraged people sufficiently that they were putting sustainable development up as a counter argument. In part it could be a problem but, at the other extreme, if it were to encourage people to engage with things on their land in a way that heretofore they had not been doing, it could be a good thing.

Sarah-Jane Laing: I suppose that the question is what the driver is. If the driver is sustainable development in the public interest, the question of who does it is secondary. If the driver is sustainable development by a community, that is entirely different.

The provisions, as drafted at the moment, give the owner a chance to agree that they have not done enough for the land and that they will bring it back into use for allotments. I think that that is positive, because it gives private owners the chance to consider improving the productive use of their land.

Where there will be a real impact is in the area of what we have called meanwhile use. Someone might have a 10-year development plan, but what are they going to do with that land meanwhile? In relation to such sites, landowners might be quite keen to work with communities for sustainable development in the public interest. However, there would certainly be no reason for the transfer of ownership to happen.

The Convener: But we are talking about communities having an idea that they perhaps need housing, whereas the landowner might think that sustainable development means building holiday homes to bring in value to the estate. Surely the question about what sustainable development is would be difficult for ministers to interpret and might be used as an excuse for not making land available to the community.

Sarah-Jane Laing: In that regard, we go back to discussions that we had on the planning application. If the planning department of the local authority decided that there was a need for tourism accommodation and business use on that site and had granted the planning application on that basis, the landowner would then be delivering the public interest. If the planning department had carried out a housing land audit and identified a need for housing, and the landowner was not delivering housing on that site, that would be a different matter.

If you are going to weigh up the need between tourism, business and housing on the same site, you are talking about competing sustainable development uses, rather than sustainable development versus the non-development of a site.

The Convener: It is a matter of interpretation, I guess.

Rory Dutton: Community and development trusts are there to make things happen for their communities. Local businesses and lairds are part of that community, too. If a laird is prepared to do something that will push forward sustainable development in that area, that is great, as it means that the community does not have to do it.

The issue goes back to the question of whether the agenda is one of the regeneration of an area or one of land reform. We take the view that it should be a regeneration agenda. If the landowner is not regenerating the area and the community can do it, that is the way it should go. However, if existing players can do it effectively, that should be welcomed.

Jon Hollingdale: The context of what we are talking about is part 3A, so we are talking about a minority of recalcitrant and refractory landowners, not the majority of landowners.

As the bill is drafted, communities would be expected to demonstrate that current land ownership is incompatible with sustainable
development, which is an impossible test to pass. Even in terms of the landowners’ plans, you have to be aware that landowners will see part 3A applications coming a long way off, because the process involves the community previously having attempted to buy the land. The bill does not detail what that means, but we assume that it does not mean simply phoning the landowner and saying, “We’ll give you a tenner for it”, it would have to be a properly valued process.

Following that, the community would have had to go through a ballot. All of that means that the landowner will have quite a window of time in which they will be aware that something is happening. Clearly, given that we are talking about a minority of recalcitrant landowners, they have an opportunity to invent a scheme out of thin air. It is therefore important that ministers have the ability to assess the credibility of the landowners’ plans.

It might be that, as has been said, a landowner has serious and sensible plans that they are either getting on with or awaiting finance for. Those are good reasons for a community’s request to be refused. However, it is important to ensure that it does not simply give a recalcitrant landowner the ability to frustrate the community’s objectives by pulling something off the shelf or having a plan that is not at all that credible.

The Convener: Indeed. Thank you for exploring the complexities of this matter with us. That has been helpful, because we are going to be considering the urban context and ECHR issues. After we reflect on matters, we might come back to you for some clarification of some of the points that you have made.

We will suspend to allow a comfort break of about five minutes.

11:34

Meeting suspended.

11:40

On resuming—

The Convener: We will continue with agenda item 6, which is evidence on the Community Empowerment (Scotland) Bill.

Our second panel will focus on the urban context and the European convention on human rights. I welcome Wendy Reid, who is the development manager with the Development Trusts Association Scotland; John Mundell, who is the chief executive of Inverclyde Council; Dr Colleen Rowan, who is membership and policy officer for the Glasgow and West of Scotland Forum of Housing Associations; David Cruickshank, who is executive director of the Lambhill Stables Development Trust; Susan Carr of the Community Alliance Trust; and Professor Alan Miller, who is the chair of the Scottish Human Rights Commission.

We have a range of questions to put to you. The microphones are handled centrally, so you do not need to switch them on and off. We will kick off on aspects of the structure of the bill.

Graeme Dey: Good morning—I think that it still is morning. Are the panel satisfied with the extent of the dialogue and consultation that have taken place on the community right to buy? Do you believe that the extension of the community right to buy to urban areas sits appropriately in the context of the bill?

Wendy Reid (Development Trusts Association Scotland): DTA Scotland is happy with the level of consultation. There have been numerous opportunities to contribute, and not just for the organisation but for our members. We found the process to be very accessible.

On whether the bill is the right place for the extension of the right to buy to urban areas, as colleagues on the earlier panel mentioned, when the bill was suggested, there was no obvious other opportunity to address the issue. In that context, it seemed to fit well to allow, through the bill, communities in urban areas the same rights as communities in rural areas have had for numerous years. The bill will empower urban communities to the extent that rural communities are already empowered.

The Convener: No one else wishes to comment on that, so we move on to the policy memorandum.

Alex Fergusson: This is a scene-setting question that I also put to the previous panel. Last June, the convener of the Parliament’s Local Government and Regeneration Committee wrote to the Minister for Local Government and Planning seeking clarification on the policy memorandum. In a way, he was fairly critical, as he described the policy memorandum as “little more than a superficial overview.”

There was then a bit of correspondence and a bit more detail was provided.

My question is very simple. Given that the policy memorandum devotes fewer than three pages to the whole of part 4 and at one point summarises 20 sections in, I think, seven bullet points, does it contain enough content and detail to explain satisfactorily the policy choices and the purpose and aims of the bill? I was particularly taken by a comment from a previous panellist, who said that someone might think that they understand the policy memorandum, but when they pick at it and try to drill down into it, they suddenly discover that
it has a different meaning. Does anybody have any comment on that?

11:45

**Professor Alan Miller (Scottish Human Rights Commission):** The Scottish Human Rights Commission has had limited and modest engagement with this whole area—I sat in on the previous session to educate myself. I have no doubt that others have much more experience of, and insight into, a lot of the issues.

On the broader policy setting and the landscape, having listened to the previous panel I am struck by how narrowly framed the debate has been. I am a little embarrassed that the way in which human rights has been interpreted is contributing to there being quite narrow parameters around debate about land reform and community empowerment. I will just make a couple of points about the perception of human rights and its relevance to the committee’s consideration of the bill, because I am sure that others have more value to add.

The language that is being used—I heard the term “absolute right to buy” being used again this morning—is very unhelpful, although I understand why people are using it. The European convention on human rights is not understood as providing a framework in which the legitimate rights of landowners and the public interest are reconciled and a balance is struck, with compensation being paid to the landowner if necessary. The right to buy is a qualified right: there has to be a competing public interest to override the right to peaceful enjoyment by the person who owns the land. Therefore, language such as “right to buy” or “absolute right” polarises the debate in an unhelpful way and does not reflect a clear understanding of what the ECHR contributes to the debate.

The bigger frustration that I have with the policy framework is this: human rights does not begin and end at the European Court of Human Rights in Strasbourg; there is a much broader framework of international human rights that are relevant to the Government and the Parliament, but which are largely invisible.

The Scotland Act 1998 calls on the Scottish ministers to observe and implement international obligations, of which one—but only one—is the International Covenant on Economic, Social and Cultural Rights, which places a duty on the Scottish ministers to use the maximum available resources to ensure progressive realisation of the right to housing, employment, food and so on—that is, it sees land as a national asset, which is to be used for the progressive realisation of what we might call sustainable development.

Therefore, what human rights provides is a broader impetus for land reform, rather than an inhibition, as is suggested in the way that the issue is currently couched—that is, in questions about whether a landowner has a red card that can be used with reference to the ECHR to stifle discussion about different use of the land. That is what is missing from the policy framework.

Another thing that I find striking is that next year—this will become real for Scotland the year after—we will have sustainable development goals at United Nations level, and all member states will be required to develop national plans. That will come to Scotland in due course. If we look at the bigger picture, having a proactive plan for using the national asset and resource of land to achieve sustainable development is where things will be in two or three years.

We are not currently benefiting from that broader framework, and as a result the debate is suffering from being quite confined and narrow. It might be that the forthcoming legislation on land reform will begin to address the issue. I certainly hope so. Currently, the way in which human rights has been perceived has narrowed the parameters of the debate and somewhat robbed us of the benefits of the wider framework.

If human rights is seen in the wider context that I have set out, there will be a realisation that it drives us not towards courts and lawyers but towards having an environment in which there is more constructive dialogue between landowners and communities, because landowners will know that there is a legal framework to which communities will have recourse as a last resort, if that is in the public interest.

It will also lead to more responsible use of land, whether by existing landowners or by the public and communities, if they take ownership of the land. I think that we are being deprived of the full benefits of an informed human rights framework by the somewhat narrowly framed bill and debate.

**Michael Russell:** That is exceptionally interesting, but if we are going to move from what is a somewhat archaic and old-fashioned view of the individual rights of land ownership to a much more informed and illuminated view of the interrelationship between land, the rights of those who live there and the responsibilities of positive use, how do we construct a dialogue that allows us to do that?

Legislation can sometimes get in the way of having the types of debate that we are having, but there is a commitment—I think correctly—to a series of legislative actions that will take us from here to a better place. What can we do that will allow the process to be more productive and more helpful to everybody involved, and to have an
outcome in which there is a possibility of reconciling the different points of view, for positive change in development? That seems to me to be the human rights challenge. You have experience of that type of dialogue elsewhere. How do we establish it?

**Professor Miller:** Where we start from is important. The bill and, to go back to Alex Fergusson’s question, the policy memorandum have made it difficult at this stage to embrace that broader view of the positive benefit of seeing how human rights plays out in these dimensions. In so far as it does play into this somewhat narrow field, I think that it is in the public interest. Human rights is in the provisions on sustainable development and how that is interpreted, applied and implemented, but it is being shoehorned in.

It may be that further legislation that looks at a broader canvas will be more appropriate. I hope the starting point of that legislation would be broader than what we have just now. It is like the person in Ireland asking for directions and being told, “Well, I wouldn’t start from where you are now, sir.”

**Michael Russell:** A famous book about Irish politics has the title “Phrases Make History Here”, which was a remark of Maffey, the UK ambassador to Ireland during the second world war. Are you going to be actively involved in the consultation on the land reform legislation, which was published yesterday, and will you make those points to the Scottish Government? It seems to me that they should be made.

**Professor Miller:** We will repeat the points on the bill that we have made to the Scottish Government; at the outset, we said to the Scottish Government that it is far too narrowly framed. If we are talking about community empowerment, we really have to understand what the community’s rights are, and we should not let the debate be polarised by the notion of an absolute right to buy, which does not exist. Communities cannot be given that. There has to be a public interest, so it is a qualified right and not an absolute right to buy.

However, we were not successful in persuading the Government to take a broader perspective. I do not know whether we will be more successful next time, but there are some quite positive indications that we might get a better reception.

**The Convener:** I think that it is correct to say that the land reform review group report in May made a big difference to how the Government is looking at the matter. I hope that you agree.

**Professor Miller:** I think that that is true. We have moved on significantly over the past year or two, and not just because of that report. Other bodies seem now to be more interested in the broader canvas than they were before, so I am quite optimistic that we are going somewhere.

**The Convener:** Okay. Nobody else wants to pick up on the points that Alex Fergusson asked about.

**Alex Fergusson:** Yes, they do.

**The Convener:** Oh. Wendy Reid does.

**Wendy Reid:** I just want to feed in our thoughts on the policy memorandum. Barring the things that have just been said, we are quite comfortable with it; it sets out quite well the policy context in relation to community empowerment, what is meant by that and the purposes of the bill. We think that it is quite ambitious.

I suppose that our question is about whether the bill enables those policy aspirations to be delivered. I guess that the statutory guidance and the detail that comes with it will determine whether we achieve what the policy memorandum claims.

We were also disappointed that the word “renewal” was dropped from the bill title, because we thought that that contextualised the bill as being about renewal and regeneration, as well as community empowerment. Community empowerment must be for a purpose: that purpose is renewal and regeneration. Although dropping “renewal” from the title did not necessarily weaken the bill, neither did it necessarily provide a useful context on community empowerment. It left people asking, “What’s that all about?”

**Dr Colleen Rowan (Glasgow and West of Scotland Forum of Housing Associations):** I echo that, and our response to the bill consultation made the same point. The bill is a missed opportunity. As far as our members are concerned and in their experience in communities, community empowerment and regeneration go hand in hand, so to separate them is to miss an opportunity.

**John Mundell (Inverclyde Council):** Any attempt to explain or contextualise the issues is a good thing. The brevity of the policy memorandum probably does not help, bearing in mind the complexity of the issues that are addressed in the bill.

One matter that has struck a chord through all the discussions—I have been at committee to discuss the bill two or three times—is that we are being asked to consult and liaise with community bodies. Obviously, they represent only a restricted number of the population. How are we to communicate or consult the wider population? Have we cracked that nut yet? Have we done enough to make people understand the bill?

I work in the community environment and try to make sure that we liaise and serve our communities in the right way. The bill is very
complex. I am not sure that we have managed to simplify the issues enough so that normal members of the public who are not, as we are, immersed in the issues can understand what the Government is trying to achieve.

**The Convener:** We will ask specific questions about that soon.

**Jim Hume:** Good morning, everyone. The financial memorandum states that the part 4 provisions would not “impose any significant additional costs on the Scottish Government.”

However, it is uncertain on the costs for urban communities and landowners. What costs might urban communities and landowners incur?

**David Cruickshank (Lambhill Stables Development Trust):** That is a deep question. I can answer it only with a broad-brush response, without going into the technical details in the bill.

The simple fact is that, in urban communities, there is not only significant deprivation but significant lack of resource. There is no point in floating the possibility of ownership without resourcing that with capital and on-going revenue. There is no magic wand that will allow deprived communities suddenly to have the confidence and experience to own and manage resources; there must be resources coming in that would make that feasible.

That can be evidenced in several different ways. First, landowners in deprived communities are not necessarily willing to hand over what they perceive as a potential asset—even though it is, in reality, probably a liability—without achieving full market value, as they perceive it. For example, Glasgow City Council has mortgaged all its redundant land to Barclays at a given market rate and will not release the land unless it achieves that value. It says that that is because it must honour its bond or promise to Barclays and cannot be released by communities unless they pay the full market value.

**Michael Russell:** I know that I am a new boy on the committee, but I find it very strange. Are you telling us that Glasgow City Council has a deal with Barclays that means that, if there is redundant land, it is incumbent on them to pay Barclays the full market value?

**David Cruickshank:** The position is not quite as cut and dried as that. There are several steps along the way, including the fact that the land is handed from Glasgow City Council to an arm’s-length external organisation called City Property, which in turn engages a private maintenance management team called Ryden, so we are dealing with a string of different pressures.

I stress that, as a representative of a community development trust, it is not a good idea for me to alienate my potential partners, so I am not going to—

**Michael Russell:** Fortunately, I have no such qualms. Is that a common arrangement across local authorities?

**John Mundell:** Not that I am aware of. Such an arrangement would, dare I say it, cause some discomfort—at least the thought of it. I would have to understand it in greater detail.
Michael Russell: The arrangement might be considered an inhibition to some of the bill’s ambitions were it to be replicated in any other places. I have had enough difficulties with Argyll and Bute Council’s attitude, which I shall discuss later. The arrangement seems odd.

John Mundell: I cannot comment because I do not know the details. It would be unfair of me to comment on the situation elsewhere. We are being charged with the responsibility of being innovative in how we deal with assets and the services that we provide, and that arrangement sounds innovative to me, although I am not so sure whether it works appropriately for the bill.

Michael Russell: Is that a non-positive definition of “innovative”? John Mundell: As I said, it would not be appropriate for me to comment on my colleagues’ ideas without more detail.

Wendy Reid: I cannot say that I know all the details, but our understanding of the arrangement is that, a number of years ago, Glasgow City Council identified several unused land assets and entered into an agreement. The council set up an ALEO and identified the land and property as being of potential use in the market. It went into a partnership agreement with a company and took out a mortgage against the value of that land and property.

The idea was that the council would get a lump sum up front and, as the company with which the ALEO went into partnership—Ryden—is a specialist land agent, the benefit from selling the assets would be maximised. In that way, the ALEO could achieve a greater value for the assets than the value that the council got from Barclays in the first place, so there would be profits on both sides.

What that means for communities is that any building or land that was identified and transferred into City Property is unavailable for communities to acquire, unless they can pay what is perceived as the market value for the land, because the council has to get that money back in order to repay the mortgage or loan that it took out against the suite of assets.

There will be nuances that we have not really understood, but that is my understanding of the principle of what happened. Some assets were identified a number of years ago; I do not know whether new assets are still being put into the portfolio. I have heard that the arrangement is being reviewed, so we cannot say where the current situation sits entirely.

The arrangement has made things extraordinarily difficult for communities in areas in which there were unused buildings such as schools that communities had an interest in acquiring. Those communities were told categorically that those buildings would not be available for asset transfer purposes because they sat within City Property.

The Convener: Maybe the news will leak out from the committee that there is considerable interest in that.

Graeme Dey: I will develop that with Wendy Reid. I understand that John Mundell is in a difficult position and does not want to comment on other local authorities, but is it Ms Reid’s experience that other local authorities in Scotland have entered into similar arrangements?

Wendy Reid: We have not come across that, to be honest. There might have been different arrangements, but there has been nothing like that and nothing that has so explicitly said that assets are outwith the council’s control.

Glasgow City Council basically said that it could not take any decisions on the future of the assets because it was no longer in full control of them. Technically, the council still owned them, as we found out, but it was extraordinarily difficult to get to the bottom of the situation, because a number of organisations and companies were involved in the arrangement. That meant that communities could not access any of the assets, which was not obvious to begin with.

It was difficult for a community to find out whether an asset that it was interested in was under the management of City Property or of Glasgow City Council. There did not appear to be an obvious place to go to for that information; registers of assets, as proposed in the bill, would have been useful in showing exactly where ownership of assets sat. Although the council technically still owned the assets, it was not in control of their disposal.

Susan Carr (Community Alliance Trust): I agree with what David Cruckshank said about development trusts trying to get on to the first rung. That is incredibly difficult without funding. I work in Craigmillar, which is five minutes along the road from here. We have a similar arrangement about who controls the land. Craigmillar has been identified as a regeneration area and the City of Edinburgh Council has set up an arm’s-length company for that regeneration. The original business plan was profit led and was meant to generate income for building new houses.

PARC Craigmillar, the regeneration company, has first call on an area, defined in the Craigmillar urban design framework by a red line that goes around most of the area, in which the buildings have been demolished or lying empty for a while. PARC has first call on the land, which precludes us from accessing it. PARC does not own it—it is
still owned by the City of Edinburgh Council—but any development there goes to PARC.

However, the original business plan did not work. When the property development sector crashed, so did the business plan. We have a development trust now because Alex Neil, when he was the communities minister, said that that might be one of the only ways in which we could influence any future decisions for Craigmillar.

We have recently taken over the lease of the White House, which used to be a notorious pub but is now a delightful art deco building that serves lovely food as a social enterprise. The point is that we want to find ways of developing and generating our ability to fund things. However, the journey that we had to make to take over that lease was unbelievable. For a small area such as Craigmillar, which has such great need, the journey was really difficult. We had to go through all the tendering and legals that an ordinary developer with loads of money would have to go through.

I would like to see whether there is an alternative to communities having the right to buy. Buying is such a far-off dream—we will never have that ability, unless funding is made available. We might have the aspiration, but we will never have the ability to buy. However, there are loads of opportunities for us to have the right to occupy buildings that are lying empty, such as buildings that contribute to an area in Craigmillar that will supposedly be our new town centre. At the moment, that is mostly derelict land, with some shopfronts that are lying empty.

A part of the shopfront—quite a sizeable building—is owned by the city council, which hopes to let it at an affordable price for developers. It is not affordable, however. For a community group, a price of £90,000 for a property that needs a lot of work is unattainable. I suspect that most people will not want to look at the building anyway. It is lying there and is contributing to the decay and the current situation in Craigmillar. People walk through it or pass it, but they do not look at it, and it is never open. It looks a disgrace. We could find a use for the premises, but we could not find £90,000 to fund it.

The Convener: The discussion about local government taxation and the way in which gap sites and neglected sites are taxed might well force some changes. However, that is up to another body, not this one.

Professor Miller: I am interested in the Glasgow City Council arrangement, which could be instructive. We would all need to know more information to understand the significance of the matter. I certainly understand John Mundell’s inhibition from being critical of fellow local authorities.

I am in a different position, but I have a lot of sympathy for local authorities. The issue that we have discussed resonates with other examples where authorities find themselves between a rock and a hard place. If it is local authorities’ view that the determinant decision-making criterion is best value, that makes it difficult for them to make decisions that serve a broader public purpose of sustainable development or whatever. That is not dissimilar to the procurement regime, where local authorities feel quite inhibited. If they are putting out to tender services that impact on the quality of lives of individuals and communities, and if best value is perceived as the primary way in which they are accountable, that often frustrates what they would otherwise like to do. We come back to this body—the Parliament—and to the Government to ensure that local authorities do not feel that they have to enter into agreements that do not serve the public interest.

Wendy Reid: Before I return to the initial question about financial implications, I will talk about best value. Our understanding is that best value is not necessarily about achieving best financial value. Other aspects make up best value and other considerations can be taken into account.

Achieving best value does not always mean getting the highest financial return on the disposal of an asset. We have always understood that to be the case, but whether that is taken into account in a lot of cases is another matter, given that local authorities are increasingly experiencing financial difficulty. We can see why best value is often seen as meaning the best financial return.

It is—partly—hard to tell what the bill’s other financial implications will be. They will all be demand driven, as I am sure the committee has heard before. One question from an urban context is to do with the fact that, at the moment, rural communities can access the land fund to get help with acquiring assets. Will that land fund be expanded to cover urban areas as well as rural areas? I know that the land fund’s value is going up, but will the criteria under which communities are eligible change?

12:15

Another point is that there is a difference between the financial implications of providing enough support and advice to organisations and those of enabling them to acquire the resources to purchase assets. Some things that are in place should not change. For instance, the Government is supporting the community ownership support service, which supports any community organisation that is looking to acquire an asset, whether in an urban or a rural context.
Some things are in place, but it is difficult to know how much extra business there will be from the changes as a result of the bill and to know what the financial implications will be. Evidence suggests that the bill will not necessarily lead immediately to a massive increase in the number of assets that go into community ownership. Within the first few years, the bill is more likely to lay down a marker than to lead to significant increases in property transfers.

**Michael Russell:** I will tease out the issue of best value, because it also relates to the topic of abandoned and derelict land, which we will come on to. Undoubtedly, councils will have bought some land and property for a development or whatever, and nobody would expect them to dispose of such assets at a loss. However, councils own substantial assets that they did not have to pay for because they were inherited for a variety of reasons from a variety of people. There needs to be a definition of types of land—it will be interesting to see whether we can arrive at such a definition—and the costs to local authorities. There is a legislative opportunity for local authorities to dispense with assets not for best value if there is another definition, and community interest is such a definition.

Have councils the will to do that? I am not asking John Mundell to speak for every council in Scotland, but do local authorities have the will to encourage the transfer of assets to communities? How can that be done with the wasting assets that Susan Carr referred to? It costs a local authority money to maintain and guard such property, to ensure that it does not deteriorate, but local authorities are generally not doing that, so the assets are deteriorating.

I do not want to disagree with Alan Miller—I rarely do so—but the issue is much more complicated than just saying that a council must look after such assets. There are council properties that have not been purchased and which are often not well looked after. There is a great opportunity for communities to make more of such property and benefit from it, which would also benefit the local authority area. Do local authorities have the stomach for that or is it too complex or difficult for them?

**The Convener:** David Cruickshank and Colleen Rowan can respond first.

**David Cruickshank:** As the question was to local authorities, it would perhaps be fair to let John Mundell respond. My point is about the resource that is available to achieve overall sustainable development and about moving away from the strict definition of value being price. I will hold back and let John Mundell respond to Mr Russell.

**The Convener:** Okay—maybe we should do it that way round. Does Colleen Rowan feel the same?

**Dr Rowan:** Yes.

**The Convener:** Right—I call John Mundell.

**John Mundell:** Thank you. I am glad that the point has been well made that best value is about more than just money. However, to my mind the issue is balance. For example, if we have an asset that is worth £1 million and has been acquired by whatever means—common good, inheritance or whatever—members will appreciate that elements of the community would challenge a council if it was to release that property for, say, £50,000 in order to have a significant community benefit. That decision would have to go through the political decision-making process and there would have to be a robust argument for it.

On whether councils have the stomach to transfer assets to communities, I can speak for my council—that is why I am here, as far as I am concerned—in saying that we absolutely do have the stomach for that. We are heavily involved in working with community groups and so on to help them to build capacity and have the required skills. We do the hand holding to help them to acquire assets.

Mr Russell made an important point when he referred to wasting assets or assets that have failed. As chief executive of Inverclyde Council, I am concerned that quite often in these austere times we look to transfer assets that perhaps have failed. Why are they failing? Because the community does not see the asset as a huge benefit. Perhaps the community has neither the capacity nor the interest to deal with the asset.

We had an asset in Port Glasgow that worked very well for quite a long time and was a valuable asset in the community. However, the people involved in running it moved on or chose not to continue. The funder of last resort, which is the council, was then asked what it would do about the asset. That asset had, in essence, been transferred, but the facility that had been operating has now been shut. What are we to do in such scenarios?

David Cruickshank made an important point about development trusts, which play a key role in communities. Inverclyde Community Development Trust is an important partner in Inverclyde and has a big part to play. I have sympathy with development trusts that are trying to access cash, and we have to take on board the point that David Cruickshank made about the capital cost, the ongoing revenues and the whole-life costs of a property. What is important is not just the property as a physical asset but supporting the services that are provided in a facility. In the current
climate, it is difficult to achieve that balancing act, as cash is getting tighter and tighter.

Without appropriate funds being made available, councils do not have the money at the moment. We have heard about bureaucracy and about the legal processes that we have to go through for procurement and best value, but those are just a couple of examples. There is a huge amount to consider. I have to employ a team of lawyers to ensure that I go through the process and that I reduce the risk for our council and, more important, for our community. I do that to ensure that our council is run appropriately, as my peers do up and down the country. There is a lot to take into account and it is very complicated.

Graeme Dey: I have an observation. We are focusing on local authorities, which was inevitable after David Cruickshanks's comment, but I suspect that we could also be talking about the national health service, as we see a move away from old, traditional hospital buildings and towards centralisation or building new facilities. Perhaps Police Scotland will also find itself in the same situation as it closes small or old police stations. It is not just local authorities that we are dealing with.

John Mundell: My council's headquarters are in a building that was built in the mid-1800s. I always find it amusing when we are told to bring all our services together, because that building was the police headquarters and is now the Strathclyde Fire and Rescue Service museum, as well as having been the council headquarters and the court for places as far afield as Eaglesham and Govan. We moved away from that—we unpicked it, but now we are trying to bring it all back together again. Obviously, things go in cycles.

We integrated health and social care back in 2010, before the latest initiative, but there is still more to do to implement the changes that are due under the impending legislation. We are already looking at jointly procuring general practitioner practices and trying to get rid of bed blocking in local hospitals, and we are much more joined up now, which is a positive thing: we can reduce the property portfolios of each of the agencies involved and make our operations much more efficient through cohabitation within facilities. There is a long way to go yet, but that might release some of the cash that we need to help communities.

The Convener: I see that David Cruickshank, Colleen Rowan and Wendy Reid all want to comment. We have quite a lot of the detail in part 4 to deal with, so please keep your remarks as brief as possible.

David Cruickshank: I agree with the observation that there is more to community empowerment than local authorities. The NHS, Scottish Water and a whole range of public agencies are in the same boat. I do not know what questions are yet to come, but I would like to make a point that I hope will be explored in further questions. There are other ways of deploying existing resources that will make it possible for communities to become empowered economically, environmentally and socially. Sustainable development—the triple bottom line, if you like—is the key to the resolution of some of those issues. I shall leave it at that for the time being.

The Convener: We will indeed deal with some of those issues.

Dr Rowan: I return to the Glasgow context. From our members' perspective, the picture is mixed. Some of our members work well with Glasgow City Council and have taken over properties in their communities. We also work a lot with other third sector organisations in the city, and again the picture is mixed.

To return to Susan Carr's point about the right to occupy, sometimes the ALEOs work well with local organisations and sometimes they do not. We hear stories all the time about organisations being asked to take on prohibitive leases that they cannot afford and to take over on-going repairs and general maintenance. Those are obstacles and barriers. We work closely with community development trusts, which John Mundell talked about, but the general community anchors are the key mechanism that connects a lot of the activity around what the council is doing and what communities want. We made that point in our submission.

Wendy Reid: I have a very brief comment about other public sector assets. There is a reason why there has been less movement of other public sector assets into community ownership. According to the Scottish public finance manual, those other public sector bodies have to get the best financial return from assets, whereas local authorities have a bit of dispensation, in that they can dispose of assets at less than market value under the Disposal of Land by Local Authorities (Scotland) Regulations 2010. Communities are very interested in other assets, but up until now, it has been easier to negotiate transfers of local authority assets, because of that flexibility for local authorities to dispose of land at less than best consideration. It would be interesting to see whether the Scottish public finance manual will be reviewed to allow other public sector bodies the same flexibility.

Jim Hume: This is more of a comment than a question. We have opened up a can of worms, to put it mildly. We have heard that there is a mixed picture of how different public bodies interpret best value. I am sure that we will want to explore
further whether that is just a Glasgow situation or whether the picture is similar across other local authorities in relation to how they and other public bodies interpret best value and whether it is interpreted purely as best value in financial accounting terms or as best value for the community.

I think we can move on now, convener.

The Convener: We can indeed.

Angus MacDonald: Just before we move on, I want to pick up Colleen Rowan’s point. I agree that not all ALEOs benefit the local communities that they are supposed to represent.

I will stick with the financial memorandum temporarily. If demand on the Scottish land fund grows following the extension of the community right to buy to urban Scotland, which public bodies are likely to be most affected? Do those public bodies have the expertise and support to advise urban communities? What costs do you envisage those bodies having to bear?

David Cruickshank: I refer you to the Development Trusts Association Scotland, of which we are a member—I am also a board member—which was set up specifically to deal with such issues. I will leave Wendy Reid to specify more exactly the role that development trusts can play.

On the ability to resource and sustain community initiatives—presumably we are talking about community empowerment and renewal in the context of land reform—one opportunity that is opening up will open up another can of worms, particularly in deprived communities where people are dependent on benefits that are currently administered through the Department for Work and Pensions. Presumably, that resource could be redeployed in a way that could serve as a foundation for employment opportunities for people in those communities, which could be built on in such a way that people were not afraid of losing their basic human rights in terms of housing, money for food and so on. There is an opportunity in cultivating communities, which is about renewal, regeneration and using that resource far more positively than it is used currently.

The Convener: That is an interesting point.

Wendy Reid: The question about which public sector bodies are likely to be affected is a hard one. Looking at the experience so far of rural communities acquiring assets by utilising the right to buy—or even acquiring assets but not using the right to buy—you can see that the main difference between the support that rural communities and urban communities can access is that rural communities in the Highlands and Islands area can access support and extra resource from HIE, whereas urban communities outside that area struggle to find a similar avenue of support.

12:30

There are various bits and pieces of support available to communities all over Scotland—people will say, "You could get this or you could get that." However, on the additional finances that are required to support urban communities, we need something akin to the level and detail of support that rural communities are able to acquire through HIE, particularly for aspects such as business planning, and the additional finances that HIE can give asset acquisition projects. Urban communities in particular are not able to access that support at the minute.

Angus MacDonald: As we have heard from a number of contributors today, finance is an issue. Are you aware of any funding schemes that are available to urban communities? What additional support is likely to be required to meet the anticipated increase in applications?

Wendy Reid: We could never put a figure on that. However, all communities are able to access Big Lottery Fund money if they are looking to acquire an asset. Although that funding is available now, the programmes are up for review and we do not know whether there will still be a growing community assets fund this time next year. We would all be surprised if on-going lottery funds did not contain some strand of funding that enabled communities to acquire, develop and manage assets, but no one knows what that will look like and what sums will be available.

Urban communities are not able to access LEADER funding, which is for rural communities, and they have less opportunity to acquire money specifically for asset acquisition than rural communities have. If the Scottish land fund is to be broadened to enable urban communities to utilise it, that will answer part of the question. I am not sure whether that will happen; there may have been a statement about it that I am unaware of. Sometimes local authorities have bits of money that communities can acquire, but there is nothing specifically for urban communities that rural communities cannot access, whereas the opposite is true at the moment.

The Convener: The reintroduction of rates—or the removal of the non-domestic rates exemption—for shooting estates is being discussed. We are looking to top up the land fund from that.

Wendy Reid: The question is whether urban communities will be able to apply to the land fund. Up until now, the fund has been, by definition,
something for rural communities, not urban communities.

**The Convener:** We will check that out.

**Susan Carr:** To apply for Big Lottery funding, a community has to have in place a lease of at least 25 years, and to negotiate the lease the community needs funding to get the support of lawyers. It is a chicken-and-egg problem.

Our community, Craigmillar, is a deprived community. For years and years, people have made decisions for us—they still do. People need to be supported to make decisions for themselves. Frankly, the idea of taking on a 25-year lease and finding the funding to do that is a bit overwhelming for some communities, which do not know where to start. Until they are given a first step up the ladder, it will be very difficult for people in deprived areas to accept that they have the ability to do that.

I hear about capacity building all the time, but quite frankly this is not about building capacity; it is about releasing it. That is what really needs to happen. The capacity is there; it is just not released. There are too many barriers for people to get past.

**The Convener:** Thank you.

We move on to the nature of land.

**Cara Hilton:** Good afternoon, panel. I am keen to hear more about how the community right to buy will empower and make a real difference to communities in urban areas. How will that help community confidence, cohesion and sustainability?

Susan Carr and Wendy Reid have already talked about the funding challenges that urban communities face, but are there any other issues that particularly affect urban communities? Do you foresee any practical problems? How likely are community bodies in urban areas to use the new right to register interest in land that is already subject to a development proposal as a way of blocking development? Do you agree that one of the unintended consequences of the bill could be an increase in inequalities between communities?

I am sorry that that was rather long.

**The Convener:** That is all right.

**John Mundell:** There are significant inequalities in our communities already. There are impoverished areas, and I see it as a primary part of my job to ensure that we try to balance the scales for people who are the most disadvantaged.

There are positives in the bill, but there are technical changes that need to be made to help us address inequalities—I have included them in my written submission. Such things need to be taken on board.

Up in Kilmalcolm, which is one of the most well-heeled areas in Scotland and lies within the Inverclyde Council area, capacity was released—I take on board the point that has been made about that—and the skills in the community were there already, so the level of intervention that the council had to make was limited. Yes, we went through a whole process and, yes, there were power struggles in the community group, but things have settled down and the project has been highly successful. It involved an asset that the council had not managed to continue, but an investment has been made through a cocktail of funding and a bid process, and it has been highly successful.

However, in other areas, where people are more disadvantaged—I recognise that there is a lot of enthusiasm and pride in such communities—more support is needed, because the skills do not necessarily exist in the local area and a greater level of intervention by councils is required.

Anything in the bill that helps us to tackle such issues is positive. However, as I have said, there are various technical issues that need to be addressed. I have pointed those out in my written submission and I would like to see them dealt with.

**Susan Carr:** I want to go back to sustainability. One of the problems in deprived areas is that we are often subject to someone’s great idea of what will solve our problems—those ideas very rarely come from people within the community. We have a long history in Craigmillar of someone having a brilliant idea, coming along and setting up a project that has a certain lifespan and then the funding is removed, so we start all over again.

Community engagement is crucial. In an area such as Craigmillar, people have been consulted to death. They could tell the Parliament about consultation. However, very little of what is said during a consultation is put into realising people's aspirations. It nearly always gets twisted. It is like the funding that we can apply for: we have to apply for the funding that people are prepared to give us for the activities that they want us to do. I would argue that if we empowered people to come up with their own ideas for solutions, we would have a much better, sustainable future for the community.

In Craigmillar, more than half the houses have been demolished but because the prices have dropped for house building, no developer is prepared to go in there. Where we once had a community of almost 25,000 people, we now have a community of about 7,000 or 8,000—at one point it went down to 5,000. The problem is that the opportunity for people to have a say is being reduced because the community is now dismissed.
as being too small to be able to reflect what the area needs. However, people will be there long after the regeneration process is completed.

There is a need to consider how we can empower people to have a say in what is needed in their own area. The committee may be surprised to find that that often concurs with what the local authority wants; it is just a different way of doing it. People want new housing, good facilities and equality in life. It is not rocket science. Nobody wants dog fouling and litter, but they are consequences, perhaps of bad design and the fact that during the consultation process no one listened to people telling the local authority about what would work in their area.

There is an issue around allowing people in deprived areas the funding and the time that it takes to take on issues themselves.

Dr Rowan: I feel that I need to come in here to say that our members’ model of community-based housing associations is predicated on local people leading and making decisions at the micro, neighbourhood level about what is needed in their own communities. I am certainly not suggesting that community-controlled housing associations are a universal panacea or a silver bullet that will solve all the problems. In fact, most of our members operate in deprived communities, and the inequalities—the health and socioeconomic inequalities—between those neighbourhoods and the rest of Scotland have grown. However, by releasing or tapping into what is already on the ground, our model works.

Most of our members are celebrating their 40th year this year—some on the peripheral estates have been around for 25 years—and it amazes us that their work is not lauded and put out there as an example of the resource that is already in communities and which could be tapped into. We have just put out a new publication, “Community Controlled Housing Associations—Still Transforming Local Communities”. We are willing to talk to councils and health boards about health and social care integration, because that offers our members and local people opportunities to be involved in those big decisions and processes as we go forward.

Claudia Beamish: To move the discussion forward, I would like to delve as deeply and as broadly as we can into the meaning of “community”, which is complex and difficult and which relates to place and interest. I will not go back to section 34 of the 2003 act, because what the committee would value is the panel’s perceptions, experience and knowledge of where they think the Community Empowerment (Scotland) Bill should be going. I would like to address the comments that have already been made about SCIOs in the context of the bill, as well as comments about bencoms and the issues with the complexities of geographical definitions and postcodes in an urban context, and also methods of defining communities of interest such as arts organisations, charities, ethnic groups and communities more broadly—the list is as never-ending as one’s imagination, but there are also challenging issues around finding land to grow things on, as allotments societies and community councils know.

I am putting all that on the table and asking whether our panel can give any thoughts about whether definitions have to relate to specific legal entities or whether there might be other ways of defining community that would be helpful in taking forward the regeneration issues that we have been discussing.

The Convener: Who wants to start?

John Mundell: That is a very challenging question. In the simplest terms, the meaning of community is about people who live together and the relationships that exist between people in that community—how they interact and live in the area and how they make their environment habitable and pleasant for all who are there.

I cannot remember all the parts of your question, but I would like to comment on SCIOs. The bill says that a SCIO must not have “fewer than 20 members”. That is particularly restrictive. We have a couple of SCIOs that are working very well, one of which has eight members and the other has 10. Are we now saying that, even though we know what the SCIO wants to achieve and we are doing everything that we can to support it, because someone in an ivory tower has said that the SCIO must have 20 members, it cannot continue? It does not have 20 members, but it is an active and progressive community and wants to make things happen, but it cannot, because it is barred. That issue needs to be addressed. Does the bill have to be prescriptive about having a minimum of 20 members on a SCIO?

12:45

Claudia Beamish: That is in the 2003 act, as I understand it. Looking forward, we are listening to your comments.

John Mundell: Well, this is an opportunity to change it.

Wendy Reid: There are many aspects to your question.

We have always looked at community in the same way that John Mundell does. We come at this from a community-led regeneration perspective and we are interested in people who live in a place being proactive together to make
positive change to that place. Our definition has always come from a geographical perspective. It is about community of place, rather than community of interest. I am not really able to comment on the community of interest side, because that is not something that we have ever got involved with.

If we are talking about community ownership, the whole thing about having a broad membership is that, whatever structure you put in place for a community-led organisation, the democratic control of that organisation is important in terms of being able to say that that organisation is accountable to the wider community through its membership. That is why we have always advocated that community anchor organisations, whether they are development trusts or not—not all anchor organisations are—should have as broad a membership as possible, because it is that membership that reflects the views of the wider community to the organisation, which then acts on their behalf.

There are a number of ways to do that: through a company limited by guarantee; through a SCIO structure; and through a community benefits society. In all those structures, the values of democratic accountability, membership and voting are represented. The other thing about being community led, from our point of view, is that the members should be able to get elected on to the governing body of the organisation, so that there is true ownership of the organisation from within the community. As I say, that can be achieved through a number of different structures.

We have always argued that decisions should not be made in legislation about one structure being better than another, because there are several factors that will influence which structure a community thinks is most appropriate for the things that it wants to achieve. For example, the reason that people may choose a community benefit society is that they may want to go down the route of raising finance through a community share issue. The only way that can be done is if the organisation is set up as a community benefit society. However, the membership of a community benefit society can be as broad as the membership of a company limited by guarantee or a SCIO.

As long as the values are built into the structure, which can be done, we do not think that the structure should be the limiting factor. It must be the structure that works best for the things that the community wants to achieve.

The Convener: It was suggested last week that new structures are being invented all the time and therefore there should be a broader definition of what the structure should embrace. Do you agree?

Wendy Reid: I think so. We can set out the values that we want the structure to adhere to and the principles to which it should operate and then see how that translates into several different structures. People often ask us what a development trust is and we say that it is not a physical thing but a way of working and a concept that demonstrates a certain set of values and approaches to how you are going to achieve the end result.

Communities are often ahead of the curve. The things that they want to do, and the aspirations that they have and the creative ways that they are thinking about how they can achieve their aims and objectives, are often limited by the legal structures that are available to them.

Having a degree of flexibility is really helpful, although my understanding is that that is there in the bill, because it says that any other structure that may come along could be added at a later stage. We would not like anything that currently exists to be excluded, but we would also want flexibility to add new structures in the future.

The Convener: John Mundell has to leave us at 1 o’clock and I wanted to bring him in on another matter.

Claudia Beamish: I do not need to come back to the panel, I am just interested in hearing their views.

The Convener: Let us hear from Susan Carr and then David Cruickshank. I want to put a question to John Mundell after that.

Susan Carr: Claudia Beamish’s question was very complex. My experience has been that communities define themselves and they evolve. They become almost redundant. Our community development trust came from an umbrella organisation that we set up for neighbourhood associations across the greater Craigmillar area. We first set up neighbourhood associations instead of tenants and residents groups because we believed that people identify themselves by where they live, not by who owns their house. We decided that we needed to bring those together, so we set up an umbrella organisation, called the community regeneration forum, which became much more strategic in its approach. We then discovered, when we met Alex Neil, that we really needed a community development trust. All that evolved over time.

It takes time for people to buy into these things. When we first spoke about a community development trust people just did not get it, because it was a new concept. You can get people to buy into these things only if they succeed. We had to get a few things under our belt before we got to the point at which people wanted to join. We started off with maybe 100
people wanting to join, but now our memorandum and articles of association say that every person who lives in our defined area is a member, so every person has the opportunity to have a say on how we are governed. It is something that evolves.

David Cruickshank: I will give a practical answer to the question of how you define a community. The Big Lottery Fund wants you to define yourself when you apply for growing community assets funding, and the only solution that we found was to use the community planning partnership definition: in our case, we used Maryhill, Kelvin and Canal community planning partnership. The community was so nebulous and there were so many different communities in that interest group that it was difficult to define. It is very difficult to define a community scientifically, but you have to come up with some answer.

That leads to the whole issue of community planning partnerships, which we are not going to go into now—convener, I can see you saying, “Help!” In theory—although not in working practice—that is a significant area, and it needs a thorough overhaul and fresh input.

The other point to make is that there can be an inherent assumption that community is always a positive thing. It is not necessarily. You get communities of drug culture and communities of fear of asylum seekers. You get communities of all kind of territorial negativity at gang level, in which young men from one side of the street are prepared to kill people from the other side of the street, because they see that they have a territorial imperative to make their name by standing up for their side of the street.

There are communities that need intervention, but that raises a whole other issue. That is my tuppencworth at this stage.

The Convener: Before we ask a couple of questions on procedures and requirements, I want to touch on definitions of “abandoned” and “neglected” land before John Mundell has to leave us in a few minutes, because the issue is particularly interesting from a local government perspective.

Dave Thompson: Good afternoon, panel. I would appreciate your views on the definition—or lack of one—of “abandoned or neglected land” and the fact that, unlike the crofting legislation, under which crofters who want to purchase land just have to show that the purchase would be in the public interest and would be for the good of sustainable development, the bill has an additional “abandoned or neglected” test.

There is another test on top of that. It has to be shown that “if the owner of the land were to remain as its owner, that ownership would be inconsistent with furthering the achievement of sustainable development in relation to the land”.

Do you agree with me that those tests, taken together—we have heard evidence on this before—would make it almost impossible for a community in an urban setting to purchase the land that it wished to sustainably develop?

Susan Carr: Craigmillar is a very deprived area and we have always been quite frightened by the fact that there is a lot of derelict land because there was so much demolition. The owner of the land is the local authority and, because we are based in Edinburgh, it would be nigh on impossible for us to come up with funding that would meet the local authority’s requirements for best value, so we are going right back to a situation where it comes down to funding.

I do not know about other local authorities but, in Edinburgh, land has such a high value—even if it is not as high as it might be at the moment—that people will not release it. We have been strong in our desire to make sure that none of the land is bought and land banked. In some respects, the fact that we have a regeneration company that has that red line has probably prevented land banking from happening, which is quite important.

How you would define the land very much depends on where it is. However, we can certainly identify buildings and so on that are just going to lie there until somebody thinks that there is enough value in the price to change things. I do not think that in bigger authorities such as Edinburgh we are ever going to be able to aspire to purchasing that land.

John Mundell: This is a very difficult issue. We have been spending tens of millions of pounds on regenerating our area, as most councils do anyway, and we have been transforming our area. I will give you an example of the difficulties involved. There is one site that is owned by an absent owner who is, I think, from the south of England. In fact, my most recent understanding is that he may well have passed on— I might be wrong on that.

Under the circumstances, there are all sorts of issues associated with that site. Strategically, from a planning perspective and from a regeneration perspective, it is a fantastic location. It is a site that the council and our community planning partners believe would be a benefit for the area. However, even with all the power and expertise that we and our partners have at our disposal, it is nigh on impossible to move that site on, so the site is blocked. That is the situation for us as a council.

I use that as an example and, in my mind’s eye, I try to put myself in the shoes of a community
group that wants to access a particular site—we are talking about abandoned or derelict land. Obviously, Inverclyde, south of the Clyde, was a major shipbuilding area in the past. We have developed a lot of the riverside already and we still have a way to go. However, some of that land might look great but is heavily contaminated with heavy metals and all sorts of chemicals and pollution, and it costs millions of pounds to decontaminate sites and make them developable. There are all those abnormal costs for those sites—it is a high-risk issue.

I doubt very much that that issue exists in Susan Carr’s area to the same degree. Obviously, the sites in Craigmillar were predominantly housing and there is a lot of open space now where the sites have been cleared. However, there will still be an element of contamination. Bearing in mind when they were built, those houses could have had asbestos in them and all the rest of it. That is what can make the cost of developing those sites so prohibitive.

We have to be very careful about what we do. It comes back to the money again. It is about proper assessment of the sites, options appraisals, and coming up with the sources of funds. Who is going to pay? From our point of view, there is the land that is owned by us and the land that is owned by Peel Holdings or Clydeport, where we are in partnership with them through our urban regeneration company. From a professional point of view, the money involved for some of those derelict areas is mind blowing.

That said, trying to develop brownfield sites in urban areas is absolutely the right thing to do, because they are a blight. There is no doubt about that. They have to be brought into effective use for the community and for the urban areas in which they exist.

13:00

The Convener: Mike Russell has a supplementary. Perhaps it is for John Mundell.

Michael Russell: It is. It is always possible to find reasons not to do things. I understand the contamination question and such things, but let us take other examples of buildings. Local authorities will hold and own a substantial number of buildings, many of which they will attempt to sell but face difficulty in so doing because of the state of the market or the nature of the building. The authority will be spending substantial sums on making those buildings wind and watertight, which is often not possible to do properly, and secure.

Where does the balance lie in ensuring that buildings that the council does not want and which it cannot sell over a period of time can be utilised by communities for their own purposes? What active work is done on that? Sometimes it seems to me—certainly from my own local experience—that the council’s attitude is that the only difference between it and a property developer with a land bank is that it is just not very good at it. The council leaves stuff in a bad state that constantly gets worse, and the building is eventually bulldozed.

John Mundell: In Inverclyde, we have replaced every secondary school, and I know that other councils are doing the same kind of thing. We have completely rationalised our schools estate over the past seven or eight years. We still have a way to go but, nonetheless, that leaves a number of rationalised properties or properties that are no longer in current use.

The funding model for our schools is quite complex. Inverclyde has done the majority of that itself through reducing the number of schools and getting better numbers in schools, for example. Part of the funding model is the capital receipts that we were due to get when we first set up our schools estate management plan away back prior to the recession. We have factored in the values that were available at that time for the sale of those assets, which are no longer available. We took a conscious decision as a council—at least, the members took the decision, obviously—to say, “Right, we’re going to stop selling those assets at the moment until the market gets back up to an appropriate level, but we need that cash to service our funding model.” That was all part of the business plan for the schools estate.

Michael Russell: What if you never get the cash? That regularly happens.

John Mundell: I will come on to the issues.

I absolutely agree that there are appropriate types of assets that we could transfer. I say that the assets should be “appropriate” because, if they are a burden to the council in keeping them wind and watertight, they will be a burden to a community group. Who will provide the funding?

That goes back to what I said. It is the old drum that we all beat. There is not enough money. I know that there is more that goes beyond that but, nonetheless, if there is a wasting asset that is in poor condition and we believe that we must come up with a reduced footprint over our whole estate to provide services—in other words, we must bring its size in and operate from fewer buildings in a more efficient way—the most inefficient part is left.

If I am genuinely trying to help communities and community groups, I will not be comfortable transferring assets that are a burden. I would rather come up with a way of helping a community group or community groups to come up with a new asset. Perhaps we can raze the building to the ground and use the land that is available—if the
building is an old primary school, it will be right in the heart of a community anyway. If the group is going to exist for 40 or 50 years or longer than that, it is appropriate that it, too, should have modern and efficient assets to operate from.

Michael Russell: There are many circumstances in which communities will want to have those assets. They will believe that they have viable plans for them, and they may be assisted by bodies from which you cannot get assistance. For example, in the Highlands and Islands, HIE may assist communities to develop and take forward assets that the council could not get money for. In those circumstances, might the council facilitate communities developing their strength and ability to regenerate themselves, rather than simply judging them with the criteria that it uses and saying, “We don’t think you’re up to this, so we’ll just demolish the building”?

John Mundell: You have perhaps misunderstood what I said earlier. We are proactively involved with community groups now. I mentioned a couple of SCIOs, for example. We are working very closely with them. Officers go to regular meetings in the evenings to try to develop plans and, indeed, to help people to come up with appropriate funding plans. We are well advanced in building a new facility in Inverkip; it is going through the planning stage and there are one or two issues with it at the moment. We do that anyway; it is not new. If we can get another organisation involved—or if Highlands and Islands Enterprise can cast its net wider and it is called by a different name—that is fair enough.

However, it comes down to the funding, predominantly, and the will—the political will and the will of people like me to make sure that we understand that we are here to serve the people out there and to help them to get the right answer.

Graeme Dey: Before John Mundell has to go, I have a brief supplementary to help us to get a feel for the issue.

In the evidence that we have taken previously, we have looked at the issue of not being able to identify who the landowner is. Perhaps you can help us to understand that issue in an urban context, given your experience as chief executive of a council. If we consider blight sites in your area, to what extent would there be an issue in identifying who owns them?

John Mundell: There are other areas that we are being consulted on in terms of the land register and so on. The philosophy behind completing the land register is absolutely bang on the button, but the aspiration to get it done within a five-year timeframe is overly optimistic; I think that it will take about 10 years. It is not a priority for us at the moment, given everything else that we are wrestling with, but it is absolutely the right thing to do. If we complete the register so that we know who owns all the bits of land across the whole of Scotland, that will make life an awful lot easier.

I include common good in that as well. There are areas in which there are shades of grey and it takes time to wrestle with the legal issues, including the transferring of assets to community groups, which is what we are here to talk about. That makes it quite difficult. The completion of the land register is a great thing to do—my professional association, the Society of Local Authority Chief Executives and Senior Managers, certainly believes that it is a great thing to do—but the timing is not on our side and the resources to deal with it are not available at the moment.

Graeme Dey: To be clear, if the provisions in the bill were introduced right now, do you anticipate that there would be substantial issues in identifying the ownership of some of the sites that people might want to take over?

John Mundell: Yes. The issue of ownership comes up in the redevelopment work that we do now. A recent example involved Peel Holdings. I think that all the land right down along the waterfront—all the shipbuilding area—was transferred for £1 many years ago; at least, that is what some of the members tell me. We are paying millions of pounds through partnership to get such sites developed. At one site, we had a boundary fence around one of my operational depots, and we were challenged by Peel Holdings, which said that that was not where the boundary was. It cost a lot of money just to sort out one boundary fence—we are talking about a couple of metres’ difference on a site in an industrialised area that was heavily contaminated. It was a lot of cash, and that is a simple example.

Anything that can help us to simplify the process—or, indeed, clear the boards and make sure that we can start afresh with a full, detailed register that shows who owns what—has to be a good thing.

The Convener: You may notice in the Official Report other points that are made after you have left. Thank you very much for your evidence.

John Mundell: I apologise for having to leave.

The Convener: Dave Thompson has questions on detailed procedures and requirements.

Dave Thompson: I will ask about the registration process and what the panel feels about communities having to register. In some instances, it might be very clear that there is a bit of land that the community wants, and an early registration would be something that it could anticipate and deal with. Often, however, pieces of land will come on the market suddenly. Last week,
Holmehill Community Buyout gave us an example in which an area that everybody thought was a public park suddenly had a “For Sale” sign put up on it. There are places in relation to which people would never have thought about registering an interest in a community purchase.

At the moment, many applications are late registrations—they are almost becoming the norm. I would like to get the panel’s views on whether we need any kind of early registration or whether communities should just be able to register an interest once a building or land comes on the market.

Also, should communities be able to register a general interest for a purpose, rather than in relation to a particular piece of land or building? That would mean that, if a community wanted to develop some housing or a park area or whatever, it could form a group to register an interest in that purpose rather than in specific pieces of land that may never come on the market.

David Cruickshank: I will backtrack briefly and give a case example that bridges to the registering proposal. In our community, we have a piece of land of 9.25 acres that was previously allotment land. It deteriorated in the late 1960s and was used for the kennelling of greyhound dogs for the local greyhound track. The area further deteriorated into a serious antisocial and criminal base where dogs were kept for dog fighting and guarding class A drugs. That situation perpetuated for 20 years until it was finally addressed through pressure from the local community council to get agencies such as the police, the council and the Scottish Society for the Prevention of Cruelty to Animals on board to support the move to take back the land.

The legal reality of the situation is that the land is owned by a trust. All the trustees are dead but their legal representatives are still negotiating, allegedly on behalf of a benefactor of the trustees of Possil estate. It is a complete nightmare to try to get to the bottom of the situation. There is no recognition of the damage that allowing that land to be a base for antisocial and criminal behaviour has done in the past 20 years. The idea that people should be responsible—publicly responsible—for the land that they own is a completely necessary prerequisite.

I simply say yes to Dave Thompson’s idea about registering. If a community says that it wants something, there should be a way in which it can make that known and then be supported to achieve that in the face of all the other players who have their agendas and who are usually much more powerful and better resourced than the local community group.

Wendy Reid: Dave Thompson raises a number of issues. The process of registration is quite onerous for community organisations. In rural areas, the 2003 act has opened communities’ eyes to the fact that they potentially have an ability to acquire land. Although not much has been acquired through the act itself—because it is actually fairly difficult to go through that process—the act laid down a marker for communities that acquiring land is a reasonable aspiration for them to have, that they have a right to own land and say that they are interested in it, and that they should be offered the opportunity to acquire it.

As the committee knows, for a community to register an interest, a body has to be set up in a certain way and there must be a certain level of support from the wider community in the registration of interest. In a small rural community, it might not be that difficult to gather that level of interest, but it might be harder in urban communities because, depending on how a community decides to define itself, there could be thousands of people in the area and they will often not be particularly engaged in democratic processes. For us, there is an issue about how a community organisation can get over that first hurdle that is put in the way, which is that 10 per cent of the community need to demonstrate support.

Secondly, once the registration is approved, the body will have to reregister the interest five years later and go through the whole process again. That puts people off. However, having to do it makes communities assess what assets they have and why they might want to register an interest in land. That encourages communities to start being proactive about the type of community that they want to live in and the things that they would like to be able to achieve as a result of owning assets.

The issue with late registration is a timing issue. If something comes up unexpectedly and a community has not thought about it in advance, it is difficult for the community to go through the process of gathering interest to support the first stage of registration and so on.

I am in two minds about the registration process. The need to register is a prompt for communities to think about how they would like their communities to develop and what opportunities they would like to have to influence how things develop. However, the process is onerous, as is the reregistration process. There is something to be said for having an easier process for registering interest if a piece of land comes up for sale that the community had never anticipated would come up for sale, because things happen that no one could have predicted. As the bill
stands, it will be extraordinarily difficult for communities to do anything about such situations, which might involve the loss of a service or whatever.

I am not sure about getting rid of registration altogether, although I can see that that would have advantages. What is useful about having to register is that it gets community organisations to think about why they might want assets and what they might want to do with them. We might not want to lose that prompt if we were to go down the route of not having early registration of interest.

Dave Thompson: You think that the process should be greatly simplified.

Wendy Reid: I absolutely do.

Susan Carr: I agree with Wendy Reid. I can give the committee two examples of something that happened in our area, just down the road. When the library moved, we expressed an interest in renting the building—we knew that we could not buy it, because there is a red line, in that the area is designated a development area. We had to go through the whole process, but we lost out for the sake of £150 a year because no consideration was given to why we wanted the library—we wanted it for a youth zone. Another bidder bid £150 more than we bid. We could have afforded to pay £150 more, but there was no acknowledgement that what we were proposing was advantageous for the whole area.

We lost out in the same way with another council-owned building a bit further along the road. I would like communities to be able to register their aspirations for the use of buildings. The two buildings that I am talking about have been taken over by private tenants and are closed for six out of the seven days of the week. Their being taken over has done little to enhance the quality of life in our area and we have missed two opportunities because we were not able to register the use to which we wanted to put the buildings.

The Convener: We will move on to the hoops that communities have to jump through. You have given one example, in the context of trying to rent a property.

There is a double requirement in the bill, in that community bodies must show that they are “furthering the achievement of sustainable development”, and ministers must be satisfied that continuation of the current ownership “would be inconsistent with furthering the achievement of sustainable development in relation to the land”.

Are those two tests fair? Do you foresee difficulties for communities in meeting the public interest and sustainable development tests?

Susan Carr: An awful lot of that will come down to interpretation. As a community worker who has worked in the voluntary sector for 25 years, I can say that what we hear from the Parliament and the Government is often quite exciting, and we think, “Yahoo! They have listened; it is going to happen,” but, unfortunately, when the local authority interprets provisions, it somehow fits things into a little box whose sides cannot be moved. I do not want to sound too critical of the local authority, because it pays my wages, but there is no flexibility.

It will depend on how the local authority officers interpret the provision and how much that matches our interpretation. There are certain difficulties and I suspect that those are different for each local authority.

Wendy Reid: I would have thought that it will be easier for communities to demonstrate that their proposals pass the first test, because community organisations are mostly concerned with improving the areas where they live. It is very rare for a community organisation to try to acquire an asset to do something that people do not think is a good idea or that is not about improving general quality of life. The second test is more difficult, because how can a community prove that somebody else is not also trying to achieve the same thing? The second test would be much harder to meet than the first.

The Convener: It has been described as a “killer clause”. Do you think that that is the case?

Wendy Reid: Yes.

The Convener: The issue of duplicate applications arises where the Government or whichever body is responsible must consider different proposals. One application could be positive and the other could appear to be positive but could in fact be designed to stymie the first proposal. Have you had any experience of that in an urban context? Will that be a complication in the development of proposals?

Wendy Reid: I am looking to my colleagues who operate in urban areas to see whether they have any examples of that.

Susan Carr: Some communities are very active in their own right. We have tried hard—but by and large we have succeeded—to get cohesion in what we do, so that the process is open and local people are involved in decisions and the direction that we take. However, some people do not like change and sometimes it is difficult for people to buy into the process.

In our community, people have had years and years of others telling them, “Now you do this and then you do that. This is the money you’ll get and this is how we’ll do it.” Then things change in the
next funding round and they are told, “Oh no, we’ve changed our minds; we’re doing it this way instead.” It is difficult for people not to be drawn to what gives the easiest access to funds, but the easiest funding option does not always mean doing what the community wants.

I have been working in a voluntary sector organisation for 25 years, and I have done everything from community engagement to employment and health—I am now working under a health grant. That is because we have to fit into what people are prepared to fund, rather than what we want to do. That is the difficulty. Also, we are often driven by targets that have been defined by someone else. We end up having to contort ourselves into the shape that will access the funds and benefit the community. In my case, we are funded to do A, B and C, but we also do X, Y and Z, because that is what the community wants. We have to do the first bit in order to do the second bit.

It is very difficult for communities to direct the funding. It is usually the other way round, with the tail wagging the dog.

The Convener: Should there be specific mechanisms for dealing with different approaches? Say that there are two applications, there needs to be some means to weigh one up against the other.

Wendy Reid: As always, we cannot avoid competition and we cannot legislate for that. There must be a mechanism for judging two applications against the same criteria and working out which will be more in the public interest. People will always come back and dispute such a decision. That happens all the time and is not something that we can avoid. However, we should not use that as an excuse not to do things.

Some communities have not previously had the opportunity to register interest and put in an application to acquire assets or land. The process will allow them to express their aspirations. Our experience has been that the fact that people are able to do it means that things are often worked out at community level first. There have not been many cases in which there were disputes over the same thing, although that might happen more in urban areas than it has in rural areas. When it comes down to it, if we are talking about achieving sustainable development, we need to consider what that means and who sets the definitions. The test can then be how competing applications contribute to achieving that definition of sustainable development in a particular place.

The Convener: Does Alan Miller think that everyone should be given a copy of the United Nations International Covenant on Economic, Social and Cultural Rights, and classes on how to interpret it? It sounds to me as though empowering people at a local level, under that broader definition in relation to sanitation, food and housing, would be very valuable indeed.

Professor Miller: What I have learned from this evidence session and the previous one is that communities do not need much encouragement to empower themselves. It is the decision makers in authority who need to be more aware of their duties under those obligations. That greater awareness at the Government and parliamentary level would be much more helpful. Some of the experiences are about not so much capacity building as capacity releasing, and for me that says it all. Too often, decision makers make decisions with the best of intentions on behalf of those for whom they are making decisions. That has to be turned on its head, and we do not need international obligations or treaties to do that. It is just common sense, or it should be.

The Convener: We shall hear a couple of final comments from Colleen Rowan and David Cruickshank.

Dr Rowan: I refer back to community planning partnerships, which are relevant in that there are three levels at which policies and strategies operate—on the ground with local people leading, at the local authority level and at the Scottish Government level, where policies are formulated. For our members and other third-sector organisations, where the system falls down is in the community planning partnership structure, because it bears little relation to what people define as their communities. There is a mismatch between the geographic interpretation of what the community is and the community’s view, and our members often do things despite what is happening in the community planning partnerships. In other cases, we work alongside CPPs. For example, in Glasgow, in relation to the single outcome agreement, we are working on the vulnerable people group and the homelessness and housing need group, and some good outcomes have been achieved.

That is a well-rehearsed discourse, and I know that those points have been made many times, but that part of the system really does not work. That is where it falls down a lot of the time.

The Convener: We are happy enough to take those ideas forward.

David Cruickshank: Convener, you asked whether there had been any examples of competing interest for a given site. Funnily enough, the one example that I could come up with from our community was a case where a housing association wanted to build residential homes—that is what housing associations do—and the community wanted facilities for young
people. There was no doubt about who the winner was, because the housing associations are equipped to move and deliver. I am not criticising housing associations, by the way, but you asked for an example and that is one.

The Convener: Indeed—thank you.

We have covered a wide range of issues today. It is fascinating for us to get as many practical examples as possible. I thank the members of the panel for all their input. If you feel that you have any further points to make, you are at liberty to write to us afterwards. Thank you for answering a wide range of questions.

At our next meeting, on 10 December, the committee will take evidence from the cabinet secretary on the Community Empowerment (Scotland) Bill and will consider petition PE1519, on saving Scotland’s seals, as well as the committee’s report to the Finance Committee on the draft budget, the latter part of that item being taken in private.

We have a wide and varied interest in community empowerment, and our interest in urban development has extended the scope of the committee considerably, but today’s session has been most useful.

Meeting closed at 13:29.
RESPONSES TO THE RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE BY LOCAL AUTHORITIES REGARDING DISPOSAL OF ASSETS

Community Land Scotland
Glasgow and West of Scotland Forum of Housing Associations
Holmehill (Dunblane) Community Buyout Group
Scottish Land Fund Committee
Additional written submission from Community Land Scotland

[Submission from Community Land Scotland in addition to the previous submission to the Local Government and Regeneration Committee which comprises:

- Supporting arguments on the need for amendments to strengthen the Community Empowerment (Scotland) Bill; and
- Submission of evidence to the Scottish Government regarding proposed revisions to Part 3 of the Land Reform (Scotland) Act 2003 via the Community Empowerment (Scotland) Bill.]

Supporting arguments on the need for amendments to strengthen the Community Empowerment (Scotland) Bill:

The question of removing barriers to sustainable development; what can constitute sustainable development and the public interest; and related ECHR considerations.

This paper builds on evidence submitted by CLS to the Local Government and Regeneration Committee in relation to the CEB, and is consequent upon close examination of Scottish Ministers decision letters in relation to the Pairc Trust application to purchase land. (relevant extracts of the CLS evidence is attached at Appendix 1)

Community Empowerment (Scotland) Bill

The CEB seeks to amend the Land Reform (Scotland) Act 2003 (LRA) by simplifying or streamlining various procedures and by extending the community right to buy land.

The policy aim of Part 3 of the LRA, which gave crofting communities a `compulsory' right to buy, was to remove barriers to sustainable rural development.(See Policy Memorandum to 2003 Act)

The terms of the LRA require that any application to use these powers must be approved by Scottish Ministers who must be satisfied, inter alia, that the application:

- furthers the achievement sustainable development, and
- is in the public interest

The only decision by Ministers in this regard has been in relation to the Pairc Trust. That decision was challenged in the Courts and withstood that challenge. (See Pairc Crofters Ltd and Another v Scottish Ministers 2012 CSIH 96)

The new Part 4 Section 48 of the CEB, which creates a new Part 3A in the LRA, seeks to provide a similar right to that given to crofting communities, (ie, to purchase land `compulsorily') to all communities in Scotland, is in pursuit of a policy aim stated as being a general public interest in removing barriers to sustainable development. (See Policy memorandum to CEB)
Within the CEB provisions, Ministers must be satisfied, inter alia, that in approving an application to purchase 'compulsorily' by a community, the land in question is 'eligible land', ie, land which is defined as:

- Wholly or mainly abandoned or neglected (CEB Section 48, 97C), and

That the application (97H), inter alia:

- furthers the achievement sustainable development
- is in the public interest

The CEB therefore introduces a new concept of 'abandoned or neglected' land, something that was not considered necessary in analogous provisions within the LRA for crofting land, where the relevant tests were kept to only whether the application furthered the achievement of sustainable development, and was in the public interest.

This approach suggests that 'abandonment or neglect' of land are considered to be the barriers to sustainable development, the removal of which are set out in the Policy Memoranda as the objectives for this part of the CEB. These barriers could be removed through the exercise of the proposed new provisions to permit 'compulsory purchase'.

It is appreciated that, if land can be said to be abandoned or neglected by the owner, it may be easier to justify its expropriation for the purposes of enabling it to be sustainably developed by a community body. However, expropriation can be justified in other circumstances. What seems to be to be important in the first place is to ascertain what is regarded to be the general interest to be achieved by the expropriation.

Given there is a shared policy purpose to remove barriers to sustainable development to both the LRA and now the CEB, it is worth exploring whether abandonment or neglect of land are the only barriers to sustainable development, and what other barriers there may be.

**Decisions of Scottish Ministers**

Revealed within decision letters on behalf of Scottish Ministers in relation to the Pairc Trust, there is a significant account of what Ministers regarded to be both sustainable development and what was in the public interest in that case. The reasoning in the decision letters extends the concept of what would be a barrier to sustainable development significantly beyond the concept of only 'abandoned or neglected' land.

The reasoning in support of the decisions is particularly helpful in that it sets out why an early application by the Pairc Trust was refused, on the grounds that it did not further sustainable development and was not in the public interest, and a later application then approved as meeting these requirements.
Furthering the achievement of sustainable development

In refusing the early application Ministers made clear the application did not satisfy them in relation to the question of furthering the achievement of sustainable development as it, inter alia:

- proposed to deliver activities which were largely already being delivered by the current owner
- did not provide significant additional activities
- did not provide any clear benefit to the community
- offered only limited income generating opportunities which would therefore not provide significant benefit to the community

(Pairc decision letters dated 21 March 2011 at Appendix 2)

In light of this it was considered that the application was not compatible with furthering the achievement of sustainable development.

Central to this reasoning is the potential for the furthering of sustainable development delivered through the achievement of greater outcomes, the delivery of more activity, and of securing community benefit.

The reasons set out for why a subsequent Pairc Trust application was approved and why Ministers considered it did further the achievement of sustainable development, included, inter alia:

- that there was a credible sustainable plan for the development of the land, and
- the plan would introduce new activities

Those activities would:

- have the potential to diversify the economy
- give power to negotiate and carry out developments
- create employment
- improve local services and infrastructure
- provide for social housing and the sale of house plots
- deliver improved visitor services
- generate revenues for investment for the benefit of the community
- facilitated wider developments

That ownership by the community body and the above listed potential uses and developments would, in consort with others' actions, contribute to:

- fostering population growth
- increasing community capacity
- economic participation

In short, and in terms of the policy aim to remove barriers to sustainable development, it can be seen that the approval of the application providing for
purchase by the community body would facilitate the potential achievement of all of the above matters, and further the achievement of sustainable development.

It seems clear the reasoning for Ministers decisions, set out in such detail, was to build defences to potential legal challenge under ECHR and more widely by being explicit in what Ministers regarded would not, and what would, further sustainable development. In the Court decision on a subsequent challenge it was held that, “the expression sustainable development is in common parlance in matters relating to the use and development of land.” (our emphasis) (see Annex 3)

It would therefore seem reasonable and justifiable that the provisions of the CEB should be amended (potentially at 97C) to provide in an appropriate way to allow for considerations by Ministers, in addition to any considerations of abandonment or neglect of land, matters of use and development of land if purchased by a community body and of the sort set out in the decision letters referred to and which would permit the furthering of sustainable development.

The Public Interest

Such a provision would also be capable of meeting what was in the public interest.

The decision letters in relation to the Pairc application also set out reasoning on what was in public interest, which included:

- the area had previously inadequate social and economic development opportunities
- ownership by the community would allow the development of a number of economic developments, such as housing, etc
- ownership would address long term decline, a shortage of available housing sites
- the creation of local services
- the development of income streams
- bring in more visitors
- greater employment and environmental benefits

Taken together, the decision letter set out this provided, “greater opportunities overall to achieve sustainable development”.

The benefits in this instance were considered to outweigh any disadvantages and were not disproportionate to the degree of any harm to any private interests, a matter central to ECHR considerations.

Conclusion

The Court judgement on the Pairc case would not appear to cut across in any way what is suggested above by way of strengthening and improvement to the CEB as introduced. Indeed, the judgement might be held to strengthen the case for such improvement, and provide some comfort in thinking ahead to any question of future challenge to provisions within the CEB.
When considering the policy aim of removing barriers to sustainable development the concept of ‘abandoned or neglected’ land is too limited as there are wider circumstances which can be a barrier to sustainable development, such as the lack of achievement of the use and development that would deliver “greater opportunities” for sustainable development.

The conditions that must be satisfied within the CEB for non-crofting land to be ‘compulsorily’ purchased by requiring that the land be ‘abandoned or neglected’ appear in themselves greater than would be necessary to meet ECHR requirements, particularly when viewed in light of the Pairc judgement.

It is not clear there is such a fundamental difference between the objective of the sustainable development of land in crofting tenure and the sustainable development of land more generally to necessitate the additional requirements of that land being abandoned or neglected for it to be eligible land for the potential exercise of the new provisions.

If a requirement to show land is abandoned or neglected is to remain, given the evidence above on what would constitute “greater opportunities” relevant to the achievement of sustainable development, the policy objective of the various provisions, then it would appear there is a strong justification for an amendment to the CEB, to provide Ministers with the opportunity to also consider wider matters of use and development of that land in determining what land could be eligible land.

Submission of evidence to Scottish Government regarding proposed revisions to Part 3 of the Land Reform (Scotland) Act 2003 via the Community Empowerment (Scotland) Bill.

Community Land Scotland is pleased to be able to respond to the consultation questions on the above consultation in the following terms.

Community Land Scotland (CLS) strongly advocates the need for changes to Part 3 of the Land Reform (Scotland) Act 2003 in order to make its use simpler and fairer, while maintaining appropriate rigour to test what is in the public interest and furthers sustainable development.

CLS is conscious that others have insights into the challenges of the current Part 3. In particular Highlands and Islands Enterprise, but also experienced advisors to community owners, such as Simon Fraser. CLS is aware that Simon Fraser submitted evidence to the Local Government and Regeneration Committee on Part 3 and we commend his analysis of the issues and urge it is taken most seriously. In addition, John Randall, of Pairc Trust who have unrivalled experience of the practical issues, also submitted evidence in a personal capacity, and again we commend that evidence.

CLS has gained particular insights into the Pairc case and how the final reconciliation of positions represented in the level of agreement now reached between owner and community was achieved. Though yet to be finally concluded, the advanced stage of agreement now achieved was only reached by a process of voluntary mediation between the parties. While on this occasion that was possible, partly because of the physical location of the parties and the ‘mediator’, it is not
appropriate to leave such matters to chance and it would be helpful if this facility was available to all communities and owners in future, should the need arise. This points to a simple power being given to Ministers to be able make suitable arrangements for such mediation, if requested to do so. That power currently does not exist and would be a helpful addition to wider simplification measures around Part 3 as set out in the Appendices to this submission (this could have application to part 2 as well).

CLS will be happy to provide such further additional information or clarifications as may be requested.

Responses to consultation questions

**Question 1.** The Scottish Government proposes to allow SCIOs and BenComs to be crofting community bodies in addition to companies limited by guarantee. Do you agree with this proposal? Are there any other types of body which you think should be permitted to be a crofting community body?

**Agree with proposal, with Ministers having a power to add such other types of body as they may see fit to give future flexibility.**

**Question 2.** The Scottish Government proposes removing the requirement for the auditing of accounts to be included in a company limited by guarantee’s articles of association in order for it to be a crofting community body. This proposal would bring Part 3 of the Act in line with proposed amendments to Part 2 of the Act. Do you agree with this proposal?

**Agree.**

**Question 3.** The Scottish Government proposes expanding the definition of a crofting community. Do you agree with the proposal? Do you think that this is a more accurate description of a crofting community?

**Generally agree. However, very few crofts will be registered on the new register for some time to come. Instead, or in combination, the Commission’s existing Register should be used.**

**A further potentially complicating circumstance that should be considered is where the number of crofting tenants or owner occupiers registered outweigh those actually resident within the immediate area. It is not clear whether this circumstance may arise, but it potentially could.**

**Question 4.** The Scottish Government proposes amending the existing mapping requirements which must be included in a Crofting Community Body’s application. Do you agree with this proposal?

**Agree, although it will be important to see the final and specific proposed wording of the change.**

**Question 5.** The crofting community body’s right to buy application must be advertised by Ministers by placing a public notice in a newspaper circulating in the area where the land or interests are located, and in the Edinburgh Gazette. The Scottish Government proposes that public notice of the crofting community body’s
right to buy application continues to be given by Ministers by advertisement, but that
the form of this advertisement be set out in regulations. What is your view on this
proposal?

Agree.

**Question 6.** The Scottish Government proposes that the owner, tenant, person
entitled to sporting interests, (depending on the nature of land or interests that the
application relates to) and any creditor in a standard security in relation to that land
or interests are correctly identified in the application form in order for Ministers to
consent to the crofting community body’s application. What are your comments on
the proposal?

It does not seem an unreasonable proposition for a community to use all its
best endeavours to accurately identify owner, person, etc…. However, the
question arises of what would happen if the owner, person, etc … could not,
even after all reasonable steps had been taken by the community, be
identified. This could arise by virtue of some of the complex and potentially
overseas arrangements that can be put in place to hide ownership and
beneficial interest, or simply by the passage of time, complex and dispersed
ownership arrangements that can follow from one time changes in ownership.
The same comment can be made about the Section 3A, which this proposal is
designed to align with, and which Parliament has yet to consider. It is not
clear why this change is necessary either for Part 3A or for this proposed
section. This proposal would only be acceptable if accompanied by a
provision to allow Ministers to, notwithstanding this provision, grant consent
when they are satisfied that the community has taken all reasonable steps to
identify the owner, person, etc …, but have been unable to do so.

**Question 7.** The Scottish Government proposes Ministers having a specific power
to make regulations setting out the information that the crofting community body is
required to provide to Ministers about the ballot, or any consultation that the crofting
community body may have held with the community about their application. The
crofting community body already are responsible for paying for the cost of the ballot.
The Scottish Government proposes to expressly state in the Act that the crofting
community body is liable for meeting the expense of conducting the ballot. What are
your comments on the proposals?

The proposals in the Community Empowerment (Scotland) Bill regarding Part
2 of the Land Reform (Scotland) Act 2003 makes provision for the Scottish
Government to in future take responsibility for the balloting arrangements and
pay for such. As a matter of principle, this proposal was not seen as one of
simply making it easier for the community body, it was also seen as a proposal
which could ensure the proper conduct of any such ballot and which therefore
provided re-assurance to the parties concerned and for the wider public
interest. These latter reasons would apply equally and might even be seen to
be more important to the conduct of ballots in the crofting community and in
circumstances where there was not a willing seller. There is therefore a case
for the same provisions as it is proposed will apply to Part 2 (through
revisions in CEB) to apply to this part. If the concern was simply one that in
such circumstances Government would be funding a ballot on what was a
`compulsory' sale, this could be readily justified as being appropriate to ensure proper conduct and public confidence in the conduct of such a ballot.

**Question 8.** The Scottish Government proposes that, when an application is extinguished under section 76, Ministers should be required to notify each person invited to give views on the application. This proposal aligns Part 3 with the proposed Part 3A of the Act. What is your view on this proposal?

Agreed.

**Question 9.** The Scottish Government proposes clarifying the certain persons listed in section 81(1) of the Act who may refer a question to the Land Court at any time before Ministers reach a decision on an application made under Part 3. What is your view on this proposal?

This does not seem unreasonable.

**Question 10.** The Scottish Government proposes increasing the timescale in which the valuer must notify the value of the land from 6 weeks to 8 weeks. Do you agree with this proposal?

Agreed.

**Question 11.** The Scottish Government proposes requiring the valuer to seek counter-representations when representations regarding the valuation of the land are received from the land owner, tenant, person entitled to sporting interests, as the case may be, or the crofting community body. Do you agree with this proposal?

Agreed.

**Question 12.** Section 89 of the Act allows compensation to be paid in respect of a loss or expense incurred in connection with a crofting community right to buy application. Ministers are already required to set out the procedure for claiming compensation by way of order. The Scottish Government proposes amending this order so that Ministers may, via an order, specify the amounts payable in respect of compensation and who is liable to pay these amounts. What are your views on the proposal?

This does not seem unreasonable.

**Question 13.** The Land Court is required to give its decision in writing within 4 weeks of the date of the hearing. The Scottish Government proposes removing the 4 week time limit, and remove the provision requiring the reasons to be provided in writing. What is your view of this proposal?

It is not clear why this is necessary or helpful to the parties involved. Having reasons in writing seem appropriate, as does having a reasonably short timescale for these matters being concluded.
Written evidence from the Glasgow and West of Scotland Forum of Housing Associations

Introduction

The Glasgow and West of Scotland Forum of Housing Associations (GWSF) is the leading membership and campaigning body for local community-controlled housing associations and co-operatives (CCHAs) in the west of Scotland. The Forum represents 63 members who together own around 75,000 homes. As well as providing decent, affordable housing for nearly 75,000 households in west central Scotland CCHAs also deliver factoring services to around 13,000 owners in mixed tenure housing blocks. For almost forty years CCHAs have been at the vanguard of strategies which have helped to improve the environmental, social and economic well-being of their communities.

The Forum’s key objectives are: to promote the values and achievements of the community-controlled housing movement; and to make the case for housing and regeneration policies that support our members’ work in their communities.

We welcome the opportunity to contribute to the Rural Affairs, Climate Change and Environment Committee’s call for written evidence on the Community Empowerment (Scotland) Bill. We also look forward to giving oral evidence at the Committee’s session on 3rd December.

Our response has been developed by members of the Forum and reflects their experiences of working alongside local people in their communities for the past four decades. It draws upon our response to the Local Government and Regeneration Committee’s call for evidence on the Bill earlier this year and on our previous consultation responses to the Bill.

The Role of Community Anchors

The overall policy aims of the Bill in relation to community empowerment, including supporting subsidiarity and local decision making and taking an assets-based approach, echo the core values of the Community Controlled Housing Association Movement. Consequently, we are extremely happy to endorse them.

Sir Harry Burns, Professor of Global Public Health at the University of Strathclyde (and formerly Chief Medical Officer for Scotland) wrote the foreword for our most recent publication. In it he summed up the contribution that Community Controlled Housing Associations (governed by local people) have made, and indeed, continue to make in their local neighbourhoods. He said.

“Local residents in CCHAs took control of local assets long before we all started talking about asset based approaches, The Christie Commission, co-production and community empowerment. But there can be no doubt that they demonstrate the characteristics that we now aspire to in Scotland and have been doing this successfully since the early 1970s.”

1Glasgow & West of Scotland Forum of Housing Associations (November 2014) “Community Controlled Housing Associations – Still Transforming Local Communities”
In the urban context in Scotland we strongly believe that true community empowerment can only be achieved as a result of action taking place at local level with local people leading, supported by trusted community anchor organisations. As the community controlled housing model demonstrates, when community empowerment happens in this way it leads to sustainable and enduring physical and social regeneration within communities. We are therefore delighted that the Bill highlights the important role of community anchor organisations, and community controlled housing associations specifically.

However, as stated in our previous consultation responses, we believe that the Bill does not develop thinking about how to support the role of CCHAs and other equally important community anchors (e.g. Community Development Trusts). We would like to see the Scottish Government more clearly setting out the key characteristics of community anchors, and to use this as a platform for promoting innovative and collaborative approaches to public service planning and delivery in our most disadvantaged neighbourhoods. GWSF’s working definition of a community anchor is an organisation that:

- Operates within a particular neighbourhood;
- Has the interests of the community in that neighbourhood at the core of its purpose and activities;
- Operates at a local level and is both trustworthy and stable;
- Has a governance structure based on control by local residents and accountability to them.

The potential savings to public sector budgets of the early prevention and intervention activities which Community Controlled Housing Associations, and other community anchors, are involved in are huge. Our model is based on real community empowerment which has stood the test of time over the last 40 years. Therefore, we believe that there is a real opportunity for the Bill to set out a framework that could progress this model.

**Community Empowerment**

We are pleased that the Bill highlights the fact that “community empowerment means different things for different communities.” As our members know from years of experience all communities are unique, and all are equipped with distinctive assets and often face distinctive obstacles.

Subsequently, we believe that there is no ‘one size fits all’ approach to community empowerment. Different approaches will work in different communities and some aspects of the Bill will be more relevant for particular types of communities.

Furthermore, some communities will be better equipped to take advantage of the provisions in the Bill since they are already farther down the road to empowerment and have more assets and skills at their disposal which will enable them to potentially benefit more. Consequently, an unintended outcome of the Bill might be increased inequalities between communities.

Most of our members operate in the most deprived communities in Scotland – and the achievement of real community empowerment in these areas has been an
enormous influence in increasing confidence and self-esteem for individuals and communities in these areas.

We would like to have seen the Bill directly draw upon this experience and set out a coherent and explicit strategy for community capacity building with the community anchor model at its core. Although, we do welcome the Bill’s intention to ‘build on existing guidance and the experience of communities themselves in becoming more empowered, as well as those who have been working over the years to support communities.’

We welcome the Scottish Government’s establishment of the Community Capacity and Resilience Fund and we are pleased to be members of the stakeholder group who are considering how the fund will be most effectively delivered to support communities.

**Community Regeneration**

As we have stated in our previous responses to consultation on the Bill, we are also disappointed that the explicit link between community empowerment and community-led regeneration has disappeared. We passionately believe that the two operate in tandem to deliver tangible results. This has been demonstrated time and time again through community-led physical and social regeneration initiatives in our neighbourhoods.

Dr Kim McKee\(^2\) (2011) highlighted this success stating “the success of localised interventions is nonetheless dependent on engaging the community in regeneration, so initiatives can be sustainable and genuinely reflect the vision of residents.”

As representative sector bodies both GWSF and the SFHA agree that the opportunity that this Bill afforded in terms of effectively making the links and establishing a frame-work between community empowerment and community-led regeneration may not be as obvious now as once was hoped.

**Community Planning Partnerships**

In our members’ experience community planning has been (and is likely to continue to be) a mechanism for improving the way that public sector organisations work together to achieve agreed objectives. It has generally operated at a local authority level, and we believe is likely to continue. The current proposals do not challenge this ‘top down’ view of community planning.

There has been a serious disconnect between the (valid) objective of public sector organisations agreeing common and shared outcomes and the need to effectively engage communities in the decisions that affect them.

The most effective community engagement takes place at a neighbourhood level or within particular communities of interest. So there is currently a serious mismatch between the scale of community planning and the scale at which community engagement is likely to be effective.

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Community planning partners have (on occasion) tried to bridge this gap by encouraging community activists rooted in particular geographic or thematic communities to ‘represent’ the community at a local authority wide level. This has led to frustration (on both sides) and to community engagement in community planning being ineffective.

In our view, there is a real need to redesign community planning from a neighbourhood level up, to allow effective community engagement and empowerment. This would make sure that the outcomes for community planning were directly relevant to the communities which were affected and that there was a direct interest in the planning, resourcing and integration of services. We see no way that this can be achieved at a local authority wide level.

We believe that community anchor organisations (suitably supported by resources from community planning partners) should have a key role in co-ordinating community planning at a sub-local authority level. This approach is being encouraged in Glasgow where New Gorbals Housing Association has been spearheading the new Thriving Place approach outlined in the Glasgow SOA, and Govanhill Housing Association has hosted the Hub – an operational joint tasking approach across all the main agencies operating in the area.

**Further information**

The views we have expressed in this response reflect the community controlled housing movement perspective on the Community Empowerment (Scotland) Bill. We hope that they are of value to the Rural Affairs, climate Change and Environment Committee in its evidence gathering process. If the Committee wishes to follow up on any of the issues we have discussed we will be happy to provide further information.
Written submission from Holmehill (Dunblane) Community Buyout Group

The purpose of this written submission

This submission has been written to set out the experiences of the Holmehill Community Buyout Group in their quest to purchase Holmehill in Dunblane.

Key points:

Positive

- The Land Reform Act was extremely important for the Holmehill group. Without the catalyst of the, then recent, Act it is unlikely that the Group would have been formed at all.
- Once the Group was formed, it sought to buy Holmehill, but on failing to achieve that, it has since, so far successfully, engaged with the planning process to protect Holmehill against inappropriate development. This involvement with the community has led to much greater dialogue and involvement in the wider planning processes in Dunblane.

Points to consider for change

- The requirement to pre-register for a right to buy is unrealistic in most circumstances, as the community needs are often generated by unexpected change, such as land being advertised for sale
- The requirement in terms of the effort required to renew every five years is unrealistic in most communities.
- There does not appear to be a viable appeal process
- The use of an “Option to sell” effectively negates the aim of the “Right to Buy” legislation, if the owner wishes to frustrate the registration
- If the “Option” is to remain valid there needs to be transparency on the nature of the options (The Scottish Executive only provided a very heavily redacted version, removing the identity of the third party.) and whether it continues to exist. This might be resolved by a requirement to record Options on the Land Register.
- Planning enforcement needs to be much stronger to give confidence that the community’s interests are being protected and that developers and land owners cannot just run roughshod over land that is important to the community.
- The planning process needs revisiting as it is stacked against the community and in favour of developers, who only need to win once, whilst communities often have to react to serial planning applications.

David Prescott  Chair, Holmehill Community Buyout Group  November 2014

Background Information

Holmehill is a 13 acre green space in the centre of Dunblane, which overlooks the 12th century Cathedral, and is within the Dunblane Conservation area.
The site currently supports mature policy woodlands, as well as open areas of grassland and scrub. A well-used path (now designated and signed as a Core Path) runs through the site and links the community on the east of Dunblane with the town centre. The trees, and the hill on which they sit, are a prominent and important landscape feature of the town, providing an important sense of place with a number of large mature trees dating from the construction of Holmehill House in 1820. The diverse habitats on the hill support a wide range of bird species as well as other wildlife.

Holmehill has been owned by the Templeton family and then by Mrs Donaldson of the shipping line family, who gave part of the site (not that subject to the buyout) to the children of Dunblane in the 1940s.

Built in the 1820s, Holmehill House was the Donaldson family home (ship-owners and proprietors of The Donaldson Line) before being sold in 1962 to Stakis PLC, the then owners of the Dunblane Hydro Hotel, which is across the Perth Road from Holmehill.

Holmehill House was demolished in 1980 and the whole site was sold to Hilton Hotels in 1999. So for some 30 years the hill remained untouched apart from the building of Holmehill Court (privately owned sheltered housing) and individual houses on the west side of Smithy Loan in the 1990s (a total of 43 dwellings). A Section 75 Agreement was agreed between Stakis Ltd and Stirling Council accepting no further development on the remaining 13 acres, except possibly on the site of the demolished Holmehill House.

Thus Holmehill became established as public open space, a status acknowledged in the 1999 Local Plan. Most Dunblane residents understood it was a preserved green space, and that no further development could take place. It was, and still is, used regularly by local primary and nursery schools, as well as the wider public.

In December 2004 notices were erected on Holmehill advertising it for sale as a potential development site, taking the whole community by surprise. Hilton Hotels sold the Hydro hotel to the Stardon Group in 2005.

Getting Started

A public meeting was held in Scottish Churches House on 3rd January 2005 and was attended by over 100 people. It was resolved to seek to register a community interest in Holmehill under the Land Reform (Scotland) Act 2003, with the aim of buying the hill for the benefit of the local community. Holmehill Ltd was formed in February 2005, as required by the legislation. It is a company registered in Scotland No 279947 and also a Scottish charity No SC036988.

Application for a Right to Buy Registration

Our first application was submitted in March 2005. This application was a considerable task. The Group had and still has a number of ideas for proposed use; including local food production, a spiritual dimension, linked to Dunblane’s significant ecumenical role as well as providing space for wildlife and quiet open space for all to enjoy. The ideas were developed through community consultation.
The Application was quickly refused, in spite of securing the signatures of more than 10% of the Dunblane electoral roll population on the supporting petition.

Rejection Decision

Our first application was deemed to be a ‘late application’ because it was submitted after the land was put on the market. In order for a successful registration in these circumstances, applicants have to satisfy three additional tests to those of a timeous application (that is one received before the land is put up for sale). These tests are contained in Section 39 of the Act and are (paraphrased):

(a) that there were good reasons why the applicant did not secure a timeous application
(b) that there exists significantly greater support for the application among the community (compared to a timeous application)
(c) that the application is even more in the public interest (compared to a timeous application).

Scottish Ministers refused Holmehill’s application on the grounds that the reasons given in (a) were not good reasons and because they asserted that the applicant was using the Act to ‘thwart the planning process’ and thus the test at (c) was not satisfied. This was the first rejection of a “late application”, although not the first “late application” to be submitted by other buyout groups.

Using the Appeal process

Holmehill appealed the decision to the Sheriff Court on the basis that the reasons at (a) were indeed good ones and that at (c) it was in the public interest since, among many things, the site was already designated as green space in the Stirling Local Plan 1999 and that in any event, a registration under the Act cannot ‘thwart the planning process’.

The appeal process involved going to Court, a daunting process at the best of times, and even more so to find we were facing three adversaries: Scottish Ministers, Hilton Hotels and Stirling Council, although the latter took no part in the proceedings.

Sheriff McSherry refused the appeal and awarded costs against Holmehill Ltd. The appeal was refused not because of the merits or otherwise of the decision that Scottish Ministers had taken, but because the Sheriff concluded (based on precedents in other cases) that he should not interfere with the decisions of Scottish Ministers. As the decision was made by officials, in the name of Ministers, this suggests that there is no realistic appeal process, and thus no way in which decisions can be challenged.

In Court Holmehill members were surprised when it emerged that officers making this decision had not consulted the Stirling Local Plan to determine the planning status of Holmehill.

The award of costs was stressful, and many members of the Buyout Group had to fulfil financial pledges that they had made at the start of the Appeal process. Hilton Hotels waived their £20,000 legal bill, and Scottish Minister recovered only about a
quarter of their legal costs, leaving the Buyout Group with a very small sum to ensure that they survived.

**Second Application for a Right to Buy Registration**

The Scottish Executive encouraged us to reapply after the sale to Allanwater Developments was concluded. This revised application was lodged in March 2007, after a second set of signatures had been collected. This second application had cleared all the procedural hurdles when we were advised that it had to be refused.

**Option and rejection**

The grounds for refusal were that the new owners, Allanwater Developments Ltd, had taken out an Option Agreement with a third party and, according to the Scottish Executive, ‘section S39(5) of the Act applies’.

**Subsequent Applications for a “Right to buy Registration”**

The group took a decision not to attempt any further applications, because:

- a) It is not possible to find out if the “option” still exists, or if there is another Option in place
- b) Even if there was no Option in place Allanwater Developments could quickly create another one.

This ended our practical interest in the Land Reform legislation and we sought to protect Holmehill in other ways.

Both of our applications and the associated correspondence and decision letters can be viewed on the Scottish Executives RCIL website.

**Subsequent Campaign History**

Allanwater Developments have lodged two separate Planning Applications for different parts of Holmehill. The Buyout Group was active in opposing both applications, which were contrary to the Stirling Local Plan 1999.

The first application (11/00788/FUL) was withdrawn, whilst the second (12/00788/FUL) was refused. Both were the subject of a significant number of local objections.

Immediately after the refusal of the second application Ian and David Stirling, (respectively former and current Managing Directors of Allanwater Developments) cut down all the naturally regenerating trees on the top of Holmehill in a single day at the end of June 2013. This was without any prior notification and contrary to the Conservation Order, which is understood to treat all trees in the Conservation area as if they are protected by a Tree Preservation Order. These trees were also one of the reasons why the planning application 12/00788/FUL was refused.

Community action by Holmehill members and supporters has forced the Council into some actions, including the belated introduction of a Tree Preservation Order for the whole of Holmehill. A Tree Replanting Order, which has been significantly watered
down from the original tree replanting plan agreed with Allanwater Developments in response to their illegal actions, has been enforced, and planting was finally completed in early November 2014.

Temporary Heras fencing has been in place for over a year, restricting public access. A lot of site clearance has taken place, which looks suspiciously like the preparation for construction activity, and may have damaged any archaeology that exists on this site above the Cathedral.

The Holmehill Group are bracing themselves for another planning application, possibly for one or two large houses on the top of Holmehill.

Dunblane Community Council and some Dunblane councillors have been supportive of our efforts.

Local Planning Processes

In parallel to these planning applications the Holmehill Group has actively engaged in the Stirling Local Planning process. We have succeeded in maintaining the “public open space” designation for the whole of Holmehill in the face of Allanwater Development’s pressure to secure a designation for housing. The Government Reporter’s decision strengthens the designation as it weighed up the merits of housing against open space and came down in favour of the open space.

The Group were unsuccessful in preventing the designation in the Local Plan of a small corner plot adjacent to Holmehill, which was gifted by Mrs Donaldson to the children of Dunblane in the 1940s, and where there was once a Scout hut, as suitable for social housing.

However the Holmehill Group are now actively participating in a design programme for a small group of houses for elderly or disabled Dunblane residents to be built on this site. They are to be built by Forth Housing Association using charitable funds which are required to aid the elderly and disadvantaged of Dunblane.

The future

The Holmehill Group is celebrating its tenth anniversary on 3 January 2015. It will continue to pursue options that could secure community ownership of this important green space in the heart of Dunblane.
Written submission from the Scottish Land Fund Committee

Statistical information about the relationship between the Scottish Land Fund and the Community Right to Buy (CRTB) and National Forest Land Scheme (NFLS) processes - summarised in the table below, with further detail given in the annexe.

Scottish Land Fund, 2012-16: CRTB and NFLS Projects

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Approved</th>
<th>Cases</th>
<th>CRTB</th>
<th>NFLS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>#</td>
<td>£</td>
<td>#</td>
<td>£</td>
</tr>
<tr>
<td>2012-13</td>
<td>4</td>
<td>788,000</td>
<td>2</td>
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<tr>
<td>2013-14</td>
<td>15</td>
<td>2,231,118</td>
<td>2</td>
<td>437,937</td>
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<tr>
<td>2014-15 (April to Nov 2014)</td>
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<td>2,224,830</td>
<td>1</td>
<td>750,000</td>
</tr>
<tr>
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<td>5,243,948</td>
<td>5</td>
<td>1,650,137</td>
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<tr>
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<td>2,469,250</td>
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</table>

In summary, of the total number of SLF cases approved and anticipated in the first 3 years of operation, approximately 17% have gone through the CRTB process and the same proportion through the NFLS, amounting to 22% and 35% of the total budget respectively.

Annexe

Background information on SLF and CRTB/NFLS

Scottish Land Fund (SLF), Community Right to Buy (CRTB) and National Forest Land Scheme (NFLS)

Year one (2012 – 2013)

The first year of the SLF had £1m available. A total of 4 projects were grant funded amounting to £788,000 of SLF assistance. Of this total, there were 3 CRTB and NFLS cases using £773,700 funding, as outlined below:

<table>
<thead>
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<th>Organisation</th>
<th>SLF award (£)</th>
<th>Hectares</th>
<th>CRTB/NFLS</th>
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<tr>
<td>Colintraive &amp; Glendaruel Development Trust</td>
<td>311,500</td>
<td>615</td>
<td>NFLS</td>
</tr>
<tr>
<td>Covesea Lighthouse Community Company</td>
<td>301,500</td>
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<td>CRTB</td>
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<td>Coigach Community Development Company</td>
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<td>0.4</td>
<td>CRTB</td>
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</table>

Year two (2013 – 2014)

Year two of the SLF had £2m available. During the year, a total of 15 projects were awarded funding amounting to £2,231,118. Of these, there were 3 CRTB/NFLS cases using £658,937 of funding.
<table>
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<td>99,437</td>
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It should also be noted that at the time of application to the SLF, Kinghorn Community Land Association (£103,390 awarded – 4.36ha) were intending to use the CRTB process; however the acquisition was concluded outwith the Land Reform Act.

The Pairc Trust were also awarded funding by the SLF in December 2013 (£230,000 awarded – 10,835 ha). The Trust used the Crofting Community Right to Buy as part of the process towards acquiring the Estate. At the time of writing however, the acquisition has not concluded. It now appears likely that this will go ahead via an amicable purchase without resort to the legislation, using SLF funding to help negotiate the deal.

*Year three (2014 – 2015) to date*

A total of 9 projects have been funded to date, amounting to £2,224,830 of SLF funding. Please note that these include projects approved at the SLF Committee meeting on 13 November which have not been publically announced, and these included 1 CRTB and 2 NFLS cases.

*Prospective cases for remainder of 2014-15*

We anticipate that the SLF Committee will consider a total of 7 cases (amounting to c. £2,500,000) in January 2015, including 1 CRTB and 3 NFLS cases.

*Year four (2015 – 16)*

There is currently a very healthy pipeline of cases for next financial year with roughly the same proportion of cases enabled by CRTB and NFLS as this year. It is difficult to give exact figures for the pipeline cases as they are at various stages of development, from ones that are advanced to those still speculative.
10 December 2014

Dear Lynn

COMMUNITY EMPOWERMENT (SCOTLAND) BILL – PART 4 – OFFICIALS’ EVIDENCE

At the Committee’s meeting on 19 November 2014, officials giving evidence on the Community Empowerment (Scotland) Bill undertook to provide additional information after the meeting. That information is provided in the attached document. I believe we have covered everything that was requested, but please let me know if we can provide anything further to assist the Committee in their scrutiny of the Bill.

Yours sincerely

DAVE THOMSON
COMMUNITY EMPOWERMENT (SCOTLAND) BILL – PART 4 – ADDITIONAL INFORMATION FOLLOWING OFFICIALS’ EVIDENCE GIVEN ON 19 NOVEMBER 2014.

Consultation

We offered to provide information given to the Local Government and Regeneration Committee which included more detail on the consultation activity undertaken. This is attached separately.

Allotments

Jim Hume asked a question relating to allotments and putting a limit on the time that local authorities have in which to provide an allotment.

The Bill places a duty on local authorities to hold and maintain waiting lists for allotments, and to take reasonable steps to provide more allotments if the waiting list exceeds certain trigger points with the waiting list not exceeding 50% of the current number of allotments owned or leased by the local authority. This addresses a key concern about the level of demand for allotments and the length of time people may be on a waiting list. During the consultation on the Bill we explored different options for the target under which local authorities should keep their allotment waiting lists and in discussions with local authorities they indicated that linking the duty to a specified timeframe would be unrealistic and onerous and that provision of an allotment should be linked to a clear, sustained demand, ie. the number waiting for an allotment.

Community Bodies and Changing Constitutions

The Convener asked whether the time that it takes to purchase land has increased significantly because community bodies have been required to change their constitutions by the bodies from which they have sought funding.

All community bodies seeking to use the community right to buy provisions must be compliant with section 34(1) of the Land Reform (Scotland) Act 2003 at the time they apply to use the provisions and must continue to comply even after they have purchased land through the provisions.

We ask that where community bodies seek to make changes to their Articles of Association that they pass the proposed changes (by means of a special resolution) to Scottish Ministers to check that they are still in compliance with the Act. A community body seeking to make changes must call an general meeting, giving 14 days notification to its company members. Following this change, the community body registers is special resolution with Companies House. Such a process should therefore not unduly increase the length of time that a community takes to purchase land. The process to change articles is set out in the Companies Acts.

We are not aware of any community bodies going through the community right to buy provisions that have been required to change their Articles of Association. As noted, any proposed changes would need to be checked by Ministers to ensure that they complied with the community right to buy provisions.

Funders require communities to have a specific type of structure (eg company limited by guarantee, SCIO) that also meet certain eligibility criteria, such as social purpose, open membership, community control and non-profit distributing). Purposes are usually very
broad, and it may be the case that a change is required to ensure that they fully reflect the purpose to which the grant is to be used.

**Late Applications – Good Reasons Test**

Dave Thompson asked how the good-reasons test has been applied up to now and officials undertook to provide examples of cases involving late applications that were either accepted or rejected.

The late application process whereby a community body can submit an application to register an interest in land after steps have been taken to market or dispose of the land is intended to be used on an exceptional basis, as this is not the policy preferred method. The intention is that communities take a planned approach to community ownership of land. Therefore, it is important that a community body in demonstrating “exceptional” circumstances has good reasons for the application being late or serious intent to purchase land. This idea of “serious intent” would seem to be keeping with the “plan ahead” approach. The approach to the legislation is that the community right to buy is transparent and predictable for all involved and that only land in which a registered interest exists should be affected by the right to buy provisions, unless exceptional circumstances where a late application may be accepted.

The Scottish Government has not provided a checklist of acceptable reasons which a community body wishing to submit a “late” application could use as a “good reason” to justify a late application. Likewise, section 39(3)(a) of the Act does not define good reason. Cases are judged on their own facts and on a case to case basis.

Ministers would normally consider actions taken prior to the land being marketed as supportive of a late application. It is important that the community body shows serious intent to secure a timeous application. Applications should not be purely reactive to a proposed sale of land, and as such this could not be considered a “good” reason. Reasons for an application must address why the application is made after the land has gone on the market.

Community bodies demonstrate the steps they have already taken towards submitting timeous application prior to having knowledge of the landowner’s wish to dispose of the land. This can include information on public meetings, evidence of gathering support etc, steps taken to identify the landowner, contact and discussions with the Scottish Government to submit an application etc.

Ministers consider that “good reasons” would not include: a community body was undertaking other work; a community body only recently became aware of the legislation; the community thought that while the land was owned by a particular owner that it would be safeguarded for the use of the community; a community body was not in existence at the time the land was advertised for sale.
There is legal discussions on the “good reasons” in the judgment for Holmehill Ltd v The Scottish Ministers, Stakis Limited, and Stirling Council at:  
http://www.scotcourts.gov.uk/opinions/b255_05.html

In their decisions on applications to register a community interest in land, Ministers provide a view on the “good reasons” test. All of the “late” applications are recorded in the Register of Community Interests in Land: http://www.ros.gov.uk/rcil/. In particular, the late applications, together with the decision on them are:

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Identification of a Landowner

Cara Hilton asked a question on what would happen to an application to register or buy land if, despite its best efforts, a local community could not find the landowner and officials undertook to provide examples from the current community right to buy process.

There is currently provision in the current community right to buy guidance to deal with such circumstances:


The documentation to help identify the landowner is at schedule 2 of The Community Right to Buy (Prescribed Form of Application and Notices) (Scotland) Regulations 2009:


There have been two applications where the landowner was “unknown”; there have been 175 applications on the Register of Community Interests in Land. The two cases where the landowner could not be identified related to two applications from Kinghorn Community Land Association. These are cases CB00052 and CB00066 on the Register of Community Interest in Land. Both applications were “approved” by Scottish Ministers and entered into the Register of Community Interests in Land. Both applications have since expired.
OTHER WRITTEN EVIDENCE

Additional Information

Letter from Joe FitzPatrick MSP, Minister for Parliamentary Business on the Community Empowerment (Scotland) Bill - 21 August 2014

Letter to the Local Government and Regeneration (LGR) Committee regarding its agreed approach to consideration of Part 4 of the Community Empowerment (Scotland) Bill Part 4 Community Right to Buy at Stage One - 8 October 2014

Letter from the LGR Committee following the RACCE Committee’s agreed approach to the Bill - 8 October 2014

Letter from the Minister for Local Government and Planning, Derek McKay, to the Local Government and Regeneration Committee Convener outlining areas which the Scottish Government plans to bring forward amendments at Stage 2. This letter was copied to the RACCE Convener - 6 November 2014

Letter from Minister for Local Government and Community Empowerment, Marco Biagi, to the Delegated Powers and Law Reform Committee on the Scottish Government’s Community Empowerment (Scotland) Bill on its report on the Bill. This letter was copied to the RACCE Convener - 19 December 2014

Letter from Convener of the Delegated Powers and Law Reform Committee on Bill - 20 January 2015
Community Empowerment (Scotland) Bill – Part 4 Community Right to Buy

Thank you for the constructive exploratory discussion to look at the merits of having the Rural Affairs, Climate Change and Environment Committee lead on consideration of the community right to buy elements of the Community Empowerment (Scotland) Bill on which the Local Government and Regeneration Committee has been formally designated as the lead committee.

The First Minister made a clear commitment at the Community Land Scotland Conference on Skye in 2013 to include community right to buy in the Community Empowerment (Scotland) Bill because of the natural synergies between the community empowerment agenda and community right to buy legislation. At that stage changes to the Land Reform (Scotland) Act 2003: Part 3 Crofting Community Right to Buy was not considered, largely because all available resources were focused on improving the Community Right to Buy and developing provisions for neglected or abandoned land. However, as the pace of land reform in Scotland is increasing the Government is now keen to improve the crofting community right to buy legislation in line with the amendments to Part 2 of the 2003 Act and intend to take this forward in the Community Empowerment (Scotland) Bill. There is also sense in addressing all parts where communities are able to exercise a right to buy, addressed in the same bill to ensure consistency between the various parts.

We recognise that this would increase the workload quite significantly on the Local Government and Regeneration Committee for what is already a challenging bill and timetable and would take that specific aspect of the Bill further away from the core remit of the committee. For those reasons we discussed and agreed that while the Local Government and Regeneration Committee was still best placed to lead on the overall Bill, there would be merit in the Rural Affairs, Climate Change and Environment Committee taking the lead on consideration of the community right to buy provisions of Part 4 of the Community Empowerment (Scotland) Bill at Stage 1 and reporting its findings to the Local Government and Regeneration Committee. We also thought there would be merit in having any relevant amendments on community right to buy referred to the Rural Affairs, Climate
Change and Environment Committee at Stage 2. I am happy to confirm that is the Scottish Government's preferred way forward.

Officials are ready to engage with the clerks to discuss the practical implications and can provide briefing and further information as required.

Yours for Scotland

JOE FITZPATRICK

Copy to: Presiding Officer
Dear Kevin

Community Empowerment (Scotland) Bill Part 4 Community Right to Buy

As you know, the Rural Affairs, Climate Change and Environment (RACCE) Committee received a letter from the Minister for Parliamentary Business, dated 21 August 2014, suggesting that there would be merit in the Committee taking the lead on the community right to buy provisions of Part 4 of the Community Empowerment (Scotland) Bill at Stage One.

The Committee considered this letter at its meeting on 1 October 2014 and discussed and agreed its approach to consideration of Part 4 of the Bill at Stage One at its meeting of 8 October. I can confirm that the Committee agreed to consider and report on the Part 4 of the Bill at Stage One and report by 23 January 2015. We have agreed a series of stakeholder meetings and have asked our clerks to liaise with your clerks to ensure that we avoid unnecessary duplication and overlap in our oral evidence sessions. I intend to issue a press release later this week, on behalf of the Committee, to advise that the RACCE Committee will be scrutinising and reporting on Part 4 of the Bill at Stage One.

Yours sincerely

Rob Gibson MSP
Convener
Dear Rob,

Community Empowerment (Scotland) Bill Part 4 Community Right to Buy

Thank you for your letter today advising that the Committee Rural Affairs, Climate Change and Environment Committee (RACCE) has discussed and agreed its approach to consideration of Part 4 of the Bill at Stage One.

I note that your Committee intends to consider and report on Part 4 of the Bill at Stage One by 23 January 2015. Local Government and Regeneration Committee also intend to report by 23 January 2015.

I therefore suggest, in addition to our respective clerks liaising to avoid unnecessary duplication and overlap in our oral evidence sessions, that the clerks also co-ordinate the publication of the Committee reports to further minimise any confusion to stakeholders.
I have also asked the clerks to alert our stakeholders that RACCE Committee will be scrutinising and reporting on Part 4 of the Bill at Stage One once your press release has been issued.

Yours sincerely,

Kevin Stewart MSP  
Convener  
Local Government and Regeneration Committee
COMMUNITY EMPOWERMENT (SCOTLAND) BILL

I look forward to giving evidence to the Committee on the Bill on 12 November. I thought it might be helpful if I outline before our meeting some areas in which the Scottish Government plans to bring forward amendments at Stage 2. I hope this will assist the Committee in its scrutiny.

In accordance with the commitment made by the Cabinet Secretary for Culture and External Affairs, we propose that Historic Environment Scotland should be added to the list of community planning partners set out in Schedule 1.

We will bring forward amendments to include Community Benefit Companies (BenComs) as a type of body which can make an asset transfer request for ownership of land, under section 53. BenComs are now defined under the Co-operative and Community Benefit Societies Act 2014.

We will put in place an appeal process for asset transfer requests made to the Scottish Ministers, in line with the provisions already included for requests made to local authorities or other relevant authorities.

I believe there is benefit in requiring relevant authorities to publish their registers of assets, to help community bodies understand what land or buildings may be available for asset transfer. My officials are considering how such a requirement might be constructed.
As noted in the letter from the Minister for Parliamentary Business to you and the Convener of the Rural Affairs, Climate Change and Environment (RACCE) Committee, we propose to use the Community Empowerment Bill to make changes to Part 3 of the Land Reform (Scotland) Act 2003, on crofting community right to buy. A “Call for Evidence” to consult stakeholders on the proposed changes was issued on 13 October and is available on the Scottish Government website at http://www.scotland.gov.uk/Topics/farmingrural/Rural/rural-land/right-to-buy/crofting.

We will also be seeking to make further amendments to Parts 2 and 3A of the Land Reform (Scotland) Act 2003, although the detail of these is still under discussion.

I and my Ministerial colleagues will also, of course, pay close attention to the views of your Committee, the RACCE Committee and the Delegated Powers and Law Reform Committee when you report on the Bill, and consider what further amendments might be brought forward to improve the Bill.

I am copying this letter to the Convener of the RACCE Committee for their interest in Part 4 of the Bill.

DEREK MACKAY

Victoria Quay, Edinburgh EH6 6QQ
Cidhe Bhictoria, Dún Èideann, EH6 6QQ
www.scotland.gov.uk
December 2014

Dear Nigel

COMMUNITY EMPOWERMENT (SCOTLAND) BILL

I write in response to the Report of the Delegated Powers and Law Reform Committee on the Scottish Government's Community Empowerment (Scotland) Bill. I would like to thank the Committee for the time and effort you have put into producing this report.

National Outcomes

34. The Committee considers that it would be appropriate for the setting and review of the national outcomes to be subject to the scrutiny of Parliament, possibly through scrutiny of regulations subject to the affirmative procedure. A more active scrutiny role for the Parliament appears to be justified having regard to the significance of the national outcomes, the discretion afforded to the Scottish Ministers in deciding how the outcomes are presented and measured, and the fact that all public bodies and other persons carrying out functions of a public nature as described in section 1(1) would require to have regard to the outcomes.

We note the Committee recommendation that the setting and review of the national outcomes should be subject to the scrutiny of Parliament, possibly through scrutiny of regulations subject to the affirmative procedure.

We agree with the Committee’s recommendation that Parliament should have a more active scrutiny role in relation to national outcomes, but do not consider that regulations would be appropriate in this context. Instead we propose to bring forward amendments to require Scottish Ministers to consult the Parliament, using the procedure provided for under rule 17.5 of the Standing Orders.

Victoria Quay, Edinburgh EH6 6QQ
www.scotland.gov.uk
Powers to add or remove bodies

43. The Committee calls on the Scottish Government to amend the Bill at Stage 2 so as to make the powers in sections 4(6) and 8(3) subject to the affirmative procedure when exercised so as to add bodies to the lists in schedule 1 or section 8(2) respectively. The Committee also recommends that the powers in sections 16(3) and 51(3) be made subject to the affirmative procedure.

We note the Committee recommendation to amend the Bill at Stage 2 so as to make the powers in sections 4(6), 8(3), 16(3) and 51(3) subject to the affirmative procedure. We agree with the Committee recommendation and will bring forward amendments at Stage 2.

Power to issue guidance

53. The Bill also makes no provision for an enforcement mechanism, to enforce compliance with the guidance. The guidance must cover matters “about the carrying out of functions conferred on community planning partners and partnerships under Part 2 of the Bill”. This is a broad requirement and the Bill makes no provision for a scrutiny or review mechanism, to review whether any automatically binding matters which may be specified in the guidance are properly included, because they concern the carrying out of functions conferred in Part 2 of the Bill.

54. These concerns would not apply if, in a similar way to the existing provision for guidance in section 18 of the Local Government in Scotland Act 2003, there was provision that community planning partners and partnerships would “have regard to” the guidance.

We note the Committee concerns with section 10 and the recommendation that these concerns would not apply if there was provision that community planning partners and partnerships would “have regard to” the guidance rather than have to comply with the guidance. We agree with the Committee recommendation and will bring forward an appropriate amendment at Stage 2 to replace “comply with” with “have regard to”.

Eligible Land

66. The Committee draws the power in the new section 97C(3)(a) of the 2003 Act to the attention of the Local Government and Regeneration Committee on the basis that it has concerns about the scope of the power and its intended use.

We note the Committee concerns with section 97C(3)(a). On 10 December the Cabinet Secretary for Rural Affairs, Food and Environment gave evidence on the Bill to the Rural Affairs, Climate Change and Environment Committee. Regarding this provision the Cabinet Secretary commented that he was reviewing the power and reflecting on the comments that the committee had received and made it clear that if the Rural Affairs, Climate Change and Environment Committee has specific views on the delegated power and how it should be used he would welcome that.
Effect of Ministers' decision on right to buy

80. The Committee considers that if the use of the word “prescribed” in section 97N is not intended to confer separate and free-standing powers to make subordinate legislation, the Bill should be clarified for Stage 2 so as to remove the scope for doubt over the interpretation of the section and the powers it confers by re-drafting the provision so as to remove the references to “prescribed”.

We note the Committee concerns on the use of the word “prescribed” in section 97N. We are looking at how we might redraft this section to remove the scope for doubt over the interpretation of the section.

I trust this is helpful and remain very grateful to you and the members of your Committee for their work on this Bill. I am copying this letter to Kevin Stewart MSP and Rob Gibson MSP as Conveners of the Local Government and Regeneration Committee and Rural Affairs, Climate Change and Environment Committee respectively.

MARCO BIAGI
Community Empowerment (Scotland) Bill

Dear Rob

At its meeting today the Committee considered the Scottish Government’s response to its stage 1 report on the Community Empowerment (Scotland) Bill.

In so doing the Committee welcomed the Scottish Government’s commitment to amend the Bill in a number of respects.

However, the Committee remains concerned by the power in the new section 97C(3)(a) of the Land Reform (Scotland) Act 2003 and continues to find the explanations provided in justification of what is a very significant power to be unsatisfactory.

As you know, section 97C(3)(a) provides that eligible land for the purposes of acquisition does not include land on which there is a building or structure which is an individual’s home, unless the building or structure falls within such class or classes as may be prescribed. The word ‘prescribed’ adopts the definition set out in section 98(1) of the 2003 Act, meaning “prescribed in regulations made by the Scottish Ministers”. The effect of section 97C(3)(a), therefore, is that Ministers may make regulations prescribing buildings or structures which are eligible for acquisition by a Part 3A community body.
The Committee was concerned, and remains concerned, that this power permits the Scottish Ministers to make regulations prescribing buildings or structures which are eligible for acquisition by a Part 3A community body notwithstanding the fact that such buildings or structures may be described as an individual’s home.

In its stage 1 report the Committee noted that neither the DPM nor the Scottish Government’s responses to the Committee’s questions, both written and oral, offered a clear explanation as to the reasons for taking this power, or how the power is intended to be exercised. Furthermore, the Scottish Government did not provide the Committee with any examples of the kinds of building or structure that may be prescribed in regulations made in exercise of this power.

In our view the uncertainty around this power and its exercise has not in any way been assuaged either in the evidence given by the Cabinet Secretary for Rural Affairs, Food and Environment to your Committee or in the Scottish Government’s response to our stage 1 report on the Bill.

In the Cabinet Secretary’s evidence to your Committee he explained that the purpose of the power in section 97C(3)(a) is to give Ministers the opportunity to exclude land from the right to buy, and that the obvious case in point would be a person’s home.

The Committee considers, however, that the power in section 97C(3)(a) is not a power to exclude certain land from the scope of the new Part 3A, but rather enables Ministers to make regulations the effect of which is to include land on which there is an individual’s home within the scope of land which could be deemed to be eligible for acquisition by a Part 3A community body. In the Committee’s view, the power enables the general exemption for land comprising individuals’ homes to be disapplied for the particular categories or descriptions of land which may be prescribed using this power.

The Committee maintains that it is unsatisfactory that the Parliament is being asked to confer a power of this significance upon the Scottish Government in the absence of a detailed explanation as to why it is necessary or what it is for and in circumstances where the thinking underpinning the power appears to be in the early stages of development.

The Committee appreciates the efforts of your Committee to pursue this matter. The Committee re-emphasises its concerns about the power and asks that you continue to pursue them with the Scottish Government.

Please note that we also intend to write to the Scottish Government reiterating our substantial concerns about this power and again inviting it to reflect on the scope and use of this power.

If I or the Committee can be of any assistance to you in your deliberations on this power, we would be very willing to assist.

Nigel Don MSP
Convener
RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

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16 December 2014

Dear Chief Executive

Disposal of Local Authority Assets

As you may be aware the Rural Affairs, Climate Change and Environment Committee has been taking evidence on Part 4 of the draft Community Empowerment Bill, which makes a range of changes to the Land Reform (Scotland) Act 2003 in relation to the community right to buy land.

In discussing this with local authorities and development trusts the issue of the disposal of local authority assets arose. I would be grateful if, on behalf of your local authority, you could provide the Committee with the following information:

- Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?
- When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?
- What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?
- What is your experience of disposal and what difficulties has the authority encountered?
As the Committee will be concluding its Stage One consideration of the draft Bill and reporting the Local Government and Regeneration Committee in January it would be helpful to have your response by 12 January 2015.

Yours sincerely

Rob Gibson MSP
Convener
RESPONSES TO THE RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE BY LOCAL AUTHORITIES REGARDING DISPOSAL OF ASSETS

Aberdeen City Council
Aberdeenshire Council
Angus Council
Argyll and Bute Council
City of Edinburgh Council
Comhairle nan Eilean Siar
Dumfries and Galloway
Dundee City Council
East Ayrshire Council
East Lothian Council
East Renfrewshire Council
Falkirk Council
Glasgow City Council
Highland Council
Midlothian Council
Moray Council
North Ayrshire Council
North Lanarkshire Council
Orkney Islands Council
Renfrewshire Council
Scottish Borders Council
South Ayrshire Council
South Lanarkshire Council
Stirling Council
West Lothian Council
Written submission from Aberdeen City Council

1. Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?

Aberdeen City Council holds property assets under three accounts, our General Services Account, Common Good or Housing Revenue Account.

Aberdeen City Council has no specific property development vehicle under which assets are held.

Some previously operational assets are now operated by arms length companies notable some former social works properties, sports and some community and cultural assets. All these property types are occupied under lease or license arrangements, some with service level agreements also.

2. When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?

Assets are generally valued at market value reflecting the RICS Valuation Standards.

When considering offers a number of issues are considered including but not restricted to:

- Timing of receipt.
- Level of receipt.
- Planning deliverability.
- Financial deliverability.
- Any impact of service delivery costs where appropriate.

3. What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?

Aberdeen City Council have an active programme of property proposals and unlike many other local authority areas the demand for property assets over the last 5 years has been strong on the open market.

Whilst the Council has no formal policy in place we have a governance mechanism to consider requests for community asset transfer and are working towards having a policy in place. We anticipate this being influenced by the Community Empowerment bill. I attach a link to our most recent committee report on the subject.

4. **What is your experience of disposal and what difficulties has the authority encountered?**

As previously noted the council has to date only transferred properties through leasehold arrangements and as such we have only limited experience to call upon.

Notwithstanding a positive approach having been taken by members in the principle of transferring assets to communities we would need comfort in relation to:

- Future funding and viability
- Community capacity and capability
- Child protection issues
- Succession planning
- Clawback/ alternative development (particularly in strong markets).
- Ongoing repair and maintenance issues
- Balancing competing interests from different community groups

There are additional problems in relation to all proposals particularly in relation to the time between assets becoming surplus and a new use being undertaken in the property. Such problems include holding costs, vacant rates costs, vandalism, asset stripping etc. This is not necessarily a problem restricted to community transfer, for example sites sold subject to planning can create delays in the sale process. Any elongation of timescale to consider community approaches does add additional risks.
Written submission from Aberdeenshire Council

1. Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?

No.

2. When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?

To comply with the disposal of land regulations, the market value of the asset is established in the first instance. The Council then attributes a value to the anticipated social, community and economic development benefits that will derive from the transfer to establish a discounted transfer price that is still considered to achieve best value.

3. What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?

The Council has both a Surplus Property Policy and a Community Asset Transfer Policy. Together these policies encourage the disposal of appropriate assets to Community Groups. The Council has published guidance to Community Groups to guide them through the applications process and to clarify the criteria against which applications will be considered and the information Community Groups are expected to provide at each stage.

4. What is your experience of disposal and what difficulties has the authority encountered?

It is acknowledged there is, at times, a tension between the need to ensure the Council obtains capital receipts to fund future investment and meeting the aspirations of communities. The Council has been proactive in Community Asset Transfer and has transferred a number of assets over recent years.

The Council is going through a period of significant investment in new assets at this stage, which follows on to disinvestment in redundant assets. There is a need to be mindful that given the financial position the Council needs to ensure there is an optimum number of assets for both public and community use whether this is delivered through the Council, other public bodies or community groups. There are also occasions whereby the representation by the community is by an individual group which does not contain a high number of members and may not always be representative of the whole community. That being said, the Council fully recognise that there are benefits from transferring assets to the community and I can provide some examples where this has worked well in Aberdeenshire.
Written submission from Angus Council

The authority does not have any arrangements in place to hold some or all local authority assets in a separate land holding. We hold all our titles to land in the name of the Council. Some can be trust or common good assets which are identified separately in the Council’s accounts, but the title is in the name of the Council as owner.

When disposing of assets the Council declares the asset surplus to requirements and places the asset on the open market. A valuation is placed on the asset by Council registered valuers or external advisers. However, assets are sold at Open Market Value except when Community Asset transfer Policy applies. Determining if an asset can be used for something else is an exercise undertaken by the Council and its partners prior to an asset being declared surplus. In some instances assets have been reused for housing development and in others for community asset transfer.

Angus Council has an active policy on Community Asset Transfer (https://archive.angus.gov.uk/ccmeetings/reports-committee2013/NeighbourhoodServices/525App1.pdf). Many projects are underway ranging from new and innovative uses for an asset through to communities taking on a village hall or Bowling Green. The policy takes account of the community benefit of transferring an asset to a community group in determining the value.

We have no real difficulties with disposals in our area but the size and age of the asset e.g. former school which has listed building status can also be a factor influencing the value.
Written submission from Argyll and Bute Council

Please find undernoted your questions with answers as applicable to Argyll and Bute Council;

1. Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?

If by separate arrangements to hold land it is meant that such vehicles as a Limited Liability Partnership, Trust, etc. are utilised then I can advise that Argyll and Bute Council has no specific arrangements in place. The possibility of utilising such vehicles would be examined if it would be an appropriate option to consider in relation to a specific project and each would be considered on its own merits. The Council does internally hold property under different accounts. Additionally the Council manages those assets held for common good.

2. When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?

With regard to the transfer of assets outwith the current Community Right to Buy legislation Argyll and Bute Council utilises the services of the District Valuer to place an impartial open market value on the asset. The valuation is then used as part of a business case assessment which will be undertaken by the department which has responsibility for the asset. The business case will first consider whether the asset is or can be made surplus to the Council’s requirements. If the asset is or can be declared surplus the business case will look at both the financial and non-financial implications of a potential sale of the asset and relate these to national and Council policy/strategies and in particular to the Community Plan and Single Outcome Agreement. If relevant to a particular project an assessment may also be made on whether there is scope to consider a less than market value or even nominal sale price. The assessment is therefore not purely financial but the Council is always mindful of the requirements under the Local Government etc. (S) Acts of the requirement to achieve the best consideration reasonably obtainable. The assessment criteria as contained in the Disposal of Land by Local Authorities (S) Regulations 2010 is also utilised by the Council to assess any request for a less than market value or nominal price.

3. What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?

Argyll and Bute Council has an approved third sector asset disposal policy and accompanying procedures in place. This includes an application form and guidance which has been developed in consultation with the Scottish Government’s Community Right to Buy Team, the Big Lottery Fund, Highland and Islands Enterprise and DTAS. Additionally a dedicated web site has been set up where assets will be advertised. The website also contains the application form which can be downloaded, guidance, leaflets and video presentations from the Council’s launch of the third sector asset transfer process which includes presentations from John Swinney MSP and a range of funders, support organisations and Council officers.
Where a third sector group is an existing occupier and requests a transfer the authority considers the request in the usual manner but will in such cases deal directly with the occupying group rather than advertising.

Within the Council’s Economic Development Service there is a Social Enterprise Team which works with community groups seeking to obtain assets. Currently there are four potential assets sales to the third sector being progressed.

4. What is your experience of disposal and what difficulties has the authority encountered?

As advised above Argyll and Bute Council is currently in the process of dealing with a number of potential sales to the third sector. Recently the Campbeltown Town Hall transferred to the South Kintyre Development Trust and is good example of the Council’s commitment to working with the community and third sector to deliver a sustainable solution.

From the experience to date it is clear that for both the Council and the third sector groups there is a considerable amount of work and cost involved to clarify proposals, prepare business cases, seek valuations, obtain cost information, etc. The Council has assessed that third sector asset disposal costs could be as high as £20,000 for each party. There is also a significant resource implication for the Council to then analysis the business case to ensure the proposal is economically viable & sustainable and to assess the merits of any sale proposed for less than market value.

The expectations of communities and community organisations in relation to the community buy out process often doesn’t reflect the statutory duties of local authorities in disposing of assets (particularly at less than market value) or the risks associated with state aid regulations where a commercial activity is involved.

A community organisation registering an interest in a community buy out, can extend the period during which the local authority incurs security or maintenance costs which can be in six figure terms. This is often unbudgeted additional expenditure and is not reflected in the asset valuation.

The process can by necessity be quite lengthy and in the case of the Campbeltown Town Hall discussions first commenced in December 2010. The Council is looking to refine the process with the benefit of experience but complicated projects are always going to require quite significant input from Council officers.
Written submission from City of Edinburgh Council

I refer to your letter of 16 December 2014 requesting information in relation to the disposal of local authority assets. I trust the following information will be of some assistance to the Rural Affairs, Climate Change and Environment Committee.

1. The City of Edinburgh Council does not have an arrangement to hold any of its assets in a separate land holding. However, there is a formal process for declaring assets surplus and available for disposal whereby a property that is no longer required by the service user is put to a Property Strategy Group. This group comprises representatives from all service areas to consider if the use of the asset would add value or create potential savings to service delivery. If no service area can make a business case for use then the asset is put to a Corporate Asset Management Group to declare surplus and available for disposal. In addition the Council is the ultimate holding organisation of EDI Group Ltd, the principal activities of which are property development and investment and it undertakes specific development activities for the Council in certain circumstances.

2. Land and property assets are valued at Market Value and are purely financial valuations at present. However, a community benefit value may be considered as part of the Council’s proposed Asset Transfer policy.

3. The City of Edinburgh Council has a current “concessionary lets” policy which it is reviewing, and is working on the production of an Asset Transfer policy to take into account the provisions of the Community Empowerment Bill. The current policy is that concessionary lets, other than certain community food growing schemes, will only be granted in exceptional circumstances, unless there is a sponsoring Council Department. The Council generally advertises properties at market value but does consider applications from the Third Sector at less than market value and, from time to time, has marketed properties for Third Sector tenants only, depending on the proposed use and location.

4. Some disposals to the third sector have been successful and have been of benefit to the Council and the City, others less so. The difficulties encountered are:

   a) The tension between obtaining a full (or any) capital receipt/rental value against the aspiration to support the third sector

   b) The time required for the third sector to carry out feasibility studies, prepare business plans and obtain funding. In the meantime, the Council incurs substantial holding costs (but this has been avoided in a recent instance when the third sector have been granted a lease for a year while they obtain funding)

   c) The time delay in b) can result in an alternative sale/lease at maximum value being lost

   d) Uncertainty in capital planning
e) Some disposals involve a significant amount of staff time across a number of different Service Areas and also require Committee time. Staff time is lost if the sale/lease is eventually aborted.

f) Some disposals to the third sector may require ongoing financial and other commitments on behalf of the Council.
I refer to your letter of 16 December 2014 requesting information in relation to Comhairle nan Eilean Siar’s asset disposal procedures with reference to the Community Empowerment Bill.

- **Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?**
  No

- **When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?**
  The assets are generally valued by District Valuer Services (DVS) and occasionally by an Estate Agent. This is predominantly a financial valuation and a guideline of what could be obtained on the open market which is used as an element of the Comhairle’s decision making in the disposal of assets.

- **What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?**
  The Comhairle has adopted a procedure whereby there is a staged approach to the disposal of assets:

  Stage 1 - Declare as surplus only on checking that Internal Departments have no interest in retaining for Comhairle Use.

  Stage 2 - Check whether the local Registered Social Landlords have an interest in acquiring for development as affordable housing. If there is interest then terms for transfer are agreed.

  Stage 3 - Advertise seeking interest from Community Groups. If there is interest then dates are set for the submission of a Business Plan which would be evaluated for compliance with the Disposal of Land by Local Authorities (Scotland) Regulations 2010. Offers in the order of 10% of the valuation have been accepted for surplus building assets.

  Stage 4 - If there is no community interest then the asset is advertised on the open market.

  I believe this procedure demonstrates a positive attitude by the Comhairle towards disposal to community groups.

- **What is your experience of disposal and what difficulties has the authority encountered?**
  Comhairle nan Eilean Siar has successfully disposed of a number of assets at every stage of this procedure over the past 4 years.
One of the main difficulties encountered is the time taken by community groups to compile viable business plans and funding packages. This time, usually in excess of 12 months, sometimes considerably more, means that the Comhairle is retaining the revenue costs, and the assets tend to deteriorate in condition when not occupied.

In some cases the community's desire to own the asset is more through social ties (often in the case of former school buildings) rather than a direct need. This means that community groups are looking for uses for the asset rather than having established uses which require an asset to deliver them. We have found that by offering communities the opportunity to lease the asset for a short term (1 to 2 years), at a reduced rate, the group can trial their business model and gain a direct experience of managing the asset without a commitment to purchase. The other benefit to the Comhairle is that the building is being occupied and maintained for this period. To date each of the community groups that have leased an asset have later proceeded with purchase.

In some cases there may be competing groups within one community wishing to acquire the asset. The Comhairle actively encourages groups to collaborate and submit one application to acquire the asset. To date this practice has been successful and has encouraged community collaboration and avoided the situation where multiple community applications are being evaluated against each other.

The Comhairle has adopted the procedure of offering the asset to community groups prior to advertising on the open market in the knowledge that the achievable receipt is likely to be reduced. Consideration was given to advertising on the open market and to community groups simultaneously in order to evaluate the most advantageous offer to the Comhairle, however difficulties were perceived in matching timescales as private offers would have to wait for the submission of community business plans.

Where possible the Comhairle starts the process as soon as the asset is known to become surplus to requirements rather than waiting until it is vacated. This reduces the time that the asset is vacant.

Other timescale difficulties relate to historical title issues particularly in relation to resumption from crofting tenure which may not have been completed. Concluding matters between the Crofting Commission, Landlord and Tenant can delay disposals for lengthy periods.
Written submission from Dumfries and Galloway Council

Dumfries and Galloway Council’s responses to the four questions from the Committee are as follows:

1. Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?

Response: No

2. When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?

Response: Where an asset is surplus to Council requirements, it is valued on the basis it will be sold on the open market. The valuation is carried out by RICS Registered Valuers, based on comparable sales evidence in accordance with the RICS “Red Book”. When the asset is actually disposed of, the agreed sale price will depend upon a number of factors, such as: offers received, interest (if any) from community group and the business case put forward from the group for the asset. Where the asset has been marketed and no community interest registered, the disposal price will generally be the highest offer received.

There are also instances where assets are transferred to community groups, where there were no plans to market the asset for disposal; the Council has transferred various assets in the last few years, and these are noted on the enclosed document. Sometimes, when an asset has been, or is about to be, marketed for disposal, a community group expresses an interest to acquire the property at less than best consideration; in such circumstances, the Council’s Disposal Policy allows that the property be taken off the market for 18 months to allow the group to develop a business case. Where properties are disposed of or transferred to a community group, it is rare that the consideration would be financial, but the criteria set out in the Disposal of Land by Local Authorities (Scotland) Regulations 2010, in terms of contributing to any of the purposes of: economic development or regeneration, health, social well-being, or environmental well-being, in respect of the whole or any part of the area of the local authority or any persons resident or present in that area are considered by the Council. (References to “well-being” are to be construed as for the purposes of section 20 of the Local Government in Scotland Act 2003(2).)

3. What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?

Response: Dumfries and Galloway Council has a Disposal Policy and a Community Asset Transfer process to encourage the disposal of assets to Community Groups. The Council’s priority to “be an inclusive Council” includes a specific objective “to empower our communities to make the most of their assets.”
I enclose a copy of the Council’s Community Asset Transfer process together with a summary of recent community asset transfers and disposal of assets at less than best consideration.

The funding of the Council’s Capital Investment Strategy also includes generating receipts from the sale of surplus assets. Previously, the target to be generated each year was £750K; however, from 2015/16, this is reduced to £500k per annum. There is therefore a balance which the Council has to strike between disposal of assets to community groups and generation of capital receipts on surplus assets. However, not all assets are of interest to community groups and, presently, it is possible to reasonably maintain this balance.

4. What is your experience of disposal and what difficulties has the authority encountered?

Response: Many properties which are marketed for disposal can be very difficult to sell, and some do sit on the open market for a considerable period of time with limited interest; the marketing price is therefore reconsidered periodically. This has been particularly true in recent years, with a general downturn in the market and also, many of the Council’s more valuable and saleable surplus assets having already been disposed of.

In terms of disposals or transfers to community groups, it can sometimes be the case that groups are interested in “saving” a building, without necessarily having a business case developed or considered for viable sustainable use of the asset in question. Where this situation arises, and consistent with our Council’s priority to be an Inclusive Council, all reasonable steps are taken to assist Community groups bring forward a sustainable business case. Likewise, as noted, the Council allows interested community groups up to 18 months to develop a business case for transfer of the asset; whilst this can be extended by the Council, the Council does not wish to see valuable assets deteriorate through long periods of vacancy.

In terms of land assets specifically, it has not generally been the case that there is community group interest in obtaining greenfield or brownfield land from the Council; community group interest is predominantly in built assets.

I trust you find the foregoing responses and the enclosures to be of help to the Committee in concluding its Stage One consideration of the draft Bill.

Annex 1

Recent Community Asset Transfers

As part of the Community Facilities Review process for 2013/14 and 2014/15 the following are community facilities which have been transferred or are due to transfer to community groups. There are also many properties which are run by management committees on older leases (particularly in the Nithsdale area).

Pre-2013:

- St Ninian Hall, Isle of Whithorn; Isle Futures, Asset Transfer
2013/14 (all transferred via the standardised agreement – lease):

- Hutton Hall
- Noblehill Community Centre (Dumfries Town Hand Community Hall)
- Stakeford Community Centre (Glenaros Church)
- Glenkens Community Centre
- Kirkcudbright Community Centre
- Whauphill Hall (Whauphill Community Association)

2014/15:

- Canonbie Hall, Annandale & Eskdale – Full cost Lease

At the moment the Council is in the process of agreeing the transfer of the following via a standardised agreement:

- Ecclefechan Hall
- Nelson House
- Annan Community Facility
- Sanquhar Community Centre
- Thornhill Community Centre
- Glenlochar Community Centre
- New Galloway Town Hall
- New Luce Village Hall
- Portpatrick Hall – Standardised agreement, then asset transfer

The Council is also seeking to asset transfer the following properties for less than best consideration:

- Stakeford Community Centre (Glenaros Church)
- Noblehill Community Centre (Dumfries Town Band Community Hall)
- Waverley Hall, Creetown (Creetown Initiative)
- Portpatrick Hall (Portpatrick Trust)
The following properties which the Council considers to be surplus to its requirements are not yet being marketed for sale due to community interest and may ultimately be disposed of at less than best consideration:

- Drummore Hall (Mull of Galloway Trust)
- Glenkens Community Centre
- Dryfe Road Offices, Dryfe Road Lockerbie
- Former Johnston Primary School, St Mary’s St, Kirkcudbirght

The Council’s disposal policy permits that a community group has up to 18 months to develop a business case for asset transfer; this period may be extended at the Council’s discretion.

Unless stated otherwise, all transfers have been to the specific facility’s Management Committee.

There are no instances of the Council having refused to enter into agreement, or seeking to refuse consideration of an asset transfer.

The Council approved a Community Asset Transfer Process in July 2014, a copy of which is enclosed.

**Power of Well-Being**

Recent examples (since January 2013) where the Council has considered well-being when considering disposal of a property at less than best consideration are:

- **22 January 2013 (item 10) and 18 March 2014 (item 10): Disposal of land to the Rear of Dumfries Academy.**
  
  The Council agreed to dispose of 1,400m² and 590m² of land to the Peter Pan Moat Brae Trust for nominal consideration. The Committee decisions and the reports can be found at:
  

  and


- **19 March 2013 (item 16): Former Dumfries Academy Dining Hall**
  
  The Council agreed to lease the former Dumfries Academy Dining Hall, Academy St/Lovers Walk Dumfries to the Inspired Community Enterprise Trust Ltd, at a nominal rent, subject to appropriate terms and conditions. The committee decision and the report can be found at:
• **18 June 2014 (item 12): Disposal of High Cemetery Lodge, Craigs Road, Dumfries**

The Council noted the two offers received by the closing date set and agreed to accept the higher offer received. Well-being was considered in reaching this decision, although the Council accepted the higher offer. The Committee decision and the report can be found at: http://egenda.dumgal.gov.uk/aksdumgal/users/public/admin/kab12.pl?cmte=PRC&meet=36&arc=71

• **18 November 2014 (item 14): Birchvale Theatre, Dalbeattie**

The Council agreed to dispose of the Birchvale Theatre, Dalbeattie Primary School to Birchvale Players for £1. The decision and the report can be found at item 14 of: http://egenda.dumgal.gov.uk/aksdumgal/users/public/admin/kab12.pl?cmte=PRC&meet=35&arc=71

• **18 November 2014 (item 13) Moffat Memorial Building, Noblehill Park, Dumfries**

The Council agreed to grant a lease for up to 20 years for use as a Men’s Shed at a nominal rent. The Agenda and the report can be found at item 13 of:


**Annex 2**

**Dumfries & Galloway Council Community Asset Transfer Process**

1. **Background**

On 19 March 2013 the Policy and Resources Committee agreed a Disposal Policy for Dumfries & Galloway Council. This includes the option for ‘complex disposal at less than best consideration’ whereby ownership of a property is transferred to another body for, usually, a nominal sum.

Whilst the Policy provides for the legal aspects, this process provides guidance for officers and community groups to ensure a consistent approach with due diligence and transparent decision making hence the need for an agreed Community Asset Transfer Process. Furthermore, the Policy provides a maximum 18 month timescale for groups to demonstrate significant progress from expression of interest towards transfer of ownership. This process provides clear steps to allow projects to move through the requisite steps within that time frame.

It is recognised that Council properties which are deemed surplus to requirements for service delivery can continue to play a key role in communities. However, this potential must be matched by viable community groups with suitable skills and a
sustainable business plan that is not dependent on ongoing Council revenue funding.

2. Purpose of Community Asset Transfer

The selling of a public asset to a community group for a nominal sum is governed by the Disposal of Land by Local Authorities (Scotland) Regulations 2010. These Regulations, provide that “where the Capital Value of the land is greater than £10,000, but the proposal is to dispose of the land for less than 75% of the Capital Value (this includes Disposal by lease), the Council should:

- appraise and compare the costs, other dis-benefits and benefits of the proposal;
- be satisfied that the disposal for that consideration is reasonable;
- and agree that the disposal is likely to contribute to any of the purposes of economic development or regeneration; health; social well-being; or environmental well-being; in respect of the whole or any part of the area of the local authority or any persons resident or present in that area. (references to “well-being” are to be construed as for the purposes of section 20 of the Local Government in Scotland Act 2003(2).

It is considered that community empowerment, resilience and capacity building can all be encompassed within social well-being. Although the legislation refers to ‘land’ the provisions apply to buildings as well.

3. The Community Asset Transfer Process

The Process for Community Asset Transfer (CAT) is outline below and summarised in Appendix 1 which also sets out roles and who makes decisions. This both guides community groups though their own development, where needed, whilst also ensuring that due consideration of the regulatory requirements can be evidenced.

It should also be noted that the timescales are indicative. It is necessary that organisations are able to demonstrate significant active progress since, where this is not evident, then the Council may explore other disposal routes.

3.1 Preliminary Activity

The success of a Stage 1 application will be determined during this phase. Although the Stage 1 application only requires an outline business plan, having a clear vision and refined business plan will help to ensure the success of suitable applications.

Community

- Groups can be galvanised around various visions. However, to satisfy the wellbeing requirements, it would not be sufficient for a group to be motivated to ‘save’ an asset. A viable and sustainable vision, supported by a robust business plan, is also needed. These take time to develop and be refined. An outline business plan should be prepared to support a Stage 1 application.
Guidance on the content expected from a full business plan is contained in the support notes for a Stage 2 application.

- Where a group is newly formed, it may be prudent for it to consider managing the asset through a short term management agreement in order to develop organisational capacity, refine the vision and test the business plan prior to taking on the financial risks of ownership. This short term arrangement should be reviewed annually for evidence of significant progress.

- Where grant funding will be a core element of a business plan, such as with a development project, it is essential that groups engage with potential funders at this early stage. Funder requirements can have a significant influence on the shape and structure of a project.

**Council**

Council support will be provided through Community and Customer Services. Officers will:

- provide information, advice and support to community groups considering CAT whilst clearly explaining the decision making process. This will include clarity on the support available from the Council during the process and the timescales that must be adhered to by both parties.

- confirm if the asset has already been declared surplus to CCS or Council needs.

- liaise with the Estates team to confirm the status of the property in terms of Title Deeds.

- provide accurate running costs for the building.

- assist in building the capacity of community groups, where that is requested. This may include the establishment of a constituted group, developing or enhancing partnership working with local groups and organisations, or a skills / training assessment to ensure that the organisation is ready and prepared to manage the asset in the future.

- give advice on developing a vision for the asset (with reference to Section 2 above), the scope of any projects and potential funding routes. This could include providing support to identify how the asset meets the organisations objectives, its ability to meet the needs of the wider community now and in the future, how viable the project is and how sustainable the asset will be.

- advise groups on consultation methods to provide sufficient evidence of community support for the proposals. This may include an introduction to the National Standards for Community Engagement, support to plan and deliver a community meeting, assistance to develop an online survey or advice on how to gather letters of support.
• provide information on the condition of the asset, such as existing condition surveys, asbestos registers or legionella test records. If necessary, provide up to date condition surveys to support funding bids.

3.2 Stage 1 – Suitability

The first stage in the process results in a decision on whether to proceed to the more detailed assessment at Stage 2. The first stage allows the community group to submit its proposals in outline. The application requirements and assessment criteria are shown in Appendix 2.

1. Community group submits initial application. If more than one group is interested then notification of a closing date for applications may be considered. Any decision will also consider which application presents the greatest potential community benefit in addition to other factors.

2. On receipt of application, the Officers will:

a. check that the application is competent

b. confirm if the property has already been declared surplus

c. confirm that clear title exists

d. review the most recent condition survey, identify any significant issues and liaise with other Departments if that is necessary. Preference will be given to organisations able to lever external funding to improve the condition.

e. confirm whether TUPE rights apply where a member of Council staff is employed in relation to an asset

Where these checks reveal any issues that could prohibit or prevent asset transfer then they need to be resolved before the application can be considered further.

3. Views of Area Committee Chair and Ward Members will be sought on the application.

4. The Head of Resource Planning and Community Services will review information in support of the application and the viability of the organisation before making an assessment on the suitability of the asset for transfer, the strength of the outline proposal (particularly potential community benefit), and the standing of the organisation. The possible outcomes are detailed below and the reasoning for the decision will be clearly communicated to the applicant:

a. application suitable to proceed to Stage 2

b. application suitable to proceed to Stage 2, subject to the property being formally declared ‘surplus with complex disposal at less than best consideration’,

c. recommendation that the organisation consider an annual management agreement years before re-submitting a Stage 1 application
d. reject the request.

5. Area Committee Chair and Ward members will be advised of the decision.

3.3 Stage 2 – Detailed Assessment (6 to 12 weeks from Stage 1 decision)

The organisation has the opportunity to submit a detailed application based on a “sound” business plan. The application requirements and assessment criteria are shown in Appendix 2.

1. Community group submits Stage 2 application. If more than one group is interested then notification of a closing date for applications may be considered. Any decision will also consider which application present the greatest potential community benefit in addition to other factors.

2. Application assessed with officers from other Departments where that is appropriate. Applicants should use the Stage 2 application form with reference to the detailed Guidance Notes:

- Section A: Pass/Fail
- Section B/C: consideration of benefits/dis-benefits of proposals with regard to evidenced community wellbeing, viability and sustainability, particularly financial sustainability.

3. It may also be that viable disposal options other than for less than best consideration exist. Should this be the case then the preferred Stage 2 application will be reviewed against other options by the Strategic Asset Board to assess which option presents the greatest community benefit. Recommendations from the Group will be included in any report to the Policy and Resources Committee.

4. Head of Resource Planning and Community Services confirms the assessment and recommendation.

5. Report to relevant Area Committee to seek a recommendation prior submitting to Policy and Resources Committee

6. Report to the Policy and Resources Committee for decision. This will contain a summary of the application, assessment and officer recommendation. The possible outcomes are detailed below:

a. Approval of transfer to applicant at less than best consideration.

b. Conditional approval of transfer to applicant at less than best consideration. (Where a business case is contingent upon the securing of external funding. Conditional approval will be time limited, subject to the likely time frame for funding applications.)

c. Reject the application with the reasons and outcome officially minuted. The organisation will be formally written to confirm the reasons for the decision detailing the timescales for the group being able to re-apply.
Note: where a Stage 2 application is rejected, the organisation may not reapply against the same asset within a period of 12 months. It is essential that organisations work closely with Council Officers in the Preliminary and Stage 1 period to ensure that a quality application is produced. Re-applications within 12 months may be considered where there has been a material change which would significantly alter the original application.

3.4 Stage 3 – Implementation (4 to 8 weeks from the Stage 2 decision)

1. Organisation commences implementation of business plan, including the making of funding applications (where relevant).

2. Council finalises legal aspects of transfer, including TUPE arrangements where appropriate.

3. Organisation provides evidence that any conditions have been met in full.

4. Final report to Policy and Resources Committee, where required.

5. Transfer implemented.

3.5 Stage 4 - Handover

Organisation commences operations. Any ongoing support required from Council officers can be covered by an SLA.

4. Glossary Term | Definition
--- | ---
Clear Title | That the Council has the right to dispose of an asset and that the asset is free of any encumbrances which would restrict or prohibit this.
Community Asset Transfer | Legal ownership of an asset is transferred from a public body, such as a council, to another organisation for 'less than best consideration'. This is permitted under the Disposal of Land by Local Authorities (Scotland) Regulations 2010 as long as the proposals pass tests of reasonableness and community benefit.
Community Group | The formality of a group may change as a vision develops into a business plan. Initially, a group may be nothing more than a community of interest. However, by the time a Stage 1 application is submitted, it should be formally constituted as a voluntary organisation. The final form of a group can be
influenced by the business plan and intended funding route, however it needs to be a “legal entity” which is able to own Property.

<table>
<thead>
<tr>
<th>Competent Application</th>
<th>Organisations must meet certain criteria for a Stage 2 application to be considered. This includes things like being formally constituted. An application will only be considered once evidence for all the conditions in the Stage 2 process have been sufficiently evidenced.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Declared Surplus</td>
<td>Historically, the Council owns many properties which have been used to deliver services. Before an asset can be disposed of, the Council goes through a formal process to agree that it is no longer needed and can be declared surplus to requirements.</td>
</tr>
<tr>
<td>Sustainable</td>
<td>Community groups will need to generate income to sustain their activities and be able to maintain an asset into the future. Whilst any business plan will contain assumptions and forecasts, in the context of the Stage 2 assessment, it should appear to have a reasonable chance of success over at least a 3-5 year period.</td>
</tr>
<tr>
<td>TUPE</td>
<td>The Transfer of Undertakings (Protection of Employment) Regulations (TUPE) protects employees’ terms and conditions of employment when a business is transferred from one owner to another. Employees of the previous owner when the business changes hands automatically become employees of the new employer on the same terms and conditions. It’s as if their employment contracts had originally been made with the new employer. Their continuity of service and any other rights are all preserved.</td>
</tr>
</tbody>
</table>
Wellbeing

Wellbeing is a subjective evaluation of how we feel about and experience our lives. Wellbeing, positive mental health and mental wellbeing are often used interchangeably, although ‘wellbeing’ is also used in a broader sense to include physical health.

Community wellbeing includes characteristics familiar from the literature on social capital e.g. trust, tolerance, participation, influence, mutual aid, social networks and social support. Other indicators of collective wellbeing are ‘collective efficacy’ i.e. coming together to solve problems or improve things, intergenerational solidarity and informal social control e.g. neighbourhoods where adults keep an eye on children and young people.

Less than best consideration

Assets have a value: the price they could sell for on the open market. However, it is recognised that outright purchase of an asset, such as a community building, is beyond the reach of many voluntary organisations. Regulations allow ownership to be transferred for less than the market value and this can be done for a nominal sum such as £1.

5. Additional Information

<table>
<thead>
<tr>
<th>Sources Who</th>
<th>What</th>
<th>How</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development Trusts Association Scotland</td>
<td>The national body for development trusts in Scotland, supporting you to unlock the potential within your community.</td>
<td><a href="http://www.dtascot.org.uk">www.dtascot.org.uk</a></td>
</tr>
</tbody>
</table>
Written submission from Dundee City Council

Disposal of Local Authority Assets

Thank you for your letter of 16 December 2014 regarding the above and respond to your questions as follows.

- Does your authority have arrangements in place to hold some or all local authority asset in a separate land holding?

No, Dundee City Council holds the asset until it is transferred through the Community Asset Transfer process.

- When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?

When an asset is deemed suitable for Community Asset Transfer, a market value of the asset will be calculated. If the Voluntary and Community Organisation (VCO) seeking transfer of the asset can demonstrate to the Council how the transfer is likely to contribute to the local community, how the transfer may help to promote or improve the economic, social or environmental wellbeing of the area and how it relates to health and regeneration then a reduced price may be acceptable. In order to allow transfers to take place at a lower price the Council has to be satisfied that these terms can be appropriately met. In such cases, and subject to the Disposal of Land by Local Authorities (Scotland) Regulations 2010, the level of discount to be applied will be determined by a range of factors including the costs to the Council of holding the asset, the strength of the VCO’s business case, the potential benefits to the community, access to funding and the risks involved. This is assessed during the Community Asset Transfer application process.

- What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?

Dundee City Council’s Community Asset Transfer Strategy was approved at the Policy and Resources Committee on 19th August 2013. The aim of the strategy is to set out a transparent, positive and proactive framework that enables and manages the transfer of assets from Dundee City Council to VCO’s in order to bring about long term social, economic and environmental benefits to the community.

- What is your experience of disposal and what difficulties has the authority encountered?

There can be challenges regarding the support levels that are required to help groups to evidence need and consult within their communities, and the support role of others to help them go through the process, acquire an asset and sustain it.
Written submission from East Ayrshire Council

In reply to your letter regarding the Disposal of Local Authority Assets on 16th December 2014, I have completed the following information on behalf of East Ayrshire Council for the Rural Affairs, Climate Change and Environment Committee:

1. Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?

   No. Land and buildings remain on either the General Service Account or Housing Revenue Account as appropriate.

2. When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?

   As per the Council’s Community Asset Transfer policy the assets will be valued at 10% of the proposed use value (whether rental or sale) unless another discount is considered appropriate dependant on the asset being transferred and the nature of the proposal. The difference between the value and the rent/price payable will be recorded as being the level the Council’s “in-kind” support to a project.

3. What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?

   As per the Council’s Community Asset Transfer policy, the Council has in the past generally pursued long lease arrangements but a disposal at less the market value would be considered:

   (a) Where it is necessary to comply with the funding criteria of the proposed project; or

   (b) For the sustainability of the project i.e. the project is predominantly capital funded or long-term in nature.

   Clawbacks are inserted in order to protect the interest of the Council in the event that they deviate from the approved community use or sell on for alternative use in the future. This was following advice from Audit regarding protecting the public pound.

4. What is your experience of disposal and what difficulties had the authority encountered?

   The majority of the Council’s asset transfers have been by way of lease unless they are for example a new build facility when they are acquiring a price of land. Many groups particularly newly established ones prefer the option to lease as the Council retain responsibility for statutory compliance and, there is a fall-back in the event the project is unsuccessful.

   We have had issues internally between balancing community wish to acquire of at less than market value and corporate objectives to follow the public
pound. It is hoped that clawbacks will protect this but some community groups seem reticent to accept these.

We had particular issue with an existing tenant who wished to purchase their property. The view of Legal Services was that the interpretation of the Disposal of Land Regulations did not allow for this as there was no additional benefits it felt that this would be contrary to the Disposal of Land Regulations. Perhaps clarity could be provided on this.

It is felt that there is still a conflict between the Disposal of Land Regulations and the obligation on local authorities to follow the Public Pound.

I have enclosed a copy of East Ayrshire Council’s Community Asset Transfer policy for your information.

Annex 1

EAST AYRSHIRE COUNCIL

COMMUNITY ASSET TRANSFER POLICY

1 INTRODUCTION

1.1 The aim of this policy is to set out a transparent and enabling framework to manage the transfer of assets from the Council to Voluntary and Community Organisations (VCOs).

1.2 The overall aim of this policy is to empower local communities, recognising at the same time, optimising the use of all of our assets including land, property and equipment.

2 COUNCIL COMMITMENT

2.1 The Council is committed to Community Asset Transfer where it will bring benefits to the local community and contribute towards the Council aims and objectives.

2.2 The Council recognises that Community Asset Transfer can be a valuable tool in empowering communities, building the capacity of local citizens and to inspire others to create locally responsive solutions to community needs.

2.3 Community Asset Transfer will become integrated within Council practice and the Council will put in place a transparent process for Community Asset Transfer.

2.4 The Council will provide designated support staff to assist VCO’s wishing to consider the transfer of a community asset. The staff will support communities to build their capacity and skills to manage facilities and assist with the application process.

2.5 The Council also recognises that some assets must remain within Council ownership and management to support delivery of essential services, provide an income stream or may have restrictive covenants on their future use.
making them unsuitable for transfer or impact on the timescales for transfer e.g. being held in the Common Good. The Council will consider as part of the initial assessment whether the asset should be retained by the Council or whether a transfer could be possible.

3 NATIONAL POLICY CONTEXT

3.1 The Scottish Government launched the “Promoting Asset Transfer” programme in 2009 to increase levels of awareness and interest within local authorities in asset transfer as a means of increasing community ownership of assets and together with COSLA they jointly launched a Community Empowerment Action Plan. This described their commitment to community empowerment with community ownership seen as one aspect that can help build capacity to deliver empowerment.

3.2 The Disposal of Land by Local Authorities (Scotland) Regulations 2010 came into effect on 1st June 2010 and these regulations removed the previous requirement in terms of section 74 (2) of the Local Government (Scotland) Act 1973 to seek Scottish Ministers’ consent to dispose of land/property at less than the best value consideration subject to certain conditions.

4 LOCAL POLICY CONTEXT AND LINKS TO OTHER STRATEGIES

4.1 The Community Asset Transfer will require to make a clear contribution to the Council’s priorities as set out in the following documents:

- Community Plan - 4 themes
  - Promoting Lifelong Learning
  - Delivering Community Regeneration
  - Improving Community Safety
  - Improving Health and Wellbeing

- Single Outcome Agreement

4.2 Cabinet on 18 April 2012 agreed the values, guiding principles and planned outcomes of a new approach to Transforming Our Relationship with the Communities We Serve.

The guiding principles which have been agreed are detailed below:

- taking a community development approach to our activity – working with rather than for communities;
- listening to our communities and valuing their knowledge, skills and experience;
- empowering communities and building their resilience;
- focusing on reducing inequalities in our most deprived communities;
- prioritising prevention and early intervention approaches; and
- building sustainability into all activity.

5 COMMUNITY ASSET TRANSFER DESCRIPTION

5.1 Community Asset Transfer involves the transfer of the responsibility for an asset from the Council to a VCO through either a transfer of management
responsibility, short or long term lease or through the transfer of outright ownership. Consideration will also be given to a phased transfer of responsibility dependent on the nature of the proposal.

5.2 The Council has in the past generally pursued long lease arrangements but a disposal at less than market value would be considered:

(a) where it is necessary to comply with the funding criteria of the proposed project; or

(b) for the sustainability of the project i.e. the project is predominantly capital funded or long-term in nature.

6 ELIGIBLE ORGANISATIONS

6.1 Organisations eligible to seek community asset transfer are voluntary and community organisations (VCOs) who are providing, maintaining or promoting cultural, social, welfare, recreation or sporting activities, or be involved in community based projects which are in the interests of local communities and/or are meeting the objectives of the Council’s Community Plan. Licensed clubs etc will not be eligible for an asset transfer.

6.2 VCOs generally have the following characteristics:

- Are formally constituted;
- Have sound long-term management and governance arrangements;
- Have their own decision-making system and accountability to independent trustees or its own members or constituents;
- Are non-political;
- Have an element of involvement of volunteers;
- Is not for private profit i.e. it does not distribute any surplus to owners or members but applies it to serving its basic purposes

6.3 Newly formed groups may also be considered suitable for asset transfer if they can demonstrate that they have the necessary expertise and experience to manage the asset and have a sound business plan in place. The Council will provide designated support staff to assist groups through the process.

6.4 VCOs meeting the above description but wishing to use the premises/sites for ancillary commercial purposes will require to demonstrate that they require the social enterprise for a recurring income stream in order to make the project sustainable. The income received from the social enterprise will require to be reinvested in the activities of the project.

6.5 In order to be eligible for a disposal at less than market value the VCOs proposal must contribute, in respect of the local authority’s area, or part of it, or the residents, to one of the purposes set out at Para 4(2) of the Disposal of Land by Local Authorities (Scotland) Regulations 2010 regulations being:

(a) economic development or regeneration;
(b) health;
(c) social well-being; or
(d) environmental well-being

7 TERMS OF TRANSFER OF LAND / PREMISES

7.1 Where a lease is to be granted, a discounted rental of 10% of the market rental will be payable unless another discount is considered appropriate dependant on the asset being transferred and the nature of the proposal. The difference between the market rental and the rent payable is recorded as being the level of the Council’s “in-kind” support to the projects.

7.2 Where there is to be a disposal of an asset, the purchase price will be 10% of the proposed use value unless another discount is considered appropriate dependant on the asset being transferred and the nature of the proposal. Likewise, the difference between the market value and the purchase price payable will be recorded as being the level of the Council’s “in-kind” support to a project.

7.3 Where a lease is to be granted, any premises will be let on a full repairing and insuring basis whereby the VCO is responsible for the cost of any repairs to the property which may arise throughout the duration of the lease, both internal and external. Other repairing covenants will be considered taking into the particular circumstance associated with each asset transfer.

7.4 Where a lease is to be granted, the Council will insure the structure of the premises against fire and special perils, with the insurance premium being recovered from the tenant who will be responsible for all other insurances, e.g. contents, third party liability, etc. The VCO will also be responsible for all excesses payable in the event of each and every claim.

7.5 All running costs and outlays associated with the occupancy of the premises will be payable by the VCO, e.g. electricity, gas, etc. The VCO will be responsible for payment of all rates and water/ sewerage charges which may be levied on the premises/sites. Organisations that are charitable or of social benefit but non-profit making or recreational or sporting members clubs, which are not established for profit, may qualify for Rates Relief and, the Council’s designated support staff will assist to determine the extent of liability for non-domestic rates.

7.6 All leases will be for a fixed term and contain a termination date linked to the funding available and proposed terms of the project. Leases with terms in excess of 5 years will include a Rent Review at the end of every fifth year.

7.7 It will be a pre-requisite of any disposal for less than market value for an economic development burden to be inserted into the title restricting the use of the land/property to that provided in terms of the approved project. In the event of the approved use ceasing i.e. the grant of planning consent for an alternative use the Council would seek an additional payment based on the current market value to reflect the change of use.
8 ASSESSMENT PROCESS

8.1 The Council will have a clear and transparent process for asset transfer including a clear first point of contact. Once the Council considers an asset to be suitable for transfer there will be a 2 staged process. The initial stage will be an Expression of Interest where the Council will consider the outline proposal and the VCO seeking transfer. If there is greater than one interest expressed by a VCO in an asset, the VCO’s will be encouraged to work together to seek a joint transfer.

8.2 Thereafter, the second stage will involve a detailed application and submission. Any VCO requesting an asset transfer must be able to:

i. Provide a well-prepared business plan. This document is crucial to the assessment process and assistance will be provided to ensure it contains the relevant information.

ii. Demonstrate a clear community/social demand for the transfer.

iii. Demonstrate they have the capacity to manage the asset and have directors or management committee members who have the necessary skills and experience.

iv. Show they have good governance and robust financial systems in place along with all necessary policies expected of a community group such as health and safety policies, compliance with relevant legislation etc.

v. Show how their project objectives contribute to the Council’s corporate and strategic objectives.

vi. Prove that the proposed project compliments activities, services or facilities already provided in the local community.

vii. The Council will assist VCO’s to build their capacity and provide the necessary information and experience to assist in the Community Asset Transfer process through the provision of designated support staff.

8.3 The following table set out the process with indicative timescales. Appendix 1 sets out the process in a flowchart.

<table>
<thead>
<tr>
<th>Timescale</th>
<th>Stage 1 – Suitability of Assets</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>A multi-disciplinary Officer Working Group will determine whether an asset is suitable for transfer. This will involve a consideration of community need, a review of the assets condition, current running costs and establish if there are any title restrictions. (internal process)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Stage 2 – Expressions of interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 weeks</td>
</tr>
<tr>
<td>Stage 3 – Detailed submission</td>
</tr>
<tr>
<td>-----------------------------</td>
</tr>
<tr>
<td>3 months for VCO to submit application</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Stage 4 – Consideration of application</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 Weeks</td>
</tr>
</tbody>
</table>

Where the Officer Working Group considered the application favourably, a report will be prepared for Cabinet outlining the terms and conditions of the proposed transfer.

Where the Officer Working Group considers it not appropriate to proceed with an application, the VCO will be advised accordingly.

<table>
<thead>
<tr>
<th>Stage 5 – Cabinet approval</th>
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</thead>
<tbody>
<tr>
<td>6 weeks</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Implementation/Transfer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to maximum of 6 months</td>
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</tbody>
</table>

It is recognised that there may require to be ongoing support from Council officers to ensure a successful transfer.
APPENDIX 1

SUMMARY OF COMMUNITY ASSET TRANSFER PROCESS

**SUITABILITY OF ASSET**
- Contacts Council with outline proposals (optional stage)
- Collate information on asset condition, running costs etc.
- Decides whether asset suitable for transfer
  - Yes: Proceed to detailed assessment
  - No: Either remains open with Council or Surplus Property procedures apply

**EXPRESSION OF INTEREST**
- VCOs invited to submit initial application
- Review info + recommend whether to proceed to detailed assessment
  - Yes: Proceed to detailed assessment
  - No: No transfer/VCO advised

**DETAILED ASSESSMENT**
- Prepare and submit detailed Business Case
- Assess application and Business Case and provide recommendation to Council
- Decides what to recommend to Council
  - Yes: Approves transfer
  - No: No transfer/VCO advised

**IMPLEMENTATION**
- Secure necessary funding
- Finalise legal aspects of transfer
- Commences operations

**HANOVER**
- Council may provide ongoing support under SLA
Written submission from East Lothian Council

Disposal of Local Authority Assets

Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?

The majority of land and property assets are held by and are under the direct control of the Council.

However, some assets are held as Common Good and some by two companies that are wholly owned by the Council: East Lothian Land Ltd and Enjoy Leisure Ltd.

East Lothian Land Ltd's remit is to promote, support and/or effect the development of land and property within the area served by East Lothian Council, with a view to stimulating economic development and regeneration and so to assist in the creation of employment opportunities.

Enjoy Leisure Ltd manages and delivers leisure services on behalf of the Council.

Lastly, a very small number of assets are held on Trusts which are administered by the Council.

When disposing of, or transferring assets how are those assets valued? To what degree is this purely a financial valuation?

The Council is bound by statute to achieve best value and, in the current financial climate, is particularly mindful of the need to maximise financial returns from surplus assets. The financial valuation of assets for disposal is therefore necessary and is obtained from the District Valuer or undertaken by the Council’s estates surveyors who have RICS Registered Valuer status. However, value to the community is also considered and opportunities for disposal or transfer to partner organisations to achieve particular outcomes, for example, day centre or residential care provision, are explored where appropriate.

What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?

Where appropriate, the council has facilitated community use of some buildings by way of the grant of long leases (99 years) to community groups. The Council is currently developing a policy in relation to this area.

What is your experience of disposal and what difficulties has the authority encountered?

a. The Council has transferred the title of Dunbar Harbour to a Dunbar Harbour Trust. It would be fair to say that the experience was a lengthy and protracted process, although this may have been inevitable given the nature of the transfer and the liabilities the harbour community were taking on. We are working to transfer ownership of North Berwick Harbour in a similar way.
b. The Council encountered delay in accepting an offer during a recent sale of a town centre asset when a community group made an offer for the property at the closing date but could not confirm that they could secure funding for the purchase within a timescale acceptable to the Council in terms of acting fairly to the other bidders.

c. The Council recently made significant investment in a long lease of a community facility to a local group. The group secured money from external funders to improve the facility. However they subsequently decided to hand the building back to the Council. One of the issues they encountered was grant conditions from an external funder which they did not feel able to accept. It can be difficult to ensure that local volunteers truly understand and are well prepared for the extent of the liabilities and responsibilities they are taking on.

d. Having to return a facility is bound to cause disappointment locally, and can dent a community’s self-confidence and appetite for further ventures.

e. The examples that have worked well for the Council in the past are where council staff are actively involved in running the facility, and the Trustees assist with programming details, raise funds and work on joint projects.

f. As the Council has said in its various responses to consultation on community empowerment, community capacity is a real issue in ensuring the sustainable control of public assets.
Written submission from East Renfrewshire Council

1. Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?

If this question is asking if the council holds potentially surplus assets separately from other assets, then the answer is no. The council does however identify properties potentially suitable for disposal under its “Property Asset Disposal Framework”. The only assets defined as surplus within the council’s assets register are those where sale is imminent and certain. The majority of properties identified for sale are therefore excluded, even when on the market. This is as disposal cannot be guaranteed within a 12 month period. The definition of a surplus asset within the council’s asset register is one being actively marketed which will be sold within the forthcoming 12 month period and this practice reflects CIPFA Code paragraph 4.9.2.13.

2. When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?

Valuations are financially based with disposal usually being by sale on the open market. This is unless an enhanced consideration would be achieved by disposal to an adjoining owner by realization of “marriage value” or where transfer to another public authority is proposed. In transferring property, the District Valuer would normally be appointed to independently determine its value. However, in relation to asset disposals to community groups some flexibility might be offered, although this would be subject to best value considerations and a report to the Council’s Cabinet under the current scheme of Administration.

3. What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?

The Council has an asset disposal framework in place which includes provision for community disposals. This is attached for information.

4. What is your experience of disposal and what difficulties has the authority encountered?

To date, there have been no community disposals via sale. Whilst some outline interest has been expressed, none has yet resulted in a property or land (sale) disposal to a community group. The biggest issue encountered to date has been the ability of Community Groups to evidence robust governance arrangements and evidencing a deliverable and sustainable business plan which allows the group to take over an asset and its future liabilities. There have been a small number of land/property assets transferred to community groups under a lease however, following Cabinet approval. These have been for various purposes including a multi faith education centre (lease agreed following payment of a grassum) and a land disposal for the purposes of creating an allotment site (lease at peppercorn rent).
Annex 1

EAST RENFREWSHIRE COUNCIL

Cabinet

15 September 2011

Report by Director of Environment

PROPERTY ASSET DISPOSAL FRAMEWORK

PURPOSE OF REPORT

1. To seek Cabinet approval to the terms of a proposed land and property asset disposal framework.

RECOMMENDATIONS

2. Cabinet is asked to approve the terms of the land and property asset disposal framework, and endorse the approach proposed to engage with local communities regarding asset management.

BACKGROUND


4. In this report, it was noted that "as time progresses and as effective asset management arrangements embed themselves within the Council, it is likely that other property and land assets will be identified as being surplus in the future. In order to ensure that all such future asset disposal decisions are carefully considered, an asset disposal framework is currently being prepared. Such a framework will follow to Cabinet shortly, and will require that rigorous appraisals be undertaken to consider the range of options available for any future land or property asset disposal".

REPORT

5. The land and property asset disposal framework has now been finalised and wide consultation has taken place between relevant officers within the Council.

6. The terms of the proposed framework are set out in appendices 1 to 3 to this report. Appendix 4 provides a list of site locations which may be able to be identified to be surplus and against which, subject to Cabinet approval, the terms of the framework will then be applied.

7. Cabinet should note that, notwithstanding the terms of this framework, the sale of any Council owned land or property asset can only be implemented following Cabinet approval.
FINANCE AND EFFICIENCY

8. As referred to in previous reports, the implementation of effective asset management across the Council brings with it opportunities to generate significant financial and efficiency savings, along with the opportunity to generate capital receipts on an ongoing basis in the future.

9. In order to ensure best value is achieved, it is important that a consistent approach is taken in relation to the identification and disposal of surplus land and property assets. This framework is intended to support officers to reach such consistent and informed decisions in relation to future asset disposals.

CONSULTATION AND PARTNERSHIP WORKING

10. Consultation in relation to this framework has taken place across the range of Council Services.

11. In parallel with the implementation of this framework, it is intended that the Council’s Community Engagement Team undertake a series of awareness raising sessions with local communities in Autumn 2011. The main purpose of this exercise will be to raise awareness of asset management arrangements across the Council generally, to test the appetite within communities for more direct involvement by them in asset management and to start a process of building capacity within communities, allowing them to more effectively contribute towards the management of property assets within their communities.

IMPLICATIONS OF THE PROPOSALS

12. There are no wider implications directly associated with the proposals contained within this report.

CONCLUSIONS

13. In order to ensure effective asset management, a consistent approach needs to be taken in relation to the identification of and arrangements for the disposal of surplus land and property assets. The proposed land and property asset disposal framework is intended to provide guidance to officers in relation to the steps which need to be taken when identifying and disposing of such assets.

RECOMMENDATIONS

14. Cabinet is asked to approve the terms of the proposed land and property asset disposal framework, and endorse the approach proposed to engage with local communities regarding asset management.

Director of Environment

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Introduction

At a time when the Council faces increasing demands of more stringent governance and the need to cut costs it is important that it is in a position to make business decisions in the complete knowledge of its heritable property portfolio. CIFPA Scotland has commented that, “(Council) assets are integral to the services delivered to the people of Scotland and the manner in which they are managed impacts on the ability of Councils to meet their aims and objectives”.

The extent of Council land and property assets is significant and whilst this can be seen as a tremendous resource it can, if underperforming, become a major burden. It is therefore vital that the Council delivers proactive management of Council land and property assets through the introduction of new procedures for the appraisal of assets and assessment of appropriateness for other uses, including for community use, or disposal.

This framework aims to formalise the basis for the identification of Council surplus land and property and the means of its disposal.

Context

The disposal of the Council’s property is subject to the provisions of section 74 of the Local Government Scotland Act 1973 as amended by section 11 of the Local Government Scotland Act 2003 and other statutory requirements. This legislation places a duty on the Council to achieve the best consideration and to ensure transparency and consistency in the disposal of land and property assets. The Council is also under a duty to achieve best value. The Council’s statutory duties must accordingly be borne in mind in the management of the Council’s estate.
As at 2011 East Renfrewshire Council had 133 non-housing properties for the delivery of its services with annual maintenance costs of some £12m and a maintenance backlog of approximately £23m.

In addition, some 130 areas of land in Council ownership have been identified by Council services that make little or no contribution to Council service delivery. Many of these are small areas of amenity open space that whilst contributing to the urban landscape present an ongoing cost to the Council and could potentially be used for other purposes. This figure excludes recognised Council parks and play areas.

To make sure that its properties are used efficiently, the Council must keep its property holdings under review. This is to ensure that property holdings are focused towards service delivery and the Council’s corporate objective of continuous improvement in its efficiency. In the current economic circumstances the importance of achieving this is greater than ever. In short, the imperative is to secure efficiencies through the rationalisation of the Council’s heritable estate.

Asset management is critical to achieving this outcome by holding the minimum number of properties necessary for service delivery. To be effective a sound understanding of assets currently held by the Council is required. The Council uses ‘Tribal’ asset management software to record property related data including running costs, level of use, suitability, condition and maintenance requirements. In addition, consultation takes place with holding departments on the implications of retaining and operating properties taking into account factors including the impact upon community organisations or other service provision. By collating this information, informed decisions can be made on the best properties to be retained to minimise service delivery costs. Through their asset management plans, Council services will be required to identify assets that positively contribute towards service delivery and those that do not.

Opportunities to reduce property maintenance costs by retaining only accommodation best suited to meeting the Council’s future needs and disposing of that not required will reduce running costs and improve the Council’s financial position.

In addition to the Tribal management system, the Council has a database of land in its ownership. This ranges from former lock-up sites to amenity open space to large landholdings like Springfield Road.

Land and property disposals by the Council will create opportunities for housing, business and leisure development by others. The Council will seek to ensure that in disposing of land and property the proposed end use is viable and sustainable and where appropriate, there is recognition of the ongoing financial responsibilities associated with maintaining a property.

Until now, the Council has not operated a formal procedure to identify potentially surplus properties. Although a number of surplus properties have been sold by the Council since its inception these have not been part of a strategic programme. Consequently previous asset disposal has been ad-hoc or reactive to the need for a capital receipt to fund a specific project. The result is that many of the Council’s most
valuable surplus land and property assets have now been sold. To make the most of the potential of the remaining opportunities a more structured and proactive approach within an agreed strategy is required to assist in future capital planning.

To maximise the benefit from the disposal of surplus assets, close consultation across Council departments and with Community Planning Partners is required. This is to ensure a coordinated approach in the identification and timing of potential disposal opportunities and will require open discussion and the full disclosure of information to remove uncertainty, avoid delays and address concerns before sites are marketed.

Whilst in the medium to long term the benefits of asset rationalisation will bring savings, in the short term there may be costs associated with managing service changes.

Until an asset is disposed of, the holding service will continue to be responsible for the costs of securing and maintaining an asset. The Director of Environment, through Property and Technical Services, will manage the property on behalf of the holding service but all costs will be recharged to the holding service. As this can be expensive, it is in the interests of holding services to identify and cooperate with the disposal of surplus assets as quickly as possible.

The amount of capital receipt that can be expected from asset disposal will be subject to

- Agreement on identifying surplus properties/sites
- Site conditions
- Potential uses
- Interest from Community Planning Partners and community organisations
- Market conditions

As such, it is impossible to be prescriptive on what can reasonably be achieved from assets identified for disposal. However it is proposed to develop, in partnership with the Director of Finance, a realistic and realisable annual programme of disposals to support the capital plan.

Acknowledging the Scottish Government and COSLA’s commitment to community empowerment, there may be a small number of opportunities for community organisations to acquire surplus Council assets to deliver community services or engage in social enterprise. The Council, through the Deputy Chief Executive, will support any legitimate community organisation that expresses such an interest. However the Council must be realistic in what is required of any organisation taking on an asset and will require a significant level of detail and evidence of financial and personal commitment. The key factors to be considered are whether there will be measurable benefits to the community by disposing of the asset and the capacity of the organisation to sustain use of the asset.
To supplement this strategy and to provide the necessary detail to asset disposal, two policy documents are included with the framework, these are:

- An *asset appraisal framework and disposal procedures* policy that sets out the considerations for identifying assets for possible future disposal. This includes a full option appraisal, consultation procedures within the Council, with partner organisations and community organisations, and the identification of potential alternatives uses and users. The policy also provides guidance on procedures for the marketing of assets including the preparation of planning guidance. These procedures are particularly crucial to ensure compliance with audit requirements.

- A *policy for the disposal of assets to community organisations*. This sets out the rigorous requirements of the Council to ensure that the community organisation has the capacity to take on the asset and can deliver measurable community benefits.

**Contribution to Single Outcome Agreement**

The purpose of this document is to provide a framework within which the Council can proactively manage its estate and where appropriate dispose of underperforming assets to generate savings and income to the Council. The outcome will be to realise additional funding for the Council’s capital programme which will contribute to maintaining and improving services and projects across the Council. In that sense, this strategy will contribute to all of the SOA.

**Vision**

We are working to proactively manage the Council’s assets in an effective and efficient way to eliminate surplus and maximise opportunities. In identifying and disposing of underperforming assets, other community needs can benefit.

**Outcomes and Intermediate Outcomes**

Because of the overarching nature of this framework it will relate and positively contribute to a range of outcomes. The following intermediate outcomes will be used to help monitor the progress of the work being undertaken towards achieving the long term SOA outcomes.

**Single Outcome Agreement Outcomes**

**SOA 9** Our local people live in an attractive natural and built environment that is sustainable and enhanced for future generations.

Intermediate outcome 02 East Renfrewshire has cleaner streets and improved parks and greenspaces.

**SOA 10** There are high quality and affordable housing opportunities for our residents. Intermediate Outcome Residents are able to live in good quality and affordable housing which is well managed.
SOA 11 Our communities are more active and have influence over service design and delivery.

Intermediate Outcome 01 Our residents and communities have the skills, confidence, knowledge and opportunity to influence service design and delivery.

Intermediate Outcome 02 All residents, including those from vulnerable, disadvantaged and minority groups are encouraged and supported to be more active in the community.

Customer, Efficiency and People Outcomes

2 Efficiency

Intermediate Outcome 02 Our assets are used more effectively and efficiently

Environment Department Service Delivery Plan 2011/12

The Strategic Land and Asset Disposal framework (SDP-PAT7) – to identify opportunities to improve the Council’s use of property and identify opportunities for the disposal of surplus property and land.

Activities

- To develop a comprehensive database of Council land and property assets to allow the Council to manage its assets more effectively and efficiently
- To identify land and property that is no longer positively contributing to Council outcomes
- To implement an appraisal framework against which Council assets can be objectively assessed to determine need, condition and suitability of other uses, including community use.
- To implement asset disposal criteria to ensure best value is achieved
- To dispose of surplus assets to achieve the most positive outcomes for the Council whether financial or contributing to the delivery of other SOA outcomes
- To deliver in partnership with the Director of Finance a programme of disposals to sustain the Council’s capital programme.
- Through the disposal of less efficient assets, we will be able to invest in remaining assets and in doing so contribute to SOA Outcomes 5 (healthier, more active)
- Through continuous review of Council assets we will ensure active management and strategic portfolio planning
Where appropriate, we will seek to acquire property that will positively contribute to the SOA. In addition, we will actively consider joint working/ownership/occupation of property with our Community Planning Partners.

We will review options for Community Facilities by means of a corporate approach to asset management

We will provide opportunities for community empowerment through the disposal of assets to community organisations

Indicators, Targets

- No. of sites successfully marketed (new)
- £’s Income generated for the Council/ £’s savings achieved (new)
- Additional units being brought into affordable housing supply
- Number of hectares of greenspace in East Renfrewshire improved
- Percentage of operational (Council owned or leased) accommodation which is in a satisfactory condition
- Percentage of operational (Council owned or leased) accommodation which is in a suitable condition for its current use
- £ per m2 in property maintenance
- The proportion of operational accommodation that is in a satisfactory condition
- The proportion of operational accommodation that is suitable for its current use

Additional Information

Consultation

This framework has been developed in partnership with Departments and Services of the Council including Chief Executives, Finance, Property and Technical, Planning, Housing, Economic Development, Legal, Environmental Services and Roads. Discussion has also taken place with the Development Trusts Association Scotland and Voluntary Action (East Renfrewshire) with regards asset transfer to community organisations.

The framework will be taken forward by the Director of Environment through the Corporate Asset Management Group and new sub group arrangements. This group will be supported by officers from across the Council who will undertake the detailed work around the option appraisals, investigative works and supporting marketing information. The Deputy Chief Executive will lead on consultation and support for local community organisations interested in the community ownership of assets.
Environmental Sustainability

The key environmental impacts directly attributable to the Council will be

- Reduced energy consumption leading to a reduction in Council controlled carbon emissions
- Increased investment in greenspaces leading to improved biodiversity and measures to mitigate against the effects of climate change
- Reduced travel for Council staff
- The disposal of assets will be supplemented where appropriate by planning guidance on sustainable urban drainage, protecting or enhancement biodiversity and energy efficient design.

Equalities

An Equality Impact Assessment (EIA) has been undertaken and no adverse impacts have been identified that would prevent this framework being implemented. It is possible that at a property-specific level impacts may be identified and where relevant these will be assessed through an EIA as part of the option appraisal exercise.

Finance and Efficiency

Implementation of the framework will be carried out by existing staff. The disposal of underperforming or vacant land and property assets will generate capital income to the Council and reduce maintenance, running costs and security costs which can be reinvested to improve service delivery.

Efficiencies can be created by having more staff working from fewer locations facilitating more cross-service working.

Supporting the capital programme through asset disposal will reduce the Council's borrowing requirements and associated interest charges.

The Council will require to spend money up-front to bring sites to the market. This would cover any requirement for ground condition surveys, legal costs, small scale site acquisition, marketing costs, etc. An annual revenue allocation will be required to support this process. Any site disposal requiring a greater level of investment would be reported to Cabinet for specific approval. Similarly, any proposed acquisition of property would require Cabinet approval.

Partnership Working

No external partnership working has taken place to date however there may be opportunities to work with partner organisations to combine assets to bring to the market. This could include working with private landowners and developers to maximise the potential of assets.
As part of good management of the wider public estate, the option appraisal exercise will include, where appropriate, consulting with Community Planning Partners to find out if they have any interest in acquiring surplus Council assets.

With support from the Development Trusts Association Scotland, the Council will carry out a programme of community engagement activity around the subject of asset management.

**Risk**

There are a number of risks associated with this framework. The main risk is that due to market conditions and suppressed levels of developer demand the Council may not be able to achieve a realistic receipt from disposal of an asset that has been declared surplus. In such circumstances a decision will be required on whether to retain the unsustainably asset and incur further costs in terms of maintenance, security, etc, or to accept a lower value for early disposal.

Other risks, such as poor ground conditions or title issues, can be mitigated through provision of a budget to facilitate asset disposal.

In the absence of an approved framework there is a risk that asset disposal and acquisition decisions may be taken without full knowledge of the property and in unfavourable market conditions. This can result in delays, under achieving on asset disposals or acquiring liabilities.

**Supporting Materials**

- Corporate Asset Management Plan
- Equality Impact Assessment
- Tribal Asset Management System
- Site Disposal Database

**Appendices: Detailed Policy Documents and Supporting Information**

2 Asset Appraisal Framework and Disposal Procedures

3 Disposal of Assets to Community Organisations

4 ERC Potential Surplus Land and Property Assets

**Annex 3**

Appendix 2 - Policy on the Land and Property Asset Appraisal Framework and Disposal Procedures

**Introduction**
The identification of surplus assets will require the cooperation of all Council services. There are clear benefits to the Council to reduce its portfolio of properties and therefore a rigorous examination of assets is required.

This policy sets out a clear methodology for assessing whether a land or property asset is surplus to Council requirements, what alternative purpose the asset might have and how this should be taken forward. The policy includes an Asset Appraisal Framework against which all Council property can be considered and identifies the various methods and procedures for disposal of assets to other parties. This methodology can also be applied where the Council is considering the acquisition of land or property.

**Property Costs**

The principal objective of this exercise is to reduce the cost to the Council of holding property. Information on property condition, suitability in its existing use and the extent of any outstanding maintenance backlog is held on the Council’s ‘Tribal’ asset management system and is used to inform strategic property decisions.

Vacant and surplus properties continue to cost the Council money through building security and basic maintenance. It is therefore important that once a property is declared surplus its future use is determined in a timely manner to minimise ongoing cost to the Council. Until the formal transfer of a property to another department has been completed or the property has been disposed of by the Council, the former holding service will continue to be responsible for the property and all associated costs.

**Identification of Potentially Surplus Assets**

Property may be identified as being potentially surplus to Council requirements as a result of the following.

1. The holding service determining it no longer has a requirement for its property due to changes in its operational requirements.

2. As a consequence of a wider strategic review of Council property holdings leading to the rationalisation of these to optimise efficient use of the Council’s heritable assets.

3. Ongoing review of assets by the Corporate Asset Management Group (CAMG)

Assets identified as a result of the above will be considered by the CAMG and an option appraisal and consultation exercise undertaken.

**Option Appraisal Framework**

The option appraisal will seek to identify the most appropriate future use of land or property. The priority is to generate capital receipts for the Council and therefore the underlying preference will be that the asset will be disposed of on the open market.
however this will be informed by the option appraisal which will consider the following:

- A description of the property, a summary of its history and details of its current or most recent use.
- A review of the land or property title to determine the existence of any restrictions regarding use or disposal.
- Information, in so far as available, on the building running costs and any income derived, if any, from it current use. Consideration of repair costs.
- Whether there is scope to improve the viability of the existing use by reducing running costs and increasing revenue generation.
- Whether the asset may have potential for use by a community organisation. (If interest is expressed the procedures detailed in The Disposal of Assets to Community Organisations Appendix 3 will apply).
- A review of any potential future uses for which planning permission could reasonably be expected and identification of any planning requirements.
- Whether additional value could be realised by the property being combined with another interest to realise ‘marriage value’.
- Whether there would be benefit to be derived from undertaking site and soil investigations or advance infrastructure works to encourage market interest by reducing developer risk.
- Where appropriate, the outcome of an Equality Impact Assessment on potential alternatives.
- Proposals to relocate users of the property to alternative sites. This would include existing staff and those using/hiring the property.
- A summary of financial implications associated with each potential alternative future use of the property. This would ordinarily be expected to include estimates of the anticipated cost of conversion, refurbishment, running costs, rental expectations and revenue generating potential. This information is of importance in assessing the likely viability of the various alternative uses that may be under consideration.

Following completion of the option appraisal an informed decision based on the financial implications from each of the possible future scenarios can be made. This would, at its simplest, be likely to result in one of the following outcomes.

- Retain the existing use in the absence of any financial benefit being achievable from any realistic alternative use.
• Identify the potential for an alternative more viable public authority use

• Transfer by either lease or sale to an appropriate community organisation.

• Lease or sell on the open market to achieve a capital receipt and achieve revenue savings from no longer having responsibility for the upkeep of the property.

Asset Disposal Costs

It is anticipated that most asset disposals will be offered for sale on the open market. In these instances the following costs would be expected

- Legal costs
- Marketing/ advertising costs
- Costs of staff decant from property
- Costs of mothballing and securing property whilst awaiting future use
- Costs of upgrading properties that will take displaced staff or groups with long-standing lets

An asset disposal revenue budget will need to be established for these costs.

In some circumstances, due to the history of the site, it will be in the Council’s interests to undertake site investigations, and possibly remediation works. This would allow the Council to be more specific about the range of possible uses for the property and to be able to take a more informed view on its value.

There may be other instances where in order to create or enhance the development potential of an asset, there is the need to undertake infrastructure or other works. This could include site access, servicing works and environmental accommodation works. Additionally, there may be benefits in acquiring adjacent property, or disposing of a combined site in partnership with another party to maximise its potential.

In all instances an option appraisal will be required to determine whether spend incurred in bringing an asset to the market will be recouped by its sale. There may be instances where the costs involved in bringing an asset to the market outweigh any expected return however there may be other benefits to be gained by this action, for instance, in revenue savings.

In exceptional circumstances where the costs of bringing a site to the market cannot be accommodated within the asset disposal budget, a report will be brought to Cabinet requesting additional funds. Financial assistance to help meet one-off costs designed to enhance a receipt value would form part of a business case, with the Spend to Save Reserve being utilised to help meet these.

Consultation
Informed by the option appraisal, the Corporate Asset Management Group (CAMG) will consult with other Council departments to determine if there is a continuing need for the Council to retain the asset.

If a Council department expresses an interest in retaining the asset, a clear business case including recognition of the ongoing financial responsibilities will require to be developed to justify retention.

If there is no clear business case for the Council to continue to use the asset, the CAMG will consult with Community Planning Partners to find out if they have a requirement for the property.

Where appropriate, the CAMG will advise the Depute Chief Executive of a property that may be of interest to community organisations.

The CAMG will also consider the likely interest if the asset is offered to the open market.

These steps are to demonstrate and evidence that full consideration has been given to the potential to retain the asset in the public sector. This exercise may therefore culminate in an alternative Council or Community Planning Partner use being identified, disposal to a community organisation, the lease of the property where the Council wishes to retain a long term interest, demolition of the property or the property’s outright sale on the open market.

**Report on Disposal Options**

If the outcome of the option appraisal is that the property is no longer required by the current holding service but that another Council service has identified a requirement and has demonstrated a business case justifying its retention, then there will be a formal transfer of the property out of the holding service to the new service holder. This would be agreed between the relevant departments in consultation with the Director of Finance.

Where the option appraisal has identified that the asset is no longer required by the Council and that some form of disposal is proposed, a report will be presented to Cabinet advising on the outcome of the option appraisal and will recommend the next steps to resolve the property’s future in one of the following ways:

- A Community Planning Partner has demonstrated a requirement for the property and Cabinet approval is sought on the basis of a transfer at market value determined independently by the District Valuer. (The lease of property to a Community Planning Partner would not ordinarily be considered to avoid it reverting to the Council if the organisation subsequently ceased to have a requirement for it or face future funding difficulties).

- The option appraisal has identified that there may be merit in community use of the property and that the availability of the property should be notified to community organisations by the Depute Chief Executive.
• That the property is no longer required by the holding service, any other Council department or any Community Planning Partners and it is not appropriate to offer for community use and as such it should be advertised for disposal on the open market either for sale or where more appropriate by its lease.

Whilst there is an overall preference for sale of surplus assets, there may be occasions where it would be appropriate for the Council to retain long term control over a property’s future and therefore each circumstance will be carefully considered on its merits.

Disposal Procedures

Following the Cabinet’s decision the Director of Environment will implement the approved course of action.

• Where Cabinet approves the property’s disposal on the open market marketing particulars will be prepared with terms and conditions of sale and, where appropriate, planning guidance. An advertisement will be placed in appropriate journals or depending on the nature of the property disposal by public auction seeking offers.

• Where the decision is to dispose of the asset to a Community Planning Partner, the District Valuer will be instructed.

• Where a property has been identified as appropriate for disposal to a community organisation this will be pursued with reference to the general requirements set out in Appendix 3.

Once the terms and conditions of the proposed sale or lease of the property have been agreed in principle these will be reported back to Cabinet to secure authority to conclude the transaction and instruct Legal Services as necessary.

Annex 4

Appendix 3 - Procedure for the Disposal of Land and Property Assets to Community Organisations

Introduction

The Scottish Government and COSLA’s Community Empowerment Action Plan promotes the empowerment of communities through the ownership of assets (land and buildings).
The disposal of assets from local authorities and other public sector organisations is recognised as an important means of supporting communities to own assets. The Scottish Government is examining how to increase the flow of assets into community ownership and aims to do this by encouraging and supporting local authorities and community organisations both to gain a wider appreciation of the benefits and risks associated with asset transfer and by developing an understanding of the processes involved. In this context asset transfer can range from disposal at full market price or for a nominal amount and can also include long leases.

It is recognised that the ownership of assets will not be the answer for all communities but in the right circumstances it can:

- Generate long term sustainable revenue streams for community organisations
- Instil a heightened sense of civic pride and responsibility
- Provide local people with a meaningful stake in the future development of the place in which they live and / or work
- Contribute to more effective and more intensive use of local resources
- Be used as leverage to draw in new finance and expand the level of community activity
- Improve the quality of the relationship between the citizen, the community and the local authority
- Provide new opportunities for local learning and community capacity building

Community ownership of assets can make an important contribution to the range of innovative, bottom up solutions which community organisations can develop to address local needs. These solutions can not only meet the needs of local people but also contribute to the delivery of both East Renfrewshire Council’s Single Outcome Agreement and national government outcomes. The Council does however recognise that the community ownership of land and property assets is a major commitment and it has a duty to ensure that it supports this only where the business case has been proven.

**Local Authority Assets: Wider Context**

Disposal of the Council’s property is subject to the provisions of s.74 of the Local Government Scotland Act 1973 as amended by s.11 of the Local Government Scotland Act 2003 and the Disposal of Land by Local Authorities (Scotland) Regulations 2010. Any proposed disposal of land by the Council will require to have regard to this legislation. Furthermore, to ensure that public money is used properly and achieves value for money, it must be possible to trace funds from the Council to where they are ultimately spent – to ‘follow the public pound’ across organisational boundaries. In relation to asset transfers, Councils are required to ensure transparency and consistency in the disposal of land and property assets. There should be measureable links to Council service delivery objectives to underpin good asset management.
Community Asset Disposal Procedures

The Asset Disposal Strategy sets the context and circumstances for the disposal of assets by the Council. As part of the procedure for declaring an asset ‘surplus’ to Council requirements, the Council will consider offering the asset to community, voluntary and other third sector agencies for community use. Most of the assets declared surplus by the Council will be disposed of on the open market however there will be a limited number of assets that will have the potential for continuing use by the community. In these instances the Depute Chief Executive will notify community organisations of the opportunity and organisations will be given time to register their interest in the asset.

In deciding whether to offer an asset to the community, the Council must consider the requirements of the capital programme and ongoing service delivery and the potential financial implications of disposal to a community organisation against disposal on the open market.

The terms and conditions of disposal – whether sale or lease, at market or below market value, will be determined by the Council on a site by site basis taking into account prevailing market conditions, funding conditions and the sustainability of projects.

Key Policy Criteria

Before the Council will begin to consider disposal of an asset to a community organisation it requires assurance on the following:

1. There will be measurable benefits to the local community by disposing of the asset

2. The community organisation has the ability to sustain the use of the asset

This is partly to ensure that the community continues to benefit from (former) publicly-owned assets and that community organisations are not burdened by taking on assets that become liabilities.

In relation to the first key policy criteria the policy requires all community proposals to meet the following before consideration is given to disposal off-market.

- The proposed use of an asset reflects the outcomes and objectives in the Single Outcome Agreement and other relevant plans and strategies

- The proposed use of the asset is genuinely for the benefit of the community, and would offer real opportunities for successful and independent community or third sector organisations to become more sustainable in the long term

- The proposed use of the asset would be non-discriminatory, inclusive and open to all.
• The use of the asset is environmentally sustainable. Any future refurbishment plans will be encouraged to make full use of energy conservation techniques and use sustainable building materials.

• That the community organisation would have greater security and independence, and would be better able to meet the needs of the communities it serves.

• That uses would enable communities to have improved access to facilities and/or opportunities that respond to their local needs.

Under the second key policy criteria, the Council needs to assess the risks carefully to ensure that organisations and future community management of the assets are appropriate and sustainable in the long term.

As it is likely that many of the community organisations applying to the Council for the transfer of assets would have limited financial history or facilities management experience it is important that a robust business case is put forward in support of any proposal. This allows the Council to both assess the authenticity and capabilities of the organisation and also allows the organisation to understand the extent of the responsibility they are seeking to take on. The policy therefore sets out the following requirements that need to be demonstrated by organisations for them to be able to be considered suitable to acquire Council assets:

• Financial viability of the transfer – the organisation needs to show at least a five year cash flow and budget forecast that demonstrates that the project is sustainable. Information on all funding sources over this period will be required. Provision will require to be made for the ongoing maintenance and upkeep of the asset, including a contingency fund for emergency repairs. Where the property is to be leased, conditions will be imposed on the required level of maintenance, appropriate insurance cover, the allocation of rates, utility charges, etc. (This is essential to minimise the risk of a property reverting to the Council in a deteriorated condition as a result of the community organisation having insufficient funds for the proper upkeep of the property).

• Experience of, and/or commitment to, partnership working – demonstrate that the asset would be put to a variety of uses to benefit the community.

• Management capacity - the organisation and key individuals have appropriate skills, knowledge and expertise and that there is a sufficient pool of volunteers to sustain the project in the long term.

• Sound governance and clarity of decision making processes – the project has clearly defined structures and that the roles and responsibilities within the organisation are appropriate to deliver the project, whether voluntary and/or paid. The project has an acceptable constitution and sound financial and management controls in place.
- **Clarity of aims and objectives** and that these meet the Single Outcome Agreement objectives.

- **All legislation and regulatory controls are in place** – meeting equality standards, child protection, health and safety, licensing requirements, employment and volunteers policies, etc.

- **Local community support** – the project must demonstrate that it has consulted with and has the support of the local community, that it can demonstrate local need and that the project is not aligned only with a single interest group.

- **Monitoring and evaluation** processes are in place to demonstrate the successful delivery of objectives and targets over the life of the project.

**Process for Assessing Asset Disposal Proposals**

The assessment of proposals from community organisations will be undertaken by the Corporate Asset Management Group or a sub group, reporting to the Director of Environment. Any community interest will be reported to Cabinet for approval at the following stages:

- Notification of interest
- Stage one application – in principle decision
- Stage two application – final decision

**Assessment Process**

The assessment of proposals put forward by community organisations involves a two stage process. Following an initial registration of interest, organisations are required to submit an outline business plan for a Stage 1 assessment at which time the Council will decide ‘in principle’ if the organisation is a proper body to acquire the asset and if the organisation has the potential to develop a project that would deliver sustainable community benefit.

If the application is approved, the organisation would be invited to submit a Stage 2 application when much more detailed information is required.

**Stage One**

When an asset has been identified as surplus to Council requirements and it is considered appropriate to offer to community organisations, the Depute Chief Executive will undertake appropriate consultation. At this stage, organisations can register their interest in acquiring the asset for community use by writing to the Depute Chief Executive. From the point of advertising the asset, organisations have three months in which to submit a Stage One application.

At Stage One, organisations will be asked to outline their proposal for consideration by the Corporate Asset Management Group. (It is not expected that detailed
management or financial information will be provided at this stage only sufficient
detail to allow the CAMG to assess if the interest has merit and would be worth
supporting). The information required should briefly outline:

- What the project is and why the asset is required.
- How the project fits against the priorities in the Single Outcome
  Agreement and other relevant plans or strategies.
- The level of local community support for the project. This should
  include the numbers of actual and potential supporters and the results
  of any initial consultation undertaken.
- Who and how local people would benefit from the project.
- Previous experience of the group or evidence of supporting
  organisations.
- Why the project is needed.
- Proposed acquisition terms i.e. sale, lease (including number of years)

The CAMG will assess the application and report to Cabinet within three months. If
the application is refused, reasons for refusal will be given. If successful the
organisation will be invited to submit a full Stage Two application within 12 months –
this timescale will not be extended unless there is good reason. (This is on the basis
that the Council will continue to incur costs for the security and maintenance of the
property).

Stage Two

At Stage two a full business plan and delivery plan is required. This submission is
expected to fully address the following:

Business Plan and Governance Documentation

- Outcomes, aims, objectives and targets the proposal will deliver including
  how these will be monitored and evaluated over the life of the project.
- The nature of the organisation delivering the project
- The capacity of the organisation detailing decision making structures
  and management / staff structures indicating whether these are
  voluntary or paid, levels of experience and/ or what training provision is
  in place.
- A strategy for succession planning
- Identify all outcomes from the project including links to the Single Outcome Agreement and other relevant plans or strategies.

- A five year financial business plan indicating all expenditure and income – both capital and revenue, including all anticipated grant funding identifying the status of this funding i.e. secured, current application, and any other income expected.

- Relationships with any other partners on the project.

- Confirmation that all statutory permissions or licences have or will be secured.

- Copies of existing (or proposed) policies in relation to child protection, health and safety, equal opportunities, environmental sustainability.

- The expected audience or catchment area for the project.

- Detailed acquisition terms

- Proposals for refurbishment or alteration of the buildings or land.

- A risk analysis of the proposals.

**Delivery Plan**

- Project programme from inception to operation

- Description of any proposed development.

- Detailed breakdown of programme and costs for any proposed building works or refurbishment proposals and how these will be funded.

The Stage Two application will be assessed by the Corporate Asset Management Group and a recommendation reported to the Cabinet within six months. (If more time is needed to reach a decision the Council will write to the organisation detailing the reasons why).

If the application is approved, final disposal details will be completed within a timescale to be agreed between both parties.
Disposal of Assets to Community Organisations Flowchart

1. ERC advertises asset surplus to requirements and suitable for community use
2. Organisation registers interest in asset
3. Organisation submits Stage one application
4. CAMG assess application and reports to Cabinet
5. Application rejected
   - Asset to be re-advertised for community use
5. Application approved
   - Asset to be put on open market (standard disposal procedures apply)
6. Organisation invited to submit Stage 2 application
7. Organisation submits Stage 2 application
8. CAMG assess Stage 2 application and reports to Cabinet
9. Application rejected
   - Asset to be re-advertised for community use
9. Application approved
   - Asset to be put on open market (standard disposal procedures apply)
10. Disposal process complete
Written submission from Falkirk Council

The Council does not have any arrangements in place to hold local authority assets in a separate land holding.

When disposing of assets, the Council has regard to its best value obligations. In disposing of assets other than in a competitive open market situation, the valuation would normally be carried out on the basis of market value unless there was a prior decision taken by elected members on policy grounds to proceed otherwise.

In relation to the attitude of the Council to disposal of assets, each request received is considered on its own individual merits. In relation to non-operational property assets [ie those properties leased out by the Council on commercial terms] the consequences of potential loss of revenue income from property rentals requires to be balanced against the benefits of the prospective capital receipt accruing. This situation is particularly relevant at a time when the Council is requiring to make significant revenue budget savings.

Whilst the Council does not currently have a specific policy in place in relation to encouraging asset disposals to community groups, as noted above, any such requests are considered on their own individual merits and the Council works constructively with local groups to consider such requests and the capacity for these to be progressed.

Key issues to be considered in this respect would be the need for the group to be formally constituted and sufficiently robust financially as to enable it to participate in property transactions; that the group’s intended activities are consistent with the Council’s Corporate Plan and Strategic Community Plan; and that the facility to be transferred will remain available for potential use and open to all members of a local community.

In addition it will be important for any such organisation to be able to demonstrate availability of any third party funding and/or continuity of membership etc enabling it to operate and maintain the facility for its agreed purpose over a given period of time eg for the duration of any lease.
1. Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?

All Glasgow City Council assets are in the Council Asset Register.

2. When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?

Assets are valued to Market Value as defined by the RICS. However, where there is a particular reason for disposal at less than Market Value, if the particular circumstances merit it, this has to be justified to the Council’s Executive Committee – i.e. valuation foregone as a contribution to funding a particular project etc.

3. What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?

Glasgow City Council approved its policy for transfer of control of assets to the community in December 2012. The principal objective of the policy is to support residents who wish to constitute themselves as a group and to manage a local community facility. It is anticipated that the policy will bring improvements in local services, enhance community capacity, improve value for money and create a more sustainable community and third sector. The Council has also committed to supporting residents who want to establish and manage their local community facilities.

4. What is your experience of disposal and what difficulties has the authority encountered?

Experience

Glasgow City Council has experience of this area before and since the above policy was approved. This experience informed our consultation response to the Community Empowerment (Scotland) Bill and evidence provided to the Scottish Parliament’s Local Government and Regeneration Committee.

It is clear that all parties involved need to be explicit about assumptions they are making not least in relation to the timeframes and costs involved for concluding any transfer of an asset. The engagement of professional advisers adds cost and delay and, in some instances, it could be questioned whether advisers are always acting in a timely manner and in the best interests of their client.

Difficulties

The costs associated both direct and indirect and for both the applicant organisations and local authorities in getting to a stage where they are ready to proceed should not be under-estimated. Such costs (some of which may be abortive) will require to be borne by the applicant organisation and the local authority with no re-imbursement to either party.
Local authorities may incur costs in getting assets into a state where they are transferable only for the transfer not to go ahead.

If organisations take over assets but did not wish to TUPE staff or use maintenance services previously provided then this could create difficulties.

If an organisation purchased an asset from Glasgow City Council and then, for whatever reason, the organisation failed or ceased to exist, then GCC may, for wider public interest, be compelled to buy the asset back.

Significant additional support and time may also be required to bring organisations (particularly community based organisations) to the point where they are able to effectively manage buildings.

**Positives**

The transfer of assets to organisations which are then able to secure funding to develop the asset and breathe new life into it could provide longer term savings for local authorities and more effective services targeted at local communities.

There could be longer term social and economic return on investment benefits as well as short-term capacity building and resilience for community organisations.

The transfer of community assets particularly where the assets will be used or operated to provide enhanced community facilities, has the potential to make a small but significant contribution to local community economies – for example through the provision of employment and the provision of community services.
Written submission from Highland Council

Further to the request of the 16 December from the Convener of the Rural Affairs, Climate Change and Environment Committee, please see below the response from The Highland Council.

1. Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?

Highland Council does hold records relating to its land and property assets within its fixed asset register and its property database.

2. When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?

The Council’s surplus operational land and property assets are valued at open market value based upon Royal Institution of Chartered Surveyors (RICS) Valuation - Professional Standards (Red Book) – this is essentially a financial valuation. It is a measure of what the market could be expected to realise in value. Within this context it is not possible to put a ‘value’ on ownership by the community and what that might mean in society or common good terms.

This Council would welcome clear and supplemental advice/guidance to be issued by the Scottish Government in support of Part 5 of the Community Empowerment (Scotland) Bill regarding the valuing of: Economic Development; Regeneration; Public Health; Social Wellbeing, and/or Environmental Wellbeing, in assessing any below open market value ATR.

The following responses, relating to this, were included within the evidence submitted to the Local Government and Regeneration Committee as part of their consideration of the Community Empowerment Bill.

Section 52 (4) (d) – Asset transfer requests

In considering any ATR, the relevant authority must take into account whether the transfer will promote or improve: (as section 55(3)(c))

(i) Economic development

(ii) Regeneration

(iii) Public Health

(iv) Social Wellbeing, or

(v) Environmental wellbeing

It is therefore recommended that this requirement should also be applied at 52 (4) (d) and that any community transfer body should specify and evidence within its ATR how its proposal will promote or improve and deliver the five requirements outlined above. The ATR should evidence how the proposal and each of the above criteria will promote, improve and deliver the benefits to the community, and how these link
in with the Aims and Objectives of the Relevant Authority. Ideally such evidence should be SMARTA (ie. Specific; Measurable; Attainable; Results-Orientated; Timebound; Agreed).

Section 55 (3) (c) – Asset transfer requests - decisions

As outlined at (s52(4)(d)), the Community Transfer Body Request should specify in its request how its proposal will promote or improve and deliver:

(i) Economic development

(ii) Regeneration

(iii) Public Health

(iv) Social Wellbeing, or

(v) Environmental wellbeing

The ATR should evidence how the proposal and each of the above criteria will promote, improve and deliver the benefits, and how these link in with the Aims and Objectives of the Relevant Authority. Such evidence should be SMARTA (ie. Specific; Measurable; Attainable; Results-Orientated; Timebound; Agreed). This will assist the relevant authority to appropriately and fairly assess any ATR.

3. What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?

The Highland Council area leads in terms of community owned assets, with 22.4% of the Scottish total. The Council has transferred over 20 assets to communities. HIE provides considerable support to community groups pre, during and post asset transfer.

The Council has had a policy in place to deal with Community Asset Transfer Requests at below market value since June 2012. Included within this policy is:

- Communities expressing interest in the transfer (through ownership/lease) of Council owned vacant and surplus land and property are invited to prepare a business case to support their proposals, and to demonstrate that their proposals are viable and sustainable as well as how their proposals support the Council’s Aims and Objectives.

- Communities interested are supported in developing and bringing forward their business case by the outgoing occupying Service (if that Service has an interest in supporting a particular community proposal) or, if not, by the relevant Ward Manager.

The Council has also recently created a post of Community and Democratic Engagement Manager to support and further develop the Council’s policy in this area in light of the Community Empowerment Bill. In addition the Highland Community Planning Partnership Board agreed in November 2014 that it would work in
partnership by sharing staff time and resources to support the ambitions of the Bill including the sections relating to asset transfers.

It is important to note that at times, the need to realise a capital receipt can be a conflict to asset transfer but in general this is not the case where there is a real demonstrable opportunity for community groups. However, the Council’s evidence to the Local Government and Regeneration Committee did note that the ATR process as outlined in the Bill in essence removes the discretion of the (local) Authority to seek a Best Value outcome to a property disposal, and thereby potentially foregoing a capital receipt that could be reinvested/recycled through its capital programme to deliver improved public services. It has been requested that clarity is provide on whether other aspects of legislation require to be repealed to reflect this.

4. What is your experience of disposal and what difficulties has the authority encountered?

Experience to date shows that sometimes when a group approaches the Council for a property they may have interest but not capacity to take it on and this can delay the asset transfer process. This highlights the need for communities to be supported better through the process and good practice identifies the need for support pre, during and post transfer. For some communities, leasing may be a route to ownership in the longer term. The new partnership action agreed in the CPP will enable more groups to be supported through the process.

There are recent examples of community groups/bodies taking, not untypically, 12-24 months from their ‘initial expression of interest’, to getting constituted, developing their business case (their ‘request) for a land/property asset transfer proposal. The Bill, whilst ensuring the rights of communities are not restricted, needs to foster this ‘developmental’ process.

Local Example - Village Hall Transfer

The transfer of 10 Council-owned halls to community groups resulted from a Council decision to equalise its support for village halls. This was partly driven by:-

- The belief that communities could become more engaged and empowered through the ownership and management of assets
- A desire to address significant historic anomalies in support
- The need to ensure that the Council had a consistent policy and approach to halls
- A requirement to make budget savings

From the outset the Council recognised that because each community was different, had different capacities and were starting from different development points the timescales to achieve the transfers would also be different for each hall. Accordingly, although most halls had transferred within eighteen months to two years, the final hall did not transfer until some three years after the process started. Flexibility in the process was critical.
Written submission from Midlothian Council

On behalf of Midlothian Council I would respond as follows to the questions raised:

1. **Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?**

   Response: No the authority does not currently hold any assets in a separate landholding interest.

2. **When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?**

   Response: Assets are valued at market value for their existing use, or if appropriate alternative use. Actual transfer value may be agreed at less than this – subject to Ministerial approval. The value of the transfer is taken into account in terms of the support the Council is providing to a voluntary group and is linked to the basis that the proposed community use for the building will deliver/provide continuity/provision of services in support of the Community Plan objectives.

3. **What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?**

   Response: Midlothian are prepared to consider disposal of surplus assets where they are not included in any existing planned capital programme. Assets which a vacant, are not subject to a wider programme would be available for transfer.

   Council officers are reviewing a previously presented but not approved Community Asset Transfer Policy proposal; the draft policy encourages non-profit distributing local voluntary groups to seek to transfer of appropriate Council assets.

   The policy is linked to other Council approved policies on co production and community engagement and is aimed at providing positive support to genuine community voluntary groups to deliver a longer term sustainable community service and effective asset transfer. In this regard the draft policy seeks to ensure that organisations seeking asset transfer have a robust and financially sound and sustainable business case, and that the membership of the organisation have the appropriate skills and experience to run both the services to be provided and the maintain and manage the asset being transferred.

   **What is your experience of disposal and what difficulties has the authority encountered?**

   Midlothian have transferred site to community organisations and have also transferred developer contribution funds to further support organisations develop new facilities on those sites. In addition considerable officer time has been spent on supporting organisations develop.

   On occasions the Council has come into difficulties in dealing with Communities, particularly where there are 2 or 3 different ‘community groups’ seeking to bid for the same asset. This gives rise to conflict with in the community, difficulties for the
Council in dealing with individual bodies. These issues are difficult to manage and it is hoped that the Community Asset Transfer Policy currently being drafted will assist in this process. However the evaluation of bids, which can be a combination of financial and non-financial issues, is difficult to quantify to enable effective fair and open comparison between groups.
Response from Moray Council

- Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?

Yes, once assets are declared surplus they are managed corporately and all capital receipts are credited to a single council account.

- When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?

Properties that are disposed of or transferred are mostly valued by the Council’s Estates Surveyors. In some cases external agents are employed – usually the District Valuer. Valuations are purely financially based. However the Council does dispose of properties at less than best consideration in accordance with the Disposal of Land by Local Authorities (Scotland) Regulations 2010 where the disposal would contribute to the purposes specified in the Regulations. Such discounted disposals are mainly Community Asset Transfers.

- What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?

The disposal of property assets surplus to requirements minimises ongoing running costs, generates capital receipts and supports the Council’s main priority of economic development, as well as other community benefits. The Council has a specific Community Asset Transfer Policy which has been publicised and the Council has run awareness briefings for community groups. As part of the council’s response to a public consultation exercise on the budget in 2010 the council agreed to establish and promote arrangements for Community Asset Transfer. This was first formalised as a strategy by the council’s Policy and Resources Committee on 12 April 2011. Since that time a working group of officers has been established to support community groups with CAT applications and a policy has been developed. The latest version of the policy was approved by the Policy and Resources Committee on 7 October 2014 and the web links to the report and policy document are provided below.


http://www.moray.gov.uk/minutes/data/PR20141007/Item%204%20Appendix-with%20track%20changes-PR.pdf

- What is your experience of disposal and what difficulties has the authority encountered?

Since 2008 the main difficulty in relation to property disposals has been the depressed local property market. Although the local property market is now showing
signs of improvement developers are still encountering difficulties securing development finance.

Regarding CATs there have been numerous challenges and the level of support required by community groups can be quite extensive. A continuing issue is groups forming with a focus on simply wanting to take control of buildings as opposed to identifying the local services that would benefit from the use of particular buildings.
Written submission from North Ayrshire Council

Disposal of Local Authority Assets

Please find below our responses to the questions you have raised. North Ayrshire Council would be pleased to continue to engage in this discussion where appropriate.

1. **Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?**

The Council holds property in three different accounts: General Fund Property, HRA and Common Good Accounts. Each Council asset will be held in one of these three accounts depending on the asset's designation and in accordance with operational procedures and legislation established by Scottish/UK Government.

2. **When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?**

The valuation of assets to be disposed of or transferred will be valued by qualified internal valuers and/or independent valuation, usually undertaken by the District Valuer. This process seeks to determine what the 'best value' could be in any competitive situation as a result of marketing the property and it is financially driven. The extent to which any disposal of an asset is financially driven, following the valuation of that asset, will be on a case by case basis; the income received from the disposal of a 'high value' asset may be earmarked to make a contribution towards offsetting any capital project where a replacement asset is being developed to improve service delivery and thereby provide 'best value'. Where a 'lower value' asset is being disposed of 'best value' may be obtained through an asset transfer which potentially secures/retains jobs in the local area, provides additionality in service provision and/or creates further business development opportunities in the local area.

The decision will take into account local circumstances, identified need and the Council’s priorities.

The Council has a Community Asset Transfer Policy which seeks to undertake community asset transfer where it will bring benefits to communities and contribute towards achieving council aims and objectives.

3. **What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?**

The Council has had an active disposals programme over the past 2 years which has been relatively successful bearing in mind the current market conditions set against the global economic downturn. Local economic conditions have dictated that certain types of assets are more favourably received when marketed leading to alternative disposal strategies being considered to achieve successful disposals.
In addition the council has concluded a number of community asset transfers with further potential community transfers in various stages of discussion with community groups/organisations.

The Council takes a proactive role in working with local organisations to encourage community asset transfer. North Ayrshire Council is committed to community empowerment and builds partnerships and capacity within its communities to ensure that asset transfer is a constructive feature of community development.

The following information is also available on the Council’s website http://www.north-ayrshire.gov.uk/resident/your-community/community-asset-transfer.aspx and the documents references below are included in the response:

North Ayrshire Council

What is community asset transfer?

Community asset transfer involves the transfer of responsibility for an asset from the Council to any suitably qualified community, voluntary or social enterprise group.

What community Assets are suitable for transfer?

Suitable assets may include:

- public halls
- town halls
- community centres
- bowling greens
- public conveniences
- parks
- play areas
- small museums

There are some assets that must remain under Council ownership in order to support the delivery of essential services or to support economic activity in an area. Other assets may have restrictive covenants attached which would restrict their use to a specifically defined purpose.

What is the Council's policy on community asset transfer?

North Ayrshire Council is committed to community asset transfer where that will bring benefits to communities and contribute towards achieving the Council’s aims and objectives.
The Council recognises that community asset transfer can be a valuable part of supporting and sustaining local communities in North Ayrshire and it wishes to ensure Council assets can be owned and managed by local people, where appropriate.

Read the [Community Asset Transfer policy](PDF, 359kb) for further information.

**How to apply for an asset**

We have prepared a [Community Asset Transfer guidance pack](Word, 353kb) to assist community associations interested in taking responsibility of a Council asset. The pack contains step by step guidance, an application form and useful additional material.

The application process consists of five stages:

**Stage 1**
Initial application (3 months)

**Stage 2**
Detailed application (3-5 months)

**Stage 3**
Cabinet decision (1 month)

**Stage 4**
Implementation (3 months)

**Stage 5**
Handover of the asset

**Who to contact?**

If you would like further information and/or guidance please contact the Community Asset Transfer Team.

4. What is your experience of disposal and what difficulties has the authority encountered?

A range of services within the Council – including Legal, Estates, Finance and Connected Communities - all have different professional experience on Community Asset transfer. We work together through a standing working group to assess and support applications. Each case is assessed on a "localised" basis i.e. how the property or land would benefit that particular community. We are considering joint training sessions across services to reinforce the principles of Community Development and Economic Development and to understand the real value of assets.
to communities beyond the economic asset value, in order that decisions can be taken in light of this.

The process is also, by necessity, fairly lengthy and complicated, both to protect community groups’ future sustainability and to protect the Council’s financial responsibilities. This can be frustrating for applicants.

The nurture and support required by many organisations also requires to be resourced; and this is a major challenge. The project management of the components of the process often falls to the Council; and the support to, or funding of, various stages in the process often also has to be addressed or funded by the local authority.

In relation to community asset transfer the challenge for the authority is managing the expectations of the community group in relation to the transfer ‘value’ of the particular asset and to ensure that in working with the community group a suitable business case is prepared to outline how the asset will be paid for, operated and managed to ensure that there is no financial liability falling to the Council in the future to step in and undertake maintenance of the transferred asset.

In all of the above, appropriate resourcing to support and build the capacity of communities to successfully achieve and sustain asset transfers is crucial.
Written submission from North Lanarkshire Council

I can confirm the following in relation to each of the information requested as follows

1. Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?

I can confirm that the vast majority of the council’s assets are held directly in the Council’s ownership. These assets will be held in the General Account or in the Housing Revenue Account. The council has transferred a number of properties to some of its Arms Length Organisations. Eg the bulk of commercial property portfolio was transferred to North Lanarkshire Properties LLP.

In addition long term leases have been granted to Culture NL Trust and North Lanarkshire Leisure Trust to facilitate effective operation of the various sports centres and community centres etc.

If you require any detailed information relating to this point then please let me know.

2. When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?

When a property is being sold the properties are valued by the Council’s property Valuers, the valuation is undertaken in accordance with the current edition of the RICS Valuation – Professional Standards. Valuations are carried out by an RICS Registered Valuer who has the appropriate knowledge, skills and understanding to undertake the valuation competently.

The main basis of valuation adopted is Market Value which is “the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm’s-length transaction after proper marketing wherein the parties had each acted knowledgably, prudently and without compulsion”.

Disposals are undertaken in accordance with the Council’s policy for Land and Property Sales. This reflects the statutory obligations in accordance with the terms of Section 74 of the Local Government Scotland Act 1973, and updated by the Scottish Government via the Disposal of Land by Local Authorities (Scotland ) Regulations 2010.

3. What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?

In February 2014 council approved a draft Community Asset Transfer (CAT) policy for consultation and agreed to select three CAT pilot projects which would inform the final draft Policy. Three projects were confirmed via a selection process for participation in the pilot in August 2014.
The vision for this new CAT policy is about developing plans and processes to further deliver community regeneration and unlock potential for local projects and services via the council’s assets. The policy requires to be delivered in accordance with the current legislation framework including Local Government (Scotland) Act 2003 (LGSA) and the subsequent Disposal of Land by Local Authorities (Scotland) Regulations 2010.

To inform and consult communities on the policy development, and call for pilot projects; information about the policy was published on the council website with a link to an on-line survey. An email was sent out to members of the Citizen’s Panel including information about the policy and a link to an on-line survey. A total of 90 on-line survey forms were completed (80 individuals and 10 third sector organisations).

The Council recognises that community asset transfer can contribute towards stronger, cohesive and sustainable communities as set out in our Economic Regeneration Strategy and Community Plan / Single Outcome Agreement.

4. What is your experience of disposal and what difficulties has the authority encountered?

As a large local authority the Council has sold a significant amount of surplus land and property since 1996. However only a few sales have involved community groups. The Council’s experience is that the groups find it very challenging to find a path through funding and having expertise in project delivery. In some cases they are often very knowledgeable in the service they deliver, but find it challenging to secure the skills, knowledge and expertise to move the project forward.
Written submission from Orkney Islands Council

1. Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?

No, this is not done by Orkney Islands Council.

2. When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?

Assets are valued on the Market Value. If there is a decision to dispose of an asset under the Market Value this is taken by the Council rather than officers.

3. What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?

At the moment we have no policy to encourage the disposal of assets to community groups. In Orkney, the Council has a lengthy history of agreeing leases for properties below market value for registered charities including community groups.

4. What is your experience of disposal and what difficulties has the authority encountered?

The Council has no experience of actual disposal as indicated in the preceding response.
Written submission from Renfrewshire Council

Disposal of Local Authority Assets

I refer to your letter of 16 December 2014, addressed to the Chief Executive, seeking additional information as part of the evidence call on Part 4 of the draft Community Empowerment Bill, which makes changes to the Land Reform (Scotland) Act 2003.

Please find detailed below my answer to the questions raised:-

1. Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?

   • Renfrewshire Council currently has a Single Asset Register for all of its property holdings. While stating this it is aware of which assets are held on the three main accounts, General Services, Housing Revenue and its Common Good Accounts for Paisley, Renfrew & Johnstone.

2. When disposing of, or transferring assets how are those assets valued?

   • When disposing of an asset this is primarily undertaken by advertising the surplus assets availability on the open market and seeking bids, via the Council's website, via web hosting sites, Co-star and Nova Loca, advertisement via the local and national press and the installation of advertising boards upon the property to be sold. The size of the property to be sold will determine whether any press advertisement is required. In addition, officers seek to contact parties/companies and individuals, who have expressed a particular interest on being advised of a properties availability in the past, by analysing the Council's own property enquiry database. The asking price is not always quoted, however when quoted, it is determined by the Council's in house Asset & Estates team, who comply with the legislative requirements to seek the best price possible. In terms of the Disposal Strategy, any adjoining owner, can seek to acquire the property lying immediately adjacent to their property interest, should it be surplus to the Council's operational requirements and this will be valued by the Council's in house valuation surveyors, who are members of the Royal Institute of Chartered Surveyors (RICS) and are Registered Valuers.

   • When transferring a property between holding accounts, the valuation is undertaken by the in house valuation surveyors who as stated are members of the Royal Institute of Chartered Surveyors and Registered Valuers. They would determine the appropriate market value to be met from one holding account to the other.

   • I can advise that a recent change to our Disposal Strategy will require officers within the Asset & Estates team to contact the local area committees when a property is declared surplus within their particular area, in order that the Community is fully aware of the properties availability, prior to any public advertisement taking place.
2(a) To what degree is this purely a financial valuation?

- In answer to the second part of the question is this a financial valuation? Yes. However, when seeking to dispose of an asset below market value to a Community Group, officers will comply with the Disposal of Land By Local Authorities (Scotland) Regulations 2010, and take account of any of the purposes set out in paragraph 4(2) of the legislation;

  (a) economic development or regeneration;
  (b) health;
  (c) social well-being; or
  (d) environmental well being.

3. What is the attitude of the authority to the disposal of assets?

Renfrewshire Council is like any other local authority, keen to dispose of any assets which are surplus to operational requirements to ensure that it can provide a leaner fitter Council for the community and at the same time seek to generate capital receipts to assist the Council to meet its aims. While stating this, since the property crash of 2007/08, Renfrewshire Council has adopted a cautious approach to the marketing of surplus property as it awaits the market recovery.

3.(a) Does your authority have a policy to encourage the disposal of assets to community groups?

- Renfrewshire Council has an approved Community Asset Transfer Policy which was prepared with the support of the Development Trust Association Scotland (DTAS) and Engage Renfrewshire. This policy considers all forms of transfer, lease, long and short term and or outright disposal. At this time any group which has come forward has sought to take a lease. In addition the Council originally set aside a budget of £1.5m to promote community ownership and participation in respect of its community halls and facilities. This budget has recently been boosted by a further £1.5m. This fund is to be used as match funding to assist Community groups to take a greater control in the management/ownership of its community halls and facilities. Officers will be looking to assist Community groups in this process.

4. What is your experience of disposal and what difficulties has the authority encountered?

- Primarily when speaking of disposal to community groups this can be broken down into 3 potential problem areas:

  (a) Capacity
  (b) Funding
Taking each section in isolation

(a) Capacity :- Often find that the Community Group coming forward do not have all of the necessary skill sets to fully appreciate the actual requirements to prepare an outline and formal business submission to the Council to enable the Council to evaluate their proposal. In addition, the group while having positive members, keen to progress a particular project, may not have looked at its own constitution or articles of association to confirm it has the power to take on a lease or ownership of a property. They do not fully appreciate the risks, statutory, public liability etc in running a facility, and often still require or anticipate the Council will provide continuing support.

(b) Funding: - While Renfrewshire Council has set aside £3m of match funding to assist the process, quite often groups do not know where exactly they can get funding from and the steps needed to secure the funding. Often the funding is a one of capital injection at the start of a project, but groups find in later years that they do not have sufficient funding and are scrambling along looking for additional support often from the Council.

(c) Sustainability :- As per the comments on funding, the groups can find they have overestimated their likely income stream or underestimated their running costs and find they have a funding shortfall. Furthermore, the excitement of achieving a project could result in a drop in volunteers/members, people feeling they have done their bit and the facility is left with one or two stalwarts who are the bedrock of the facility. However, what has been noted within Renfrewshire is the age profile of those at the forefront of Community groups and do not see many of the younger generation coming forward to take a project on or to succeed in later years.

As a Council to resolve the 3 potential problem areas we have encouraged groups to speak with officers at an early date and with Engage Renfrewshire, a Community support agency funded by the Council. In part this is to hopefully inform the Community groups of the Council's Asset Transfer Policy, assist the groups to bring forward their outline and detailed business plans, provide guidance on funding streams and to manage expectations. The Council has also undertaken, at a significant cost to the Council, site and soil tests for one group in order that the Council can determine whether the land in question was suitable for development and has shared this information with the community group in order that it can take account of the technical information when bringing forward their proposal.
Written submission from Scottish Borders Council

I refer to your letter of the 16 December 2014 requesting information relating to the above. Below is the response of Scottish Borders Council to the bullet points in your letter. For ease of understanding I have included the wording of your bullet points:-

- **Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?**

  **Answer** - No – to date there has been no reason for Scottish Borders Council to do so.

  The Council however has entered into an NHT partnership with SFT to develop mid-market housing for rent, to help address the housing crisis. This housing is held in the NHT partnership.

  Common Good fund property is held in the accounts of the relevant common good fund and managed separately.

- **When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?**

  **Answer** - For sales of property to raise capital receipts to help support the Council’s capital programme, properties are sold at market value. In these instances market value is the basis of valuation. These are an important source of finance for the Council and the imperative is to raise money to help fund public works and infrastructure such as schools, care facilities, affordable housing, roads, flood protection schemes and bridges.

  For lets of the commercial estate the lettings are all at market value on the basis that all tenants are treated as commercial tenants. EU State Aids legislation prevents concessionary rents being given to commercial tenants, because to do so would be considered as illegal state aid. The commercial estate also generates around £1.3M per annum in income which the Council uses for public services.

  For the transfer of properties for community asset transfer purposes, the usual basis is at a nominal sum of £1 or £1 per annum if demanded. Properties subject to community asset transfers usually don’t have any commercial or residential market value and are suitable primarily for community use, hence the willingness of the Council to accept a nominal sum. The Council prefers to lease because it can retain the asset value in its accounts, which helps with its borrowing capacity.

  For outright community asset transfers of property with potential development value, a claw back clause is usually agreed enabling the Council to recover the development value in the event that the community organisation ceases to operate and sells the property on at market value. With such clauses, there is usually a roll over provision whereby if the community group wishes to continue operating and sell the property for re-investment into a replacement premises, the claw back would attach to their replacement premises instead of them having to pay the development value. In this way, any development value is retained by the public for re-investment into public works.
For sales and lettings of properties held in the Common Good funds, these are managed separately through the relevant Common Good Fund Sub-Committee. For their commercial, residential and agricultural holdings, sales and rentals are usually at market value. Sales are very rare but open market lets are routine because historically one of the main roles of this property is to raise revenue to help fund community activity in the relevant towns.

Common Good facilities used for community purposes (such as parks) are sometimes subject to deeds of dedication in favour of community groups to enable them to undertake works and associated community activities that benefit the public, such as the creation of play parks and sports pitches. In these instances no consideration is sought, except sometimes for consideration in kind such as in the form of pitch maintenance.

For common good properties used by the Council to deliver public services, there is an agreed protocol which is attached. The protocol also sets out the principles to be followed for disposals, transfers, rental income and capital expenditure on common good properties.

- What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?

**Answer** - Scottish Borders Council has a proactive property disposals policy and disposals fall into the following categories:-

a) Market sales – These comprise properties with commercial and/or residential use or development value. The proceeds are an important source of funding for the Council’s capital programme which in turn funds public works as explained above.

   For larger development sites the opportunity is taken (within commercial parameters) to negotiate for the development of affordable housing. Some of this housing is bought by the Council for its NHT housing partnership.

   The Council (within commercial parameters) also seeks to require developers to incorporate key commercial uses important for the economic development of the respective town within their schemes, such as for example the development of a hotel.

b) Commercial leases – The Council has an estate of around 330 commercial properties let to commercial tenants as part of its economic development strategy. The occupancy rate runs at around 90% which is very high and indicates that Scottish Borders Council is providing key business infrastructure. The commercial estate comprises units at the affordable end of the market which are ideal for small businesses, which in turn form the life-blood of the Borders economy and a substantial level of local employment. It is very important for Scottish Borders Council to be able to continue with these commercial lets unhindered because it is the main provider of small commercial premises in the Borders. If these lets were to be frustrated through having to give community
groups first option to lease in preference to businesses, then substantial damage could be done to the fragile Borders economy.

c) Community Asset Transfers – The Council has a portfolio of properties used primarily for community purposes or which don’t have a readily realisable development value. In many cases these properties are already being used by the community. These include town halls, public halls, community centres, sports facilities (most sports activity is not commercially sustainable in the Borders), parks, open spaces and allotments.

The Council is very willing to enter into discussions with community groups for them to take on the running and management of the premises. In this respect the Council has a community asset transfer policy which it developed in partnership with the Development Trusts Association Scotland, a copy of which is attached.

In negotiating such transfers the Council is usually willing to agree to a rental of £1 per annum if demanded or a sale price of £1 if asked for. As explained before, the Council prefers to lease because this enables the Council to retain the asset value, which in turn helps its borrowing capacity. However if the occasion were to arise that a key non-Council funder of the community group were to insist upon an outright transfer, the Council would give this sympathetic consideration.

Generally, the vast majority of interest from community groups has been in this portfolio of property with the Council having transferred village halls, an arts centre, sports pitches, a community centre, a former gym and land for allotments, with a number of transfers currently in discussion.

For Common Good properties falling within this portfolio, the premises are usually inalienable – that is, it is unlawful to sell or lease them.

The “work around” is to grant deeds of dedication allowing community groups to proceed with developments that benefit the public, with the group having the benefit of block bookings of the facility at no charge. In some cases the group also assume liability for the maintenance of the facility. This has allowed the development of play parks and fully drained sports pitches.

- What is your experience of disposal and what difficulties has the authority encountered.

Answer – Disposals for community asset transfers form one of the Council’s key pillars of its property disposals strategy. More importantly they are considered to be a key part of developing community resilience and Borders localities.

However a balance has to be struck between those properties that lend themselves well for community asset transfers and those that would be better sold off at market value, with the proceeds re-invested into public works such as schools, care facilities, affordable housing, roads, bridges and flood protection works. Furthermore, consideration needs to be had for commercial properties let to commercial tenants who are very important to the local economy for the creation of employment and
prosperity. This factor is all the more important given the fragile nature of the Borders economy.

Generally the community asset transfers that have taken place have all worked out well mainly because considerable effort was put in by all parties to ensure that each transfer has good long-term prospects of success.

Difficulties faced by the Council in negotiating transfers include:-

- Groups focusing on the property solution prematurely, making them ineligible for most sources of non-Council funding.
- Groups not heeding Council advice relating to 1, creating delays for their project.
- Ensuring groups undertake appropriate public consultation for their project.
- Groups developing viable business cases that create a credible source of income to cover premises running costs.
- Groups not having the skills and/or capacity to undertake their project both in the short-term and into the longer term.
- A shortage of specialist Council staff resources to assist community groups to develop their projects.
- All parties under-estimating the time required to put together a successful project and obtain all the necessary funder, Council and statutory approvals.
- For some projects, under-estimating the opposition to a proposed transfer, particularly at the planning permission stage.

However any difficulty is more than outweighed with the creation of a successful community asset transfer.

ANNEX 1

Community Asset Transfer

Guidance for Community Organisations 2011

Produced in partnership with the Development Trusts Association (Scotland)

INTRODUCTION

1. Community Asset Transfer is a process which results in communities taking on and managing their own assets – usually buildings and land. The process is built on a partnership between the Council and local communities where the Council agrees to the transfer of these assets from their management into local community management. That transfer can be made either through a leasing arrangement or outright with ownership going over to the community organisation. Community organisations come in different forms such as Trusts, Charities, Not For Profit organisations and social enterprises.

2. The Scottish Government has made a specific commitment to community ownership of assets. It says:

‘Communities owning their own land and buildings can have a huge impact on their empowerment. Asset ownership can have key impacts. It can provide revenue for
community organisations, making them more sustainable in the long term. It can give local people a renewed sense of pride in their communities, a real sense of a stake in the future of the places they live and work. For some community organisations, working towards asset ownership can be a fantastic catalyst for the group growing and maturing.'

3. Scottish Borders Council is similarly committed to community management of assets. We have produced this guidance to start a Community Asset Transfer programme. We are committed to Community Asset Transfer because we believe that this approach will help us achieve key outcomes – particularly our commitment to develop strong, resilient and supportive communities and improve the provision and accountability of services within communities. We believe that Community Asset Transfer can safeguard the network of buildings and facilities in local communities at a time when there is severe pressure on Council budgets and little opportunity to invest in growing services.

4. This guidance has been produced with the help of the Development Trusts Association Scotland which has been funded by the Scottish Government to promote a programme of Community Asset Transfer across Scotland.

5. The guidance is for community organisations that are investigating leasing or taking ownership of Council assets. We have started our Community Asset Transfer programme with a set of pilot projects involving Public Halls and Community Centres, where we know there is local interest in taking them on and running them under community management. But this guidance is a good start point for community organisations that might be interested in any of our assets, not just buildings and but also land.

**THE PROCESS**

**Stage 1 (no less than three months)**

1. We recommend that you make contact with us at the earliest stage, at the point where you have just begun to explore the possibility of taking a Council asset into community management. You can contact the Council’s Asset Transfer Team:

   - by email assettransfer@scotborders.gov.uk
   - by phone 01835 8********
   - via our website www.scotborders.gov.uk/assettransfer

   We will assign someone from our Asset Transfer Team to work with you.

2. Once we have confirmed that the building you have targeted is one of our assets and within the asset transfer programme, we will provide you with the background information you need to determine whether the building is suitable for your needs:

   - condition data and assessments
   - building plans and layout
   - title information and appraisal
   - usage data (raw and analysed)
• running costs including support costs and lifecycle costs

3. We can also provide you with demographic, social, economic and planning data to help you build up a community profile and demonstrate local community need for your proposal.

4. At the end of this exploratory stage we will support you to produce a business case for your proposal. In the business case we expect you to present the reason for transfer, based on your assessment of community needs. An options appraisal should be included, which demonstrates why transfer of the targeted building is the best of the available options; how it will achieve your organisation’s aims and objectives. The business case should also include an initial assessment of financial viability. We think it is particularly important at this stage, especially if you want to bid for funding to support your project, that you demonstrate community need and demand in the business case.

5. In exceptional circumstances, other community organisations may express an interest in the building you have targeted. Where there is conflicting demand, we will make our decision about which project to support based on how well the business case demonstrates the viability of the project and the community benefits it will deliver.

Stage 2 no less than six months

1. When we reach agreement that the business case is made, we will proceed with you to produce a full business plan for the transfer.

2. The business plan will include an operational plan, which demonstrates how you will manage the building and deliver your project, and a financial plan which shows what your running costs will be and how you will meet them, along with any investment proposals you have for the building.

3. We will draft a management agreement or lease for you, or, if we have agreed that outright transfer is a better option, we will prepare the documentation for transfer. Where our caretaking staff become part of the transfer will manage this process with you.

4. Where we believe that the transfer is particularly complex or contentious we may initiate a public consultation to ensure that there is a public consensus for the preferred way ahead.

5. When we have agreed a business plan and management agreement or lease or outright transfer with you and all documentation is in place, we will seek approval for the transfer. We will either go direct to the Council’s Executive for approval, or, if the building is held as Common Good or in Trust, we will first approach the local Common Good Working Group or trust representatives for their support and then go to the Council (acting as trustees) for approval.

6. With Executive or Council (acting as trustees) approval, we will complete the transfer of the building to you.
ANNEX 2

SCOTTISH BORDERS COUNCIL ITEM 9

29 SEPTEMBER 2011

REPORT BY DIRECTOR OF RESOURCES

MANAGEMENT OF COUNCIL OCCUPIED COMMON GOOD ASSETS

1 PURPOSE OF REPORT

1.1 To establish principles which should apply in respect of Council occupation of common good heritable (land and buildings) assets and associated financial issues arising from the ongoing review of these assets.

2 BACKGROUND AND HISTORY

2.1 The history and legal position relating to Common Good is set out in Appendix 1 to this report.

3 COMMON GOOD HERITABLE ASSETS

3.1 In view of the current review of Common Good heritable assets, it is necessary to establish a number of principles which should apply in respect of their management and use by the Council, to reflect current legal requirements and accounting principles.

3.2 The Council is required, in terms of these accounting principles, to maintain a list of all Common Good assets and it is the heritable list which is currently being reviewed through examination of all the assets of each of the former Burghs in the Borders, with the work scheduled to complete in the spring of 2012.

3.3 Common Good heritable assets can be regarded, for operational purposes, as falling into any of the following four categories:-

1. ‘Dignity of the Burgh’ property, which is a property necessary for the administration of the burgh or for the convenience of its inhabitants.

2. Properties used for local authority services.

3. Property used to generate income directly for the relevant Common Good fund.

4. Other Common Good property.
‘DIGNITY OF THE BURGH’ ASSETS

4.1 These break down into three categories:

4.1.1. Common Good Assets Irrevocably Dedicated to Specific Local Authority Services – Examples may include public parks, public halls and administrative offices.

4.1.2. Historical Assets Held On The Common Good Account – These comprise historical buildings held on the common good account that the Council deliver services from, in which the history of the premises is a key part of that service. Examples may include houses, former court rooms and jails from which museum services are delivered in which the buildings themselves have a significant relevance to the service.

4.1.3. Ceremonial Assets Held On The Common Good Account – These comprise common good heritable assets that are primarily used for ceremonial occasions and which also form part of the cultural fabric of the town. Examples include town clocks, war memorials, council chambers used for formal ceremonial occasions, provost’s offices and marriage rooms.

4.2 The basis of the Council’s use of ‘dignity of the Burgh’ assets for the delivery of local authority services is detailed in Appendix 2.

5 COMMON GOOD PROPERTIES USED FOR LOCAL AUTHORITY SERVICES

5.1 These comprise properties held in a common good fund that are not necessary to sustain the ‘dignity of the Burgh’ but which are occupied by the Council to deliver local authority services.

5.2 The basis of the Council’s use of such properties for the delivery of local authority services is detailed in Appendix 2.

6 COMMON GOOD PROPERTIES USED TO GENERATE INCOME

6.1 These comprise properties held on the common good which are not required to sustain the ‘dignity of the Burgh’, and which are available to lease to third parties.

6.2 The management arrangements for such property are outwith the scope of this report.

7 OTHER COMMON GOOD PROPERTY

7.1 This comprises residual vacant pockets of land held on the common good account that do not require to be separately identified as assets for accounting purposes.
7.2 The management arrangements for such properties are outwith the scope of this report.

8 DISPOSALS, TRANSFERS, RENTAL INCOME, AND CAPITAL EXPENDITURE

8.1 While the Council has a wide discretion in its administration of the common good assets, there is one area in which the law is more restrictive than that applying to other Council-owned properties (in that some common good assets may not be freely sold or leased) – as explained in Appendix 1 paragraphs 2.5 and 2.6.

8.2 The principles to be adopted for transfers, disposals rental income and capital expenditure for common good properties, including the treatment of adjustments between general fund and common good funds in relation to properties discovered to be common good assets which had not been previously known as such, are set out in Appendix 3.

9 INSURANCE ARRANGEMENTS

9.1 All heritable property in the Council’s portfolio, including all common good properties, is insured under the Council’s block insurance policy. The costs of insuring common good properties are recharged pro-rata to the relevant common good funds.

10 FINANCIAL IMPLICATIONS

10.1 This report sets out the principles for the accounting treatment of common good assets and the Council’s use of them. However, it is not possible to determine the full financial implications until the ongoing review of common good heritable properties is complete. Once complete a full analysis of the financial implications will be undertaken and the outcome together with recommendations on the way forward financially will be brought forward in a future report to Council.

10.2 The revenue costs of each common good property used by the Council for service/administration delivery will have to be recorded individually to ensure that income and expenditure is correctly accounted for between the respective common good funds and the general fund.

10.3 All adjustments made between the general fund and common good funds would be reflected in their respective balance sheets.

11 CONSULTATION

11.1 Finance, the Heads of Audit & Risk, Legal & Democratic Services and Property & Facilities Management, and the Clerk to the Council were consulted and their comments are incorporated into the report.

11.2 External Audit was consulted and their comments are incorporated into this report.
12  EQUALITY

12.1 It is anticipated there will be no adverse impact due to race, disability, gender, age, sexual orientation or religion/belief arising from the proposals contained in this report.

13  ENVIRONMENT

13.1 There are no environmental issues directly associated with this report.

14  RISK COMMENTARY

14.1 There is a financial and legal risk to the general fund and the common good fund if common good property and its use by the Council for delivering local authority services is not correctly accounted for. The adoption of the principles above will assist in mitigating that risk.

15  SUMMARY

15.1 This report establishes principles which will apply in respect of Council occupation of common good heritable (land and buildings) assets and their use by the Council to establish principles which should apply in respect of Council occupation of common good heritable (land and buildings) assets and associated issues arising from the ongoing review of these assets.

16  RECOMMENDATIONS

16.1 It is recommended that Council:-

(a) **Adopts the principles for the future management of the common good heritable** assets and the Council’s use of them as detailed in Sections 4 to 7 (inclusive) and Appendix 2.

(b) Adopts the principles for the treatment of adjustments between general fund and common good funds in relation to properties discovered to be common good assets which had not previously been known to be such together with the treatment of future capital expenditure set out in Appendix 3.

(c) Agrees that the Director of Resources provides a further report to Council once the review of common good premises has been completed, detailing the financial implications and the recommended way forward in light of them.

Approved by

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<td>Tracey Logan</td>
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Background Papers:

Previous Minute Reference:

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Democratic Services can also give information on other language translations as well as providing additional copies.

Contact us at Democratic Services, Scottish Borders Council, Newton St Boswells, MELROSE, Scottish Borders, TD6 0SA tel 01835 824000, fax 01835 825071, e-mail lmcgeoch@scotborders.gov.uk

APPENDIX 1

COMMON GOOD PROPERTIES – BACKGROUND, HISTORY AND LEGAL POSITION OF THE COUNCIL AND COUNCILLORS

1 BACKGROUND AND HISTORY

1.1 The history of Common Good can be traced back to the 12th Century when in an effort to develop Scotland economically, the Crown or local feudal barons granted lands to Burghs, to enable the Burghs to generate income and capital. Monies raised through renting or selling the land off in small parcels were added to tolls and market fees etc recovered by the Burghs, and used primarily for the payment of taxes. Any surpluses were customarily redeployed for the general benefit of the burghs, hence the expression for the “common good” of their inhabitants.

1.2 Regulation and reform of municipal authorities and the way in which they operated began in earnest in the early to mid 19th century and with statutory discretions and obligations created in tandem, came the right to levy rates. This meant that, for the first time, money came from a non traditional route, in the form of taxes payable by inhabitants of the burghs simply by virtue of their residence as opposed to income and capital derived from the burgh’s land holdings alone. This new stream of income was not regarded as part of the common good as it had to be spent on the provision of the particular services for which it was assessed rather than being used for the general purposes of the burgh (which was the essence of common good).

1.3 Over time, as the town councils’ statutory obligations and powers increased, a greater and greater proportion of the burghs’ income was derived from rates (and more latterly from the rates support grant provided by central government). This income had to be spent on statutory local authority services and their supporting assets and consequently had to be accounted for separately from the common good income and assets.

1.4 While the town councils remained in existence, the ratepayers and the inhabitants of the burghs were essentially one and the same. This led, in some cases, to some blurring of the lines. A town council’s powers in the administration and deployment of the common good funds were much less
restrictive than in relation to the statutory local authority funds and it was (and remains) competent for common good monies to be utilised in the provision of a statutory local authority service, provided it was done in the general interests of the town’s inhabitants. So, for example, when the rates monies available for maintenance of a public library were insufficient (at one time the library rate was subject to a statutory cap of 1d in the pound), they could be topped up with funds from the common good. Similarly, properties being bought to fulfil a statutory local authority function could be paid for from common good funds. Notwithstanding this however, the common good funds and the general rates funds still had to be kept apart and separately accounted for.

1.5 At local government re-organisation in 1975, the Local Government (Scotland) Act 1973 provided for the transfer of property which was held as part of the Common Good to island or district councils and in administering that Common Good property, these Councils were to “have regard to the interest of the inhabitants of the area to which the Common Good formally related”.

1.6 The Local Government etc. (Scotland) Act 1994 in turn transferred and vested Common Good property in the new Unitary Authorities, including Scottish Borders Council.

2 LEGAL POSITION OF THE COUNCIL AND COUNCILLORS

2.1 The title to all common good properties rest with the Council though they are legally deemed to be held on the behalf of the relevant communities.

2.2 There is a misconception that the question of whether or not a property is part of the common good should be determined by reference to the title deeds alone. In fact, the answer can only be found after considering other evidence, such as that available from burgh records.

2.3 The key issues, in the case of property which had been owned by a burgh council are as to whether the property is held under a “special trust”, or whether it has been acquired through statutory powers. If the answer to both of these questions is no, then that will indicate the property is common good. However, it needs to be borne in mind that the way in which the case law has developed suggests that property may in certain circumstances be deemed to be held under a ‘special trust’ in the context of determining whether or not it forms part of the common good, even although all of the normal legal requirements for constitution of a trust may not have been met.

2.4 In addition, the acquisition of property ‘under statutory powers’ need not always mean property appropriated by, or under threat of, compulsory purchase procedures. Rather, this can include any property acquired for the delivery of a local authority service for which rates could be levied - including, in some cases, properties gifted for such purposes.

2.5 One facet which sets certain common good properties apart from the rest of the assets in the Council’s portfolio is that some common good properties are deemed inalienable and thus may not be sold or leased without the approval
of the court (which will generally only be granted when the Council has demonstrated that the disposal is appropriate and of benefit to the inhabitants of the relevant town).

2.6 This concept of inalienability arises by operation of law and exists purely to protect underlying rights of the inhabitants of the former burghs to have and use certain properties for certain purposes. These rights either arise from the terms of the original grants of land to the burghs or have been established by usage of land as of right for a particular purpose (or for general purposes) ‘from time immemorial’. The inalienable properties are therefore generally restricted to:

- Places of customary public resort (recreation grounds, market places etc) normally held under the ancient titles.

- Original administrative buildings/places necessary to sustain the ‘Dignity of the Burgh’ (public halls, clock towers etc).

However, any such inalienable property will become alienable if a suitable replacement facility is provided, or if the need for the property to be used for a particular function has otherwise now disappeared. In these circumstances court approval is not required.

2.7 The relationship between the Councillors (acting as a whole), the common good and the residents of the relevant towns is not dissimilar in many respects to that which exists between trustees, trust estates and beneficiaries but is not identical, not least because the “trustees” and the “beneficiaries” in the common good context were considered to be one and the same (i.e. the inhabitants of the burgh), which cannot be the case under a proper trust. The Council therefore holds the assets not as trustees in the full legal sense, meaning that the Trusts (Scotland) Acts do not apply, but as custodians for the benefit of residents in the former burghs.

2.8 The duties of Councillors in their dealings with each of the common good funds are less exacting than that of trustees in formal trusts because there are no clearly defined trust purposes or objectives. Instead S.15 (4) of the Local Government etc (Scotland) Act 1994 simply provides that the Council in its dealings with any common good fund must “have regard to the interests of the inhabitants” of the relevant former burgh.

2.9 However, each town’s common good holding must be treated separately, though the Councillors acting as a whole has overall responsibility for each common good fund. In the Scottish Borders each town with a common good fund has a common good working group comprising the local Councillors, acting under the Scheme of Administration.
APPENDIX 2

COMMON GOOD PROPERTIES – USE FOR THE DELIVERY OF LOCAL AUTHORITY SERVICES

1 INTRODUCTION

1.1 This appendix sets out the basis for the use of common good property for the delivery of local authority services.

1.2 Each former burgh’s common good fund must be treated separately. The Council, acting as a whole, has overall responsibility for each common good fund. The Funds may comprise heritable properties (land and buildings) and/or moveable items, including money and investments. In the Scottish Borders each former burgh with a common good fund has a common good working group comprising the local Councillors, and governed by the Scheme of Administration.

1.3 It should be borne in mind that common good assets are held in the individual common good funds for each of the former Burgh districts, and that local authority services are funded from the general fund. As a matter of law, all property is vested in the Council. Consequently, it is not legally possible for one fund to lease property to the other, because it would amount to the Council leasing property to itself, which is not legally possible in Scot’s law.

1.4 Therefore, it is proposed that the Council now regularises the financial basis for its use of common good assets to deliver local authority services as set out in this document.

2 BASIS OF OCCUPATION BY THE COUNCIL

2.1 ‘Dignity of the Burgh’ Properties.

2.1.1 Maintenance – The costs of day-to-day maintenance, which comprises all works that would not be treated as capital expenditure are met from the general fund. So for example, this would include replacement of slipped and missing slates, but not the replacement of whole roof coverings, boiler repairs but not the replacement of the boiler itself, wiring repairs but not the complete replacement of the wiring system. Maintenance would also exclude capital investment required to tackle obsolescence such as the complete replacement of toilets and kitchens which have reached the end of their useful lives or are otherwise no longer compliant with current regulations for new facilities. The Council acting under the War Memorials (Local Authorities Powers) Act 1923 as extended by S.133 (3) of the Local Government Act 1948 often undertakes the day to day maintenance of war memorials through the general fund.

2.1.2 Energy/Utility Usage – The costs of all energy/utility usage including electricity, gas, water, phone and oil would be paid from the general fund.
2.1.3 **Rates** – All rates arising out of the Council’s occupation and use of the premises would be paid from the general fund.

2.1.4 **Income** – For premises used for the provision of services that generate an income, such as public halls for example, the income goes firstly to help offset the running costs of the premises and if there is a surplus after running costs have been deducted, the surplus is credited to the relevant common good fund at or following the end of the financial year.

2.1.5 **Staffing and other service delivery costs** – The costs of all staffing and other service delivery costs such as provision of books, stationery, IT equipment, furniture etc. would be paid from the general fund.

2.1.6 **Capital Works** – Where the relevant common good working group and the Council acting as a whole are in agreement to the provision of local authority services from a common good asset for a period of 20 years or more, the Council may invest general fund capital into the asset to make it fit for purpose to deliver the general fund services. Any capital spend by the general fund would be made through the normal general fund budgetary approval process.

Where the Council is likely to use the premises for less than 20 years the common good fund would bear the cost of any capital works to the premises. If the Council then occupies the property for a period, it will make an annual contribution (in arrears) to the relevant common good fund for each year that it does so, equivalent to the extent to which the relative capital expenditure by the common good fund is written down in that same year.

2.1.7 **Termination** - Should the relevant common good working group not wish the Council to deliver the local authority services from a dignity of the burgh common good property, they could formally ask the Council to cease doing so. In such cases provided there is agreement by the Council acting as a whole the Council would work with the relevant common good working group to either hand the premises over to a new management arrangement or alternatively cease delivering the services altogether, to enable the premises to be put to an alternative use or disposed of for the benefit of the common good. In these circumstances, the common good fund would pay suitable compensation to the general fund to cover the cost of capital expenditure previously incurred by the general fund on the premises.

Should the Council wish to cease delivering the local authority services from a dignity of the burgh common good premises it would formally notify the relevant common good working group. In such case the Council would either work with the relevant common good working group to hand the premises and services delivered from them over to a new management arrangement should this prove viable, or alternatively vacate the premises to enable the premises to be put to an alternative use or be disposed of for the benefit of the common good. In this circumstance, the relevant common good fund would not be expected to pay any compensation to cover previous capital expenditure from the general fund.
Should a common good fund incur capital expenditure on the basis that the Council remains in occupation for an agreed period to deliver local authority services and the Council terminates the arrangement before the agreed period has expired, the relevant common good fund would be suitably compensated from the general fund to ensure the relevant common good fund is not disadvantaged. Compensation however would not be payable from the general fund if the relevant common good working group initiates the termination of the arrangement.

2.2 Common Good Properties Used for Local Authority Services – Long-term occupation (20 years plus)

2.2.1 Rent – The relevant common good fund would be credited annually in arrears, from the general fund, with a rent for the premises based upon the market rent for the premises for its existing use and condition, less rentalised capital charges for any general fund capital expenditure that would otherwise have been the liability of the common good fund (i.e. but for the fact that the property was occupied for the provision of a local authority service). For properties where such rentalised capital charges exceed the market rent the rental shall be nil.

2.2.2 Maintenance – The costs of day-to-day maintenance, which comprises works that would not be treated as capital expenditure, would be paid for from the general fund. So for example, this would include replacement of slipped and missing slates, but not the replacement of whole roof coverings, boiler repairs but not the replacement of the boiler itself, wiring repairs but not the complete replacement of the wiring system. Maintenance in this context would also exclude capital investment required to tackle obsolescence such as the complete replacement of obsolete toilets and kitchens with new facilities.

2.2.3 Energy/Utility Usage – The costs of all energy/utility usage by the Council including electricity, gas, water, phone and oil would be paid from the general fund.

2.2.4 Rates – All rates arising out of the Council’s occupation and use of the premises would be paid from the general fund.

2.2.5 Capital Works – The Council may invest general fund capital into the asset to make it fit for purpose to deliver local authority services. Any capital spend from the general fund would be made through the normal general fund budgetary approval process.

2.2.6 Termination - Should the relevant common good working group wish to take the premises back for an alternative use and the Council as a whole agree to that; the Council should be given a reasonable period in which to find suitable alternative accommodation and vacate the common good premises. In these circumstances, the common good fund would pay suitable compensation to the general fund to cover the cost of capital expenditure previously incurred by the general fund on the premises.
Should the Council no longer wish to continue occupying the common good premises for the delivery of local authority services, it should give the relevant common good working group a reasonable period of notice prior to vacating the property. In this circumstance, the common good fund would not be expected to pay any compensation to the general fund to cover previous capital expenditure by the general fund.

Should the relevant common good fund incur capital expenditure on the basis that the Council remains in occupation to deliver local authority services for an agreed period that is more than 20 years and the Council terminates the arrangement before the agreed period has expired, suitable compensation would be paid from the general fund to the common good fund to ensure the relevant common good fund is not disadvantaged. Compensation however would not be payable from the general fund if the relevant common good working group initiates the termination of the arrangement.

**Short-term Occupation (less than 20 years)**

2.2.7. General – The basis of short-term occupation would be the same as for long-term occupation except for the terms below.

2.2.8 Rent - The relevant common good fund would be credited from the general fund, annually in arrears with a rent for the premises based upon the greater of the market rent for the premises for its existing use and condition or the rentalised capital charges for any capital expenditure incurred by the common good on the premises.

2.2.9 Capital Works – Where the Council is likely to use the premises to deliver local authority services for less than 20 years the relevant common good fund would bear the cost of any capital works to the premises.

2.2.10 Termination - Should the relevant common good working group wish to take the premises back for an alternative use and the Council acting as a whole agree to that; the Council should be given a reasonable period in which to find suitable alternative accommodation and vacate the common good premises.

Should the Council no longer wish to continue occupying the common good premises for the delivery of local authority services, the Council should give the relevant common good working group a reasonable period of notice prior to vacating the property.

Should the relevant common good fund incur capital expenditure on the basis that the Council remains in occupation to deliver local authority services for an agreed period that is less than 20 years and the Council terminates the arrangement before the agreed period has expired, suitable compensation would be paid to the relevant common good fund to ensure the relevant common good fund is not disadvantaged. Compensation however would not be payable to the relevant common good fund if the relevant common good working group initiates the termination of the arrangement.
APPENDIX 3

COMMON GOOD PROPERTIES - DISPOSALS, TRANSFERS, RENTAL INCOME AND CAPITAL EXPENDITURE

1 INTRODUCTION

1.1 This appendix sets out the principles to be adopted for disposals, transfers, rental income and capital expenditure affecting common good property, including adjustments between the general fund and common good funds in relation to properties discovered to be common good assets which have not been previously known to be such.

2 DISPOSALS, TRANSFERS AND RENTAL INCOME

2.1 When a common good asset is sold the net proceeds should be credited to the relevant common good fund.

2.2 Where it is discovered that in the past the sale proceeds of a heritable common good asset have been credited to the general fund, then arrangements would be made to credit the net proceeds of that sale to the relevant common good fund, along with interest at appropriate rates such that the common good fund is not disadvantaged.

2.3 In determining the net sale proceeds the general fund’s costs of management and landlord’s obligations would be deducted.

2.4 Where it is discovered that rental from a common good asset, previously not recognised as such, has been credited to the general fund then following deduction of costs incurred by the general fund in:-

(a) making the property fit for letting,

(b) management of the property and fulfilment of landlord obligations, arrangements would be made to credit the appropriate common good fund net rental plus interest at appropriate rates such that the common good fund is not disadvantaged and vice versa.

2.5 For clarity, any adjustments between the general fund and common good fund required in terms of this Section 2 would also take account of any restitution appropriate in terms of Section 3 below and this would be reflected in their respective balance sheets.

3 CAPITAL EXPENDITURE

3.1 Capital expenditure comprises investment in major works for renewals, refurbishments, replacements and extensions that go beyond the usual day-to-day maintenance and repair costs. For accounting purposes, because common good and general fund expenditure must be kept separate, the general fund should not normally be used to fund capital works on common good assets, with the result that each common good fund has to fund its capital expenditure from its own resources.
3.2 This is an onerous liability for the common good funds because many of their properties comprise old buildings in which major components such as roof coverings, electrical installations, toilet and kitchen facilities and heating systems are nearing the end of their working life with substantial capital works required to renew them. In addition many properties may be at risk of becoming functionally obsolete. Substantial capital works may be required to bring them up to modern standards.

3.3 In some cases, the general fund has been used to fund capital works to common good properties in good faith (in the belief, at the time, that they were not common good assets) in support of the local authority services that the Council delivers from them. This has often occurred where the Council has inherited services from a district council delivered from a common good property, but has been unaware that the property is common good because of an insufficiency of records and subsequent local government reorganisations. According to accounting principles, capital expenditure by the general fund should be treated as donations to the relevant common good fund.

3.4 However, the accounting principles proceed on the assumption that the ‘ownership’ of the asset is known at the time the decision to incur the expenditure is made. In these instances, where the fact that a particular property is a common good asset was not known at the time the expenditure was incurred, it is considered appropriate where practicable to offset any capital expenditure incurred by the general fund against any sums due to the relevant common good fund in terms of Section 2 above.

3.5 For example, Rosebank Quarry at Selkirk was believed to be a general fund property when it was sold in 2005 for £83,000. It was also believed that Victoria Hall, Selkirk was a general fund property and since 2007 £178,000 of general fund capital money has been spent on the property. However, as part of the ongoing review of the common good estate it came to light that both properties are part of the common good. Consequently both the £83,000 capital receipt and the £178,000 of capital expenditure should have been attributed to the common good fund and the £178,000 should be offset against the £83,000, potentially putting the common good fund into a deficit position. However, in this example, because it would be counter-productive to put a common good fund into a deficit position because it too was unaware of the status of the property when the decision to incur the expenditure was made, any capital expenditure above £83,000 would be treated as a donation to the fund.

3.6 To summarise the assets transferring from general fund to common good fund would do so at current book value, which would reflect any capital expenditure and asset sales. There would be no compensation for asset sales unless they exceeded the value of capital work.

3.7 In future, where common good properties need capital investment the general fund should not normally be used and instead, the relevant common good fund should look to its own resources to carry out the required works.
3.8 However, in future, where the Council is delivering local authority services from a common good property and capital investment is required to make the premises fit for delivering the services then, provided there is a reasonable prospect of the premises being required and available for the delivery of the local authority services for the medium to long term (20 years plus), the Council may use general fund capital expenditure for such works. As part of the arrangements, it would need to be agreed that the Council would be entitled to continue with delivery of the local authority services from the premises for a minimum of 20 years, or until the Council no longer needs the premises. This is reflected in Appendix 2. Any capital spend using the general fund would be made through the normal general fund budgetary approval process.
Written submission from South Ayrshire Council

I refer to your letter of 16 December 2014 and your call for evidence on Part 4 of the draft Community Empowerment (Scotland) Bill.

In response to the queries raised, I respond as follows:

1. The Council has no arrangements in place to hold our assets in a separate land holding.

2. When disposing of assets they are valued internally or in certain cases externally by RICS registered valuer. Valuations are carried out in accordance with the RICS Valuation Standards and are based on the market value of the existing use, taking account of any higher alternative value. The valuation is financial although any community benefits will be considered within the Council’s process with regard to disposals.

3. The Council encourages community asset transfer, and a draft policy is currently being prepared. The Council’s Community Development team assist in building capacity within Community Groups.

4. The Council has no experience of disposing of land and property assets to the Community. Notwithstanding, the primary difficulties that we could envisage encountering would relate to a lack of awareness of legislative and statutory requirements for the property on the part of community groups, and also the need to provide a sustainable business plan to provide a sustainable future income stream. We could also imagine issues around needing to bring properties up to a certain standard prior to transfer, particularly if the Council is proposing to transfer the property below the market value. Please do let me know if there is anything further I can assist the Committee with in connection with the scrutiny of this Bill.
Written submission from South Lanarkshire Council

I refer to your letter of 16 December 2014 seeking evidence in connection with Part 4 of the draft Community Empowerment (Scotland) Bill and the proposed changes to the Land Reform (Scotland) Act 2003 in relation to community right to buy.

I would provide the following comments in response to the points raised:-

1. Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding account?

All assets are held by South Lanarkshire Council. There is a separation within the Council’s records in respect of those held as General Services and Housing Revenue as well as a record of those defined as Common Good.

South Lanarkshire Leisure and Culture Limited, operate and manage some of the Council’s assets under the terms of leases and operation and management agreements, but do not own any land assets.

2. When disposing of, or transferring assets how are those assets valued? To what degree is this purely a financial valuation?

Assets are valued either by the Council’s in house Royal Institution of Chartered Surveyors’ registered valuers and surveyors, or the District Valuer, depending upon the specific circumstances of the transaction. The valuation takes account not only of the existing use, but also the development potential of an asset for sale. This valuation is used as a benchmark for the assessment of offers and, in terms of community asset transfer requests, a basis for explaining the value of any discount arising from community benefit being offered to community organisations, as required by the Disposal of Land by Local Authorities (Scotland) Regulations 2010.

3. What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?

The Council has a well-established asset disposal procedure, which has been adapted to respond to applications for Community Asset Transfer. This procedure commences with an assessment of the development and market potential of an asset, along with possible other public sector uses through the marketing/negotiation sales of terms, to reporting of recommendations. The Council’s process fully includes elected members in that the general principle of any Community Asset Transfer is approved by the Council’s Executive Committee, with the details of the terms and conditions of any transfer being considered by the Council’s Housing and Technical Resources Committee.

The Council has been actively involved in Community Asset Transfer since 2011, however, has never received an application under Community Right to Buy.

4. What is your experience of disposal and what difficulties has the authority encountered?

The Council has no experience of disposal under Community Right to Buy.
Having completed a number of Community Asset Transfers through sale and lease in the past 3 years, the Council anticipate that the difficulties under Community Right to Buy will be similar, namely:

- Organisations are generally not well prepared when they make their initial approach for a property. Often the organisations require assistance in respect of their constitution, establishing their community representativeness and in developing a sustainable project plan. As the Council has limited resources to assist with this development, it tends to enlist the assistance of the Development Trust Association, the voluntary sector and Business Gateway, to ensure community organisations receive appropriate assistance and support.

- Organisations sometimes react to a facility closure, submitting an application as a form of protest over changes to service delivery rather than because there is a viable project. This results in abortive work and can lead to tension in communities.

- Development of the organisation and the project plan can take years, making it difficult for the Council to commit to retaining a specific property. The decision to retain a property has to take into account the uniqueness of the property to the community, the security, health and safety and insurance risks, as well as the likely deterioration of the property condition if it remains vacant.

Of particular concern is the concept that organisations may in the future be able to make application to purchase authority assets under both Parts 4 and 5 of the Community Empowerment (Scotland) Bill, effectively having the right to make two applications. This will require further consideration.

I trust that the above information clarifies the Council’s position with regard to this matter.
Written submission from Stirling Council

Thank you for your letter dated 18th November, please find below answers to your questions:

1. Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?

   Stirling Council does have a number of arms-length companies which hold non-operational properties.

2. When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?

   Values are determined on the basis of market value, in accordance with RICS Valuation Standards but the Council does have a procedure for disposals to communities – at less than the market value. This requires the approval of the whole Council.

3. What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?

   Stirling Council enthusiastically supports the transfer of assets to communities provided that there is a sound business case showing how both the community and the asset will substantially benefit from the transfer. The work that the Council is currently doing on settlement planning, and on community halls encourages communities to take responsibility for facilities in their localities.

4. What is your experience of disposal and what difficulties has the authority encountered?

   Communities can find it challenging satisfying the Council that they have a viable and sustainable business case for taking on assets. Smaller communities can find it difficult to find willing volunteers with relevant business experience within their community; or even to put together a grant application form and to produce a business plan.

   Even once they have completed the business plan – they can find it difficult to raise funds to run the facility, and to fund repairs and investment – the Big Lottery tends to be the only source of these funds.

   Because of this, Stirling Council has agreed temporary leases (for a couple of years) with groups in order to allow them to establish whether their project is viable.

   Community councils would be best placed to take on assets transferred, but they are not constituted to hold heritable property, therefore other bodies have to be used to hold these assets.

   Stirling Council’s experience has been that the whole process of transferring assets to Communities is very demanding of officer time, and our stretched resources have meant that we have only been able to support a limited number of transfer to date.
Written submission from West Lothian Council

West Lothian Council’s position is as follows:

1. Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?

All West Lothian Council’s property assets remain in the ownership of the Council.

2. When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?

All disposals of assets, by sale or lease, are at market value, unless covered by the council’s policy for Asset Transfer, in which case the disposal may be subject to a reduction in value in accordance with the Disposal of Land by Local Authorities (Scotland) Regulations 2010. Only in these circumstances are the terms for disposal not on a financial basis.

3. What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?

Property assets may be sold or leased once they have been declared surplus to the council’s requirements. The approved procedures for surplus properties include an options appraisal that will consider the potential interest in Asset Transfer to Community Groups, in which event an asset may be pro-actively offered for transfer. The council is also open to requests for asset transfer, if they are in accordance with council policy. Full details of the Asset Transfer policy can be found on our website at http://www.westlothian.gov.uk/article/4429/Community-Asset-Transfer.

4. What is your experience of disposal and what difficulties has the authority encountered?

I assume this question refers to asset transfer and not to mainstream sale or lease. Our experience of asset transfer is limited. However, a number of difficulties are apparent.

1. The absence of a suitable and proportionate mechanism for calculating community benefit, to enable a reduction in the market value in accordance with the Disposal of Land Regulations. Social Return on Investment is the most relevant model but is over-complicated.

2. The capacity of local voluntary organisations. Many appear to be willing to consider transfer, but do not have the skills to take forward the process.

3. Resource availability for community groups – both to develop a proposal for transfer, and to carry through any proposals for conversion or redevelopment of an asset.
Dear Richard,

BEST VALUE IN THE DISPOSAL OF LOCAL AUTHORITY ASSETS

During the Rural Affairs, Climate Change and Environment Committee’s consideration of Part 4 of the Community Empowerment (Scotland) Bill the Committee heard from stakeholders on the issue of best value in the disposal of Local Authority assets. As these issues affect matters in the portfolio of the Cabinet Secretary for Finance, Employment and Sustainable Growth and matters in the portfolio of the Cabinet Secretary for Social Justice, Communities and Pensioners’ Rights, I have also written to Alex Neil MSP and to John Swinney MSP.

The Committee received oral evidence that suggested that in the disposal of assets local authorities are always required to obtain best value (under the Local Government in Scotland Act 2003) and that normally means market value. The Committee heard concerns that some local authorities’ interpretation of best value might hinder a number of aspects of the proposed legislation.

The Committee explored the activity of other public sector bodies and heard that there has been less movement of other public sector assets into community ownership than was hoped, and less movement in comparison with the activity of local authorities, as, according to the Scottish public finance manual, other public sector bodies have to achieve the best financial return from their assets.

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1 Community Empowerment (Scotland) Bill: [http://www.scottish.parliament.uk/S4_Bills/Community%20Empowerment%20(Scotland)%20Bill/b52s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Community%20Empowerment%20(Scotland)%20Bill/b52s4-introd.pdf)
The Committee also heard that Glasgow City Council had bonded some of its land to Barclays Bank, which may mean that it would be difficult to release that land for communities. The Committee was concerned that the same situation might exist in other local authority areas and we wrote to all local authorities in Scotland to ask for confirmation of their policy and practice in relation to the holding and disposal of their land-holdings and their approach to best value. We received 25 responses.

The Committee understands that local authorities can dispose of assets at less than market value under the Disposal of Land by Local Authorities (Scotland) Regulations 2010. We also understand that local authorities can treat the public interest as having a value, and theoretically the issue should not be an obstacle. However, from our review of the local authority responses, it is clear that many of them consider the best value of the land they hold to be the financial value that can be obtained rather than the wider value to the community. The Committee is concerned that this approach might hinder some communities that may wish to access land held by local authorities and other public bodies.

In written evidence to the Committee, the Royal Town Planning Institute Scotland suggested that clarity was needed in the definition of best value and best public benefit in terms of the disposal of public land. It stated that this should not only be about financial value, but should also take into consideration social, community and environmental aspects, particularly in terms of the transfer of land to community or voluntary organisations.

In the Committee's report on Part 4 of the Community Empowerment (Scotland) Bill, we recommended that the Scottish Government give consideration to what more can be done to address the issue of best value, best public benefit and, the approach taken by local authorities and other public sector bodies. It appears to the Committee that there is a requirement to change the mind-set of many local authorities and public sector bodies on these issues to reflect the fact that their role is that of custodian, holding assets on behalf of the public.

We would welcome your urgent consideration of what further could be done by way of amendments to the Community Empowerment (Scotland) Bill at stage 2 to address the issue of best value, best public benefit and the practical impact of the approach taken by local authorities and other public sector bodies and to extend the provisions of the Disposal of Land by Local Authorities (Scotland) Regulations 2010, to ensure that there is a pre-disposition that sales of publicly owned land to communities will be at less than market value.

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2 Letter from Convener to local authority chief executives: http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2014.12.12_-_Convener_to_Local_Authorities_CE_Bill.pdf
3 Responses to letter from local authorities: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/82153.aspx
than market value. There may also be merit in including related provisions within the proposed land reform bill.

The Committee also suggested that the Scottish Government consider reviewing the Scottish public finance manual and we would welcome your view on this. In addition we would welcome a commitment from you to provide further guidance to local authorities and to other public sector bodies in relation to their assets, their consideration of best value, and the related support to communities seeking to acquire public land. In particular there is a need to provide both specific guidance on discounting the value of assets and to establish a presumption in favour of sales to communities at a nominal price. The Committee considers that there is also a requirement for clear additional guidance in relation to valuation where a disposal to a community is likely to contribute to the promotion or improvement of: economic development or regeneration; health; social well-being or environmental well-being.

In our report on Part 4 of the Community Empowerment (Scotland) Bill we also recommended that the Scottish Government give consideration to an appropriate mechanism to adjudicate in cases where there are suggestions that local authorities and other public sector bodies may be seeking to frustrate local communities and we would welcome your view on this.

Yours sincerely

Rob Gibson MSP
Convener
Dear John,

BEST VALUE IN THE DISPOSAL OF LOCAL AUTHORITY ASSETS

During the Rural Affairs, Climate Change and Environment Committee’s consideration of Part 4 of the Community Empowerment (Scotland) Bill¹ the Committee heard from stakeholders on the issue of best value in the disposal of Local Authority assets. As these issues affect matters in the portfolio of the Cabinet Secretary for Rural Affairs, Food and Environment and matters in the portfolio of the Cabinet Secretary for Social Justice, Communities and Pensioners’ Rights, I have also written to Richard Lochhead MSP and to Alex Neil MSP.

The Committee received oral evidence that suggested that in the disposal of assets local authorities are always required to obtain best value (under the Local Government in Scotland Act 2003) and that normally means market value. The Committee heard concerns that some local authorities’ interpretation of best value might hinder a number of aspects of the proposed legislation.

The Committee explored the activity of other public sector bodies and heard that there has been less movement of other public sector assets into community ownership than was hoped, and less movement in comparison with the activity of local authorities, as, according to the Scottish public finance manual, other public sector bodies have to achieve the best financial return from their assets.

¹ Community Empowerment (Scotland) Bill: http://www.scottish.parliament.uk/S4_Bills/Community%20Empowerment%20(Scotland)%20Bill/b52s4-introd.pdf
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We would welcome your urgent consideration of what further could be done by way of amendments to the Community Empowerment (Scotland) Bill at stage 2 to address the issue of best value, best public benefit and the practical impact of the approach taken by local authorities and other public sector bodies and to extend the provisions of the Disposal of Land by Local Authorities (Scotland) Regulations 2010, to ensure that there is a pre-disposition that sales of publicly owned land to communities will be at less

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2 Letter from Convener to local authority chief executives: http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2014.12.12_-_Convener_to_Local_Authorities_CE_Bill.pdf
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In our report on Part 4 of the Community Empowerment (Scotland) Bill we also recommended that the Scottish Government give consideration to an appropriate mechanism to adjudicate in cases where there are suggestions that local authorities and other public sector bodies may be seeking to frustrate local communities and we would welcome your view on this.

Yours sincerely

Rob Gibson MSP
Convener

C.c. Clerks to the Finance Committee
RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Alex Neil, MSP  c/o Clerk to the Committee
Cabinet Secretary for Social Justice,  Room T3.40
Communities and Pensioners’ Rights  The Scottish Parliament
The Scottish Parliament
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EH99 1SP
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18 February 2015

Dear Alex,

BEST VALUE IN THE DISPOSAL OF LOCAL AUTHORITY ASSETS

During the Rural Affairs, Climate Change and Environment Committee’s consideration of Part 4 of the Community Empowerment (Scotland) Bill\(^1\) the Committee heard from stakeholders on the issue of best value in the disposal of Local Authority assets. As these issues affect matters in the portfolio of the Cabinet Secretary for Rural Affairs, Food and Environment and matters in the portfolio of the Cabinet Secretary for Finance, Employment and Sustainable Growth, I have also written to Richard Lochhead MSP and to John Swinney MSP.

The Committee received oral evidence that suggested that in the disposal of assets local authorities are always required to obtain best value (under the Local Government in Scotland Act 2003) and that normally means market value. The Committee heard concerns that some local authorities’ interpretation of best value might hinder a number of aspects of the proposed legislation.

The Committee explored the activity of other public sector bodies and heard that there has been less movement of other public sector assets into community ownership than was hoped, and less movement in comparison with the activity of local authorities, as, according to the Scottish public finance manual, other public sector bodies have to achieve the best financial return from their assets.

\(^1\) Community Empowerment (Scotland) Bill: http://www.scottish.parliament.uk/S4_Bills/Community%20Empowerment%20(Scotland)%20Bill/b52s4-introd.pdf
The Committee also heard that Glasgow City Council had bonded some of its land to Barclays Bank, which may mean that it would be difficult to release that land for communities. The Committee was concerned that the same situation might exist in other local authority areas and we wrote to all local authorities in Scotland\(^2\) to ask for confirmation of their policy and practice in relation to the holding and disposal of their land-holdings and their approach to best value. We received 25 responses\(^3\).

The Committee understands that local authorities can dispose of assets at less than market value under the Disposal of Land by Local Authorities (Scotland) Regulations 2010\(^4\). We also understand that local authorities can treat the public interest as having a value, and theoretically the issue should not be an obstacle. However, from our review of the local authority responses, it is clear that many of them consider the best value of the land they hold to be the financial value that can be obtained rather than the wider value to the community. The Committee is concerned that this approach might hinder some communities that may wish to access land held by local authorities and other public bodies.

In written evidence to the Committee, the Royal Town Planning Institute Scotland suggested that clarity was needed in the definition of best value and best public benefit in terms of the disposal of public land. It stated that this should not only be about financial value, but should also take into consideration social, community and environmental aspects, particularly in terms of the transfer of land to community or voluntary organisations.

In the Committee’s report\(^5\) on Part 4 of the Community Empowerment (Scotland) Bill, we recommended that the Scottish Government give consideration to what more can be done to address the issue of best value, best public benefit and, the approach taken by local authorities and other public sector bodies. It appears to the Committee that there is a requirement to change the mind-set of many local authorities and public sector bodies on these issues to reflect the fact that their role is that of custodian, holding assets on behalf of the public.

We would welcome your urgent consideration of what further could be done by way of amendments to the Community Empowerment (Scotland) Bill at stage 2 to address the issue of best value, best public benefit and the practical impact of the approach taken by local authorities and other public sector bodies and to extend the provisions of the Disposal of Land by Local Authorities (Scotland) Regulations 2010, to ensure that there is a pre-disposition that sales of publicly owned land to communities will be at less

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\(^2\) Letter from Convener to local authority chief executives: [http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General\%20Documents/2014.12.12_-_Convener_to_Local_Authorities_CE_Bill.pdf](http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General\%20Documents/2014.12.12_-_Convener_to_Local_Authorities_CE_Bill.pdf)

\(^3\) Responses to letter from local authorities: [http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/82153.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/82153.aspx)


than market value. There may also be merit in including related provisions within the proposed land reform bill.

The Committee also suggested that the Scottish Government consider reviewing the Scottish public finance manual and we would welcome your view on this. In addition we would welcome a commitment from you to provide further guidance to local authorities and to other public sector bodies in relation to their assets, their consideration of best value, and the related support to communities seeking to acquire public land. In particular there is a need to provide both specific guidance on discounting the value of assets and to establish a presumption in favour of sales to communities at a nominal price. The Committee considers that there is also a requirement for clear additional guidance in relation to valuation where a disposal to a community is likely to contribute to the promotion or improvement of: economic development or regeneration; health; social well-being or environmental well-being.

In our report on Part 4 of the Community Empowerment (Scotland) Bill we also recommended that the Scottish Government give consideration to an appropriate mechanism to adjudicate in cases where there are suggestions that local authorities and other public sector bodies may be seeking to frustrate local communities and we would welcome your view on this.

Yours sincerely

Rob Gibson MSP
Convener

c.c. Clerks to the Local Government and Regeneration Committee.
BEST VALUE IN THE DISPOSAL OF LOCAL AUTHORITY ASSETS

Thank you for your letter dated 18 February, which was also sent to the Cabinet Secretary for Social Justice, Communities and Pensioners’ Rights and the Cabinet Secretary for Rural Affairs, Food and the Environment. This response is on behalf of us all.

I agree it is disappointing that local authorities and other public bodies are perhaps not making as much use as they could of the powers they have to dispose of assets at less than market value, where there are other public benefits to be gained. However, I believe the Community Empowerment Bill will make a significant difference in this area.

It is important to recognise that the experiences you have heard about in oral evidence, and the responses received from local authorities, are set in the current context in which there is no requirement for local authorities or public bodies to have asset transfer arrangements in place. Hence some authorities have no policy for or experience of transferring assets, and where policies are in place there is substantial variation between them.

The Bill will mark a complete change in that position, by introducing a statutory scheme for asset transfer. Although to date some community bodies have sought to acquire public sector land through the community right to buy provisions in the Land Reform (Scotland) Act 2003, in future we expect that all such requests will be through the asset transfer provisions, as this will be a simpler process.
Local authorities and public bodies will have to deal with requests they receive in line with the statutory procedures and timescales, and will be required to agree to the request unless they have reasonable grounds for refusal, which they must set out in the decision notice. This will significantly strengthen the position of community bodies making requests.

In addition, there is provision for community bodies to seek an appeal or review if their request is refused, or if it is agreed but the terms and conditions offered, including the price, are significantly different from those proposed by the community body. In the case of requests to public bodies, this appeal will be to Ministers. In the case of local authorities, it will be an internal review, but will ensure that the final decision is made by elected members, not just officers.

The criteria which a relevant authority is to consider in making its decision on an asset transfer request include whether agreeing to the request is likely to promote or improve economic development or regeneration, public health, social well-being or environmental well-being. These are the same criteria that a local authority is required to take into account in considering whether a disposal at less than best consideration is permitted, under the Disposal of Land by Local Authorities (Scotland) Regulations 2010. There is therefore a clear read-across between agreement to an asset transfer request and benefits that could justify a discounted price.

In relation to other public bodies, I amended the Scottish Public Finance Manual in October 2014 to highlight the need to take account of wider public benefits in the disposal of assets. This states:

"Where there are wider public benefits, consistent with the principles of Best Value, to be gained from a transaction, disposing bodies should consider disposal of assets at less than Market Value. This includes supporting the acquisition of assets by community bodies, where appropriate."

The Community Ownership Support Service (COSS) is funded by the Scottish Government to support both community bodies and local authorities (and other bodies) in the transfer of assets to communities. In August 2013, COSS together with the Association of Chief Estates Surveyors, representing local authority property managers, issued guidance, "Asset Transfer from Policy to Practice", which includes advice on evaluating the benefits of community proposals and appropriate discount.

I am happy to make a firm commitment that the Scottish Government will update and provide further guidance to local authorities and public bodies in connection with the introduction of the asset transfer provisions in the Bill, which will include guidance on valuation of assets and the assessment of wider benefits in the consideration of best value and discounting. This has always been our intention, and will be taken forward in collaboration with community bodies and support organisations, as well as local authorities and public bodies.

1 http://www.gov.scot/Topics/Government/Finance/spfm/PropertyManagement
I do not believe it is appropriate to introduce a statutory presumption in favour of sales to communities at a nominal price. It is essential that public sector bodies are transparent in their financial dealings and can be held responsible for their stewardship of taxpayers' money. Market Value is embedded in International Accounting Standards and International Valuation Standards for this purpose. While in many cases transferring an asset to a community body has benefits that justify a discount, each case should be assessed on its own merits. Local authorities and public bodies must take account of the interests of all the people they serve, and consider the impact that income foregone, in the shape of a discount, may have on other services and planned investments. A statutory presumption would presumably have to indicate the degree to which the value of an asset should be discounted, and I doubt this could be sufficiently sensitive to account for all the factors that should be taken into consideration. I believe that statutory guidance is the best way to provide for that necessary level of discrimination.

There may also be a risk that selling a public asset at a reduced price might constitute State aid and will have to comply with State aid rules. This is an issue which any public authority must consider in its transactions. State aid rules take precedence over national laws, and would therefore over-ride any statutory presumption of discount. In the event that the European Commission were to investigate and find the aid illegal, the full aid amount and compound interest would be required to be repaid by the recipient to the funding body.

You also recommend introducing a mechanism to adjudicate in cases where there are suggestions that local authorities and other public sector bodies may be seeking to frustrate local communities. As I have said, I believe these situations will be less likely to occur once a statutory asset transfer scheme is in place. However, as part of the Short Life Working Group looking at the target of 1m acres in community ownership by 2020, we will be considering the remit of a Community Land Agency, and such a mediation or adjudication role could potentially be given to that body.

I am grateful to the Committee for its consideration of this issue, and I look forward to the progress of the Community Empowerment Bill at Stage 2.

JOHN SWINNEY
Delegated Powers and Law Reform Committee

63rd Report, 2014 (Session 4)

Community Empowerment (Scotland) Bill at Stage 1

Published by the Scottish Parliament on 5 November 2014
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
   (a) any—
   (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   (ii) [deleted]
   (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
   (c) general questions relating to powers to make subordinate legislation;
   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
   (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
   (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
   (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
   (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Richard Baker
Nigel Don (Convener)
Mike MacKenzie
Margaret McCulloch
Stuart McMillan (Deputy Convener)
John Scott
Stewart Stevenson
Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth Anderson

Support Manager
Daren Pratt
The Committee reports to the Parliament as follows—

1. At its meetings on 19 August, 30 September, 28 October and 4 November the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Community Empowerment (Scotland) Bill ("the Bill") at Stage 1\(^1\). The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

OVERVIEW OF BILL

2. This Government Bill was introduced by John Swinney MSP on 11 June 2014. The lead Committee is the Local Government and Regeneration Committee. The Bill makes wide-ranging provision in relation to various types of community body and their rights. It is divided into 9 parts.

3. Part 1 places a duty on the Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, to be reviewed every 5 years. Public authorities are to have regard to the national outcomes in carrying out their functions, as are all persons carrying out functions of a public nature. The Scottish Ministers are obliged to prepare and publish reports about the extent to which the national outcomes have been achieved.

4. Part 2 concerns community planning. Section 4(1) provides that local authorities, the bodies listed in schedule 1 of the Bill and community bodies must participate with each other in community planning. ‘Community planning’ is defined as planning that is carried out with a view to improving the achievement of outcomes in relation to the area of a local authority resulting from, or contributed to by, the provision of services delivered by or on behalf of the local authority or the persons listed in schedule 1 to the Bill. Schedule 1 lists bodies such as National Park authorities, Scottish Enterprise and the Scottish Fire and Rescue Service.

\(^1\) Community Empowerment (Scotland) Bill [as introduced] available here: [http://www.scottish.parliament.uk/S4_Bills/Community%20Empowerment%20(Scotland)%20Bill/b52s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Community%20Empowerment%20(Scotland)%20Bill/b52s4-introd.pdf)
5. Part 2 of the Bill also makes provision in relation to local outcomes improvement plans. These are plans prepared and published by community planning partnerships setting out local outcomes to which the partnership must give priority with a view to improving the achievement of the outcome, as well as a description of the proposed improvement action and the time period within which the improvement is to be achieved. The local outcomes improvement plan is to be kept under review by the community planning partnership.

6. Part 3 of the Bill relates to participation requests. A participation request is a request made by a community controlled body to a public authority to permit the body to participate in an outcome improvement process. In making a request, the community body must set out details of any knowledge, expertise and experience the body has in relation to the specified outcome. The Bill also sets out the process to be followed by an authority where it receives a participation request.

7. Part 4 of the Bill does two things. Firstly, sections 27-47 make amendments to Part 2 of the Land Reform (Scotland) Act 2003 ("the 2003 Act"). The principal amendment is an extension of the community right to buy (currently available in respect of rural land only) to all land in Scotland. Sections 27-47 of the Bill also make various other changes to Part 2 of the 2003 Act so as to improve the working of those provisions.

8. Secondly, Part 4 creates a new community right to buy in respect of abandoned or neglected land. Section 48 of the Bill introduces a new Part 3A into the 2003 Act. The provisions set up a process whereby community bodies may apply to the Scottish Ministers to exercise their right to buy land which is abandoned or neglected. The new right to buy differs from the existing rights in Part 2 of the 2003 Act in one important respect, which is that the right to buy abandoned or neglected land may be exercised in circumstances where the owner of the land does not wish to sell.

9. Part 5 of the Bill relates to asset transfer requests. An asset transfer request is a request made by a community controlled body to a 'relevant authority' which seeks permission to buy, lease or otherwise acquire rights in respect of property owned by that relevant authority. A 'relevant authority' is a body listed in schedule 3 to the Bill, and includes local authorities, the Scottish Ministers, SEPA and the Scottish Court Service. Part 5 sets out the requirements to be met by a community body before it can make a request, the process to be followed in making a request and the rights of appeal that are available in the event that a request is refused.

10. Part 6 of the Bill relates to common good property. "Common good" refers to assets originally acquired from former burghs to which local authorities have taken title. The Bill requires each local authority to establish and maintain a common good register which must be available to members of the public for inspection. The Bill also imposes requirements on local authorities to publish details of any decision it proposes to take to dispose of common good assets or to change their use. The authority is required to have regard to any representations it receives in relation to the proposed disposal of common good assets.
11. Part 7 of the Bill concerns allotments. It replaces the provisions of the Allotments (Scotland) Acts of 1892, 1922 and 1950 which are repealed in their entirety. The Bill also repeals some provisions of the Land Settlement (Scotland) Act 1919. The Bill creates a new definition of 'allotment' and 'allotment site', and it places a duty on local authorities to hold and maintain waiting lists for allotments and to take reasonable steps to provide more allotments if the waiting list exceeds key trigger points. The Bill creates compensation rights in favour of tenants of allotments for disturbance, deterioration of an allotment site or loss of crops.

12. Part 8 concerns non-domestic rates. It amends the Local Government (Financial Provisions etc.) (Scotland) Act 1962 and the Local Government Finance Act 1992. The effect of the amendments is that local authorities are given power to grant localised relief from business rates. Any relief granted is to form part of a relief scheme which is funded by the authority. Before creating such a scheme, the authority is required to have regard to the interests of persons liable to pay council tax which is set by that authority.


DELEGATED POWERS

14. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill ("the DPM")\(^2\). Due to the volume of powers in the Bill the Committee adopted a staged approach to its scrutiny. At its first consideration of the Bill, the Committee delegated authority to its legal advisers to ask written questions of the Scottish Government. The questions issued and the responses received from the Scottish Government are included in this report at Annex B.

15. At its meeting on 30 September, the Committee took oral evidence from Scottish Government officials on a number of powers in the Bill following receipt of the Scottish Government’s answers to the written questions.

16. The Committee makes no recommendation in respect of the powers listed at Annex A to this report. These powers are divided into powers with which the Committee was initially content; powers with which the Committee was content following written evidence from the Scottish Government; and powers with which the Committee was content following both written and oral evidence from the Scottish Government.

17. The Committee’s comments and recommendations on the remaining delegated powers in the Bill are detailed below. Before considering the individual powers, the Committee makes the following general observations:

\(^2\) The Delegated Powers Memorandum is available here: [http://www.scottish.parliament.uk/S4_Bills/CE_DPM.pdf](http://www.scottish.parliament.uk/S4_Bills/CE_DPM.pdf)
i. The reasons advanced in the DPM for taking many powers in the Bill were not sufficiently detailed so as to enable the Committee to reach a view on whether those powers were acceptable in principle. With regard to several powers, the necessary information was only obtained following both written and oral evidence.

ii. The quality of some of the written answers provided by the Scottish Government in response to the Committee’s questions was inadequate, requiring the Committee to explore a number of issues further with Scottish Government officials in oral evidence. In relation to some key powers in the Bill, for example the power in the new section 97C(3)(a) of the 2003 Act, the answers given by the officials in oral evidence failed to provide the information sought by the Committee.

iii. In relation to the power in the new section 97C(3)(a) of the 2003 Act, the Committee remains in a position, having considered both written and oral evidence, whereby it is unable to form a view as to how this power is intended to be used. The Government has not provided an explanation for taking this power beyond a need to retain flexibility within the Bill. The Committee considers that explanation to be inadequate in light of the significance of this power and what it appears to permit. The Committee further finds it concerning that the thinking behind a power of such significance to the scope and application of the Bill appears still to be in the early stages of development. The Scottish Government may wish to reflect on its reasons for taking this power as the Bill progresses through the Parliament and the lead Committee may wish to explore the power further when it takes oral evidence from the Minister for Local Government and Planning.

iv. More generally, the Committee finds it unsatisfactory that the Parliament is being asked to confer certain wide-ranging powers on the Scottish Ministers in circumstances where the Scottish Government has not informed the Parliament in sufficient detail of its plans for using those powers or of the reasons for taking a particular approach to the framing of certain powers. The Committee considers that there is a clear need for delegated powers to be fully explained, their terms appropriately framed and their scope clearly delineated.

v. The points made above are concerning to the Committee given the significance of many of the powers in this Bill. The quality of delegated powers memoranda in particular is an issue that the Committee is monitoring on an ongoing basis, and will continue to raise in its annual and quarterly reports and, as appropriate, with the Minister for Parliamentary Business.
## Recommendations

### Sections 1 and 2 – National outcomes

<table>
<thead>
<tr>
<th>Powers conferred on:</th>
<th>the Scottish Ministers</th>
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<tbody>
<tr>
<td>Powers exercisable by:</td>
<td>published determination</td>
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<tr>
<td>Parliamentary procedure:</td>
<td>none</td>
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</tbody>
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### Scrutiny procedure for setting and review of national outcomes

18. Section 1(1) of the Bill places a duty on the Scottish Ministers to determine national outcomes in relation to Scotland that result from, or are contributed to by, the carrying out of functions of Scottish public authorities, cross-border public authorities, and other persons carrying out functions of a public nature. Such bodies are required to have regard to the national outcomes in carrying out their functions.

19. Section 1(2) of the Bill places a requirement on the Scottish Ministers to consult on the national outcomes and section 1(3) requires Ministers to publish the outcomes. There is no provision for Parliamentary scrutiny of the outcomes prior to their publication, or for the outcomes to be laid before Parliament once published. The Committee sought written explanation as to why it is considered appropriate for the power to decide on national outcomes to be exercisable by informal published determination as opposed to by, for example, Scottish statutory instrument.

20. The Scottish Government's written response to the Committee indicated that Parliamentary scrutiny will focus on progress toward the national outcomes, not the setting of the outcomes. The response also indicated that it may be that the Parliament would wish to debate the outcomes set out by Ministers, and that the arrangements put forward by the Bill do not prevent that.

21. The Committee explored these issues further with the Scottish Government officials at its meeting on September 30th. Anne-Marie Conlong of the Scottish Government’s Performance Unit explained that—

> “The Scottish Government believes that what we have set out in the provisions reflects the current separation of powers between the Scottish Government and the Parliament. It would be for the Scottish Ministers to co-ordinate Government business and to set out the strategic direction for Government – within its overall accountability to the Parliament, of course - and the Parliament would exercise a scrutiny function, holding ministers to account on progress toward the national outcomes and objectives.”

22. Furthermore, officials indicated that they were—

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3 Delegated Powers and Law Reform Committee, Official Report, 30 September 2014, Col.3
“...more than happy to take back for further consideration with Ministers the Committee’s views on the respective roles of the Parliament and the Government in setting the outcomes.”

23. There is recent comparable provision for national outcomes to be set out in subordinate legislation. Section 3(2) of the Public Bodies (Joint Working) (Scotland) Act 2014 requires that a local authority and a health board must, in preparing an integration plan, have regard to the national health and wellbeing outcomes in section 5 (and the integration planning principles in section 4). Section 5(1) enables the Scottish Ministers to prescribe the national health and wellbeing outcomes by regulations which are subject to the affirmative procedure.

24. In the DPM for the 2014 Bill, the Scottish Government explained why it was considered appropriate that the health and wellbeing outcomes should be prescribed by regulations subject to the affirmative procedure: “By allowing Ministers to set national outcomes, it provides for a consistent focus nationally. It is appropriate that outcomes are set by regulations as this requires a process of consultation to be followed, contemporaneously with integration plans being prepared, to inform the outcomes. It also provides flexibility for the Scottish Ministers to amend outcomes in the future, in response to innovation locally and changing circumstances, and in order to support continuous improvement.... This is subject to affirmative procedure as the national outcomes are fundamental to health and social care integration in that they express its practical purpose. Whilst this level of scrutiny involves more parliamentary time, it is considered that the national outcomes are sufficiently important to justify this, and it is not anticipated that they will be regularly amended.”

25. The Committee considers that there is a clear comparison to be drawn between the health and wellbeing outcomes for Scotland as provided for by the Public Bodies (Joint Working) (Scotland) Act 2014, and the national outcomes under this Bill. The Committee also observes that the national outcomes set under the Bill will be applicable to a wider range of bodies than the health and wellbeing outcomes therefore the requirement for Parliament to have a role in the process of setting or reviewing the outcomes is, in the Committee’s view, greater.

26. The Committee acknowledges, however, that there are alternative ways to afford the Parliament an opportunity to scrutinise the national outcomes. By way of example, the Committee notes the provision in section 16 of the Judiciary and Courts (Scotland) Act 2008. Section 16 relates to guidance issued by the Scottish Ministers or the Lord President as to the manner of exercise by the Judicial Appointments Board for Scotland of its functions. Section 16 provides that before issuing guidance, the Scottish Ministers or, as the case may be, the Lord President, must lay a draft of the proposed guidance before the Parliament. The guidance must not be issued until 21 days after it has been laid before Parliament, and the Parliament may by resolution make recommendations in relation to the draft guidance to which the Government or the Lord President must have regard. The Parliament does not, however, have power to prevent the guidance from being issued.

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4 Delegated Powers and Law Reform Committee, Official Report, 30 September 2014, Col.3
27. While the Committee acknowledges that the Parliament would not be prevented from debating such outcomes as are set by the Scottish Government, the Committee considers that a more active scrutiny role for the Parliament in relation to the outcomes would be appropriate and should be set out on the face of the Bill. One clear way to enable Parliament to scrutinise the outcomes would be for the outcomes to be prescribed in regulations subject to scrutiny by the affirmative procedure, although as noted above, the Committee acknowledges that there may be alternative ways in which the Parliament could be afforded a role in considering the outcomes and that the formulation of such a role is ultimately a matter for the Scottish Government.

Consultation on the national outcomes
28. Sections 1(2) and 2(5) of the Bill provide that before determining or revising the outcomes, the Scottish Ministers must consult such persons as they consider appropriate. The Committee explored in the oral evidence session why, in principle, the provision does not specify any persons or bodies which (at a minimum) the Scottish Ministers would need to consult.

29. It was explained in the oral evidence session that the intention is to leave the potential scope for consultation as broad as possible, which has been favoured by stakeholders. In some cases consultation would be very wide, but in other cases focussed. The intention is not to limit or narrow the scope of the persons who may be consulted. It was indicated that if the Committee was of the view that the Bill should include a minimum list of bodies that suggestion would be considered further, however the Scottish Government would not want to limit the scope of potential consultation in any future review.

30. Sections 1(2) and 2(5) provide that the consultation on the national outcomes will be with such persons as (subjectively, at the particular time) the Scottish Ministers consider appropriate. The Committee accepts that this approach keeps the scope for consultation as broad as possible, but observes that, equally, it does not offer any guarantee of consultation at a minimum level, where the outcomes are to be set or revised.

31. The Committee also notes that, by comparison, section 5 of the Public Bodies (Joint Working) (Scotland) Act 2014 specifies a minimum level of required consultation before the national health and wellbeing outcomes are prescribed by regulations. Ministers must consult in advance local authorities, Health Boards, each integration joint board at the time established, and in respect of various groups set out in section 5(4) involved in health and social care provision, such persons appearing to be representative of the group as the Ministers think fit.

32. The Committee considers that a list of persons or bodies that, at a minimum, the Scottish Ministers must consult when national outcomes are set or reviewed should be adopted in the Bill. Such an approach could be tailored to ensure a minimum base for consultation while leaving it open to Ministers to consult such other bodies as they think fit in the particular circumstances, having regard to the nature of the outcomes being set or revised.
33. The Committee has concerns that the process for setting and reviewing national outcomes under Part 1 of the Bill leaves no role for the Parliament to scrutinise the outcomes that are proposed to be set or, as the case may be, revised, before they are published.

34. The Committee considers that it would be appropriate for the setting and review of the national outcomes to be subject to the scrutiny of Parliament, possibly through scrutiny of regulations subject to the affirmative procedure. A more active scrutiny role for the Parliament appears to be justified having regard to the significance of the national outcomes, the discretion afforded to the Scottish Ministers in deciding how the outcomes are presented and measured, and the fact that all public bodies and other persons carrying out functions of a public nature as described in section 1(1) would require to have regard to the outcomes.

35. Sections 1(2) and 2(5) provide that before exercising the power to determine or revise the national outcomes, the Scottish Ministers must consult such persons as they consider appropriate. The Committee recognises that the determination of which bodies and persons ought to be consulted is a policy matter. The Committee draws to the attention of the Local Government and Regeneration Committee however that sections 1(2) and 2(5) keep the scope for consultation as broad as possible, but equally they do not guarantee any minimum level of consultation that might be suitable, depending on whether it is proposed to set or change the outcomes generally or to have a more focussed review.

Sections 4(6), 8(3), 16(2) and 51(3) – power to add or remove bodies

Powers conferred on: the Scottish Ministers
Powers exercisable by: regulations (sections 4(6) and 8(3)); order (sections 16(2) and (3) and 51(2) and (3))
Parliamentary procedure: negative

36. Section 4(6) allows Ministers to modify schedule 1 of the Bill to expand the list of community planning partners to which Part 2 of the Bill applies. The power also enables Ministers to remove bodies from the list, thereby reducing the scope of Part 2 of the Bill. Section 8(3) provides a similar power in respect of the list of community planning partners which have governance requirements in relation to community planning as set out in section 8(2).

37. Sections 16(2) and (3) provide powers to expand or reduce the list of public service authorities to which a participation request may be made in terms of Part 3 of the Bill (the list is contained in schedule 2). Sections 51(2) and (3) create similar powers in respect of the list of relevant authorities to whom an asset transfer request may be made under Part 5 (the list of relevant authorities is set out in schedule 3).

38. These powers are subject to the negative procedure. The Committee sought explanation from the Scottish Government as to why that was considered appropriate as opposed to the affirmative procedure, which would afford the
Parliament a greater measure of scrutiny over the exercise of these powers which not only permit the modification of primary legislation, but which could also have a considerable impact on the scope and application of Parts 2, 3 and 5 of the Bill.

39. In response, the Scottish Government explained that the negative procedure was considered appropriate for the exercise of these powers, as adding or removing bodies from a list in one of the schedules to the Bill is unlikely to be controversial. The response also drew a parallel with section 4(1) of the Freedom of Information (Scotland) Act 2002 (“the 2002 Act”) where a power to amend a list of bodies is subject to the negative procedure. In oral evidence, the officials explained that these powers provide flexibility to make changes to the relevant lists should that be considered necessary.

40. The Committee considers that the exercise of these powers is capable of having a considerable impact on the scope and applicability of some of the key provisions in the Bill. For example, the power in section 4(6) could in theory be used to considerably expand the application of Part 2 of the Bill by adding large numbers of bodies to the list of community planning partners contained in schedule 1. Conversely, it could also be used to reduce the application of Part 2 of the Bill by removing bodies from the schedule 1 list.

41. The Scottish Government draws a parallel with section 4(1) of the Freedom of Information (Scotland) Act 2002 as a similar provision to add or remove bodies to or from a list which is also subject to the negative procedure. The Committee observes, however, that more recent powers to make amendments to lists of bodies have adopted a different procedural approach. For instance, section 25 of the Public Services Reform (Scotland) Act 2010 provides that an order which adds a body to the list in schedule 5 is subject to the affirmative procedure, but to the negative procedure where a body is removed from the list. A similar example pertains in section 7 of the Regulatory Reform (Scotland) Act 2014 (power to modify the list of regulators).

42. These examples, which post-date the 2002 Act, suggest that where bodies are added to lists, the powers should be subject to the affirmative procedure. Conversely, where the application of the Bill is shrunk and bodies are removed from lists, the negative procedure may be appropriate. Standing the absence of reasons why the present Bill should not follow these more recent examples, the Committee recommends that the Scottish Government amend the Bill at Stage 2 so as to require these powers to be subject to the affirmative procedure where they add bodies to the lists, but to the negative procedure where they are exercised so as to remove bodies from the lists.

43. The Committee calls on the Scottish Government to amend the Bill at Stage 2 so as to make the powers in sections 4(6) and 8(3) subject to the affirmative procedure when exercised so as to add bodies to the lists in schedule 1 or section 8(2) respectively. The Committee also recommends that the powers in sections 16(3) and 51(3) be made subject to the affirmative procedure.

Section 10 – Power to issue guidance
Power conferred on: the Scottish Ministers  
Power exercisable by: guidance (published)  
Parliamentary procedure: none  

44. Section 10(1) provides that each community planning partnership must comply with any guidance issued by the Scottish Ministers about the carrying out of functions conferred on the partnership by Part 2 of the Bill. Section 10(2) provides that each community planning partner must comply with any guidance issued by the Ministers about the carrying out of functions conferred on the partner by Part 2. Before issuing either set of guidance, the Ministers must consult such persons as they think fit. Section 95 provides that the guidance will be published on issue, in such manner as the Scottish Ministers think fit.

45. The Committee explored two aspects of the power to issue guidance in the oral evidence session: a) why the guidance is proposed to be binding on community planning partnerships and partners, rather than there being a requirement that they will have regard to it; and b) why there is no provision for any Parliamentary procedure to apply to the guidance or for it to be laid before Parliament.

46. As to a), the proposed automatically binding nature of the guidance is a change to the provision in section 18 of the Local Government in Scotland Act 2003. That section provides that every person initiating, maintaining, facilitating or participating in community planning shall, in doing so, have regard to any guidance provided by the Scottish Ministers about community planning. The consultation requirement in section 10(3) is similar to that already in section 18(2) of the 2003 Act.

47. The Committee explored in oral evidence the considerations underlying the proposal that the guidance should be binding. A key aspect as outlined by the Scottish Government officials was that the policy intention is that there should be local discretion and local innovation in how community planning is approached and dealt with, but there may be some matters that the Scottish Government feels are fundamental enough to apply on a national level, where the guidance could specify binding requirements on community planning partnerships and partners.

48. In reply to the question how it is foreseen that this power of binding guidance would be utilised, the officials responded—

“It is hard to know at the moment…the guidance will be subject to quite a lot of consultation before we put it out…It is hard to say what particular provisions will be used for, but that will emerge from the process.”

49. The Committee considers that a power to issue guidance which is automatically binding according to its terms is highly unusual, and might be expected to require particular explanation as to why the power is needed. A binding requirement in such guidance would in law be binding in the same way as if the provision was contained in a statutory instrument or in an Act. The Bill

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5 Delegated Powers and Law Reform Committee, Official Report, 30 September 2014, Col.9
appears to put no enforcement mechanism in place for compliance with the guidance. The guidance must cover matters “about the carrying out of functions conferred on community planning partners and partnerships under part 2 of the Bill.” But this is a broad requirement, and there is no enforcement or scrutiny mechanism proposed in the Bill to review whether matters required by the guidance are properly covered as concerning the various functions conferred in Part 2.

50. It was explained to the Committee in evidence that the policy intention is that some matters covered by the guidance should be matters which would be binding on a national level, while others would permit local discretion. However, the scope of the power in section 10 makes no such distinction, for instance by specifying a range of matters or requirements which possibly could be included as binding.

51. The Committee accordingly draws to the attention of the Local Government and Regeneration Committee that it has concerns, in principle, as to the proposal that the guidance should be binding on community planning partnerships and partners. This concern has a number of factors, and a power of this nature is unusual.

52. The Scottish Government officials were not clear in their oral evidence to the Committee as to the reasons why this power was being taken and how it could be exercised. It was indicated that there is a policy intention that some matters would be fundamental enough to be binding on a national level, while others would not and could permit local discretion and innovation. This distinction, however, is not provided for in section 10.

53. The Bill also makes no provision for an enforcement mechanism, to enforce compliance with the guidance. The guidance must cover matters “about the carrying out of functions conferred on community planning partners and partnerships under Part 2 of the Bill”. This is a broad requirement and the Bill makes no provision for a scrutiny or review mechanism, to review whether any automatically binding matters which may be specified in the guidance are properly included, because they concern the carrying out of functions conferred in Part 2 of the Bill.

54. These concerns would not apply if, in a similar way to the existing provision for guidance in section 18 of the Local Government in Scotland Act 2003, there was provision that community planning partners and partnerships would “have regard to” the guidance.

Section 48 inserting section 97C(3)(a) into the 2003 Act – Eligible land

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
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</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>regulations</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>affirmative</td>
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</table>
55. The new Part 3A of the 2003 Act as inserted by Part 4 of the Bill will apply only in respect of “eligible land”. Eligible land is defined in the new section 97C(1) of the 2003 Act as land which the Scottish Ministers consider is wholly or mainly abandoned or neglected. The remainder of the new section 97C provides further detail as to the meaning of eligible land.

56. Section 97C(3)(a) provides that eligible land does not include land on which there is a building or structure which is an individual’s home, unless the building or structure falls within such class or classes as may be prescribed. The word ‘prescribed’ adopts the definition set out in section 98(1) of the 2003 Act, meaning “prescribed in regulations made by the Scottish Ministers”. The effect of section 97C(3)(a), therefore, is that Ministers may make regulations prescribing buildings or structures which are eligible for acquisition by a Part 3A community body notwithstanding the fact that such buildings or structures may constitute an individual’s home.

57. The DPM states that the policy intention is that eligible land should not include an individual’s home. It also states that this power will enable there to be flexibility as to exactly what buildings or structures constitute an individual’s home. The power is subject to the affirmative procedure and the DPM states that this is considered appropriate, given that what constitutes “eligible land” is fundamental to the scope and application of the new Part 3A.

58. While the Committee agrees that this power is fundamental to the scope and application of the new Part 3A of the 2003 Act, it does not consider that the DPM provides a sufficiently detailed explanation as to how it is intended to be used. The Committee accordingly sought written clarification from the Scottish Government as to what this power enables the Scottish Ministers to do and how it is intended that the power will be used.

59. In its written answer, the Scottish Government confirmed that section 97C(3)(a) enables Ministers to add prescribed classes of building back into the pool of eligible land to which the new Part 3A applies. The Government explained that it was unable to provide examples of the kinds of building or structure which may be prescribed using this power, but that the power “allows for flexibility”. The Government also stated in its written answer that it would be happy to consider changes to the provision should the Committee be of the view that that would be of benefit to the Bill.

60. At the oral evidence session on 30 September, Members sought further information from the Scottish Government officials as to why this power was being taken, standing the lack of detailed explanation in the Government’s written response and the DPM. Members also asked what factors – other than flexibility – were taken into account in framing this power.

61. In oral evidence Dave Thomson from the Scottish Government’s Land Reform and Tenancy Unit repeated that the power was required to allow for flexibility—

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The flexibility on those powers is the key part at the moment. The policy intent is not to take people’s homes away in any circumstances, but still to allow community bodies to take control of assets. Essentially, the powers that we are looking to take on through that provision are simply to allow that flexibility to set out in detail the types of buildings or assets that can be included or excluded. At the moment, we do not have specific examples, hence the current need for flexibility in those powers.”

Rachel Rayner of the Scottish Government Legal Directorate also commented on this power:

“[A]ny regulations made by Ministers would have to comply with the European Convention on Human Rights. As you will be aware, Article 8 of the ECHR provides a right to respect for private and family life, which would include respect for a person’s home, and that would have to be taken into account were the power to be used.”

The Committee finds it concerning that the taking of a power as significant as that proposed in section 97C(3)(a) of the 2003 Act has not been justified by the Scottish Government, either in written or oral evidence, beyond the apparent need for flexibility. While the Committee accepts that some flexibility in the available powers could be appropriate to ensure that the scheme envisaged by the new Part 3A of the 2003 Act is capable of operating effectively in practice, it considers that flexibility is not in and of itself sufficient explanation for the taking of such an important power. The Committee also observes that any regulations made by the Scottish Ministers in exercise of this power - or indeed any power - require to be ECHR-compatible.

In oral evidence, the Scottish Government officials explained that the policy intent underpinning these provisions is not to take individuals’ homes away in any circumstances. The power appears, however, to directly contemplate making buildings and structures available for compulsory acquisition by community bodies despite the fact that those buildings and structures are an individual’s home. If it is not the Government’s intention to make homes available for acquisition by Part 3A community bodies as the officials explained in oral evidence, the Committee finds it difficult to decide what this power is intended to do.

The Committee further finds it unsatisfactory that the Parliament is being asked to confer this power upon the Scottish Ministers without having received satisfactory answers to questions asked about its intended use. When asked to give examples to demonstrate how the power might be used in practice, the Scottish Government did not do so either in written or in oral evidence. The Committee considers it unsatisfactory that the Parliament is being asked to approve powers where the thinking behind them appears still to be in the early stages of development and where officials are unable to offer a detailed explanation of the circumstances in which it is planned that they will be used.

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6 Delegated Powers and Law Reform Committee, Official Report, 30 September 2014, Col.10
7 Delegated Powers and Law Reform Committee, Official Report, 30 September 2014, Col.12
66. The Committee draws the power in the new section 97C(3)(a) of the 2003 Act to the attention of the Local Government and Regeneration Committee on the basis that it has concerns about the scope of the power and its intended use.

67. The power permits the Scottish Ministers to make regulations prescribing buildings or structures which are eligible for acquisition by a Part 3A community body notwithstanding the fact that such buildings or structures may be described as an individual’s home. The Committee’s questions of the Scottish Government, both written and oral, did not elicit a clear explanation from the Scottish Government as to its reasons for taking this power, or how the power is intended to be exercised. The Scottish Government also did not provide the Committee with any examples of the kinds of building or structure that may be prescribed in regulations made in exercise of this power.

68. The Committee finds it unsatisfactory that the Parliament is being asked to confer a power of this significance upon the Scottish Government in the absence of a detailed explanation as to why it is necessary or what it is for and in circumstances where the thinking underpinning the power appears to be in the early stages of development. Together with the lack of examples of the kinds of building or structure which may be prescribed using this power, the Committee finds it difficult to reach a view as to whether the power is acceptable in principle and recommends that the lead Committee explore the power further as part of its further consideration of the Bill.

69. The Scottish Government may wish to reflect on its reasons for taking this power as the Bill progresses through the Parliament and the lead Committee may wish to explore the power further when it takes oral evidence from the Minister for Local Government and Planning.

Section 97N(1) and (3) – Effect of Ministers’ decision on right to buy

Powers conferred on: the Scottish Ministers
Powers exercisable by: regulations
Parliamentary procedure: affirmative

70. New section 97N(1) of the 2003 Act provides that Ministers may, by regulations, make provision for or in connection with prohibiting prescribed persons from transferring or otherwise dealing with land which is the subject of an application under Part 3A during the prescribed period. Section 97N(2) provides that those regulations may in particular include provision prescribing transfers or dealings which are not prohibited; requiring or enabling prescribed persons to register prescribed notices in the Register of Community Interests in Abandoned or Neglected land; and in prescribed circumstances, requiring information to be incorporated into prescribed deeds relating to the land.
71. Section 97N(3) provides that Ministers may, by regulations, make provision for or in connection with suspending, during the prescribed period, such rights in or over land in respect of which a Part 3A community body has made an application as may be prescribed. Section 97N(4) provides that such regulations may in particular include provision specifying rights to which the regulations do not apply, and rights to which the regulations do not apply in prescribed circumstances.

72. The Committee considers that it may be appropriate for the Scottish Ministers to make regulations for the purpose of suspending rights in or over land for the duration of the period within which Ministers are considering a Part 3A community body’s application. The Committee also considers it appropriate that these powers are subject to the higher level of scrutiny afforded by the affirmative procedure. Despite these conclusions, the Committee considers that there are issues of clarity with the drafting of these powers. The Committee explored these issues with the Scottish Government both in written and oral evidence.

73. Section 97N uses the word “prescribed” a number of times. “Prescribed” has a specific definition in section 98(1) of the 2003 Act, meaning “prescribed in regulations made by the Scottish Ministers”. The Committee wrote to the Scottish Government to ask whether the word “prescribed” as used multiple times in section 97N is intended to attract the definition of that term set out in section 98(1) with the effect that section 97N in fact creates a new power to make subordinate legislation each time that word is used, in addition to the two free-standing powers conferred by sections 97N(1) and (3).

74. In its written response, the Scottish Government confirmed that the use of the word “prescribed” in section 97N is intended to attract the definition of that term set out in section 98(1). The Government also stated, however, that its view is that section 97N confers only two powers to make subordinate legislation: the power in section 97N(1) and that in section 97N(3). Sections 97N(2) and (4) are intended to provide further detail of the matters which regulations made under subsections (1) and (3) may cover, and the use of the word “prescribed” in those subsections does not have the effect of conferring separate powers to make subordinate legislation.

75. The Committee considers that if the word “prescribed” as used in section 97N is intended to adopt the definition in section 98(1) of the 2003 Act, it seems clear that multiple powers are being conferred. The existence of the definition means that wherever the word “prescribed” appears in the 2003 Act, including where it appears as a result of amendments made to that Act by this Bill, it is an instruction to the reader to construe the word as conferring a power upon the Scottish Ministers to make regulations unless contrary provision is made.

76. The Committee therefore asked the Scottish Government officials for further explanation of the power when it took oral evidence on 30 September. The Scottish Government officials reiterated their position, which is that section 97N confers only two powers to make subordinate legislation. The officials offered to write to the Committee following the meeting to explain further their position. A letter dated 8 October 2014 is attached at Annex C.
77. This is a technical drafting point. The Committee does not object to the powers in sections 97N in principle, not to the selection of the affirmative procedure as the appropriate level of Parliamentary scrutiny over the powers. Nevertheless, the Committee finds that the use of the word “prescribed” in section 97N is apt to cause confusion when construed in accordance with section 98(1), and, as such, draws the conclusion that the Bill should be clarified at Stage 2.

78. The Scottish Government’s intention is that section 97N confers only two powers to make subordinate legislation: the power to make regulations prohibiting the transfer of land pending a decision on a Part 3A application in section 97N(1); and the similar power to suspend other rights e.g. rights of pre-emption or redemption that is set out in section 97N(3). The Committee considers, however, that this intention is not readily compatible with the use of the word “prescribed” in section 97N and its definition in section 98(1) of the 2003 Act. Other provisions in the Bill use the word “prescribed” and rely on the definition of that term in section 98(1) to create a free-standing power to make subordinate legislation. It is not clear from the evidence received from the Scottish Government why that same reliance does not apply in the case of the word as used in section 97N.

79. The Committee calls on the Scottish Government to clarify the new section 97N of the Land Reform (Scotland) Act 2003 as inserted by section 48 of the Bill. Section 97N makes repeated use of the word “prescribed”, and the Scottish Government has explained to the Committee, both in written and oral evidence, that while the use of the word “prescribed” in section 97N is intended to adopt the definition of that term in section 98(1) of the 2003 Act meaning “prescribed in regulations made by the Scottish Ministers”, section 97N is considered to confer only two powers to make subordinate legislation: the power in section 97N(1) and the power in section 97N(3).

80. The Committee considers that if the use of the word “prescribed” in section 97N is not intended to confer separate and free-standing powers to make subordinate legislation, the Bill should be clarified for Stage 2 so as to remove the scope for doubt over the interpretation of the section and the powers it confers by re-drafting the provision so as to remove the references to “prescribed”.
### Annex A

The Committee was content with the following powers on first consideration of the Bill:

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<th>Description</th>
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<td>local outcomes improvement plan: progress report</td>
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<td>Section 12(2)(d)</td>
<td>power to prescribe other matters to be addressed in an application for incorporation</td>
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<td>Section 15(2)</td>
<td>meaning of “community participation body”</td>
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<td>Section 18(1)</td>
<td>regulations (further provision about participation requests)</td>
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<td>Section 19(7)(a)</td>
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<td>Section 19(8)</td>
<td>participation requests: decisions</td>
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<td>Section 21(6)</td>
<td>power to specify information to be published about the outcome improvement process</td>
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<td>Section 24(3)</td>
<td>modification of outcome improvement process</td>
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<td>Section 25(4)</td>
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<td>Section 28(2)</td>
<td>power to prescribe bodies that are “community bodies”</td>
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<td>Section 28(7)</td>
<td>power to define a “community”</td>
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<td>Section 33</td>
<td>power to specify the description of land</td>
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<td>Section 37</td>
<td>power to prescribe the information to be provided to the ballotter by the Scottish Ministers</td>
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<td>Section 37</td>
<td>power to prescribe information to be provided to the ballotter by a community body</td>
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<tr>
<td>Section 38</td>
<td>power to make regulations which set out the information a community body must provide to the Scottish Ministers</td>
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<td>Section 40</td>
<td>ballot not conducted as prescribed</td>
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<tr>
<td>Section 48</td>
<td>power to prescribe that eligible land does not include certain land for the purposes of Part 3A</td>
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</table>
Section 48 - power to approve/direct the transfer of property on winding up

Section 48 - power to set out the definition of a “community”

Section 48 - payment of charges for copies of entries in the Part 3A Register of Community Interests in Abandoned or Neglected Land

Section 48 - power to prescribe the application form for Ministers to consent to a Part 3A community body’s right to buy

Section 48 - power to prescribe the manner in which an application under Part 3A is given public notice

Section 48 - power to prescribe how the ballot of the community is undertaken and the form of the ballot return to Ministers

Section 48 - Ministers’ notification of their decision on an application under Part 3A

Section 48 - power to direct that community body’s right to buy is extinguished

Section 48 - power to make provision in relation to compensation

Section 48 - power to make grants towards Part 3A community bodies’ liabilities to pay compensation

Section 48 - rules affected by Ministers in relation to the Lands Tribunal Act 1949

Section 50(2)(a) - designation of a community transfer body

Section 50(2)(b) - designation of a class of bodies as community transfer bodies

Section 53 - power to approve or direct the transfer of property on winding up

Section 54(3) - power to make provision about information relating to land in respect of which an asset transfer request is proposed

Section 55(8) - power to prescribe a time for a decision notice to be given

Section 55(9) - power to make provision regarding the information contained in a decision notice and the manner in which it is to be given
The Committee was content with the following powers after receiving written evidence from the Scottish Government:

- power to establish a body corporate for community planning purposes
- meaning of “community”
- eligible land
into the 2003 Act

Section 48  - register of Community Interests in Abandoned or Neglected Land

Section 48  - right to buy: application for consent

Section 73(1)  - allotment site regulations: additional provision

The Committee was content with the following powers after receiving both written and oral evidence from the Scottish Government:

Section 48  - provisions supplementary to section 97D

Section 54(1)  - power to make further provision about asset transfer requests

Sections 58(3) and 59(3)  - appeal or review of decisions on asset transfer requests

Section 80(7)  - power to remove unauthorised buildings from allotment sites
Annex B – Written Correspondence

Part 1 – National Outcomes

1. Sections 1-3 – publication of national outcomes

a) Sections 1(3), 2(4) and 3(1) provide for the publication of the national outcomes that are determined by the Scottish Ministers, and reports about the extent to which they have been achieved. The Scottish Government is asked to explain why it has been considered appropriate that the power to decide on the national outcomes should be exercisable by informal published determination, and not by Scottish statutory instrument which could be subject to Parliamentary scrutiny and procedure.

The decision was taken not to use Statutory Instruments as we envisage the primary role of Parliament to be scrutiny of progress towards the national outcomes. It may well be that the Scottish Parliament may wish to debate on the national outcomes set by the Scottish Ministers and the arrangements proposed do not prevent that.

b) Section 1(2) states that before determining the national outcomes, the Ministers must consult such persons as they consider appropriate. The Scottish Government is asked to explain why this provision does not specify any persons or bodies which (as a minimum requirement) the Ministers would consult.

The intention here is to leave the potential scope for consultation as broad as possible. In some cases, e.g. where a review is of a technical nature and focuses on specialist or statistical issues, it may be more appropriate to limit the scope of consultation to those who have expertise and experience in that area. In other cases, the review may be of a more general nature and in those cases, it would appropriate to consult more widely. Consultation with appropriate people would also include consultation with the public as a whole if appropriate.

Part 2 – Community Planning

2. Section 4(6) – power to modify schedule 1

The power in section 4(6) is capable of being used to considerably expand the list of community planning partners to which Part 2 of the Bill applies, or alternatively to considerably reduce the scope by removing bodies that are listed in schedule 1.

The Scottish Government is asked to explain therefore why it is considered more suitable that any regulations made under section 4(6) should be scrutinised by the negative procedure - rather than by the affirmative procedure where regulations add or remove persons from the schedule 1 list, and the negative procedure for regulations which amend an entry (which could adjust an entry on a change of name of a body).
This power provides flexibility to make future changes to the list of community planning partners in schedule 1. The power to amend the primary legislation is restricted to amending the list of public bodies who are members of a community planning partnership. Adding a body to, or removing it from, the list is unlikely to generate controversy. An example of a power to amend a list of public bodies in a schedule to primary legislation which is subject to negative procedure can be found in section 4(1) of the Freedom of Information (Scotland) Act 2000. In these circumstances it is considered that subjecting the exercise of the power to negative procedure is appropriate.

3. **Section 8(3) – power to modify section 8(2)**

The power in subsection (3) of section 8 is capable of being used to considerably expand the list of community planning partners in subsection (2) which have governance requirements in relation to community planning, or alternatively to considerably reduce the scope by removing bodies from that list.

The Scottish Government is asked to explain therefore why it is considered more suitable that any regulations made under section 8(3) should be scrutinised by the negative procedure - rather than by the affirmative procedure where regulations add or remove persons from the schedule 1 list, and the negative procedure for regulations which amend an entry (which could adjust an entry on a change of name of a body).

The power relates to making changes that may be required as the nature and practice of community planning evolves and the provisions of this part of the Bill take effect. It is restricted to allowing the Scottish Ministers to amend a list of public bodies who are partners in a community planning partnership so that they are also subject to a governance role. As with the power in section 4(6), it is not considered that the exercise of this power would generate controversy. It is considered that the negative procedure offers an appropriate level of parliamentary scrutiny.

4. **Section 10 – power to issue guidance**

The Scottish Government is asked to explain why the powers to issue guidance in section 10 are appropriate, and how the powers could be used. In particular an explanation is sought as to-

a) why the guidance is proposed to be binding on community planning partnerships and partners, rather than there being a requirement that they will have regard to it; and

b) why there is no provision for any Parliamentary procedure to apply to the guidance or for it to be laid before Parliament.

With regard to the request for an explanation as to why the powers to issue guidance are appropriate, the Scottish Ministers have inherent power to issue
guidance and the Bill does not confer express powers to that effect. The purpose of section 10 is to confer a status on any guidance Ministers may issue regarding the carrying out of functions by the Community Planning Partnership. Section 10(3) requires that any guidance must be the subject of consultation before it is issued.

a) The Scottish Government believes that this section will help to enable the dissemination of best practice in community planning across Scotland and is necessary to support the process by which public bodies work together and with community bodies to plan for, resource and provide services which improve local outcomes in the area. With regard to the obligation to comply with guidance, we would of course be happy to consider amending this to an obligation to have regard to the guidance if the Committee feel it would be of benefit to the Bill.

b) There is currently no provision for any Parliamentary procedure to apply to the guidance or for it to be laid before Parliament as it was considered that the guidance would deal with a range of issues in some detail, including administrative issues as necessary and that this was not a necessary or appropriate use of valuable Parliamentary time and resources.

5. Section 12 – power to establish bodies corporate

a) The Scottish Government is asked to explain why the wide power to specify any other matters in section 12(3)(h) is required, and how this power could be used.

b) What additional matters would this power enable, beyond the ancillary powers to make incidental, supplementary or consequential provisions contained in sections 96(1) and 97?

Section 12(3)(h) is in the same terms as, and replaces, section 19(3)(h) of the Local Government in Scotland Act 2003. The inclusion of 12(3)(h) provides the necessary flexibility to deal with any new development which may need to be addressed when exercising the power in section 12(1). It also makes it clear that the provision that can be included in the regulations made under section 12(1) is not restricted to the matters listed in section 12(3)(a) to (g).

Part 3 – Participation Requests

6. Section 16 – meaning of “public service authority”

a) The powers in section 16(2) and (3) are capable of being used to considerably expand the list of “public service authorities” to which participation requirements could be made in accordance with Part 3 of the Bill, or alternatively to considerably reduce the scope by removing bodies (or types of body) from the list in schedule 2.

The Scottish Government is asked to explain therefore why it is considered more suitable that any order made under sections 16(2) and (3) should be scrutinised by the negative procedure - rather than by the affirmative
procedure where the order proposes to remove persons from the schedule 2 list and/or designate more persons or classes of person as “public service authorities” and the negative procedure for an order which amends an entry in schedule 2 (which could adjust an entry on a change of name of a body).

b) The Delegated Powers Memorandum (“DPM”) states in relation to section 16(2) that the Scottish Ministers are included in schedule 2, but this is not the case. Clarification is sought as to whether there is any intention to include the Ministers in the schedule.

a) These powers provide flexibility to make future changes to the list of public service authorities in schedule 2. The power to amend the primary legislation is restricted to amending the list of public bodies to whom a community participation body may make a participation request. Adding a body to, or removing it from, the list is unlikely to generate controversy. An example of a power to amend a list of public bodies in a schedule to primary legislation which is subject to negative procedure can be found in section 4(1) of the Freedom of Information (Scotland) Act 2000. In these circumstances it is considered that subjecting the exercise of the power to negative procedure is appropriate.

b) The reference to the Scottish Ministers in the Delegated Powers Memorandum in relation to section 16(2) was an error.

Part 4 – Community Right to Buy Land

7. Section 28(6) – duty to provide information about community right to buy

The power in the new section 34(4B) of the 2003 Act, as inserted by section 28(6) of the Bill, appears to be subject to the negative procedure while the DPM refers to the power being subject to the affirmative procedure. Section 98(5) of the 2003 Act, as amended by paragraph 4 of schedule 4 to the Bill, provides that regulations made under the new section 34(4A) will be subject to the affirmative procedure, but there is no reference to regulations made under the new section 34(4B), the effect of which would appear to be to leave such regulations to take the negative procedure.

Can the Scottish Government explain whether this is an error or, if the Scottish Government intends the power to be subject to the negative procedure, can it explain why this is considered appropriate?

The Scottish Government agree that the new section 34(4B) of the 2003 Act, as inserted by section 28(6) of the Bill, is subject to the negative procedure but that it would be appropriate for this power to be subjective to affirmative procedure, as stated in the DPM.

8. New section 97C of the 2003 Act – eligible land

a) Can the Scottish Government provide more information as to how it envisages using the power in the new section 97C(2) of the Land Reform
(Scotland) Act 2003 (“the 2003 Act”)? The DPM refers only to the power being used to prescribe matters which are “too detailed to include in the primary legislation”. Can the Scottish Government provide any examples of matters which it is intended will be prescribed in regulations made in exercise of this power so as to inform the Committee’s consideration of the power?

b) The Scottish Government is asked for a fuller explanation as to the relationship between the powers in the new section 97C(3)(a), 97C(3)(b) and 97C(4) of the 2003 Act, as inserted by section 48 of the Bill. How is it considered that these powers will interact?

c) Does the Scottish Government agree that the power in section 97C(3)(a) enables Ministers to add prescribed classes of building back into the ‘pool’ of eligible land to which the new Part 3A applies despite the fact that such buildings may constitute an individual’s home? Can the Scottish Government provide any examples of classes of building or structure which it intends to prescribe in regulations made in exercise of this power?

(a) The matters that Ministers should take account of in considering whether land is wholly or mainly abandoned or neglected is currently under discussion with stakeholders. Some examples of matters might include the physical condition of land, environmental or historic designations affecting the land and the extent to which the land is having a detrimental effect on the local environment, where environment can be physical or social.

(b) The relationship between the various powers is that that section 97C(3)(a) provides that land on which there is an individual’s home is not eligible land but this doesn’t apply to classes or descriptions of land set out in regulations. This will enable exceptions to be made should this be considered appropriate in the future. Section 97C(3)(b) will enable regulations to provide that land associated with an individual’s home such as private gardens and land forming the curtilage of the home will not be eligible land, and section 97C(4) allows regulations to be made treating buildings or structures as homes and so the land which these are situated on will not be eligible land. For example a house that is used just for holidays and which doesn’t constitute an individual’s home could be treated as a home and so the land which it is on would not be eligible land.

(c) Section 97C(3)(a) enables Ministers to add prescribed classes of building back into the ‘pool’ of eligible land to which the new Part 3A applies. At this point in time, we are not able to give specific examples, but this power allows for flexibility. We would of course be happy to consider changes if the Committee feel it would be of benefit to the Bill.

9. Section 97E(4) - power to make an order relating to matters connected with the acquisition of the land

Can the Scottish Government explain how the power in the new section 97E(4) is intended to be exercised and why it requires to be drawn in such wide terms? Can the Government provide any examples of the kinds of
modifications to primary legislation that the Scottish Government anticipates making in exercise of this power as permitted by the provision in section 97E(5)?

The underlying reason behind the power in section 97E(4) is to ensure that the process for buying back land from a community body is open and transparent as well as robust. There are examples of similar powers e.g. sections 1 and 2 of the Transport and Works (Scotland) Act 2007.

10. Section 97F(6) – power to modify the information and documents that are to be contained in the Register of Community Interests in Abandoned or Neglected Land

The Scottish Government is asked to explain further its reasons for taking the power to modify new sections 97F(3) and (4) of the 2003 Act as inserted by section 48 of the Bill. In particular, can the Government explain the circumstances in which it considers that it may be appropriate to modify those subsections given that they exempt, in circumstances where a Part 3A community body requires it, any information or documents relating to the raising or expenditure of money by that body from being entered in the Register of Community Interests in Abandoned or Neglected Land?

There is already a similar power in respect of the Register of Community Interests in Land in Part 2 of the Land Reform (Scotland) Act 2003 (section 36(6)) so the power in section 97F(6) ensure that Parts 2 and 3A are consistent. It is allows the Register to be kept relevant should there be any changes to the requirements of community bodies, or the information that they are required, by law, to provide.

11. Section 97G(5)(c) – power to prescribe information in an application form for Ministers to consent to a Part 3A community body’s right to buy

a) The Scottish Government is asked to justify the power in section 97G(5)(c) as distinct from the power in section 97G(5)(a). The DPM provides the same information in respect of both powers, however the power in section 97G(5)(a) is a power to prescribe the form of an application under Part 3A of the 2003 Act, whereas the power in section 97G(5)(c) is a power to prescribe kinds of information to be included in such a form, or to accompany such a form.

b) Can the Scottish Government explain why this power is necessary, and can it provide examples of the types of information it intends to prescribe in regulations made in exercise of this power?

These powers allow the style of the form, and the information contained in that form, to be set out in regulations. These are two separate things, hence the need for the two powers. There are examples of the sort of form (both in terms of style and content) anticipated in The Community Right to Buy (Prescribed Form of Application and Notices) (Scotland) Regulations 2009.
12. Sections 97N(1) and 97N(3) – effect of Ministers’ decision on right to buy

a) The Scottish Government is asked whether the word “prescribed”, as used multiple times in the drafting of the new section 97N of the 2003 Act is intended to capture the definition of that term as set out in section 98(1) of the 2003 Act with the effect that new section 97N confers multiple powers to make subordinate legislation, or whether the matters which may be “prescribed” as referred to in that new section are intended to form specific aspects of the two standalone powers expressly conferred by sections 97N(1) and 97N(3).

b) If the Scottish Government does not intend for the word “prescribed” to adopt the definition in section 98(1) of the 2003 Act when it is used in section 97N, can it explain how the Bill prevents this?

Section 98(1) of the 2003 Act defines “prescribed” for the Act and provides that it means “prescribed by regulations made by Ministers”. We agree that the use of “prescribed” in section 97N attracts that definition. Each time the expression is used in section 97N it effectively confers power to specify something in regulations. These powers operate in the context of the powers in section 97N(1) and (3). For example, in section 97N(1) “prescribed period” means the period set out in regulations made by Ministers prohibiting the transfer or other dealing in certain land.

Part 5 – Asset Transfer Requests

13. Section 51(2) – power to modify schedule 3

The Scottish Government is asked whether, given that the power in section 51(2) of the Bill permits the modification of primary legislation, this power should be subject to the affirmative procedure.

This power provides flexibility to make future changes to the list of relevant authorities in schedule 3. The power to amend the primary legislation is restricted to amending the list of public bodies to whom a community transfer body may make an asset transfer request. Adding a body to, or removing it from, the list is unlikely to generate controversy. An example of a power to amend a list of public bodies in a schedule to primary legislation which is subject to negative procedure can be found in section 4(1) of the Freedom of Information (Scotland) Act 2000. In these circumstances it is considered that subjecting the exercise of the power to negative procedure is appropriate.

14. Section 54(1) – power to make further provision about asset transfer requests

The Scottish Government is asked why this power requires to be drawn in such wide terms. The specification of particular matters about which regulations may be made in exercise of this power does not appear to restrict the overall width of the power, and consequently the power would
appear to be capable of being used to make different provision, subject only to the requirement that that provision be “about asset transfer requests”. The Government is invited to explain why such a wide power is considered to be necessary.

Section 54(2) sets out some of the general scope of the matters which it is envisaged that the regulations relating to asset transfer requests will deal with and the wording of section 54(1) is to ensure flexibility so that other matters which it may be appropriate to include could be included if necessary. As the Committee point out the power is limited by the requirement that the regulations only enable provisions to be made in relation to asset transfer requests and, as the Delegated Powers Memorandum states, the further provision that may be required regarding process and procedure is a largely administrative matter.

15. Section 58(3) and 59(3) – power to prescribe asset transfer request appeal and review procedures, time limits and the manner in which appeals and reviews are to be conducted

a) The Scottish Government is asked for further explanation of the meaning of sections 58(4) and 59(4) of the Bill, which provide that the provision that may be made by virtue of the powers in section 58(3) or 59(3) to prescribe the procedure to be followed in an appeal against or a review of a decision on an asset transfer request includes provision that the manner in which an appeal or review, or any stage of an appeal or review, is to be conducted is to be at the discretion of, respectively, the Scottish Ministers or the local authority.

b) The Scottish Government is asked to explain what aspects of an appeal or review it considers might be made subject to the discretion of the Scottish Ministers or the local authority in exercise of these powers, and why the Government considers that that would be appropriate, as opposed to specifying the appeals procedure in the subordinate legislation that is made under sections 58(3) or 59(3).

Section 58(4) and 59(4) follow the approach taken in relation to appeal processes in planning (see section 267(1C) of the Town and Country Planning (Scotland) Act 1997). The intention is that the regulations setting out appeal processes would enable the choice of appeal procedure to be flexible and selected in particular cases to meet the needs of that case. It is envisaged, as with planning appeals, that the selection of the appropriate process for conducting the appeal, for example, by written submission or a form of hearing, or mix of procedures would be determined by the Scottish Ministers in the light of the circumstances of each case.

Part 7 – Allotments

16. Section 73(1) – Allotment site regulations: additional provision

Can the Scottish Government explain why the power in section 73(1) is proposed to be exercised by the local authority by way of regulations rather
than, for example, by way of byelaws subject to confirmation by the Scottish Ministers (as under section 202 of the Local Government (Scotland) Act 1973)? If it is considered appropriate for the power to be exercised by the local authority by regulations, can the Scottish Government explain why there are no proposals for the regulations to be confirmed by the Scottish Ministers or laid before Parliament, or otherwise to be subject to scrutiny?

The Scottish Government does not consider that the power in section 73(1) falls within the scope of byelaws. Section 201 of the Local Government (Scotland) Act 1973 (“the 1973 Act”) confers power on local authorities to make byelaws, “for the good rule and government of the whole or any part of their area, and for the prevention and suppression of nuisances therein”. Contravention of byelaws is generally dealt with by summary prosecution. The current approach has been taken since the Regulations are not principally intended to address nuisance and as such carry no criminal sanctions. The sanctions are that the lease holder would be given notice to quit the allotment.

The Scottish Government does not consider it necessary for the regulations proposed under section 73(1) to be confirmed by the Scottish Ministers, laid before Parliament, or otherwise subject to scrutiny. The Scottish Government notes that byelaws made under the 1973 Act have no effect until confirmed (section 202(3)), however contravention of byelaws will generally carry criminal sanctions. Management rules under the Civic Government (Scotland) Act 1982 (to which the Scottish Government considers the proposed regulations more similar) are not subject to confirmation or other scrutiny. In line with the procedure for making management rules, section 74 of the Bill requires local authorities to consult interested persons and provides for a period of notice with an opportunity for representations before regulations under section 73(1) are made. Given the relatively narrow purpose of such regulations and the absence of offences relating to their contravention, the Scottish Government does not consider scrutiny by the Scottish Ministers or Parliament to be required.

17. Section 80(7) – power to remove unauthorised buildings from allotment sites

Can the Scottish Government explain further the intended purpose of the power in section 80(7) and in particular what further provision, standing the procedural requirements already contained in section 80(5) and (6), the power in section 80(7) might be used to make?

Section 80(7) permits, but does not require, the Scottish Ministers to expand upon the detail of the procedure set down in sections 80(5) and 80(6). At this point in time, we are unable to give specific examples of what further provision this power might be used to make, but the power allows for flexibility. We would of course be happy to consider changes if the Committee feel it would be of benefit to the Bill.
Annex C – Letter from the Scottish Government:


Section 97N(1) and (3) of new Part 3A of the Land Reform (Scotland) Act 2003 ("2003 Act") (to be inserted by section 48 of the Bill) confers powers on the Scottish Ministers to make regulations. Section 98(1) of the 2003 Act defines "prescribed" for the purposes of the 2003 Act and provides that it means "prescribed by regulations made by [the Scottish] Ministers". The use of "prescribed" in section 97N has, and is intended to have, the meaning given in section 98(1) of the 2003 Act.

Regulations made under section 97N(1) and (3) will be subject to the affirmative procedure (see paragraph 2(5)(a)(ii) of schedule 4 to the Bill which will amend section 98(5) of the 2003 Act).

Section 97N(1) confers powers on the Scottish Ministers to make regulations prohibiting the transfer of land or otherwise dealing with land if a Part 3A community body has made an application under section 97G for consent from the Scottish Ministers to exercise the right to buy that land. Subsection (1) further provides that those regulations can specify: (a) the period of the prohibition; and (b) the persons who are prohibited from transferring or otherwise dealing with the land during that period.

Subsection (2) sets out particular matters that may be included in any regulations made under subsection (1). Subsection (2) is not a free-standing power. It provides some detail of the provision that may be made in regulations made under section 97N(1).

So for example, the power conferred by section 97N(1) would enable the Scottish Ministers to make regulations setting out that, from when the landowner has received notice of an application made by a Part 3A community body until the Scottish Ministers have determined the application, the landowner is prohibited from transferring or otherwise dealing in the land that is the subject of the application. The regulations could also make provision for exceptions to this prohibition. The regulations would be made under section 97N(1) and would specify the period of the prohibition and also specify the persons to whom the prohibition applies. In making exceptions to the prohibition, the Scottish Ministers would still be making use of the power in subsection (1) as further described in subsection (2).

Section 97N(3) confers power on the Scottish Ministers to make regulations making provision for suspending rights in or over land in respect of which a Part 3A community has made an application under section 97G. This subsection further provides that the regulations may specify: (a) the period during which the rights are to be suspended; and (2) the rights that are to be suspended during that period. Subsection (4) provides that any regulations made under subsection (3) may include provision specifying any rights that are not to be suspended and any
rights to which the regulations do not apply in certain circumstances. These are examples of the kind of provision that may be made in regulations made under subsection (3). Subsection (4) is not a free-standing power. It provides some detail of the provision that may be made in regulations made under section 97N(3).
Present:
Richard Baker
Mike Mackenzie
Stuart McMillan (Deputy Convener)
Stewart Stevenson
Nigel Don (Convener)
Margaret McCulloch
John Scott

Community Empowerment (Scotland) Bill: The Committee took evidence on the delegated powers provisions in the Bill at Stage 1 from—

Ian Turner, Bill Team Leader; Norman Macleod, Scottish Government Legal Directorate; Rachel Rayner, Scottish Government Legal Directorate; Dave Thomson, Land Reform and Tenancy Unit; Dr Amanda Fox, Food and Drink Policy Leader; Anne-Marie Conlong, Performance Unit, Scottish Government.

Community Empowerment (Scotland) Bill (in private): The Committee considered the evidence it heard earlier in the meeting.
Scottish Parliament
Delegated Powers and Law Reform Committee
Tuesday 30 September 2014

[The Convener opened the meeting at 10:01]

Decisions on Taking Business in Private

The Convener (Nigel Don): I welcome members to the 27th meeting in 2014 of the Delegated Powers and Law Reform Committee. I ask everyone to make sure that they have turned off their mobile phones.

The first agenda item is to take decisions on taking business in private. It is proposed that we take items 9 and 11 in private. Item 9 will be further consideration of the oral evidence on the Community Empowerment (Scotland) Bill that we will hear today. It is also suggested that we take future stage 1 consideration of the bill in private. Item 11 is consideration of a draft report on instruments that were considered by the committee in 2013-14. Does the committee agree to take items 9 and 11 in private?

Members indicated agreement.

The Convener: Does the committee also agree to take in private further stage 1 consideration of the Community Empowerment (Scotland) Bill?

Members indicated agreement.

The Convener: Members should also note that, in line with a previous decision of the committee, item 10 will also be held in private.

Community Empowerment (Scotland) Bill: Stage 1

10:02

The Convener: Agenda item 2 is oral evidence on the Community Empowerment (Scotland) Bill. This allows the committee to follow up on matters in relation to the bill that it previously raised in writing with the Scottish Government.

I welcome the first panel of a cast of thousands: Ian Turner is the bill team leader, Norman Macleod and Rachel Rayner are from the Scottish Government legal directorate, Dave Thomson is from the land reform and tenancy unit, Dr Amanda Fox is food and drink policy leader and Anne-Marie Conlong is from the performance unit. Good morning one and all. We will test you a great deal this morning, but I hope that it will not take forever because we also have to hear from lots of lawyers later on.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I want to start by looking at how the legislation provides for determining the national outcomes, and the role of Parliament in seeing whether those are met. Before I ask my questions I want to go back to the progenitor of Scotland performs, which is, of course, the Virginia performs model. In particular, I want to explore, perhaps with Mr Turner and Ms Conlong, the extent to which the Virginia performs model has been examined. That model differs in certain ways from how our bill is constructed, in that the council on Virginia’s future, which essentially determines the targets, is not simply a Government body, but requires the inclusion of the majority and minority leaders from each house—they are part of the body that sets the targets. In that context, there is a role for a more widely based, rather than simply Government-driven, setting of the targets.

To what extent have officials and ministers looked at the Virginia performs model and the council on Virginia’s future in deciding how to take the bill forward?

Anne-Marie Conlong (Scottish Government): I am happy to take that question. Back in 2007—and before that, when Scotland performs was being developed—there was a huge amount of research and liaison with the people who were involved in Virginia performs. A lot of what happened there informed and led across to Scotland performs. Stewart Stevenson is absolutely right that the key difference is around the council on Virginia’s future; that leads me to the difference between that approach and what we propose in the bill.
The Scottish Government believes that what we have set out in the provisions reflects the current separation of powers between the Scottish Government and the Parliament. It would be for the Scottish ministers to co-ordinate Government business and to set out the strategic direction for Government—within its overall accountability to the Parliament, of course—and the Parliament would exercise a scrutiny function, holding ministers to account on progress towards the national outcomes and objectives. Of course, the Scottish Parliament may wish to debate the national outcomes as set by Scottish ministers, and the arrangements that are proposed would not prevent that in any way.

I will pick up on your point about the widely based element of the outcomes in Virginia performs. Part of the work that we are doing under Mr Swinney and the round table that is chaired by him—which is quite a diverse group of stakeholders as it includes cross-party support from the Parliament, and key civic organisations in Scotland such as the Carnegie Trust and Oxfam Scotland, as well as some academics—involves working together to develop an improved Scotland performs. In fact, that is where the impetus to put provisions in the Community Empowerment (Scotland) Bill came from. The national outcomes will therefore be widely consulted on. In the provisions, we have left the basis for that consultation as open as possible so that as many people as possible, including the whole of the public of Scotland, where that is appropriate, can be consulted. That is a broad base for setting the national outcomes.

The fundamental difference from what we propose in the bill is that, as Stewart Stevenson said, the council on Virginia's future is quite separate. We are more than happy to take back for further consideration with ministers the committee’s views on the respective roles of the Scottish Parliament and the Scottish Government in setting the outcomes.

Stewart Stevenson: This committee’s role is restricted and is not to look at the broader policy issues. It simply relates to whether the construction in the bill that is before us is appropriate. The policy committee will perhaps pick up some of the points that you make.

I am simply trying to explore the process to ensure that what we have in the bill properly reflects the policy outcome. I note that the Virginia performs framework and the council on Virginia’s future were established not by ministerial fiat but by the governing legislation that was passed in Virginia. I just want to be clear that that is forming part of the consideration. From the answer that I have had, I think that we as a committee should properly conclude that that is the case, even if there might be different views elsewhere, in respect of policy.

I note that the bill makes no specific provisions on persons or bodies that should be consulted about national outcomes. It seems that you would be able to identify particular bodies that you would consult. Is there any particular reason why we do not see a list in the bill?

Anne-Marie Conlong: The intention is to leave the potential scope for consultation as broad as possible. That is something that our stakeholders have been very keen on. In some cases, a review of the national outcomes might focus on a specialised or specific issue, in which case only certain bodies or persons would be consulted, because that would be the most appropriate thing to do. In other cases, the consultation might be much wider because the review of the outcomes is of a much more general nature.

The intention behind not listing bodies was not to limit or narrow in any way the scope of the bodies and people who can be consulted. However, if the committee thinks that the bill should include a minimum list of bodies, we can consider doing that, but we would be clear that we do not want to limit the scope of potential consultation in any future review.

Stewart Stevenson: It would not be for this committee to suggest who should be on such a list. That would be a policy matter.

The point on which I want to be clear is whether consideration has properly been given to the possibility of involving some people or bodies in looking at the whole thing, while ensuring that the bill does not restrict consultation. I assume that consultation has taken place on exactly that point. I see that you are nodding.

Anne-Marie Conlong: Yes.

Stewart Stevenson: Right. I will move on.

The bill makes no provision for regular periods of reporting, unless I have misread it. Is there a reason for that?

Anne-Marie Conlong: Again, the intention was to keep some flexibility. Currently, the Scotland performs website is the reporting tool for the national outcomes. The approach is unique, in that the website is constantly updated, as soon as new data become available. This might also be a policy matter, but we have debated with our colleagues around the table whether a report that is static would be helpful and whether such a report would add to the existing reporting process. How we might maintain the constant dynamic reporting of Scotland performs while providing regular reports, if there is an appetite for them, is still under consideration.
Stewart Stevenson: In the context of formulating policy, the bill provides that public bodies beyond Government will have a duty to “have regard to” the outcomes that are set, while not placing such a duty on the Government itself. Was there a reason for that? Let me characterise the position in the most extreme way: the Government gets to choose the questions for the exam sheet and then answers them, but that is not the case for other public bodies.

Anne-Marie Conlong: I assume that the Scottish Parliament’s scrutiny role is to hold the Government to account on the national outcomes. If the outcomes are set based on broad public and civic consultation, there is a collective view of what they should be and progress against them would be tested on a wide consultative basis.

Stewart Stevenson: I will ask one more question. The Government has brought together a group, which includes Opposition representatives, but there is no direct parliamentary input. We have a range of bodies and individuals, who represent a range of political views, but there is no process in the bill for the Parliament to be part of that. Is that correct?

Anne-Marie Conlong: That is correct, as the bill stands.

Stewart Stevenson: Okay. It is important to get that on the record, so that we understand the position.

The Convener: I will pursue that issue. If we are talking about the outcomes providing a framework to which other people must have regard—I take the comment about things being subject to parliamentary scrutiny, as we would expect in a parliamentary democracy—it seems strange that there is no mechanism for the Government to bring to Parliament an affirmative statutory instrument setting out the principles, which we could consider and then reject or approve. I am struggling to understand why there will be no such process.

Anne-Marie Conlong: As I said, the position until now has been that the provisions reflect the Scottish Government view of the separation of powers between scrutiny and the setting of the strategic direction of Government. That has been the thinking up to now, but we welcome the committee’s views and can consider the matter further with ministers.

The Convener: I argue that we will always scrutinise such things, but we must find them before we can do so. If the Government does not set out its approach in a form into which a parliamentary committee can get its teeth, there will be only peripheral scrutiny, which is not a good process.

Anne-Marie Conlong: At the moment, Scotland performs is set out publicly—all the information is publicly available. In fact, both last year and this year, we have assisted parliamentary committees with scrutiny of the draft budget by producing performance score cards for each of the committees. There are processes available, albeit that they are not laid out formally in statute. Scotland performs information is publicly available and has been well used by Parliament to scrutinise performance.

10:15

The Convener: At the risk of pursuing the issue too far, I make the point that, if a set of things to which public bodies must have regard is set out in law, they ought, I suggest, to be laid out in such a way that a parliamentary committee—ours or another—could scrutinise those things instead of having to work its way round and generate some debate about the general principles that we think we have. There seems to be a process point there, which I think is what worries us.

Anne-Marie Conlong: I am certainly happy to take that point away.

The Convener: Thank you. That completes that line of questioning, unless other members have questions on it.

We move on to question 5, which will be asked by John Scott.

John Scott (Ayr) (Con): Sections 4(6), 8(3), 16(2), 16(3) and 51(2) are all broadly concerned with the procedure to be applied to powers that enable bodies to be added to or removed from the lists in the schedules to the bill. In the bill, the power to add or remove a body is subject to negative procedure. In that regard, you draw a parallel with the Freedom of Information (Scotland) Act 2002.

However, a different approach has been taken in more recent acts, with the power to add a body being subject to affirmative procedure and the power to remove a body being subject to negative procedure. That approach has been taken in the Public Services Reform (Scotland) Act 2010 and the Regulatory Reform (Scotland) Act 2014. Why have you not adopted that more recent approach? In particular, why have you chosen to apply negative and not affirmative procedure to the power to add a body to a list?

Ian Turner (Scottish Government): The powers provide the flexibility to make changes, should that be necessary. Across the bill, the powers in the relevant provisions are limited to amending the list of public bodies that can be involved.
We believe that such regulations would be unlikely to generate any controversy, so because there is unlikely to be an issue at that stage, negative procedure would be the more appropriate procedure to use.

**John Scott:** Right.

**Ian Turner:** I appreciate the point that you made about more recent acts, and we would be happy to consider the views of the committee.

**John Scott:** I think that our view would be to ask why there should be a sudden reduction of standards, as it were. I am happy to have made the point; I will leave it at that and leave it for others to say more.

**The Convener:** The point is well made, but I suspect that the problem is that, without knowing the circumstances that are being referred to, it is not obvious which process it would be desirable to use. I suppose that we would tend to give the Government the benefit of the doubt and assume that it would consult on things that needed to be consulted on, and would not lay a negative instrument if it had not consulted the appropriate people.

**Ian Turner:** Absolutely.

**The Convener:** In practice, therefore, the procedures might be almost the same.

**Ian Turner:** Yes, I think that that is our view. The bill has gone through a hugely consultative process, with individual consultations being followed by more detailed consultation on the draft bill. That is what we intend to do with regulations in the future.

**The Convener:** I suspect that making the point is all that we can do for the moment.

**John Scott:** As parliamentarians, we do not want to see a reduction in parliamentary scrutiny, and the answers that have been given suggest that there will be a reduction in parliamentary scrutiny, which is a departure from what we have been used to. Is that a fair comment?

**Ian Turner:** Negative procedure would still be used. That certainly represents a reduction in scrutiny compared with the use of affirmative procedure, but we believe that the use of negative procedure is appropriate in relation to the powers as they stand.

**Stuart McMillan (West Scotland) (SNP):** Good morning, panel.

I have some questions about section 10 of the bill. There is a possibility that they may stray into policy matters, in which case I understand that you would not be able to answer them, but I will pose them and we will take it from there.

Section 10 provides that community planning partnerships and partners must carry out their functions in relation to community planning in accordance with any relevant guidance that is issued by the Scottish ministers. Why is it proposed that the guidance under section 10 will be binding on community planning partnerships and partners, rather than that they will be required to have regard to it?

**Ian Turner:** That became an important point during the process of developing the bill. The intention is that section 10 will be used for community planning partnerships, which have been in place for a number of years, although we are putting them on a statutory footing under the bill. The section should ensure a consistency of approach to community planning throughout Scotland. We want local discretion and local innovation in how community planning is approached and dealt with, but there might be some matters that we feel are fundamental enough to apply on a national level, hence the reason to comply with national guidance.

**Stuart McMillan:** You are aware that I also sit on the Local Government and Regeneration Committee, as we met last week.

**Ian Turner:** Yes.

**Stuart McMillan:** Over the past few years, much of the work that has been undertaken by that committee has highlighted that point regarding community planning partnerships. Much of the community-facing work that we have undertaken has highlighted the stark differences in the public understanding and knowledge of community planning partnerships.

At the same time, one key issue that has been raised time and again has been the perception of a top-down approach, with the Government—of whatever hue—imposing restrictions on local government and community planning partnerships. What was the thinking, not so much behind putting community planning partnerships into statute, but behind what is proposed in section 10 in relation to guidance?

**Ian Turner:** The community planning part of the bill feels a bit top down, because it places duties on the statutory partners. It is not possible to place duties on voluntary or community bodies in that way. The proposed statute has the feeling of a top-down approach, but we are trying to use those duties to ensure that community bodies participate and resource the process properly.

There might be processes within that involving emerging best practice that we wish to be actively promoted and encouraged. As you heard at the Local Government and Regeneration Committee last week, that involves a culture change within the public sector, to some extent. The issue is how to
engaging community bodies and how to get them to participate. We think that the guidance can help with that process of culture change.

**Stuart McMillan**: Could some of that culture change and some of those methods not happen through other routes, such as the benchmarking tool that the Convention of Scottish Local Authorities has recently established?

**Ian Turner**: Absolutely. Those routes are not ruled out; the guidance is in addition to those.

**Stuart McMillan**: How do you foresee the power in section 10 being utilised?

**Ian Turner**: It is hard to know at the moment. As I was saying in response to a previous question, the guidance will be subject to quite a lot of consultation before we put it out. There will be consultation with public sector and community bodies, and with all the interested partners that we have had throughout the bill process. It is hard to say what particular provisions will be used for, but that will emerge from the process.

**Stuart McMillan**: Is there an opportunity for Parliament to be involved in that consultative process and for it to discuss any guidance?

**Ian Turner**: There is always an opportunity for Parliament to discuss it. There is no specific provision on that in section 10, and we are aware of that. If the committee would wish to include such a provision, I am certainly happy to consider that.

**Stuart McMillan**: Would you consider it an appropriate use of parliamentary time to consider the use of guidance or scrutiny?

**Ian Turner**: It would sometimes depend on the guidance, which might go into a lot of detail. You might not necessarily want a negative or affirmative procedure; you might just want the guidance to be laid before you, and you might not require to use any further processes.

**Mike MacKenzie (Highlands and Islands) (SNP)**: New section 97C(3)(a) of the 2003 act, in new part 3A, provides that

> "Eligible land does not include ... land on which there is a building or other structure which is an individual's home"

other than buildings or structures that may be set out in regulations by ministers. It appears, therefore, that ministers may make regulations that have the effect of applying the provisions of the new part 3A to buildings or structures that constitute an individual’s home. Can you explain in more detail why you have taken that power? In your response to written questions on the matter, you suggest that it is to allow for flexibility. What other factors did you take into account when taking that power?

**Dave Thomson (Scottish Government)**: The flexibility on those powers is the key part at the moment. The policy intent is not to take people’s homes away in any circumstances, but still to allow community bodies to take control of assets. Essentially, the powers that we are looking to take on through that provision are simply to allow that flexibility to set out in detail the types of buildings or assets that can be included or excluded. At the moment, we do not have specific examples, hence the current need for flexibility in the powers.

**Mike MacKenzie**: I am sure that you appreciate the need to get that right, though. There will be lawyers across the country scratching their heads and hanging on every word, I suspect. It is a wee bit disappointing that you have not got to a stage in your thinking where you are able to provide more detail.

I will move on. When previously asked to justify the width of the power in new section 97E(4) of the 2003 act, the Government cited examples of similar powers in sections 1 and 2 of the Transport and Works (Scotland) Act 2007. However, the connection between those powers and the powers in section 97E(4) is not wholly apparent to the committee. Can you shed light on that?

**Dave Thomson**: The connection between the two is largely to do with process. Rachel Rayner may be better at explaining the legal connections.

**Rachel Rayner (Scottish Government)**: I can take you quickly through the power in the Transport and Works (Scotland) Act 2007, section 1 of which gives ministers a power to make an order relating to, or to matters connected with, construction of transport systems or inland waterways. Section 2 goes on to set out matters about which provision can be made in such an order, and the schedule makes it clear that that includes compulsory acquisition of land. Section 2 goes on to provide that the order that ministers can make can apply, modify or exclude enactments relating to those matters.

That is used as an example because the power that we are proposing in new section 97E of the 2003 act would enable ministers to make a process for acquiring land, and that could be done by modifying existing processes for compulsory acquisition, if that was thought to be an appropriate way of achieving what was wanted. The aim of taking the power is to ensure that, where ministers have the power to compulsorily acquire land, there is a fair, robust, open and transparent process for doing that. The detail that you are asking about is just a means of making that happen. Rather than writing out a process longhand, you could apply existing legislation but modify it to suit the particular purpose.
Mike MacKenzie: I am glad that you are talking about modification, because I am quite sure that you are aware that the existing provisions are not without their problems. How can you justify the width of the power in new section 97E(4)? I understand that it apparently makes sense to use something that works reasonably well in practice, but how can you justify the width of the power?

Rachel Rayner: It is so that the power is wide enough to ensure that the process that would need to be put in place should that happen is fair, transparent and robust. If you have concerns about the power, I would be happy to consider them.

John Scott: Is it subject to parliamentary scrutiny?

Rachel Rayner: Yes, it is subject to the affirmative procedure.

Mike MacKenzie: Why has the power in new section 97E(4) been drawn in such wide terms, and have you considered restricting it?

10:30

Rachel Rayner: We would be happy to take away any particular concerns and consider them further. I should point out, though, that this power for ministers to acquire such land compulsorily can be used only in limited circumstances. What the regulations will set out is not when ministers can acquire the land but the process for exercising the power, to ensure that the process is transparent and fair and includes the appropriate detail.

Mike MacKenzie: Do you have any examples of the kinds of modifications to primary legislation that the Scottish Government expects to make in the exercise of this power as permitted by the provision in proposed new section 97E(5) of the 2003 act?

Rachel Rayner: I cannot give you any such examples at the moment, although the power would give us the opportunity to modify and apply existing compulsory acquisition schemes, if that was thought to be the most appropriate approach.

Mike MacKenzie: I am sure that you appreciate that some of this is going to be quite contentious. Although that is a policy matter, there is nevertheless an interlinking between policy and this committee’s work that is quite crucial to the successful operation of this bill—or the act, when it becomes an act. Thank you very much for your responses.

John Scott: Going back to a previous question that I think is linked to this issue, I am disappointed to hear that, despite the massive powers that you are assuming, you have no idea of the sorts of assets that you would be considering as eligible for compulsory purchase. Can you try a little harder to give us some idea? I should of course declare an interest as a landowner and farmer, which means that the issue is of specific interest to me and certainly to many others.

Dave Thomson: Going back to the issue of flexibility, I said at the beginning of the session that this provision will allow us to ensure that a person’s home, for example, or the land that they use is not taken off them. As for the width of the powers, one of the changes made by the bill is that the Land Reform (Scotland) Act 2003 will now apply to urban as well as rural situations. That means that a whole different set of issues needs to be taken into consideration, and we are considering some way of ensuring that what we put in the bill covers both urban and rural areas. As you will appreciate, they are two completely different beasts as far as assets are concerned, and the bottom line is that we want to get things right.

We need flexibility at this stage until we manage to narrow down the sorts of buildings, land and other assets that we would like to include or exclude from this provision. At the moment, we are certainly not talking about homes or land that is being used constructively. The whole basis of the provision is to ensure the sustainable development of land; we want to include community purchases of assets or land that help us in that aim, and we are not interested in simply having some means of acquiring assets that do not result in the sustainable development of land. That is why we are still considering the issue and why, I am afraid to say, I cannot give you any more specific examples.

Rachel Rayner: Obviously any regulations made by ministers would have to comply with the European convention on human rights. As you will be aware, article 8 of the ECHR provides a right to respect for private and family life, which would include respect for a person’s home, and that would have to be taken into account were the power to be used.

John Scott: My next question was actually going to be about whether the provision was ECHR compliant. The committee has, in its recent history, dealt with a problem with the legislation relating to 1991 tenancies. You have constantly referred to a transparent and fair process, but in that example there was a judgment by, I think, the Supreme Court that turned on the fact that the legislation was not fair to both parties. I trust, therefore, that this legislation will endeavour to be fair to all sides; otherwise we will be back in the position of making legislation that is subsequently knocked down.
The Convener: Thank you for your answers. Again, we are looking at a fairly wide-ranging piece of legislation that has fairly wide powers. Officials such as you come along, absolutely rightly, and in perfectly good faith, tell us that there is no intention of doing this, this, this and this. We understand that, and it is undoubtedly what the Government wants.

However, once upon a time, there was a principle that we only legislated for what we wanted and the man in the street was defended against the misuse of power because the Government was never given that power. Increasingly, we seem to be looking at legislation that gives Government very wide powers and Parliament is having to trust the Government not to abuse those powers, which is not difficult to do. I am conscious that the specific purpose of everything is in the top line of the bill and we could not use any of the powers in the bill for a purpose that was not within the purpose of the bill. Nonetheless, I get the impression that we are increasingly looking at bills that are just widening the scope of what the Government has within its discretion, and there is part of me, as a parliamentarian, that is slightly worried about that trend. However, as officials, that is not your problem of course.

I am grateful to you for your answers. We now go to a point of detail from Stewart Stevenson.

Stewart Stevenson: Thank you, convener. I want to explore the use of the word “prescribed” in the new section 97N that will be inserted in the 2003 act by section 48 of the bill. Section 98 of the 2003 act says:

“prescribed” means prescribed by regulations made by Ministers.

However, the new section 97N uses the word “prescribed” on a number of occasions, particularly in section 97N(1), which says:

“Ministers may by regulations make provision for or in connection with prohibiting, during the prescribed period, prescribed persons from transferring”

and so on. It is not clear in the written answers that we have got that “prescribed period” and “prescribed persons” are subject to the definition in section 98 of the 2003 act and it will therefore have to be made clear through secondary legislation what the “prescribed period” and the “prescribed persons” are.

Rachel Rayner: Perhaps I can help you with that. We agree that “prescribed” will mean “prescribed by regulations made by Ministers” and that is what is intended in new section 97N. The use of the term “prescribed” that you have given will definitely be in regulations. The provision that you read out is a regulation power. Ministers may make regulations and those regulations may set out the period for which the restriction on a transfer of land may apply, and they may set out who can be restricted from transferring land. Those matters will be in regulations under section 97N(1) or 97N(3), both of which attract the affirmative procedure.

Stewart Stevenson: New section 97N(2)(b) mentions “prescribed persons” and “prescribed circumstances”, section 97N(2)(c) mentions “prescribed circumstances” and “prescribed information”, section 97N(3) mentions “prescribed period”, and section 97N(4) mentions “prescribed circumstances”. You are therefore confirming that, in each and every instance in new section 97N, the use of the word “prescribed” is as described in section 98.

Rachel Rayner: Yes. For example, new section 97N(2) sets out further detail of the regulations that may be made under section 97N(1). The same applies for section 97N(4), which has details about the provisions that may be made in regulations under section 97N(3). I can confirm that those examples you give will be matters in regulations.

Stewart Stevenson: Section 97N(3) uses the word “prescribed” without making backwards reference to section 97N(1).

Rachel Rayner: Section 97N(3) is a separate power. Section 97N(1) is about a power to make provision about restricting transfers of land during an application process. Section 97N(3) is about suspending rights over land such as, for example, possible rights to buy or pre-emption rights. That is a separate power in section 97N(3) and section 97N(4) provides further detail about that.

Stewart Stevenson: Right—I understand that. Let me test our mutual understanding of the issue by asking how many powers you think new section 97N creates for ministers to provide secondary legislation.

Rachel Rayner: In practice, I think that it provides two powers, because although the details about the prescribed period and the prescribed persons will have to be set out in regulations, they will all fall within regulations that are made under subsections (1) or (3).

Stewart Stevenson: What about “prescribed circumstances”, which is mentioned in subsection (4)?

Rachel Rayner: That is the same, because it relates back to regulations that are made under subsection (3). I would be happy to put the matter in writing if that would be of assistance.

Stewart Stevenson: It would be of assistance to me; the convener will decide whether it is of assistance to the committee. It is right to flag up
the issue. It is technical, but we will have to be satisfied that we understand what we have been told today and what you subsequently write to us. At present, until we discuss the issue, we probably remain a little uncertain as to the effect of the use of the word “prescribed”.

The Convener: If you are able to set that down in writing, Ms Rayner, that would be helpful, not least because it would absolutely guarantee to you and your colleagues that you really have got it. I do not doubt you.

Rachel Rayner: Certainly—I am happy to do so.

Stuart McMillan: Section 54(1) gives the Scottish ministers a power to make further provision by regulation about asset transfer requests. The Government has explained that the power has been drawn relatively widely to allow for flexibility in the making of regulations relating to asset transfer requests. However, the committee still seeks clarity on the power. For example, could the power be used to make any further provision as long as it is about asset transfer requests?

Ian Turner: I think that that is for me again.

You are correct that the power has been deliberately drawn widely to deal with asset transfer requests—it is wide in the sense that it deals with that part of the bill. The detail that is set out in section 54(2) provides an indication of the areas in which we think the provision will mostly be used: the manner of requests; the procedures to be followed; and the information to be included on requests. However, section 54(2) does not provide an exhaustive list and issues might emerge during consultation on the regulations or during practice and in the light of experience. Potential problems or issues might arise that require regulations to do with asset transfer requests as a whole, which is why we think that the power might be useful. It is to ensure flexibility of approach.

Stuart McMillan: Has consideration been given to restricting the power in a way that still allows a degree of flexibility?

Ian Turner: Not at the moment, although we are happy to consider any improvements that could be made to the bill. Because asset transfers happen at the moment and we are putting in place a statutory framework for what they can do, issues might arise in the way in which the provisions are used by community transfer bodies or public sector organisations. We want to ensure that, without having to return to the bill as a whole, we can deal with some of those problems, if they arise, through regulations.

Stuart McMillan: Scotland is made up of a wide variety of communities. My take on what you have said is that the flexibility is to allow for, say, an island community to go through an asset transfer request process that might be somewhat different from the process in the likes of Glasgow, Edinburgh or Dundee. Is that correct?

Ian Turner: That is potentially the case. We want the process to be as consistent across Scotland as possible, but there might be instances in which communities require different things to get their transfer application going and into the procedure as defined by the bill. Often, such issues are about the pre-transfer process, and are to do with setting out the business case, how the community wants to use the asset, how it will maintain the asset and the income streams that there might be. That is probably not the sort of thing that we are talking about in the bill; it is probably to do with other guidance and funds that might be available to community transfer bodies.

Stuart McMillan: Is “probably” an accurate word to use, or should it be “definitely”?

10:45

Ian Turner: The word is probably “probably” at this stage.

Richard Baker (North East Scotland) (Lab): My questions relate to sections 58(4) and 59(4), which concern the powers that are laid out in sections 58(3) and 59(3). We asked you in correspondence about those powers and about why it is deemed appropriate for appeal procedures to be left to the discretion of the Scottish ministers or local authorities. Will you explain further which aspects of appeals or reviews the Government considers might be subject to the discretion of the Scottish ministers or local authorities?

Norman Macleod (Scottish Government): What exactly the regulations will contain has yet to be formulated, but there are powers to make regulations in connection with procedure. The provisions in the bill mirror closely the provisions that apply to appeals under planning legislation. Parallels with that can be drawn: the processes will be set out in the regulations under the bill, and the discretionary element will be up to the decision maker, who will decide in each case which of the processes should apply and how they will apply within the flexibility that the regulations allow. The model that is being used works in exactly the same terms for all appeals under planning and listed buildings legislation.

Richard Baker: Is that why the Scottish Government believes that it is adequate to leave the appeal procedures to the discretion of ministers or local authorities rather than to specify them in subordinate legislation?
Norman Macleod: I will give a more concrete example. The purpose is to allow the decision maker who is faced with determining the appeal or review to choose the process that they consider is best suited to enabling them to have in front of them the information that they need to reach a decision. Typically, that might involve a choice between using a written submissions procedure, which is likely to be set out in the regulations, or a hearings procedure, for which a process will be set out in the regulations.

Richard Baker: Why is the negative procedure considered appropriate, given that aspects of appeals and reviews will be left to the discretion of ministers or local authorities? Did you consider using the affirmative procedure?

Norman Macleod: The negative procedure is fairly standard for such procedural regulations. All the regulations on planning appeals are subject to negative resolution.

Ian Turner: We want the process to be as transparent, effective and efficient as possible. We have talked about having a fair process for all parties; that applies to the appeal procedures, too.

The Convener: Are we clear that the appeal process will be sufficiently disconnected from the Government to satisfy the requirement of being fair? When one party—the Government or a public organisation—is in any sense involved in the appeal process, it is always a worry that the process might be perceived to be biased in that body’s direction. Are we clear that the process will be adequately independent?

Ian Turner: The bill does not change much, as the decision maker is the authority in the end. The appeal process reviews the process that the authority followed. The bill does not change who makes the decision.

The Convener: I take it that the Government’s lawyers are confident that the process will be ECHR compliant.

Norman Macleod: Yes—certainly. We are confident of that. I make the general observation that somebody must be the appellate body. ECHR compliance in such contexts relies on the courts’ oversight. Ultimately, the courts have the power to consider how decisions were made, which makes any such administrative decisions ECHR compliant.

John Scott: Throughout the bill, there is a far greater assumption of powers by the Scottish ministers. Usually the sort of appeals that we are talking about are decided by the Scottish ministers. Unless I am missing the point, there is an inherent contradiction in there.

Norman Macleod: I do not see the contradiction. It might be helpful to draw a comparison with planning appeals. Ministers are the final port of call for planning appeals. There is judicial authority for these powers all being compliant with the ECHR. The reason for that is that the courts have the oversight necessary to ensure that the powers are exercised in accordance with law and through fair and transparent processes.

The Convener: But the potential difference in this case is that, whereas a planning appeal would only allow somebody to use land on the presumption that they owned it by the time that they wanted to use it, we are talking here about the ability to expropriate people’s land, are we not?

Ian Turner: No, not in the asset transfer provisions.

The Convener: Okay.

John Scott: Would it be fair to say that there is a significant assumption of extra powers by the Scottish ministers throughout the bill, without apparent justification—such as in respect of asset transfer and the power of compulsory purchase—along with an apparently reduced level of parliamentary scrutiny? Would that be a fair summary?

Ian Turner: I do not think that that is true in relation to asset transfers. Asset transfers can happen at the moment, and they often do.

John Scott: I mean in the generality. Things that were previously looked at under the affirmative procedure are now to be looked at under the negative procedure. There seems to be a great deal of movement towards that. I am certainly no expert—I am the first to admit that—but it appears to me that the level of parliamentary scrutiny is reducing. Is that a fair comment?

Norman Macleod: It is not, in the context of the question that we were originally asked on section 58.

John Scott: I am sorry—I was widening it out to the generality, rather than asking about the particular. I was perhaps too early in my summary of the points.

Ian Turner: We do not think that there is a general reduction in parliamentary scrutiny. In fact, including a statutory process for things such as asset transfer requests means that there is an increased amount of scrutiny in the process generally.

Richard Baker: I have a final quick question regarding the process and the appeal of decisions. You talked about ECHR compliance, which ultimately would be determined by the courts. It does not strengthen the hand of ministers and local authorities if the process is laid out more
clearly in primary legislation and there is therefore a standard process to follow, rather than what seems to be a potentially quite ad hoc arrangement.

Norman Macleod: There is a power to make regulations to set out processes and how appeals and reviews will be conducted. Those will be set out and transparent. The discretionary element that will not be set out is really a matter of choice in relation to processes, including choices within those processes. There needs to be that flexibility for the system to work efficiently.

Stewart Stevenson: I seek officials’ confirmation about the difference between affirmative and negative instruments. It seems to me that the opportunity for scrutiny is the same for both. What is different is that a negative instrument can have immediate effect, whereas an affirmative instrument requires the consent of Parliament before it has effect. In fact, the distinction between the two lies in when they take effect and the process by which they may be undone, rather than the parliamentary process around scrutiny. Do I have the wrong end of the stick or the right end of the stick?

Norman Macleod: You are absolutely correct. A negative instrument could come into force immediately. Obviously there are rules—for example, there should be a 28-day period before it comes into force—which are normally adhered to. An affirmative order would have to have the Parliament’s approval before it could come into force. How quickly that could happen would be a matter of parliamentary process. No doubt it could happen quickly, and could indeed happen faster than some negative instruments that allow 40 days or more before they come into force. You are quite correct in your understanding.

Stewart Stevenson: In essence, there is no difference in the opportunity for scrutiny.

Norman Macleod: A negative instrument is laid before Parliament, parliamentary committees consider it and it is for members of Parliament to choose whether to have a debate on whether or not it should stand.

Margaret McCulloch (Central Scotland) (Lab): The Scottish Government has explained that the power in section 80(7), which will allow ministers to make further provision in relation to the removal of unauthorised buildings from allotment sites, as provided for in section 80(2), is required in order to allow for flexibility. Can you give more detail on the intended purpose of the power in section 80(7)? In particular, can you provide examples of the types of further provision that the power in section 80(7) may be used to make?

Dr Amanda Fox (Scottish Government): Section 80(7) will permit, but not require, Scottish ministers to expand on the detail in the procedure that is cited in sections 80(5) and 80(6).

On flexibility, the current procedure provides for local authorities to give a period of notice to the tenant and details the tenant’s right to make representations and the local authority’s duty to take account of those representations and inform the tenant of the outcome. The provisions also give the tenant the right of appeal through the sheriff court.

The additional power could be used to add timeframes to those areas that do not already have specified timeframes. For example, it could be used to detail a timeframe in which the local authority might take account of representations. It might also be used to detail the methods through which tenants might make representations. We would expect the power to cover that type of thing.

Margaret McCulloch: When the committee wrote to you to ask that question, why did you not provide that level of detail when you wrote back?

Dr Fox: I do not know why we failed to provide that level of detail. I can only apologise for that.

Margaret McCulloch: Can anybody else answer that question?

The Convener: I think that a point has been made there.

We have covered everything that the committee wants to consider at this stage. I thank the team for its extensive answers and its patience with us.

I suspend the meeting to enable everybody to change places.

10:58

Meeting suspended.
Nigel Don MSP  
Convener  
Delegated Powers and Law Reform Committee  
The Scottish Parliament  
EDINBURGH  
EH99 1SP  
By email: DPLR.Committee@scottish.parliament.uk

/9 December 2014

Dear Nigel

COMMUNITY EMPOWERMENT (SCOTLAND) BILL

I write in response to the Report of the Delegated Powers and Law Reform Committee on the Scottish Government's Community Empowerment (Scotland) Bill. I would like to thank the Committee for the time and effort you have put into producing this report.

National Outcomes

34. The Committee considers that it would be appropriate for the setting and review of the national outcomes to be subject to the scrutiny of Parliament, possibly through scrutiny of regulations subject to the affirmative procedure. A more active scrutiny role for the Parliament appears to be justified having regard to the significance of the national outcomes, the discretion afforded to the Scottish Ministers in deciding how the outcomes are presented and measured, and the fact that all public bodies and other persons carrying out functions of a public nature as described in section 1(1) would require to have regard to the outcomes.

We note the Committee recommendation that the setting and review of the national outcomes should be subject to the scrutiny of Parliament, possibly through scrutiny of regulations subject to the affirmative procedure.

We agree with the Committee's recommendation that Parliament should have a more active scrutiny role in relation to national outcomes, but do not consider that regulations would be appropriate in this context. Instead we propose to bring forward amendments to require Scottish Ministers to consult the Parliament, using the procedure provided for under rule 17.5 of the Standing Orders.

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Powers to add or remove bodies

43. The Committee calls on the Scottish Government to amend the Bill at Stage 2 so as to make the powers in sections 4(6) and 8(3) subject to the affirmative procedure when exercised so as to add bodies to the lists in schedule 1 or section 8(2) respectively. The Committee also recommends that the powers in sections 16(3) and 51(3) be made subject to the affirmative procedure.

We note the Committee recommendation to amend the Bill at Stage 2 so as to make the powers in sections 4(6), 8(3), 16(3) and 51(3) subject to the affirmative procedure. We agree with the Committee recommendation and will bring forward amendments at Stage 2.

Power to issue guidance

53. The Bill also makes no provision for an enforcement mechanism, to enforce compliance with the guidance. The guidance must cover matters “about the carrying out of functions conferred on community planning partners and partnerships under Part 2 of the Bill”. This is a broad requirement and the Bill makes no provision for a scrutiny or review mechanism, to review whether any automatically binding matters which may be specified in the guidance are properly included, because they concern the carrying out of functions conferred in Part 2 of the Bill.

54. These concerns would not apply if, in a similar way to the existing provision for guidance in section 18 of the Local Government in Scotland Act 2003, there was provision that community planning partners and partnerships would “have regard to” the guidance.

We note the Committee concerns with section 10 and the recommendation that these concerns would not apply if there was provision that community planning partners and partnerships would “have regard to” the guidance rather than have to comply with the guidance. We agree with the Committee recommendation and will bring forward an appropriate amendment at Stage 2 to replace “comply with” with “have regard to”.

Eligible Land

66. The Committee draws the power in the new section 97C(3)(a) of the 2003 Act to the attention of the Local Government and Regeneration Committee on the basis that it has concerns about the scope of the power and its intended use.

We note the Committee concerns with section 97C(3)(a). On 10 December the Cabinet Secretary for Rural Affairs, Food and Environment gave evidence on the Bill to the Rural Affairs, Climate Change and Environment Committee. Regarding this provision the Cabinet Secretary commented that he was reviewing the power and reflecting on the comments that the committee had received and made it clear that if the Rural Affairs, Climate Change and Environment Committee has specific views on the delegated power and how it should be used he would welcome that.
Effect of Ministers' decision on right to buy

80. The Committee considers that if the use of the word “prescribed” in section 97N is not intended to confer separate and free-standing powers to make subordinate legislation, the Bill should be clarified for Stage 2 so as to remove the scope for doubt over the interpretation of the section and the powers it confers by re-drafting the provision so as to remove the references to “prescribed”.

We note the Committee concerns on the use of the word “prescribed” in section 97N. We are looking at how we might redraft this section to remove the scope for doubt over the interpretation of the section.

I trust this is helpful and remain very grateful to you and the members of your Committee for their work on this Bill. I am copying this letter to Kevin Stewart MSP and Rob Gibson MSP as Conveners of the Local Government and Regeneration Committee and Rural Affairs, Climate Change and Environment Committee respectively.

MARCO BIAGI
Dear Rob

At its meeting today the Committee considered the Scottish Government’s response to its stage 1 report on the Community Empowerment (Scotland) Bill.

In so doing the Committee welcomed the Scottish Government’s commitment to amend the Bill in a number of respects.

However, the Committee remains concerned by the power in the new section 97C(3)(a) of the Land Reform (Scotland) Act 2003 and continues to find the explanations provided in justification of what is a very significant power to be unsatisfactory.

As you know, section 97C(3)(a) provides that eligible land for the purposes of acquisition does not include land on which there is a building or structure which is an individual’s home, unless the building or structure falls within such class or classes as may be prescribed. The word ‘prescribed’ adopts the definition set out in section 98(1) of the 2003 Act, meaning “prescribed in regulations made by the Scottish Ministers”. The effect of section 97C(3)(a), therefore, is that Ministers may make regulations prescribing buildings or structures which are eligible for acquisition by a Part 3A community body.
The Committee was concerned, and remains concerned, that this power permits the Scottish Ministers to make regulations prescribing buildings or structures which are eligible for acquisition by a Part 3A community body notwithstanding the fact that such buildings or structures may be described as an individual’s home.

In its stage 1 report the Committee noted that neither the DPM nor the Scottish Government’s responses to the Committee’s questions, both written and oral, offered a clear explanation as to the reasons for taking this power, or how the power is intended to be exercised. Furthermore, the Scottish Government did not provide the Committee with any examples of the kinds of building or structure that may be prescribed in regulations made in exercise of this power.

In our view the uncertainty around this power and its exercise has not in any way been assuaged either in the evidence given by the Cabinet Secretary for Rural Affairs, Food and Environment to your Committee or in the Scottish Government’s response to our stage 1 report on the Bill.

In the Cabinet Secretary’s evidence to your Committee he explained that the purpose of the power in section 97C(3)(a) is to give Ministers the opportunity to exclude land from the right to buy, and that the obvious case in point would be a person’s home.

The Committee considers, however, that the power in section 97C(3)(a) is not a power to exclude certain land from the scope of the new Part 3A, but rather enables Ministers to make regulations the effect of which is to include land on which there is an individual’s home within the scope of land which could be deemed to be eligible for acquisition by a Part 3A community body. In the Committee’s view, the power enables the general exemption for land comprising individuals’ homes to be disapplied for the particular categories or descriptions of land which may be prescribed using this power.

The Committee maintains that it is unsatisfactory that the Parliament is being asked to confer a power of this significance upon the Scottish Government in the absence of a detailed explanation as to why it is necessary or what it is for and in circumstances where the thinking underpinning the power appears to be in the early stages of development.

The Committee appreciates the efforts of your Committee to pursue this matter. The Committee re-emphasises its concerns about the power and asks that you continue to pursue them with the Scottish Government.

Please note that we also intend to write to the Scottish Government reiterating our substantial concerns about this power and again inviting it to reflect on the scope and use of this power.

If I or the Committee can be of any assistance to you in your deliberations on this power, we would be very willing to assist.

Nigel Don MSP
Convener
INTRODUCTION

1. The Community Empowerment (Scotland) Bill (“the Bill”) was introduced on 11 June 2014 by the Scottish Government (“the Government”). As with all bills, it was accompanied by a Financial Memorandum (FM) (page 51 of the Explanatory Notes) which set out the estimated financial implications of the Bill’s provisions.

2. Under Standing Orders Rule 9.6, the lead committee at Stage 1 is required, among other things, to consider and report on the Bill’s FM. In doing so, it is required to consider any views submitted to it by the Finance Committee (“the Committee”).

THE BILL

3. The FM states that the Bill “reflects the policy principles of subsidiarity, community empowerment and improving outcomes” and provides a framework which will—

   - empower community bodies through the ownership of land and buildings and strengthening their voices in the decisions that matter to them; and
   - support an increase in the pace and scale of public service reform by cementing the focus on achieving outcomes and improving the process of community planning.”

4. The FM states that it sets out the costs associated with the following parts of the Bill—

   - **Part 1** places a duty on the Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, which builds on the Government’s internationally acclaimed “Scotland Performs” framework.
   - **Part 2** places community planning partnerships (CPPs) on a statutory footing and imposes duties on them around the planning and delivery of local outcomes.
   - **Part 3** provides a mechanism for communities to have a more proactive role in having their voices heard in how services are planned and delivered.
   - **Part 4** amends Part 2 of the Land Reform (Scotland) Act 2003, extending the community right to buy to all of Scotland, and introduces a new Part 3A to that Act to make provision for community bodies to purchase neglected and abandoned land where the owner is not willing to sell that land.
   - **Part 5** provides community bodies a right to request to purchase, lease, manage or use land and buildings belonging to local authorities, Scottish public bodies or the Scottish Ministers.
   - **Part 6** places a statutory duty on local authorities to establish and maintain a register of all property held by them for the common good and requires local
authorities to publish their proposals and consult community bodies before disposing of or changing the use of common good assets.

- **Part 7** updates and simplifies legislation on allotments. It requires local authorities to take reasonable steps to provide more allotments if waiting lists exceed certain trigger points and ensures appropriate protection for local authorities and plot holders.

- **Part 8** provides for a new power which will allow councils to create and fund their own localised business rate relief schemes to better reflect local needs and support communities.

5. A table summarising the additional costs expected to arise as a result of the Bill's provisions is provided on pages 52 to 60 of the FM.

**EVIDENCE**

6. The Committee received 16 responses to its call for evidence on the FM, around half of which were from local authorities. Responses were also received from organisations including COSLA, Highlands and Islands Enterprise (HIE), NHS Lothian, The Office of the Scottish Charities Regulator (OSCR), the Scottish Environmental Protection Agency (SEPA), the Scottish Property Federation (SPF) and SportScotland. All written evidence is available on the Committee’s website.

7. The Committee also received a letter dated 3 October 2014 \(^1\) from the Minister for Local Government and Planning (“the Minister”) which provided further financial information with regard to forecasting the use of participation requests and asset transfer requests.

8. The letter highlighted the difficulties the Government and stakeholders had faced in estimating the financial impacts of the Bill, but provided “examples based on current practice to show the level of resource and costs that may be involved in both participation requests and asset transfer requests.”


**Issues highlighted in evidence**

10. A number of written comments were received in respect of specific aspects of the Bill and their estimated financial impacts as set out in the FM. The Committee then raised a number of these points in its oral evidence session with the Bill Team.

11. However, several respondents also commented on the possible financial implications of the Bill as a whole and expressed concerns regarding its overall

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\(^1\) Letter to Convener from Minister for Local Government and Planning dated 3 October 2014
impact on their budgets. Given that some of the Bill’s costs are expected to be demand driven, the Committee notes that the FM does not fully quantify the total estimated financial implications of the Bill.

**General Comments**

12. A number of general comments about the FM were received with several respondents acknowledging the difficulty in predicting demand. HIE for example, stated that—

“The FM makes a good ‘estimate’ of ‘unit costs’ for aspects of the Bill’s delivery, in many cases providing ranges where those are informative, however, the inability to profile demand take up makes it impractical for the FM to estimate the total costs that might be expected in say the first three years of operation.”

13. Several local authorities, however, foresaw difficulties in meeting the costs of the Bill and called for additional resources from central government. East Lothian Council for example, stated that—

“Local government will incur extra cost as a result of these provisions (which constitute a new legislative burden) and it is not possible to allocate money to these costs from within our budgets without taking it from other activities. We would expect central Government to add to our settlement any money necessary to fulfil the provisions of the Bill.”

14. Glasgow City Council echoed this view stating that likely additional costs on local authorities were not quantified to any reliable extent in the FM due to difficulties in predicting demand and activity. However, it stated “that the costs will be significant and that local authorities will find it challenging to meet these costs from existing resources.”

15. Inverclyde Council also stated that there was “no evidence” to support the FM’s assertion that costs, in many cases, would be minimal and able to be contained within existing budgets. In its view, this was “not the case” and there was no additional fund within the Council to absorb any demand.

16. Similar suggestions that additional resources would be required to implement the Bill’s provisions were made by other respondents including North Lanarkshire Council and North Ayrshire Council which stated that—

“Where costs have been included in the narrative the ranges are sufficiently wide to accommodate a huge amount of uncertainty. However in other

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2 Highland and Islands Enterprise, written submission
3 East Lothian Council, written submission
4 Glasgow City Council, written submission
5 Inverclyde Council, written submission
sections there is no mention of costs but it does mention there will be additional costs incurred. The implication is that the additional costs will be minimal but there is uncertainty that is not addressed in the bill.\textsuperscript{6}

17. However, North Ayrshire Council also stated that “in the main the council was in agreement with the financial implications contained in the Bill.”

18. COSLA also acknowledged the difficulties in quantifying demand—

“it is difficult to anticipate the uptake and demand that will be placed upon Local Authorities. This makes it very difficult to quantify the financial cost that will be placed upon local government in complying with the legislation and indeed the Financial Memorandum makes no attempt to quantify a cost for these areas of the proposed legislation...

COSLA seeks reassurance that further work be undertaken to better quantify these costs before the Community Empowerment (Scotland) Bill is passed.”\textsuperscript{7}

19. When asked about the work it had undertaken to attempt to anticipate demand and to ensure local authorities are adequately resourced to effectively deliver the Bill’s measures, the Bill Team explained that work had been undertaken prior to publication of the Bill. However, it stated that “little financial information and cost information was provided by others” in response to its consultations and it had “found it difficult to amass information on how the legislation might be used” meaning that “it was difficult to consider what demand might be.”\textsuperscript{8}

20. The Bill Team explained that, as communities are not homogenous and will have different priorities and needs which could not be amalgamated into a single demand profile, it “will be hard to predict what communities will do.” It further pointed out that “no one else has been able to do it either.”\textsuperscript{9}

21. In response to concerns expressed by the Committee that the Bill might raise expectations where there was insufficient support available to meet them, the Bill Team explained that, the Government had a general convention that it would provide additional funding where new costs had arisen from legislation. However—

“The difficulty with the bill is that we cannot quantify that funding at the moment. That additional funding would need to be demonstrated and quantified through practice. That would happen through the normal processes and the funding would be provided in that way.”\textsuperscript{10}

\textsuperscript{6} North Ayrshire Council, written submission
\textsuperscript{7} COSLA, written submission
\textsuperscript{8} Scottish Parliament Finance Committee, \textit{Official Report, 8 October 2014, Col 48}
\textsuperscript{9} Scottish Parliament Finance Committee, \textit{Official Report, 8 October 2014, Col 48}
\textsuperscript{10} Scottish Parliament Finance Committee, \textit{Official Report, 8 October 2014, Col 49}
22. When questioned about how the funding mechanism would work, given the impossibility of estimating figures, the Bill Team replied—

“We cannot say at this time. If local authorities can demonstrate and quantify what the new duties in the bill have cost them, that will be part of the ongoing process of local authority settlements.”  

23. Given that the Bill was expected to take effect during financial year 2015-16 and the draft budget for that year was expected to be published imminently, the Committee asked how much would be set aside to cover the costs of the Bill’s provisions. In response the Bill Team stated—

“We are not anticipating any particular financial burden in 2015-16. COSLA is right to say that it will not be overly onerous and therefore could be encapsulated within current resources. However, we recognise that additional funding might be required in the future.”

24. When it was pointed out that COSLA’s position appeared to be that whilst the costs of the Bill’s individual elements might not be overly onerous, overall costs had the potential to be so, the Bill Team acknowledged this point but stated that it did not agree that overall costs had the potential to be significant. It confirmed that it believed that—

“the cost can be managed within current resources, with some addition if the demand is more than local authorities can cope with.”

25. In the event that costs did turn out to be greater than expected as a direct consequence of the Bill, The Bill Team confirmed that—

“That would be part of the normal discussions with local authorities through the annual budgeting process. Local authorities would have to demonstrate and quantify what was involved and then go into discussions with the Scottish Government.”

26. However, the Bill Team further stated that it would be for the Minister for Local Government and Planning to respond more fully to this question.

27. The Committee invites the lead committee to seek clarity from the Minister regarding whether and by what mechanism additional funding will be made available for local authorities should they incur significant additional costs as a result of the Bill.

28. With particular regard to Parts 3 and 5 of the Bill, the lead committee may wish to explore the issue of how the Government can be confident that any

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11 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 54
12 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 55
13 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 55
14 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 55
additional costs can be managed within current resources, given that costs are expected to be demand driven.

29. In response to questions from the Committee about whether there was a risk that, had the FM presented more concrete estimates of potential demand and costs, these might have been seen as “an upper limit for how much could be done”, the Bill Team agreed—

“Absolutely: demand will be led by communities, so we cannot work in that way. If we set a limit, that will confine the process and box it in.”

30. Expanding on this point, the Bill Team explained that it did not wish to set a benchmark as “we want the legislation to be successful and we want as many communities as possible to use it—it is for the communities to use and not for us to tell them to use it.”

31. Towards the end of the evidence session, the Committee drew attention to Standing Orders rule 9.3.2 which states that—

“A Bill shall on introduction be accompanied by a Financial Memorandum which shall set out the best estimates of the administrative, compliance and other costs to which the provisions of the Bill would give rise, best estimates of the timescales over which such costs would be expected to arise, and an indication of the margins of uncertainty in such estimates.”

32. When asked whether the FM met these criteria, The Bill Team explained—

“We attempted to include costs in the financial memorandum in a number of places where we believed that we could actually indicate what the costs will be. In some areas, we know that the costs under the current provisions are fairly low, for example, and we therefore have an idea of what the costs may be in the future.

We express a caveat a number of times about the margins of uncertainty, because to attempt to state what the bill might cost in future would be unreasonable and potentially misleading.”

33. Following the oral evidence session the Convener wrote to the Minister seeking an explanation of how the FM met the requirements of Standing Orders and

15 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 52
16 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 52
17 Standing Orders of the Scottish Parliament
18 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 58
19 Letter from Convener to Minister for Local Government and Planning dated 14 October 2014
also of the Scottish Government’s own guidance on Financial Memoranda (SG 2009/1).\textsuperscript{20}

34. The Committee received a letter from the Minister dated 24 October\textsuperscript{21} which confirmed his view that the FM did meet the requirements of Standing Orders and had been conducted in line with the Government’s guidance.

35. The letter highlighted the work that had been undertaken with stakeholders in order to estimate unit costs and noted that the FM had provided examples of costs arising from similar processes—

“Thus the FM and the additional information supplied contains the full range of financial information that can be made available with certainty in relation to this Bill.”

36. However, the letter also stated that “the FM cannot estimate the level of demand for asset transfer or participation requests, and consequently does not provide ranges for the total potential costs of these provisions.” This, the Minister explained, was intended to avoid giving a flawed figure as the variables inherent to the Bill in terms of “the number of requests, their complexity and their distribution over time” “would make a specific figure or range far too questionable.”

37. Therefore, the letter concluded—

“the information provided is clearly the best estimate that can be provided of the administrative, compliance and other costs to which the provisions of the Bill would give rise, the best estimate of the timescales over which such costs would arise and has given a very clear indication of the margins of uncertainty in such estimates.”

38. The Committee acknowledges the difficulties faced in quantifying potential future costs arising from services that will be demand driven. However, the Committee remains concerned that, despite the requirements of Standing Orders, best estimates have not been fully provided.

39. The Committee invites the lead committee to ask the Minister what plans are in place to ensure that any costs arising from the Bill will be monitored on an ongoing basis. It also invites the lead committee to seek clarity regarding the funding mechanism by which resources will be made available to local authorities in the event that such costs prove to be significant.

\textsuperscript{20} Scottish Government Guidance Note 2009/01: Financial Memoranda that accompany Scottish Government Bills

\textsuperscript{21} Letter from Minister for Local Government and Planning to Convener of Finance Committee dated 24 October 2014
Part 2: Community Planning

40. The FM states that the Bill seeks to strengthen CPPs by placing new duties on public sector partners “to play a full and active role in community planning and the resourcing and delivery of local priority outcomes.” It explains that some of these bodies are already statutory community planning partners, whilst others are not, although in practice they “frequently participate in community planning.”

41. The FM states that “for those public bodies which are complying with national and local action already underway at policy level to strengthen community planning it is anticipated that the provisions will impose either no or minor costs” (such as costs relating to travel or staff time).

42. Similarly, the FM states that “for those local authorities which are complying with national and local action already underway at policy level to strengthen community planning, it is anticipated that the provisions will impose either no or minor additional indirect costs, in terms of commitment by senior officers and elected members.”

43. COSLA’s written submission agreed that any additional costs arising from this part of the Bill “would appear to be minimal.”

44. SEPA expressed surprise that it had been designated as a public body for community planning and expressed concerns about “false expectations that SEPA will fully engage with all CPPs in Scotland” stating that this would be “highly resource intensive and not cost neutral”, especially if it did not “have the flexibility to tailor our engagement with different CPPs, and to deploy our limited resource where we can add the most value.”

45. The Bill Team confirmed that SEPA would be a partner to the 32 CPPs across Scotland, but pointed out that the Bill did not stipulate what the level of engagement with each CPP should be. Therefore, “how SEPA engages will be flexible and will be decided in collaboration with CPP partners, so we do not necessarily see the same resource issues as SEPA does.”

Part 3: Participation Requests

46. The FM states that the Bill will enable community bodies to seek to participate, along with a public body, in a process to improve the outcome of a service delivered by that public body. Public bodies will only be able to decline a request for dialogue where there are “reasonable grounds” to do so and will be required to publish a report at the end of the process.

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22 COSLA, written submission
23 Scottish Environmental Protection Agency, written submission
24 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 50
47. The FM acknowledges that public bodies (including local authorities) are likely to incur costs in responding to participation requests. However, it provides no estimates of what these potential costs might be, stating that “the costs will depend on how often community participation bodies use the provisions and at this stage it is difficult to forecast use across Scotland.”

48. Expanding on this point in oral evidence, the Bill Team gave the example of one local authority area where demand for participation requests might be very low as the public authorities were already excelling in public engagement and participation as opposed to another area which might have low demand as a result of lack of capacity in the community. This scenario, it suggested, highlighted the difficulties in attempting to estimate the demand profile across Scotland.

49. The Bill Team also suggested that demand might increase over time as communities became increasingly aware of their new rights—

“When people see such requests being used, they might catch on. If people see them having an impact in their local area, demand may increase from that. It all depends on what communities want to do and how they want to use the provisions.”

50. In response to questioning as to why other FMs previously scrutinised by the Committee where costs were also expected to be demand driven had set out approximate upper and lower limits, albeit with appropriate caveats, yet this one did not, the Bill Team explained that any such ranges would “be too large to be considered worthwhile.” Levels of demand, it stated, would only be seen when the Bill took effect.

51. Expanding on this, the Bill Team continued—

“There are too many variables to factor into what would be a reasonable demand profile, or a reasonable idea of how many requests could come forward. We have gone back to what the unit cost might be and, as COSLA says, it is not overly onerous.”

52. When asked to give an example of a piece of previous legislation for which the costs had been similarly unquantifiable the Bill Team confirmed that it had looked but had been unable to find a similar example.

53. The letter from the Minister dated 24 October explained that “there is no existing community-led mechanism comparable to participation requests on which to

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26 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 53
27 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 54
base estimates of demand” and highlighted the uncertainties over uptake of participation requests and the work required to respond to them. 28

54. The Committee acknowledges the difficulty in providing concrete estimates of services that will be demand driven but emphasises that Standing Orders require FMs to provide best estimates of costs, their timescales and margins of uncertainty.

55. The FM also states that public bodies (including local authorities) will incur costs in relation to the provision of an outcome improvement process, although again, no estimates are provided. Two examples of the costs incurred by a local authority in relation to community engagement events (ranging from £1,100 to £41,000) are provided with the FM stating that they mainly related to staffing costs.

56. HIE agreed that there were “inevitable uncertainties” associated with the extent to which communities would seek to utilise the opportunities presented by the Bill, but anticipated that communities in its area would wish to engage strongly and utilise the new powers conferred by it. However, with regard to participation requests it expected that it would be able to absorb them “to a large extent within the costs of staff time currently devoted to on-going business improvement activities.” 29

57. COSLA’s submission drew parallels between the potential impact of participation requests and that of the existing Freedom of Information laws and expressed concerns about the associated administrative burden. However, the Bill Team stated that the Bill was not directly comparable to the Freedom of Information Act 2000 as it applied to everyone whilst participation requests would only apply to community bodies which met the criteria set out by the Bill. Furthermore, any such requests would then be assessed against certain criteria meaning that demand would be more limited.

Capacity Building

58. A number of respondents raised the topic of “capacity building” in community bodies with NHS Lothian, for example, suggesting that the FM’s costs were “arguably understated” and noting that its original consultation response had stated that—

“community bodies may not possess the relevant skills, experience or knowledge to allow them to be meaningfully or effectively involved. Public service authorities would therefore need to consider how they could provide support for capacity building. This could add pressure to public service authorities from an already under-resourced position,… There does not seem to be consideration in the bill that addresses the inevitable financial

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28 Letter from Minister for Local Government and Planning to Convener of Finance Committee dated 24 October 2014
29 Highland and Islands Enterprise, written submission
and capacity implications of participation for community bodies in the improvement process."\textsuperscript{30}

59. NHS Lothian also drew attention to the impact of the Bill in terms of tackling inequalities in Scotland, stating that—

“there needs to be specific regard made to what support infrastructures are in place to empower our less equipped communities, if not, the bill will further increase the inequalities gap between communities, some of whom are well equipped and able to articulate their needs while some will struggle to be heard/access this empowerment opportunity.

Without appropriate support and investment in community empowerment the key components of the Bill will not be fairly accessible to communities (both geographic or communities of interest).”\textsuperscript{31}

60. East Lothian Council stated that, in order to assist community groups to develop the capacity to take on the opportunities and challenges represented by the Bill, appropriate consideration should be given to the provision of adequate resources nationally “rather than assuming that local authorities will be able to find the resources from current spending allocations.”\textsuperscript{32}

61. This view was echoed by South Lanarkshire Council, which suggested that additional resource was required to establish appropriate structures and to support CPPs in maximising the Bill’s impact.

62. However, the Bill Team stated in oral evidence, that whilst it agreed that “communities are not necessarily on a level playing field”, it did not believe that this was a matter for the Bill. Whilst the Bill provided a legal framework for such requests, support for capacity building in community bodies was provided through different avenues such as the Strengthening Communities Fund announced in April.\textsuperscript{33}

63. South Lanarkshire Council also sought clarification of the definition of a community body, questioning whether such bodies were “restricted locally” or whether national organisations were also covered by the provisions. In the event that the latter was the case, it suggested it could be left open to “vast quantities of requests” leading to substantial costs which it was not resourced to deal with. It also expressed concerns that it could face further substantial costs if the outcome of the improvement process was that it had to “markedly change the way in which it sets its priorities and delivers services.”\textsuperscript{34}

\textsuperscript{30}NHS Lothian, written submission
\textsuperscript{31}NHS Lothian, written submission
\textsuperscript{32}East Lothian Council, written submission
\textsuperscript{33}Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 49
\textsuperscript{34}South Lanarkshire Council, written submission
64. **The Explanatory Notes** state that—

“There are no restrictions on how a community may be defined for this purpose: it may be based, for example, on geographical boundaries, common interests, or shared characteristics of its members (such as ethnic background, disability, religion, etc.).

65. **The lead committee may wish to invite the Minister to respond to the concerns raised by South Lanarkshire Council regarding the definition of a community body.**

66. Fife Council also suggested that consideration might need to be given to levels of staffing needed to take on the organisation, assessment, and administration of additional requests from community groups. Whilst acknowledging that any investment in additional staffing might not be significant in terms of its overall budget, it noted that specific services such as Community Learning and Development were already under pressure as a result of having to respond to requests from local groups.

67. The letter from the Minister dated 3 October provided examples showing that the overall costs for participation and engagement events could vary depending on the issues being looked at. It suggested that this was also likely to be the case with regard to participation requests and on this basis, estimated that costs per request could range between £1,000 and £7,500 “in most cases”. Therefore, should there be 100 participation requests across Scotland, the total cost could be expected to be between £100,000 and £750,000.

**Part 4: Community Right to Buy Land**

68. The FM states that the Bill makes changes to community right to buy (CRTB) in order “to make the process easier and more flexible for communities while continuing to strike a fair balance between the rights of communities and landowners.” The FM further states that the Bill extends the right to buy to all of Scotland and removes the power of Ministers to designate “excluded land”.

69. Whilst the FM acknowledges that these changes could be expected to lead to more communities taking up the right to buy, it states that “it is not possible at this stage to accurately estimate the demand and how many new applications may be received.”

70. HIE agreed that it was difficult to quantify the likely increase in demand, but suggested that the extension of the right was “likely to generate significantly more CRTB applications” than anticipated with the attendant increase in costs to the Government. Whilst the FM does not make concrete predictions of the likely increase in CRTB applications, it provides examples on the basis of increases of five and ten

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35 [Fife Council, written submission](#)
36 [Letter to Convener from Minister for Local Government and Planning dated 3 October 2014](#)
additional applications per year which HIE suggests is “on the conservative side”, particularly given the extension of the provisions to urban communities. This point was echoed by the SPF which questioned whether this assumption could “remain credible.”

71. The Bill Team agreed that HIE could expect more work as a result of the Bill, but stated that it would have “a certain amount of flexibility” in how it assisted communities. When communities come to HIE, it suggested that —

“the process will not be about engagement and consultation through HIE’s mechanisms; it will be about what the communities want to do.”

72. The Committee acknowledges that bodies such as HIE will have some flexibility in how they deal with increased volumes of CRTB applications. However, the lead committee may wish to seek further clarity over what support might be put in place for such bodies in the event that demand exceeds expectations.

73. Glasgow City Council stated that the FM “wrongly suggests that there are no financial implications for local authorities in relation to right to buy.” It expected costs to arise as a result of the council “putting a process in place and of utilising resource from a range of services in order to enable a response to be made within a very short timescale” where the request relates to its land or that of an Arms Length External Organisation. It also raised the issue of possible financial implications “in the circumstance where the proposed acquisition may deal with a short term issue but is not aligned to the Council’s longer term strategy.”

74. The SPF also suggested that the Bill might result in costs relating to events that did not happen or were delayed as a result of CRTB, for example where funding or investment was available for a limited time only and financial losses might be incurred as a result of delays resulting from CRTB applications.

75. Expanding on this point the SPF stated that its main concern was —

“that the enhanced scope of CRTB and by extension asset transfer may inhibit larger scale and complicated investment in development land in a manner that has not hitherto been an issue under the existing CRTB rights.”

76. However, the Bill Team rejected this suggestion, explaining that similar concerns had been expressed during the passage of the Land Reform (Scotland) Bill, but they had not come to fruition. It further explained that in the event that community applications were made with the intention of inhibiting large-scale

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37 Highland and Islands Enterprise, written submission
38 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 51
39 Glasgow City Council, written submission
40 Scottish Property Federation, written submission
projects, it was unlikely that they would meet the public interest case set out in the Bill.

77. When asked whether it was correct that “the community land fund was established with a finger in the air to make a judgment, because nobody knew how many communities would apply or register interest in land” the Bill Team confirmed that it understood that to have been the case, although it did not know how the figure was arrived at.41

78. The Committee invites the lead committee to seek clarification of how the community land fund’s budget was arrived at and to consider what parallels can be drawn between it and funding for CRTB in the context of the Bill.

79. A further point raised by the SPF was the lack of a clear explanation of how the expansion of CRTB inter-relates with the Government’s guidance on what is known as “the Crichel Down rules” and the potential for costs in the event of a challenge under them. It explained that—

“This is where land has been compulsorily purchased by a public authority but is then surplus and subject to disposal by the public authority in question. In these circumstances it is government policy for the previous owner to have right of first refusal. We do not see any assessment of the costs of ensuring this guidance is followed or indeed, provision made for where challenges might be made by former owners to the (erroneous) sale of properties to CRTB.”42

80. The lead committee may wish to seek clarification of how the expansion of CRTB might interact with “the Crichel Down Rules”.

81. The SPF also questioned whether NDPBs such as Historic Environment Scotland would “no longer have the same level of protection under the Bill as had been previously envisaged when they were an Agency of Government”, suggesting that were this to be the case, there could be significant financial implications for its estate and for those of other public bodies.

82. A final point raised by the SPF related to what might happen in the event that a community body—

“successfully purchases via CRTB from, for example, a public sector authority but then two or three years later finds it is unable to continue to hold the property and needs to sell the asset on but is unable to. A public authority may well be obliged to resume ownership and we do not see that this has been factored into the financial implications of CRTB or asset transfer.”43

41 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 56
42 Scottish Property Federation, written submission
43 Scottish Property Federation, written submission
83. SportScotland expressed concerns in the context of its duties under funding rules stating—

“We would not wish to see liabilities handed to community groups who then need to seek financial or other support from national organisations such as ours which funding rules do not allow us to give. As a distributor of National Lottery resources, continuing to invest in line with national guidance, we are required to ensure we protect the additionality principle. This means lottery investment adds to, and does not replace, other funding sources, achieving additional impact to what otherwise would have been achieved. Furthermore our standard terms and conditions attached to awards state that lottery monies must be used for the purpose set out in the approved application and are non-transferable. Any proposed disposal of assets wholly or partially acquired, restored, conserved or improved through lottery (or Scottish Government funding) cannot be progressed without first giving us written notification and we are satisfied that full market value is being sought.”

84. The lead committee may wish to seek clarification of how rules relating to lottery funding might impact on CRTB.

Part 5: Asset Transfer Requests

85. The FM states that the Bill seeks to increase the amount of asset transfers from public bodies to community bodies by allowing such bodies to identify for themselves what they wish to achieve and the assets that they wish to acquire. It notes that the service which supports asset transfers was involved in 38 asset transfers from 2011 to 2014 but states that it cannot accurately predict future demand post-implementation.

86. The FM also states that the Government and/or local authority may decide to transfer an asset at lower than its market value following a full cost/benefit analysis which would include predicted future savings.

87. In respect of the Scottish administration and public bodies, the FM states that “the costs of these provisions will depend on the arrangements put in place and any additional costs will be met from existing resources.”

88. The FM provides no estimate of the financial impact of these provisions on local authorities stating that they “were not able to provide monetary estimates for any costs and savings that may arise.” It explains that this was in part due to the difficulty of predicting the number and variety of requests as well as the “complexity in predicting savings associated with better service provision.”

89. As with participation requests, the Bill Team explained that there were too many variables in terms of potential demand to quantify the potential volumes of asset transfers—

44 SportScotland written submission
"As we go forward, we will see what the bill involves, but we cannot give the committee a definite figure for how much it might be used."45

90. East Lothian Council estimated that it would require an additional full-time post costing around £40,000 per annum due to increased workloads arising from asset transfer requests. This additional work would include dealing with enquiries, the provision of detailed information, responding to and processing asset requests, preparing reports and valuations, responding to appeals, and providing plans and information. District Valuer valuations were also estimated to lead to fees of around £5,000 per annum.

91. East Lothian Council also estimated that its legal team could incur costs of between £400 and £1,200 per transaction and that it could spend around £500 each year in dealing with reviews (estimated at four per year).46

92. The letter from the Minister dated 3 October provided further information on the possible costs of dealing with asset transfer requests. In addition to the estimates provided by East Lothian Council, the letter also highlights figures from the Forestry Commission Scotland which indicate that it currently incurs costs of between £7,500 and £12,500 per asset transfer under its National Forest Land Scheme which enables communities to buy or lease Forestry Commission land.

93. The letter also provided a breakdown of the potential costs to community bodies undertaking an asset transfer. This states that “the estimate for community transfer bodies to obtain agreement to transfer is between £13,480 and £25,040.47

94. With regard to overall costs, the Minister’s letter dated 24 October explained that “any estimate or range would be inherently flawed” as a result of uncertainties relating to the complexity of requests and demand over time.48

95. East Lothian Council also drew attention to councils’ duty to secure best value in their activities and to maximise the use of their assets. It pointed out that—

“It may not necessarily be in the best interests of the community as a whole to transfer a surplus building to a community group on request. The community as a whole may be better-served by attracting an economic use of such a building. In other words, there might be both economic and community wellbeing justification in seeking interest from the market to see if we could attract an economic use which would increase footfall and employment in the local area.”49

45 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 54
46 East Lothian Council, written submission
47 Letter to Convener from Minister for Local Government and Planning dated 3 October 2014
48 Letter from Minister for Local Government and Planning to Convener of Finance Committee dated 24 October 2014
49 East Lothian Council, written submission
96. Fife Council agreed that it was “difficult to estimate savings, especially if assets are being disposed at less than market value (as has been the case in transfers to community organisations).” With regard to potential costs it stated that—

“Local Councils may need to develop a cross Service team with a suitable skill mix to fully implement and manage any programme of transfer of assets. There is also an unknown potential cost to Councils as they will require to be reactive to communities’ aspirations. In addition to suitable community work expertise to engage with local organisations, legal, financial and property management skills may be required.”

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97. However, Fife Council did confirm that it did not expect these costs to be prohibitive in terms of implementing the Bill.

98. South Lanarkshire Council also noted that it could incur costs relating to asset transfers where it had to retain a property off market while the process was ongoing. These could include costs in relation to empty property rates, insurance, security, utility bills, repairs and maintenance. Noting that it could also lose income where the community body sought a reduction in price or rent (which it stated could be expected “in most cases”), it also drew attention to its responsibility to ensure that any such reduction was “clearly set against community benefits.”

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99. NHS Lothian echoed these concerns stating—

“The longer and more complex the disposal process becomes, the greater the cost to the public sector body. Non-domestic rates will be incurred, security costs will have to be paid and the potential for deterioration and vandalism increases.”

52

100. In addition to these costs, NHS Lothian shared the views of East Lothian Council, suggesting that “the increased complexity and more onerous process may necessitate additional staff resources and a greater demand for consultancy services” as well as costs relating to legal fees and the valuation of assets.

101. In terms of potential savings, South Lanarkshire Council acknowledged that these were more difficult to identify as they would depend on the specific proposal. It stated that savings could be made if the alternative to asset transfer was demolition or if maintenance and operational costs were to be borne by the community organisation. However, it also pointed out that these savings could also be achieved through a sale or lease on the open market.

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50 Fife Council, written submission
51 South Lanarkshire Council, written submission
52 NHS Lothian, written submission
53 South Lanarkshire Council, written submission
102. COSLA’s submission stated—

“Very little information on the potential cost savings have been outlined, as again this will be demand driven and COSLA is concerned that these savings may have been overstated. COSLA would welcome clarity around this area of the Financial Memorandum.”

103. The Committee invites the lead committee to ask the Minister to respond to COSLA’s request for further clarity in this area.

104. NHS Lothian drew attention to anecdotal evidence that local authorities might regard the transfer of assets to community groups as a cost saving exercise and expressed concerns that such groups might not have “the funds nor the capacity to maintain these areas once a lease has been drawn up.”

105. It also expressed concerns that public bodies could incur losses as a result of the Bill—

“There may be potential costs to public service bodies as a result of land not necessarily being disposed of at true market value. Public bodies may bear a cost if they are not properly financially compensated for any asset transfers under Part 5 of the Bill. The Bill does not appear to require public bodies to be compensated for asset transfers.”

Part 6 – Common Good Property

106. The FM states that as of 31 March 2011, local authorities managed common good assets valued at £219 million. It explains that the Bill seeks to improve transparency around such assets and to increase community involvement in decisions regarding their identification, use and disposal.

107. To this end, the Bill will require local authorities to establish and maintain a register of common good assets and to invite community groups to comment on it in draft form.

108. Fife Council pointed out that the Bill does not amend the law of common good to allow local authorities to use certain categories of common good land for other purposes such as building new schools. It went on to suggest that this might have unintended financial consequences for local authorities as it would reduce their options for using their land. This, it suggested, could force councils to “acquire land from third parties at cost rather than making best use of existing resources.”

54 COSLA, written submission  
55 NHS Lothian, written submission  
56 Fife Council, written submission
Part 7 – Allotments

109. The Bill replaces existing legislation relating to allotments, “updating and clarifying” the requirements on local authorities.

110. Local authorities will be required to provide more allotments when certain trigger points are reached in relation to numbers on a waiting list.

111. The FM states that local authority costs “will be dependent on how much provision is required to meet their targets, how much provision is actually possible due to land availability and costs, and factors such as the local cost of land and whether road access, toilets etc. need to be created.” It also states that estimates provided by some local authorities indicate a cost ranging from £1,900 to £6,250 per plot and from £21,000 to £150,000 for a whole site. The FM states that demand is variable, with some local authorities facing substantial demand whilst others would need no more plots to meet this target.

112. North Ayrshire Council, however, stated that its response to a recent COSLA consultation had indicated an upper limit of £250,000 for a whole site.\(^{57}\)

113. South Lanarkshire Council drew attention to the right of the Scottish Ministers to prescribe the size of allotments, which it stated would—

“clearly impact on the cost to the Council since a prescribed size will mean that the Council will have to consider this when acquiring land. Clearly, the larger an allotment is the greater the cost to the Council.”\(^{58}\)

114. Whilst Glasgow City Council pointed out that—

“Specific costs are noted for the aspects of the Bill relating to allotments but this focuses on the administrative costs as opposed to the capital investment costs. The council believes that the capital investment costs would be significant.”\(^{59}\)

115. COSLA also suggested that significant financial implications could arise for local authorities as a result of the development of new allotments, “in particular, where this includes the provision of roads for access and facilities such as toilets and access to water on site” and expressed concerns that the costs of site maintenance and utility bills had not been considered in the FM.\(^{60}\)

116. In oral evidence, the Bill Team agreed that costs in relation to allotments would be “dependent on existing provision and demand” but explained that the FM’s figures

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\(^{57}\) North Ayrshire Council, written submission

\(^{58}\) South Lanarkshire Council, written submission

\(^{59}\) Glasgow City Council, written submission

\(^{60}\) COSLA, written submission
were based on information provided by “the 15 out of 32 local authorities that responded” to its consultation.\(^{61}\)

117. The Minister’s letter dated 24 October confirmed that—

“the costs associated with the allotments provisions will depend on the amount of provision already in place compared with any unmet demand, as well as the local cost and availability of land.”\(^{62}\)

118. However, it went on to state that “the figures provided by local authorities provide some examples but do not allow robust national estimates to be constructed.”

119. The Committee invites the lead committee to seek clarification as to whether additional resources will be made available to any local authorities which incur significant additional costs as a result of the duty to provide additional allotments.

Part 8 – Non-Domestic Rates

120. The FM states that, in effect, this provision allows local authorities “to create localised relief schemes to respond to local needs and demands.” Any such discretionary reliefs awarded by a local authority must be funded from within that authority’s existing resources and not at the expense of the [Government’s central NDRI] pool.”

121. The Bill does not give local authorities equivalent powers to levy any additional rates.

122. Fife Council stated that “in effect it proposes the establishment of localised relief schemes which could be used to help incentivise development and investment in areas deemed appropriate by the local authority.”\(^{63}\)

123. However, Fife Council also noted that whilst this could create opportunity, it could also lead to additional costs in terms of administration costs and the loss of income arising from the reliefs themselves. It further pointed out that the Bill explicitly prevented local authorities from raising NDR in other areas to compensate for any loss of income.

124. East Lothian Council stated that any reliefs would have to be funded by savings elsewhere and would ultimately be borne by council tax payers. It further suggested that the Bill could be expected to lead to a marked increase in applications for NDR relief and related disputes and in their complexity which would inevitably impact on its workload. This additional work, it suggested, could lead to a reduction in the

\(^{61}\) Scottish Parliament Finance Committee, *Official Report, 8 October 2014, Col 48* 
\(^{62}\) Letter from Minister for Local Government and Planning to Convener of Finance Committee dated 24 October 2014
\(^{63}\) Fife Council, written submission
collection of NDR as the absorbing of the additional workload could leave its Business Rates Team with fewer resources to target poor payers.

125. East Lothian Council did acknowledge that longer-term financial benefits could result from the targeted use of reliefs to stimulate economic growth in certain areas, but stated that in the short-term, it would “be costly in a time of monetary constraint as we would be funding any reduction.”

126. North Lanarkshire Council also suggested that “the new localised relief scheme has the potential to benefit larger/Council Tax rich local authorities at the expense of other local authorities.”

127. The SPF raised the issue of whether local authorities might seek to spread the costs of NDR relief among local landlords and expressed the hope that central government would provide some financial support for the policy.

CONCLUSION

128. The lead committee is invited to consider this report as part of its scrutiny of the Community Empowerment (Scotland) Bill’s FM.

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64 East Lothian Council, written submission
65 North Lanarkshire Council, written submission
66 Scottish Property Federation, written submission
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

25th Meeting, 2014 (Session 4)

WEDNESDAY 8 OCTOBER 2014

Present:

Cameron Buchanan
Jamie Hepburn
Michael McMahon

Kenneth Gibson (Convener)
John Mason (Deputy Convener)
Jean Urquhart

Apologies were received from Malcolm Chisholm.

Community Empowerment (Scotland) Bill: The Committee took evidence on the Financial Memorandum from—

Dr Amanda Fox, Food and Drink Policy, Heather Holmes, Head of Community Assets Branch, and Ian Turner, Bill Team Leader, Scottish Government.
On resuming—

**Community Empowerment (Scotland) Bill: Financial Memorandum**

**The Convener:** Our fourth item of business is evidence from the Scottish Government bill team on the financial memorandum to the Community Empowerment (Scotland) Bill. I welcome to the meeting Dr Amanda Fox, Heather Holmes and Ian Turner. Members have copies of the financial memorandum and written submissions that were received in response to our call for evidence.

I see that Amanda Fox wants to say a few words.

**Dr Amanda Fox (Scottish Government):** I just want to apologise for wearing sunglasses. I am recovering from a migraine and my eyes are still exceptionally sensitive to light. Please bear with me.

**The Convener:** That is okay. I assumed that you had some sort of photophobia, so I did not comment. I did not think that you had just flown in from a beach.

**Dr Fox:** If only.

**The Convener:** You might have been running late and had to leave halfway through your sunbed treatment, or something. In any case, thank you for the explanation.

As the witnesses will probably know, the Convention of Scottish Local Authorities has raised a number of concerns with the committee. In its letter to all members of the committee on 6 October, it mentioned the number of new burdens on local government, and said that

“While individually, these are not overly onerous, they have the potential to combine to create a significant increase in work for councils.”

COSLA goes on to say that its main concern centres on the difficulty of anticipating demand for the measures in the bill and, in turn, quantifying the cost that will be incurred by local authorities. What work have you done to try to anticipate demand and to ensure that there is a realistic budget to go to local authorities to ensure that they can effectively deliver the measures in the bill?

**Ian Turner (Scottish Government):** A lot of work was done during the consultation leading up to publication of the bill. There was an exploratory consultation and then a consultation on a draft bill. During those periods, we asked questions about how the provisions might be used and what the costs behind them might be. At that time, little financial information and cost information was provided by others. We found it difficult to amass information on how the legislation might be used, which meant that it was difficult to consider what demand might be.

We agree with COSLA that the effect of the new legislation will not be overly onerous, and we agree that the demand element is the element that could change the cost profile. However, because the bill is about community empowerment, it will be up to communities—not authorities—to decide what they want to do, in particular in terms of participation requests, community right to buy and asset transfer requests. It will be hard to predict what communities will do, because communities in different places will want different things, and their decisions will be based on local priorities. Amalgamating everything into a demand profile is hard to do, as we found out. No one else has been able to do it, either.

**Dr Fox:** Part 7 of the bill relates to allotments. As well as the wider consultation exercises, we wrote to the 32 local authorities in December 2013, specifically asking for their views on what the additional costs of the new duties on allotments might be. As Ian Turner rightly points out, the costs in relation to allotments will be dependent on existing provision and demand. The figures in the financial memorandum are based on the information that we received from the 15 out of 32 local authorities that responded.

**The Convener:** I understand the points that you are making. The Minister for Local Government and Planning, Derek Mackay, wrote to us just before COSLA did. He said:

“despite ongoing discussions with stakeholders they have not been able to provide monetary estimates for costs or savings making it difficult to provide accurate ranges.”

That makes it difficult for the Finance Committee to scrutinise the bill. What safeguards will be in place should the financial burdens on local authorities be significantly higher than is anticipated?

**COSLA** said that the bill is

“reliant on council support and provision of community capacity building assistance, which can be very resource intensive and continues for an undefined period of time ... there no reference in the Financial Memorandum of the impact on reductions to a local authority’s asset base.”

It said that the bill

“could adversely affect Local Authorities’ ability to take out loans.”

On common good property, COSLA said that

“some additional costs for Local Authorities are anticipated,”

but that they were not quantified. You touched on allotments, which COSLA also mentioned. What
cushioning will there be for local authorities if demand greatly exceeds the resources that have been set aside for the bill?

**Ian Turner:** Demand for participation requests, which are new, and asset transfer requests will be limited—I use that word in a broad sense—by the provisions of the bill. COSLA tried to use the analogy of the Freedom of Information Act 2000, but the bill is not like that act. The 2000 act allows individuals to make requests for information, and that is what they do. The bill will allow community-controlled bodies, as defined by the bill—they must meet certain criteria, such as having a written constitution—to submit participation requests or asset transfer requests, which will also have to meet criteria in the bill. There will then be a cost-benefit procedure, in which the authority will consider the benefit in doing the process and will align that against possible costs. That process will, to a degree, limit demand.

You are absolutely right about the capacity of communities, because communities are not necessarily on a level playing field. However, we do not believe that that is a matter for the bill. The bill provides the legal framework to allow community bodies to do these things; capacity comes from other funds and other places. For example, the £3 million strengthening communities fund was announced in April, with the purpose of helping community organisations in disadvantaged areas to increase their capacity. However, that fund does not say that such organisations must do an asset transfer or a participation request: it is for them to decide what they want to do, on their terms.

**The Convener:** My concern is that expectations will be raised and that there will not, even allowing for that £3 million, be enough resources to meet expectations, so the bill will not be able to deliver what is promised. That is why I asked what cushioning would be available. Would the Scottish Government be willing to consider providing additional funding for local authorities, to ensure that the bill is delivered smoothly?

**Ian Turner:** As it has for most new duties that come from legislation, the Government has a general convention that we will provide extra funding. The difficulty with the bill is that we cannot quantify that funding at the moment. That additional funding would need to be demonstrated and quantified through practice. That would happen through the normal processes and the funding would be provided in that way.

12:15

**The Convener:** I will ask a couple more questions before I open up the discussion to the myriad members who are queuing up to ask questions.

The Scottish Property Federation has stated that its main concern is “that the enhanced scope of CRTB and by extension asset transfer may inhibit larger scale and complicated investment in development land in a manner that has not hitherto been an issue under the existing CRTB rights.” Do you see that being an issue?

**Heather Holmes (Scottish Government):** I do not. Such issues were brought up around the time when the Land Reform (Scotland) Bill was going through Parliament. Since then, in the operation of the community right to buy for the past 10 years, we have not seen what the SPLF described and we have not seen community applications that are trying to blight big developments. If we got applications that were blightly—if I can use that word—the chances are that they would not meet the public interest test. We have checks and balances on our side, so I do not think that that is going to be a big issue, especially in the context of urban land coming within the scope of the community right to buy.

**The Convener:** Okay. Before we move on, let me give you three brief quotations. The Scottish Environment Protection Agency says that there are “false expectations that SEPA will fully engage with all CPPs in Scotland”, which would be highly resource intensive and not cost neutral. With regard to participation requests, Highlands and Islands Enterprise says that it “would expect to be able to absorb that to a large extent within the costs of staff time currently devoted to on-going business improvement activities.”

NHS Lothian has said: “Without appropriate support and investment in community empowerment the key components of the Bill will not be fairly accessible to communities”.

Given those concerns, do you not feel that the Scottish Government has been too cautious in respect of the amount of resource that it feels will be required to implement the bill? From the evidence that we are receiving, it appears that that is the case.

**Ian Turner:** SEPA is talking particularly about community planning, because it will be a partner in the 32 CPPs throughout Scotland. The bill does not say what the level of engagement in each of those CPPs should be. The fact that SEPA should be involved goes alongside what their outcomes are intended to deliver. How SEPA engages will be flexible and will be decided in collaboration with CPP partners, so we do not necessarily see the same resource issues as SEPA does.
The Convener: What about the comments of HIE and NHS Lothian?

Heather Holmes: We work with HIE on the likes of the land fund and cases in which communities want to exercise the community right to buy, but also to keep open the option of going through negotiated sales. HIE’s work to assist communities is very much like the work that is undertaken by our community right to buy branch, and there is a certain amount of flexibility, given the number of cases that have to be dealt with. We build flexibility into our work planning and manage it in that way. As you say, HIE expects more work. Likewise, the Scottish Government expects to have a bit more work through the community right to buy, and we reckon that we will have to be flexible in our ways of working.

Jamie Hepburn: If I have taken anything from the experience of my political activity over the past few months, it is a sense that the people out there want to have a greater say in the factors that determine their lives. The bill is, therefore, hugely welcome if it can do anything to achieve that aim.

I have some sympathy with what the bill team is saying. If any bill was going to present us with a financial memorandum that found it hard to cost the proposals, it is this one. We are talking about empowering people, but we do not know how they are going to respond, so it must be difficult to quantify the exact costs.

I was taken with a turn of phrase that Ian Turner used. You talked about it being difficult to establish a demand profile. If you had said what the demand would be and what the bill would cost, could there have been a danger that that would have been viewed as an upper limit for how much could be done, which might have been viewed as being the opposite of empowerment?

Ian Turner: Yes. In trying to do a demand profile, we would have to guess at what might be low demand or high demand. It is not easy to work out what those might be with respect to the number of rights that we are giving communities. For example, an area might not use participation requests at all because the public authorities in that area are very good at participation and engagement and are doing the job already, so demand would be low. However, in another area, demand might be low because there is no capacity in the community. How would we assess those two different communities when there could be different parts and profiles?

Fife Council, I think, said in its evidence to the committee that there will be peaks and troughs as things work through the system and as public organisations change. I took HIE’s comments about improving its business as meaning that it will need to change to ensure that the bill works.

When communities come to HIE, the process will not be about engagement and consultation through HIE’s mechanisms; it will be about what the communities want to do.

Jamie Hepburn: Those are some of the difficulties. My point was more that, even if you attempt to come up with a set of figures, whether they show low demand, high demand or something in between, the danger is that people will think that that is what they have to work with. However, the process cannot really work that way, because if it is to be in the hands of people out there, they sort of lead, do they not?

Ian Turner: Absolutely: demand will be led by communities, so we cannot work in that way. If we set a limit, that will confine the process and box it in. That is why community capacity is so important throughout the process.

Heather Holmes: I agree with Ian Turner. When the bill that introduced the community right to buy was going through Parliament, there was an attempt to work out what demand would be. I think that it was predicted that there would be 15 cases in the first year and five cases a year thereafter. However, things have worked out quite different; we get an average of 15 cases a year. We have to work flexibly with the communities and the demand. When I work with my branch, I do not always know what the next case will be and when it will come in. We utilise the resource well and we work flexibly. We want the legislation to be successful and we want as many communities as possible to use it—it is for the communities to use and not for us to tell them to use it. We do not have a benchmark that says that if we have only 14 cases in a year, the legislation is not successful. Communities lead the process and make it successful.

Jamie Hepburn: So, the number is not a measure of success: 15 cases in a year is not an upper limit and does not mean that other communities will have to come back next year. The community right to buy is a good parallel, as it is led at community level, I presume.

Heather Holmes: Yes.

Jamie Hepburn: I return to the COSLA submission, which has a degree of criticism in relation to quantifying costs. However, at the end, COSLA echoes Mr Turner’s point when it states: “it is difficult to anticipate the uptake and demand that will be placed upon Local Authorities. This makes it very difficult to quantify the financial cost that will be placed upon local government in complying with the legislation”.

In essence, that is the same as the point that Mr Turner made. It is interesting that, despite the criticism in the COSLA submission, COSLA has not made an attempt to say what the bill will cost. Has COSLA provided any figures to you?
Ian Turner: It has not done so separately. The information that we have is the information in the financial memorandum and the additional information that the minister provided last week.

Gavin Brown: Quite a lot of areas of public policy are demand driven, as are many of the bills that come before the committee. Generally, the sponsoring bill team or minister does their best to get an approximate amount, although they add caveats on what might be the upper or lower reality, so that we have a best estimate. Why is that possible in other demand-driven areas of policy but impossible here?

Ian Turner: To some extent, it is because the range would be too large to be considered worth while. We do not know what the demand profile will be so we cannot put a range on it. We have estimated that participation requests, for example, could cost between £1,000 and £7,500 each, depending on what the request is for and what area it covers. If there are 100 across Scotland, that will be between £100,000 and £750,000. It is a range. You could say, “Well, it could be 1,000 or more,” but that only gets you so far. We cannot really go into any more detail at this stage about which is more reasonable. It will only be in practice that we see the level of demand.

Gavin Brown: So you have no idea how many participation requests there will be. There could be a million.

Ian Turner: I very much doubt that there will be a million participation requests. The bill makes provision on who can make requests—community participation bodies—and what requests they can make. To an extent, it will be limited by the costs and benefits of going through the process. In making participation requests, community participation bodies need to say what experience they have in the process and the benefits—the outcomes—that the process will bring to them. It is for the public authority to assess the request on that basis and to go through the process.

Gavin Brown: So it definitely could not be a million. Could there be 10,000 participation requests?

Ian Turner: I could not say at this time. I doubt it. That would be at the very high end. The risk profile for that would be high impact but very low likelihood.

Gavin Brown: My point is that you seem to able to quantify the situation slightly better now than you have done in the memorandum. You must have some idea of what you think the likely range will be.

Ian Turner: We do not, because it is for the communities themselves. It is not just geographic communities; it is potentially communities of interest, too. Different groups might want to do different things in different ways, and it will depend on local circumstances. There are too many variables to factor into what would be a reasonable demand profile, or a reasonable idea of how many requests could come forward. We have gone back to what the unit cost might be and, as COSLA says, it is not overly onerous.

Gavin Brown: So the Government position is that it is impossible to quantify participation requests and costs. Would you make the same comments in relation to asset transfer requests and costs?

Ian Turner: Yes. Again, that would be limited by the issues that we have been discussing. However, because asset transfer in the bill is not just about ownership—it can be about leasing, managing or using an asset—there is a range of things that a community might want to do within the provisions of the bill. Asset transfer already exists—the community ownership support service did 38 over three years. That provides an idea, but it is certainly not the range across Scotland because the support service is not involved in all the transfers and its funding is limited so it can get involved in only a certain number. As we go forward, we will see what the bill involves, but we cannot give the committee a definite figure for how much it might be used.

Gavin Brown: The Government says that it is impossible to give figures on any of these aspects. How, then, will the funding mechanism work?

Ian Turner: We cannot say at this time. If local authorities can demonstrate and quantify what the new duties in the bill have cost them, that will be part of the on-going process of local authority settlements.

Gavin Brown: Let us assume that the bill is passed, which I am sure it will be. When does it take effect? Is it the financial year 2015-16?

Ian Turner: It will probably be 2015-16 that we start to implement the provisions in the bill.

Gavin Brown: That is what I thought. Tomorrow, we will be given the draft budget for the year 2015-16. Amounts will be allocated to every department, non-departmental public body and council. Given that you will somehow have to quantify it tomorrow, how much is being given to local authorities in the draft budget to cover the obligations in the bill?

Ian Turner: It comes within the current remit of local authorities. No particular additional work has been done because, at this point, we cannot quantify or demonstrate what the additional burdens might be.
12:30

Ian Turner: Asset transfers are not new, so local authorities already do community capacity work and participation engagement with communities, which is one of the reasons why it is difficult to extrapolate how much additional cost the bill may bring to the process. Asset transfers already happen across Scotland.

We are not anticipating any particular financial burden in 2015-16. COSLA is right to say that it will not be overly onerous and therefore could be encapsulated within current resources. However, we recognise that additional funding might be required in the future.

Gavin Brown: My reading of COSLA’s position was that, although the individual elements were not overly onerous, the totality had the potential to be so. Is that not what COSLA said?

Ian Turner: Yes, but we do not agree that the cost has the potential to become significant. We think that the individual elements are not overly onerous and will not be overly onerous in total. We believe that the cost can be managed within current resources, with some addition if the demand is more than local authorities can cope with.

Gavin Brown: As far as you are aware, as the bill stands, local authorities are not getting any additional resources. What if COSLA turns out to be right and it is onerous and there is a huge upsurge in demand? How concrete is the guarantee from the Scottish Government to underwrite the costs that councils will face?

Ian Turner: That would be part of the normal discussions with local authorities through the annual budgeting process. Local authorities would have to demonstrate and quantify what was involved and then go into discussions with the Scottish Government.

Gavin Brown: This may be a question for the Minister for Local Government and Planning—I do not know whether he is giving evidence to the committee so perhaps I will have to write to him. Let us just say that there is a huge upsurge in demand, which costs councils—for the sake of argument—several million pounds more than they had budgeted for. If they can demonstrate that the upsurge is a direct consequence of the bill, is it your understanding that the Government will pay councils that money, or would that have to be negotiated?

Ian Turner: That is something that would have to go through the normal processes of negotiation with local authorities. I do not think that there is a particular guarantee. That is probably a question for the minister, rather than for me.

Michael McMahon: You have established that the figures in the financial memorandum are not quantifiable and you have explained why they are unquantifiable. I accept your explanation, although I have some concerns about—as Gavin Brown said—where that leaves the overall budget for local authorities. Can you give us an example of previous legislation where the financial memorandum was in a similar position to this one, in which the potential costs are unquantifiable? Was anything established in that legislation to take account of the potential for the budgets to come under pressure?

Ian Turner: I have looked, but I have not found a similar example.

Jean Urquhart: Even without the bill, a growing number of community groups are already looking to take over local authority assets for community purposes, for example in the Highlands and Islands. You mentioned Highlands and Islands Enterprise. Will Scottish Enterprise have a similar role? It has never had the community role that Highlands and Islands Enterprise has had and, if the bill is successful, I imagine that it might have a role to play. Do you see that as the case?

Ian Turner: Scottish Enterprise could have a role to play. Highlands and Islands Enterprise is often a funder—it provides money to make the asset transfers—and I do not know whether Scottish Enterprise will be in that position. It will be involved in the community planning partnerships, so it will be involved in setting the local outcome improvement plans, which we hope will set in context how some of this might work within local areas.

Scottish Enterprise gave evidence to the Local Government and Regeneration Committee last week and talked about being an opportunity-led organisation, seeking opportunities and gaining the maximum benefits from those. An asset transfer in the Highlands and Islands could be such an opportunity if Scottish Enterprise sees that it has a role to play there.

Jean Urquhart: On the point about trying to fix a budget, I would guess that the community land fund was established with a finger in the air to make a judgment, because nobody knew how many communities would apply or register interest in land. Would that be right?

Ian Turner: Yes, as I understand it.

Heather Holmes: I think that a sum was allocated, but I do not know what calculations were done to arrive at the figure.
Jean Urquhart: Finally, there are a number of critics of the bill, who are saying that it does not go far enough and is quite tame. Which more radical issues from the consultation were left out of the bill?

Ian Turner: It is hard for me to comment on what was radical and what was not. In the bill, we set up a process whereby, if someone seeks an asset transfer, it is still for the authority to decide whether it takes place, and the bill ensures that the process for that decision is transparent and open. I think that some community groups would want more of an absolute position whereby, if someone asks for it, they get it. The same applies to the community right to buy, particularly for abandoned or neglected land, and people may see that opening up beyond such land. However, the bill does not provide for that.

The Convener: That concludes questions from committee members, but I have one or two further questions.

Do you envisage that the bill will have an immediate impact? Will there be a rush to involvement or will demand rise steadily? Has there been any analysis of that?

Ian Turner: It depends on who you speak to. We have talked to a lot of community organisations and stakeholders. Some of them say that there is pent-up demand in their areas and that people may use the provisions—there is always a “may”, because it depends on what communities want to do and how they might use the provisions. Others say that it will take time for communities to adapt and to develop capacity to use the provisions.

The bill is in legal language because it is a bill, and a participation request looks like quite a process. It will have to be covered in guidance so that people can understand it and see how it might be used. When people see such requests being used, they might catch on. If people see them having an impact in their local area, demand may increase from that. It all depends on what communities want to do and how they want to use the provisions.

The Convener: The financial memorandum does not provide specific cost estimates for many aspects of the bill, in some cases because costs are expected to be demand driven. However, rule 9.3.2 of standing orders states:

“A Bill shall on introduction be accompanied by a Financial Memorandum which shall set out the best estimates of the administrative, compliance and other costs to which the provisions of the Bill would give rise, best estimates of the timescales over which such costs would be expected to arise, and an indication of the margins of uncertainty in such estimates.”

In what regard does this financial memorandum meet those criteria?

Ian Turner: We attempted to include costs in the financial memorandum in a number of places where we believed that we could actually indicate what the costs will be. In some areas, we know that the costs under the current provisions are fairly low, for example, and we therefore have an idea of what the costs may be in the future.

We express a caveat a number of times about the margins of uncertainty, because to attempt to state what the bill might cost in future would be unreasonable and potentially misleading. We indicate a timescale—

The Convener: Standing orders make it clear that there should be best estimates. The committee has been down this road before when a bill team has come in and has not been able to give us figures. It is frustrating from our point of view. We are supposed to be scrutinising legislation from a financial perspective, but it is difficult when we are not given much to get our teeth into, so to speak.

Ian Turner: I absolutely know what you mean. There is frustration on our side as well when it is difficult to quantify the costs.

The Convener: Are you saying that it is impossible to meet the criteria or are you arguing that they are actually met?

Ian Turner: I would argue that they are met, because it was accepted.

The Convener: Thank you. Are there any further points that you would like to make?

Ian Turner: No.

The Convener: I thank you very much for your evidence and I thank colleagues for their questions.

We now move into private session, as was agreed earlier.

12:39

Meeting continued in private until 12:46.
EXTRACT FROM THE MINUTES OF PROCEEDINGS

Parliamentary Year 4, No. 75 Session 4

Meeting of the Parliament

Thursday 3 February 2015

Note: (DT) signifies a decision taken at Decision Time.

**Community Empowerment (Scotland) Bill:** The Minister for Local Government and Community Empowerment (Marco Biagi) moved S4M-12220—That the Parliament agrees to the general principles of the Community Empowerment (Scotland) Bill.

After debate, the motion was agreed to (DT).

**Community Empowerment (Scotland) Bill: Financial Resolution:** The Cabinet Secretary for Finance, Constitution and Economy (John Swinney) moved S4M-12113—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Community Empowerment (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act.

After debate, the motion was agreed to ((DT) by division: For 76, Against 31, Abstentions 0).
Community Empowerment (Scotland) Bill: Stage 1

The Presiding Officer (Tricia Marwick): The next item of business is a debate on motion S4M-12220, in the name of Marco Biagi, on the Community Empowerment (Scotland) Bill. Mr Biagi, you have 14 minutes.

14:19
The Minister for Local Government and Community Empowerment (Marco Biagi): Thank you, Presiding Officer—and I begin this stage 1 debate by thanking a lot of other people, too. Although “stage 1” suggests that we are at the first stage, all parliamentarians will know how much work has gone into the bill before this stage, as is the case with all bills.

My colleague and predecessor Derek Mackay took what began as a scattered set of suggestions in the Scottish National Party manifesto, tended the proposals through two consultations and 40 engagement events and helped them to spring forth in the bill that we consider today. All I can say is that he took much better care of the proposals than he took of the plant in what is now my office in Victoria Quay.

I thank the Finance Committee and the Delegated Powers and Law Reform Committee for their consideration of the bill. Most of all, I thank the two subject committees: I thank Kevin Stewart and the members of the Local Government and Regeneration Committee; and I thank Rob Gibson and the members of the Rural Affairs, Climate Change and Environment Committee, who looked at part 4, on the community right to buy, in particular.

The two subject committees produced a ream of recommendations—I mean “ream”; the paper in front of me runs to 44 pages. The Government will consider all the recommendations closely in advance of stage 2. In the spirit of producing the best possible bill, we will also consider ideas that members put forward today.

The committees were no doubt helped by their efforts to take evidence from an unusually wide range of organisations and individuals. Meetings took place in Fort William and Dumfries, and there was innovative use of social media and online video to help explain aspects of the bill. It is heartening to see colleagues making it easy for people to participate in the development of a bill that should be all about participation.

Thanks are also due to everyone who took the time to offer their views and experiences to the committees or the Scottish Government. Time and time again, I have been encouraged to hear organisations and individuals express confidence that the bill will make a real difference in helping to make public bodies and agencies look at community empowerment in a different way.

I come to the debate to present the bill and endorse its aims, and to ask members of all parties to join together to back it. We all know that communities can do great things when they are empowered to achieve their own goals, given the freedom to choose their own path, given responsibility for their surroundings and trusted to take their own decisions.

In places such as Craigmillar, Inverness, Govanhill, Irvine and Kilmarnock, I have met grass-roots groups that are doing remarkable things in their communities, in their own way and on their own terms. There is so much talent out there—it just needs a bit of self-belief, some encouragement and the taking away of unnecessary obstacles.

That is what the Community Empowerment (Scotland) Bill sets out to do. By creating new rights for community bodies and conferring new duties on a range of public authorities, it will provide a new legal framework and, I hope, stimulate the growth of a new mindset—we can never legislate for that—which will promote and encourage community empowerment and participation.

Since the bill’s introduction in June, the demand for participation and empowerment has grown. Our historic referendum proved, if proof were needed, that people will get involved when they know the issues that are at stake and that they can make a difference to them.

Members across the chamber believe in more powers for this Parliament, because that, too, is a form of bringing control over decision making closer to the people whom decisions affect.

We now need to build on that new sense of what can be achieved. The bill contributes to the spirit of democratic renewal. It does so tangibly, in ways that can instantly be recognised—even if I accept the Local Government and Regeneration Committee’s point that things can sometimes be hidden by a bit of gobbledegook. We have done our best to produce an easy-read policy memorandum and we will put our guidance in plain English—more than anything else, we accept that recommendation.

Part 1 will put into statute the national outcomes approach, which is currently represented by Scotland performs, and will place duties on the Scottish Government to develop, consult on, publish, review and report on a set of indicators for the kind of Scotland that we want to see. For the community of the whole nation, that has to be, and will be, an empowering process.
Part 2 puts community planning partnerships into statute, and we will develop the role and performance of CPPs, not least by ensuring that public bodies work together in CPPs and with the public.

Through the participation requests in part 3, the bill will give communities a new power to enter into dialogue with public authorities to ensure that their voices are always heard. That simple power will remind everyone that communities should always be around the table when decisions that affect them are being taken.

The provisions in part 4, on which my colleague the Minister for Environment, Climate Change and Land Reform will lead, deal with the community right to buy that exists in the Land Reform (Scotland) Act 2003. Part 4 will simplify the process and make it more flexible, and it will extend the type of community bodies that are able to access the right to buy. Crucially, it will expand the extent of the communities that can take forward such a right: the community right to buy will be extended from rural Scotland to all of Scotland.

The community right to buy will also be extended through the introduction of a right to buy neglected or abandoned land, even where there is no willing seller. We recognise that committees and stakeholders have all asked for clarification of the type of land that is covered by that provision. We have sought stakeholders’ views and have discussed with them what would be required. My colleague the Minister for Environment, Climate Change and Land Reform will therefore provide draft regulations in advance of stage 2 that will detail the matters that must be considered when the question whether land is neglected or abandoned is determined. Those matters could include the physical condition of the land and the use, or lack of use, to which it is being put and the effect that that has on the surrounding land.

Part 5 will make it easier for communities to take control of a public asset. Whether it is a community centre, a patch of public land or whatever, the sky is the limit for what can be achieved by the ingenuity and local knowledge released by community participation.

The common good asset registers in part 6 will mean more transparency over common good assets as well as increased community involvement in the decisions that are taken about them.

Part 7 will create a new duty on local authorities to keep a waiting list of those who want an allotment, which will be paired with a duty to “take reasonable steps” to ensure that those waiting lists do not grow too long. Let me be clear: that will mean more allotments.

Bruce Crawford (Stirling) (SNP): On allotments, I think that all members have received a piece of lobbying from the Scottish Allotments and Gardens Society. For whatever reason, the society feels threatened by the bill, but I am not sure whether the threat is perceived or real; indeed, I am not sure what the real issue is for the society.

Could the way forward be for the minister to indicate that he would be prepared to support the exploration of grandfather rights for individuals who already have allotments and who could keep those rights for the future? We could enshrine that in law, with any new allotments that were created falling under the bill. That potential solution may help everyone through a difficulty.

Marco Biagi: On Friday, I spoke to Ian Welsh of the Scottish Allotments and Gardens Society. I committed to consulting on the use of one of the powers that the bill will create with the aim of addressing concerns about size, while allowing flexibility to ensure that those who want differently sized plots also have their needs met. However, that focuses on people who get an allotment for the first time. It is clear that anyone who has a lease or agreement with a local authority under existing legislation will come up against a lot of contract and rental law. We could certainly look at that issue. I do not believe that the changes would lead to there being significant impacts on existing contracts, although councils have the ability to review rents—that applies to any council rental contract.

There is a possibility that we could look at the additional rights that are coming in and examine whether to have transitional arrangements or, indeed, to continue existing arrangements if that approach would be disadvantageous. The bill takes areas that have not been legislated on for, in some cases, 123 years and creates additional rights in relation to allotments in every area that I have looked at, as far as I can tell. However, there is on-going dialogue, and I will continue to speak to the Scottish Allotments and Gardens Society so that we understand each other and can reach an agreement.

After what I have just said, perhaps I should say “last, but not least” as I turn to part 8 of the bill. Part 8 will allow councils to support and encourage businesses in target areas through local business rates relief schemes.

Each part of the bill individually provides new measures; taken together, we hope that they will help to change the culture around community empowerment to make such local approaches routine. We recognise, however, that if all our communities are to be empowered, some will require support. The Local Government and Regeneration Committee was right to highlight
that. We want all communities to be able to keep up in the race to take advantage of the new powers.

We will therefore not stand still at stage 2. While we have been considering the evidence to the committee, we have already been discussing and debating with partners and stakeholders how we might improve the bill, which was introduced to Parliament seven months ago. We propose to lodge amendments on appeal procedures for asset transfer requests and the publication of asset registers, but the central change has to be an even greater focus on reducing inequalities.

The bill stands alongside the whole range of existing duties and policies that target inequalities, and we believe that by empowering communities, inequalities are reduced and that, where communities lead their own regeneration and control their own future, they will take the right steps forward. We will, however, lodge amendments to ensure that the national outcomes and approaches to community planning are aligned to the aim of reducing inequalities.

We also intend to require public bodies to make inequality a material concern in decisions on key participation requests and asset transfer mechanisms. We want to see the communities that have been most excluded take their well-deserved seats at the table and those that have been most disempowered take control of their surroundings. The cabinet secretary therefore announced today an extra £5.6 million for the people and communities fund. That will be part of the overall empowering communities pot, which now stands at £19.4 million of support.

With the aim of empowering those communities, we have been particularly impressed by participatory budgeting, where funding decisions are taken directly by the people who are affected. Scottish Government-funded PB training events in recent months have drawn crowds from public bodies and local authorities, and we have received a great deal of interest in our offer to new PB projects. We know of about two dozen that have taken place in the past decade, including the well-established annual Leith decides project, which will go ahead this weekend. Together with the cabinet secretary, I have consulted the participatory budgeting working group and I am considering options, including legislative ones, to ensure that the agenda moves forward.

Participatory budgeting is a relatively new form of community engagement, but public bodies have been doing—or have known how to do—community engagement well for many years. The national standards for community engagement have been the basis for that, and I intend to use them as the foundation of the guidance on community participation that will go to community planning partnerships under the new statutory guidance powers.

CPPs must be the forum where high-level decisions are taken for entire authority areas, but there is much to commend the taking of similar partnership approaches more locally, where grassroots community groups in all their diversity can more easily input directly.

Ken Macintosh (Eastwood) (Lab): Will the minister take an intervention?

Marco Biagi: I am afraid that I am in my final minute.

On Saturday, I will visit a charrette hosted by the Glasgow canal regeneration partnership, where the community will be able to come together in just such a way with facilitators and designers and, over a few days, develop an image or set of options for the design of their community. Charrettes are a participatory approach to planning. They have been supported by the Scottish Government for four years and they are just one of the countless examples that are already out there of people coming together to play their part in their own future.

I do not want to say that we need to up our game because it is clear that there are already so many great examples of excellence out there, but with the bill we have a unique opportunity to ensure that our greatest asset—the people who live and work in Scotland—are even better able to make decisions about their future on their terms. We believe, will believe and always have believed that, if they come together in that way, the decisions will be better. The bill is an opportunity that we must come together today to seize.

I move,

That the Parliament agrees to the general principles of the Community Empowerment (Scotland) Bill.

The Deputy Presiding Officer (Elaine Smith): At this stage of the debate, we have a little time in hand if members wish to take interventions.

I call Kevin Stewart to speak on behalf of the Local Government and Regeneration Committee.

14:34

Kevin Stewart (Aberdeen Central) (SNP): I am pleased to speak in this debate on behalf of my colleagues in the Local Government and Regeneration Committee. I thank the current and past members of the committee for the work that they have undertaken, not only in scrutinising the bill but on the wider topic of community empowerment. The committee has been examining community empowerment in one form or another for the past three years. I will elaborate on that later.
I extend my thanks to all the witnesses who provided written and oral evidence to the committee as well as to the hundreds of people from all over Scotland who took part in various community engagement events with us. Thanks are also due to all the people who helped to facilitate the committee’s various fact-finding visits across Scotland over the past three years. They proved to be invaluable preparation for our scrutiny of the bill.

I thank our colleagues in the Delegated Powers and Law Reform Committee and the Finance Committee for their scrutiny of the bill and, in particular, I thank the Rural Affairs, Climate Change and Environment Committee, under the convenership of Rob Gibson, for its consideration of part 4, on the community right to buy. I know that that work proved to be a big ask for a committee with a very full programme of work, but my colleagues and I greatly appreciated the knowledge and expertise that its members brought to the examination of the community right to buy. We have accepted its recommendations to us in full. I am sure that members of that committee will say more about that during the debate.

I thank the former Minister for Local Government and Planning, Derek Mackay, and all the Scottish Government officials who have worked to bring the legislation to fruition. I hope that we can work in tandem with the current minister to ensure that we make the bill the best that it possibly can be.

Ernest Hemingway once said:

“The best way to find out if you can trust somebody is to trust them.”

That piece of advice neatly sums up the core philosophy at the heart of the Community Empowerment (Scotland) Bill. At first glance, it may be difficult to see a unifying theme to the bill, as it seems to cover so many different areas, but, in truth, trust is the unifying theme at the heart of it: trust that communities all over Scotland know what is best for them and have the desire and ability to help to bring their ambitions to reality; trust that, despite all the challenges that our public services have faced and will continue to face, they can work together to empower communities and deliver the outcomes that they need; trust that communities can make better use of public assets such as buildings or land than local authorities or the wider public sector can; and trust that CPP partners will help to facilitate public trust by being able to work in partnership with communities.

The bill is not about imposing a framework or compelling various public bodies to undertake various actions that we wish them to undertake; rather, it is about providing communities across Scotland with the tools that they need to take decisions for themselves and about trusting them to use those tools wisely. In short, it is about putting the power in community empowerment.

Joan McAlpine (South Scotland) (SNP): On compelling organisations to do things, Kevin Stewart will be aware that the Scottish Woodlot Association has expressed concerns about the Forestry Act 1967, which prevents community groups from taking Forestry Commission land for woodland projects. What is the committee’s view on that?

Kevin Stewart: Andy Brown of the Scottish Woodlot Association was in touch with the committee on Sunday and yesterday. He is pleased that we have recommended that Forestry Commission Scotland should be able to lease state forest land to not-for-profit co-operatives. I hope that that helps the Scottish Woodlot Association with what it is trying to achieve.

I have mentioned trust. With all trust comes a degree of risk; indeed, risk is at the very heart of what it means to trust. As we heard during our evidence taking on the bill, many public sector stakeholders are keenly aware of potential risks that may arise as a result of the change that the bill will help to foster. However, from the widespread community engagement that we undertook as a committee, we feel confident that the legislation will benefit not only communities, but the wider public service.

In our scrutiny of the bill, we have made great efforts to engage with the people whom the bill will affect. First, since early 2012, we have sought to use our entire work programme to take opportunities to examine community empowerment and inform ourselves of how it has developed as a mechanism for delivering change over the past decade or more. Over the past three years, the Local Government and Regeneration Committee has taken advantage of seven major pieces of work to examine the issue of community empowerment: our scrutiny of the Local Government Finance (Unoccupied Properties etc) (Scotland) Bill; our three-strand inquiry on public services reform, in which we undertook three interlinked inquiries over 18 months; our scrutiny of the 2013-14 draft budget; our scrutiny of the third national planning framework; and, most recently, our inquiry into the delivery of regeneration in Scotland.

Secondly, we have taken every opportunity to communicate with real people and communities the length and breadth of Scotland, and to do so in as clear a manner as possible. We undertook 10 fact-finding visits and held four full meetings of the committee outside Edinburgh. We visited places as diverse as Kelso, Cumbernauld, Paisley, Maybole, Stornoway, Dumfries and Fort William. During those visits, we held round-table
discussions with local people and community groups about community empowerment. The clerks have estimated that more than 600 people attended the engagement sessions in person, with more joining in via social media.

Thirdly, the committee has very much taken to heart the reform agenda set forth by the Presiding Officer to engage with the people of Scotland as widely as possible using modern technology. To this end, we made widespread use of both Twitter and Facebook to engage with people and garner their views on the bill. We also recently established the first-ever Scottish Parliament committee Instagram account to make use of the visual evidence that we have collated.

During our visit to Stornoway, we held a live interactive Twitter discussion in both English and Gaelic with people in all three island areas. The discussion focused on what those communities felt they needed to empower themselves.

We also had some YouTube videos made, and I invite members to have a look at them. We have already made differences to people’s lives in the course of dealing with the bill. We visited Dumfries, and our video highlights the excellent work of a community group there called the Usual Place and the vital services that it provides in the Dumfries and Galloway area, such as a changing places toilet. I am happy to say that the committee was able to play a small role in helping that worthy organisation to secure a lease with Dumfries and Galloway Council on a property for its use. That is a good example of community empowerment at its best. I give thanks to the Parliament’s media team for allowing us the opportunity to participate in those videos.

The minister mentioned gobbledegook and officialspeak, which are a great turn-off for many folks who want to become involved. I am glad that the minister raised that point today, and I hope that he will continue to follow the committee’s line that we must eradicate them, to allow for the maximum possible amount of participation.

Let us now consider the committee’s findings and recommendations. Part 1 of the bill addresses national outcomes. Given the focus on scrutiny of outcomes, we consider that the Scottish Government should report annually on the extent to which national outcomes have been achieved. That would inform the Parliament’s budget scrutiny process. Such reports should be available before the publication of the draft Scottish budget each year.

Part 2 relates to community planning. The committee is concerned that local communities are not sufficiently and directly involved with community planning partnerships. We recommend that the Government amends the bill to require CPPs to seek involvement from a level below that of community representative, as well as to set out how that involvement will be assessed. There should be an explicit requirement on all CPPs to include community capacity building in local plans and to report on progress in every annual report.

Part 3 deals with participation requests. There can be no doubt that the bill is generally a welcome boost towards putting power in the hands of communities. However, the committee was struck by the fact that, although the bill is designed to empower, it contains a requirement that only groups with a written constitution may submit a participation request. That seems to be out of step with the whole ethos of the bill. In the words of Jeanie Mackenzie, who responded to our video on participation requests:

“Sometimes an individual has a very good idea for improving public services, but lacks the time or opportunity to find others and form a constituted group.”

We therefore recommend that the bill be amended to allow individuals to submit participation requests.

Given the need to legislate in this area, it is vital that progress on participation requests is closely monitored. We therefore also recommend that the bill requires all public service authorities to produce periodic public reports. That is covered in paragraphs 261 to 270 of our report, which sets out our recommendations for the areas to be covered by that process.

As I have already stated, part 4, on the community right to buy, was considered by the Rural Affairs, Climate Change and Environment Committee, so I will leave members of that committee to speak about that issue.

Part 5 deals with asset transfers. Some of our recommendations in that area are directed at the changes that are required to public bodies to ensure that the bill’s intention is achieved in practice. That, too, will require close monitoring.

Part 6 relates to the management of common good assets. Given the approach that the minister outlined in oral evidence, we see no difficulty with the bill specifying a maximum timescale for the compilation of common good registers.

The Deputy Presiding Officer: I am afraid that I must ask you to come to a close.

Kevin Stewart: Part 7 relates to allotments. We have already heard a little about that from members. We have made recommendations on that, too.

Part 8 deals with non-domestic rates, which I may come back to if I have a chance to intervene.
I go back to the first principle, which is that all of this is about trust. It is about time that we trusted our communities, and I hope that we will do so.

I commend our stage 1 report on the bill.

14:45

Alex Rowley (Cowdenbeath) (Lab): Lyndon Johnson said:

“You do not examine legislation in the light of the benefits it will convey if properly administered, but in the light of the wrongs it would do and the harms it would cause if improperly administered.”

For me, that is a good starting point on the bill. I welcome the fact that the minister has said today, and the Cabinet Secretary for Social Justice, Communities and Pensioners’ Rights has said previously, that they want to have more discussions and are willing to consider addressing some of the issues in the bill at stage 2. The Labour Party certainly supports the principle of the bill, but we see a need for greater clarity, and I hope to go through a few of them. I will highlight one. On participation requests, I say that if there is no right to appeal—there is uncertainty on that, in some senses—what is the point?

The bill needs teeth and more strength. Marco Biagi said that “inequalities are reduced” when we empower communities, and I do not disagree with that, but I am not sure that the bill will do that, particularly if we are aiming at the least empowered communities. A real worry about that comes through in the evidence to the committee. Therefore, the bill needs more strength and more teeth if we are serious about community empowerment. I am not sure that it actually goes there.

There is a great need for improvement in the bill, which is why I commend Kevin Stewart and the Local Government and Regeneration Committee for the exhaustive work that they have carried out. They have produced a report that contains a range of detailed recommendations. That demonstrates not only that the committee has been active in taking evidence but that it has listened to that evidence. I am sure that the committee’s recommendations will form the basis of discussions with the Government, as we move forward.

I draw attention to the Finance Committee’s report. We cannot go past today without highlighting that, although that committee “acknowledges the difficulties faced in quantifying potential future costs arising from services that will be demand driven”, it “remains concerned that, despite the requirements of Standing Orders, best estimates have not been fully provided.”

A number of local authorities gave evidence to the Finance Committee and the Local Government and Regeneration Committee, and highlighted many concerns. For instance, East Lothian Council said:

“Local government will incur extra cost as a result of these provisions (which constitute a new legislative burden) and it is not possible to allocate money to these”.

There were submissions from Inverclyde Council, Glasgow City Council, North Ayrshire Council and North Lanarkshire Council, all of which raised legitimate concerns. The bill team confirmed that “That would be part of the normal discussions with local authorities through the annual budgeting process” and that “Local authorities would have to demonstrate and quantify what was involved and then go into discussions with the Scottish Government.”

As we know, local authorities the length and breadth of Scotland—regardless of their political colour—are currently cutting front-line services.

Kevin Stewart: Will Alex Rowley give way?

Alex Rowley: I will not, at this stage.

I raise that point not to highlight concerns about local government finance, but to argue that if the moneys are not available, the cost and the fear of cost could become a barrier to ensuring that public organisations progress the legislation in the intended spirit.

The Finance Committee and Kevin Stewart’s committee have flagged up those points, and it is important that we flag them up today. The Local Government and Regeneration Committee believes that finance is such a major concern that it draws attention to the issue in the report that is before Parliament today.

Kevin Stewart: The committee was divided on that point, but it would be fair to say that there are some concerns.

The Scottish Community Alliance director, Angus Hardie, said:

“while recognising the validity of the concerns highlighted by the ... Committee with regard to the Financial Memorandum, the Scottish Community Alliance would urge MSPs to support the passage of the Bill to the next Stage.”

Does Mr Rowley agree with that?

Alex Rowley: I have said that the Scottish Labour Party absolutely supports the principle of community empowerment. However, there are serious questions around finance that should be raised in Parliament. That is a fact.
Anne McTaggart (Glasgow) (Lab): Alex Rowley referred in his opening comments to poor legislation and the challenges in the bill. Does he agree with the latest statement from the Scottish Allotments and Gardens Society, which asks for section 7 to be removed from the bill and passed as separate legislation?

Alex Rowley: I should probably declare an interest as a very keen allotment grower. There needs to be further discussion with the Scottish Allotments and Gardens Society, which has raised a number of issues that I note—with the greatest respect—the minister did not address in his response to Kevin Stewart’s intervention.

Marco Biagi: On the point about discussion with the Scottish Allotments and Gardens Society, I have been out and visited an allotment, and met the society to discuss the five points that it put forward. I also spoke to the society’s president on the phone on Friday. There has been continuing dialogue, which will go on. It is important to identify what the society is looking for, because that is the sticking point right now with regard to what the legislation needs to do. My door is open, and my phone is on.

Alex Rowley: I agree with the minister that the five points that the society makes will form the basis of a discussion.

The letter that the society has submitted highlights a missed opportunity to link the bill to the food strategy and to health and wellbeing through the community planning partnerships, and to build its aims into local community plans. We should be able to have those discussions, and I am happy to join the minister in engaging in them. As I said, I am a very keen allotment grower and I would like to see allotments expand.

I will quickly highlight a few other issues. Inclusion Scotland states that

“in absence of genuine and meaningful community capacity building and engagement, the opportunities created by the Bill will not be”

equally distributed. It goes on to state that under part 3 of the bill

“Communities which are the most marginalised, fractured and impoverished are likely to benefit least whilst communities already rich in resources and human assets are likely to benefit most through their acquisition of new assets”.

The Local Government and Regeneration Committee highlights the same points, which are genuine and need to be taken on board.

Inclusion Scotland’s briefing also highlights the issue of how “community” is defined. I was quite surprised to see that, because I thought that the Government was looking at the definition more widely. However, I discovered from reading the cabinet secretary’s evidence in committee that that was not what was said, so we need to take on board Inclusion Scotland’s point.

To go back to the point that I made at the start and that the minister made in his opening speech, if we are serious about tackling inequalities and poverty, we must recognise that empowerment is one part of that and getting community planning right is another. In a previous role, I met the Cabinet Secretary for Finance, Employment and Sustainable Growth and had a discussion about that. I am absolutely committed to community planning, but we must recognise the points that Inclusion Scotland makes, including that it believes

“that the requirement placed on community groups to request participation disempowers rather than empowers communities, as it leaves the power with the public bodies, which should instead have a duty to ... engage with communities.”

There are some serious points in that that we must pick up and consider if we are serious about the principles of the bill. They are all highlighted in the evidence to the committee.

This morning, I read another briefing that came from Barnardo’s, Oxfam and others. I note that they talk about participatory budgeting. The minister has said that he is interested in that, and some pots of money have been made available.

I am a big believer in the idea that there is in Scotland a fourth tier of government—community councils. As we discussed in the committee, many people criticise them because they often tell us what they are against rather than what they are for. In my constituency, three community councils had elections only a few months ago. The turnout was 22 or 23 per cent, which is not bad when we consider that it was 27 per cent in the by-election in Kirkcaldy, which I thought was good for a by-election. That means that 20-odd per cent of the communities in Kelty, Cardenden and Lumphinnans turned out to elect local community councillors.

If we go back to the Local Government and Regeneration Committee’s previous report on empowerment and voting patterns, we see the argument that, if councils are perceived to have more powers, more people are likely to come out and vote. It is likewise with the fourth tier of government in Scotland. It is worth exploring passing budgets down through participatory budgeting to local level to empower communities to take local action.

The Deputy Presiding Officer: You need to draw to a close, please.

Alex Rowley: I will draw to a close.
We must reconsider the right to request to participate, because we cannot have it without a proper appeals system.

Scottish Labour is absolutely committed to empowering communities. We need a progressive agenda that not only puts far more power into this Parliament from Westminster but ensures that it goes from Parliament to communities. That is the way ahead.

The bill needs a lot more work, and we are certainly up for working with the Government and partners to move things forward.

14:57

Cameron Buchanan (Lothian) (Con): The bill contains some provisions with which I agree and some with which I do not. I welcome the principle of community empowerment, but I am not sure that the bill will truly empower communities in the most appropriate way.

Although there have been areas of broad agreement, I will raise a number of concerns that remain, in the hope that further discussion will help to resolve the issues. It is vital that key terms in the bill be defined properly, which unfortunately does not appear to be the case. In addition, it is a fundamental point that bills must be costed before they are put to Parliament for approval. As yet, that has not happened. I welcome the general provisions regarding allotments, but wish for greater clarity on them as the bill progresses.

Before I elaborate on the aspects of the bill on which some work is needed, I reiterate my agreement with the principle of enabling communities to have a greater say in their areas. However, I am not sure that the bill would empower communities in the most appropriate way.

Furthermore, it is vital that definitions of when a community's right to buy can be enforced be set out very clearly. An absolute right to buy without strict and obvious conditions would set a very damaging precedent that would be neither fair nor in Scotland's best interests. My colleague Alex Fergusson will elaborate on those points.

One of the key aspects of the bill that is to be assessed as it passes through the Parliament is the estimate of the costs that will arise as a result of its provisions. In its report, the committee expresses its concern that best estimates of costs arising from all provisions have not been provided, despite the requirements of standing orders, as Mr Rowley said. I feel the need to reiterate those concerns in the strongest terms, because that omission in particular, regarding asset transfer or participation requests, is a serious matter that must be addressed before the bill goes to stage 2.

Members of Parliament should not be expected to debate accurately the merits of the bill without proper costings; we cannot be expected to sign a blank cheque. We may hear the excuse that there are difficulties in quantifying future costs arising from provisions that will depend on the amount of demand, but that is no excuse, since the committee and Parliament expect estimates within ranges. I am sure that many members share my concerns in that regard; I expect that the concerns will be addressed as soon as possible.

I welcome the bill's aims to make clear provisions regarding allotments. They are valuable to many people and it is important to explore how we can help. Accordingly, I agree with a number of the provisions. However, I would like to raise two particular aspects that I believe should be considered. The first concerns provisions regarding the size of an allotment plot. The committee heard points regarding traditional plot sizes. People were right to highlight the need for plots to be of sufficient size, but it is perhaps unwise to assume that all allotment holders wish to use them for the same reasons and for the same purpose. For example, some people use allotments purely as a hobby, rather than as a means to feed a family.

Furthermore, different areas will have varying local demands and differences regarding available space, as we heard in connection with Fort William. The point that I am trying to underline is that a balance must be struck. Allotment holders deserve a reasonable sized plot, but local authorities need flexibility to adapt to local circumstances and local demand. With that in mind, as we have heard, the Scottish Allotments and Gardens Society suggested that a particular size could be a reference standard that could be halved or quartered, rather than being an obligatory standard. That is worth detailed consideration. However, it remains sensible for local authorities to have the flexibility to offer plot sizes that are most suitable locally.

The second point that I would like to make on allotments is that, in the interests of fairness, no supplier of grown produce should be excluded through legislation from selling the produce locally in markets or shops. It is only fair that new producers are able to establish themselves without undue boundaries, and local consumers should be able to decide for themselves what they want to buy.

Before I conclude my remarks, I would like to return to what I see as being one of the most important points to be made about the bill, which is that it lacks clear and unambiguous definitions in many areas. For example, I welcome the duty that the bill places on local authorities to establish and maintain a register of all property and assets that
are held by them for the common good. That duty will, amongst other things, help to increase transparency. However, the definition of “common good” is not set out clearly, which might result in confusion during the bill’s implementation, as well as opportunities for provisions to be either extended or avoided.

I hope that today’s debate shows a degree of agreement around some aspects of the bill, even though pressing concerns remain over many provisions.

Alex Rowley: Does Cameron Buchanan agree that it is therefore crucial that we have some kind of financial estimates of the costs that could be incurred, if we are serious about taking this bill forward and wanting it to work in communities?

Cameron Buchanan: It is essential that we have estimates of costs, or the bill cannot proceed. We have not had those estimates.

It is important that, in the provisions on allotments, the correct balance be struck between protecting allotment holders’ interests and allowing local authorities the flexibility that they need to operate efficiently. After all, community empowerment should be about allowing decisions to be made locally. Furthermore, it is vital that clear definitions be provided for each aspect that remains ambiguous. If they are not, the interpretation and reach of the bill could be extended beyond its remit, with controversial consequences.

I would like to finish on a positive note, by highlighting my sincere concern about the lack of financial information that has been provided and reiterating my expectation that that omission will be rectified.

The Deputy Presiding Officer: We come to the open debate. Speeches should be of six minutes, please.

15:03

Rob Gibson (Caithness, Sutherland and Ross) (SNP): The Rural Affairs, Climate Change and Environment Committee considered part 4 of the bill and reported our views to the Local Government and Regeneration Committee.

Land reform is an on-going and complex process. The provisions in part 4 address some of the issues on that agenda. Once amended, the provisions should resolve the identified shortcomings of the Land Reform (Scotland) Act 2003 and extend the community right to buy across Scotland, which we welcome. However, we agreed with some concerns about the drafting of the bill, with regard to what is included and what is to be left needing regulation and guidance later on.

The committee believes that the complexity of aspects within part 4 merits further explanation in the financial and explanatory memoranda. Further consideration of sustainable development and human rights could have facilitated a more constructive dialogue between landowners and communities. We understand that the community right to buy will be demand led, so the costs for communities, landowners and public bodies are unclear. The financial memorandum omits to monitor the cost implications of the part 4 provisions closely and the funding requirements will have to be kept under review—the figure is as long as a piece of a string.

Stakeholders overwhelmingly support extending the community right to buy to the whole of Scotland. The committee agrees, and we welcome the provisions in section 27 to do so. We also welcome the cabinet secretary’s potential amendments at stage 2 to extend the list of eligible community bodies, and we recommend that that includes community benefit societies and community interest companies.

We heard some suggest that the definition of communities should include communities of interest as well as those of geographic place, for example in dispersed rural communities. However, the committee recognises the importance of communities being rooted in place, and we are content with the definition in the bill.

Registration of an interest in land was explored in great detail. As many communities start to take an interest in land acquisition only when land comes on to the market, it is right to have that. Communities benefit from proactive engagement in community development and trying to identify assets that they may need to deliver their objectives. In principle, we are supportive of the requirement to register an interest in land, but re-registration processes must be simplified and should include the option to register for a purpose.

Communities should have a right to register an interest and to be notified when land is coming onto the market or ownership is changing and that should trigger the process of registering a right of pre-emption, which is a new way forward. The process for late registration should reflect the practical reality for communities and should be redesigned to accommodate that.

A presumption in favour of re-registration should be agreed unless there is some material change of circumstances. If the re-registration process is substantially simplified, a requirement to re-register every five years is appropriate.

The committee agrees that mapping requirements for the community right to buy are excessive. Communities need a simplified system to align the eligibility criteria with those for parts 2
and 3A of the amended Land Reform (Scotland) Act 2003.

The power to extend the community right to buy where there is no willing seller should be a power of last resort. That power could play a key role to hasten negotiation. We are concerned that this new right, as currently drafted, may be almost impossible to exercise. Too many obstacles and opportunities for avoidance on the part of landowners occur to us.

Why should the definition of eligible land be restricted to that which is considered to be “wholly or mainly abandoned or neglected”?
The committee believes the draft bill may fail to further sustainable development. Why is a definition needed at all, as the parallel tests for crofting land purchases do not require that? Most committee members support tests of furthering sustainable development and being in the public interest, which meet the requirements.

The majority of the committee recommended that the Scottish Government consider a definition that avoids the wider circumstances that are barriers to sustainable development, and we look forward to the minister providing guidelines before stage 2. If no unambiguous and acceptable definition of abandoned or neglected land appears on the face of the bill, avoiding the existing legal concept of abandoned land, the committee will ask the Scottish Government to remove the term “abandoned or neglected land”. We think it is an urban concept that has little place in rural land use.

The difficulties faced by communities in seeking to exercise their right to buy prompt us to seek assurance that appropriate support and funding is available. Public sector bodies, such as the Forestry Commission, must be proactive, so we welcome the Scottish Government’s proposal to establish a community land unit to provide support and advice. That may help many communities to make progress.

The committee understands that the Scottish Government intends to lodge amendments at stage 2 to include provisions for the crofting community right to buy. We would have preferred the consultation on the crofting community right to buy to have been undertaken alongside the consultation on the existing part 4 provisions, and amendments to the crofting community right to buy to have been included in the bill rather than being introduced at stage 2.

The committee wrote more than 70 pages of report on part 4. That suggests that the bill is a huge bill with huge intent and that community empowerment is central to all our interests. To make it all the more effective, we hope that the Government will take on board the committee’s views.

15:10

Sarah Boyack (Lothian) (Lab): There is strong support across the chamber for extending land reform to urban communities. Part of the process has to be about learning from the lessons of the implementation of our historic land reform legislation in the early years of the Parliament. It is important to bear that in mind as we look at the details and the principles of the bill. We have to make sure that the legislation that Parliament passes is capable of working as intended and that communities will be able to use it, and there are key concerns about that.

I thank the committees for their work. I have recently joined the Rural Affairs, Climate Change and Environment Committee. I particularly thank the many stakeholders for the detailed work that they have done on their comments to enable us to process their concerns at stage 1.

I put on the record the fact that Labour wants to work with those who want to be radical on land reform. A couple of years ago, we made it clear that we want to see new community rights to purchase land even when there is no willing seller. We are very pleased to see those ambitions in the bill and we strongly support them in principle.

For us, the key challenge is to make sure that the proposals are workable. We need more than the rhetoric of land reform and of being radical; the detail has to match the rhetoric. That remains a key challenge as we move towards stage 2 of the bill process. The stakeholders who have given us evidence and are listening to the debate today do not believe that the bill’s proposals are sufficiently clear or workable.

The proposals appear to give new rights with one hand but, on the other hand, they might make it impossible to exercise those rights in practice because of the specific wording used in the bill. The committee report makes that clear.

That takes me to the central purpose of the bill and the question of land that is to be eligible for potential purchase even when there is not a willing seller. The policy memorandums for the Land Reform (Scotland) Act 2003 and for this part of the bill make it clear that the policy purpose of the provisions is to further sustainable development and to remove barriers to it. As currently drafted, the bill refers to such impediments to sustainable development on land that is “wholly or mainly abandoned or neglected”.

That seems to be too narrow a definition that implies that what is under consideration is solely the physical characteristics of the land. To us,
sustainable development is about both physical and environmental matters and social and economic matters. The social and economic development of communities can be neglected as well as their land being environmentally or physically neglected. The bill must be absolutely clear about that.

The Scottish Government appears to be reluctant to do what the committee wants to do by defining abandoned or neglected land in the bill. When the committee debated the issue, it emerged that the Scottish Government was having further consultation on the issue on the very same day. We have not seen the outcome of those discussions. Claudia Beamish and I dissented from that one part of what is an extensive and very strong report to signal how important it is to us that the matter is resolved. We reserve the right to have abandoned or neglected land defined in the bill, even if the committee is tempted to follow the Government’s preferred route.

Paragraph 219 of the bill concludes:

“The Committee reserves the right to take evidence on this issue at stage 2.”

That is the part we strongly support.

I do not know whether the environment minister is speaking today, although I am glad that she is in the chamber to hear the evidence. Our report shows that the Law Society, Scottish Land & Estates, Community Land Scotland, the Church of Scotland and other respected organisations have looked at the bill and strongly criticised how it might be implemented.

We think that there must be a clear definition. If that is not there, stakeholders have given us fair warning that in any court challenge there will be a real danger that the court may decide, when considering the prescribed matters, that “the linkage between those concepts was not sufficiently warranted or reasonably envisaged by the statutory provisions, or was stretching the normal interpretation of the primary tests”

—which would be the dictionary meaning of the words “abandoned” or “neglected”. We have been clearly warned about the dangers of the current approach and we are in danger of giving a new and powerful right with one hand but removing it in practice with the other because the detailed words in the bill are wrong.

There is another trap in the bill, which is the clause that requires ministers to be satisfied that it would be inconsistent with sustainable development if the current owner of the land was to remain the owner. We have had evidence that that would be impossible to demonstrate and could automatically mean that any community application would be bound to be refused. That is why the committee wants that provision to be deleted.

The bill is hugely important and we share communities’ ambitions for the sustainable use of their land, but we need to ensure that communities can exercise that power. The bill as drafted will not let them do that. As our convener Rob Gibson said, the devil is in the detail.

We do not yet know when ministers will respond to the committee; that will be absolutely crucial. We have a very short timescale. In just a couple of weeks we will take extra evidence on the community right to buy and in a month we are scheduled to look at the bill in detail for stage 2. We very much need detailed information from the Scottish ministers. When the minister sums up, I would like to know when we will get that information, because we will want to look at it in detail with stakeholders as we decide on which amendments—including those that the Scottish Government might lodge—we think are appropriate.

The bill is hugely important and I am concerned about the timescales. If we do not get the detail right, the bill will not do what we all want it to do. That cannot be allowed to happen.

15:16

Michael Russell (Argyll and Bute) (SNP): The bill is very welcome. It is useful to state at the outset, as minister did, that this is about mindsets more than minutiae. We cannot empower communities by fiat; communities need to take power to themselves.

The Deputy Presiding Officer: Mr Russell, could you check your microphone? I am not hearing you very clearly.

Michael Russell: Sorry, Presiding Officer. I was just hiding away.

The job of legislators is to create the framework to allow that to happen, encourage those who want it to happen, remove the barriers to it happening and ensure that those who do not want it to happen are not successful in their aim. I will touch on all those issues in a moment, but first I will make three other points.

First, although the word “sustainability” is on everybody’s lips, there is no practical assistance to communities and others who want to understand what that means to their buyout. It should be possible to give Scottish Natural Heritage, for example, a statutory duty to help those who take on assets and advise them how to manage them sustainably.

I agree with Rob Gibson and Sarah Boyack about the difficulty of the words
"wholly or mainly abandoned or neglected."

They need to be defined in the bill and all of us regret that that has not happened yet. If it is not done at stage 2, the words will have to be removed, because they present an enormous barrier to the successful operation of the bill.

Consideration is also needed of a requirement in the bill for ministers to have regard to the International Covenant on Economic, Social and Cultural Rights when determining an application. Ministers are already bound to have regard to the European convention on human rights. It is important that we recognise the wider human rights considerations that land reform presents.

As we are all born-again diggers, I refer to the allotments issue. There are very clear and simple requests from allotment owners. The Scottish Allotments and Gardens Society wants a definition of standard plot and a public sector duty. Those are reasonable demands that would contribute to the Scottish Government's health, environmental and food policies.

The biggest issue in the bill for me, and for many, is the transfer of assets to local communities. In that regard, the task that I have outlined—to create the framework, stimulate the demand, remove the barriers and ensure that those against do not succeed—is very clear. It needs to be judged against two things: the present legislation on community buyout and the actual practice for those who try to buy properties.

Members in the chamber will not be surprised that I want to use an example from my constituency: the proposed buyout of Castle Toward. Castle Toward is a large, decaying mansion house set in parkland that overlooks the Clyde. It was built in 1820 by Kirkman Finlay, the lord provost of Glasgow and the MP for Glasgow. It was owned by the Coats family, and during the second world war it was commissioned as HMS Brontosaurus—perhaps that is rather appropriate, given the dinosaur-like attitude of Argyll and Bute Council—and was used as a training centre for the D-day landings. It was purchased by the Corporation of Glasgow in 1948 and became a celebrated outdoor centre.

When local government was reorganised, Castle Toward passed to Argyll and Bute Council at no cost. Up until 2013, it had a tenant who had a very poor relationship with the council. The community tried and failed to buy it in 2011, and a commercial bid failed in 2013. A second community purchase bid has been made, which was backed by the overwhelming majority of the community in a ballot. The bid has received the maximum funding from the Scottish land fund and it is supported by Highlands and Islands Enterprise. Just last week, the Scottish Government made a helpful intervention via the cabinet secretary. Up to 100 jobs could be created. An anchor tenant is in existence. A new valuation that the community had carried out supports the purchase price offer of £850,000.

The community is desperate to get hold of the asset but, for some reason, the council will not sell. A 10,000-signature petition demands that the council sell the property, but it makes no difference. Chimeras such as difficulties with state aid and the business plan have come and gone. There remains an intransigence on the part of the council. Indeed, it is worse than an intransigence—there is a pretence that the council wants to sell. A £1 million loan has been offered to the community, but the business plan shows that that cannot be supported. The council has even said to the community that it should just take the loan, default on it and hand the property back in three years’ time. We might describe such action as being more appropriate to the Cosa Nostra than to the Costa Clyde.

The reality is that the building remains in the possession of the council. If it was a private individual who was involved, we would pillory them the length and breadth of Scotland. Such poor landlordism is not unique in Scotland; it is not unique even among local authorities. There is a public mindset—to use the word that the minister used—that property is retained by the public sector and that access to it is very rarely given by anyone else.

That is particularly true in Argyll and Bute. This morning, I spoke to MacLeod Construction, which is a big building firm in Argyll that is desperate to build a factory unit in Lochgilphead. The community wishes to have part of the land for community use, but it is being obstructed by the local authority. There are many examples across my constituency of extraordinarily poor stewardship of public assets, which the community cannot get hold of.

When we apply the tests that I have outlined, we find that the legislation is not doing enough to force the issue. A framework exists, but it is not working well enough. The bill can change that. Demand exists—in many areas, that demand is growing all the time—but there are still too many barriers that local authorities and public agencies can put in the way of communities, and there are still far too many ways in which bodies can obstruct community purchase.

Whether in south Cowal on Mull, where the community council wanted to buy the local toilet from Argyll and Bute Council and was told that it would be no problem—it would cost £30,000 and would take a year to process—in Oban, where Rockfield school is for sale and the community wants to set up an arts centre, or in Lochgilphead,
throughout Argyll and Scotland as a whole communities want to buy and use assets. They would use them in better ways than those of us who stand as stewards of them do, including the councils. We must get the bill right so that that can happen. We will do that through the process of amendment. I hope that the minister will be sympathetic to that aim.

The Deputy Presiding Officer: I advise members that we are eating into what little extra time we had.

15:23

Tavish Scott (Shetland Islands) (LD): I welcome the minister to the bill. I hope that he does not spend all his time over the next few years with his lawyers but, on the basis of today’s proceedings, it sounds as if that is reasonably likely.

Liberal Democrats support the bill. It would be difficult to be against community empowerment. I believe that many of the remarks that have been made in the debate, not least those that Kevin Stewart made about the principle of trust, have struck a reasonable tone on the best way to achieve what is sought from the bill.

There are a couple of other important principles that have not been touched on, one of which is devolution within Scotland. I know that the minister will not agree, but I want to see a reversal of centralisation within Scotland and a return to decentralisation. We have spent an awful lot of time arguing about the principle of what should flow from one part of the United Kingdom to another. However, it is important in our deliberations that we, at times, reflect on what more could be done around Scotland in our different communities, towns, villages and islands were some of that decentralisation to happen.

Marco Biagi: In the spirit of returning to that decentralised era when the member was a minister, does Tavish Scott support the return of ring-fenced funding in local government?

Tavish Scott: I am just coming on to the ring fencing that the minister still has in place. The idea that he has got rid of all the ring fencing is far from the truth.

I am very grateful to the minister for raising the issue. I will come on to the other centralisations that he has voted for so convincingly over the last number of years. I was hoping to debate in a much broader spirit, but if he wants to play the politics, believe me, I will be all too happy to do that, too.

I return to the laudable objectives in the bill to encourage local people to design, initiate and decide on the services that they want and to use the assets that Mike Russell mentioned briefly. We should have a role in encouraging local government, too. Mr Russell made a very strenuous and passionate case about the failures of the council in his area on a particular project, and I am sure that he is entirely justified in making that case. However, I worry slightly at times because when we are considering community empowerment, it would occasionally be important to recognise that local government can play a positive role in that. Far from believing that local government is a threat to Holyrood rules, which appears to be the view on some of the nationalist benches, we should take a rather more positive approach.

I see in some of the submissions that we have had that the same approach could be applied to community councils. I was a bit taken aback by reading the minister’s remarks about community councils in his evidence to the committee.

The Government minister rightly asked for ideas and proposals. I strongly believe that one way to empower communities is by giving more local government financial responsibility at a local level. That is not just about participative budgeting. Many submissions talked strongly and persuasively not only about that, but about local government finance. The minister is blessed with a majority in the Parliament. He could reform local government finance. He could introduce local income tax. He would have no impediment from my party; indeed, on that issue, he would have our support. More to the point, he has the numbers to get it through. Sadly, the policy is going nowhere; it appears to be utterly lost in the long grass of the Government’s thinking.

Marco Biagi: There is an outstanding invitation to the Liberal Democrats to nominate a member to join the commission on local tax reform. Perhaps if you return the letter, we can get on with creating the commission.

Tavish Scott: The minister could just pass legislation to introduce local income tax. That is the policy that I believe in and I thought that you believed in, too, Marco, so why do you not just get on and do it rather than set up yet another commission?

The Deputy Presiding Officer: I ask members to speak through the chair, please.

Chic Brodie (South Scotland) (SNP): Why did the Lib Dems not do that earlier?

Tavish Scott: If Mr Brodie wants to intervene, I will happily take that intervention. However, if he does not have anything to say, why does he not just stay where he is?

We must reverse the centralisation. If the bill begins to do that, that would be welcome indeed. Over the past seven years, we have seen many
changes that, far from empowering communities, have taken powers away from them.

I agreed with the minister when, in his opening remarks, he said:

“communities should always be around the table when decisions that affect them are being taken.”

I entirely endorse that sentiment and that principled approach. However, the approach should also have applied to the police and fire services, to the courts closures and to the other closures that we have seen over the past number of years when communities’ views on those subjects were very much ignored by this Government. I could mention a number of other examples, but it seems to me that, if we are to move forward, there needs to be a little understanding from the Government that the one-size-fits-all approach that tends to come from Edinburgh does not mean flexible and responsible local services or assets being used in the right way. That needs to change.

I also want to reflect on a series of particularly helpful submissions for the debate from different organisations, not least of which is the submission from the Scottish Council for Voluntary Organisations. It said:

“Successful community empowerment cannot be driven by a top-down approach, it must be encouraged to develop from the grassroots up.”

I am sure that most of us would agree very strongly with that sentiment.

Scottish Community Alliance has been mentioned. It noted:

“the Bill is a missed opportunity to address at least some of the long standing challenges faced by the country’s most localised tier of democracy”—

community councils. I commend that approach to the minister. I hope that he might give that further thought.

Voluntary Action Scotland noted:

“The bill does not go far enough to force this joint working between statutory bodies”.

I hope that the minister accepts that there is a lot to do.

Rob Gibson rightly spoke about the amendments on the crofting community right to buy that the Government plans to lodge at stage 2. We raised the same concerns in connection with the Aquaculture and Fisheries (Scotland) Bill just a year or so ago. Mr Gibson—quite fairly—made that point, as did Mr Fergusson and Ms Beamish. I hope that the Government will not make the same mistake as it made with that bill, which was to introduce big stage 2 amendments without any consultation. That is a parliamentary point for you, Presiding Officer, as much as for anyone else.

The Deputy Presiding Officer: I ask members to keep within their 6 minutes, please.

15:30

Mark McDonald (Aberdeen Donside) (SNP): I was a member of the Local Government and Regeneration Committee throughout the stage 1 consideration of the bill, although I left the committee before it drafted its report. Having looked at the weighty tome that was produced, I have a feeling that I may have had a lucky escape at that point. I pay tribute to the committee clerks, who did a fantastic job during the consideration of the bill in supporting the committee’s work and ensuring that we were able to hear from a wide range of interested parties, be they local authorities, other public bodies or—most important—community groups and organisations here in Edinburgh and, crucially, out there in the communities.

I have been enthusiastic about the bill’s potential for some time and I remain so. However, I will cover only a couple of the areas within it because there are a lot of sections and my colleagues have covered some of the other areas in detail. I will address the areas that I focused on during my consideration of the bill in committee and will flesh out my comments a bit.

Participation requests are extremely important. All too often, I see an approach to service delivery that supports design from the top down rather than from the bottom up, although we are now seeing some improvement in how local authorities consult communities, whether on the design of services, the delivery of services or the formation of their budgets. When I arrived in local government in 2007, the budget process was a closed shop. Back-bench council members received their budget papers a couple of weeks before the budget and communities had very little input into how the budget was formed. In Aberdeen City Council, we took the approach of reforming the process so that the public face of the budgeting process started much earlier, which allowed much more community feed-in and involvement. I see participation requests as an opportunity for that kind of approach to be taken not just in how local authorities set their budgets, but in how they design and deliver services. That will result in the meaningful involvement of communities rather than the tick-box consultation exercises that politicians hear complaints about all too often.

On asset transfers, my colleague Mike Russell made a passionate case on some of the issues that affect his local community. He highlighted the fact that there can, all too often, be blockages. I have seen that in my constituency as well. There are good examples out there of communities and community organisations having taken on assets
or land from local authorities or other bodies and having delivered real opportunities or good work in communities. I am thinking of, for example, the Dyce development and amenities committee, in my constituency, which operates the old Carnegie library—the Carnegie hall, as it is known in Dyce—which a range of community groups is able to use. It also operates the community garden, which has provided some green space and an opportunity for people in the community to enjoy that area.

Yet, just a couple of miles down the road, in the community of Bucksburn, there has been a long-standing and protracted attempt to gain access to green space next to the Cloverleaf hotel. The land, which is known as the Cloverfield park area, was transferred to the local authority in exchange for green space that was taken up during the development of the new secondary school. The land requires work, and there is interest from within the community in developing it as a community garden or community green space; it is recognised that there is a lack of green space for the people of Bucksburn to use. However, it has proved extremely difficult to get the local authority to come to the table and have meaningful discussion and dialogue with the community to advance the issue. As a result of a housing development, there might be an opportunity to develop the land, but what ought to have been a simple process has taken far too long.

Another, recent example is Victoria road school, in Maureen Watt’s constituency. The community in Torry wanted to take on the former primary school and operate the building for the benefit of the wider community, but the council has rejected the approach and elected to demolish the building. The council’s decision is unfortunate and flies in the face of what we are trying to achieve with the bill, which is to allow communities to have much more say in and ownership over what goes on in their areas.

I recognise the importance of allotments. There are a number of allotment plots in my constituency. I highlight an issue that came up in committee discussions: there is a requirement on local authorities in relation to allotments, but many other public bodies and organisations have land that might be suitable for allotments. Will the minister reflect on that as he considers how the bill might be amended at stage 2?

15:36

Bob Doris (Glasgow) (SNP): I am glad that I am following Mark McDonald, because in this important debate I thought for a while that members were speaking in abstract and technical terms and were not making the issues real for the communities that we represent, as I want to do.

A few months ago, I led a debate in the Parliament about helping community-led regeneration in Royston. Royston, or the Garn gad, as most locals call it, does not have its challenges to seek. However, it has many inspiring individuals and organisations who daily make a difference to many people’s lives. I am thinking of organisations such as Blochairn Housing Association, Spire View Housing Association, Copperworks Housing Co-operative, Royston Youth Action and Rosemount Development Trust, and individuals such as Charlie Lunn, Tilly and Liz McIlroy and Joan Reuston, who champion community empowerment in everything that they do. There are many more groups and individuals who do much in the Garn gad, and I am sorry that I cannot mention them all.

I firmly believe that if the bill had become law several years ago, the community in the Garn gad could have benefited greatly. The test of the bill is whether it can make a significant difference to that community and others that I represent.

I am privileged to have worked with key community stakeholders, on a cross-party basis, to help to develop a community regeneration strategy and get a forum up and running in that regard. In particular, I thank Rosemount Development Trust and Kevin Murray Associates, who have brought us to a stage at which we have a fully fledged and community designed, consulted on and led regeneration strategy.

Whether we are talking about plans for a sports hub and more sports facilities, better connectivity with other areas, better shopping facilities, particularly around Roystonhill, bringing healthcare into the community, providing local amenities such as improved recreation and meeting space, or better housing provision and mix, everything has to tie together and the community must lead the strategy.

An issue is that in the middle of the community there is a significant piece of land, over which the community has had no control for many years. The land was sold to a group called Focus Urban several years ago, which made a commitment to put affordable housing on it, but—to be frank—that never came to a hill of beans. It could be argued that at the time the local authority did not take a joined-up approach to considering whether that was the best place to build houses anyway.

In recent months, that company went bankrupt and the land was to be disposed of by the Bank of Ireland, which had control over the situation. As political representatives and community stakeholders, we all made strenuous efforts to get in contact with someone to see whether the community could get control over a key piece of land in order to bring about a fully fledged, bigger-picture regeneration of the wider local community,
but I am afraid to say that we had no joy. The land was sold to an offshore company, but it does not matter whether it is such a company, a domestic private concern or, indeed, a local public authority interest that owns the land, because the bottom line is that the community has a plan for Royston, or the Garn gad. 

We will push forward that plan as best we can, but it would have been much better if we had had control over all the community assets. Much of the talk in the debate this afternoon has been around what terminology such as “abandoned land” and “neglected land” means. I concur with the view that if land is not part of a sustainable community regeneration strategy but is an asset that is lying fallow, it is neglected land. Such land in the Garn gad has to fit into the bigger picture of wider public interest and public communication about what people in the Garn gad want.

If the minister wants to see for himself what living, breathing, community empowerment legislation will look like in action, he should come to the Garn gad and see what we have done and also see the land in our community that we no longer have control of. I urge the minister to take up that invitation.

I say “our community”, but I do not stay in the Garn gad. I stay in an area of Glasgow called Summerston, and I will also speak about a community asset in that area. The minister need not worry, because I will not invite him to see the asset. However, I will certainly make him aware of it.

There are very few community facilities in Summerston, which has grown exponentially in recent years—I stay in one of the new-build houses—but without community assets being brought in to support that growth. However, there used to be a community asset facility in Summerston that was a day centre for adults with learning disabilities. I will not rehearse the arguments about whether the centre should have stayed open, although I supported its retention. However, I will certainly make him aware of it.

There are very few community facilities in Summerston, which has grown exponentially in recent years—I stay in one of the new-build houses—but without community assets being brought in to support that growth. However, there used to be a community asset facility in Summerston that was a day centre for adults with learning disabilities. I will not rehearse the arguments about whether the centre should have stayed open, although I supported its retention. However, I was a key community asset in a key community location that is now sitting boarded up and empty and which is being vandalised and going to rack and ruin because of the lack of a joined-up strategy. If only the bill had become an act earlier, it would have been possible to marshall the many community views on the building and its site and make them the real heart of community regeneration in Summerston.

To return to the story that I told about Royston, I hope that the minister will come and see the area for himself. Colleagues have spoken about technical aspects in relation to how we can improve the bill, but at the end of the day the bill has to do what it says on the tin for the communities that we represent. Whether it is in Royston or Summerston, or in urban or rural areas, we must ensure that the bill delivers. I am delighted to support the bill at stage 1, but if it needs to be improved, the Parliament should come together to do that.

15:43

Claudia Beamish (South Scotland) (Lab): I am delighted to speak in this debate on the furtherance of fairer distribution of land and assets throughout urban and rural Scotland. Although ownership is only one way for communities to carve out a positive future, I am clear that land reform must continue to be the robust way forward in Scotland and that the Community Empowerment (Scotland) Bill makes a significant contribution to that.

I intend to focus on part 4, which was scrutinised by, as our convener Rob Gibson highlighted, the Rural Affairs, Climate Change and Environment Committee, of which I am a member. Like others, I am a born-again digger, so I will also make a quick reference to allotments.

As a member for South Scotland, I am keenly aware that the majority of community purchase in rural Scotland has been in the Highlands and Islands. Some argue that there is no interest in community purchase in the rest of Scotland, including in my region of South Scotland, but I strongly disagree. There are examples of community success across the south, from the Mull of Galloway Trust to Corehead farm, which is owned by the Borders Forest Trust. They have community interest in regeneration and sustainable development—in the true sense of that term—at their heart. There is also interest in community purchase for the future from other groups, such as in the village of Leadhills.

However, it is essential that support is in place to enable communities to identify opportunities, build capacity and understand how to take forward the process. Thus, the Scottish Government’s commitment to new bodies such as the community land fund, as highlighted in the land reform review group’s report, is fundamental to the way forward. It would also be helpful if the minister could confirm today whether the Scottish Government is considering a review of Scottish Enterprise’s remit to enable it to provide the sort of robust support that is offered by Highlands and Islands Enterprise.

With regard specifically to the bill, as a community activist and as a community councillor in the past, I have spent much time pondering the definition of “community” and, to be frank, I have not always come up with very clear definitions. It is a difficult issue, although the committee’s support for bencoms—community benefit societies—is an
important step forward. In the context of the bill, I believe that our committee was, on balance, right to rule out communities of interest and to keep the focus on communities of place. However, as Rob Gibson stressed, rurality is an issue, and I continue to seek reassurance on the matter from both the Minister for Local Government and Community Empowerment and the Minister for Environment, Climate Change and Land Reform. Groups such as the Strathaven choral society have members from as far away as 20 miles, and in the Highlands there must be societies whose members come from even further away. We have moved away from the postcode issue, but we need to be careful and we might need to look at the issue again at stage 2.

Sarah Boyack focused on concerns about the definition of abandoned and neglected land and on sustainable development—I will not rehearse what she said. Rob Gibson mentioned registration issues, and I want to highlight that simplicity is the key. That said, I am convinced that the committee made the correct decision to recommend a re-registration period of five years and not 10, the reason being that so much can change in a community, especially if it is in the process of regeneration and more people are coming in, because things can be fluid. If things are simple, a five-year period should be acceptable.

In this year of food and drink, I want to highlight the issue of allotments, even though it is not in part 4. I know that many members have an interest in ensuring that we have local, accessible, fresh food, and one aspect of that is people having the opportunity to grow their own, especially in these shameful days of food banks. No one can argue against the benefits that people growing their own food can bring.

As an organic gardener, I can vouch for the sense of straightforward delight that the commitment brings, from the first spade cut to the taste of one’s own perpetual spinach soup. Of course, the health benefits of digging one’s own allotment are widely known, as are the mental health benefits of being outside in the fresh air, even if it is pretty nippy at times.

Allotments also allow a sense of community from people sharing seeds and selling surplus produce together. In principle, I believe that anyone who wants to grow vegetables should have a little patch of earth to do that on, romantic though I may sound. However, we are a long way from that. In the view of SAGS, the identity and unique role of allotments have not been recognised and all the diverse food growing organisations and communities are being amalgamated into a homogeneous unit.

New models of devolved management and community control of local allotments are arising and they should be part of the dialogue about the food growing strategy. I respect the fact that the minister said today that he will look at the matter again, but I would be concerned if it ended up going into the long grass because of the confusion that has developed. Allotments are only a small aspect of the bill, but it is an important one.

Finally, I turn to human rights, which have already been touched on by our convener, Rob Gibson. Section 48 in part 4 is vital if we are to change the nature of discussions between communities and landowners, and there is a prize to be won. There are credible and tough backstop powers for the times when they are needed, but we all hope that, in their shadow, constructive dialogue and debate that lead towards more voluntary purchase of land can take place.

I hope that, at stage 2, we will be able to take the debate about the human rights aspects further. For too long, human rights have been mentioned only by reference to owners’ rights under the ECHR. There are many more human rights obligations than are in the ECHR and they require to be brought to the forefront of our considerations to ensure that they are reflected as fully as possible in the bill. In that regard, I highlight the evidence of Professor Alan Miller, chair of the Scottish Human Rights Commission, which I found compelling.

There are indeed concerns about the process and about how issues have been brought through so far, but I am an optimist and I believe that, if we work together, we will reach a fair conclusion in the bill.

Labour will support the passage of the bill, but a great deal remains to be done on its detail. I look forward to working with my committee colleagues to play our part in ensuring that it is the best bill possible for the communities of Scotland.

The Deputy Presiding Officer (John Scott): I call Chic Brodie.

15:50

Chic Brodie (South Scotland) (SNP): I suppose that, as I am an avowed devolutionist and strong supporter of personal, community and country independence, an inevitable expectation is that I will support the bill. Centralism and collectivism have no place in my personal lexicon. In general, I support the bill, but I am not so blinded by it to imagine that our governmental structures are perfect, or else why would I seek a wholly different structure from that of the current national Government of these islands? I continue to subscribe to the view that our local authorities and community groups are an integral part of overall governance, alongside our national Government at Holyrood, but change is inevitable,
and I hold the view that, at the end of the day, political power is a bottom-up process and that we have an obligation to ensure that the bill embraces that objective.

Although the bill’s general intent is welcome, some of the objectives and tenets in its current construction may need further review. I believe, of course, that they can be addressed.

The Christie commission recommended that the bill should seek to strengthen communities’ voices in shaping the services that affect them. As the bill’s policy memorandum states:

“Empowerment is a core pillar of the human rights approach.”

In enacting the bill, we have to ensure that we secure greater engagement and greater participation of communities in decisions that affect them so that they can determine what happens in building the community.

Although Christie was right to focus on outcomes, not targets, democratic involvement, decision making and engagement at the community level are currently very poor, despite the laudable election turnout in Fife. In some areas, particularly in relation to decisions that affect wind farms, for example, it is perceived in a few isolated cases that support or objections allegedly come down to a very few elected or, indeed, in some cases, appointed individuals who discuss community benefits and the like.

Alex Rowley: Will the member give way?

Chic Brodie: No. I am sorry.

My contention is that more emphasis must be put on local community democracy and ownership, and that we must avoid what the policy memorandum states. It says that communities might “have difficulty in understanding the ... draft legislation”.

The Local Government and Regeneration Committee stated in its report last February that the current experience of community empowerment in action across Scotland is mixed. Democracy, better understanding of the bill, a focus on outcomes, not targets—I repeat that—and continuous improvement, and, above all, responsibility and accountability for communities are critical.

The vehicle to support the core public service reforms rests with the current community planning process. The partnerships are key conduits of change to full community empowerment.

Yesterday, I met very senior representatives of the police and fire services in Ayrshire. They play a key role not just in managing their services, but in helping to empower communities through understanding objectives in their areas and beyond through the planning process.

Apart from the role of community partnerships in the development of a local participative hierarchy, the transfer of public assets, land and buildings to communities is paramount. Notwithstanding the challenges—there will be challenges—appropriate fiscal management and recording and the increased responsibility of communities to own public capital assets and improve their utilisation will, if they are done effectively, stimulate productive activity in the communities.

Alex Rowley: The member has mentioned wind farms. Does he agree that, in Germany and other European countries, more than 50 per cent of wind farms are controlled through community or public ownership? Is that not something that we should be striving for in Scotland, working with all communities?

Chic Brodie: Mr Rowley will find that, in any discussions that I have had on that subject, my main tenet has been community ownership.

Protecting or improving local facilities can lead to profitable enterprise. It behaves local authorities to pursue landlords who neglect the care of their properties—some properties are in a deplorable state, as the Presiding Officer will know from the case of the Bobby Jones building in Ayr—and to transfer those properties to communities for the purposes of community enterprise and income.

Let us not be afraid to place an emphasis—a bias, even—to ensure that new allotments are allocated to young people in the community. I support Bruce Crawford’s case for grandfather rights, but young people can be encouraged to get involved.

Let us encourage the social enterprise and third sectors to provide services through public procurement, not just to their own communities but to neighbouring communities, if they can.

In my opinion, the Community Empowerment (Scotland) Bill is one of the most significant bills, if not the most significant bill, to come before the Parliament. I look forward to its successful passage and, once amended, its enactment.

15:56

John Wilson (Central Scotland) (Ind): I draw members’ attention to my entry in the register of members’ interests: I currently serve as the chair of a community organisation that is in negotiation with the local authority regarding the asset transfer of a community centre in the village where I live, Glenboig. That has been a lesson in endurance for many people in the community. The first offer for the community centre was made seven years ago, but, because of the hurdles some council
departments put in place, the community had to walk away at the time. Then, more than a year ago, we were re-offered the community centre via an asset transfer.

That case has highlighted many of the problems that are faced not just by the community in Glenboig but by many communities throughout Scotland. In its inquiry, the Local Government and Regeneration Committee found from the evidence that was taken from community representatives in particular that communities were facing obstacles that were not real obstacles.

Michael Russell referred to the situation at Castle Toward, where a community came up with plans and presented them to the local authority. It was keen to take those plans forward, only to find that the local authority was the major stumbling block to doing so.

For the committee, the issue as we examined the bill was to make sure that we get the legislation right. We need to ensure that all the partners in community planning partnerships and other organisations understand what we mean by community empowerment. We do not just mean community engagement; we mean passing real power to communities so that they can participate fully in decision making and the delivery of services.

Too many organisations view communities as an obstacle to delivering what they think should be done to those communities. To them, it is not about what communities require or identify as their real needs.

The committee spent almost three years taking evidence on a number of issues. I pay tribute to the many community organisations that came forward and were candid about the issues that they faced in pursuing what they wanted to happen in their communities. The committee report highlights that “There should be an explicit requirement on all CPPs to include community capacity building in local plans and to report on progress along with setting out future plans in every annual report.”

We hope that the minister will take that on board and get the message out clearly to community planning partners, including local authorities and other agencies, that we are looking for real engagement with and empowerment of communities.

The issue of community partnership and working with communities reminds me of the work that I did in Castlemilk in 1988, when the new life for urban Scotland programme was introduced in four regions in Scotland. We found that the community partnership was very much a partnership of agencies that did not engage with communities. I hope that the bill will result in a sea change in the attitude of many officials.

Claudia Beamish and others have referred to Scottish Enterprise. I, too, would like its remit to be adjusted slightly to include the social element, in the same way as Highlands and Islands Enterprise’s remit does. HIE has shown clearly what it can do in working with communities in its area. If that was replicated in the central belt, there would be a major benefit for many communities, which could engage in not only social aspects but economic aspects that they want to engage in.

On the registration of community organisations, the minister highlighted the issue of SCIOs. For the many people who might not know what they are, I point out that they are Scottish charitable incorporated organisations. A number has been attached to them. I would like the minister to seriously consider reducing the required number of members from 20 to a lower number or to a number that is appropriate for the organisation. When we talk about community empowerment, we are talking about not just geographical communities but communities of interest, and some communities of interest might be smaller than that requirement in the bill.

I look forward to the response from the Government and to the amendments at stage 2. I hope that we end up with legislation that can take forward Scotland and its communities together.

16:02

George Adam (Paisley) (SNP): Although I am not a member of the Local Government and Regeneration Committee, I was there to welcome its members when they came to Paisley to see what is happening in communities in the town. It is interesting to see what the varied groups offer and the work that they are trying to do. There are many challenges in our community. It is absolutely no surprise to me that my colleague and friend Derek Mackay was the minister when we first started talking about the bill, because he saw the challenges that communities in towns such as Paisley have, and he knew that a bill could empower local people to make a difference.

One major problem that we have is in dealing with buildings that fall into disuse because of a change in public services. That is a problem throughout the country. Recently, NHS Greater Glasgow and Clyde changed its services and moved out of the Russell Institute in Paisley. As a local MSP, when the Paisley Development Trust came to me looking for a project for the future, I said that the Russell Institute was the perfect building to try to get access to and to bring back into use in the community. After a long time, in which the trust has gone through the difficulties
that members have mentioned community groups have when they get involved in such projects, the result is that Skills Development Scotland will be working from the building. That shows what can be achieved. The trust was lucky, because it had support, but other groups are not so lucky. We have to use the bill to ensure that we can make a difference and get assets back online.

We have in Paisley a selection of large places of worship that no longer have sufficient congregations to sustain them. How should we deal with those buildings? Some of them are significant for Paisley and some, such as Paisley abbey, are of national significance. We have to look at how we deal with such buildings when they can no longer be sustained by the organisations that currently run them. They are of importance to the local community.

I welcome the First Minister’s announcement in her programme for government of the new £10 million empowering communities fund. The fund will allow community groups to get the finance to develop programmes such as the ones that I have described.

One interesting project in my area is run by a local businessman called Gary Kerr. In short, Gary’s view of Paisley is similar to my own. He is committed to and ambitious for the town, and he sees that there are buildings that have been left unused following the end of their previous function, and which the community could be using.

Gary Kerr has set up the Paisley 2021 Community Trust, which is working towards the creation of a community cinema and theatre. The project will fit perfectly with the bill once it is passed, and the bill would give Gary Kerr an opportunity because he has had difficulty in dealing with red tape in local government. Let us not kid ourselves: local government can make it very difficult for community groups—not necessarily or always by design—to get through the process. The Paisley 2021 Community Trust project aims to have a community-based theatre and cinema in the town. There is a demographic of older people who do not want to go to the multiplexes or to other areas, and who would prefer to go to a more traditional venue that accords with what they regard as a cinema.

That brings me to some of the other issues in dealing with historic buildings in the area. The SCVO mentioned in its submission that it

“supports the transfer of assets to communities, provided that the community has an active desire to take ownership of them.”

That issue comes up quite often in dealing with authorities. As a former councillor, I can tell members that local authorities’ idea of community engagement and involvement often involves trying to force a community to take a building that the council no longer wishes to use and that it just wants to get off the balance sheet as a small part of the budget.

As the SCVO states, that is not the way to do things. We must ensure that communities are empowered in such a way that they can take on board all the issues and work with the buildings and the services that they want to work with.

During my time as a councillor, I became involved with the Renfrewshire access panel. In all honesty, I think that I was asked mainly because people thought that because my wife is a wheelchair user, I would know what an access panel was. Being the type of person I am, I got involved and started working with the panel. It is important that we acknowledge the work of access panels throughout Scotland in trying to engage with local authorities to give something back to disabled people with all types of disabilities. In my area, the Renfrewshire access panel is working with Glasgow airport to ensure that when people with disabilities go on holiday, there is a process to enable them to get on the plane and go back and forth across the campus with no problems.

The same is true for other areas. In Inverness, the access panel has been working with NHS Highland on improvements to Raigmore hospital. In other areas, access panels are working to ensure that new capital projects, such as a town hall refurbishment or a new school, are fully accessible.

Alex Rowley: Will George Adam give way?

George Adam: I am just finishing—I have only about 20 seconds left.

The Deputy Presiding Officer: The member should draw to a close, please.

George Adam: Those access issues are extremely important.

In dealing with community empowerment, we should remember that Scotland’s people are our greatest asset. Our communities want to make a difference in that respect, and I believe that the bill can empower them. We have to ensure that we make it work.

16:09

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I congratulate the Local Government and Regeneration Committee on an outstanding report, and the Finance Committee on emphasising in its report the fact that the lack of financial estimates breaches standing orders, which—as Alex Rowley pointed out—could become an obstacle to implementing the bill.
As Alex Rowley also said, Labour supports the principles of the bill, but we believe that it requires greater clarity and more teeth, and needs more explicitly to abandon the top-down approach for one that is based on co-production and which empowers local communities. In the first instance, those elements should be reflected in part 2 of the bill. I welcome the fact that community planning partnerships will at least have a statutory underpinning. They have been around for a long time; I do not know where they started. I was certainly talking about community planning when I was a UK minister for local government in 1997 and, as it developed, I became worried about the extent to which it was becoming a top-down process, so the committee is right to say that the Government needs “to be more prescriptive in relation to local involvement” to “ensure the necessary ‘paradigm shift’ from a top down approach”.

That is a loose quotation from the committee’s recommendations.

I welcome the fact that the national standards for community engagement will be put into legislation. I am reminded that I launched them 10 years ago, but I think that they have improved since then, although that will not be enough.

My final point on part 2 is that we need to listen to what Voluntary Action Scotland says about further involvement of the third sector.

I agree that part 3, which concerns participation requests, is too prescriptive about participation bodies requiring written constitutions, so I hope that the Government will accept the committee’s recommendation on that.

I am disappointed that, although the definition of participation bodies includes community councils, there is little in the bill that reinforces the importance of community councils.

Later today, I will go to West Pilton and West Granton community council. It is one of several excellent community councils in my constituency, which is probably why I have a particularly positive view of them. I expect that the community councillors will ask me about the bill and how the debate went because they have been interested in its progress. In fact, some of them have been particularly interested in part 5, which is on asset transfer. I think that they contacted and possibly even had a meeting with Marco Biagi about that. I will have a meeting with them and regeneration officials in three or four weeks.

On asset transfers, community groups hope that when such groups wish to acquire public land, the bill will make a difference. However, my fundamental question is this: what happens if the local authority just says no? The fear is that the bill will make no difference if a public body is determined to realise the highest possible receipt from selling off the land.

There is also no clarity in part 6 about whether or how local authorities could dispose of common good land through asset transfer. In fact, there are many questions about part 6 in general. Although everyone has welcomed the transparency of having registers of common good land, there is still a lack of clarity about the statutory definition.

I apologise to members, but I am trying to get through all the parts in the short time that is available.

Under part 4, the right to buy land will be substantially extended. I am sure that that is widely welcomed, and I particularly welcome the compulsory right to buy, which gives communities the right to acquire land without its being put on the market. However, the Rural Affairs, Climate Change and Environment Committee did some sterling work pointing out some of the problems with the definition of abandoned and neglected land—apart from anything else, it is a bit of a legal quagmire—and I am sure that the Government will look carefully at that committee’s recommendation that it should “consider a definition that relates to the wider circumstances which can be a barrier to sustainable development”.

Part 7 concerns allotments. As Alex Rowley said, we need further discussion with the Scottish Allotments and Gardens Society. We also need to link the work on allotments with food, in particular, and with health and wellbeing more generally.

Part 8, which is on non-domestic rates relief, is linked to other financial concerns that I mentioned earlier.

I broadly welcome section 1, not least as a member of the Finance Committee, which has been emphasising the importance of outcomes and outcome-based budgeting for a long time.

I conclude with a quotation from the commission on strengthening local democracy. It published “Effective Democracy: Reconnecting with Communities” last year, and it is important for wider devolution arguments as well. It says:

“Scotland cannot deliver on’ improved democratic participation

“without radical new thinking. There now appears to be agreement that Scotland should have substantially more powers. But simply repositioning control nationally in Edinburgh or London will not tackle the complex opportunities and challenges that communities face. The shift needs to be decisive and far-reaching, not a trickle of
power to councils, then to communities, all controlled from above.”

In that context, “above” could refer to councils as well as to the Scottish Parliament and Scottish Government. We need genuine power to be put into local communities.

16:14

Graeme Dey (Angus South) (SNP): The problem with speaking this far into a debate is that we tend to find that most of the bases have been covered by the time we are able to contribute to it. However, so wide ranging was the Rural Affairs, Climate Change and Environment Committee’s contribution to the stage 1 report that there are some angles that are either still to be visited or which are worthy of being expanded on. I will focus my speech on those.

As we have heard, the major issue with the bill from that committee’s perspective is abandoned and neglected land and the need for an unambiguous definition of those terms. However, several other areas that were covered by our report are, although less significant, nonetheless important.

The first one that I will deal with is human rights—there is a lack of detail in the policy memorandum on human rights. However, in evidence an interesting perspective emerged on the role that human rights play in community purchases of land or property. As Claudia Beamish said, the Rural Affairs, Climate Change and Environment Committee understands that the ECHR does not mean that private ownership must be protected in all circumstances; a landowner can be required to cede ownership when it is in the public interest to do so, and that can be done in a way that ensures that no human rights are breached.

In a thought-provoking piece of evidence, Professor Alan Miller, who is the chair of the Scottish Human Rights Commission, made the point that we need to concentrate on the wider human rights aspects of the legislation, and I have to agree with him. As Professor Miller explained, the community right to buy does not exist in order for the community to purchase a property or land for the sake of it. The purchase needs to be in the public interest; it is therefore a qualified right to buy. Further, as he observed, “If human rights is seen in the wider context … there will be a realisation that it drives us not towards courts and lawyers but towards having an environment in which there is more constructive dialogue between landowners and communities.”—[Official Report, Rural Affairs, Climate Change and Environment Committee, 3 December 2014; c 46.]

Richard Lochhead, the Cabinet Secretary for Rural Affairs, Food and Environment, acknowledged that “we must have at the forefront of our mind the rights of communities and the wider public interest as much as the rights of landowners and property owners.”—[Official Report, Rural Affairs, Climate Change and Environment Committee, 10 December 2014; c 6.]

Could the minister therefore outline in closing how the Government has reflected on Professor Miller’s points, which the cabinet secretary undertook to ensure would be done?

The committee also examined membership numbers and the make-up of a community. We took a good deal of evidence on the registration process, and the requirements for registration. The committee expressed considerable concern over the minimum number of members that is required of Scottish charitable incorporated organisations. If SCIos are to have no fewer than 20 members, as the bill proposes, the reality is that a number of current SCIos will not be able to register a community interest in land, because they would not be eligible community bodies. There are large and small communities across Scotland, and there will be times when a well-functioning SCIO has fewer than 20 members. The committee heard of examples in Inverclyde where SCIos of eight and 10 members are working well. As John Wilson suggested, the requirement seems to be unnecessarily prescriptive.

The requirement to register was another area that the Rural Affairs, Climate Change and Environment Committee covered. Much of the evidence that we heard called for simplification of the registration process. However, there was also much discussion over the requirement to register in relation to communities reacting to land becoming available rather than being proactive in that registration. Although I can understand that communities are, unless prompted, perhaps more likely to be reactive than proactive in that regard, I think that registration would greatly encourage the latter tendency and therefore lead to possibly more considered decisions to acquire property or land for the community.

However, that is not to say that registration should be conducted as it is outlined currently in the bill. The committee feels that a simplified registration process would not only encourage a proactive approach from communities but would ensure that those communities can empower themselves, rather than being caught up in a lengthy and complex registration process. If we are to entice as many as communities as possible into the process, we need to be mindful that expertise and capacity are likely to be less pronounced among less-affluent communities.
Reregistration was another area that was considered in some detail. As we have heard, the bill outlines a need for reregistration after five years, requiring that the same potentially complex process be gone through again. Many stakeholders had concerns over the timeframe and the need for the same process to be completed for a second time. However, there seems to be a more straightforward answer to all of that, as outlined in the RACCE Committee’s report, which is to stick with the five-year timeframe that is proposed in the bill, but with a simplified process that leans toward a presumption in favour of reregistration.

If we retain the provisions relating to abandoned or neglected land—I share other committee members’ concerns over that, unless clear and unambiguous definitions are to come forward—we require some clarity on a number of areas. Will the provisions apply only to the parts of a landholding that are considered to be wholly or mainly abandoned or neglected, or to the entire landholding? What happens where it is a tenant rather than the landowner who is responsible for lack of activity or poor management? Will there be an exclusion for land that is being utilised for recognised conservation or environmental purposes, such as natural regeneration for biodiversity or flood prevention?

I think that there is unanimity across the chamber—indeed, across Scotland—in support of the policy intent of the bill. There are differences of opinion on how best, in practical terms, to deliver on that intent, but we are as one with regard to the potential for good that the bill contains, and I think that we are resolved on working towards making the Community Empowerment (Scotland) Bill—as the minister said in opening—the best that it can be.

16:19

Alison Johnstone (Lothian) (Green): I thank all those who have contributed to getting the bill to this stage. I would have liked to have seen a braver bill, but there is still time to make it so and there is still much in it that Greens can welcome. We will, of course, be voting in favour of the general principles this afternoon.

People from many different groups and communities had big expectations of the bill. Today, I will concentrate on empowering the community of football fans who want to buy their football clubs. As a first step, we welcome the Rural Affairs, Climate Change and Environment Committee’s recommendation that the list of eligible bodies be expanded to include community benefit societies and community interest companies. That is an important foundation for fan ownership, given the way that so many fans trusts are organised.

However, the bill as it stands brings us no nearer to a proper fans’ right to buy. I therefore intend to lodge amendments on that issue. I will address a number of key questions. I urge the minister in closing to agree to look again at what the Scottish Government can do for football fans in this area.

Is there a serious problem with how Scottish football is currently owned and run? I am sure that members would agree that there is, even those who do not support Hearts, Rangers, Dunfermline Athletic, Livingston or Gretna. Of course not all privately owned clubs are operated irresponsibly, but when they are, and when they go into administration or are traded like any other asset, fans are still all too often shut out of the process. We should also have a clear process to ensure that there is a clear exit strategy for responsible owners who decide, for whatever reason, to call time on their period as custodian of a club.

Was there not just a review that decided not to make the case for fan ownership? No. Stephen Morrow is a great expert, but as his report says: "the desirability or otherwise of supporter ownership was not discussed within the Working Group."

That is a shame, but that was the remit given to it by ministers.

Can fan ownership really work? The evidence from Scotland and around the world is that it can. Members across the chamber appear to agree. I know that Kenny MacAskill is helping Hibs fans as they try to take control of their club. Ian Murray MP has worked with Hearts and I know that Bruce Crawford played a key role in the efforts of Stirling Albion fans to buy their club. Many other members will know their local fans trusts, which are keen, smart and determined groups that have their clubs’ best interests at heart.

Would a right to buy drive out good owners of Scottish clubs? Hardly. If a club is thriving on and off the pitch there will not be an appetite to change that. However, good owners come and go, and when they go, fans should have first right of refusal to take over. Is that too radical? No, it is not.

Chic Brodie: In the case of one particular club that one might say is in trouble, I was asked to submit an idea, which I did, but then found that because there are seven supporters trusts that could not agree with each other, there was no hope of the club becoming a community-based soccer club.

Alison Johnstone: All groups of fans trusts would have to be openly and democratically constituted. Ministers, under advice, would have to
sign them off. If a small group passed that test, it would obviously have to meet with the approval of the larger group of fans.

The idea is not too radical. Parliament has decided that tens of thousands of acres should be available to communities to buy in this way through a brave piece of legislation, which the Pairc case confirmed is within European law. If large areas of Scotland’s land should be available to local people, clubs should be available to their fans.

Is legislation necessary? What is stopping fans from just buying their clubs already? As we have seen all too often in recent times, it takes a great deal of time to raise the money. A period such as is set out in the bill in which the fans are automatically the preferred bidder would make the process far more straightforward.

The committee’s report quotes the minister as saying:

“The driving force behind the bill is that we can unlock much of Scotland’s potential through community empowerment.”—[Official Report, Local Government and Regeneration Committee, 5 March 2014; c 3167.]

Of course that is true. It is also true that we can unlock much of Scotland’s football potential through fan empowerment in exactly the same way. We need to see fans as a community and football clubs as their assets. Before we consider the bill again, I urge members to talk to their local fans and see what they think. If their club is being sold, or worse, would they want the option of first refusal?

My view is that, in 30 years, Scottish football could be entirely transformed. We will wonder why clubs were ever owned by anyone but their fans, and we might be enjoying a much stronger national game by then, too.

I will talk briefly about common good and participatory budgeting. The common good registers will increase consistency across local authorities, but we need more than a bare spreadsheet that lists assets. Perhaps the bill could require councils to demonstrate how they have managed the assets on the register to meet best value and responsible stewardship. I would also like to see a requirement on councils to set out how they have valued the assets, and to publish a periodic plan on long-term management of the common good on behalf of the people. I agree with the committee’s recommendation for a timescale for completion of the registers.

Finally, the bill has been described by the Government as the “biggest transfer of powers since devolution”, but real empowerment and decentralisation can be achieved only if financial power goes alongside new duties and rights. The minister spoke positively about the impact of participatory budgeting schemes. There was support for PB in the original bill consultation, and it has worked well in Leith, for example, where packed public meetings have reached consensus on local spending priorities. I urge the minister to consider legislative options and I ask what specific support the Government might give to expanding on the report.

Finally, it is exceptionally important that the issues that have been raised about allotments be resolved.

16:26

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** Although I did not join the committee until the beginning of December, like many of my colleagues who were serving local councillors for many years, I find the proposals in the bill to be familiar territory.

There are big messages in the bill about outcomes and what success might actually look like, about putting our community planning partnerships on a statutory footing for the first time, and about real empowerment for local people and representative organisations and about being more than simply engaged in a process but helping to define what the future will look like at a local level. If we achieve those aims, we will certainly have taken a great stride towards delivering real community empowerment.

As our committee convener said a few weeks ago during his speech on flexibility and autonomy in local government,

“If communities are to be empowered those powers must be passed down through the tiers of government.”—[Official Report, 11 December 2014; c 40.]

That is not happening at the moment. The bill gives us that golden opportunity to move forward to the next stage.

What I like about the committee’s report is the breadth of different views that were taken during evidence sessions and the plain and simple language that is used in the many recommendations to the Government that will hopefully help to strengthen the bill as it makes its journey to stage 3.

On setting national outcomes, it is correct that there is an obligation on ministers to develop, publish and review a set of national outcomes for Scotland, but it is equally important that local communities have the power to define what those might actually be. Many of those who gave evidence asked for that and offered the view that it would really empower communities from the bottom up. That could be as demanding as it is
rewarding. On the one hand, as Audit Scotland commented, we might wish to set national outcomes to assess national progress on health inequalities, life expectancy or educational attainment, for example, but national indicators can often mask significant local variations in performance. As I mentioned earlier, success might look quite different from one community to another. There is a big challenge there but it is important to work to get the balance right.

The section on community planning certainly got some robust feedback, probably as a result of varying levels of satisfaction with the community planning partnerships over the past decade. Some felt that hitherto, the process has been too top-down: a collection of public bodies coming together to map out a community’s future. In some cases, that could hardly pass as engagement. According to the Scottish Council for Voluntary Organisations, if the process is to work, local people must have the opportunity to articulate the societal changes that they wish to see so that the CPPs can take them up on their behalf. That is real empowerment.

We should not shy away from that process.

Margaret McDougall (West Scotland) (Lab): Will the member take an intervention?

Willie Coffey: In a moment.

As Kay Gilmour from East Ayrshire Council said:

“If we have a culture of improvement, we do not get anxious if communities, individuals in the community or community groups make suggestions about how to innovate or do things differently and better.” —[Official Report, Local Government and Regeneration Committee, 27 October 2014; c 40.]

I give way to Margaret McDougall.

Margaret McDougall: Community empowerment is largely dependent on volunteers. Very often the same volunteers are relied upon in communities for the provision of many community facilities. It is likely that community buyouts will enlist the same volunteers—we are reliant on those volunteers all the time. I ask Willie Coffey and the minister what consideration has been given to the capacity of volunteers and to sustaining the number of volunteers required for community buyouts, given that only 18 per cent of adults volunteer.

Willie Coffey: Margaret McDougall makes a good point. I have certainly seen a passage in the bill on building community capacity to make that kind of process much more possible.

There are signs that the Government’s proposals are taking us in the right direction. Section 5 will allow individuals and community bodies who would not normally be part of the formal process to be involved in shaping the local outcome improvement plans. That process will not exclude community councils, which have a key part to play. However, the committee made clear its view that engagement is not the same as empowerment—John Wilson made that point earlier—and that the Government should be absolutely clear about how it intends to empower local people in that crucial community planning process.

Perhaps one of the more exciting elements of the bill is the proposal that communities will be able to seek to take control of council-owned buildings and land, not as a result of council disposals, but as a proactive and positive move that helps the community to achieve its aims. That will be a fundamental shift in how Scotland’s land and building assets are managed and will present communities right across Scotland with the opportunity to lead and drive that process for themselves. Quite a few asset transfer processes are already in place in Scotland, but the difference in the bill is that communities will be able to instigate requests themselves, which is a welcome and positive change from the current situation and is consistent with the Christie commission findings.

The bill offers people across Scotland real powers to shape and develop their local communities and to do that very much from the bottom up. It will not be an easy process for councils, officials or even elected members, but if all of us embrace the principles behind the bill, Scotland will surely be the better place for it.

The Deputy Presiding Officer: Many thanks. Before we move to closing speeches I will say that several members who spoke in the debate have not been in the chamber for some time. I would remind them that they should be here for the closing speeches.

16:32

Alex Fergusson (Galloway and West Dumfries) (Con): I am tempted to start by saying that if Mike Russell’s speech represented him in hiding, as he said, heaven help us all if he ever decides to come out of hiding, but I will resist that temptation.

No one in their right mind could disagree with the overall aims of the bill that we have discussed this afternoon, although some of the detail might be a different matter—members such as Alex Rowley, Rob Gibson and Tavish Scott and others have highlighted that. However, any measure, legislative or otherwise, that seeks to strengthen community participation, unlock enterprising community development and renew our communities must be worthy of support, and we on the Conservative benches will support the general principles of the bill at decision time.
As a member of the Rural Affairs, Climate Change and Environment Committee, my involvement with the bill has been limited to part 4, and I will focus on my reservations about that part shortly. However, it is clear from the many briefings that we have received from outside organisations that I am by no means alone in having some reservations and concerns about various aspects of the bill.

One of those centres on the definition of community: a topic on which the committee spent quite a lot of time. I am drawn towards defining communities by place or location rather than by interest. However, Inclusion Scotland's concerns—which Alex Rowley referred to—which highlight what it calls "a missed opportunity" to give disabled, disadvantaged and marginalised people the ability to participate in community planning, have made me sit up and think. If any groups deserve to be further empowered when it comes to the delivery of local services, it must surely be those groups. I hope that the Government will look seriously at that aspect when it comes to stage 2.

I listened carefully to the minister's comments on equalities. The fact that Inclusion Scotland and others have suggested that the bill as drafted runs the risk of further disempowering disadvantaged and marginalised groups must surely ensure that that concern is taken seriously.

I do not often agree with Joan McAlpine, but I am delighted to say that today's debate is an occasion on which I do. I, too, was interested in the point that the Scottish Woodlot Association made. I strongly support the association, particularly as Scotland's first woodlot was established in my constituency. It has stated that for woodlot licences to reach their full potential in Scotland, they need to be established on state land as well as on private land. I agree with that whole-heartedly, and I hope that the Government will agree with recommendation 347 of the Local Government and Regeneration Committee's report, which seeks a review of the legislation that currently prevents the Forestry Commission from leasing land to communities for forestry purposes. It is surely logical that, just as the commission now plays an important role in bringing new entrants into agriculture through the development of starter farms, it could do the same with foresters.

Planning Aid for Scotland makes the important point that community planning, as a local authority function that sits alongside the planning system, needs to involve more effective engagement with local communities. I strongly agree with that point, because I know that most of the communities that I represent view community planning as the ultimate in talking shops. They see it as something that the council does somewhat remotely without much local input or impact. Community planning is not understood by communities the length and breadth of the country. Given the heightened role that it is to play in delivering the aims of the bill, that must be corrected.

In the time that remains to me, I want to talk about part 4. Although I did not comment on the first sentence of the Rural Affairs, Climate Change and Environment Committee's report when we discussed it, I am more than a little taken aback by the wording that "a Bill is required to remedy the defects of the Land Reform (Scotland) Act 2003".

I might be being a little oversensitive about this, but as the convener of the Rural Development Committee that led on consideration of the Land Reform (Scotland) Bill, I might have preferred wording along the lines of, "a Bill is needed to build on the successes of the Land Reform (Scotland) Act 2003".

I was interested to hear in the evidence that the committee took that not many community purchases had taken place using the 2003 act, but it was clear that many communities have engaged in the right-to-buy process because of the act's very existence. In other words, the act has acted as a catalyst to empower communities in ways that would almost certainly not have been possible without its existence. I think that that points to the 2003 act being quite a successful piece of legislation, rather than one that is full of defects. Nonetheless, the time is right to extend the 2003 act's provisions, particularly into urban areas, and we very much welcome the principle of doing so.

Where I have dissented from the recommendations of the RACCE committee's report is on the power to extend the community right to buy when there is no willing seller. The Government's position is that that should apply only as a last resort when other measures and negotiations have failed. I could accept that, as the committee does, but the majority of the committee went on to question the need to restrict the definition of eligible land to that which is "wholly or mainly abandoned or neglected" and to ask why a definition is needed at all. They believed that the tests of furthering sustainable development and of being in the public interest are capable of testing all requirements. In my view, those criteria also require greater definition if we are really to understand where we are going with the bill.

I find myself endorsing the Government's position on the matter as laid out in the policy memorandum. In my view, the committee's majority recommendation would open the door to a virtual absolute right to buy for communities. The Government has, in effect, ruled that out in relation
to agricultural holdings, and I hope that it will hold fast to its original intentions for the bill.

What has been highlighted, above all, throughout the debate by Mike Russell, Sarah Boyack and many others is the urgent need for the Government to provide clear definitions in the bill as we move forward to stage 2. If the Government does so, I feel certain that the bill, which in many ways bears a welcome resemblance to the Localism Act 2011, which was brought in by the current United Kingdom Government, will eventually receive unanimous cross-party support. I very much hope that that will be possible, because our communities deserve no less from their Parliament.

16:39

Ken Macintosh (Eastwood) (Lab): What an excellent debate this has been, with good will expressed from all parties in support of the bill. Graeme Dey described it as welcome “unanimity”—although I am not sure that we quite had unanimity—and Alison Johnstone said that we should be slightly “braver”. There was friendly criticism, but we definitely welcome the bill and the direction of travel outlined in it. We will be supporting it at decision time.

The bill attempts to build not only on the Christie commission’s recommendations but on the whole devolution agenda and the creation of the Scottish Parliament itself—the idea of subsidiarity and of each of us at a local and personal level exercising as much control and influence as possible over the forces that affect our lives and the services that support us.

Just as I am pleased that the Government has finally introduced the bill—it had a bit of a stuttering start—I am especially grateful for the work of the Local Government and Regeneration Committee and the Rural Affairs, Climate Change and Environment Committee. I thank members of both committees, who have highlighted not only the strengths but the many weaknesses of the bill and the concerns that exist about it.

I am not sure that the minister deserved to have his hard work dismissed as mere “gobbledygook” by the usually assiduously loyal convener of the Local Government and Regeneration Committee. However, there are tensions and even paradoxes around community empowerment that must be addressed if the bill is to be effective. It remains slightly woolly and vague on whether that will be the case.

I particularly welcome Tavish Scott’s thoughtful but quite spiky contribution. Mr Scott warned that, if we are not careful, the bill could be a lawyers’ charter.

There are outstanding questions, such as how to ensure robust and democratic accountability when it comes to utilising public resources, how to reconcile local control and therefore local variation with national demands for equity and fairness and, perhaps most important, how to ensure that, rather than narrowing inequality, the bill does not make it worse. That dilemma was raised repeatedly in evidence as well as in debate. The Local Government and Regeneration Committee, in its report, quoted the Poverty Alliance, which said:

“the most important aspect of this Bill is around empowering Scotland’s most disadvantaged communities, and narrowing inequalities between those communities which are already empowered and those which will require more support.”

It added:

“There is a danger that the Bill, in its current form, will most benefit those communities which are already empowered and able to take advantage of the provisions in the Bill.”

Mark McDonald: I hear what the member is saying, but empowerment does not just naturally follow affluence. Indeed, many of the deprived communities that I represent have flourishing community organisations, with delivery of services in the community by the community. There are good examples in some of the more deprived areas of communities taking charge of what is going on.

Ken Macintosh: There are, indeed, good examples but, as Oxfam pointed out, participation requests run the risk of “becoming the privilege of already empowered communities”.

I suggest that that is a problem that most MSPs have encountered in our work. At its most basic, the issue is about ensuring that resources are distributed fairly and not according to those who shout the loudest.

At the beginning of the debate, we had a battle of quotes between Kevin Stewart and my colleague, Alex Rowley. Kevin Stewart suggested that we listen to Ernest Hemingway and that we trust each other, whereas Alex Rowley suggested that we would be wiser to listen to Lyndon Johnson and to ask ourselves what harm it would do were the powers to be wrongly administered.

I have no doubt whatever that the minister and most members in the chamber share my intention and that of my Labour colleagues to use the bill to give a voice to the powerless and to enfranchise those who feel marginalised, but we must be careful that, inadvertently or otherwise, the bill does not simply give more power to the middle classes. I look forward to the minister lodging amendments to address that genuine anxiety.
There is a parallel concern that, despite all the new powers for communities to deliver public services or to control public assets, the processes established in the bill could simply reinforce the dominance of the public sector—be that the council, the health board or the enterprise agency—and the hierarchy of power and empowerment. That concern about a top-down approach was flagged up by the SCVO and the Royal Society of Edinburgh.

What emerged strongly from the bill consultation was the need to invest in building community capacity and resilience, a point that Margaret McDougall highlighted near the end of the debate; yet, when we speak to the third sector, it highlights the fact that programmes that support community capacity are the very ones that are under threat in the current financial climate.

That brings me neatly to finance. There are major question marks over the funding of the bill—or, rather, the lack of clear funding. That issue has been flagged up by both the LGR committee and the Finance Committee. For many people, the problem is not just the lack of reasonable estimates but the fact that the bill will not make any funding happen. Rob Gibson, the convener of the RACCE committee, acknowledged that when he said that funding requirements will need to be kept under review. The minister himself spoke of the benefits for communities of participatory budgeting. I suggest that, if it is good enough for local groups, surely it is good enough for the Parliament. I agree entirely with Angus Hardie of the Scottish Community Alliance, who was quoted earlier, that we should not allow the issue to derail the bill. Nevertheless, it would be wrong—indeed, it would be a failing on the Government’s part—if the Government did not face up to the issue and offer clarity.

Undoubtedly, the fact that the bill tries to update the legislation on allotments is to be welcomed. Allotments play a more vital role than ever by allowing people access to the natural environment, enabling people to grow their own healthy food and contributing to a more sustainable way of life here in Scotland. The trouble is that the minister does not seem to have won the confidence of the allotment holders themselves. In his opening remarks, Mr Biagi revealed the death of his office aspidistra and bemoaned his predecessor Mr Mackay’s lack of green fingers, but I worry that the new minister has inherited that trait. The Scottish Allotments and Gardens Society has been calling for five substantial amendments to the relevant section of the bill; however, since the minister’s intervention, meetings and phone call, it is now calling for that section of the bill to be dropped altogether. [Laughter.] I am not sure whether to encourage the minister or to ask him to lay off. I echo Claudia Beamish’s possibly intentional but very appropriate metaphor in saying that the minister must avoid kicking the issue into the long grass.

I welcome the points that Alison Johnstone made on fan ownership of football clubs and indicate Labour’s sympathy and, I hope, practical support for those proposals when we see the amendments. Supporters Direct has made huge progress in recent years, and several clubs, which Alison Johnstone listed, have made the move. It is impossible to look at Scottish football at the moment and not recognise the problems that are created by the wrong kind of ownership model. Fans and the local community put the interests of their local club first, and there has never been a better time to promote the right to buy for football supporters.

In concluding, I turn to perhaps the most important issue: land reform. I welcome the many contributions to the debate that have been made across the chamber. It was the subject that was most focused on, and those who addressed it included Mark McDonald, Bob Doris and John Wilson. Members have spoken of the move to extend the powers of land reform to urban areas, pointing out the pitfalls and advantages of trying to exercise control over community assets. Rob Gibson and Mike Russell agreed on the weakness of the bill in not defining “abandoned or neglected land”. I am grateful to Mike Russell for enlightening me on the fate of my old school, Rockfield primary school, which is possibly to become an art gallery. I assure members that that is not based on any contribution to art that I made when I was at the school.

Ken Macintosh: Mr Russell was also particularly forceful in describing the enormous barrier that the lack of a definition of “abandoned or neglected land” in the bill would pose. I am, therefore, surprised that the RACCE committee seemed to leave the door open on the issue, with only Sarah Boyack and Claudia Beamish following the logic of the evidence that was heard and insisting that the phrase either has to be defined or has to go.

John Wilson and several Labour colleagues highlighted the need for social and economic development, not just environmental issues, to be taken into consideration, and Sarah Boyack reminded us of the need to learn from past experience. I will conclude on that point.

Thank you, Presiding Officer. I thought that I had an extra minute, but I will conclude now.

Ken Macintosh: Sorry, Presiding Officer. I thought that I had an extra minute, but I will conclude now.
The Neilston Development Trust, in my area of East Renfrewshire, is one of the best examples that I know of a community using the existing land reform legislation to take control of an asset—the former Clydesdale bank, in our case. However, the legislation did not enable the trust; it was almost a hurdle, because of poor definitions and there being too many obstacles in the way, despite the good intentions.

**The Deputy Presiding Officer:** You must close, please.

**Ken Macintosh:** I urge the minister not to make the same mistake with this bill but to empower Scotland’s communities to take control.

16:49

**Marco Biagi:** I am tempted to join in the exchange of quotations. The one that comes to mind is:

“Laws, like sausages, cease to inspire respect in proportion as we know how they are made.”

The quotation is sometimes attributed to Bismarck, but apparently it was John Godfrey Saxe who said it.

This has been an experience in seeing laws made. This afternoon we heard a lot of examples of areas in which members have considered the same evidence, approaches, opinions and situations but responded slightly differently, depending on our political perspective and personal experience. That is to be expected—it is why the Parliament exists and why everything is not simply put through without debate. However, ultimately there is unity on the bill’s general principles.

I gently suggest that, if there is an ability to look at the same evidence and come to different conclusions, the flipside invites the question whether, if the Government had come to a different conclusion on some matters, the Opposition would have been just as strong in highlighting alternative approaches.

An issue on which we continue to have a difference of view, which Alex Rowley raised first but other members mentioned, is the finances in relation to the bill. As we have said, we think that the financial information that has been provided to the Parliament is the best estimate of the administrative, compliance and other costs to which the bill could give rise. It is also the best estimate of the timescales over which costs would arise.

We have been up front throughout the bill process in saying that elements that the bill provides for—participation requests, the community right to buy, asset transfer requests and allotments—will be driven by the demand from communities, and we cannot predict with any degree of certainty what that demand will be. We know that from the consultation. To have plucked a figure from the air could have produced something that was misleading, confusing and false and would have led to just as much criticism. Let us simply accept that we have put forward the best estimates that we can put forward.

Another area that has generated a lot of debate is the approach to allotments. The Government comes to the issue with a principle on which I hope that we all agree: allotments are a good thing and there should be more of them. We share and are working with that principle.

On the Scottish Allotments and Gardens Society’s five-point proposition, the first proposal is that a standard plot be defined as being normally 250m². We intend to have powers to deal with the size of plots. At the moment there is no restriction on a local authority, so plot sizes vary. I visited allotments and found some plots that were described as full plots and others that were described as half plots. The bill would increase powers to set a minimum size, and I have made the offer to SAGS to initiate such powers straight after the bill is enacted.

SAGS expressed concern about fair rent, which I think led to Bruce Crawford’s suggestion. The current fair rent provision is undefined, and the substantial rent increases that have given rise to controversy in Edinburgh are happening under the current legislation. I think that we can agree that kicking the issue into the long grass will help no one. We want additional protections in the law now, such as the requirement to create a waiting list, which would generate nearly 1,000 new allotments. It is important that that is implemented. I would rather fix the issue at stage 2 and continue our dialogue than remove the provisions on allotments entirely.

I note the interesting issues that were raised about the common good. For example, members asked why the common good has not been defined. The common good is a particular and interesting aspect of the Scottish public policy, legal and historical landscape, which will be addressed in forthcoming land reform work. The bill presents an opportunity to take steps pretty quickly on which people can agree, such as ensuring that a common good register comes into effect within five years and ensuring that communities, including community councils, are consulted on the disposal of common good land.

The wider issue will be dealt with in future legislation. I suggest to Alison Johnstone that, if she wants to tell councils what to do about common good land rather than take the Scottish Government’s approach of ensuring that communities are consulted, that creates a
tension—if we had taken her route, we would have been criticised as centralists.

On the wider issue of land reform, Sarah Boyack asked whether I could state in my closing speech when the further information that the committee requested is coming. I can do that by referring to what I said in my opening speech, which was that the Minister for Environment, Climate Change and Land Reform will provide draft regulations in advance of stage 2 that will detail the matters that must be considered when determining whether land is neglected or abandoned.

Sarah Boyack: The information is critical because, although the committee will start to take evidence in a month’s time, we have the community right to buy to consider. We would therefore like to see the ministerial response to the whole committee report and not just to one issue.

Marco Biagi: Reports will come, but the commitment on providing the draft regulations is already there. Instead of jumping to the conclusion that everybody will get it wrong, let us have faith that the regulations may well turn out to be right.

Claudia Beamish: I highlight to the minister that it is not a case of jumping to conclusions but of having taken a substantial amount of evidence and not being convinced.

Marco Biagi: I am sure that the Minister for Environment, Climate Change and Land Reform will reflect on the matter and come to members in advance of stage 2 on it.

Another issue that Claudia Beamish raised earlier was locality. There has been debate on that issue, and I can shed some light on it. Essentially, we have two similar but rather different mechanisms in asset transfer and land reform. The approach that was developed in 2003 and which has been taken to land reform buyouts is area based, whereas under asset transfer—which involves a transfer from the public sector to the community sector rather than a transfer from the private sector to the community sector—there is a difference in the thresholds of justification and the ways of doing it, so it is appropriate to open that up to communities of interest.

We are not being prescriptive so, when it comes to participation requests, community councils will be able to join in as much as anybody else through asset transfer. There are many examples of community councils that have set up community development trusts, which help to insure them against financial risks and allow them to play a greater role. I intend to return to that, because I recognise a lot of the concerns that have been raised. However, I draw people’s attention to the Local Government and Regeneration Committee’s view that a great deal of devolved decision making can happen already.

Community planning is going to need greater engagement. We must differentiate between the community planning partnership that covers an entire local authority area and where a third sector interface is the best way in which to participate, and what we might call genuine community planning partnerships, which are the groups that councils convene at local levels that can make decisions at those levels and really involve local neighbourhood associations and residents associations in making decisions. We want that to be improved.

When I looked up the national standards for community engagement on appointment to my role, I saw Malcolm Chisholm’s face smiling out at me. They were passed in 2005, when there was no such thing as social media. The ways in which we have to engage with communities and allow them to participate have changed massively. The committee was right to note the difference between empowerment and engagement, but I draw attention, too, to the difference between participation and consultation.

Alex Fergusson: Will the minister take an intervention?

Marco Biagi: I am afraid that I do not have time and must conclude.

My final message is that we must remember that we came into this to empower communities, which is what the bill’s general principles are for. I said in my opening speech that communities need a bit more help and fewer obstacles.

Let us imagine what the bill’s principles will do. We will have a Scotland where neglected and abandoned buildings that are a blight on streets and towns can be bought out by the community and renovated; where councils are empowered to help businesses to regenerate town centres; where everybody knows what the common good assets are and is guaranteed involvement in decisions about what is held in their name; where every part of Scotland has a partnership between all the bodies delivering for people, with participation and tackling inequality at the heart of that; and where the country as a whole, which we hardly mentioned in the debate, will have a clear mission for the kind of nation that we want to create and will not be afraid of letting public assets be owned and managed by the communities that they serve.

That would be a Scotland where participation by the authentic voices of community know-how and experience was welcomed and where they were invited to participate whenever any decision was being taken. Those are the general principles of
the bill and I hope that we will endorse them in just a moment.

Community Empowerment (Scotland) Bill: Financial Resolution

16:59

The Presiding Officer (Tricia Marwick): The next item of business is consideration of motion S4M-12113, in the name of John Swinney, on the financial resolution on the Community Empowerment (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Community Empowerment (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act.—[John Swinney.]

The Presiding Officer: The question on the motion will be put at decision time.
Decision Time

17:00

The Presiding Officer (Tricia Marwick): There are two questions to be put as a result of today’s business. The first question is, that motion S4M-12220, in the name of Marco Biagi, on the Community Empowerment (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Community Empowerment (Scotland) Bill.

The Presiding Officer: The next question is, that motion S4M-12113, in the name of John Swinney, on the financial resolution on the Community Empowerment (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadier, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Ferguson (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, George (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hebbron, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Lamont, John (Etrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)

MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urguhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

Against

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Kelly, James (Rutherglen) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Mothervale and Shawfair) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
The Presiding Officer: The result of the division is: For 76, Against 31, Abstentions 0.

Motion agreed to,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Community Empowerment (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act.
Community Empowerment (Scotland) Bill

Scottish Government Response
Stage 1 Report

February 2015
INTRODUCTION

I would like to thank the Local Government and Regeneration Committee, Finance Committee and Delegated Powers and Law Reform Committee for their consideration of this legislation at Stage 1, and the Rural Affairs, Climate Change and Environment Committee for their scrutiny of Part 4 of the Bill. I welcome the report and I thank everyone who took the time to give evidence to shape the Bill and the Committees’ recommendations.

This Government is committed to creating a fairer and more prosperous country, and we believe we can only do that when everyone feels they can contribute and have their voices heard. It is clear that people want to be involved when they know they can make a difference. The Bill will place new duties on a range of public authorities and create new rights for community bodies, helping them to take control of land and buildings and to participate and have their voices heard in the planning and delivery of public services. It will ensure that all public services are shaped by a focus on outcomes, with local priorities to the fore. It will also encourage and support the shift in mindset we want to see, so that community empowerment and participation becomes everyday practice in all public services.

Responses to all the recommendations and key points made in the Stage 1 Report are set out below, using the paragraph numbering from your report. Part 4 of the Bill, Annexe A of your report, is dealt with separately.

I welcomed the debate on the general principles of the Bill and both I and the Minister for the Environment, Climate Change and Land Reform look forward to continuing to work with the Committees and stakeholders on the detail as the Bill progresses through its further Parliamentary stages.

Marco Biagi MSP
Minister for Local Government and Community Empowerment
**RESPONSE TO STAGE 1 REPORT KEY POINTS**

**Introduction**

34. We were pleased to hear the Minister go some way to meeting these concerns [*about ineffective forms of consultation*] when he indicated he will lodge an amendment at stage 2 to strengthen accountability in community planning partnerships by making reference to the national standards of engagement. We will expect that amendment to apply widely and cover all instances of engagement under the Bill.

The Bill changes the purpose of community planning from a process for planning local public services to planning that is carried out to improve local outcomes. In doing so the Bill strengthens community participation so it is about more than just consultation, and Community Planning Partnerships must secure and enable that participation (including by contributing resources). We have considered the evidence received and the discussions within the Committee and we will amend the Bill to further increase the accountability of CPPs to their communities.

The Bill requires public authorities to have regard to guidance issued by the Scottish Ministers in carrying out their functions in relation to community planning, participation requests and common good. The relevant guidance will include the National Standards for Community Engagement, which following the passage of the Bill will be refreshed, updated and promoted to local authorities and public bodies for use in all their engagement activities.

47. The Minister stated “…there will be a requirement in legislation to produce the information that is needed to understand the nature of the assets and buildings [*subject to an asset transfer request*].” We consider the same position should apply to all parts of the Bill and to all the public bodies subject to provisions. We recommend the Bill, or regulations or guidance should set out requirements in this regard on such bodies to provide up-front support with the necessary expertise to support applicants.

These requirements will be set out in different ways for different parts of the Bill. For example:

- In relation to community planning, section 4(5) requires the community planning partnership to “make all reasonable efforts to secure the participation” of community bodies and to “take such steps as are reasonable to enable the community bodies to participate in community planning”, and section 9(3) requires each community planning partner to “contribute such funds, staff and other resources as the community planning partnership considers appropriate…for the purpose of securing the participation of the community bodies mentioned in section 4(5)(a) in community planning”. Guidance, including the National Standards for Community Engagement, will provide more detail on how this should be done.
In relation to participation requests and asset transfer requests, the Scottish Ministers may make regulations about the procedure to be followed by public service authorities and relevant authorities in relation to requests, in addition to the power in section 54(3) to make regulations about information to be provided about land in respect of which a community transfer body proposes to make an asset transfer request. Further to these regulations, guidance will provide advice on promoting the provisions of the Bill and supporting bodies which may want to make a request.

Support will not only come from the body to which a request may be made. The Scottish Government and its agencies provide and fund a range of support for community bodies which will, in future, include support to take advantage of the provisions of the Bill. This includes Highlands and Islands Enterprise’s Strengthening Communities Work, the Community Ownership Support Service which works with both community bodies and local authorities to promote asset transfer, and the work of the Coalfields Regeneration Trust, amongst others. A Third Sector Interface is funded by the Scottish Government in each local authority area to support and develop a strong third sector and build their relationship with community planning.

48. We look forward to the views of the government in relation to the funding of capacity building recognising the long term aim must be to build capacity directly into communities. We expect the Government to state the current amount spent on community capacity building and the extent to which that will increase as the Bill is implemented.

265. The importance of anchor organisations and the third sector in delivering support to communities and in bridging knowledge and skill gaps is widely accepted. Accordingly we would like the Scottish Government to state its approach to building this capacity and how it is to be funded, thereby allowing Parts 3 and 5 to be accessible to all.

As part of the Public Service Reform agenda, all public bodies and local authorities are expected to engage communities in the design and delivery of services, and to consider the need for capacity building and support to allow all communities to participate in those processes.

The Scottish Government has issued the Strategic Guidance on Community Learning and Development (CLD), which includes capacity building, and the CLD Regulations, requiring education authorities to plan CLD on the basis of identifying those communities which are most likely to benefit from CLD and assessing their needs and barriers to access. Funding for this activity and for local community-led regeneration is provide by central government to local authorities within the general local government settlement, and is not ring-fenced.

The Scottish Government’s Empowering Communities Fund, totalling £19.4m in 2015-16, funds a range of programmes to support community bodies and the development of participatory approaches. This includes the Strengthening Communities Programme which is directly intended to build capacity in local community organisations, particularly in areas suffering disadvantage and inequality.
Capacity in communities arises from many sources. When people are engaged and supported to participate in one area of their lives, they develop greater confidence and skills to seek participation in other areas. This could be through any activity: community gardening, involvement in community-controlled housing or a tenants association, patient-led healthcare initiatives, sport and exercise, environmental projects, are just a few examples.

The Scottish Government also recognises the critical role the Third Sector plays in addressing issues of inequality and the needs of disadvantaged communities, and helping to build the capacity and confidence of people and communities to take control of decisions about what goes on in their local areas. It is at the heart of transforming lives and public service reform in Scotland, working directly with individuals and communities to co-produce solutions and approaches that support resilience and wellbeing.

The Scottish Government invests significantly in the third sector as a key social partner, with third sector funding of £24.5m maintained in the 2015/16 budget. We are working closely with the sector to consider what approach might be taken in the period ahead to continue to secure a buoyant and sustainable third sector.

In 2015-16 to maximise the contribution of the third sector, we will:
- recognise the role of the third sector as a social and economic partner, continuing to invest in the national infrastructure, and in local third sector interfaces to support the third sector’s local role and as key partners in community planning;
- invest £2.5 million over 2014-15 and 2015-16, to build the capacity and resilience of communities and local third sector organisations, particularly helping them to respond to the worst effects of welfare reform; and
- aim to maximise the impact of the third sector in public service reform and prevention, growing community capacity, empowerment and initiative, tackling poverty and social exclusion, and developing enterprising and innovative solutions to the challenges facing communities.

Capacity building is therefore spread across many budgets and organisations and it is not possible to define a single figure for the amount spent on it, particularly as increasing capacity may be only one element of wider activities.

49. We agree with the submission of South Lanarkshire Council there should be a specific duty on CPP partners to reduce inequality and focus on early intervention and prevention. We look forward to the Scottish Government stating how this will be taken forward.

The Scottish Government and the National Community Planning Group agree that community planning should include a particular focus on prevention and reducing inequalities. This is made clear in a letter which the Chair of the NCPG issued to
CPP Chairs in July 2014\textsuperscript{1}, which highlighted a set of key principles on how CPPs can continue to maximise their impact. These include that the themes of prevention, joint resourcing and community engagement and co-production are intrinsically inter-connected; that CPPs should focus their collective energy on where their efforts can add most value for their communities, with particular emphasis on reducing inequalities; and that, since multiple negative outcomes tend to befall the same communities with inequalities most stark when disaggregated to small neighbourhood level, there is real value in targeting and customising services to particular communities and in building community capacity.

In line with this, we intend to introduce an amendment to the Bill which ensures that the statutory purpose of community planning should be to reduce inequalities of outcome among communities in the area, as well as to improve local outcomes. How CPPs fulfil these expectations will be for them to decide, based on their participation with community bodies and their understanding of local needs and circumstances. Statutory guidance can set out approaches which CPPs and their partners should deploy or consider, with preventative approaches likely to be prominent in such guidance. While preventative approaches are not ends in themselves, we would expect CPPs to pursue these vigorously as a matter of policy.

67. We therefore draw to Parliament’s attention when considering the financial resolution on this Bill the concerns of the Finance Committee that, despite the requirements of Standing Orders, best estimates have not been provided.

Annexe A 98. The Committee recommends that the Scottish Government monitor the cost implications of the Part 4 provisions closely over the coming years, in terms of both the direct cost to communities and landowners and the indirect costs to public bodies and keep the funding requirements under review.

These issues were highlighted during the Stage 1 debate on 3 February 2015. The Government’s position remains the same that best estimates have been provided of the administrative, compliance and other costs to which the provisions of the Bill would give rise. We also provided the best estimate of the timescales over which such costs would arise and we have given a very clear indication of the margins of uncertainty in our estimates. The Parliament voted in favour of the motion in respect of the Financial Resolution following the Stage 1 debate.

The Scottish Government will monitor and review the cost implications of the Bill in respect of the cost implications for public authorities, communities and landowners.

79. For our part we found it necessary to seek substantial additional detail to supplement that supplied in the Policy Memorandum. We observe the legislative requirements of Parliament are made for a purpose, not only to inform members but also crucially, to allow the wider public to meaningfully contribute. We have also commented in this regard to the delay in publishing

\textsuperscript{1} http://www.scotland.gov.uk/Resource/0045/00457528.docx
the EQIA until a point in time when the majority of our evidence have been taken.

Annexe A 76. The Committee considers that Policy Memorandum should strike a balance between presenting the high level and broad policy and providing sufficiently detailed information to clearly explain the provisions of the Bill and enable effective scrutiny. On balance the Committee believes that the significance and complexity of the provisions within Part 4 of the Bill would have merited further explanation and clarification within the Policy Memorandum.

Annex A 87. The Committee welcomes the commitment of the Cabinet Secretary to reflect on the points made in relation to human rights issues, both in respect of this Bill and in respect of the forthcoming land reform legislation. The Committee was, however, disappointed that the Equality Impact Assessment was not made available at the time of the publication of the Bill and is concerned that this delay may have had an impact on the effective scrutiny of the Bill.

The comments of both the Local Government and Regeneration Committee and the Rural Affairs, Climate Change and Environment Committee in respect of the Policy Memorandum and EQIA have been noted.

The information to be included within the Policy Memorandum is a matter of balance between providing information on the policy underlying the major proposals and changes of the Bill without overwhelming the reader with too much detail on the provisions themselves. The Explanatory Notes are intended to provide detail of individual sections. An easy read version of the Policy Memorandum was also produced to help people get to grips with the proposals contained within the Bill and this was well received.

Regarding the EQIA, the Government put together five different EQIAs and a summary document to reflect the different policy areas of the Bill. They were not ready for publication on the introduction of the Bill and unfortunately they were published later in Stage 1 than we would have wanted due to administrative problems in getting the documents published on the website.

186. We retain concerns about the terminology and language used throughout the Bill and ask the Scottish Government to amend accordingly to ensure the language used is not a barrier to community involvement.

The Scottish Government is committed to drafting legislation in plain language and all Bills are drafted in accordance with this commitment. Guidance and support materials will be produced to help communities to use the provisions of the Bill, and we will work with partners to further promote and explain it.
Part 1 – National Outcomes

107. We agree with the Minister that communities must be empowered. Given this fundamental principle we expect to see the Scottish Government leading by example. In relation to consultation and engagement with those who are affected, i.e. communities, provision should be enshrined in this Part of the Bill by means of a suitable amendment to Part 1.

We would anticipate that all governments would want to consult widely and inclusively on the national outcomes as a whole and consider this is best achieved by a broad provision which does not limit the scope of the consultation in any way.

If a review related only to individual outcomes or particular topics, it might be more appropriate to have a more focused consultation with particular sectors or individuals. The current wording allows flexibility for the consultation process to be appropriate to different situations.

We have taken on board the views of the Delegated Powers and Law Reform Committee that there should be a formal role for the Scottish Parliament in the process of determining the national outcomes. Therefore, we propose to bring forward amendments to require Scottish Ministers to consult the Parliament, using the procedure provided for under rule 17.5 of the Standing Orders. That could also provide an opportunity for the Parliament to comment on the consultation process that has taken place.

108. Given the focus placed on scrutiny of outcomes we consider the Scottish Government, not least to inform budget scrutiny by the Scottish Parliament, should report annually on the extent to which national outcomes have been achieved. The report should be available before the annual draft Scottish budget is published.

The Bill provides that the Scottish Ministers must regularly and publicly report progress towards the National Outcomes. This is currently done through the Scotland Performs website, which provides an up to the minute picture of progress towards the national outcomes. Updates are continually made as soon as the latest data becomes available.

This Government provides a Scotland Performs Update to support the draft budget scrutiny process, including performance scorecards and narrative to show performance against national outcomes.

For future governments, the format and timing of the reporting should be for the then Scottish Ministers to decide, allowing for further innovative approaches to be developed.
Part 2 – Community Planning

172. We would like to see some of the various engagement requirements under this Part translated into empowerment. It is important that powers are exercised at the lowest possible level. We look forward to seeing the promised amendments from the Government at Stage 2.

The then Minister for Local Government and Planning told the Committee that we are happy to give consideration to amendments that strengthen the accountability of CPPs to their communities\(^2\). We propose an amendment to make it explicit in the Bill that CPPs must publicly report on their progress each year to their communities. The detail of what this reporting should include would be for guidance, which we anticipate will be shaped by the views shared by the communities that they are effectively participating with throughout community planning.

The Bill is intended to ensure participation with communities lies at the heart of community planning. Section 4(5) already requires CPPs to make all reasonable efforts to secure the participation of any community bodies which they consider are likely to be able to contribute to community planning, and take reasonable steps to enable these bodies to participate where they wish to. We are considering whether further amendments can further reinforce the expectation that community bodies should be able to participate throughout the community planning process.

173. The Bill should require CPPs to seek involvement and input from a level below that of community representatives. It is for the Scottish Government to suggest how this be done, and as importantly, how it will be assessed.

We agree that, for participation to be effective, it should be at a level closest to those it seeks to support. Section 4(8) provides a definition for community bodies which is purposefully wide. These bodies do not need to be formally constituted. They may represent geographic communities or communities of interest (e.g. vulnerable adults or children). They may be resident in the area or otherwise present (e.g. the business community).

None of this prevents CPPs from engaging directly with full communities or sections of the local community. However, we expect community participation to apply throughout the community planning cycle (including understanding needs, circumstances and opportunities; identifying local outcome priorities; working through how to respond to these local outcomes; reviewing progress made on these local outcomes; revising approaches where necessary). For community planning to be dynamic and effective throughout this cycle, the most effective community involvement will often come from representative bodies.

174. There should be an explicit requirement on all CPPs to include community capacity building in local plans and to report on progress along with setting out future plans in every annual report.

Section 4(5) already places duties upon CPPs to make all reasonable efforts to secure the participation of community bodies that can contribute to community planning. Section 9(3) places duties on partners to contribute such funds, staff and other resources for the purpose of securing the participation of community bodies to the extent that those bodies wish to do so.

We are considering an amendment to the Bill, to require CPPs to account for the quality of their participation with community bodies as part of their annual reporting. Guidance could set out what CPPs should cover in fulfilling this duty. Similarly, guidance can set out what CPPs should include in their local outcome improvement plans.

175. As a minimum we would expect the Bill to require annual reports from CPPs to comment on community involvement across the area, including setting out the steps taken to consult with and involve individual communities, and to report on successes in this area. CPPs should also be required to report on how they have developed contacts with local communities over the previous year and the steps they are planning to take to extend and increase involvement of local communities in the coming period.

As stated above, we are considering an amendment to the Bill, which would place a duty on CPPs to account for the quality of their participation with community bodies as part of their published annual progress report. Guidance could provide further detail of how CPPs should fulfill this duty.

176. Overall we are not convinced this Bill goes far enough to move CPPs from their current top-down approach and recommend further statutory provision is made to ensure this is both clearer and measurable.

The Bill reflects a model for community planning that attracted substantial support from respondents to the Scottish Government's second consultation paper (November 2013). It is a model which is both strategic, and responsive to the diversity of needs and circumstances that face different communities within a CPP area.

The strategic aspect to community planning is critical. CPPs are expected to prioritise local outcomes for their area in their local outcome improvement plan, based on their understanding of local needs and circumstances and the input of communities. As stated at para 49 above, the National Community Planning Group is encouraging CPPs to focus efforts on a small number of priorities where they can make the biggest positive difference for their communities, including to tackle multi-faceted disadvantage. In their report "Improving Community Planning in Scotland", the Accounts Commission and Auditor General highlighted this development as an example of improving leadership by the NCPG.  

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3 Page 4 and para 21
At the same time, CPPs need to be clear about the diverse nature of needs, circumstances and opportunities for different communities in their area (both geographic communities and communities of interest). They should reflect these in setting their priorities for improving local outcomes and reducing inequalities, and in how they act on these priorities.

While the recommendation focuses on the need for specific statutory provision, our general position is that there is an important place for both that and statutory guidance. In particular, guidance can add real value to new arrangements in ways that statutory provisions alone cannot, because it can be shaped with stakeholders around their needs. We will continue the open and inclusive approach we took to the development of the Bill in creating that guidance, and in drawing up the secondary legislation. We can expect to establish groups of stakeholders to develop guidance on each topic, building on our engagement at earlier stages of the process, and to consult publically and widely on the drafts produced in this way. We will ensure a balance is obtained between the various interested sectors in the Bill, in particular between the public and community and voluntary sectors. We intend to create straightforward guidance so that everyone can understand the rights and duties created by the Bill and take advantage of the opportunities it offers. That will include Easy Read versions where appropriate. We will also build on the good practice and advice already available and ensure we get the benefit of the experience and understanding of all our stakeholders.

177. The Bill should be clearer as to the expectations in relation to leadership, governance and audit arrangements that apply to CPPs.

Section 8 of the Bill provides clarity about governance duties and provides a basis for shared leadership among the governing partners listed in section 8(2). It makes it clear that it is the governing partners who are responsible for facilitating community planning and ensuring that the partnership carries out its functions efficiently and effectively.

Guidance can set out in more detail how CPPs and partner bodies should exercise effective leadership and governance, similar to how Best Value guidance sets out leadership and governance expectations for local authorities and public bodies).

CPPs are already subject to audit without statutory provision and we welcome the stimulus that external audit has provided to support on-going improvement in community planning.

178. We remain unclear how the Scottish Government, who supply most of the funding spent by CPPs, intend to measure and hold to account each CPP on their achievement of outcomes and value for money. We consider the Bill must explicitly include this, building on The Statement of Ambition.

179. The above applies equally to individual CPP partners on their involvement, the Bill should be clear about their accountability for the performance of the CPP.
Within the CPP, the Bill establishes clear duties for partner bodies on how they contribute to community planning, review progress and provide effective overarching governance. The lines of accountability for community planning partners are unaffected by the introduction of the Bill and remain the same. e.g. NHS to Scottish Ministers, Local Authorities to their electorate. We intend to take steps to ensure that, for those public bodies that are listed in Schedule 1 to the Bill, their contribution to community planning is reflected more consistently as part of how they are held to account for their performance.

181. We do not consider the Bill, as currently drafted, makes it clear that priority must be given to CPP initiatives over those of individual partner organisations. This Bill requires to be clearer around the provisions requiring the sharing of budgets by all CPP partners.

We disagree that the Bill should isolate CPP activity from their broader responsibilities or “give priority” to one over the other. What is important is that partners contribute positively to community planning and, having agreed what they do to support local outcomes, all partners provide the resources agreed within the CPP (section 9(3) refers).

The duties of joint resourcing for community planning partners have less to do with sharing budget information, and more to do with providing and aligning funds, staff and other resources towards shared priority local outcomes. We agree with Douglas Sinclair, Chair of the Accounts Commission, who told the Public Audit Committee: “the challenge for CPPs is not to argue about mainstream budgets but to get into budget areas that overlap and where they can make a difference to reduce inequalities and their particular priorities”.4

182. Annual reports should be both backward and forward looking. As well as reporting under section 7(2), on whether there has been any improvement in the achievement of each local outcome set out in the local outcomes improvement plan, CPPs should be statutorily required to report intended actions and activities.

We disagree that legislation should specify that an annual report must include both backward and forward looking dimensions. Sections 5 and 6 already set out arrangements for the development, review and revision of local outcomes improvement plans. Separate arrangements in section 7 cover the preparation of annual reports on progress made.

We are happy to consider whether CPPs should be expected to produce additional material on their future plans, as part of statutory guidance. However, we would not expect that this should be set out within a published annual report. To be valuable, any statement of future plans would need to be published in advance of the reporting year in question; while any report on progress could not be produced until the reporting year in question had ended. So we are not clear how a single report could

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set out both a progress report for one reporting year, and planned activities for the following year.

183. **A deadline for reporting should be specified. We recommend no later than 6 months after the end of the period in question.**

We agree that a deadline should apply to the publication of annual reports. The currency of reporting has an impact on the usefulness of the information contained within the report. We consider that guidance will provide an opportunity to address specific timing and will engage with stakeholders to determine a suitable timeframe.

184. **If Scottish Enterprise are to be included as partners their remit requires to be amended to include community support along the lines of that of Highland and Island Enterprise. Equally they must be required to comply with all requirements, including budget sharing, to avoid any perception that engagement by partners is optional.**

Scottish Enterprise is an important community planning partner with its current remit. Changing its remit would require substantive changes to the Enterprise and New Towns (Scotland) Act 1990, and we do not consider the case for such significant change has been made.

Scottish Enterprise will be subject to the same duties as are placed on other partners listed in Schedule 1 to the Bill, including the duty in section 9(3) to contribute such funds, staff and other resources as the CPP considers appropriate with a view to improving local outcomes and for the purpose of securing participation by community bodies. This should not be confused with “budget sharing”. As the then Minister for Local Government and Planning explained to the Committee on 12 November 2014:

> “I can guarantee to Mr McDonald and to the Committee that Scottish Enterprise is very mindful of our obligations on community planning, as was reinforced during my recent visit. Lena Wilson, the chief executive, is very clear that, although Scottish Enterprise might not be bringing its budget to the table, it should be bringing its expertise, support, networks and contacts to the table. That is the kind of support that a community planning partnership would want.

> The bill deals with what is agreed at community planning partnership level. Scottish Enterprise can bring its business expertise. Economy is one of the key themes in community planning, and Scottish Enterprise is of course well placed in that regard.”

185. **The third sector and housing bodies should be given a more prominent role, short of becoming a partner at the partnership board of CPPs.**

We have taken steps throughout the Bill to ensure the effective participation of community bodies, which can include the third sector and housing bodies, is secured.

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5 Columns 25, 26
and acted upon. However, we do not consider that it would be appropriate to place statutory duties on third sector and housing bodies. We are happy to consider providing further detail about their role in statutory guidance.

186. **The bill should explicitly encourage the involvement and participation of the private sector and local business with CPPs.**

The Bill already reflects this. As described above, duties are placed on partners to secure participation of community bodies and such other persons as it considers appropriate. The definition of “community bodies” in section 4(8) extends to communities not resident but otherwise present in the area of the local authority, which can include local businesses.

187. **We do not consider sportscotland should be included as partners in CPPs.**

We understand that sportscotland have written to the Committee to clarify their position. Their inclusion in Schedule 1 to the Bill is in line with the terms of their response to the Scottish Government’s second consultation on the Bill proposals, as they recognised the potential contribution they have to make to work with others in community planning. As with other statutory community planning partners, the extent of their involvement and where within the community planning process they get involved may vary from one CPP to another, as it currently does. This is addressed in the Bill, with section 9(1) providing that a CPP may agree that a particular partner need not comply with a duty or need only comply to such an extent as agreed by the partnership.

188. **Provision should be made in the Bill for other public bodies to be full CPP partners as appropriate, based on local circumstances and need. We have in mind for example DWP and transport partnerships.**

Those bodies which are community planning partners are listed in Schedule 1 to the Bill and Scottish Ministers by regulations will be able to add, remove or amend this list. The Committee may wish to note that transport partnerships are already listed in Schedule 1. Individual CPPs may agree to participate with other public bodies not included on the list as they agree between themselves. The Bill does not prohibit participation with other public bodies.

However the Department of Work and Pensions is a reserved body, and therefore cannot have duties placed on it by Scottish legislation.

190. **The Bill must make clear the linkage between local improvement plans and single outcome agreements.**

We have attempted to do make this clear previously in the policy memorandum which confirms that Local Outcome Improvement Plans are the equivalent of Single Outcome Improvement Plans.

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Outcome Agreements – we have used the new wording in legislation to more clearly articulate what their purpose is.

Part 3 – Participation Requests

260 – 264, 268. Given the need for this Bill follows the failure of voluntary arrangements we consider it vital progress is closely monitored. To allow that to happen we recommend the Bill require all public service authorities to produce periodic public reports. This would include:

- The arrangements made by each body to support communities to utilise the provisions (instead of requiring a named officer)
- The methods used to encourage community participation, and comment on how successful they have been.
- The steps taken to underpin the community focused provisions in the Bill (Parts 3 and 5). It should also identify those communities which have been supported along with a summary of the support provided and details of how successful this has been.
- How they have built capacity in communities which has allowed them to take advantage of participation requests and asset transfer requests. In addition it should set out measures taken to address inequalities between communities in their area.
- Steps taken to provide information to communities, including publicity, and how successful this has been in making the participation request process open to all.

270. Finally, we recommend information be included in the reports on public service authorities’ willingness to allow community participation; the number of participation requests made; the number refused; and an explanation of organisational initiatives which encourage community participation in shaping of and the delivery of services.

The same recommendations are applicable in relation to Part 5 (paragraphs 339-341)

We recognise the need to monitor the progress of public service authorities and relevant authorities in implementing the provisions of the Bill. We will bring forward an amendment to require public service authorities and relevant authorities to provide an annual report. We would require that the annual report covers the number of requests received, the results of those requests, together with narrative information about the measures taken by each authority to promote the provisions of the Bill and support community bodies in making requests.

267. We recommend the removal of the need for an application to be by a group and in the event of an application under this Part by a group for the requirement for any written constitution along with any other restrictions
which could dilute the community accessing these provisions. For any that are to remain we expect to hear compelling reasons for their inclusion otherwise as the process, which is designed also to assist public service authorities in improving services, should be open to all.

Public authorities should use a range of engagement and participation approaches to allow all members of our communities to be involved in the design and delivery of services, including individuals. Participation Requests are a specific mechanism designed to enable proposals to be brought forward by groups with a common interest and purpose. The structure of the provisions (requirement to establish an outcome improvement process and report on the outcome of that process) would be disproportionate if it were applied to suggestions from individuals with no wider support.

The requirement for a written constitution is intended to ensure that the group is open, inclusive and representative, controlled by the members of the community which it claims to represent. This addresses concerns raised in consultation that the provisions could be used by individuals or closed groups to further their own interests, or without effectively seeking the views of those the proposals are intended to benefit. Model constitutions will be provided, as is done for community bodies under the community right to buy scheme, to ensure that it is as easy as possible for any group to agree a suitable constitution.

269. We recommend complaints concerning the handling of participation requests made to the Scottish Public Services Ombudsman (SPSO) are separately identifiable in their records and shown in annual reports. This will enable implementation and effectiveness of the new process to be monitored.

The SPSO publishes statistical information on all complaints on its website, and highlights the main trends and top categories in its annual report and individual sectoral reports each year. Almost all individual decisions made by the SPSO are also published either in a public interest report or in a shorter summary report. These can be searched by keyword as well as subject on the website.

The SPSO seeks to ensure that the categories used in its statistics and analysis are meaningful and allow for comparison across authorities. If there are too many categories they may overlap or there may be too few cases in each category to allow meaningful analysis. Categories are reviewed as necessary to reflect changes in legislation or in the nature of complaints being brought.

The SPSO’s annual report is laid before Parliament each year. Under section 17(3) of the Scottish Public Services Ombudsman Act 2002, the SPCB can provide directions as to the content and form of the report.
Part 5 – Asset Transfer

339 – 341. Given this Bill has been found to be necessary we consider it vital progress is closely monitored. To allow that to happen we recommend the Bill require all public bodies to produce periodic reports.

Our recommendations in Part 3 (paragraphs 261-265) in relation to capacity of communities also applies to Part 5.

We recommend information be included on relevant authorities' willingness to respond to asset transfer reports: the number of asset transfer requests made; the number refused; and an explanation of organisational initiatives which encourage transfer of assets to communities.

Please see the response under Part 3.

342-344. The Bill should stipulate a 6 month maximum time limit following receipt of community transfer body's offer within which relevant authorities must conclude contracts unless otherwise agreed by all parties.

Any delay beyond the above period must be reported to the Chief Executive of the relevant authority setting out the reasons why an asset transfer has not been concluded.

Any breaches of the period must be reported in the report.

The Minister set out in his letter to the Committee, dated 17 December 2014, how the provisions in the Bill would work in this situation. If no agreement is reached within 6 months, the transfer will fall and any agreement will be of no further effect. However, the community transfer body and the relevant authority can agree an extension to the period, or failing that the community transfer body can apply to the Scottish Ministers to direct that the period should be extended, so that negotiations can continue. This puts the community body in control of the situation if they consider that the relevant authority is delaying agreement. The Scottish Ministers can direct the period to be extended more than once. The relevant authority cannot dispose of the property to any other person until after any extended period expires.

It is not clear how the situation would be resolved under the Committee's proposal if the time limit is breached, only that the matter must be reported to the Chief Executive of the relevant authority. We consider that this provides less benefit to the community body than the recourse to Scottish Ministers currently provided by the Bill.

We are happy to agree that the annual report proposed in paragraph 341 should include information on any requests where the contract has not been concluded within the 6 month period.

345. To enable groups to assess the funding options available to them we recommend the Bill should stipulate that as a minimum the information listed
at paragraph 345 (price, running costs etc) be included in subordinate legislation [on information to be provided to the community transfer body].

The Bill provides for Ministers to make regulations about information which a community transfer body may request from the relevant authority in advance of making an asset transfer request, and how the relevant authority is to respond. The aim of placing this information in subordinate legislation is to provide for flexibility. We will consult separately on the detail of those regulations, taking into account the views expressed in consultation on the Bill and in the evidence provided to the Committee.

346. We welcome the Scottish Government’s commitment to require all relevant authorities subject to Part 5 of the Bill to provide a publically available asset register.

We agree this will be helpful to enable community bodies to understand the range of assets that may be available for transfer.

347. In addition we recommend the Scottish Government gives consideration to the various pieces of legislation which prevent the Forestry Commission from leasing land to communities for forestry purposes, and in particular, the leasing to not-for profit industrial provident societies to enable greater use by communities of their land.

We propose to bring forward amendments at Stage 2 to extend the range of community organisations that can lease land for forestry purposes, to ensure it aligns with the policy aims of the Bill and the amended Land Reform (Scotland) Act.

348. The Minister’s commitment to put in place an appeal process for refusals of asset transfers by the Scottish Ministers is welcome. We look forward to hearing detail of the framework.

The framework is expected to be similar to that for local authority review of their decisions. The current provision for appeals and reviews, under section 58 and 59, allows for detailed procedures to be set out in regulations. We will work with stakeholders to develop appropriate procedures for appeal and review by the Scottish Ministers.

349. We recommend the Bill detail how the appeal process for relevant authorities, local authorities and Scottish Ministers will apply to the valuation of an asset and the conditions attached to the transfer.

The current provisions allow the appeal and review processes to consider, and if necessary alter, any terms and conditions attached to the transfer. We consider that the amount set for purchase or rent would also be a term or condition in this context and could therefore be considered in any appeal or review.

350. The Scottish Government should specify which organisational structures it deems appropriate for ownership of assets.
Section 53 sets out the criteria for community transfer bodies that may request transfer of ownership of land. At present this includes companies and Scottish Charitable Incorporated Organisations (SCIOs), as well as bodies that may be designated by the Scottish Ministers as eligible to request transfer of ownership. We intend to bring forward amendments to add Community Benefit Societies registered under the Co-operative and Community Benefit Societies Act 2014.

All community transfer bodies (other than those designated by the Scottish Ministers) must meet the criteria for community-controlled bodies set out in section 14, including the requirement that all surplus funds or assets of the body are to be applied for the benefit of the community to which the body relates. Co-operatives and Community Interest Companies are therefore excluded from the legal forms eligible to request transfer of ownership, because they are able to distribute profits to members.

Part 6 – Common Good

397. We recommend the Bill be clarified to make it clear to local authorities and communities that no conflicts exist in relation to the transfer of common good assets under Part 5 of the Bill.

Any restrictions on the disposal or use of property, whether as a result of common good status, title conditions or other restrictions, will apply in the case of asset transfer as they would to any other sale or lease. This will be clarified in guidance. However, common good status would not prevent a community body from leasing, managing or using the property, provided this was in line with the purposes for which the property was originally intended.

398. Given the approach outlined by the Minister we see no difficulty in the Bill specifying a maximum timescale for the compilation and production of Common Good Registers which we recommend be no later than 5 years from Royal assent. Such timescales would also include the requirements on local authorities to report at specified intervals.

Since they must have sufficient information to account for the value of their common good fund, we would expect authorities to be able to publish their proposed lists of common good property relatively quickly once the detailed requirements are agreed. As has previously been confirmed, it will not be necessary for authorities to confirm the status of every item in their own lists or suggested by representations before placing it on the register. Some items may need to be marked as unconfirmed until such time as detailed investigations, and if necessary legal proceedings, are carried out. We therefore consider that it should take no more than 3 years for authorities to establish their common good registers, although not all items on the register will have their status confirmed within that time. The requirement to begin the process of establishing a register will come into force as soon as the relevant sections of the Bill are commenced.
Local authorities are required to maintain their registers once established. This will entail updating the status of any items formerly under investigation, and adding any proposed through consultation. It is not clear what additional information would be provided through periodical reporting.

399. We note evidence on the impracticalities of being required to consult all community councils within a local authority area on specific common good assets, especially geographically larger councils. The Bill should be amended to permit regulations to allow for a necessary degree of flexibility.

We recognise the issue for larger local authorities which may have separate common good funds deriving from different burghs. We will bring forward amendments to address this.

Part 7 – Allotments

459. On issues such as the size and number of allotments, we agree with the Minister that setting a defined standard plot size on the face of the Bill would not be helpful. This would remove local flexibility from councils, however we would like to see guidance covering this matter.

Whilst we do not intend to include on the face of the Bill any provision prescribing a standard plot size, we are considering further amendments in this area.

460. While we expect Local Authorities to take the lead in making land available for allotments etc, we expect other public bodies to look closely at their land holdings and respond positively to demand from communities. We recommend the Bill widen the responsibility to include the CPP to ensure the other partners are engaged.

We agree public bodies should “look closely at their land holdings and respond positively to demand from communities”. This could include asset transfer requests made under Part 5 of the Bill. The Scottish Government has supported a number of initiatives to develop growing spaces in different public sector scenarios including; the transformation of vacant City Council land in the Toryglen area of Glasgow for community growing, and the establishment of growing space at the Royal Edinburgh Hospital (NHS Estate) amongst others.

However, we do not accept the Bill should place a statutory duty on CPPs to ensure other public sector bodies make land available for allotments, etc. Any such duties would fall on each partner body individually. As with other duties placed on partner bodies, they should be answerable through pre-existing lines of accountability (e.g. NHS boards to Scottish Ministers).

Similarly, while we recognise that community planning can be a vehicle in which public bodies consider joint approaches to asset management, decisions about whether and how to pursue these approaches should be for CPPs themselves, where they consider this can provide a valuable contribution to their work.
461. We recognise local authorities are the appropriate public sector organisations to draw up local food growing strategies. However, confining this duty simply to local authorities would be a missed opportunity. We recommend that food-growing strategies be made a CPP duty, so that all CPP partners will have an obligation to contribute to meeting the objectives of the strategy through the Single Outcome Agreement. This should be developed in such a way as to support the forthcoming United Nations Sustainable Development Goals from 2016 onwards.

462. The Scottish Government should indicate how it will ensure CPPs are required to engage private and commercial sector land owners to assist in supporting food growing and allotments.

463. CPPs should be required to support the delivery of access to food-growing activity as an objective. This could be achieved by providing access to publicly-owned land held by public sector agencies or by providing other resources such as funding the development of growing skills, or utilising existing programme or skills within the public sector (for example on decontamination of land etc.). We recommend guidance make this duty clear along with a requirement to report on how it is being achieved.

Recommendations 461 to 463 cut across a fundamental principle of the strengthened community planning arrangements in Part 2 of this Bill. The Bill does not stipulate any themes or policy issues that CPPs are required to prioritise within their Local Outcomes Improvement Plans. It is for CPPs to determine their own local outcome priorities, reflecting their understanding of local needs and circumstances and in light of community participation. As a matter of policy, and as the Accounts Commission and Auditor General highlighted as an example of improved national leadership in their report "Improving Community Planning in Scotland", the National Community Planning Group has advised that CPPs should focus their collective energy on where their efforts can add most value for their communities, with a particular focus on tackling multiple inequalities. Indeed the audit report praised Glasgow CPP for narrowing their focus towards three specific priorities for their area that reflect its greatest challenges, with associated outcomes.

Against these backdrop, we do not agree that there should be any mandatory themes or outcome areas which all CPPs must include in their Local Outcome Improvement Plans. We also do not agree that food-growing strategies should, uniquely, be such a mandatory element, when there are no others. To impose such a “top-down” statutory duty on CPPs runs against both Scottish Government policy and the Committee’s own stated “bottom-up” intentions for Part 2 of the Bill.

In further response to Recommendation 462, the Committee may wish to be aware that, to encourage landowners, both private and public, to make sites available for growing food, Scottish Government supported the production of a ‘Guide for Landowners’, that was produced by the Community Land Advisory Service in 2013. This Guide provides comprehensive information, suggestions and background.

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7 See also response to Recommendation 176 above
details to equip landowners to play their part in making more land available for local communities to grow food.

464. **Local authorities should work to ensure their food-growing strategies are inclusive of the need to develop horticultural skills, especially amongst children.**

Curriculum for Excellence (CfE) is the national approach to learning and teaching for young people aged 3-18 in Scotland and is the result of wide-ranging and ongoing engagement and consultation with parents, teachers, educationalists and other key stakeholders since 2002. CfE enables young people to develop four capacities - successful learners, confident individuals, effective contributors and responsible citizens. It provides learners with a range of personalised learning experiences and qualifications that meet their individual needs and aspirations. It also frees teachers from prescription, providing a framework for learning through a set of experiences and outcomes in eight curricular areas.

Guidance produced for local authorities by the Scottish Government last year – ‘Better Eating, Better Learning’ – is clear that within Curriculum for Excellence the development of practical food skills is a key area of learning for children and young people and would include horticultural skills. The Guidance states that, “With careful planning outdoor settings can be accessible to all and are being used effectively to teach children and young people how to plant and grow food, cook over open fires and produce meals from seasonal foods sourced locally.”

The Guidance recognises that the benefits gained as a result of involvement in practical food growing projects includes enhanced community relations and creating partnerships between schools and food businesses. Scottish Government and Education Scotland provide an extensive list of resources on organisations able to support schools in this area.

Furthermore, there is a range of quality assured, accredited and relevant vocational training courses and qualifications in horticulture available in Scotland. These range from entry level to more advanced levels as well as a Modern Apprenticeship framework.

Many of Scotland’s local authorities already work in active partnership with training providers (eg colleges) to deliver high quality horticultural learning and training. Most of these focus on parks, gardens, cemeteries and landscaping (ie amenity horticulture) but there is flexibility to focus on local food production eg the Loch Lomond & the Trossachs Skills Partnership is helping to pilot a related ‘Shared Apprenticeship’ on kitchen gardens, and there are other examples of relevant initiatives (Glasgow City Council is one). Approximately 45 secondary schools already include land-based delivery in their curriculum (some again in active partnership with their local college).

465. **We recommend the community-based allotment and food growing sector be encouraged to become part of a viable empowering food economy while also ensuring the land available to them is not taken advantage of by the**
larger scale commercial food production industry. We look forward to an appropriate amendment loosening the restrictions in section 87 to make this clear.

The Government is proposing to loosen the provisions relating to the sale of surplus produce by removing the need for Scottish Ministers to prescribe what produce may be sold.

Should the provisions be broadened to enable food produced on allotments to be part of the wider food economy this could have the unintended consequence of bringing allotment holders within the scope of the Agricultural Holdings (Scotland) Act 1991 since such production would fall within the definition of agricultural land which includes land being used for the purposes of a trade or business.

Part 8 – Non-domestic rates

500. We are content to have variability in the way this power is used across Scotland and indeed within and across local authority areas, we view the power as one providing increased flexibility to local authorities that can be used to support the creation of new businesses and to sustain existing businesses.

501. We have no concerns about the suggestions of a “race to the bottom”, viewing this power as but one tool for local use principally to incentivise and regenerate local areas. The power can only be utilised within the uniform business rates scheme.

502. We request the Scottish Government to consider ways in which they can promote the use of this power to prioritise regeneration activities within disadvantaged areas.

503. We would be concerned if landlords were to target rent increases on properties receiving relief under this power and encourage the Scottish Government to consider ways in which this could be prevented.

We note the Committee’s points regarding local business rates relief. We would also note the existing scope for local discretion that councils have with regard to some national rate reliefs. Whilst we would not fetter councils’ discretion as to whether or how they use the proposed new power, we will continue to promote regeneration activities in active partnership with councils, drawing on the range of available powers, and note that this new power may afford corresponding opportunities. Any changes to business rates may have implications for rents, and, whilst we will endeavour to observe the effects of any new measures, the responsibility for considering impacts and implications of any local rate relief will rest with the respective council.
Annexe A – Part 4, Community right to buy land

Responses to paragraphs 76, 87 and 98 are included with responses to the general points made at the beginning of the report.

78. The Committee considers that the Part 4 provisions of the Bill have the potential to contribute significantly to sustainable development but agrees with the Scottish Environment Protection Agency which suggested that the Policy Memorandum provides a ‘light touch’ assessment of the sustainable development aspects of the Bill. The Committee considers that the Policy Memorandum could have provided further consideration of sustainable development. The Committee would welcome information from the Scottish Government on its plans to produce further regulation and guidance on this matter.

The sustainable development element of any community right to buy is taken into account when considering each application. The impact will vary widely across the spectrum of cases and the Scottish Government will, of course, ensure that clarification is provided wherever it is required, both through regulation and guidance, and in consultation with stakeholders.

86. The Committee was interested to hear the views of Professor Alan Miller, Chair of the Scottish Human Rights Commission, and considers that human rights could have been brought into the wider context of the Bill. The Committee believes that a wider consideration may have assisted, and might still assist, in establishing an environment which would facilitate a more constructive dialogue between landowners and communities.

Human rights is part of the consideration of any community right to buy. When assessing the community body’s application, Ministers must take account of all facts and assess applications on a case by case basis.

96. The Committee understands that community right-to-buy will be demand-led. However, the Committee considers that the Scottish Government should have provided further clarification of how the Community Land Fund’s budget was arrived at and should have considered what parallels could be drawn between it and funding for community right-to-buy in the context of the Bill. The Committee is of the view that the Financial Memorandum ought to have given greater consideration to this.

The SLF has been increased to £10 million from 2016-20 to meet demand, as announced in November 2014. The Scottish Government will certainly monitor the costs associated with the Community Right to Buy as it progresses over the next few years and will continue to keep its funding for this and other community-led activity under review.

97. The Committee is also concerned that the costs for communities and landowners (e.g. legal costs arising from appeals, costs to communities in preparing and developing proposals and bids) and the costs to public bodies
of providing support to communities are unclear. The Committee is of the view that the Financial Memorandum should have better reflected this.

The Financial Memorandum included unit costs for the key elements of the right to buy process, such as valuations, ballots and appeals. The cost to each community body is not collected by the Scottish Government, and varies widely depending on just how each community approached the right to buy. In the Bill as introduced, under Section 47, we have included a duty to provide information about community right to buy, for the purposes of monitoring and evaluating impact.

101. The Committee welcomes confirmation from the Cabinet Secretary that the initial view that the rules relating to lottery funding would not have any impact on the right-to-buy. However, the Committee encourages the Scottish Government to clarify this initial view and advise the Committee of any change in that position.

We believe the sportscotland submission to the Local Government and Regeneration Committee, that gives rise to these concerns, relates more to asset transfer (part 5 of the Bill), than to community right to buy. We agree that communities should not be encouraged to take on liabilities that they cannot support, and recognise that lottery funding may not be available where a property is bought from the public sector. It is essential that every proposal for community ownership is based on a viable business plan with a clear view of how the project will be sustainable in the long term, identifying future funding sources with appropriate eligibility criteria where necessary.

Assets that have been improved/bought with lottery funding cannot be sold without first informing the distributor of the funding, who must be satisfied that full market value is being sought. Since Community Right to Buy is always valued at market value, this is not a concern for this Part of the Bill.

110. The Committee understands the concerns of stakeholders in respect of areas subject to an active planning consent. The Committee recommends that the Scottish Government give further consideration as to whether amendment at stage 2 is required to provide a mechanism to exempt such sites, for a period of time, to offer greater certainty to the investment and development market.

The Law Society of Scotland raised suggestions that consideration is given to allowing for a mechanism to obtain a certificate exempting a site from community right-to-buy for a certain amount of time. This would be where, in its view, land may be subject to redevelopment proposals and the potential uncertainty that applications could create, adversely impacting on investment decisions.

At the moment, any current development plans or active planning permissions are already taken into account in deciding whether it is in the public interest for the community application to be accepted. In order to keep the uncertainly to a minimum, there is a maximum of 63 days between receipt of an application and a decision on whether or not it should registered.
As a result, the Scottish Government does not intend to make any amendment to the Bill in this area.

112. It is not clear to the Committee whether specific mention of salmon fishings and mineral rights implies that the right-to-buy is not exercisable in relation to other tenements. The Committee would welcome clarification from the Scottish Government as to whether that is indeed the case.

The Scottish Government appreciates the need for clarity and therefore intends to bring forward amendments at Stage 2 to clarify whether the right to buy is exercisable in relation to other tenements.

121. The Committee heard the views of those who would prefer the Bill to define the characteristics of an eligible community body rather than specify the eligible legal structure. However at this time the Committee remains unconvinced of this approach. The Committee understands that new forms of legal entities that could be eligible may emerge over time but the Committee is comfortable that provision exists to define those entities in secondary legislation. The Committee recommends that any such legislation be brought forward under the affirmative procedure.

The Scottish Government agrees with the views of the Committee and it is intended that any regulations made by Ministers to extend the range of legal entities that can be community bodies will be subject to the affirmative procedure.

122. The Committee welcomes the inclusion of Scottish Charitable Incorporated Organisations in the Bill. The Committee listened carefully to the evidence on the impact of restricting the choice of legal entity to two options and, on reflection, considers that the Bill should extend the eligibility of legal entities to include Community Benefit Societies and Community Interest Companies. The Committee welcomes the commitment of the Cabinet Secretary to consider potential amendments at stage 2 to extend the list of eligible community bodies and recommends that the Scottish Government bring forward amendments to include Community Benefit Societies and Community Interest Companies.

One of the key considerations in whether or not a particular type of community body should be eligible is that all funds raised should be used to benefit the community. In particular that;

\[ s34(1)(g) - \text{provision that any surplus funds or assets of the company are to be applied for the benefit of the community}\]

Scottish Charitable Incorporated Organisations (SCIOs) will also have this requirement within the legislation. Whilst both Community Benefit Societies (BenComs) and Community Interest Companies (CICs) certainly have a community focus, the main difference is that CICs with shares can distribute dividends to individual shareholders. This is not something that is desirable at this moment in time, therefore it is proposed to extend the range of bodies that can be valid...
community bodies to BenComs alongside SCIOs and Company Limited by Guarantee but not to CICs at this stage.

Ministers will have the power to make regulations to add additional types of organisational structures at a later date, and therefore if in the future it is considered that CICs would be suitable community bodies that change could be made at that time.

123. The Committee recommends that the Scottish Government also give consideration to the proposals of the Scottish Federation of Housing Associations and the Church of Scotland that the Bill should mention housing associations and co-operatives, and charities such as the Church of Scotland, as community bodies.

The addition of housing associations and charities such as the Church of Scotland to the types of community body would introduce bodies that did not necessarily have a community focus, nor would they be obliged to ensure that all funds are retained within the community. These types of organisation can have a wider, even national, remit and there is a desire to keep a much more local focus. As a result, there are no plans to allow these additional types of community body at this time. However, as mentioned above, Ministers will have the power to make regulations to extend the range of entities that can be a community body if the position changes.

125. The Committee is concerned that the requirement for Scottish Incorporated Charitable Organisations (SCIO’s) to have a minimum of 20 members will, in practice, mean that a number of existing SCIOs would be excluded from the definition of an eligible community body and would therefore be unable to apply to register a community interest in land. The Committee considers that the requirement for SCIOs to have a minimum of 20 members is overly prescriptive and strongly recommends that the Scottish Government bring forward relevant amendments at stage 2.

The Land Reform (Scotland) Act 2003 already provides that Ministers may disapply the requirement for community bodies to have twenty members, and this Ministerial power will apply to all types of community bodies in Parts 2, 3 and 3A of the 2003 Act.

However, in light of the Committee’s concerns, the Scottish Government will bring forward amendments to reduce this limit to 10 members, to ensure that smaller communities are not disadvantaged.

134. The Committee listened to the concerns of stakeholders in relation to the provisions of minutes upon request and recommends that the Scottish Government give consideration to this provision and the need for further clarification and reflect on the impact of this provision on existing community bodies. The Committee recommends that the Scottish Government consider whether there are other means to affect the policy objective such as a requirement for community bodies to enact relevant bylaws or rules, and bring forward relevant amendments at stage 2.
The policy aim of this requirement is to encourage transparency and openness in the right to buy process. In response to the Committee’s concerns the Scottish Government is giving consideration to whether it should qualify the application of this requirement, in relation to the types of minutes it applies to and whether it applies to minutes of meetings that took place prior to commencement of the Bill. Any qualification would be brought forward by way of an amendment to the Bill at Stage 2. At this stage it is considered that the current qualification that the community body must only respond to requests for minutes that are reasonable provides sufficient security to community bodies that they will not be placed under an overly onerous burden.

140. The Committee recognises the practical issues for communities in considering an interest in land and agrees that Ministers should not be artificially restricted by a six-month time limit in considering any relevant material. The Committee would welcome further consideration of this section by Ministers.

One of the factors that is taken into account in a community body’s application for a right to buy is the level of community support that they have received. At the moment, it is considered that 6 months is a reasonable timescale within which evidence of support should be received. In the evidence received by the Committee, some of the issues raised were that it could take longer than 6 months to form a community body, or that feasibility or other studies could date back before that period. To date, all applications received have demonstrated evidence of community support within the 6 month deadline, and therefore there is no intention to amend the 6 month timescale on the face of the Bill at this stage. However it is intended to take a regulation-making power so that Ministers can amend the time limit in the future, should a problem become more apparent.

151. The Committee recommends that the Scottish Government should take into account the recommendations of the Land Reform Review Group with respect to the “right lite” for registration, i.e. providing communities with a right to register an interest and to be notified when land was coming on to the market or ownership was changing, that would trigger the process of the “heavier” right of registering a right of pre-emption.

There are practical issues surrounding registration that would make this difficult in practice. First of all, a community body would still have to be created, in order to register the interest in the first place. If the “heavier” right was then triggered, this body would still have to be compliant with the Act. For the right to be triggered, an area of land would have to be identified for Registers of Scotland to “flag”, otherwise, how would they know that it had been part of a registration of interest? By default, because there was no prohibition, the fact that it was put up for sale, automatically means that it is considered to be a late application. The easiest solution would seem to be to register an interest as part of the existing Part 2 application.
Current changes within the Bill, as part of the late application process, could allow work undertaken as part of identifying that interest to be considered as “relevant steps”.

152. Notwithstanding that, the Committee considers that the registration process requires considerable simplification. The Committee was also interested to hear the proposals from stakeholders to allow communities to register a purpose. The Committee considers that there may be scope for a dual registration process to enable registration for specified areas of land or buildings and to enable registration for a purpose which could potentially be met by a range of assets. The Committee recommends that the Scottish Government give consideration to a simplified registration process that would also include the option to register “a purpose” and bring forward amendments to that effect at stage 2.

Current changes to the late application process mean that work undertaken to identify a community’s needs, and requirement for land for a particular purpose, could be taken into consideration as examples of relevant steps, which it could not in the original legislation. This means that, should a community be actively considering options, it is not penalised simply because land is put on the market whilst that process is underway.

162. The Committee is keen to ensure that the provisions in Part 4 of the Bill simplify the provisions of the 2003 Act and effectively support communities in their aspirations to acquire land and deliver wider public and sustainable development benefits, whilst balancing this with the need to protect the rights of land owners. The Committee is aware that whilst encouragement and support should be given to communities in registering an early interest in land it is likely that for many communities and applications late registration will continue to be the norm. The Committee considers that the process for late registration should reflect the practical reality for communities and should be redesigned to accommodate this.

163. The Committee has concerns about the ‘good reasons’ test but is also concerned that removal of the ‘good reasons’ test and replacement of this with the need to show ‘relevant work’ may make the process more restrictive and more onerous. The Committee remains unconvinced, where there is a late application, of the need to impose a requirement on communities to show either good reason or demonstrate relevant work and recommends that the Scottish Government bring forward amendments at stage 2 to remove this requirement.

164. If the Scottish Government decides not to amend the Bill to remove the requirement on communities to demonstrate relevant work/steps, the Committee urges the Scottish Government to de-couple the requirement for the work and application to be made by the same community body.

The existing provisions of the Land Reform (Scotland) Act 2003 provide that for a late application a community body is required to show there were good reasons why
the community body did not secure the receipt of an application before the land went on the market. This means that it is the community body which must have tried to secure receipt of an application. The Bill amends this so that if such relevant work or steps as Ministers consider reasonable was carried out by a person, and such work or steps were taken sufficiently in advance of the land being put on the market, and the work or steps related to the same purpose as is proposed in the application, and that it was carried out by the community body, or by another person with a view to an application being made by the community body, then Ministers may approve a late application.

This means that first of all, there does not need to have been an attempt to secure receipt of an application, only that relevant work or steps have been taken and are considered reasonable. As noted in the responses to earlier recommendations, this could be things such as identifying a need within the community, or undertaking work to identify suitable land for a specific purpose.

Secondly, it allows for this work to have been done by a person other than the community body, as long as it was with a view to an application being made by a community body. This means that the work could have been undertaken prior to the community body being formed, which removes another obstacle in relation to late applications.

169. The Committee heard a range of views on the appropriate timescale for the re-registration of an interest in land. The Committee considers the most significant requirement is the need to simplify the registration process to one of a presumption in favour of re-registration unless there has been a material change of circumstance. The Committee believes that this should substantially reduce the burden on community bodies, particularly if those community bodies have multiple registrations. The Committee recommends that the Scottish Government bring forward amendments to that effect at stage 2.

Ministers already have the power to prescribe a separate form to be used for re-registration that could be simpler than the original registration form. The Scottish Government’s intention, through introducing a simpler re-registration form, would be to reduce the burden on community bodies when submitting their re-registration application. The main criteria that would be likely to be shown is that there is continued community support, the business plans have not changed, and that the land identified has not changed.

This would not, however, create a presumption in favour of re-registration as it is considered important for Ministers to ensure continued public support for the continued registration. It is intended to use current Ministerial regulation making powers to prescribe a simpler form for the purposes of re-registration and therefore ease the burden on community bodies.

171. The Committee raised the issue of the inability of applications to be amended once submitted with the Cabinet Secretary and recommends that amendments be brought forward by the Scottish Government at stage 2 to enable applications to be amended once submitted.
The Scottish Government does not intend to bring forward amendments at Stage 2 to allow applications to be amended following receipt by Ministers due to the overall effect this would have on the time of the application process.

If a process was introduced to allow the amending of applications an additional time period would need to be introduced allowing for the other parties to reconsider the amended application and make any representations on that amended application. It would also open up the potential for applications to be appealed if they have been changed to any large extent.

As part of the current process, the existing right to buy team provide advice and guidance to communities to ensure that there are no technical errors in their applications, to allow the application to be judged solely on its merits.

175. The Committee questions the rationale for the requirement for an owner to inform Ministers of an exempt transfer being made and considers that it should be sufficient to include a declaration in the disposition. The Committee recommends that the Scottish Government reflect on this and consider whether amendment to this provision is required at stage 2.

It is the Scottish Government’s view that it is important that a land owner notifies Ministers of an exempt transfer being made, in order for the register of interest to remain accurate and up to date, and that the community body’s application names the correct owner of the land in question.

This will also ensure that, by being notified of a change of ownership, it will save time and effort should the land come on the market at a later date, and will ensure that the community body and Ministers contact the new owner of the land.

180. The Committee would be concerned if landowners were found to be seeking to thwart legitimate applications from communities. The Committee considers that the existence of an option to purchase should not automatically exclude a community application and recommends that the Scottish Government consider this provision and bring forward amendments at stage 2 to ensure that land and buildings under option are not excluded from eligible land for registration or purchase.

It is the Scottish Government’s view that a valid option agreement should be allowed to stand. A valid option agreement is the equivalent of missives being concluded in a transaction, therefore Ministers must decline the application.

182. The Committee welcomes the provisions within section 36 which provide greater flexibility by removing the requirement that half the members of the community must vote on an application. The Committee asks the Scottish Government to clarify what considerations and criteria will be taken into account in assessing whether a sufficient proportion of the community has voted. The Committee recommends that the Scottish Government issue guidance on this matter.
Current guidance already asks that communities should provide good reasons why community support is less than 50%, why it is in the public interest to allow an application to proceed in these circumstances (which should be exceptional) and why this is considered to be sufficient support for the purchase to proceed. These are considered on a case by case basis.

To attempt to identify particular criteria would make this less flexible, however the Scottish Government will ensure that the guidance is strengthened in this regard.

186. The Committee questions whether there is any practical merit in the Minister and the community body providing background information to the ballotter, given that the ballotter’s role is solely to undertake the ballot. The Committee asks the Scottish Government to re-consider the necessity of this provision with a view to bringing forward amendments at stage 2 to delete that requirement.

It is the Scottish Government’s view that, in order for the ballotter to undertake the ballot, they have to ensure that it is proceeding in a fair and equitable manner, that the ballot question is appropriate in the circumstances and fully covers the issues. It is therefore important for the ballotter to have background information in order to meet these criteria. Of course, much of that information is already contained in the community body’s application and can simply be referred to rather than having to repeat it.

188. The Committee also questions the requirement of the provision in section 37(4)(b) on fixing notices to the land in relation to right-to-buy applications for separate tenements and asks the Scottish Government to consider whether that requirement could be relaxed for those cases, and, if necessary, bring forward amendments at stage 2.

The Scottish Government will bring forward an amendment at Stage 2 which will require community bodies, who wish to acquire separate tenements where the land owner is not known, to give notice of the acquisition by advertisement in such manner as prescribed in regulations.

191. The Committee considers that, given the significance of the policy objectives of land reform and the Part 4 provisions of this Bill, and the very real difficulties many communities face in building capacity and in securing resources, should Ministers consider the application meets the public interest and sustainable development tests, then it is appropriate that the cost of the ballot be met from the public purse.

Section 51(A), inserted into Part 2 of the 2003 Act by section 37 of the Bill, requires Ministers to meet the cost of the ballot. The application, by this stage in the process, is considered to have already passed the public interest and sustainable development tests, and the community’s support for the application has already been indicated in the application.
For both Parts 3 and 3A, the ballot is the first indication of community support, and takes place prior to the receipt of the application by the Scottish Government, and it is felt appropriate that the Scottish Government should not offer to pay ballot costs in all cases, but the intention is that it could reimburse the cost of the ballot in certain circumstances, for example, where a ballot indicated community support.

The Scottish Government intends to introduce amendments at Stage 2, applicable to Part 3 and Part 3A, to include powers for the Minister to make regulations setting out the circumstances in which a crofting/Part 3A community body will be able to apply to the Ministers to have the cost of the ballot reimbursed.

198. While the Committee is concerned to ensure that landowners do not thwart the legitimate proposals of communities, the Committee recognises that there will be cases where landowners, for legitimate reasons (e.g. where family or financial circumstances change) decide to withdraw land from sale after a right-to-buy has been activated. The Committee is of the view that there should be Ministerial discretion on this matter. The Committee considers that further clarification, by way of regulation, will be required to set out the criteria which would form the basis of the Ministerial decision.

The Bill as introduced amends Part 2 by inserting section 60A which provides that Ministers may require the owner of the land to pay any expenses incurred by the valuation process. The Scottish Government will ensure that the criteria which Ministers will consider when making a decision as to whether valuation costs should be recovered are set out clearly in guidance. The guidance will take account of legitimate reasons a land owner may have for withdrawing the lands from sale.

202. The Committee recommends that the Scottish Government give further consideration to the requirement for consistency in the 2003 Act on the treatment of public and local holidays and bring forward amendments at stage 2 to ensure this.

The Scottish Government’s view is that it would not be appropriate to take account of public or local holidays as they may differ from area to area, thereby potentially introducing uncertainty and a margin for error to the process. Including public and local holidays will provide absolute certainty in key areas such as timescales for payments dates, valuation dates and appeal dates, whilst allowing community’s some flexibility in others.

Community right to buy abandoned and neglected land (section 48)

216. The Committee agrees with stakeholders that the power to extend the community right-to-buy where there is no willing seller should be a power of last resort, to be exercised only when other methods and negotiations had failed. However, the Committee has concerns that this new right, as the provisions are currently drafted, may be almost impossible to exercise, with too many obstacles and opportunities for avoidance on the part of landowners. Notwithstanding this, the Committee believes that the existence of this power is likely to play an important role in incentivising negotiation.
217. The Committee questions the need to restrict the definition of eligible land to that which is considered to be wholly or mainly abandoned or neglected. The Committee is concerned that these provisions, as drafted, may fail to further sustainable development.

218. The Committee also questions why the Scottish Government considers that a definition is needed at all, as the parallel tests for crofting land purchases do not require this.

Comparisons to Crofting Right to Buy

Paragraph 211 of the Committee’s report highlighted the comments of Community Land Scotland - it did not believe that there was a clear and fundamental difference between the sustainable development of crofting land (as required by the crofting community right-to-buy in the 2003 Act) and the sustainable development of other land which necessitates the additional requirements of abandonment or neglect in order for it to be eligible for the potential exercise of the new powers under Part 3A.

The Scottish Government’s position is that the crofting community right to buy was developed on the basis of the specific issues relating to crofting areas, unlike the proposals for the right to buy abandoned or neglected land which relates only to areas of land that are a barrier to sustainable development because they are abandoned or neglected. The policy aim of the crofting community right to buy was to remove barriers to sustainable rural development by empowering crofting communities. Paragraphs 24, 25 and 26 of the Policy Memorandum to the Land Reform (Scotland) Act 2003 are particularly useful in considering the policy aim of the crofting community right to buy. These paragraphs stated as follows:

“24. The proposals for a crofting community right to buy build upon existing right to buy arrangements for individual crofters and create rights for other crofting communities similar to those enjoyed by crofting communities whose landlord was the Secretary of State (now the Scottish Ministers). It might therefore be argued that new legislation is unnecessary. But, although it is theoretically possible for a crofting community to use the existing right to buy provisions for individual crofters in existing legislation as a means of achieving community control of croft land, this would be cumbersome, risky and costly, with no certainty of success. There is a great likelihood that such an approach would lead to an unsatisfactory solution suit neither the community nor the landowner. Hence the need for modern arrangements to enable crofting communities to buy their croft land in concert.

25. The crofting community right to buy is of course an unlimited right to buy. It can be exercised at any time, not just when the land comes up for sale. As indicated above, this means that the property market could be affected, and that suitable compensation arrangements are necessary in order to avoid significant ECHR difficulties. The effect on the property market, and the compensation costs, while potentially substantial, are both inherently constrained by the extent of crofting land, and the generally low value per hectare of that land. These two factors mean that the potential disruption and compensation costs of a crofting community right to buy are
much less than the potential compensation costs of a general community right to buy. The Executive believes that giving crofting communities but not other communities an unlimited right to buy is justified by the greater need to support such crofting communities, which are located in the most fragile areas where the potential for a bad landlord to do real harm to the community is greatest.

26. It is not envisaged that the crofting community right to buy will be frequently exercised. It is very apparent that where crofting communities have a good relationship with their landlord there is little inclination on the part of the communities to take on the not inconsiderable burdens of ownership. The crofting community right to buy requires serious commitment from the crofting community to the ownership and management of land as a community asset and is likely to prove to be a costly and complex process. Without needing to be exercised it is expected that its very existence will achieve two important objectives. First, it is likely to create a climate in which landowners will willingly sell land to crofting communities by agreement. Secondly, it will encourage landowners who have monopoly ownership of land in crofting areas to work with and maintain good relations with that community.”

The following statements are particularly relevant:

“The Executive believes that giving crofting communities but not other communities an unlimited right to buy is justified by the greater need to support such crofting communities, which are located in the most fragile areas where the potential for a bad landlord to do real harm to the community is greatest.”

“Without needing to be exercised it is expected that its very existence will achieve two important objectives. First, it is likely to create a climate in which landowners will willingly sell land to crofting communities by agreement. Secondly, it will encourage landowners who have monopoly ownership of land in crofting areas to work with and maintain good relations with that community.”

It is clear from these paragraphs that the policy aims for the crofting community right to buy were different from the policy aims of the new Part 3A. The policy aim of Part 3A is usefully summarised at paragraph 65 of the Policy Memorandum to the Bill which states:

“Land that is neglected or abandoned can be a barrier to the sustainable development of land. In some cases it may prevent the community from developing or improving facilities. There are also cases where derelict or neglected sites become a blight on the surrounding area, and the community could bring the land back into productive use. The Scottish Government considers that, in such circumstances where all other options fail to achieve improvement, communities should be able to acquire the land without having to wait for it to be put on the market.”

This policy aim is different from the aims of the crofting community right to buy, which were the creation of a climate in which landowners willingly sell land to crofting communities by agreement and the encouragement of landowners who have monopoly ownership of land in crofting areas to work with and maintain good relations with that community, in the context of crofting communities having a greater
need for support, being located in the most fragile areas where the potential for a landowner to do harm is greatest. The difference between the aims of both rights to buy is the reason why the tests for each right to buy are different – the tests have been developed in order to meet different policy objectives.

219. The Committee considers that there are convincing arguments that the tests of ‘furthering sustainable development’ and of being ‘in the public interest’ are capable of testing all requirements. On that basis, the Committee recommends that the Scottish Government reconsider the requirement that eligible land be restricted to land which is wholly or mainly abandoned or neglected and recommends that the Scottish Government consider a definition that relates to the wider circumstances which can be a barrier to sustainable development, such as the lack of achievement of the use and/or development of land that could deliver greater public benefit.

**Definition of “abandoned” and “neglected”**

There is no definition on the face of the Bill of the terms “abandoned” and “neglected” because it is intended that these terms are given their ordinary meaning. It is intended to use the words “abandoned” and “neglected” as descriptions of land that may be eligible land for the purposes of the exercise of the new compulsory right to buy as the words are capable of a broad meaning. This is because it is expected that the broad expressions may apply to a multiplicity of circumstances and should be understood generally.

By using broad expressions, Parliament would therefore be able to confer on Ministers a wide discretion, exercisable in many of circumstances, to consider whether particular land described in an application is eligible for the purposes of Part 3A. Although the exercise of that discretion is subject to judicial oversight, it would not be expected that the Court could read down “abandoned” or “neglected” in a narrow way.

Any attempt to define the expressions further is more likely than not to result in a situation where the words are given a narrower meaning than the broad meaning that would otherwise apply if they are not technically defined.

It is important that any proposal that is included in legislation has been fully considered by both the Scottish Government and stakeholders.

The consultation on the Community Empowerment Bill focussed on the specific issue of abandoned and neglected land, and not on the extent to which land should be used to meet the needs of the community. The former is seeking to provide a means of resolving the problems that can arise as a result of land being neglected and abandoned and it was this policy that was consulted on whereas the latter is a very different issue.

In addition, to ensuring that there is full consultation on proposals, the Scottish Government also has to ensure that legislation is robust, fit for purpose and within legislative competence.
The recent consultation on proposals for a Land Reform Bill explores the potential for powers for Ministers to intervene, where necessary, to overcome barriers to sustainable development. We are currently considering the responses to the land reform consultation and, in doing this, we will also take into account the views expressed during the Community Empowerment Bill.

**Draft Regulations**

The approach which Ministers would adopt in applying the test of whether the land in a particular application is neglected or abandoned would be determined having regard to guidance and to a multiplicity of different matters. Some of these matters would be mandatory for Ministers to have regard to and for that reason it is intended that the minimum categories of such matters should be prescribed in subordinate legislation. There is power to do so in section 97C(2) and the RACCE Committee have been provided with a draft of Regulations under that power which indicates the sorts of matters that we would suggest that Ministers must have regard to as a minimum.

The matters to which Ministers must have regard when deciding whether land is eligible land are set out in the draft Regulations and fall into three broad categories:

- the physical condition and its effect on the surrounding area, public safety and the environment;
- the use of the land, or lack of use as the case may be, including whether the land is a nature reserve, held for conservation purposes or used for public recreation;
- any designation or classification of the land, such as land which has been classed as contaminated land, or buildings which are listed buildings or scheduled monuments.

The specific matters as set out in the draft Regulations are as follows:

**Condition of the land**

1. **Physical condition**
   Regulation 2(2)(a) obliges Ministers to have regard to the physical condition of the land or any building or other structure on the land, and the length of time for which it has been in such a condition. This means that Ministers must take account of any physical signs of neglect or abandonment, such as the derelict nature of a building or overgrown weeds. This will be considered in the context of other matters as set out below, such as whether the building is derelict because it is a listed building, or whether a piece of land is overgrown with weeds because it is a nature reserve.

2. **Amenity of adjacent land**
   Regulation 2(2)(b) obliges Ministers to consider whether, and to what extent, the physical condition of the land or any building or other structure on it is detrimental to the amenity of the land which is adjacent to it. It is intended that
“amenity” is given its ordinary meaning, being a desirable or useful feature or facility of a building or place. This might cover, for example, the situation where an a piece of land that appears to be abandoned by its owner is being used for criminal activity, thus discouraging the use of a neighbouring play park by children.

3. **Public safety**
   Regulation 2(2)(c) obliges Ministers to consider whether, and to what extent, the physical condition of the land is a risk to public safety. This could cover situations where derelict buildings are at risk of collapse, or where there are uncovered manholes or electricity wires.

4. **Environmental harm**
   Regulation 2(2)(d) obliges Ministers to consider whether the physical condition of the land or any building or other structure on the land is causing or is likely to cause environmental harm. “Environmental harm” is given the meaning that it has in section 17(2) of the Regulatory Reform (Scotland) Act 2014, which is:

   (a) harm to the health of human being or other living organism;
   (b) harm to the quality of the environment, including
       (i) harm to the quality of the environment as a whole,
       (ii) harm to the quality of air, water or land, and
       (iii) other impairment of, or interference with, ecosystems;
   (c) offence to the senses of human beings;
   (d) damage to property; or
   (e) impairment of, or interference with, amenities or other legitimate uses of the environment.

   This means that Ministers cannot simply look at the nature of the land in isolation – they must look at its impact on surrounding land and the health and senses of people in the community in which it is situated.

5. **Agricultural land**
   Regulation 2(2)(e) obliges Ministers to consider whether the physical condition of the land complies with the standards for good agricultural and environmental condition. The provisions of regulation 2(1) make clear that Ministers must only consider matters so far as applicable, so an urban landowner would not be at risk of a successful Part 3A application simply because they did not take into account of agricultural standards.

**Use of the land**

6. **Use for particular purpose**
   Regulation 2(3)(a) obliges Ministers to have regard to the purpose for which the land or any building or other structure is being used or has been used, and the length of time for which it has been so used. This may cover a wide range of scenarios, but would make clear, for example, that if a landowner had put the land to a specific purpose, and the land appeared to be either abandoned or neglected as a result of that purpose, Ministers must take this into account. An
example of this may be where land is kept in its natural state deliberately, but is not necessarily classed as a nature reserve under section 15(1) of the National Parks and Access to the Countryside Act 1949 (referred to in more detail below).

7. **Lack of use**
   Regulation 2(3)(b) obliges Ministers to have regard to the length of time for which land has not been used, if it appears to them that the land or any building or other structure on the land is not being used for any particular purpose. This may be relevant, for example, if the land has not been used since it was purchased because the owner is waiting for planning permission.

8. **Public recreation**
   Regulation 2(3)(c) obliges Ministers to consider whether, and to what extent, the land or any building or other structure on the land is being used for public recreation. This may be relevant, for example, where a piece of land has not been built upon or cultivated, but is regularly used by children to play football. It may be that the owner has deliberately not cultivated or built upon that land because he is aware of its use by children and is therefore confident that his land is not a blight to the environment.

9. **National or historic interest**
   Regulations 2(3)(d) and (e) oblige Ministers to consider whether, and to what extent, the land is being held for the purposes of permanent preservation for the benefit of historic or national interest and (i) for the preservation of its natural aspect and features and animal and plant life or (ii) for the preservation of its architectural or historical features so far as of national or historic interest. This may be relevant where buildings or land are not officially classed as “listed buildings”, “nature reserves” or “conservation areas”, but are nonetheless in a certain condition for the purposes of preserving certain aspects of the land for the preservation of national or historic interests.

**Designations/classifications**

10. **Nature and conservation**
   Regulation 2(4)(a) obliges Ministers to consider whether the land, or any part of the land, is or forms part of a nature reserve or conservation area. “Conservation area” means a conservation area for the purposes of section 61 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 and “nature reserve” means a nature reserve for the purposes of section 15(1) of the National Parks and Access to the Countryside Act 1949. The rationale for inclusion of this matter as one to which Ministers must have regard is that it may not be consistent with furthering the achievement of sustainable development to allow for the compulsory purchase of land which is in a certain physical condition for conservation or natural purposes.

11. **Contaminated land**
   Regulation 2(4)(b) obliges Ministers to consider whether the land, or any part of the land, is designated a special site because it is contaminated land. “Special
site” means a special site for the purposes of section 78C(1) of the Environmental Protection Act 1990. The rationale for inclusion of this matter is that contaminated land is already subject to a regulatory regime under the Environmental Protection Act 1990, and therefore any particular requirements on the landowner as a result of the designation of his land as a special site should be taken into account when deciding whether he has abandoned or neglected his land.

12. **Listed buildings/scheduled monuments**
   Regulations 2(4)(c) and (d) oblige Ministers to consider whether any building or structure on the land is a listed building or scheduled monument. “Listed building” means a listed building for the purposes of section 1 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997. Scheduled monument” means a scheduled monument for the purposes of section 1 of the Ancient Monuments and Archaeological Areas Act 1979. These matters in case a building appears to be derelict but is actually in that condition because it is of historical or cultural interest.

Ministers may consider other matters not set out in the draft Regulations where these are relevant. The draft Regulations are a list of the matters to which Ministers must have regard as a minimum – in some cases Ministers may have to consider other matters which they deem relevant in order to have satisfied themselves that to approve an application is in the public interest and compatible with furthering the achievement of sustainable development.

220. In the absence of an unambiguous and acceptable definition of abandoned or neglected land produced by the Scottish Government which both removes the barrier that the present proposal is likely to erect, and which avoids the problems of interpretation giving the existing legal concept of abandoned land, then the Committee is likely to ask the Scottish Government to remove the term ‘abandoned or neglected land’ and bring forward a proposal which will allow the widest possible opportunity for community purchase. The Committee reserves the right to take evidence on this issue at stage 2.

It is the Scottish Government’s view that, through a combination of the broad dictionary definition of ‘abandoned’ and ‘neglected’, together with the requirement for Ministers to have regard to the matters set out in regulations made under section 97C(3) of the new Part 3A, the correct balance is struck between the need to provide communities with considerable scope to acquire land which is a barrier to sustainable development, whilst respecting the rights of land owners, giving them certainty as to whether their land is likely to be regarded as “eligible land” for the purposes of Part 3A.

We understand the Committee’s concerns and will actively consider whether we can extend the descriptions of land that the right to buy applies to, beyond neglected and abandoned land, to other land that is causing problems.
234. Notwithstanding the Committee’s recommendation in paragraph 220, with respect to the terms wholly or mainly abandoned or neglected land, which takes precedence, should the Scottish Government wish to retain this provision, the Committee recommends that the Scottish Government bring forward amendments at stage 2 to the following effect—

- the term “abandoned” is sub-optimal and should be removed entirely, leaving the legislation to relate to “wholly or mainly neglected land;”

Paragraphs 227 and 228 of the Committee’s report highlight concerns from Malcolm Combe and the Historic Houses Association for Scotland about the use of the term “abandoned”. The meaning of abandoned in the context of Part 3A would be its ordinary meaning – not its meaning in Scots property law. The Scottish Government is concerned that to remove the term “abandoned” from the definition of eligible land may be restrictive, as it would exclude land which is a barrier to sustainable development that may not be in a poor physical condition, but may be unused for any purpose whatsoever (see regulation 2(2)(b) of the draft Regulations which obliges Ministers to have regard, if it appears to the Ministers that the land is not being used for any particular purpose, to the length of time for which it has not been so used). The Scottish Government’s intention is to refrain from any potential restriction to the application of the concept of “eligible land”, and therefore it is proposed to retain the reference to “abandoned” land in section 97C(1).

- the definition of neglected should relate to the sustainable development of the land and not solely to a description of its physical condition and there should be a clear justification for the inclusion of the term;

The draft Regulations set out a number of matters to which Ministers must have regard that, if agreed, will oblige Ministers to take account of the effect of the physical condition of the land, in addition to having regard to what that physical condition is. In particular, Ministers would have to consider whether, and to what extent, the physical condition of the land or any building or other structure on it is (1) detrimental to the amenity of land which is adjacent to it, (2) a risk to public safety and (3) causing or likely to cause environmental harm. The meaning of environmental harm for the purpose of the draft Regulations will be the meaning given to it in section 17(2) of the Regulatory Reform (Scotland) Act 2014, which is:

- harm to the health of human being or other living organism;
- harm to the quality of the environment, including
  (i) harm to the quality of the environment as a whole,
  (ii) harm to the quality of air, water or land, and
  (iii) other impairment of, or interference with, ecosystems;
- offence to the senses of human beings;
- damage to property; or
- impairment of, or interference with, amenities or other legitimate uses of the environment.
Therefore the draft Regulations will oblige Ministers to take account of matters that go beyond a simple assessment of the physical condition of the land.

- if prescribed matters in relation to eligible land are to be set out in regulation these regulations should be laid under the affirmative procedure;

It is intended that the draft Regulations will be laid under the affirmative procedure.

- owners and communities are entitled to know, prior to the Bill becoming law, what is meant by the separate terms. The Committee considers it is not appropriate to deal with the transfer of fundamental property rights through secondary legislation. The Committee recommends that any definition of terms be set out on the face of the Bill.

The terms “abandoned” and “neglected” have their ordinary meanings, and therefore the meaning of the terms are not being dealt with in secondary legislation. The draft Regulations set out the matters to which Ministers must have regard when applying those ordinary meanings to specific applications. The draft Regulations have already been made publically available, via the RACCE Committee website, and the Scottish Government is continuing to engage with key stakeholders throughout the process. As mentioned above, the draft Regulations will be laid under the affirmative procedure in order to allow for appropriate scrutiny of the matters to which Ministers must have regard when deciding whether land is eligible.

A benefit to setting out the matters to which Ministers must have regard in secondary legislation is that the Scottish Government will have more flexibility to add to the list of matters in the Regulations as policy in this area evolves, case history accrues and as Ministers analyse the evidence gathered as a result of any use of the Part 3A right to buy.

237. The Committee considers that, whilst there may be a differentiation in urban and rural circumstances and there could be challenges in measuring neglect and abandonment in rural areas, should this provision remain, the Committee is of the view that it should apply uniformly outwith crofting land. However, further consideration to the criteria for determining neglect and abandonment is necessary and should be set out on the face of the Bill.

It is our intention that the provisions will apply uniformly outwith crofting areas, across both urban and rural areas. As previously mentioned, it is expected that the draft Regulations, which outline the prescribed matters which Ministers must take into account when deciding if land is considered to be eligible land, provide enough of a range of factors to ensure that it can be equally applicable in both rural and urban situations. The Scottish Government would welcome any suggestions as to other matters which would be relevant to a decision as to whether both rural and urban land is abandoned or neglected.

239. The Committee shares the concerns of the National Farmers Union of Scotland (NFUS) in relation to the possible impact of the provisions on
agricultural land that may be out of regular use for periods of time. The Committee considers that land which is classified as agricultural land should be exempt from this provision unless it is determined that it fails to meet “good agricultural and environmental condition”. The Committee recommends that the Scottish Government bring forward amendments to that effect at stage 2.

It is recognised that effective management of agricultural land may require it to be set aside and out of use for periods of time. Ministers will be obliged by virtue of section 97C(3) and regulation 2(2)(e) of the draft Regulations to consider whether land, where applicable, meets good agricultural and environmental condition before deciding whether the land is abandoned or neglected.

241. The Committee recommends that, should the provision relating to abandoned or neglected remain, the Scottish Government give consideration to the issue of appropriate timescales in which land could be determined to be abandoned and neglected and bring forward amendments to identify timescales in relation to this provision at stage 2.

Each instance of land considered to be abandoned or neglected, whether urban or rural land, must be taken on its merits. The Scottish Government would not wish to be prescriptive and place an arbitrary timescale on this, as the time land has been viewed as being abandoned or neglected will vary, and any timescale must be relevant to the particular land under consideration. The time for which land has been in a particular physical condition, for which it has been used for a particular purpose and for which it has remained unused are matters that are set out in the draft Regulations because it is intended that Ministers must have regard to these timescales when deciding on an application.

244. The Committee considers that the information to be provided as part of the application process should enable Ministers to consider the potential impacts of an application. The Committee is aware of the concerns raised in relation to land owned by an entity in administration or insolvency process and recommends that the Scottish Government reflect on that and consider the need for further regulation or relevant guidance, and if necessary bring forward amendments at stage 2.

Whilst there is nothing on the face of the Bill which explicitly addresses insolvency, the decision as to whether land is wholly or mainly neglected or abandoned under section 97C is one for Ministers, who have discretion to take in relevant factors, and indeed must take certain matters into regard as are set out in the draft Regulations made under section 97C(3). Therefore, it is open to Ministers to take into consideration the fact that the owner is going through an insolvency process when deciding whether the land is abandoned or neglected. Of particular relevance will be regulations (2)(2)(a), (3)(a) and (3)(b) which set out that the length of time that land has been in a certain condition, used for a particular purpose or has remained unused are matters to which the Ministers must have regard. If the time for which land has been in a certain condition, or has remained unused, relates to the
existence of an insolvency procedure then it is expected that Ministers would take this into account.

In addition, section 97H sets out a list of things of which Ministers must be satisfied before they can approve an application. The following criteria are particularly relevant in the case of insolvency:

- **s. 97H(b)(i) – public interest** – the fact that an owner is going through an insolvency process will be something that should be taken into consideration by Ministers when deciding whether consent to the Part 3A application is in the public interest.

- **s. 97H(c) – if the owner of the land were to remain as its owner, that ownership would be inconsistent with furthering the achievement of sustainable development in relation to land** – if the owner is going through an insolvency process then this is relevant to the consistency of the current ownership with furthering the achievement of sustainable development of land. The continued ownership might be quite likely to be inconsistent given that it is highly likely that the land will be sold, for example if a liquidator has been appointed he will be attempting to sell the owner's assets in order to maximise returns for creditors. Without knowing to whom the land would be sold, it would be difficult for the Ministers to be satisfied that such a sale would be inconsistent with furthering the achievement of sustainable development.

- **s. 97H(f) – owner is not prevented from selling the land or subject to any enforceable personal obligation to sell the land otherwise than to the Part 3A community body**. The existence of an insolvency process is very likely to create enforceable personal obligations, or prevent the owner from selling the land. For example, if a receiver has been appointed, and a floating charge has attached to the land, this has the effect of prohibiting the owner from selling the land.

Section 97N gives Ministers a power to make regulations to either prohibit certain transfers of land taking place or suspend rights, and therefore the content of the Regulations under section 97N are likely to affect how the Part 3A process is to interact with insolvency procedures.

246. The Committee recommends that should the provision relating to abandoned or neglected remain, the Scottish Government provide clarification as to whether the provisions in relation to abandoned or neglected land would apply only to those parts of a land holding that were considered to be wholly or mainly abandoned or neglected or would apply to the whole land holding. The Committee asks that the Scottish Government reflect on this and consider the need for further regulation or guidance to provide clarity on this matter.

The provision relates only to those parts of the land holding that are part of the community body’s application. It is the land that is the subject of the application that must be wholly or mainly abandoned or neglected – not a larger holding of land of which the land in the application forms part.
249. The Committee recognises that, in some cases, control over the management of land will lie primarily with the tenant rather than with the landowner. The Committee considers that the Bill as currently drafted does not appear to provide for situations where the owner is not responsible for the absence of activity or for poor management. The Committee recommends that the Scottish Government reflect on this and consider whether relevant amendments are required to clarify this at stage 2.

There are other means by which the owner is able to address issues with their tenant’s conduct. It is not the intention that this Bill is used as a vehicle to address tenant/landlord issues.

255. The Committee was concerned about the possibility that land that is under a low intensity/zero management regime for a valid reason (e.g. natural regeneration for biodiversity or natural flood protection) could be considered “wholly or mainly abandoned or neglected” and recognises that in practice there appears to have been a presumption in favour of development rather than public amenity and nature conservation (e.g. at Holmehill).

256. The Committee recommends that, should the definition of abandoned and neglected land remain in the Bill, land which is intended for recognised conservation or environmental purposes be specifically excluded from that definition. The Committee recommends that the Scottish Government bring forward amendments to that effect at stage 2.

Regulation (2)(4)(a) of the draft Regulations sets out that the Minister will be obliged to have regard to whether the land, or any part of the land, is or forms part of a nature reserve or conservation area.

257. The Committee is aware that vacant or derelict land may be contaminated. The Committee believes that it is unlikely that communities will have the skills or resources to deal with such situations and agrees with the Scottish Environment Protection Agency that there is a need for appropriate mechanisms to ensure that communities have access to expert advice and support. The Committee recommends that the Scottish Government addresses these concerns and ensures that appropriate guidance, advice and support is provided to communities.

The Scottish Government already provides help to communities throughout the community right to buy process and officials will ensure that this is continued.

262. The Committee shares the concerns of the Delegated Powers and Law Reform Committee in relation to the new section 97C(3)(a) on eligible abandoned or neglected land, which states “Eligible land does not include land on which there is a building or other structure which is an individual’s home unless the building or structure falls within such classes as may be prescribed”. The Committee is also concerned that the thinking behind this significant power is in the early stages of development. Given the lack of detail provided in response to its questions on the thinking behind the power the
Committee remains unconvinced of the case for its necessity. The Committee urges the Scottish Government to reconsider the provision that grants Ministers the power to include an individual’s home in the definition of eligible land for the purpose of section 97C(3)(a) and recommends that the Scottish Government bring forward amendments at stage 2 to remove this power of prescription.

Ministers intend to bring forward a stage 2 amendment to remove the power for Ministers to make regulations including certain types of home within the definition of eligible land.

265. The Committee asks the Scottish Government to provide further information on the decision to exclude bona vacantia and Crown land from the definition of eligible land. The Committee further recommends that the Scottish Government reflect on this and the potential for amendment at stage 2 to include such land as eligible.

267. The Committee would be interested to know why it is proposed that land which is under the Queen’s and Lord Treasurers Remembrancer power of disposal should be treated differently from any other land and asks the Scottish Government to provide further information on the decision to treat land which is under the power of the Queen’s and Lord Treasurers Remembrancer differently. The Committee recommends that the Scottish Government reflect on this and, if appropriate, bring forward amendments at stage 2 to remove this power of exception.

The policy behind the new Part 3A being inserted into the Land Reform (Scotland) Act 2003 (by section 48 of the Bill) is to provide a last resort mechanism where an owner of the land is unwilling to sell. The purpose of the QLTR however is to seek to realise, for its value, any land falling to the Crown as bona vacantia or ultimus haeres. Unlike other owners therefore, the QLTR does not to seek to retain land - indeed it is not in the QLTR’s interest to do so as no disposal income would be generated and they are not resourced to manage such land on an ongoing or long-term basis. The QLTR also seeks to avoid retaining land because of the risks of liabilities arising in relation to it - and it follows from the sources of land falling to the Crown as bona vacantia that it can often be in a poor condition bringing with it the risk of future problems if the Crown interest in it is not resolved.

The QLTR accordingly seeks to resolve the Crown interest in such land by either a disposal, where there is interest in the land, or by a notice of disclaimer (for example where there is no reasonable prospect of a disposal proceeding).

Where the QLTR achieves a disposal, this serves the public interest in the following ways:

- the net surplus generated by the QLTR from dealing with property falling to the Crown as bona vacantia or as ultimus haeres is paid into the Scottish Consolidated Fund, and
• the effect of the disposal should enable land, which may otherwise have been sitting in a derelict condition, to be brought back into beneficial use.

It follows from the QLTR's functions that they are already directed at the mischief being addressed by the Bill, namely seeking to address derelict land which might be a barrier to sustainable development.

The Scottish Ministers already have power to direct the QLTR regarding the exercise and performance of her functions should Ministers consider that to be appropriate – section 2 of the Public Revenue (Scotland) Act 1833 as amended by the Scotland Act 1998 (Schedule 8, paragraph 1).

The QLTR has to operate within the legal framework applying in relation to bona vacantia. In particular, the property of a dissolved company vesting in the Crown as bona vacantia is subject to provisions in the companies legislation which impose time limits within which the QLTR can disclaim property. Consequently, whilst the QLTR will seek a disposal of such land, they have to be able to protect their own (and the Crown’s) positions, if appropriate, by resolving the Crown interest within those time limits. The discretion to disclaim ownerless property can potentially be lost after only 12 months (section 1013(4) of the Companies Act 2006). The QLTR's experience is that discussions even for a voluntary disposal can be protracted against that period. There would be obvious timing implications were the last resort mechanism to be applied to bona vacantia.

It is in the nature of this Crown land that the QLTR usually has no prior knowledge of it in advance of an approach to them. Once this land has been raised with the QLTR, the QLTR's experience is that if there is a delay or failure for a disposal to proceed in respect of land it is usually due to the absence of an interested purchaser, inadequate investigation to establish who is the owner of the land, competing interest in the land with potential local sensitivities, the character of the land being such that it should go to some form of community body (such as amenity land) but the only interest is from a private individual rather than a suitable community body, or an unwillingness to pay the professionally assessed value of the land (the QLTR uses the District Valuer). All of those reasons would also potentially arise pursuant to the last resort mechanism in the Bill even if it were to apply to such Crown land.

For the Committees information, if the QLTR were to disclaim property, anyone seeking thereafter to acquire the land might consider the prescriptive claimant provisions in sections 43-5 of the Land Registration etc (Scotland) Act 2012, or where the QLTR has disclaimed under the companies legislation, whether they might seek a vesting order under section 1021 of the 2006 Act.

274. The Committee considers that there should be consistency in the Bill and in subsequent regulation with respect to the definition of an eligible community body for the purposes of all community right-to-buy provisions. The Committee therefore recommends that the Scottish Government bring forward amendments at stage 2 to address the current inconsistency.
Ministers will bring forward amendments at stage 2 to introduce Scottish Charitable Incorporated Organisations (SCIO) and Community Benefit Companies (BenComs) as eligible forms of community body. Ministers also have powers to prescribe via regulations other legal entities which are considered eligible bodies, should that be required at a later date.

276. The Committee notes this apparent omission and recommends that the Scottish Government brings forward amendments at stage 2 to this provision to refer to constitutions as well as to memoranda and articles.

Stage 2 amendments will be brought forward to include constitutions.

279. The Committee questions the necessity for, and the benefit of, the creation of a register of community interests in abandoned or neglected land and recommends that the Scottish Government re-consider the value of this provision and consider the requirement for amendment at stage 2.

Whilst the Scottish Government is creating a new register of community interests, in practical terms, this will utilise the existing register to ensure that it is familiar to users. It is required to store documentation received in respect of applications, to ensure that they are available for public scrutiny, in the interest of transparency.

287. The Committee recognises that there can be very real practical difficulties in identifying land owners and anticipates that the Land Registration (Scotland) Act 2014 will, over time, have a positive effect on the availability and accessibility of information on ownership.

288. However, the Committee remains unconvinced that the provision requiring community bodies to identify ownership, rather than a requiring community bodies to demonstrate they have taken all reasonable steps to identify ownership, is appropriate. The Committee considers that there ought to be a mechanism in this Bill, similar to the existing provisions in the Land Reform (Scotland) 2003 Act, providing for communities to be able to register an interest in land without knowing who the owner is. The Committee recommends that the Scottish Government reconsider its position on this and bring forward amendments to that effect at stage 2.

Land cannot be purchased compulsorily from unknown owners, regardless of how much effort had been undertaken by the Part 3A community body to establish who owned the land, because the mechanism for the transfer under Part 3A is that section 97Q(4)(b) obliges the owner to transfer the land to the Part 3A community body. If the owner refuses to transfer the land then by virtue of section 97Q(6) the Lands Tribunal may authorise its clerk to adjust, execute and deliver title deeds in order to effect the transfer as if it had been done by the owner. For this process to work, the owner has to have been identified.

This differs from Compulsory Purchase provisions where the land owner is unknown. In such situations, title is vested in the purchasing authority, generally the Local Authority, by way of a declaration which is registered in the Land Register, without
the need for a transfer to be effected by the owner. If the land owner is identified at some future date within six years, compensation is payable to the land owner for the loss of their land at that point.

If no owner can be identified, the land in question can be referred to the QLTR, and a community body may be able to acquire the land from them as an alternative option.

291. The Committee considers that all parties should be treated fairly and in this regard recommends that the Scottish Government bring forward the necessary amendments at stage 2 to allow landowners sight of all views submitted and to ensure that the process allows the opportunity for Ministerial consideration of counter views.

It is the Scottish Government’s view that an additional counter-representation stage to seek the landowners’ views on the community body’s application should not be required as all parties to the application should make full representations at the appropriate opportunity in the knowledge that they have only one opportunity to make representations on the other party’s comments.

296. The Committee welcomes the clarification from the Cabinet Secretary that, as the Crichel Down Rules are not statutory, they do not preclude a community having the right-to-buy. The Committee understands that these rules apply only to land bought during the Second World War; however, the Committee would welcome further detail from the Scottish Government on the application of the rules in relation to the land that they do and do not apply to.

More detail about the rules is helpfully set out in “Planning Circular 5/2011: Disposal of Surplus Government Land - The Crichel Down Rules”. The Rules apply to all land acquired by any public authority, if it was acquired by or under threat of compulsion or to land acquired under the blight provisions: Part V of Town and Country Planning (Scotland) Act 1997.

Whether or not the land held by the public authority is offered back to the previous owner will depend on a number of factors, so it does not necessarily preclude a community having the right to buy.

297. The Committee also asks the Scottish Government to provide clarification on what it envisages in a situation where there is an approved application but the purpose for which the application was approved is not pursued. The Committee also asks the Scottish Government’s view of what would happen in a situation where the community body has bought the land but ceases to exist. If the Scottish Government considers that the previous owner should be offered first right of refusal to buy back the land then the Committee recommends that the Scottish Government reflects on the requirement for the introduction of relevant provisions within the Bill.

Scottish Government officials do not follow up on whether or not land is used for the purpose for which is was acquired. It is generally the funders who impose conditions
on the provision of funding, therefore it would be the funders who may seek to
recover monies where land was not used for the purpose for which it was acquired.
The disposal of assets when a community body ceases to exist is covered under the
rules for whichever type of body it is. For example, a SCIO which is dissolved must
confirm to OSCR that any surplus assets have been passed to the body (or bodies)
named in the resolution of the SCIO’s members. The Scottish Government has no
plans to introduce any further obligations.

301. The Committee agrees with those stakeholders who consider that the
mapping requirements for community right-to-buy are excessive and strongly
believes that there is a need to streamline the mapping process, simplify the
information requirements and align the eligibility criteria with those for Parts 2
and 3A of the amended Act. The Committee recommends that the Scottish
Government bring forward amendments to this effect at stage 2.

The Scottish Government agrees with the Committee that there is a need to
streamline the mapping process, and therefore intends to bring forward amendments
at Stage 2 to amend the mapping requirements.

307. Notwithstanding the points made by the Cabinet Secretary, the Committee
is concerned that the Bill as currently drafted appears to suggest that the onus
will be on the applicant, rather than on the owner, to show that the current
ownership would be inconsistent with sustainable development.

308. The Committee considers that this additional provision is unnecessary
because the community would have to demonstrate, in its application, that the
purchase furthered the achievement of sustainable development. The
Committee recommends that the Scottish Government bring forward
amendments at stage 2 to delete the provision that currently states that,
should the ownership of the land to remain with its current owner, that
ownership would be inconsistent with furthering the achievement of
sustainable development in relation to the land.

Section 97G(6) of the new Part 3A sets out the matters which must be specified in
the application by the Part 3A community body. These matters are:

- the reasons why the Part 3A community body considers that its proposals for
  the land are in the public interest and compatible with further the achievement
  of sustainable development in relation to the land;
- the reasons why the Part 3A community body considers that the land is wholly
  or mainly abandoned or neglected;
- the location and boundaries of the land in the application;
- certain information about rights and interest in the land;
- the proposed use, development and management of the land and how it
  would affect any facilities on the land such as sewers or pipes.

Section 97G(6) does not state that the Part 3A community must demonstrate in its
application that, if the land were to remain with its current owner, that ownership
would be inconsistent with further the achievement of sustainable development in
relation to the land. This is a matter of which Ministers must satisfy themselves
under section 97H(c), rather than something which the Part 3A community body to
demonstrate.

Of course, it is open to the Part 3A community body to demonstrate, in their
application, that it is in the public interest for the application to be approved because
the current ownership would not be consistent with the sustainable development of
the land. Equally, it would be open for the landowner to make representations to the
effect that his continued ownership would be consistent with the sustainable
development of the land.

The Scottish Government will consider whether or not alternative wording would be
preferable to avoid any confusion. However, in essence, the purpose of section
97H(c) is to ensure that the application is not approved in cases where the current
owner has demonstrated that his continued ownership of the land would further the
achievement of sustainable development of the land, because if this is the case, then
the policy objectives of the Bill will already have been met.

310. The Committee recommends that the Scottish Government provide
guidance for communities setting out the basis of the required evidence to
prove that a community had tried and failed to purchase the land.

If the provisions are passed the Scottish Government will ensure that the guidance is
updated to include this.

315. The Committee recognises that it may be helpful for communities to have
information on the valuation at the time of the ballot and that such information
may inform their views. The Committee recommends the Scottish Government
give further consideration to this prior to stage 2 and consider the possible
benefit of amendments to that effect.

The appointment of an independent valuer is carried out within 7 days of approving
an application. They then have 8 weeks to provide a valuation. The ballot must
have taken place before the application is submitted so it is not possible for this
valuation to be in place at the time. However, it is expected that there will be an
indication of costs, obtained by the community body, as part of the ballot information
even if this is not the final valuation used for the purchase itself.

318. The Committee is concerned that communities should have equivalent
access to the right-to-buy provisions of part 2 and part 3 and agrees with the
view of stakeholders who suggested that the independent balloter should be
appointed and paid for by Scottish Ministers. The Committee recommends that
the Scottish Government bring forward amendments to this effect at stage 2.

For both Parts 3 and 3A, the ballot is the first indication of community support which
is different from applications under Part 2 where community support has already
been demonstrated at the time of registration of the interest and prior to the ballot
taking place. The Scottish Government does not intend to automatically pay ballot
costs in all cases, but the intention is that it could reimburse the cost of the ballot in
certain circumstances, for example, where a ballot indicated community support.
The Scottish Government intends to introduce amendments at Stage 2, applicable to Part 3 and Part 3A, to include powers for the Minister to make regulations setting out the circumstances in which a crofting/Part 3A community body will be able to apply to the Ministers to have the cost of the ballot reimbursed.

320. The Committee understands the concerns of stakeholders with respect to the edited register and the initial 50% threshold, however, the Committee considers that this needs to be balanced against the provision which could deprive an owner of their asset. Given the significance of this provision, the Committee considers that the proposed threshold is appropriate. However, the Committee recommends that the Scottish Government keeps this under review.

The Bill as introduced amends section 51 of the Land Reform (Scotland) Act 2003 to remove the 50% threshold and require that the proportion of the community who voted is sufficient to justify the community body’s proceeding to buy the land. The requirement for the majority of those who voted to have voted in favour of the acquisition remains.

Part 3A of the Act (section 97J(1)(b)) provides that, for the purposes of the ballot in relation to a Part 3A application, either (i) at least half of the members of the community must have voted or (ii) fewer than half of the members of the community have voted but the proportion which voted is sufficient to justify the Part 3A/community body’s proceeding to buy the land.

323. The Committee considers that Ministers should have the discretion to determine which application should proceed and recommends that the criteria to be considered in coming to a decision should be set out in regulations.

Section 97K gives Ministers the discretion to decide which application is to proceed in circumstances where more than one Part 3A community body has applied under Part 3A to buy the land, and it is considered that putting the criteria into regulations would remove the element of flexibility. In relation to Parts 2 and 3 (sections 55 and 76) Ministers also have discretion to decide which community body may proceed with the application. In reaching a decision, cases would be considered against each other with regards to public interest, feasibility, cost and any other relevant factors, and Ministers are obliged to have regard to all views on each of the applications and the responses to those views which they have received in answer to invitations to comment on the applications.

326. The Committee understands the concerns of the National Trust for Scotland. However, the Committee is of the view that there could be many and varied conditions that could apply to each consented application and that each application and the relevant conditions should be considered on a case by case basis. In that regard, the Committee is not persuaded of the need to specify the range of possible conditions on the face of the Bill or by way of a definitive list in subsequent regulation and considers that this is rightly a matter for Ministerial discretion.
328. The Committee would welcome further information from the Scottish Government on the circumstances under which Ministers envisage suspending rights over land in respect of which a Part 3A application had been made.

Regulations under section 97N would be used to prevent an owner circumventing the Act by transferring the land in question before the process is complete. As a result, the Scottish Government intends to place a prohibition on transfers, except for those considered to be exempt, from the point at which Ministers approve the application. This is in line with the current Part 3 of the Act.

331. The Committee would welcome further information from the Scottish Government on what is envisaged in terms of burdens and claw-back provisions should the plans of a community body not be implemented. The Committee would also welcome further information on whether the Scottish Government has considered applying a time requirement for implementation of community bodies’ plans and how this would work in practice.

Then Scottish Government has no plans to introduce any form of intervention should community body plans not be implemented, nor any timescale. It is generally the funders who impose conditions on the provision of funding, therefore it would be the funders who may seek to recover monies where land was not used for the purpose for which it was acquired.

337. The Committee considers that the valuation procedure should ensure that both parties are treated fairly by giving each the opportunity to comment on issues raised in the other’s representations and draw attention to anything inaccurate or potentially misleading. The Committee recommends that the Scottish Government bring forward amendments at stage 2 to provide both the owner and the community body the right to comment on the valuation and other party’s representations.

The Scottish Government intends to bring forward amendments at Stage 2 to introduce a counter-representation stage in the valuation process. The land owner will be invited to make counter-representations on the community body’s representations and vice-versa in order for the valuer to reach an informed valuation for the land.

338. The Committee agrees with the Big Lottery Fund’s suggestion that it would be useful, for a number of reasons, for the community body to have the valuation early and recommends that the Scottish Government reflect on this and the merit of amending the Bill to this effect at stage 2.

The appointment of an independent valuer is carried out within 7 days of approving an application. They then have 8 weeks to provide a valuation. The ballot must have taken place before the application is submitted so it is not possible for this valuation to be in place at the time. However, it is expected that there would be an
indication of costs, obtained by the community body, as part of the ballot information even if this is not the final valuation used for the purchase itself.

342. The Committee concurs with the view of the Development Trusts Association Scotland that the right of compensation should be limited to situations where the application is approved, and recommends that the Scottish Government bring forward amendments at stage 2 to clarify the provision in this respect.

It is not felt fair that, where a community application has failed, the owner, through having to comply with the Act, is out of pocket. In fact, by putting their own case forward convincingly, they can be impacting on their own case for compensation. As a result, there is no intention to bring forward amendments at stage 2 in relation to compensation in this regard.

343. The Committee shares the concerns of the Community Land Advisory Service in relation to owners’ tax liabilities and the timing of the sale and agrees that the community should not bear this cost. The Committee recommends that the Scottish Government reflect on this and clarify the appropriate source of compensation for this deprivation by way of amendment at stage 2.

The owner should be compensated for any financial costs incurred in complying with the Act. Since it is the community body that has purchased the land, it is they who should pay compensation. In given circumstances, Ministers are empowered to make a grant towards the community body’s liability for compensation. To apply successfully for such a grant, the community body need to demonstrate that:

- after they have made payment of outstanding costs incurred by the purchase of the croft land, they have insufficient funds to pay the compensation required;
- they have already taken all reasonable steps to try and raise the compensation amount required; and
- it is in the public interest that Ministers pay the grant.

In relation to the crofting community right to buy, the process for applying for a grant towards compensation costs is set out in the Crofting Community Right to Buy (Grant Towards Compensation Liability) (Scotland) Regulations 2004. The equivalent provisions for the Part 3A right to buy are set out in section 97U, and it is intended that Ministers will prescribe the form and the procedure for the process by way of regulations made under section 97U(6).

347. The Committee has no specific comment to make in relation to appeals. However, the Committee considers that a process of mediation should have been built into the Bill to ensure that effective discussion between a landowner and a community is facilitated. The Committee considers that Ministers should have the powers to facilitate negotiation, and where necessary appoint, and provide financial resources to support, a mediator. The Committee recommends that the Scottish Government give consideration to an
appropriate mediation process and include provision for this within the Bill by way of bringing forward amendments at stage 2.

The Scottish Government does not plan to introduce any form of mediation into the Bill. However, it could well be a function of the dedicated resource for community land ownership that was announced in the Programme for Government, such as a Community Land Agency. If a mediation role were to be placed within the Land Reform Act, any mediation could only refer to Community Right to Buy case, rather than any wider situations that might benefit from the same approach. There will be a short life working group set up as part of the 1 million acre target work that will look into this.

Other issues considered by the Committee

350. The Committee was interested to hear the views of stakeholders in relation to land use and the right to manage land and recommends that the Scottish Government consider the scope to include provisions in relation to management rights in this Bill by way of amendment at stage 2 and/or in the forthcoming land reform legislation.

Where public sector land is concerned, leasing, management or use are provided for in addition to ownership under the asset transfer provisions in Part 5 of the Bill. In relation to privately owned land, a range of options is being considered in relation to the forthcoming Land Reform Bill.

357. The Committee recommends that the Scottish Government give consideration to what more can be done to address the issue of best value, best public benefit and, the approach taken by local authorities and other public sector bodies. The Committee recommends that the Scottish Government identify further measures to address this issue, through a review of the public finance manual, by the inclusion of related provisions within the proposed land reform bill and by the provision of further guidance to local authorities in relation to their assets, their considerations of best value, and supporting communities to acquire land.

Local authorities have powers to dispose of assets at less than best consideration under the Disposal of Land by Local Authorities (Scotland) Regulations 2010, where they are satisfied that the disposal will contribute to the promotion or improvement of economic development or regeneration, health, social well-being or environmental well-being. The Scottish Public Finance Manual has also been amended to highlight the need for other public bodies to consider similar benefits, stating:

“Where there are wider public benefits, consistent with the principles of Best Value, to be gained from a transaction, disposing bodies should consider disposal of assets at less than Market Value. This includes supporting the acquisition of assets by community bodies, where appropriate”.

The Community Ownership Support Service and Association of Chief Estates Surveyors produced guidance in August 2013, “Asset Transfer From Policy to
Practice”, which gives advice on evaluating benefits and discounts, and we will consider providing further guidance on these issues as the Bill is implemented.

358. The Committee also recommends that the Scottish Government give consideration to an appropriate mechanism, such as the proposed land commission, to adjudicate in cases where there are suggestions that local authorities may be seeking to frustrate local communities. The Committee asks the Cabinet Secretary to reflect on this issue and consider what further amendments could be brought forward at stage 2 to address the issue of best value, best public benefit and the practical impact of the approach taken by local authorities and other public sector bodies.

There is no intention to bring amendments to the Bill on this at stage 2. As part the paper “A Consultation on the Future of Land Reform in Scotland”, Proposal 1 asks about a potential Scottish Land Reform Commission and the structure and remit of such a body. The issues raised by the Committee could be dealt with by this body, if that were deemed appropriate.

366. The Committee recognises the difficulties faced by communities in seeking to exercise their right-to-buy and is keen to ensure that appropriate support and funding is available to all communities across Scotland to facilitate meeting their aspirations. The Committee agrees that public sector bodies have an important role in that regard.

367. The Committee is familiar with the role of Highlands and Islands Enterprise in supporting communities to acquire land to date and requests further information on the role that the Scottish Government envisages for Highlands and Islands Enterprise and for Scottish Enterprise in taking the land reform agenda forward. The Committee also asks for the Scottish Government’s view on how best to take forward the social remit outwith the Highlands and Islands.

As part of the work associated with the 1 million acre target, the functions and remit of HIE is actively being looked at, as well as options for other bodies that might take this forward outwith the HIE area.

368. The Committee welcomes the Scottish Government’s commitment to establish a community land unit to provide support and advice to communities. The Committee seeks information on how the Scottish Government anticipates the new community land unit will utilise the expertise and interact with the existing unit within Highlands and Islands Enterprise.

369. The Committee also requests that further information be provided on the remit and resourcing of the unit; the timescale for its establishment; the location of the unit; the ways in which the unit will work with, and practically support, communities at a local level; and how the work of the unit will be monitored and evaluated.
As part of the work associated with the 1 million acre target, the functions and remit of the dedicated resource announced is under development, and details will be released when they have been clarified further.

370. The Committee welcomes confirmation that fresh guidance which takes a more relaxed view of state aid issues has been issued and recommends that the Scottish Government actively promote this guidance to local authorities across Scotland.

The Scottish Government will ensure that the new guidance is promoted accordingly.

372. Having considered the Bill, it does not appear to the Committee that there is any restriction on communities seeking to use the provisions within Part 3 and Part 3A of the 2003 Act, and the part 5 provisions of the Bill; however, the Committee would welcome clarification from the Scottish Government that this is indeed the case. The Committee would also welcome further information from the Scottish Government on the decision-making process where Scottish Ministers or Scottish Government agencies are the landowner.

Communities are quite able to lodge applications under several parts of the 2003 Act, and under part 5 of this Bill. The decision making process would remain the same where the SG were the landowner. It is subject to appeal, should community groups feel that their application has not been assessed fairly, so there is a degree of scrutiny of decisions in these matters.

ISSUES NOT INCLUDED IN THE BILL

Crofting Community Right to Buy (Part 3)

375. The Committee considers that it would have been preferable had consultation on the crofting community right-to-buy been undertaken alongside consultation on the existing part 4 provisions and that the amendments to the crofting community right-to-buy had been included in the Bill as introduced, rather than at stage 2. The Committee considers that the introduction of significant new provisions by way of amendments at stage 2 is undesirable in terms of effective parliamentary scrutiny, as the time available at stage 2 to consider new evidence is limited. The Committee would welcome the opportunity of early sight of the proposed Scottish Government draft amendments.

The Scottish Government issued a call for evidence about its proposals as well as a series of face to face meetings with stakeholders across the crofting spectrum. There was broad agreement amongst stakeholders for the proposals. Scottish Government amendments have been lodged in order to provide early sight of proposals to allow the Committee to consider them as part of their stage 2 deliberations.
Community Empowerment (Scotland) Bill: The Committee took evidence on stage 2 amendments 1-11 relating to the crofting community right-to-buy from—

Derek Flyn, Director, Scottish Crofting Federation;
Susan Walker, Convener, Crofting Commission;
Sandy Murray, Chairman, NFUS Crofting Highlands and Islands Committee;
Gordon Cumming, Land Manager, The North Harris Trust;
Peter Peacock, Policy Director, Community Land Scotland;
Duncan Burd, Rural Affairs Sub-Committee, Law Society of Scotland.
Community Empowerment (Scotland) Bill: Stage 2

The Convener: Agenda item 4 is stage 2 of the Community Empowerment (Scotland) Bill. We will take evidence on the Government's amendments on the crofting community right to buy. We are joined by a variety of stakeholders. I ask everyone to introduce themselves.

Derek Flyn (Scottish Crofting Federation): I am a retired crofting lawyer. Recently, I have been the co-administrator of what we call the crofting law sump, collecting the problems of crofting law and trying to find solutions through the crofting law group.

Gordon Cumming (North Harris Trust): I am the land manager for the North Harris Trust.

Claudia Beamish: I am an MSP for South Scotland and shadow minister for environment and climate change.

Duncan Burd (Law Society of Scotland): I am a solicitor in private practice on the Isle of Skye. I am here to represent the Law of Society of Scotland, and I sit on its rural affairs committee.

Dave Thompson: I am the MSP for Skye, Lochaber and Badenoch.

Michael Russell: I am the MSP for Argyll and Bute.

Alex Fergusson: I am the MSP for Galloway and West Dumfries, and crofting law is a complete mystery to me.

Peter Peacock (Community Land Scotland): I do policy work for Community Land Scotland.

Jim Hume: I am an MSP for South Scotland.

Sandy Murray (NFU Scotland): I am a crofter from Sutherland and the chairman of the Highlands and Islands committee of NFU Scotland.

Angus MacDonald: I am the MSP for Falkirk East, which is well known for its lack of crofts.

The Convener: For the time being.

Susan Walker (Crofting Commission): I am the convener of the Crofting Commission, which is the regulator of crofting.

Graeme Dey: I am the MSP for Angus South.

The Convener: I am convener of the committee and the MSP for Caithness, Sutherland and Ross, where there is a lot of crofting of various intensities and kinds.
Thank you for coming to this morning’s meeting. We have many questions, but we do not need everyone to answer every question in order to allow us to reach the core of the matters under debate.

Have stakeholders been consulted enough about what is proposed? Are you satisfied that the consultation has been sufficient in terms of the amendments?

Peter Peacock: We are very satisfied. We take the view that the matter goes back to a predecessor committee to the Rural Affairs, Climate Change and Environment Committee that commissioned independent research on the Land Reform (Scotland) Act 2003. Out of that came the issues around the need for change that are now being consulted on.

It would have been better if the amendments to part 3 of the 2003 act had been part of the original Community Empowerment (Scotland) Bill; that is not the case, but we are encouraged that the Government is trying to make the changes. I encourage the committee to be generally quite relaxed about the changes, because they are heading in the right direction.

Our members have been consulted by the Scottish Government through a written consultation and a series of meetings to which they were invited and at which they had the opportunity to have their say. In that sense, we are happy with what has happened.

Derek Flynn: I was involved in the post-legislative report, looking specifically at crofting matters. The matters that were raised are being dealt with.

11:00

The Convener: We have started with general approval for the level of consultation. Graeme Dey will ask about the amendments.

Graeme Dey: Just to tease this out a little bit, I want to be clear that the witnesses feel that the amendments fully and appropriately address the concerns that were raised during the consultation process. To what extent will the proposed changes allow more crofting communities to exercise their right to buy? Are further amendments needed—perhaps to create a mediation service, which has been mentioned?

The Convener: What about the experience in North Harris? You got the right to buy and have applied it.

Gordon Cumming: The North Harris Trust has been with the community since 2003. The purchase did not go through as a community right to buy; it was a voluntary effort.

We are, on the whole, happy with the amendments. We feel that they are fair and that the consultation has gone very well.

Peter Peacock: On the second point about mediation services, Community Land Scotland has been arguing for some time that it would be helpful to put it beyond doubt that Scottish ministers have the power to facilitate mediation between potential purchasers and owners. That is born of bitter experience of what has happened with a number of purchases. From conversations with some of the agencies that support community groups, we are aware that they feel that although they would like mediation to be facilitated, they do not have the legal power to do so. It is not clear to me whether Scottish ministers have that legal power, either. I hoped that the provisions would contain some simple power to enable ministers to facilitate mediation when it is requested by either party and both parties agree. That would be helpful because it would clarify the law.

We are anxious about the matter because we do not want communities to have to resort on every occasion to complex law. It would be much more satisfactory if there could be negotiated settlements around an aspiration to buy land. There is quite a lot of evidence supporting that approach, particularly in the Western Isles. We need a framework for that to happen. For a good number of months, our chairman has been involved in trying to resolve the Pairc situation by bringing the parties together at their request. Frankly, although that has been helpful in taking the process forward, we are not skilled in mediation techniques and it is too haphazard to leave it to chance that one individual will be acceptable to both parties. It would be far better to have some kind of clear power. That would help the whole situation.

On Graeme Dey’s first point about the scope of the amendments and whether there is anything else we want, I guess that there is always something else, but we are happy with what we have because it identifies the core issues. That said, once we get into the detail, the amendments contain quite a lot of implications that might be worth teasing out today. There is nothing specific that we are looking for at this stage, but there are fine details that we need to thrash out.

Sandy Murray: I support what Peter Peacock said on mediation. We need somebody who is able to mediate because in the long run it will save us from a lot of arguments.

I also agree that quite a few details in the amendments need to be teased out.

The Convener: Should the remit of the Scottish mediation service be looked at with regard to
agricultural matters, or would that be too formalised a process?

Peter Peacock: I am not familiar with that service. However, as it happens, on Friday I met somebody in Edinburgh who is involved with what appears to be a kind of marketplace for mediation services. There are people who are highly skilled in that sort of thing.

If ministers had the power to facilitate mediation, they could bring in whatever services were appropriate. If bringing mediation skills to bear on a situation requires changing the terms or remit of an existing statutory mediation system, so be it.

Graeme Dey: You have made a good point. It is clear that mediation skills exist, but does the knowledge base to mediate in the crofting sphere exist?

Peter Peacock: It is said that only three people understand crofting law—one is mad, one is dead and nobody can remember who the third one is. Actually, to be fair, that was said of local government finance.

I am not sure about crofting mediation skills, but in any situation where there is a dispute between two parties, mediators can bring to bear their skills irrespective of the technical detail that is associated with the subject. No doubt, however, technical expertise could be brought in. I know that in the Pairc case there is a huge amount of technical detail and people have had to bring in lawyers and others to help with that. However, the key thing is actually to get the parties together and talking in order to resolve difficulties and create a satisfactory outcome.

Claudia Beamish: The witnesses will know this, but for the record I point out that at present a crofting community body must be a company limited by guarantee. The amendment to section 71 of the Land Reform (Scotland) Act 2003 will broaden the base of legal organisations to include Scottish charitable incorporated organisations and community benefit companies, or bencoms, and any other body "as may be prescribed", subject to certain requirements.

The explanatory note on the amendments states that part 3 of the 2003 act will be brought "into alignment with proposed amendments to Part 2 (community right-to-buy)"

and with proposed new part 3A, which is on the right to buy abandoned or neglected land without a willing seller. We are certainly getting into the detail here, but it is important to do so.

Do the amendments to the crofting community bodies section in the 2003 act—section 71—provide enough protection against personal liability for the trustees of such bodies? Will they provide reassurance for those who enter contracts with those bodies? More broadly, will the amendments provide flexibility for the situations that a crofting community body might experience?

Susan Walker: I have experience of being a member of a community trust that went through a registration of interest under part 2 of the 2003 act. The added flexibility will be useful. Different kinds of bodies are being created, such as community interest companies. It can take quite a long time to set up an SCIO, and a body cannot officially become one until the Office of the Scottish Charity Regulator has approved and registered it. Therefore, it is good to have that flexibility. Any director who takes on a position with a community trust must understand their responsibilities, but there is a good support system through, for example, Highlands and Islands Enterprise’s land unit, which advises people on their responsibilities. I think that the proposals look robust and have flexibility.

Sandy Murray: I agree that the proposals look fairly robust. We must ensure that, whatever type of bodies are set up, we maintain a majority of crofters’ representatives on the boards of those organisations.

The Convener: There are no further points on that, I hope. If there are, the witnesses should speak up now.

Peter Peacock: Are we on the specifics of SCIOs and bencoms? There is a point of detail that arises, so perhaps I could come on to that.

Peter Peacock: Please do.

Peter Peacock: There is an issue in the amendments about which crofters will count in all this related to whether they are on the crofting register.

Alex Fergusson: We will come on to that.

Peter Peacock: Fine. I will leave that for now.

Jim Hume: Proposed new section 71(3)(c) of the 2003 act, which will be inserted by one of the stage 2 amendments, will repeal the requirement for crofting community bodies to audit their accounts formally, but the explanatory note on the amendment says that they will still be required to “make proper arrangements for ... financial management”. Do the witnesses welcome the removal of the requirement for accounts to be audited?

Witnesses indicated agreement.

The Convener: I see Peter Peacock, Susan Walker and Gordon Cumming nodding, Jim, so we should take that as read.
Jim Hume: That is absolutely fine. As I have said, the explanatory note also makes it clear that bodies will be required to “make proper arrangements for ... financial management”.

I would be interested to find out how the witnesses think that transparency can be developed to ensure that any investment is being made properly and that there are adequate safeguards in that respect.

Susan Walker: Again, from the point of view of a body that was set up to be compliant with part 2 of the 2003 act, I point out that that act requires us to have our accounts independently scrutinised. Moreover, all registered charities must produce annual accounts. It seems, therefore, that it would be inconsistent to treat part 3 bodies differently from part 2 bodies; whatever is required for part 2 bodies should also be required for part 3 bodies. In that respect, I think that the amendment to which Jim Hume referred will equalise things.

Jim Hume: Okay.

The Convener: Thank you very much for that. Alex Fergusson has some questions about amending the definition of “crofting community”.

Alex Fergusson: I must apologise for interrupting Peter Peacock in full flow earlier, but I have spent two days trying to get my head round this question and I did not want my moment of glory to be taken away from me.

The Convener: We will find out now how well you have managed to get your head round it.

Alex Fergusson: You would have thought that to a mere lowlander like me the definition of a crofting community would be quite a simple matter. Clearly, however, it is not. My understanding—I think that this was the point that Peter Peacock was referring to—is that proposed new section 71(7) of the 2003 act will amend the definition to capture more crofters who are excluded from the existing legislation, and that it is recognised that the existing definition of “crofting community” might not include all those who consider themselves to be part of that community. I therefore understand the desire to amend the definition to bring in more people.

However, as Peter Peacock pointed out—and, again, as I understand it—some owner-occupier crofters are registered on Registers of Scotland’s crofting register and the amendment will not cover those on the Crofting Commission’s register of crofts. I do not want to get into the question of why on earth there are two registers, but various people have in evidence to the committee highlighted the difficulties that might be created in trying to bring the registers together or simplifying the terminology. My question for anyone who wishes to comment is whether you foresee problems arising from the sole use of Registers of Scotland’s crofting register and, if so, how they might be remedied.

The Convener: Derek Flynn?

Derek Flynn: Thank you. [Laughter.]

The term “crofting community” poses a number of problems. For a start, real conflict has emerged from its being defined differently in two pieces of legislation. We must look to resolve that situation, but I do not think that such a resolution will be found either in this bill or in the Crofters (Scotland) Act 1993.

The point that owner-occupier crofters are covered only if they have been entered in the crofting register but not in the register of crofts is, I think, false. Those who are on the register of crofts should also be covered, because in order to become an owner-occupier crofter one must intimate one’s position to the Crofting Commission. Having done so, a person would, in fact, be entered in the commission’s register of crofts as an owner-occupier crofter. The problem, however, is that the legislation does not actually say that.

Under the Crofters (Scotland) Act 1993, to become an owner-occupier crofter the person has to tell the Crofting Commission, which holds that information, and the one place that it would hold the information is in the register of crofts, so the bill should make reference not only to the crofting register but to the register of crofts.

11:15

Alex Fergusson: So you believe that a combination of registers is the right way to approach the issue, rather than the sole use of one register?

Derek Flynn: Yes, because putting something into the crofting register is still an unnecessary hurdle, and it would produce an unnecessary distinction between one set of owner-occupier crofters and another.

The Convener: Can I clarify something? Presumably, because we are moving to a map-based register, the Crofting Commission register as it is at the moment, which is just a list, will eventually become redundant.

Derek Flynn: I look forward to that. [Laughter.]

The Convener: Just for clarity.

Peter Peacock: We would strongly support the general point that Derek Flynn made. It does not seem clear at all why owner-occupiers who are in the register of crofts should not be counted for that purpose. There is probably some deep technicality here, because the implication in the explanatory
notes is that ministers are taking a regulatory power and might change things in due course. Perhaps they can explain that. The outcome ought to be that both registers, for both tenants and owner-occupiers, ought to be in play.

Susan Walker: The Crofters (Scotland) Act 1993 says that the commission has a duty to keep a register of crofts, but it states that we have only to list tenants. No duty to keep a register of owner-occupier crofters has been added. As Derek Flyn said, those crofters have a duty to tell us, and we certainly do register them in the register of crofts. There are something like 800 crofters listed on the crofting register, but we have over 13,000 crofters, so if you used only the crofting register, you would be severely limiting the number of owner-occupier crofters who would ever be registered as crofters.

Peter Peacock: My recollection is that, when those matters were dealt with in the last crofting act, it was estimated that it could take up to 80 years for the crofting register to be complete. That is why you need the register of crofts as well.

The Convener: Hence Derek Flyn’s helpful remark. Alex Fergusson may continue.

Alex Fergusson: That is me. I am exhausted.

The Convener: All right. We move on to the lovely subject of croft land mapping.

Susan Walker: Before we move on, I have another point on the definition of the crofting community. The proposals appear to have removed the residency requirement and I wonder why that is the case and whether there could be situations in which absentee crofters influence the outcomes for their community, despite the fact that they do not live there. I do not understand well enough how the ballot works. Is there a ballot of all crofters, or do all crofters have to comply with the residency requirement that is general upon the whole community? If there is a ballot of all crofters, absentee crofters could influence the outcome for a community.

The Convener: Indeed. In the Crofting Commission’s submission to the consultation, you raised the question of the 32km rule. Are there particular words that you think should be amended in the Community Empowerment (Scotland) Bill to clarify that point about absentees?

Susan Walker: The 2003 act referred to a distance of more than 16km, but that was changed by the 2010 act. I wondered why that had been removed. As I say, I do not understand enough about the ballot arrangements, but if the arrangement is that all crofters are balloted, it is important that that element be reintroduced.

Derek Flyn: The point is that absentee crofters should not control what is happening on the land and we should bring the land reform measurement of 16km into line with the previous act’s limit of 32km.

The Convener: We can ask the minister about that and clarify the point.

We move on to the proposed amendments to section 73 of the 2003 act, on croft land mapping. Do you agree that the suggested removal of the detailed mapping requirements will make mapping simpler? There is a problem in balancing the mapping requirements with facilitating the crofting community right to buy. It is proposed to repeal the requirement to map dykes, ditches and that sort of thing.

The way I look at it is that, at the point at which someone is trying to buy something, we are talking about a cadastral map and not about the detailed map that is required for gaining ownership. Can we find a way to explain why only a simplified form of mapping is required in the first instance?

Derek Flyn: The transfer of ownership of a Highland crofting estate is a massive problem because it tends to be a jigsaw puzzle with lots of pieces removed. Under the sasine system, it was merely a transfer of a bundle of writs, but now it is all to be mapped. No Highland estate would transfer to another landlord showing every pipe, every dyke and so on, so it is quite improper that a community should be asked to map those things.

The requirement should be at the level required by Registers of Scotland to change ownership from one person to another. At that stage, it has to check that the sasines title is good enough to go on to the land register. If we can get a plan to that quality, it seems that that would be sufficient for a crofting community buyout.

Sandy Murray: I support what Derek Flyn said. To have an overcomplicated map and to have to work out in the first instance where all the dykes, watercourses and things were would be cumbersome for the community.

Peter Peacock: This is the single biggest prize of the proposed changes. We know from experience that the process is tortuous. It is virtually impossible to meet, and it leaves open all sorts of opportunities for challenge on fine technical detail, such as that someone did not get a dyke or a sewer exactly right, or whatever. The removal of the requirement is important and it is welcome. It will help to simplify matters.

However, other matters are proposed to be introduced to section 73, and you might want to move on to discuss those. There are other, equally onerous requirements in the form that has to be filled in.

The Convener: The submission from Scottish Land & Estates suggests that it is not unduly onerous to detail things such as pipes. I say for
the record that, unfortunately, Scottish Land & Estates could not be with us on the panel today, but it believes that the provision should remain the same. It seems to me that the evidence from people here is that, at the stage of applying—

Peter Peacock: I do not know this, but I suspect that, originally, this was picked up from the set of arrangements for compulsory purchase that would apply to urban areas. If we are talking about a site that is the size of this room, it would be possible to identify sewers, drains and so on, but if we are talking about a 40,000 acre crofting estate where there is dispute that goes back for generations about where boundaries between crofts are and the topography has changed around dykes and so on, the requirements become virtually impossible to meet.

If we want to make progress, it is essential that we remove the requirements, and I am glad that that is what the Government is proposing.

The Convener: We need requirements to be set out in regulations in a way that ensures that a fair balance is struck between the rights of landowners and the rights of the crofting communities. On that basis, do you want to develop the other point that you made? I will then bring in Mike Russell.

Peter Peacock: I was referring to evidence that was submitted by John Randall from the Pairc Trust, who is the only human being who has been through all of this, so he understands it. He pointed to the requirement about sewers, pipes, drains and so on, which we have just discussed, but he also pointed out that the applicant has to fill in a prescribed form.

That form requires other things, such as the inclusion of a list of all postcodes within Ordnance Survey 1km grid squares and a full list of all those eligible to vote in the ballot, including distance from relevant townships and so on. That is contained in the regulation. I know that that is not strictly speaking a subject for your committee’s consideration, but if we are going to simplify this, we need to address those things in the regulation.

The Convener: We mentioned that issue in our stage 1 report. That is one thing that we have picked up already.

Michael Russell: I want to echo a point that Derek Flyn made, because it is something that we need to reflect on and use more widely across the consideration of the bill. There is a danger in the bill of constantly reinventing the wheel—of creating another way of doing things. If it is suitable for the registers to have the definition and mapping of the croft in such a way that the title can be transferred, we should not invent another way of doing it, because the two will be incompatible. It may produce great work for lawyers at various stages, but it will be incompatible with the ease with which we allow land to be transferred, which is what the bill is about. It is extremely important that we have a single standard, and if a standard exists then that is the standard by which we should continue to operate, unless there is a problem with it.

I have been involved in this issue over a long period and I remember a dispute in Benbecula, which is probably still going on, which originated from the fact that a line on the map was drawn with a pen that was too thick. Derek Flyn remembers the case, I can see; there are probably others. It is really important that we have simplicity in this.

The Convener: We have no other comments at the moment. Peter Peacock, do go on.

Peter Peacock: New requirements are being added, as well as deletions being made. Proposed section 73(5ZA) of the 2003 act will require the identification of

"the owner of the land ... any creditor in a standard security over the land ... the tenant of any tenancy of land over which the tenant has an interest"

and

"the person entitled to any sporting interests".

That is a very onerous requirement and there is a real danger that although the bill will remove onerous requirements on mapping it will introduce others of a different kind. It is not clear to me why that requirement is needed. I do not think that it would be required in a private sale, so it is not clear to me why it should be required in a sale to a crofting community body. I want to flag that up to the committee.

This morning I received a couple of emails from members of Community Land Scotland who are in crofting communities and they reckon that the requirement would be very difficult to meet. I will pass those on to the committee so that you have that concern in writing. In several respects, we think that the requirement is very onerous and I wanted to alert the committee to that. We would rather not see that requirement; it is not clear why it is required now when it was not before.

The Convener: Obviously, we need to explore ministerial discretion or the exact reason why that requirement is there.

Michael Russell: Can I pursue that issue with other witnesses, to get further clarity on it? Peter Peacock’s point is very important: if it is not possible for those attempting a buy-out to identify a creditor in a standard security over the land, which I suspect could be difficult, or everybody who has sporting interests in the land, then the burden falls on those attempting the buy-out, as opposed to those who are selling. What are
witnesses' views on that? It seems to be a major obstacle and one that could derail potential purchases.

Derek Flyn: This is knowledge that should be in the hands of the owner of the land. Identifying the owner of the land is one of the requirements, but in a normal system would you expect a purchaser to find out all about creditors and tenants? You would expect that information to be provided. At worst, you should leave the purchaser to find out only what is available on public registers.

Michael Russell: Could the burden not be put on the owner of the land to provide that information? That seems perfectly feasible.

Derek Flyn: That seems perfectly normal.

11:30

Peter Peacock: One of our members has this morning given me an example of a situation in which it was not possible to identify the owner to try to get that information. In the example that I have been given, four owners were listed but three of them were fictitious. It turned out that it was a front for a company laundering money, or something to that effect—they were unsavoury characters, if I can put it that way. You would fall at the first hurdle, because you could not identify the owner, let alone meet the other criteria.

We should not underestimate how difficult it is to meet the requirement. It could be made clear that, if the requirement were to remain that a community use their best endeavours to try to identify them, it should not prevent an application from proceeding if it could not find them. It is important to tease this out.

Michael Russell: So the provision requires amendment, either to put the burden on the owner and/or to create circumstances in which the best endeavour of the purchaser would be required, but there is acknowledgement that there might be circumstances in which it would not be possible to find the information. Is that what we are saying?

Peter Peacock: I think so.

Duncan Burd: You do not want to go with “best endeavours”; you want only “reasonable endeavours”. You may want to further refine the provision so that after

“the owner of the land ... any creditor in a standard security over the land”

it continues “as may be disclosed in either the register of sasines or the land register of Scotland”, in order to lock down who should be within the public knowledge and avoid the fraudsters.

Michael Russell: I am always delighted to get free legal advice. That is splendid; thank you very much.

The Convener: That point has been well made.

Susan Walker: I have an additional point. I agree with everything that has been said, and our submission says that the provision should be “reasonable endeavours” and that it should cover only those things already on the public record. It is important not to underestimate the extent to which the requirement could create a loophole for a landlord, as they could set up a private arrangement with a relative and it could then be said that, as the community had failed to list that person in their application, their application should fail.

Derek Flyn: I will make one strong point. Crofting is different and crofting law is different. It is an area in which landlords do not have to do anything. Putting the duty on the landlord to produce information would mean that we would make no progress at all. We have to consider that the landlord might be a company registered in Andorra that never replies to any correspondence. If there is to be a duty to provide information, it can be only that which can be reasonably acquired and it must be from public registers. Those who have rights that are listed should have them registered somewhere. Otherwise, they cannot be identified.

The Convener: So, what Duncan Burd said about “reasonable endeavours” applies to what is on the public register. I think that that point is clear.

Angus MacDonald has questions on public notice of application, which is an interesting issue on the ground.

Angus MacDonald: I will briefly explore section 73 of the 2003 act on the public notice of application. The proposed new section 73(4) replaces the requirement to advertise an application in the Edinburgh Gazette and a local newspaper in the area. The explanatory note states that the

“amendment provides greater flexibility and allows more appropriate forms of advertisement to be used according to the individual circumstances of the case.”

I presume that the provision is welcome, given the burden that—as we have already heard—exists on crofters with regard to various public notices. Is everyone content with the amendment? I see that you are all nodding.

The Convener: Let us move on to the identification of owner, tenants and certain creditors. Mike Russell has a question.
Michael Russell: Sorry. I have just asked my question.

The Convener: I think that we have probably covered the issue.

Michael Russell: Yes—I think that we have covered it.

Peter Peacock: It is the same point.

The Convener: If we are happy that there are no other aspects that we should ask about, we will move on to the ballot procedure. Sarah Boyack has some questions.

Sarah Boyack: I will explore the issues around section 75. The section lets ministers make regulations in relation to the conduct of the ballot, which it is anticipated will be undertaken by the crofting community body. The explanatory note sets out how that might work and includes the suggestion that

"the crofting community body ... is liable for the cost of the ballot, and that ... in certain circumstances"

it might

"seek reimbursement of the cost of conducting the ballot"

from ministers, who will be given quite a degree of flexibility in the procedures. I have looked at responses to what is proposed and found a number of different views about the requirement to have a ballot: some are quite happy about it, but others are not. Is it strictly necessary to require a ballot? Malcolm Combe suggested in his evidence that it is not, given the “property” provision of the European convention on human rights. He suggests that that point was confirmed by Lord President Gill in the recent Pairc case. So, there is a question about the requirement to have a ballot. Malcolm Combe believes that the requirement for a ballot would make the act more bureaucratic and therefore make it harder for a community to benefit from the act’s provisions and he suggests that we should consider that point “very carefully”. I am keen to get the witnesses’ views on that.

Further, should the ballot provisions be different for other community groups that want to buy land? Is there a reason why the provisions need to be different and we need to have different legislation? I am really keen to get witnesses’ views on that, because we have had quite a range of views on the issue.

Peter Peacock: I will take first the question whether the ballot is necessary. We think that ballots are an important part of the process because they confirm that there is community assent to a proposition. Perhaps Malcolm Combe’s point is on whether a ballot is required legally. Pragmatically, it would be very difficult for a community not to have a ballot. How could they otherwise prove that there was assent to the proposition to purchase land? We think that the ballot is a necessary and important part of establishing that there is such assent.

Requiring a ballot means that there will have to be dialogue within a community to persuade people that the arguments for purchase are strong, the business case is strong and so on. We think that the ballot is an important aspect that we would not wish to see removed. That said, it is not clear to us why what is proposed in part 2, whereby the Scottish Government would now take responsibility for organising the ballot and paying for it, does not exist in part 3. It is not clear why there should be that distinction.

I accept that what the Scottish Government is proposing by way of allowing a crofting community to apply to have its costs met is a helpful flexibility compared with where we are at present, so to that extent I welcome what is proposed. However, that does not overtake the rather fundamental question why crofting communities should be different from others in that respect.

When we are getting into a part 3 purchase, we are talking about the potential of expropriating land against the wishes of the seller. It seems to me that in those circumstances it must be very clear that the conduct of any ballot that might help precipitate that action is seen to be above board. It therefore seems to me that the Government taking responsibility for organising that instead of the community would help to remove any potential dispute around the ballot not being conducted properly. I think that it is a question of conduct and propriety, and assuring people that the conduct is proper. However, there is also the question why part 2 would have a different set of arrangements from part 3—that does not seem right to me.

Sandy Murray: I fully support what Peter Peacock says. We, too, suggest that the ballot provision is brought into line with that for the community right to buy. A ballot shows that there is support is there for a buy-out when there is not a willing seller.

The Convener: Are there any further points?

Sarah Boyack: I want to tease things out a bit more. I accept that holding a ballot is a good, clear principle to demonstrate that there is genuine community support. However, I wonder why crofting communities would have to pay to conduct a ballot. The proposed amendment specifies that the crofting community group might seek reimbursement in some circumstances, and I am trying to think what those circumstances would be. It would be much clearer just to have the provision that a ballot should be properly conducted so that everyone would know that a standard and a good
principle were being applied—I can see the point about propriety.

If the ministers do not want to change the amendment, I would like to tease out what the circumstances would be that would allow the ballot to be paid for for some groups but not for others. A new set of tests seems to be being introduced, and I cannot see why that would be done.

**Peter Peacock:** I agree with all that. It is not clear to me why people would be treated differently. When we are coming to some sort of democratic expression, it is important that the rules are applied consistently. Given that the Government is accepting responsibility for the ballots under part 2, I think that it should apply that responsibility equally to part 3. That would seem to me to have everything to commend it.

**The Convener:** That will be one of our questions for the minister next week, without a doubt.

We move on to the right to buy by only one crofting community body. Has there been conflict in crofting communities between more than one body so far?

**Peter Peacock:** Not in our experience.

**Susan Walker:** There has been in our experience.

**The Convener:** If there has been, has conflict been widespread?

**Susan Walker:** I believe that it was in Melness, or somewhere around that area; one body applied to buy and then another body came in with an overlapping application.

**The Convener:** It has happened, so perhaps somebody in the Government is alert to the potential that it could happen elsewhere.

Dave Thompson has a question on reference to the Land Court.

**Dave Thompson:** It is a small point concerning what the Law Society’s submission said about the list of persons who have a right to refer a question to the Land Court. The suggested amendments cover three of those persons: the owner entitled to sporting interests, the tenant and any other person entitled to sporting interests. The Law Society suggested that a “creditor in a standard security” in relation to the land should also have the right of reference.

When we took evidence from Malcolm Combe, he suggested that that might not always be a good thing. I am not sure when the Law Society made its submission, so I seek a bit of clarity from Duncan Burd on whether the society still feels strongly that creditors should have the right of reference. Everyone else seems to agree with the amendments, so I would appreciate hearing that point of view.

**Duncan Burd:** The Law Society is of the view that giving creditors the right of reference keeps the bill in accordance with other legislation in which the creditor in a standard security is notified of litigation and has the ability to enter appearance.

You may be familiar with the situation in which a couple are divorcing and there is an argument over the house. The heritable creditor must be told about the action. From a practical point of view, the creditor will never enter appearance, but the legislation states that they should be told about it because they have a perceived financial interest in the outcome of the case.

On a more technical basis, the suggestion ties in with proposed section 73(5ZA), which lists the same four categories that the society identified. Again, it brings continuity to the legislation.

**The Convener:** Sarah Boyack has a question about valuation.

**Sarah Boyack:** It is about the extension from six weeks to eight weeks. Scottish Land & Estates expressed concern in evidence that the process is already difficult, and that just adding another couple of weeks is not likely to help matters. Indeed, it could make the process more problematic when landlords are reluctant to sell and may be deliberately delaying.

11:45

**Peter Peacock:** We are generally in favour of extending such things to give that little bit more time. Whether two weeks would make a material difference is arguable—make it 12 weeks, if you wish. The general point is that it is moving in the right direction; rather than making the process more restrictive, it is making it more flexible. Ministers can further extend that time if it is required or shown to be necessary. We do not have a problem with the proposal.

**Gordon Cumming:** We felt that there was no problem with the extension. Again, if we are creating a system in which people can keep extending the period, that could create problems but, at the end of the day, if that administrative time is required, it is sensible for it to be available.

**The Convener:** Scottish Land & Estates took the opposite view, but I shall not make a judgment on that. The longer the delay, the greater the detriment in terms of finance and the relationship between the owner and the crofting community body. However, the balance of opinion seems to favour the opposite view.
Duncan Burd: I will go off piste here. As you know, I act in the Pairc case. The difficulty that the landlord had was in ensuring that information that he released to the valuer would be kept confidential if the buy-out did not go ahead. That has been a fundamental difficulty for valuers; they approach landlords who are not willing to release information. The Law Society would prefer 12 weeks, but from a personal perspective, it is clear to me that the valuers need that time. When you have been dealing with the Pairc case for 12 years, what is 12 weeks?

The Convener: That point is well made.

Graeme Dey has a question on compensation.

Graeme Dey: Scottish Land & Estates and NFUS have questioned whether it is appropriate for ministers to assess compensation levels, and SLE suggested that advice from experienced valuers should come into the process. Do the panel members have any concerns about the objectivity of ministers and their ability to determine appropriate levels of compensation in such cases?

The Convener: Be careful how you answer that question—it refers to any minister.

Peter Peacock: Ministers are estimable people of the highest quality and therefore their judgment should be trusted absolutely. [Laughter.]

Seriously, at the end of the day someone has to make a decision and, in a democracy, ministers have to take that responsibility. They will be given good advice by their officials and there is a valuation process behind it all, so I do not think that there is an issue.

The Convener: In that case, we move on to the appeal to the Land Court.

Angus MacDonald: Section 92 of the 2003 act allows the Land Court four weeks from the hearing date to give its reasons in respect of a valuation appeal. The proposed amendment will extend that period to eight weeks. Should that extended timescale not be sufficient, the Land Court is to notify all parties of the date on which it will provide a written decision. The explanatory note states that “this will provide assurance to all parties of when the decision will be received.”

Initially, the call for evidence suggested repealing the provision requiring the Land Court to provide its reasons in writing, and the majority of respondents focused on this amendment.

Is the panel content with the amendment as it stands? Does the Land Court have the flexibility to take a number of weeks before it rules on an appeal?

Derek Flyn: After 30 years of appearing before the Land Court, I would hesitate to fix time limits at all. It seems to me that it is for the court to decide on such limits and perhaps they should be contained in the rules of court. What sanction is available to parties if the Land Court does not do as instructed in the legislation? No sanction is included. If there is no result within the eight-week period and no information about when the written statement will be produced, should my friend the new chairman of the Land Court, Lord Minginish, be hung, drawn and quartered?

It seems highly inappropriate that the crofting community right to buy should be a preferred use of the Land Court. That is my personal opinion after 30 years as a practitioner appearances before the court. The court is always in control of what it does. Being told to do something in 28 days requires a punishment if it is not done within that time, so what is the sanction if the court does not abide by the eight-week limit?

The Convener: You put that on the table for us. Does anyone else want to comment?

Peter Peacock: I suppose that we would generally rather have a tighter timescale because we are trying to focus minds but, to be honest, whether it is four or eight weeks is not of the greatest importance, so we are happy to live with the amendment even though we think that it is headed in the wrong direction. As Derek Flyn says, the court is free not to meet the eight-week deadline, so the question is whether the time limit really matters.

Duncan Burd: The appeal relates to valuation, which is a fairly important part of the overall process, so it keeps certainty for the parties. If the Land Court overruns its eight-week limit and has not put its hand up for an extension, does that mean that the status quo applies and the entire procedure collapses? That might be a question for Lord Gill in the first appeal.

Derek Flyn: By adding a time limit, we put something in the law that is perhaps not required.

We have had recent experience of time difficulties. The Land Court issued a judgment just before Christmas on a Crofting Commission case and the commission had 28 days to appeal but there was no time over the Christmas period for it to do much about that. Its first meeting was after the 28-day period.

If the chairman of the Land Court and two members are off on a hearing in South Uist for four weeks, who will respond to an appeal? Should one of the clerks in the office get back and say that it will be done later? It is really strange to me to include a time limit in a bill requiring the court to do something.
Sandy Murray: We are generally of the view that there should be some time limit in the bill, but there should be an ability to apply for an extension to it. The important point is that the parties be kept aware of when the decision will be made.

The Convener: So, in a sense, it is an advisory limit that makes the point that a reasonable time needs to be taken. Can we have a section in the bill that sets a time limit without the additions that have been mentioned?

Derek Flyn: That problem appears in the crofters act where the Crofting Commission is told that it has to do certain things whereas there is a policy plan that has to be approved. That is where such matters should be laid. Likewise, how the Land Court goes about its business should be in its rules and regulations. If it is in the bill, nothing will be able to be done about it if it goes wrong. It will just cause a legal problem that will go into the courts and stay there.

The Convener: Sandy Murray suggests that, to put it in other words, the limit is to try to focus minds. We would assume that the Land Court would try to focus but, if it is in South Uist, how will it focus on a valuation appeal?

Derek Flyn: It will not focus.

The Convener: We will have to ask the minister about that as well.

I have two points about process and outcomes. We have had a short timescale in which to deal with the amendments but, because there has been a general consensus that they move in the right direction, we have been able to cope with that, although we wish that they had been consulted on at the beginning of the process.

I thank the witnesses for the efforts that they have made and the clarity that has been brought to the matters, which will enable us to pin down the minister on one or two points with the general recognition that, for once, “simplification” and “crofting” are two words that can be spoken in the same sentence. Is it likely that the amendments will encourage crofting communities to seek the right to buy and point more people in the direction of taking such action?

Susan Walker: I distinctly hope so. I suggest that all the buy-outs that have taken place in the Western Isles have taken place because of the existence of the Land Reform (Scotland) Act 2003—it was only the coming into existence of that act that enabled that progress to be made. In our little township, we have managed to negotiate the purchase of a very small area of land for a community hub by virtue of the existence of the 2003 act. I think that it is an extremely important piece of legislation, and everyone should welcome any improvement that is made to it.

Peter Peacock: I would like to add something to that and to make a point about process.

If the amendments to part 3 of the 2003 act are agreed to—in general, we hope that they will be—proposed part 3A will have to be amended in line with those amendments, because it was drafted on the basis of the current part 3. That is a technical point, but I wanted to flag it up, because if that does not happen, we will end up with another anomaly.

I completely support what Susan Walker said about the proposed amendments encouraging people. It is very important that the law is credible. If it is believed to be credible by all parties, that will encourage more people to talk to one another in the way that people have been doing in the Western Isles. The proposed changes could make the law more credible in the eyes of communities, because currently the folklore surrounding part 3 is that it is impossible to use, so people should not even try to do so. That discourages communities. The amendments will make the process that bit easier, so communities will be prepared to think about using part 3, if necessary. In turn, that will encourage more discussion between communities and owners of the sort that is taking place regularly in the Western Isles.

The Convener: I thank the witnesses very much for their participation in what has been a comprehensive session on an area in which there is a wide degree of agreement.

The committee has another couple of items that we have to consider in private, so although it would be nice to talk to you all about the price of lamb in Harris et cetera, it would be a good idea if we could clear the room quickly.

The next meeting will be on 25 February, when we will hear from the Minister for Environment, Climate Change and Land Reform on the Community Empowerment (Scotland) Bill. We will also take further evidence on the Government’s wild fisheries review from stakeholders.

11:57

Meeting continued in private until 12:52.
Present:

Sarah Boyack  Graeme Dey (Deputy Convener)
Alex Fergusson  Rob Gibson (Convener)
Jim Hume  Angus MacDonald
Michael Russell  Dave Thompson

Also present: Jamie McGrigor.

Apologies were received from Claudia Beamish.

Community Empowerment (Scotland) Bill: The Committee took evidence on stage 2 amendments relating to the crofting community right-to-buy, and draft regulations on abandoned or neglected land, from—

Aileen McLeod, Minister for Environment, Climate Change and Land Reform, Stephen Pathirana, Deputy Director, Land and Tenacy Reform, and Dave Thomson, Land Reform and Tenancy Unit, Scottish Government.
Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Wednesday 25 February 2015

[The Convener opened the meeting at 09:31]

Community Empowerment (Scotland) Bill: Stage 2

The Convener (Rob Gibson): Good morning, everybody, and welcome to the eighth meeting in 2015 of the Rural Affairs, Climate Change and Environment Committee. I remind everyone to switch off mobile phones as they interfere with the sound system. Committee members will, of course, be able to consult tablets, as will witnesses, in relation to the business of the meeting. We have apologies from Claudia Beamish.

Agenda item 1 is evidence on stage 2 amendments to the Community Empowerment (Scotland) Bill on the crofting community right to buy and the draft regulations on abandoned and neglected land. I welcome Dr Aileen McLeod, the Minister for Environment, Climate Change and Land Reform, and her supporting Scottish Government officials: Stephen Pathirana, deputy director, land and tenancy reform; and Dave Thomson from the land reform and tenancy unit.

Welcome, minister. Do you want to make a short introductory statement?

Aileen McLeod: Yes, I do, convener, if that is okay. I was delighted to be invited to give evidence to the Rural Affairs, Climate Change and Environment Committee on my proposed stage 2 amendments to the Community Empowerment (Scotland) Bill, which seek to amend the crofting community right to buy.

I thank the convener and members of the RACCE Committee for agreeing to take on this not inconsiderable part of the bill on behalf of the Local Government and Regeneration Committee. I also thank all the stakeholders who responded to the call for evidence on the proposed amendments and attended the meetings that my officials held in Edinburgh, Inverness, the Isle of Harris and the Kyle of Lochalsh in December. The evidence from those who participated has been instrumental in shaping the amendments.

I strongly believe that the crofting community right to buy is a tool that can be of great benefit to crofting communities, and it is therefore vital that the amendments, which introduce much-needed flexibility and simplification, are introduced at the earliest opportunity.

Only two crofting community bodies have made use of the crofting community right to buy legislation in more than 10 years. However, we heard at last week’s stakeholder evidence session that even the existence of the legislation has helped to change the culture by encouraging crofting communities to buy their croft land. The framework of the legislation acts as a useful backstop to encourage the parties to get round the table and open negotiations. Indeed, earlier this month, over 80 per cent of the community of Barvas on the Isle of Lewis voted in favour of a community buyout of the Barvas estate, which contains about 300 crofts.

That is why I strongly believe in the principles of the crofting community right to buy, which is designed to empower our crofting communities or to work as a backstop to allow them to negotiate a community acquisition outwith the framework of the Land Reform (Scotland) Act 2003.

However, I recognise that there are elements of the legislation that could cause great difficulties for communities wishing to exercise their right to buy, not least the mapping requirements that communities must fulfil, which stakeholders have highlighted as being particularly onerous. I therefore want to make the legislation more flexible when necessary and more straightforward for community use. I have listened to what stakeholders have told me, and I am introducing a number of measures to address the flaws that have discouraged the use of the crofting community right to buy, including the mapping requirements and how the legislation is used to define a crofting community.

I am happy to answer questions that the committee may wish to ask in response to the amendments.

The Convener: Thank you. I assure you that we have quite a number of questions. To start with, the explanatory notes on the amendments state that they would make the crofting community right to buy

"easier for crofting communities to use, while at the same time continuing to strike a fair balance between the rights of landowners and crofting communities."

Can you expand on that statement and indicate how many crofting communities you think might take advantage of the simplified process?

Aileen McLeod: The proposed changes will encourage more communities to access their right to buy by simplifying some parts of the 2003 act and opening up more options for communities and others. For example, we will simplify the mapping requirements, which have been a key area of
concern for stakeholders. We will also increase the options for communities by expanding the types of organisation that community bodies can use under the act, which will include Scottish charitable incorporated organisations and community benefit companies. In addition, we will remove some of the burdens on communities by, for example, no longer requiring auditing of accounts and allowing ballotting expenses to be claimed under certain circumstances—at the moment, communities must fund their ballot themselves. I believe that the amendments as a whole will encourage communities to think about what they can do to take responsibility for their own futures.

As you will appreciate, it is difficult to estimate the number of communities that will take up the opportunity. However, as I said, even with the 2003 act as it stands, many communities use its existence to encourage dialogue with owners, which leads to purchases outwith the act. I hope that the amendments will encourage even more communities to follow that example.

**The Convener:** I understand the context, which is that the amendments will push out the envelope so that more people can consider the crofting community right to buy. However, we need to define what a crofting community is, so Alex Fergusson has a question about that.

**Alex Fergusson (Galloway and West Dumfries) (Con):** Good morning, minister. Amendment 1 would widen the definition of crofting community in section 71 of the 2003 act. However, as we learned last week in particular, amending the definition of crofting community in the way that is proposed would mean that owner-occupier crofters who are registered on Registers of Scotland’s crofting register would be included but those on the Crofting Commission’s register of crofts would not be.

To a complete outsider like me, that seems a very strange omission. Although we have been told that it is not easy to capture in legislative terms what a crofting community is, oral evidence that we took at last week’s meeting suggested that the proposed provision would produce a distinction between the two registers’ definitions of crofter. Why do you think that it is appropriate to go down that route?

**Aileen McLeod:** The proposed amendments would amend the definition of crofting community in section 71(5) of the 2003 act to address the issue of crofters being excluded by the existing legislation. Alex Fergusson is quite right to say that the proposed amendment would include in the definition of crofting community the owner-occupier crofters who are registered on Registers of Scotland’s crofting register but not those on the Crofting Commission’s register of crofts at this point in time.

The reason for that is that, although the Crofting Commission collects information on crofters, as Susan Walker from the Crofting Commission said at last week’s committee meeting, the commission has no duty to keep owner-occupier details. The Crofters (Scotland) Act 1993 sets out the information that must be on the register of crofts. At the moment, that does not include owner-occupier details.

The Scottish Government intends to work with the Crofting Commission, and we will consider introducing legislative changes to include owner-occupiers within the information that must be included. However, until that process has been completed, it is not possible, under the bill, to rely on the register of crofts for the owner-occupier information. That is why it is proposed that the Scottish ministers take a regulation-making power to expand the definition of crofting community at a later date. Such an expansion could include owner-occupier crofters who are registered in the register of crofts. At the moment, that needs to be carried out in a two-stage process, using the ministerial power to add the owner-occupier crofters who are recorded in the register of crofts at a later date, when a legal matter is addressed by the Crofting Commission.

**Alex Fergusson:** Thank you for that. I think that you have answered the second part of my question.

Is the purpose of the further powers that you propose to take to expand the definition of crofting to include later data, when it is more guaranteed to be correct?

**Aileen McLeod:** Yes.

**Alex Fergusson:** Thank you for answering that point.

Another issue that was raised with us by Susan Walker of the Crofting Commission was that the proposals appear to have removed the residency requirement. She raised the possibility that absentee crofters could influence the outcome of a community ballot, for instance. What are your thoughts on that?

**Aileen McLeod:** On the issue of residency, we have indeed removed the requirement that tenants must be resident within 16km of the crofting community. We have replaced that with a requirement that they be either tenants registered in the crofting register or the register of crofts, or owner-occupiers registered in the crofting register. There have been some issues with the distance and just where it is measured from—from the middle of a crofting community or from the edge,
for instance. That is why we sought to simplify matters, in keeping with the rest of the changes.

As you rightly point out, Mr Fergusson, there are some concerns that the removal of the distance element could lead to an undue influence being exerted by absentee crofters, who would be defined as being part of the crofting community for the purposes of the eventual act.

Under the ballot rules, there are two elements to demonstrating that the community supports the proposals of the community body. First, the majority of those voting are in favour. They must be people of the crofting community. Secondly, the majority of tenants of crofts within the land that the crofting community has applied to buy are in favour. To the best of our knowledge, there are no crofting communities where the majority of the tenant crofters are absentees, which is the only situation where any undue influence could be asserted.

The Convener: I hope that I understand that.

There is a point that I wish to follow up. I suggested last week that, because we are moving to a map-based register, the Crofting Commission register as it is at the moment—just a list, I intend to include information from both the registers. We want to ensure that the Crofting Commission records the information on both the registers as a duty or obligation, rather than just to make the registers complete as they would like. That is where the regulation-making power comes in. Once the Crofting Commission is collecting all the data that we would like, we can ensure that those people are all included in the definition of a community.

The Convener: There is nothing like having an 80-year legacy ahead of you.

Alex Fergusson: That is job security.

The Convener: Yes.

Alex Fergusson: I want to come back on that. Again, I stress that I am a total outsider to crofting law and it is a complete mystery to me—every time I look at it, I am more confused. However, what Mr Thomson has just said suggests that it makes all the more sense to use both registers. As far as I can see, where somebody is registered in the Crofting Commission's register of crofts in a way that is safe and secure and we know that it is the correct information, the amendment will not take that ownership into account, and it seems strange not to do so. Perhaps I am being too simplistic.

Dave Thomson: No, you are correct. The difference is to do with the duty that the Crofting Commission has to collect the details of owner-occupiers. At present, the commission collects those details, but it is not under a duty to do so. Therefore, in theory, it could at any point stop doing so. If the bill relies on that as a measure of who is in a crofting community, we could be left in a situation in which we are asking for information that is not being collected any more. We want to impose a duty on the Crofting Commission to collect that information and then use the regulation-making power to include that as part of the definition.

Alex Fergusson: That helps.

The Convener: I am glad that we have got that cleared up.

Aileen McLeod: That is the work that we are keen to take forward with the Crofting Commission.

The Convener: We will move on to croft land mapping.

Angus MacDonald (Falkirk East) (SNP): Good morning, minister. In your opening remarks you briefly acknowledged the issue of croft land mapping requirements. The amendment that has been lodged with regard to croft land mapping will repeal some existing mapping requirements, such as those relating to sewers, pipes, lines and watercourses. The oral evidence that we heard last week broadly supported the amendment. Derek Flyn stated:

"The transfer of ownership of a Highland crofting estate is a massive problem because it tends to be a jigsaw puzzle with lots of pieces removed."—[Official Report, Rural Affairs, Climate Change and Environment Committee, 18 February 2015; c 34.]
Peter Peacock of Community Land Scotland also warmly welcomed the proposed changes. However, as we might expect, Scottish Land & Estates said in written evidence that the change will affect

“inter alia valuations and details of ownership.”

Are valuations and details of ownership likely to be affected by the amendment? Will you clarify how a fair balance between the rights of the landowner and those of crofting communities will be ensured?

Aileen McLeod: To start with your last question, we are maintaining the balance that is there. Obviously, we are improving the process and providing greater flexibility for community bodies. We are trying to streamline and simplify the crofting community right to buy process in line with feedback that we have received from stakeholders. Landowners will still have the opportunity to put their views across and they will still be entitled to compensation. The factors that protect landowners' interests will still be there.

Some feel that the current mapping requirements are not particularly onerous, as they refer to the fact that the information is that which is “known to the applicant body or the existence of which it is, on reasonably diligent inquiry, capable of ascertaining”.

Such information is easier to obtain for small areas of land, where there is less chance of making technical errors in producing maps, but that is certainly thought to be particularly difficult for large crofting estates. The complexity of the maps that are required when submitting a first application to Registers of Scotland is often cited as a reason for community bodies not engaging with the process in the first place. We are keen to remove the complexity of having to include the details of “sewers, pipes, lines, watercourses or other conduits and fences, dykes, ditches or other boundaries”.

However, the maps provided will still have to be sufficiently detailed to allow checks to be made against the ownership of the land in question and, later on, to allow the land to be valued, should the application be approved.

Angus MacDonald: I think that that covers my question. I should reiterate the point that the majority of those who have contributed evidence have broadly welcomed the amendments.

The Convener: We move on to questions about identification of owners, tenants and certain creditors.

Michael Russell (Argyll and Bute) (SNP): Although Scottish Land & Estates is broadly happy with these amendments, everyone else is somewhat unhappy with them, including in particular experts in crofting law.

At the beginning of the meeting, you correctly pointed out that the bill's purpose is not only to empower communities but to remove barriers to the transfer of assets that have beleaguered crofting for a long time now. However, I put it to you that the amendments contain quite a considerable barrier. The obvious change might have been to put the burden on the owner, but as Derek Flynn has rightly pointed out, crofting law essentially depends on the owner being expected to do virtually nothing and the tenant being expected to do virtually everything, and if you put the burden on owners, they might not respond to it.

Have you considered simplifying things further by, for example, requiring the crofting community body to use the best of its endeavours to find out the information, or ensuring that the provision relates only to material that is publicly available? Sometimes there are difficulties with estate ownership in that the beneficial owner of the estate resides a very long way away and they might not be accessible to a community body that is trying to find out about them.

Aileen McLeod: It is important to identify the owner and creditor. After all, we are talking about the purchase of land, and the community needs to purchase it from someone. As Mr Russell quite rightly pointed out, information is readily available from public sources, but in situations in which the owner cannot be identified, the community can refer the land to what is known as the Queen's and Lord Treasurer's Remembrancer for consideration and the community body can enter into discussions about purchasing the land from it. I also point out that the community body need only identify the owners of sporting interests and their tenants if they are purchasing the tenancies and sporting rights separately from the land.

Nevertheless, it is important to remember that, as this is a compulsory purchase of land, an owner must be identified, and that kind of information is readily available from public sources. As I said, though, where an owner cannot be identified, the community can refer the land to the QLTR.

Michael Russell: I want to press you on that point. The issue is not so much that an owner cannot be identified but that it can be pretty difficult to identify the actual ownership of, say, a Highland estate. The chain of ownership can be very complex, and it would help if you could insert some qualification—either into the bill or in guidance—to indicate that, as you have just indicated, best endeavour is expected to apply and that publicly available information is being sought. On the face of it, it seems a pretty tall order for a community body to find out about not only ownership but creditors of one sort or another if the chain of ownership happens to end up on an
obscure island somewhere in the Caribbean or, indeed, in a Swiss bank vault.

Aileen McLeod: Do you want to take that, Dave?

Dave Thomson: Finding an owner can sometimes be a tortuous process, but we need to keep in mind that, because we are talking about compulsory purchase, an owner must be found if the land is to be purchased. In some cases, that will not be easy, but the bottom line is that it still has to be done.

On the point about strengthening the guidance, I note that, as far as locating sources of such information is concerned, the right-to-buy team is always there to help the community through the process at any point. The land reform review group recommended the establishment of a community land agency that could assist with that sort of thing as well, and that might happen. That aspect is still up for discussion and out for consultation.

Michael Russell: The issue applies not only to ownership but to standard securities over the land. If I am reading this correctly, you are saying that guidance could be issued that could deal with the issue so that the burden of the situation was understood more accurately by the crofting community and that, therefore, concepts such as “publicly available” or “best endeavours” could be considered.

Dave Thomson: To be honest, I am not sure how far we can go in terms of defining reasonable endeavours.

Michael Russell: The term is “best endeavours”. We were quite firmly warned off “reasonable endeavours” by Derek Flyn and, I think, the Law Society.

The Convener: To be clear, we were warned off “best endeavours” and it was suggested that we use “reasonable endeavours”. Duncan Burd suggested that we might also want to include the words “as may be disclosed in either the register of sasines or the land register of Scotland”. —[Official Report, Rural Affairs, Climate Change and Environment Committee, 18 February 2015; c 37.]

That is okay, but the point is to lock down who should be within the public knowledge and to avoid the fraudsters. That means that “reasonable” would probably fit the bill. Is that going to be reflected in the bill or the regulations?

Aileen McLeod: We are happy to take that away and consider it.

Michael Russell: That would be helpful, because it would be an area for possible further amendment.

Aileen McLeod: The only other point that I would make is that Registers of Scotland has a commitment to get all the land on to the register within the next 10 years and we are looking at a full modernisation of the land register. That is not happening now, but it will happen in the long term.

We are happy to have a look at the point that has been raised and come back to the committee.

Michael Russell: Thank you—that would be helpful.

The Convener: Graeme Dey has a question about ballot procedures.

Graeme Dey (Angus South) (SNP): The proposed amendments would get us into a situation in which crofting community bodies could, in certain circumstances, seek reimbursement of the costs that are associated with conducting the ballot, but no such option is made available to a community body under part 2 of the 2003 act. Can you outline why we have that differential treatment?

Aileen McLeod: In a part 2 application, where the community body registers a pre-emption to buy, it has to demonstrate community support for the group’s plans by other means, such as a petition. However, when it comes to purchasing the land, a ballot must be held to confirm that the community wishes to go ahead with the purchase. As the crofting community right to buy involves a compulsory purchase, it goes straight into the purchasing stage of the process. It is therefore important that community support for the purchase is demonstrated. The requirements are the same as far as the ballot is concerned; it is just that there is no pre-emptive element or associated petition to demonstrate support.

The main difference is around the funding for the ballot. As part of the changes to the community right to buy, we are proposing that the running of the ballot and the cost of that is met by the Scottish ministers. With regard to the crofting community right to buy, we are proposing that the community should run and fund the ballot in certain circumstances, seek reimbursement of the costs that are associated with conducting the ballot, but no such option is made available to a community body under part 2 of the 2003 act. Can you outline why we have that differential treatment?

Aileen McLeod: The only other point that I would make is that Registers of Scotland has a commitment to get all the land on to the register within the next 10 years and we are looking at a full modernisation of the land register. That is not happening now, but it will happen in the long term.

We are happy to have a look at the point that has been raised and come back to the committee.

The Convener: Dave Thompson has a question about the Land Court.
Dave Thompson (Skye, Lochaber and Badenoch) (SNP): This is a relatively minor point that concerns an issue that was raised last week by the Law Commission. It is about the people who have a right to refer a question to the Land Court. The proposed amendment from the Scottish Government extends that. The Law Commission said—

The Convener: It was the Law Society of Scotland.

Dave Thompson: Sorry, convener. The Law Society said that creditors should also have the right to refer. In a submission, a member of Community Land Scotland made the following point:

“Creditors with a standard security and right to sell the land are irrelevant in a Part 3 situation, because land in crofting tenure is near valueless”.

However, no other witness seemed to be particularly exercised by that. Creditors are included in section 73 of the 2003 act, but they are not included in section 81. Is there any particular reason for that? Is there any merit in what the Law Society suggests?

Aileen McLeod: Section 81(1)(c) of the 2003 act refers to

“any person who has any interest in the land … which is legally enforceable”,

which would include creditors.

Dave Thompson: So that is the answer. They are included in that broader part of the legislation.

Aileen McLeod: Yes.

Dave Thompson: That is fine. Thank you.

The Convener: We move on to the outcome of an appeal to the Scottish Land Court.

Jim Hume (South Scotland) (LD): Good morning to you, minister, and your officials. The 2003 act allows the Land Court four weeks from a hearing date to give reasons regarding its decision on an evaluation appeal. The amendments to section 92 of the act would make that eight weeks and would allow the Land Court to report on why it was unable to achieve the eight-week target.

What is the rationale for saying that it is beneficial to double the time that the Land Court has and, therefore, the time that people have to wait? Surely, if the court is given double the time, it will take it.

Aileen McLeod: One of the amendments that we propose allows for cross-representations. At the moment, either party is entitled to submit representations to the valuer, and they must be taken into account. It is felt that, to ensure that all relevant information is taken into account, where one party has submitted representations, the other party should be entitled to submit cross-representations. We do not wish to extend the process unduly as a result, so we have imposed a short, two-week period—that is the extension from six to eight weeks—for the parties to consider the initial representations and then submit cross-representations should they wish to do so.

The Land Court requested that the four-week time limit be extended because it can often cause scheduling issues, particularly with complex cases, and it was felt that it was unlikely that a case that had been heard over a number of weeks could be written up in four. However, we also realise that community bodies and owners need clarity about when they might expect a decision. Therefore, although the time limit has been extended and the court has the ability to request that it be extended further, it must give a definite date by which a written decision will be provided.

Jim Hume: What sanctions are available if the Land Court does not achieve the eight-week target? How will you ensure that it reports within that time?

Aileen McLeod: Although there are no powers to impose sanctions should the court not adhere to the timescales, it is felt that it is still important to specify them to give all parties a degree of certainty about when they can reasonably expect a decision. It is not expected that the court will miss those deadlines except in extenuating circumstances.

Jim Hume: So there are no sanctions if the court does not meet the deadline.

Aileen McLeod: That is correct.

Graeme Dey: Do you have any figures for how many times you anticipate the Land Court would miss the target?

Aileen McLeod: I do not have that information with me, but I am happy to take that question away, ask officials to look into it and write to the committee with a response.

The Convener: Are there enough members of the bench of the Land Court to cope with the work in hand? The time that it takes the court to hear such cases might be tied up by, as has been suggested to us, a couple of members of the court being in South Uist to deal with a case there. Should we recommend that there be more members of the Land Court?

Dave Thomson: The change in the timescales was reached through discussion with the Land Court, which was happy with the extension from four to eight weeks and did not ask for a further extension. To be fair, we did not ask whether there was a need to increase the number of members
on the bench of the Land Court. We asked it about its schedule and timetables and what it would reasonably expect to be able to comply with.

The Land Court has given us no indication that it is going to miss the eight-week limit. Up to now, as far as we are aware—we will go and check—it has by and large met the four-week limit, although in some cases that has been difficult. The extension will give the court a bit more time, but it still includes a degree of certainty for communities and owners as to when they can expect a decision—it will not just be “mañana”. There are no sanctions to enforce that, but at least it gives some sort of framework.

The Convener: Dave Thompson has a question on mediation.

Dave Thompson: I am sure that you are aware that Scotland is developing a strong reputation for mediation. There are many good mediation services out there and we should encourage them. I know that the Government has been involved in that.

Does the Government have the legal power to insist on mediation in relation to disputes under the legislation? We heard evidence from Community Land Scotland that a number of agencies that support community groups would like to be able to facilitate mediation but do not have the legal power to do so. That could speed up the resolution of disputes. I am not sure what the position of most lawyers would be—it might do them out of some work, but lawyers can get involved in mediation, too.

Mediation is something that we should be moving towards, generally, throughout all the legislation on everything that we do in Scotland. We should be encouraging mediation at every step. I would like a wee bit of clarification as to how you see mediation working in relation to the legislation? We heard evidence from Community Land Scotland that a number of agencies that support community groups would have the power to do so. That could speed up the resolution of disputes. I am not sure what the position of most lawyers would be—it might do them out of some work, but lawyers can get involved in mediation, too.

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Aileen McLeod: It is recognised that the majority of crofting community purchases have taken place outwith the 2003 act, using a negotiated settlement between the parties. As we know, those negotiations can often be difficult and it is recognised that there may be a need for support.

The Scottish Government is forming a short-life working group as part of the work on achieving the target of 1 million acres in community ownership. That work will inform the potential functions and role of a community land agency, which was one of the recommendations of the LRRG, and one of the agency’s functions could be to assist with mediation. Mediation is voluntary and it is thought that investigating the options through that route would allow for much better consideration of the issues and the best solution.

On Mr Thompson’s point about legal powers, I will be honest and say that I am not sure what the answer is. We will check and get back to the committee on that point.

Dave Thompson: That was very helpful, minister. Mediation is voluntary, but it would help for it to be made clear in the legislation that it is favoured and that the community bodies that are assisting community groups will have the power to suggest it and push people towards it, instead of just leaving it as an ephemeral thing.

I appreciate your response, minister, and I look forward to hearing from you once you have checked the situation.

The Convener: Thank you. We will move on from crofting community bodies to general community empowerment in relation to abandoned and neglected land.

Sarah Boyack (Lothian) (Lab): Thank you for sending us the draft regulations for this part of the bill, minister. That has been incredibly helpful. I am sure that I will not be the last member to ask questions on this part, because the committee spent quite a lot of time discussing the issue before our stage 1 report. That was partly because of the weight of the evidence that we received from key stakeholders, but it was also because of the policy intent of the bill.

The policy memorandum is clear about the Government’s objective. It states:

“Land that is neglected or abandoned can be a barrier to the sustainable development of land”

and that the bill’s objective is to enable communities to have the opportunity to buy that land when other routes to getting access to its better use have failed. We have concerns that the phrase “neglected and abandoned” is mentioned in the bill, but sustainable development is not.

I want to kick off on the definition of “neglected and abandoned”. In her response to us, the minister said that “neglected” and “abandoned” take “their ordinary meaning” and are not to be defined in the bill. To paraphrase, she basically said that it is obvious to everybody what the terms “neglected” and “abandoned” mean.

My worry is that the matter is not that straightforward, whether the area is urban or rural. Everybody says that it is obvious in an urban area but not so obvious in a rural area. I have represented an urban area for quite a while. Even in that context, illustrating whether land has been neglected or abandoned is not necessarily straightforward.
You have said that circumstances will be set out in the regulations, but if a community wanted to establish that something is neglected, for example, what would happen if minor works had taken place on the land? What about works just to make a building safe and secure but not necessarily used? What about the question of whether planning applications are regularly submitted? There are questions about the issues of abandonment and neglect and how bad something has to be before ministers would consider it.

It is a concern that “neglected” and “abandoned” are not defined in the bill and that the policy ambition is to achieve sustainable development but that does not appear in the bill. What do you think about the representations that we made in our committee report? Why have you not felt able to date to take them on board and to agree to putting a statutory definition in the bill and using the words “sustainable development”, as you did in the policy memorandum?

Aileen McLeod: Perhaps I can first make some general points on the draft regulations. At the moment, the draft regulations illustrate the sort of thing that could be put into the regulations. We are trying to bring clarity to neglected and abandoned land, and we have tried to take on board the committee’s concerns. If the committee has any suggestions or ideas about what else could be put into the regulations, I will be very happy for you to feed them into the Government at this stage.

The introduction of proposed part 3A of the Land Reform (Scotland) Act 2003, which relates to the right of communities to buy land that is abandoned or neglected, even against the wishes of its current owner, is a very important step. It will allow land that is neglected or abandoned to be brought back into productive use while ensuring that it is developed in a sustainable way for the benefit of the community. I accept that that is not as big a step as some would hope for, but it is an important one, as it will allow communities with clear plans for neglected or abandoned land to make a case for community ownership.

There is the example of the Cuningar loop. That is not exactly the same thing, but it provides an example of the sort of opportunity there can be from the change that can be made to the land. The Forestry Commission has brought into use a derelict site at the heart of the Clyde gateway area, where it has created an inspiring and accessible riverside woodland park on the boundary between South Lanarkshire Council and Glasgow City Council.

As I said, that situation is not exactly the same, but it is an example of the kind of opportunity that communities could have to change land for the better by using the proposed power in relation to abandoned or neglected land. The proposal is not only a demonstration of the Government’s ambition to further community empowerment; it is another step in Scotland’s land reform agenda.

10:15

We have listened carefully to the committee’s concerns and those that have been raised by stakeholders. We have taken legal advice on whether amendments could be made to the bill to address the concerns that the committee raised in its stage 1 report. There are several aspects that we must take into account in deciding what appears in the bill. We must ensure that the amendments to the bill are within the competence of the Scottish Parliament. That includes ensuring that they comply with the European convention on human rights, which provides a right to peaceful enjoyment of possessions. We must also ensure that the right to buy will be compatible and concordant with the law in pursuing a legitimate aim in a proportionate way.

I want to be as helpful as I can in helping the committee to understand the legal context. We will actively consider whether amendments can be made to the definition of eligible land to include land that is not neglected or abandoned but which is still causing problems.

Sarah Boyack: Thank you very much. That was very helpful.

Quite a few stakeholders have raised an issue about the term “sustainable development”. I note what you said about legal force and legal understanding, but the term “sustainable development” regularly appears in Scottish Government bills. If the terms “neglected” and “abandoned” are used and the objective of ensuring sustainable development is seen in the use of the land, what could the legal objection be? “Sustainable development” is a term that is understood and is being used in the courts.

I very much welcome the fact that what is proposed is a step on the way to ensuring that land is used in a way that supports sustainable development and I support the Scottish Government’s intentions, but the worry is that, if clear definitions are not provided and the term “sustainable development” is not included in the bill, that might cut across the ambition that you have in the policy memorandum to make a difference in many of our communities.

Aileen McLeod: I will ask Stephen Pathirana to come in on that.

Stephen Pathirana (Scottish Government): Thank you, minister.

A lot depends on exactly what is changed in the drafting. The present proposals relate to neglected and abandoned land. Depending on what the
committee recommends, if we were to remove the reference to neglected and abandoned land from the bill, that would represent a complete change in the scope of the proposal. It would mean that, rather than covering just neglected and abandoned land, it would cover all land. That is a completely different proposal.

When such a fundamental shift is made, it is necessary to think carefully about all the checks and balances that are in place that make legislation compliant. We would be dealing with a different and new proposal.

The proposal focuses on sustainable development in the context of what the community proposes to do with the land. When you talk about including the term “sustainable development” in the bill, if it is about what the community wants to do as opposed to the condition of the land, that is a fundamental shift in the scope of the proposal, and one that changes its meaning.

Sarah Boyack: If you were to be able to define the terms “neglected” and “abandoned” in the bill, would that not go some way to reassuring the communities that are worried that the test of whether land is neglected or abandoned might cut across what the Government hopes to do in giving land a use that supports sustainable development?

Stephen Pathirana: We have thought very hard—and we continue to do so—about the merits of defining “neglected” and “abandoned” in the legislation. Any attempt to define those terms would invariably narrow the definition. I think that the question that the committee is interested in is how broad the criteria for land that is eligible can be made.

As the minister said earlier, we are thinking about whether there is scope to go beyond abandoned and neglected land to other land with which there are problems. We need to look at whether we can introduce amendments that would take the scope further than it is at present but at the same time not extend it to all and any land in Scotland.

Although we are not including a definition in the bill, the idea is that we can introduce regulations that set out what issues ministers should consider. That will help to define what we mean by neglected and abandoned land. In a way, that has greater flexibility because, if it is found not to be working quite as well as Parliament wants, it can be amended. If we included a definition in the bill, it would be very hard to make changes to it.

Michael Russell: This is a very important discussion, and we are all trying to find the right solution. It might be helpful to step back for a moment and ask, “What is the right solution?”

The right solution is to enable communities to possess—to buy—land that they wish to use for purposes of sustainable development. If we get this wrong one way or the other, that will not happen. It will not happen because it will be frustrated by lawyers who want it not to happen and owners who do not want to sell. We need clarity in case the bill is challenged, because judicial review does happen and reference under ECHR could happen. If we do not get it right, this is the proposal that will prevent communities from participating in the right to buy.

The question is this: is it better to include a definition in the bill and have it challenged but at least be absolutely clear about the meaning, or is it better to leave the bill as giving the words what you have euphemistically called “their ordinary meaning”—though they are capable of many ordinary meanings—and another legal meaning?

That is really quite worrying, because there is a specific legal meaning to “abandoned and neglected land” that you are not applying here. In those circumstances, if you leave the bill as it is, will the challenges be successful because of the vagueness in the legislation? In the greater part—it was not unanimous—the committee believed that it was very important that we tied the definition down as clearly as possible so that communities could use the legislation effectively. That is what we are still struggling to do.

While I am pleased to see these fundamental and radical steps to change land ownership, there is an issue about whether they should be defined in secondary legislation or whether they should be defined clearly as a legislative intention of the Parliament in primary legislation. I do not think that we are there yet; although the regulations are helpful, it is important that we get a clearer definition in the bill.

What Sarah Boyack has been trying to do, quite correctly, is point to sustainable development as one possible area in which we could get a clearer definition. I think that amendments will be brought forward on the issue, and I would urge the Government to think about that, because we are all trying to help each other to get absolute clarity so that the intention for a radical step forward will be fulfilled in practice.

We know from the land reform legislation that many of the difficulties that existed, including some that I have been dealing with in recent weeks, are because the legislation is not as clear as it should be and there are difficulties in operating it. We have learned from that, so the question is: can we keep moving in this legal debate?

My contribution to that debate is that I think that we need a clear definition and we need the term
“sustainable development”. Work that has been done by Community Land Scotland to suggest a way to frame the definition should be seriously considered by the Government’s lawyers. I think that there will be an amendment at stage 2. If that amendment were to be seriously considered by the Government’s lawyers, we might get ourselves to the stage at which we could all eventually agree.

Aileen McLeod: We appreciate the committee’s support and its work in the area, and we are actively considering what is possible from the Government’s side. The consultation on the draft land reform bill asks the question:

“Do you agree that there should be powers given to Scottish Ministers or another public body to direct private landowners to take action to overcome barriers to sustainable development in an area?”

The responses to the consultation are currently being analysed, but we are considering right now what other amendments could be lodged.

Michael Russell: That is helpful, minister. I am grateful for that. You are saying that the debate can continue and that you will look at possible amendments and keeping thinking about how we can make the proposal effective so that it does not present a difficulty but fulfils your policy intention, which is warmly endorsed by the majority of the committee.

Aileen McLeod: Yes.

Dave Thompson: It strikes me that the broader the definition, as outlined by Stephen Pathirana, the more room there is for challenge, but that is counter to what you have said. The people who are happy with the current proposal are the ones who do not want change in relation to a community’s right to buy land, and that is significant. We should look at the folk who support the change and look at the folk who are content with the current situation. That is just a comment to kick off with.

Minister, I would like a wee bit of clarity on what you said about the legal advice. You mentioned the competence of the Parliament and the ECHR. You said that, if the definition was on the face of the bill, there would be greater difficulties and problems for us. I do not understand—I am not a lawyer, so maybe Stephen Pathirana can help me with this—why you think that the definition would create problems if it were on the face of the bill but not if it appeared later in regulations. What is the difference between those two things? Why are you confident that you can put something in the regulations that you feel you cannot put in the bill?

Stephen Pathirana: First, I am not a lawyer either—let us get that clear.

Dave Thompson: My apologies.

Stephen Pathirana: Nevertheless, I will do my best to answer your question.

There is still some confusion about the different things that we are talking about in relation to the proposal. There is the issue of the type of land that we are talking about and how the words “neglected” and “abandoned” relate to the land. There is then the issue of whether the community has a proposal and a case for taking ownership of the land. Those are different things.

When we are talking about the type of land, the question is about what definition describes the land as it is now. My initial understanding is that the committee was suggesting that, if we removed the words “abandoned and neglected”, the provision would then mean all land. However, all land is very different from a specific class of land. Even when we are talking about crofting communities, we mean a specific type of land with specific rights that already apply in relation to it—it is different from other land. We need to be clear about what land we are talking about, and we are using the words “neglected” and “abandoned” to describe the land that we mean.

Although I accept that we are talking about the normal definition of “neglected” and “abandoned”, which ultimately—as with all groundbreaking legislation—will be defined by case law, we anticipate that that definition will probably be broader than any definition that we would articulate. Invariably, when you start trying to articulate things, you end up narrowing them down—that is the risk. We could define it down, but the definition would be narrower rather than wider.

It would be a substantive change in direction if the proposal were to make the sustainable development of communities the key factor in driving decisions about which land was eligible. That would be the communities deciding, which would be a huge change. In developing the current proposal, all the checks and balances in relation to “neglected or abandoned” land have been carefully thought through. Essentially, that would all have to be thought through again.

10:30

One could argue that, in the context of the consultation on land reform, the proposal for giving ministers the power to intervene where the actions of a landowner are detrimental to the sustainable development of communities—in which the committee is really interested—requires a lot of careful thought about how we design a mechanism that is compliant and that pays regard to landowners’ and communities’ interests. From a landowner’s point of view, such an intervention must be adequately foreseeable. They would have
to understand what they must do to bring their land back into good use and make it sustainable. Making a shift like that would be a huge change at this stage in the process.

We can go away and look at the scope for bringing greater clarity to the provision on “neglected or abandoned” land and for extending it to other land with which there are problems. However, extending the provision to all land is a bigger step.

Dave Thompson: That is very helpful and useful. I apologise for calling Mr Pathirana a lawyer earlier.

Stephen Pathirana: I will take it.

Dave Thompson: As we have said, the committee has proposed that the provision be taken out altogether, but I can see that there might be arguments for leaving it in.

Let us assume that the provision—which keeps things tight and does not extend to all land; I fully understand that point—is kept in the bill. Does it not logically follow that, if the reference to “neglected or abandoned” land is on the face of the bill, having a definition in the bill would strengthen your hand even more, especially if that definition made it clear that the whole purpose of the provision was to do with sustainability and sustainable land?

Rather than just referring to “neglected or abandoned” land in the text of the bill—which in a sense clarifies that there is a tight definition—with the regulations following, it would strengthen the bill and make things very clear to everybody if we also included the sustainable development aspects in the text of the bill. That would mean that we were really defining the concept and being much more precise. Am I right about that?

Stephen Pathirana: Possibly. Putting a clear definition in the bill would certainly make the provision more precise, but it would invariably be narrower. It would have to relate to the sustainability and condition of the land as opposed to the sustainable aspirations of the community, and those are different things—there is a big difference.

There is scope in regulations to allow us greater flexibility to get the definition right over time in a way that putting a definition in the text of the bill would not. Including a definition might pin the concept down and offer less flexibility.

Dave Thompson: I take that point, but the whole purpose of the provision is to ensure that land is used to its best advantage, and that sustainable development of land is progressed so that land is not just lying there doing nothing and not benefiting anyone other than someone who has bought it as an investment.

I agree that the definition would have to relate to the sustainable development of the land, and that is fine, but that would be in the interests of the community. If there is a bit of land lying there doing nothing because someone has bought it as an investment to hedge against inflation or whatever, and the community would like more housing, business parks, hydro schemes or something like that, the community would be able to come in and argue that the land was not being used sustainably and that it had a way of ensuring that the land would be used in a sustainable way. The community could present a business plan and give all the detail—along the lines of the Pairc judgment, for instance.

I am quite comfortable with the definition being in the text of the bill to make it clear, because what I have described is what we are seeking to do. A lot of land in the Highlands is sterilised and is not being used to best effect, and we need to change that.

Stephen Pathirana: Can I come back on one small point, convener?

The Convener: Yes, briefly. It is a debate. Alex Fergusson and Mike Russell want to come in, and so do I.

Stephen Pathirana: The provisions that we are discussing do not apply to the crofting districts. In essence, the crofting community right to buy is a broader right than that which would apply in other areas. In all the situations in the Highlands that Dave Thompson mentioned, the crofting community right to buy is the vehicle that would be used.

Dave Thompson: Not all of the Highlands is under crofting tenure.

The Convener: Exactly—only some districts are.

Alex Fergusson can go next.

Alex Fergusson: First, I thank Mr Pathirana for confirming—I think—that the committee’s recommendations in the area that we are discussing would, in effect, introduce an absolute right to buy for all land, which is what is creating the difficulty—

The Convener: No.

Alex Fergusson: Well, Mr Pathirana said that the recommendations would open up the possibility of the right to buy covering all land. Is that right?

The Convener: That was a mistake on his part.

Stephen Pathirana: If we do not provide a definition of the land, we will, in effect, be talking about all land.

Alex Fergusson: If you did as the committee recommended, that would be the case. Is that what you are saying?
Stephen Pathirana: If we removed the definition of “neglected or abandoned” land.

Alex Fergusson: I thank you for that clarification, because that is why I dissented from that section of the committee’s report.

My question is to the minister. Can you confirm that it remains the Government’s intention that the power should be used only as a last resort when all other processes have failed?

Aileen McLeod: Yes.

Alex Fergusson: Thank you. That is all that I need to know.

Michael Russell: Perhaps I should have come in before Alex Fergusson, because I wanted to say to Stephen Pathirana that I do not think that the committee intended that the recommendation to remove the words should open up all land to purchase. I can see that that might be the logical inference, but it was not the committee’s intention. I think that I am right in saying that about the recommendation from the discussion that took place.

The committee’s intention was to ensure that the opportunity would exist to purchase land that was “abandoned or neglected”, but getting a definition of that land has proved to be very difficult. I do not think that there is any intention to open up all land for purchase. Some might argue that that would be the right thing to do, but that is another debate.

The committee’s intention is to fulfil the Government’s policy intention, and the debate is about whether further definition of those words is required in the bill in order to do so. That is what we should focus on. There is no intention to go wider and, if that was to become the debate, that would—as we have just seen—not help the Government to fulfil its intention. Criticising what the committee did is perhaps not the road to go down.

The Convener: I see that the minister takes that point.

I want to focus specifically on the fact that we are talking about “eligible land”, as has been mentioned. “Eligible land” excludes agricultural land that has been kept in good condition, low-intensity-use land that has been agreed and so on. The term “abandoned or neglected” therefore applies to a limited amount of land: it does not apply to all land. Can you confirm that, please?

Aileen McLeod: That is set out in the draft regulations, which list the matters to which we must have regard in deciding whether land is eligible. They fall into three broad categories. The first is “the physical condition of the land and its effect on the surrounding area, public safety and the environment”.

The second is “the use of the land, or lack of use as the case may be, including whether the land is a nature reserve, held for conservation purposes or used for public recreation”.

The third refers to “any designation or classification of the land, such as land which has been classed as contaminated land, or buildings which are listed buildings or scheduled monuments.”

The Convener: Thank you for that confirmation. It is a good explanation of areas in which there should be some discretion so that assessment can be made.

Minister, you should be aware that, whatever arrangements are finally agreed by the Parliament, those who have a landowning interest will cite the ECHR. In an article in this month’s Scottish Field—a 26-page assessment of land reform—the editor, Richard Bath, states that “it is almost inconceivable that any reform will not be challenged legally.”

We live in a world in which, whatever move is made, we can expect that some means will be found to challenge it in court—that is the reality. If that is true, we are moving into an area in which people will take entrenched positions because they are not prepared to accept the situation. Before the ECHR, the crofting right to buy was accepted, but it looks as though there will be a challenge to the community right to buy whatever happens.

When are you going to respond to our stage 1 report? We need to see that response. In the report, human rights and equalities are dealt with in the following way. The ECHR is set against article 11 of the International Covenant on Economic, Social and Cultural Rights. Malcolm Combe suggested that, when the two are put together, we are led to talk about matters that lead to thinking about property and the sustainable use of land. If we are going to fulfil the requirements for food, housing, sanitation and so on, we must see the land as being sustainable. We are trying to suggest that it would be a good idea to find a way in which to test the ECHR against the United Nations covenant. If a court is faced with a situation in which someone has challenged our decision on the basis that the ECHR has been breached, will you be prepared to push the covenant that the UK has been signed up to since the 1970s as overriding the ECHR?

The Scotland Act 1998 says that we are responsible for ECHR issues. Given that there will almost certainly be challenges in the courts, is it not time that we went back with something that overrides the ECHR?
Stephen Pathirana: We can get back to the committee with a further response to that question. In all cases, we have to find a way of articulating clearly the public interest and balancing it with the rights of individuals and communities in any process such as that involving the crofting community right to buy. The proposal on neglected land tries to do that.

The committee should reflect on the fact that those things are probably all possible, but we need to make sure that the checks and balances that are set out in a proposal achieve the outcome in a fair and balanced way. In what we have proposed so far on neglected land, we think that we have struck the right balance, subject to some further thinking about the definition of “neglected or abandoned” land. If we were to broaden the proposal out to other areas where we wanted to take action, we would need to think that through in a broader context. We are thinking about the issues in the context of the land reform consultation and where else the Government might choose to go.

Aileen McLeod: I reassure the committee that we are considering all of that right now to see how we can broaden the definition. The Government’s response to the committee’s stage 1 report was sent this morning, so the committee should have received it.

The Convener: Thank you for that. I am just suggesting that you should take seriously the context in which we are working. If we are to achieve something lasting, we will have to take into account the moving platform on which we work. The consultation document talks about land reform in Scotland being for the common good—it uses a phrase like that. That suggests that the common good overrides that of individual current landholders. It seems to me that, if that balance is to be reflected in the proposed amendments on the definition of “neglected or abandoned” land, you should take that on board.

Aileen McLeod: We are happy to do so.

The Convener: Do members have any further points to make? I hope not, because we have gone round the houses on the issue. I hope that this has been a constructive way of dealing with the matter.

Minister, I thank you and your colleagues for your evidence. I hope that the Government will be able to meet our wishes and that, when we read your response, some of it will become clearer.

We will have a short suspension because we have a big group of witnesses coming in and we need a wee break.

10:46

Meeting suspended.
COMMUNITY EMPOWERMENT (SCOTLAND) BILL

Explanatory Notes

Introduction

These notes have been prepared by the Scottish Government in order to assist the reader of the amendments and to help inform debate on them. They have not been endorsed by the Parliament. The notes should be read in conjunction with the amendments and the sections of the Land Reform (Scotland) Act 2003 which they propose to amend.

Policy aim of Part 4 amendments

The attached proposed amendments amend the Crofting Community Right to Buy provided for in Part 3 of the Land Reform (Scotland) Act 2003.

The proposed amendments are intended to provide greater flexibility for community bodies and streamline the crofting community right to buy process in line with feedback received from stakeholder groups.

Background

It is over 10 years since the introduction of the Crofting Community Right to Buy provided for in the Land Reform (Scotland) Act in 2003 (“2003 Act”).

During these 10 years, the Scottish Government have observed how the provisions have worked in practice and, with stakeholders’ assistance, have identified ways in which they can be improved. A range of proposed amendments are summarised below. The purpose of the proposed amendments is to make the Crofting Community Right to Buy easier for crofting communities to use, while at the same time continuing to strike a fair balance between the rights of landowners and crofting communities.

A Call for Evidence, published on 13/10/2014, sought views from key stakeholders on these proposed amendments. This was followed by a number of face-to-face meetings with key stakeholders which took place in Edinburgh, Inverness, Isle of Harris and Kyle of Lochalsh during December 2014.

The Call for Evidence can be viewed at:


1 Amendments available here:

2 Amendments available here:
Responses to the Call for Evidence can be viewed at:


**SPECIFIC AMENDMENTS – PART 4 OF COMMUNITY EMPOWERMENT BILL**

**Sections 71 and 72 - Legal structure of community body**

The proposed amendments will broaden the range of legal organisations that can be a crofting community body (CCB). This is to include Scottish Charitable Incorporated Organisations (SCIOs) and Community Benefit Companies (BenComs) that meet certain requirements. Currently a CCB must be a company limited by guarantee that meets certain requirements.

This proposed amendment will provide greater flexibility for community bodies to adopt a legal entity which best suits their circumstances.

This proposed amendment will also bring Part 3 into alignment with proposed amendments to Part 2 (community right to buy) and Part 3A (the proposed new right to buy abandoned or neglected land without a willing seller) of the 2003 Act.

In addition, the proposed amendment will insert a section 71(A1)(b) which will give Ministers a regulation-making power to provide for different types of bodies to be eligible crofting community bodies.

**Section 71 - Removal of provision for auditing of accounts**

The proposed amendments remove the requirement that a company limited by guarantee can only be a CCB if its articles of association include provision for the auditing of accounts. Such a company will still be required to make proper arrangements for its financial management.

The reason for this proposed amendment is that it has been indicated by some community bodies that they believe they are required to have formal audits of accounts prepared in order to comply with the 2003 Act, which is not the case.

**Section 71 - Amend definition of ‘crofting community’**

The proposed amendments would amend the definition of a ‘crofting community’ in section 71(5) to capture more crofters who are excluded by the existing legislation. It is recognised that the existing definition of a crofting community may cause difficulties in a number of ways and may not include all those who would consider themselves to be members of the crofting community.

The proposed amendment includes owner-occupier crofters who are registered on Registers of Scotland’s Crofting Register within the definition of the crofting community, but does not include those on the Crofting Commission’s Register of Crofts at this point in time. The proposed amendment gives Ministers a regulation-making power to expand the definition of crofting community at a later date. Such expansion could include owner-occupier crofters who are registered in the Register of Crofts.
Section 73 - Croft land mapping

The proposed amendments simplify the mapping information that a CCB is required to provide about the land that it wishes to purchase. The existing mapping requirements are recognised as being particularly complex as a CCB is required to map areas including all sewers, pipes, lines, watercourses etc. In addition to the map, the CCB is also required to provide a written account of all such features on the land, and their locations.

The proposed amendment will simplify mapping requirements to a more reasonable level than current requirements, because it has been evident during stakeholder consultation that the current requirements are considered to be particularly complex. The required information to be on the application form will still be set out in Ministerial regulations, but these regulations are no longer obliged to specify that all rights and interests in the subjects of the application are identified – instead they must specify that all rights and interests in the subjects of the application that are known to the community body are specified. In addition the requirement that the required information must include sewers, pipes, lines, watercourses or other conduits and fences, dykes, ditches or other boundaries in or on the land will be removed.

Section 73 - Public notice of application

The proposed amendments will amend the way in which Ministers are required to give public notice of an application. Current provisions require Scottish Ministers to publish a public notice advertising the crofting community body’s right to buy application under Part 3 of the 2003 Act. The 2003 Act requires the advertisement to be placed in a newspaper circulating in the area where the land or interests the crofting community body wishes to acquire are located, and in the Edinburgh Gazette.

The intention is that Ministers should still be required to give public notice, by advertisement, of an application by a crofting community body under Part 3 of the Act. The proposed amendments provides that the form of the advertisement be set out in regulations made by Ministers.

This proposed amendment provides greater flexibility and allows more appropriate forms of advertisement to be used according to the individual circumstances of the case. It might be the case that advertising in the local church or village hall will reach a wider community audience than an advert placed in a newspaper circulating in the local area.

Sections 74(1) and 97B - Identification of owner, tenants and certain creditors

The proposed amendments add to the conditions set out in section 74(1) of the Act to provide that, in order to consent to an application under Part 3, Ministers must be satisfied that the owner, tenant, person entitled to sporting interests, or creditor in a standard security in relation to that land or interests, are correctly identified in the application submitted by the crofting community body.
This proposed amendment will ensure that all relevant parties to the application are correctly identified in order for the application to proceed. This will also ensure that all parties to the application are fully involved in the process and will be given the opportunity to comment on the application. This will ensure that Ministers will have received all available evidence on which to make a decision on the crofting community right to buy application.

Section 75 - Ballot procedure

(1) A ballot of the crofting community must be undertaken by the crofting community body in order to indicate where or not there is community support for the proposal to buy the land to be purchased under Part 3. Ministers already have power to make regulations setting out how the ballot is to be conducted.

The proposed amendments inserts a specific power for Ministers to make regulations setting out the information that the crofting community body is required to provide to Ministers about the ballot, or any consultation that the crofting community body may have held with the community about their application.

(2) The crofting community body are already responsible for paying for the cost of the ballot. The proposed amendment expressly states that the crofting community body is liable for meeting the expense of conducting the ballot.

(3) The proposed amendments also insert a power for Ministers to make regulations setting out circumstances in which the CCB may apply to Ministers to recover the cost of conducting the ballot.

The proposed amendments provide clarity and confirm that it is the crofting community body who is liable for the cost of the ballot, and that the CCB may, in certain circumstances, seek reimbursement of the cost of conducting the ballot.

The proposed amendments also give Ministers flexibility to request additional information in connection with the ballot, if Ministers feel that additional information would be helpful in the decision-making process.

Section 76 - Right to buy exercisable by only one crofting community body

When more than one CCB applies to purchase the same land, Ministers must decide which application is to proceed and the other applications are extinguished.

If an application is extinguished Ministers have to notify the owner of the land, person entitled to the sporting interests or tenant, as the case may be, and the CCB of this.

The proposed amendments provide that Ministers should also be required to notify each person who was invited to give views on the applications that have been extinguished.

This will ensure that all parties to the applications who were invited to comment on the applications are notified when an application is extinguished.
Section 81 - Reference to Land Court

Currently, the 2003 Act lists certain persons who have a right to refer a question to the Land Court at any time before Ministers reach a decision on an application.

The proposed amendment extends the list of certain persons who have a right to refer a question to the Land Court before Ministers reach a decision on an application.

The proposed amendment will ensure that all parties to an application have the right to refer a question to the Land Court.

Section 88 - Valuation

(1) In carrying out the valuation of land to be purchased by the CCB the valuer is required to invite the landowner, person entitled to the sporting interests in the land, or tenant as the case may be, and the CCB to make representations as to the value of the land.

Where such representations are made the proposed amendments provide that there should be an opportunity to make counter-representations.

(2) The proposed amendments provide that the timescale for valuation of the land to be purchased is increased from 6 weeks to 8 weeks (this can still be extended by Ministers) to provide the valuer with more time to complete the valuation and carry out the counter-representation step.

This will ensure that the valuer takes account of all parties’ views to the application, is furnished with all information relevant to the valuation, and has adequate time to complete the valuation process.

Section 89 - Compensation

The proposed amendments extend the power for Ministers to make an order about the compensation payable by a CCB in relation to an application to purchase land. Compensation is payable to those who have incurred loss or expense in connection with the crofting community right to buy application to recover the amount of that loss by way of compensation.

This will enable Ministers to make further provision, should it be considered appropriate, about the compensation payable.

The proposed amendment will enable Ministers to make further regulations, should they be required, to ensure those who have incurred loss or expense in connection with the crofting community right to buy application are properly compensated for the loss or expense.

Section 92 - Outcome of appeal to Land Court

Where there is an appeal to the Land Court in respect of the valuation, the Land Court is required to give their reasons in writing within 4 weeks of the hearing date. The proposed amendments change the 4 week time limit to 8 weeks.
In addition, the proposed amendments provide that, should the Land Court be unable to meet the 8 week time limit, the Land Court is to notify all parties of the date on which the Court will provide a written decision.

This proposed amendment eases the burden on the Land Court and gives the Land Court more flexibility when scheduling its caseload. In providing a date on which the Land Court will report should it be unable to report within 8 weeks, this will provide assurance to all parties of when the decision will be received.
WRITTEN SUBMISSIONS TO THE RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE AT STAGE 2

Community Land Scotland – The Crofting Community Right to Buy
NFU Scotland
Highlands and Islands Enterprise
Community Land Scotland – Crofting Community Right to Buy - Evidence on proposed Scottish Government amendments to Part 3 of the Land Reform (Scotland) Act 2003
Community Land Scotland – Further evidence on draft regulations on the question of ‘abandoned or neglected’ land
North Harris Trust
Law Society of Scotland
Crofting Commission
Scottish Land and Estates
Community Land Scotland supplementary evidence
Written submission from Community Land Scotland

The Crofting Community Right to Buy - February 2014

Further Evidence to the RACCE Committee in response to Scottish Government proposals to amend Part 3 of the Land Reform (Scotland) Act 2003.

Introduction

Community Land Scotland, among others, was consulted by the Scottish Government in November on their then proposals to amend Part 3 of the Land Reform (Scotland) Act 2003. This submission of evidence is that sent to the Scottish Government at that time.

Generally speaking, and while recognising concerns raised by the RACCE Committee in their Stage 1 Report about the process followed which give rise to consideration now about Part 3 of the Land reform Act, Community Land Scotland would want to re-assure the Committee that the Scottish Government consultation has been well received across the range of stakeholders and has provided ways forward which appear well targeted. We would not wish concerns about procedures to prevent the proposals for change the Committee is now having the opportunity to scrutinise, to prevent the welcome improvements that are being proposed.

1st November 2003 Evidence to Scottish Government

Community Land Scotland is pleased to be able to respond to the consultation questions on the above consultation in the following terms.

Community Land Scotland (CLS) strongly advocates the need for changes to Part 3 of the Land Reform (Scotland) Act 2003 in order to make its use simpler and fairer, while maintaining appropriate rigour to test what is in the public interest and furthers sustainable development.

CLS is conscious that others have insights into the challenges of the current Part 3. In particular Highlands and Islands Enterprise, but also experienced advisors to community owners, such as Simon Fraser. CLS is aware that Simon Fraser submitted evidence to the Local Government and Regeneration Committee on Part 3 and we commend his analysis of the issues and urge it is taken most seriously. In addition, John Randall, of Pairc Trust who have unrivalled experience of the practical issues, also submitted evidence in a personal capacity, and again we commend that evidence.

CLS has gained particular insights into the Pairc case and how the final reconciliation of positions represented in the level of agreement now reached between owner and community was achieved. Though yet to be finally concluded, the advanced stage of agreement now achieved was only reached by a process of voluntary mediation between the parties. While on this occasion that was possible, partly because of the physical location of the parties and the `mediator’, it is not appropriate to leave such matters to chance and it would be helpful if this facility was available to all communities and owners in future, should the need arise. This points
to a simple power being given to Ministers to be able make suitable arrangements for such mediation, if requested to do so. That power currently does not exist and would be a helpful addition to wider simplification measures around Part 3 as set out in the Appendices to this submission (this could have application to part 2 as well).

For completeness, we attach as Appendices previous evidence we have given on issues around Part 3, much of this is overtaken by the current proposals, but not all of which have been picked up by the questions in the consultation.

CLS will be happy to provide such further additional information or clarifications as may be requested.

Responses to consultation questions

**Question 1.** The Scottish Government proposes to allow SCIOs and BenComs to be crofting community bodies in addition to companies limited by guarantee. Do you agree with this proposal? Are there any other types of body which you think should be permitted to be a crofting community body?

Agree with proposal, with Ministers having a power to add such other types of body as they may see fit to give future flexibility.

**Question 2.** The Scottish Government proposes removing the requirement for the auditing of accounts to be included in a company limited by guarantee’s articles of association in order for it to be a crofting community body. This proposal would bring Part 3 of the Act in line with proposed amendments to Part 2 of the Act. Do you agree with this proposal?

Agree.

**Question 3.** The Scottish Government proposes expanding the definition of a crofting community. Do you agree with the proposal? Do you think this is a more accurate description of a crofting community?

Generally agree. However, very few crofts will be registered on the new register for some time to come. Instead, or in combination, the Commission’s existing Register should be used.

A further potentially complicating circumstance that should be considered is where the number of crofting tenants or owner occupiers registered outweigh those actually resident within the immediate area. It is not clear whether this circumstance may arise, but it potentially could.

**Question 4.** The Scottish Government proposes amending the existing mapping requirements which must be included in a Crofting Community Body’s application. Do you agree with this proposal?

Agree, although it will be important to see the final and specific proposed wording of the change.

**Question 5.** The crofting community body’s right to buy application must be advertised by Ministers by placing a public notice in a newspaper circulating in the
area where the land or interests are located, and in the Edinburgh Gazette. The
Scottish Government proposes that public notice of the crofting community body’s
right to buy application continues to be given by Ministers by advertisement, but
that the form of this advertisement be set out in regulations. What is your view on
this proposal?

Agree.

**Question 6.** The Scottish Government proposes that the owner, tenant, person
titled to sporting interests, (depending on the nature of land or interests that the
application relates to) and any creditor in a standard security in relation to that
land or interests are correctly identified in the application form in order for
Ministers to consent to the crofting community body’s application. What are your
comments on the proposal?

It does not seem an unreasonable proposition for a community to use all its
best endeavours to accurately identify owner, person, etc…. However, the
question arises of what would happen if the owner, person, etc … could not,
even after all reasonable steps had been taken by the community, be
identified. This could arise by virtue of some of the complex and potentially
overseas arrangements that can be put in place to hide ownership and
beneficial interest, or simply by the passage of time, complex and dispersed
ownership arrangements that can follow from one time changes in ownership.
The same comment can be made about the Section 3A, which this proposal is
designed to align with, and which Parliament has yet to consider. It is not
clear why this change is necessary either for Part 3A or for this proposed
section. This proposal would only be acceptable if accompanied by a
provision to allow Ministers to, notwithstanding this provision, grant consent
when they are satisfied that the community has taken all reasonable steps to
identify the owner, person, etc …, but have been unable to do so.

**Question 7.** The Scottish Government proposes Ministers having a specific power
to make regulations setting out the information that the crofting community body is
required to provide to Ministers about the ballot, or any consultation that the crofting
community body may have held with the community about their application. The
crofting community body already are responsible for paying for the cost of the ballot.
The Scottish Government proposes to expressly state in the Act that the crofting
community body is liable for meeting the expense of conducting the ballot. What
are your comments on the proposals?

The proposals in the Community Empowerment (Scotland) Bill regarding Part
2 of the Land Reform (Scotland) Act 2003 makes provision for the Scottish
Government to in future take responsibility for the balloting arrangements and
pay for such. As a matter of principle, this proposal was not seen as one of
simply making it easier for the community body, it was also seen as a proposal
which could ensure the proper conduct of any such ballot and which therefore
provided re-assurance to the parties concerned and for the wider public
interest. These latter reasons would apply equally and might even be seen to
be more important to the conduct of ballots in the crofting community and in
circumstances where there was not a willing seller. There is therefore a case
for the same provisions as it is proposed will apply to Part 2 (through
revisions in CEB) to apply to this part. If the concern was simply one that in such circumstances Government would be funding a ballot on what was a 'compulsory' sale, this could be readily justified as being appropriate to ensure proper conduct and public confidence in the conduct of such a ballot.

**Question 8.** The Scottish Government proposes that, when an application is extinguished under section 76, Ministers should be required to notify each person invited to give views on the application. This proposal aligns Part 3 with the proposed Part 3A of the Act. What is your view on this proposal?

**Agreed.**

**Question 9.** The Scottish Government proposes clarifying the certain persons listed in section 81(1) of the Act who may refer a question to the Land Court at any time before Ministers reach a decision on an application made under Part 3. What is your view on this proposal?

**This does not seem unreasonable.**

**Question 10.** The Scottish Government proposes increasing the timescale in which the valuer must notify the value of the land from 6 weeks to 8 weeks. Do you agree with this proposal?

**Agreed.**

**Question 11.** The Scottish Government proposes requiring the valuer to seek counter-representations when representations regarding the valuation of the land are received from the land owner, tenant, person entitled to sporting interests, as the case may be, or the crofting community body. Do you agree with this proposal?

**Agreed.**

**Question 12.** Section 89 of the Act allows compensation to be paid in respect of a loss or expense incurred in connection with a crofting community right to buy application. Ministers are already required to set out the procedure for claiming compensation by way of order. The Scottish Government proposes amending this order so that Ministers may, via an order, specify the amounts payable in respect of compensation and who is liable to pay these amounts. What are your views on the proposal?

**This does not seem unreasonable.**

**Question 13.** The Land Court is required to give its decision in writing within 4 weeks of the date of the hearing. The Scottish Government proposes removing the 4 week time limit, and remove the provision requiring the reasons to be provided in writing. What is your view of this proposal?

**It is not clear why this is necessary or helpful to the parties involved. Having reasons in writing seem appropriate, as does having a reasonably short timescale for these matters being concluded.**
Appendix 1
Submission to Land reform Review group first call for evidence – December 2012

Part 3 – The crofting community right to buy

The complexity of the requirements of Part 3 of the Act have become notorious and add such complexity to the requirements on communities that they are capable of being largely self-defeating to the principled intentions of Parliament. Some of the requirements have been described as Byzantine. Some of the detail exists in regulation, rather than primary legislation, though the primary legislation sets the tone for the detail in the regulations through provisions that are on the face of the Act.

The overwhelming need is to simplify procedures so that genuine and strong applications cannot be thwarted by legal action on technical grounds.

The procedures which have to be exercised by crofting community bodies under Part 3 in order to exercise their rights to purchase crofting land and related leases on behalf of their communities (i) are extremely complex and time-consuming; (ii) often appear to have no logical or functional rationale; and (iii) risk legal challenge on minor technical grounds.

The issues can best be understood by considering the application form for consent to buy eligible croft land (or the interest of the tenant in related tenanted land), which is prescribed by secondary legislation. It is accepted that a crofting community body should be required to demonstrate: (i) that they are properly constituted and represent the relevant crofting community; (ii) the boundaries of the land or lease they seek to buy; (iii) that the majority in the community (both crofters and the whole community) support the application; and (iv) that it is in the public interest that they should be given permission to buy the land or interest of the tenant.

However, there appears no logical or functional rationale for being required to provide the following:

- a map and written description showing not only the boundary of the land or lease to be acquired, but also all sewers, pipes, lines, watercourses or other conduits, and fences, dykes, ditches, or other boundaries (Question 4(d)). This goes far beyond what is required in other land or lease transactions, and there seems no functional reason to require this information. It is particularly absurd when the area to be purchased extends to several thousand hectares.

- a list of all postcodes and OS 1 Km grid squares included in the land or lease area to be purchased (Question 4(c)). Again there seems no reason for this if the boundary is properly defined on a map. If the area concerned extends to several thousand hectares, the list simply opens up scope for a technical challenge if particular postcodes or grid squares are inadvertently omitted.

- a full list of all those eligible to vote in the ballot, including distances away from the relevant township in the case of absentee crofters (Question 11)). The test should be evidence that a majority support the application, rather than providing...
detailed lists which open up the possibility of legal challenge if any error or inconsistency is made.

Community Land Scotland would wish to see such existing requirements being abolished.

In the event that any rationale might be found for retaining any such provisions, then a criterion of proportionality should be explicitly applied to all such provisions so that an application which meets the essential purposes of the Act are not at risk of refusal or legal challenge on minor technical details. For example, an error in one voter issued with a ballot paper should not invalidate the result if there is a large majority in favour, and an error in the listing of one postcode or grid square should not invalidate an application if the boundary of the land or lease to be acquired is clear.

Time limits should be imposed on all stages of the process of application, comment, decision, and appeal, so that a landlord cannot unreasonably delay a decision on an application, or indefinitely hold up implementation of an approved application. The overall timescale should not be dissimilar, overall, to that applying to Part 2, from inception to completion of the process.

Appendix 2

Submission made in response to consultation on Community Empowerment Bill – January 2013

Part 3 – Further Issues

The Crofting Community Right to Buy

The same points as are at Appendix 1 were repeated in this submission (above) plus

Crofting Community Definition [Probably now overtaken by current proposals]

The definition of a crofting community is complex and is centred on the location of residents in relation to the land to be acquired and also includes certain crofting tenants of the land but who reside outwith the boundary of the land in question. Maps in detail need to be prepared to establish who is a member of the crofting community.

The definition of a crofting community in the Crofting Acts is different from that of a crofting community in the Act. The former is a community of crofters which excludes non-crofters, and the latter is a community in a crofting area which includes non-crofters.

The Crofting Community Right to Buy should be amended to allow the crofting community body to determine its own boundaries. We do not see any benefit in crofting community members being defined by their property having a contiguous boundary with the land to be acquired.

The Act might usefully rename a ‘crofting community’ to a ‘crofting area community’ to distinguish it from the ‘crofting community’.
Generic issues common to both Part 2 and Part 3

Serving notice on landowner

Serving the notice on the landowner if the registration reaches the stage where the intention to register is to be served on the landowner can be problematic. The property that the registration refers to is not adequate service if that property is not the landowners principal residence, even if it is occupied by his paid employees when he is not in residence. It is incumbent on the applicant to trace the landowner(s) main residence so that Scottish Government can serve the document there. Simplify this requirement would be helpful.

Community Definition – Choice to utilise Part 2 or Part 3

It is not possible for a single community body to be established to use both Part 2 and Part 3 of the Act. This is due to the different definition of community in these parts. If a crofting community body is to remain as an entity that is distinct from a community body then the relevant provisions should enable crofting community bodies to be eligible applicants under the Part 2 provisions. There could be times where a crofting community would prefer to register an interest in land rather than seek to acquire it under Part 3. At present a crofting community would have to opt to establish either a Part 2 compliant company or one that satisfies the requirements of Part 3. The crofting community cannot benefit from both of the LRA’s right to buy provisions unless it establishes two community companies. This is unhelpful and unnecessary in our view.

The Act should be amended to allow crofting community bodies as defined under Part 3 to be able to register an interest in land under the Part 2 provisions.

Identifying the landowner

It can be difficult to identify the legal owner of land. Where a community body has taken all reasonable steps to do so a community's aspirations to register an interest or acquire an asset are should not be thwarted by virtue of not being able to identify the legal owner.

Provision should be made for this requirement to be set aside provided it can be shown all reasonable steps that could be taken have been taken.

Access to the Voters Role

Community bodies are not entitled to a copy of the voters roll.

The proposal that the Scottish Government might take responsibility for the organisation of the ballot may overcome this difficulty but this notwithstanding Community bodies should be given a right to the full Voters Roll for the purpose of any ballot they may organise in compliance with the requirements of the Act.
Other

It should be noted that the very act of having to secure a 10% threshold can have the effect of alerting the landowner of an interest in the land, potentially in some circumstances, precipitating the land being put on to the market, at which point the threshold for approval to submit an interest rises under the provision for late registration, if these are maintained.

In such circumstances a helpful change to current provisions would make it clear that the timeline for rules for a timeous registration should apply when the process for securing the 10% approval started when the land had not been advertised as being on the open market, even if it is on the market when the registration application is submitted.

**Timeous and late registration** - The criteria for late registration of an interest to buy are more onerous than for a timeous application. In practise, most recent purchases that have proceeded have been from late registrations.

It is not clear why a late registration should have more onerous conditions than a timeous one. This could have been conceived as a mechanism simply to encourage timeous applications, which are easier to achieve. However, given that the underlying intention of a timeous and late registration remain the same, to register an interest in land, and given the genuine reluctance of some communities to register an interest (for reasons set out elsewhere in this submission) it does not seem reasonable that the registration requirements should be so different, particularly given the ultimate ballot requirements for a right to buy purchase to be able to proceed.

Community Land Scotland believes it is important to continue to have late registration procedures, but that it should have the same 10% threshold requirements as the timeous registration requirements.

**The 30 day confirmation period** - Once a piece of land comes on to the market and the registered interest is triggered, the community has 30 days to confirm their intention to exercise their right to buy.

There has been some experience that such a period may fall during important holiday periods, and this can prove challenging. It is considered that making this requirement 30 working days would suitable relax the period.

**Turnout and majority in ballot** - In order to proceed to purchase the community body must be able to demonstrate that at least half the members of the community have voted in a ballot on the question and the majority of those voting have voted in favour. There are some circumstances where less than 50% have voted in the ballot, but the majority of those voting having voted in favour of purchase can be regarded by Ministers as sufficient.

Given the element of discretion available to Ministers there appears no need to change current requirements.
Some questions have been raised about the ability of an approved community body being entitled to access to registers of electors. Given the requirements of the Act it should be a matter put beyond doubt that Electoral Registrations Officers are required to give such properly constituted bodies access to current registers for the purposes of conducting ballots under the terms of the Act.

**Buying the company owning the land**

A number of communities for reasons associated with achieving practical progress and to suit the land owner concerned have bought the company that owns the land, together with its assets and liabilities, as the means to acquire land. It is likely this will require happen again.

It will be important to ensure that there are no provisions with the Act that would prevent progress under the Act being made when a community thought it right or expedient to purchase the Company that owns the land as the means to acquire the land itself.
NFU SCOTLAND RESPONSE - CROFTING COMMUNITY RIGHT TO BUY - AMENDMENTS WITHIN COMMUNITY EMPOWERMENT BILL

Introduction

1. NFU Scotland (NFUS) is Scotland’s premier farming lobby, representing around 8,500 members across Scotland, of whom 750 are crofters. Our dedicated Crofting Highlands and Islands Committee meets on a regular basis to represent crofting interests at local, regional and national levels.

2. NFUS understands that the Scottish Government has submitted amendments to the Community Empowerment Bill at Stage 2 relating to community right-to-buy. NFUS has engaged with this piece of legislation throughout the process, submitting evidence on the initial government consultation in January 2014 and again to the Local Government and Regeneration Committee in their examination of the Bill as introduced in September 2014. A submission was also issued to the Scottish Government’s Agriculture, Food and Rural Communities Directorate in November 2014 relating specifically to the proposals for amendments to Crofting Community Right to Buy. This response is primarily based upon the points raised in these original submissions.

3. Primarily, NFUS is encouraged by the Bill, and considers that encouraging partnership-working with communities has wide-ranging benefits for the rural economy.

4. However, NFUS repeats concerns that there is not a concrete definition for what constitutes ‘wholly or mainly abandoned or neglected’ in the context of land. Parcels of land may be out of regular ‘use’ for periods of time when they are involved in an agricultural enterprise.

Crofting Community Right to Buy

5. NFUS recognises that the Bill’s explanatory notes outline the purpose of the proposed amendments is to make the Crofting Community Right to Buy easier for crofting communities to use, while at the same time continuing to strike a fair balance between the rights of landowners and crofting communities. We are supportive in principle of these purposes and aims, however remain conscious that each crofting community buy-out must be required to put in place a long-term plan to ensure the economic sustainability of the scheme. Further detail on areas of concern are outlined in further detail below.

Section 71 – Community Bodies

6. In particular, in terms of the removal of provision for the auditing of accounts, NFUS suggests that whilst this will remove unnecessary burdens from community bodies, a structured auditing process should also be put in place to ensure that community bodies reinvest any income received in to the crofting community.

7. Regarding the provisions for community bodies that would be eligible to apply for a community buy-out, NFUS welcomes the extension of organisations defined as
Crofting Community Bodies (CCB) however advises that advisory services from non-government bodies such as HIE and SAOS are employed.

8. NFU Scotland welcomes that the amendments recognise the current confusion in the definition of ‘crofting communities’. However, again, we urge caution on who this definition is extended to. Whilst this amendment simply gives Ministers the regulation-making power to expand the definition of crofting community, we repeat concerns that use of the Crofting Register as a means of defining those included in the definition of ‘crofting communities’ is unwise. The Crofting Register is incomplete and it will be some time before it is sufficiently populated that it could be used in such a way. NFUS encourages Ministers to expand the uptake of the Crofting Register in the first instance.

Section 73 – Crofting land mapping and public notice of application

9. NFUS agrees that the mapping requirements should be simplified as much as possible. It is important to consider the scale at which the mapping is required and this will relate to the total size of croft land being purchased. However, at some stage it is important that all servitude rights and burdens are mapped and detailed in order for the community to know exactly what they are purchasing.

10. NFUS also agrees that greater flexibility is required in the placing of public notices in order to inform of the intention to purchase land. Clearly, it will be necessary for the community to demonstrate, as part of the application, that they have done their best to inform all members of the community, owners and adjacent landowners of the crofting community buy-out.

Section 75 – Ballot procedure

11. NFUS disagrees with the amendment’s proposal to make CCBs liable for the cost of conducting a ballot, but welcomes the provision that allows the CCB to apply to Scottish Ministers to recover the costs, depending on specific circumstances.

Section 76 – Section 88

12. NFUS is satisfied with these proposals.

Section 89 - Compensation

13. NFUS agrees that there needs to be some mechanism to specify the amounts payable in respect of compensation and who is liable to pay these amounts, however we have some reservations as to whether this should be done by the Minister. We would prefer that it was done by an independent body or person.

Section 92 - Outcome of appeal to Land Court

14. NFU Scotland understands that the Land Court’s own regulations require them to set out in writing any decision they make. Therefore, to have this requirement duplicated in this legislation would seem unnecessary. NFU Scotland, however, believe it is still necessary to have a set time limit by which point the Land Court have to respond by. We agree that in some very complex cases a 4 week time limit could be difficult to meet. We would therefore suggest that when necessary
the Land Court could apply to Scottish Government/the Minister to extend this time limit where the Land Court can demonstrate that they need extra time to consider the case.
Written submission from Highlands and Islands Enterprise

INTRODUCTION

HIE’s understanding of purpose and what the amendments seek to achieve.

Highlands and Islands Enterprise (HIE), as the Scottish Governments economic and community development agency for the Highlands and Islands, welcome the legislative framework being developed through the Community Empowerment (Scotland) Bill.

We are supportive of the amendments to Part 3 of the Land Reform (Scotland) Act 2003, therein.

In line with Government Economic Strategy (GES), our purpose is to generate sustainable economic growth in every part of the Highlands and Islands.

Our Operating Plan 2014-17 sets out our four priorities:

- Supporting businesses and social enterprises to shape and realise their growth aspirations
- Strengthen communities and fragile areas
- Developing growth sectors, particularly distinctive regional opportunities
- Creating the conditions for a competitive and low carbon region

Our work to support community ownership is an integral part of our approach to deliver on all of the above organisational priorities, recognising the contribution community asset ownership makes directly to the economy and society of our region, and to Scotland.

We are grateful to the Committee for enabling a further short input through this submission, in relation to the amendments now proposed. We would be pleased to provide further input if this is helpful to the Committee in due course.

Within the previous submissions we have made through the legislation development process, we outlined our experience over many years in regard to the complexity of Part 3 of the LRSA 2003 and hopefully this has highlighted the complex barriers faced by communities in implementing the spirit of the Act.

The amendments now proposed are very welcome, making substantial changes to the legislation and it’s enabling provisions. We offer the following comment on each amendment.

Sections 71 and 72 Legal structure of community body.

This amendment is supported by HIE.

Section 71 – Removal of provision for auditing accounts.
This amendment is supported by HIE.

Section 71 – Amend definition of “crofting community”.

An increasingly inclusive definition is welcome.

We would note that the Registers of Scotland Crofting Register (RoSCR) may not presently be sufficiently robust as a source from which to determine active and engaged crofting members however.

The recognition of owner occupiers and the subsequent legislative changes to the Crofters (Scotland ) Act 1993 is welcomed yet this leads to a possible area of concern. Due to previous processes involving means testing, many active current croft owner occupiers are classified as absent and in turn, the relevant croft data held on the Crofting Commission register can be classified as vacant. We consider that the completeness of any data source leant on as primary data to underpin a legislative matter is of great importance.

We welcome the development and scrutiny of the current legislation proposals and we note that the amendment does include a power for Ministers to expand on the RoSCR.

We also note the ongoing work of the Crofting Commission in regard to the current census data gathering exercise, a practical but important consideration connected to this legislation and we recognise the importance of effective dissemination of the census data in order to achieve the outcomes the legislation seeks to enable.

Section 73 – Croft land mapping.

This amendment is supported by HIE. We consider this a key amendment which will make a material and enabling change.

Section 73 – Public notice of application.

This amendment is supported by HIE.

Section 74(1) and 97B – Identification of owner, tenants and creditors.

This amendment is supported by HIE.

Section 75 – Ballot procedure.

The principle of this amendment is supported by HIE. In our earlier evidence submission we outlined some of the difficulties faced by communities in obtaining often multi layered information relating to land ownership. We would reiterate that a further amendment might be worded around the principle of “best endeavours demonstrated”. These endeavours could be itemised and logged chronologically. HIE is pleased to note the opportunity for communities to work with Ministers and officials to minimise costs and that where these cost might escalate outwith the capacity of a community organisation then recourse is available to seek assistance from Ministers.
Section 89 – Compensation.

The principle of this amendment is supported by HIE, and whilst supportive we would encourage consideration be given the most effective, objective mechanism which can be brought to bear to service this issue.

Section 92 – Outcome of appeal to the Land Court.

This amendment is supported by HIE.
Written submission from Community Land Scotland

Crofting Community Right to Buy - Evidence on proposed Scottish Government amendments to Part 3 of the Land Reform (Scotland) Act 2003

Introduction

Community Land Scotland has long argued the need for changes to Part 3 of the Land Reform Scotland Act 2003 and welcomes the fact that the Scottish Government proposes to make important simplifications now using the Community Empowerment (Scotland) Bill.

In particular it is very welcome to see the repeal of the most tortuous mapping requirements within Section 73 of the Land Reform (Scotland) Act.

There are a number of other welcome changes to definitions and administrative arrangements.

Unless otherwise stated, Community Land Scotland either accepts or welcomes the changes set out by the Scottish Government.

Detailed observations on some amendments

Crofting community bodies

The provisions for bodies other than Companies Limited by Guarantee represent a welcome new flexibility.

In (4)(1A)(g) and in (1B)(g) there is the provision for the declaration of minutes upon request of “a” meeting of the community body. This is fine in principle, and as a matter of openness, however the provision is not clear as to whether this is any meeting, including sub-committee or working group, or only full meetings of the Board, or the AGM, or special meetings. Further, any request could not necessarily be met within the time-frame set out unless this was meant to apply to approved minutes. Greater clarity in the provisions would be necessary or could be set out in guidance or regulation to ensure clarity of what is intended.

In 1 (7) (b) (iii) (iii) it is proposed not to allow owner-occupier crofters registered in the Register of Crofts, as distinct from the Crofting Register, to be recognized. This distinguishes this particular group by reference to their registration at this time only in the Register of Crofts, and it is not clear why this is the case.

While there is provision for Ministers to alter this by regulation, and it is hinted that this could be used to subsequently include this group, no policy rationale is given for not including this group now.

Application: information about rights and interests in land

The repeal of the mapping requirements at Section 73 of the 2003 Act subsection (5)(b)(ii) and (f) is very welcome.
The inclusion of new provisions 3 (3) (5ZA) which require the identification of a range of persons is not currently required and this is not referred to, or the policy rationale explained, in the Explanatory Notes. The danger is that one set of onerous requirements (mapping) may be being replaced with another set of onerous requirements. It is not clear to what extent the information sought is readily within the reach of the crofting community body. It would appear that failure to be able to comply would have the effect of invalidating an application and it may be wise to allow for when a crofting community body has used all reasonable endeavors to ascertain the information, but this cannot be finally obtained, this should not invalidate an application.

The greater flexibility in the means of giving public notice by potentially adding to advertising in a local newspaper is welcome - 3(4).

Criteria for consent by Ministers

The proposal is to introduce a series of new requirements to Section 74 which seeks to accurately identify persons. This is a new requirement and, as at Section 73 referred to above, it is not clear to what extent the information sought is readily within the reach of the crofting community body. Failure to be able to comply would have the effect of invalidating an application and it may be wise to allow for when a crofting community body has used all reasonable endeavors to ascertain the information, but this cannot be finally obtained, this should not invalidate an application.

Ballot: Information and expenses

The onus is on the crofting community body to arrange and pay for the required ballot.

This new provision to allow the crofting community body to apply to have the costs of the ballot met by Ministers under conditions to be established in regulation would, on the face of it, represent a welcome additional flexibility.

However, this would leave the ballot arrangements between Part 2 of the Land Reform Act, by virtue of provisions proposed through Part 4 of the Community Empowerment Bill (yet to be agreed) and Part 3 of the Land Reform Act. Under the proposals for Part 2 of the LRA, Ministers would take responsibility for the organization, conduct and cost of the ballot, and this is welcome.

It is not clear why there should be a difference between Part 2 and Part 3 in this regard. There is everything to be said for consistency between the two parts. This is particularly so when it comes to a Part 3 application as the degree of controversy associated with such a purchase could be greater than a Part 2 purchase and where the correctness of the processes and procedures around the ballot could be of particular importance to the integrity of the process as a whole. This would be significantly assisted and help put any questions beyond doubt if arranged by Ministers.

Ministers should, as in Part 2, accept responsibility for ballot arrangements also under Part 3.
Other matters

If and when the proposals for amending Part 3 are approved, these need to apply equally to the new Part 3A or significant anomalies would arise between the different Parts of the Land Reform Act. The current Part 3A was drafted, based on the current Part 3 and now itself being reformed by the welcome amendments submitted to the Committee. This ought to be a technical and straightforward process, largely repeating the amendments suggested to Part 3. It is, however, vitally important, otherwise, for example, the tortuous mapping requirements about to be repealed for Part 3 would remain for Part 3A.

This is only raised as it is not referred to in the Explanatory Notes.

Community Land Scotland

16th February 2015
Written submission from Community Land Scotland

Draft Regulations on the question of ‘abandoned or neglected’ land provided to RACCE Committee by Scottish Government to aid considerations at Stage 2 – February 2015 - Further evidence by Community Land Scotland.

Introduction

The RACCE Committee in its Stage 1 Report raised a number of pertinent concerns about the clarity of the terms “abandoned or neglected” land, introduced by the new Part 3A of the Community Empowerment Bill to the Land Reform Act by Part 4 (Section 48) of the Community Empowerment (Scotland) Bill.

The Scottish Government has sought to meet the Committees concerns, not by amending the proposals on the face on the Bill as sought by the Committee, but through showing what draft regulations on these issues might say, and to provide reassurance to the Committee their concerns will be adequately addressed in this way. The Minister has written to the Committee giving explanations of the Scottish Government’s intentions.

Community Land Scotland can see that the Draft Regulations could be very helpful in the urban context, where physical signs of neglect may be much more obvious. Wider neglect arising from use or lack of use of land is more complex in the rural land setting.

Discussion (when thinking about the rural context in particular)

Having examined the letter from the Minister and the Draft Regulations, Community Land Scotland remains significantly concerned that the draft regulations do not provide the necessary reassurances as they stand.

The draft Regulations do not appear to provide explicitly or even implicitly that the need for, or the lack of, sustainable development of the land is a matter to which Ministers are to have regard when determining whether land is wholly or mainly abandoned or neglected.

It may be argued that Regulation 2(3) would allow Ministers to do so but it appears that the most that Regulation does is to require Ministers to have regard to the purpose for which the land is or has been used or to consider whether it has not been used for any particular purpose. It does not require Ministers to consider, in either case, whether that use or lack of use has furthered or hindered any purpose, such as that of sustainable development.

Community Land Scotland remains of the view the matters are best resolved by making some change on the face of the Bill, as the Committee has suggested.

If, the Scottish Government is not prepared to accede to the Committees preferred approach at achieving clarity, even by potentially dropping the terms “abandoned or neglected”, it would be possible to make it explicitly clear on the face of the bill that eligible land could be land which, in addition to it being either “abandoned or neglected”, could also be land “in substantial need of sustainable development”.

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Regulations could then support these definitions, but the primary matters of eligible land being potentially land in need of sustainable development would be clear.

The proposed primary legislation at new Part 3A and the draft regulations appear to studiously avoid using the term sustainable development for reasons that are not at all clear, given the policy purpose of the Bill, and that these are terms in regular use and have a meaning capable of embracing all the Committees and many stakeholders concerns.

Lord Gill in the Judgment on the Pairc Crofters case said of the terms “sustainable development”:

[55] “...I should first deal with a preliminary objection raised by counsel for the appellants to the effect that the terms sustainable development and public interest are to [sic] vague to have legal force and are therefore, as counsel put it, “not law.”

[56] “In my view, the expression sustainable development is in common parlance in matters relating to the use and development of land. It is an expression that would be readily understood by the legislators, the Ministers and the Land Court.”

Viewed from the outside it seems that the Draft Regulations display a very clear concept of the physical aspects of land and land use, but the wider concept of sustainable development consequent on use or lack of use of land does not appear so well recognised.

It is only within the draft regulations at 2.(3)(a) and (b) that they get close to the wider idea of sustainable development, but even then it is not at all clear that as drafted they would in any way help a future Eigg to secure status as eligible land. It is also not clear that the community which sought to acquire a small piece of land to enable their sustainable development, when the owner was refusing to engage or assist, would be capable of making a case by virtue of the regulations as drafted. The scope for interpretation here is wide, and that runs both ways, to be helpful, or specifically not helpful.

The Draft Regulations cite what Ministers would be bound to consider when any land was not being used for a “specific purpose” [2. (3) (b)]. It is difficult to imagine circumstances where land could not be said to be being used for a “specific purpose”, even if that “specific purpose” was not conducive to furthering the achievement of sustainable development, as might have been said in the case of Eigg, for example. Further, 2.(3)(b) is strictly not about the non-use of the land, but the length of time for which the land has not been used.

Greater clarity by way of specific reference to the concept of sustainable development would help and may alleviate some of the concerns felt with the current draft. There could be a number of potential approaches, for example:

- in (3)(a) adding at the end, “and whether that purpose or use furthered the achievement of sustainable development”
• in (3)(b) insert after “purpose” “to further the achievement of sustainable development”

or

• add an additional requirement for Ministers to consider “such other matters as would in the opinion of Ministers further the achievement of sustainable development”

• or, Ministers could be required to have regard to “the aggregate of the social, economic and cultural conditions arising from the use or lack of use of the land.”

• or,” whether, and to what extent, [the land or any building or structure on it, needs, or lacks, sustainable development] or [there is a need for sustainable development of the land or any building or structure on it]”

The covering letter of the Minister indicates that Ministers have to be ultimately satisfied that approving any application is in the public interest and is compatible with furthering the achievement of sustainable development. However, that is at the stage in the process when Ministers are considering the granting of consent for an application for the right to purchase, and not when considering whether the land should be eligible land and on which an application can be made at all, which is the matter at hand in this part of the Bill.

The Minister’s letter seeks to re-assure the Committee that the terms “abandoned” or “neglected” are intended to have their ordinary meaning and these words are capable of a broad meaning. It is precisely because the terms are intended to have their ordinary meaning that is the concern of Community Land Scotland, as their ordinary meaning would not appear to embrace the wider concept of sustainable development, the policy the Bill seeks to promote.

The specific avoidance of the use of the well recognised term “sustainable development”, gives the impression this is because the intention is specifically not to embrace this concept. While the Minister’s letter is in a number of respects helpful in seeking to provide some reassurance on this, the letter is not law.

A further concern of Community Land Scotland, unless there is a link provided on the face of the Bill, is that the link between the ordinary meaning of the terms “abandoned or neglected” and any regulations would be open to challenge on the basis that the linkage between the concepts was not sufficiently warranted or reasonably envisaged by the statutory provisions, or was stretching the normal interpretation of the primary tests (ie, the ordinary meaning of the words “abandoned” or “neglected”).

Additionally, it is not clear what the implication would be of land, for example, being in good agricultural and environmental condition, but wider sustainable development not being furthered. This was the situation in Eigg at the time of purchase, no one said the farm tenants were not keeping their land in GEAC, but the island as a whole was in almost terminal decline. You might read the same for Gigha.
While the good intentions of the Scottish Government in providing this draft is not in doubt, the regulations have the status of being a draft, and a lot of water could flow under this particular bridge before the regulations were finally tabled. That is why capturing the principle of wider sustainable development on the face of the Bill remains important to Community Land Scotland in establishing this is what this part of the Bill is about, and establishing that there was a link between this concept and any detail then spelt out in regulation.

ENDS

16th February 2015
Written submission from North Harris Trust

Written submission to Scottish Government regarding proposed revisions to Part 3 of the Land Reform (Scotland) Act 2003 via the Community Empowerment Bill

Background

The North Harris Trust is a community organisation and registered charity which now owns and manages 27,000 hectares of North Harris, Western Isles. It aims to:

- Increase employment and housing opportunities for our young people and reverse population decline
- To keep North Harris wild and beautiful by safeguarding and enhancing natural heritage
- To work with partners to meet the needs, hopes and aspirations of the community
- Promote enjoyment, understanding and appreciation of North Harris’ outstanding natural and cultural heritage

The community of approx. 700 people seized a unique opportunity when the 22,900ha. North Harris Estate was placed on the market in April 2002. After much hard work and effort, on the 21st March 2003 the North Harris Estate came into community ownership. Subsequently in February 2006 the Trust bought the adjoining 3,125ha. Seaforth Estate. In 2012 the residents of the adjacent Isle of Scalpay voted to join the North Harris Trust after they were offered free ownership of the 710ha. Island.

The Trust is now managed by a Board of 14 locally-elected volunteer Directors and employs 9 staff.

The community buy-out of the North Harris Estate was carried out prior to the Land Reform (Scotland) Act 2003, but the established Trust has provided a model for other buy-outs, with the Directors and staff continuing to advise and support other community groups.

For more information on the Trust and its activities visit:

www.north-harris.org

Comments on Specific Amendments- Part 4 of Community Empowerment Bill

The North Harris Trust is grateful for the opportunity to provide written evidence and agrees with all of the amendments with only minor comments as detailed below.
Section 71 and 72- Legal structure of community body

The proposal to broaden the range of legal organisations that can be a crofting community body (CCB) and allowing Ministers to provide for further types of bodies to be eligible seems sensible and fair. Our only point would be that Ministers need to continue to show real diligence when appointing CB’s. As the range of eligible Community groups broadens, there must not be an opportunity for non-community landlords to abuse the system.

Section 71- Removal of provision for auditing of accounts

The NHT agrees with this amendment.

Section 71- Amend Definition of Crofting Community

The NHT agrees with this amendment.

Section 73- Croft Land Mapping

The NHT agrees with this proposed amendment. Whilst the CCB should make every effort to map the assets when registering its interest, providing the level of detail originally required could be a major task. As the buy-out proceeds, the burden needs to be on the landowner to provide full titles and not to conceal assets or liabilities associated with the property.

Section 73- Public Notice of Application

The NHT agrees with this amendment. Local newspapers often have a very limited readership which may be biased. Alternative forms of posting Public Notices should be acceptable with the approval of the Ministers and the interested stakeholders.

Section 74(1) and 97B- Identification of owner, tenants and certain creditors

The NHT agrees that it is important to identify the owner, tenant, person entitled to sporting interests, or creditors relating to the land interests involved in an application. However, as long as the CCB has made sensible efforts to identify these stakeholders, failure to provide a complete list should not prevent the Ministers from accepting an application.

Section 75- Ballot Procedure

The NHT agrees with this amendment.

Section 76- Right to buy exercisable by only one crofting community

The NHT agrees with this amendment.

Section 81- Reference to Land Court

The NHT agrees that this amendment seems fair.
Section 88- Valuation
The NHT agrees with these amendments.

Section 89 - Compensation
The NHT agrees with these amendments.

Section 92- Outcome of Appeal to Land Court
The NHT agrees with these amendments.
Introduction

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making process.

To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors to ensure we benefit from the knowledge and expertise both within and out with the solicitor profession.

The Rural Affairs Sub-Committee (the “Committee”) welcomes the opportunity to provide oral evidence to the Rural Affairs, Climate Change and Environment Committee on 18th February 2015 on amendments to part 3 of the Land Reform (Scotland) Act 2003 made through the Community Empowerment (Scotland) Bill. The Committee has prepared the following brief comments in advance of the evidence session.

Legal Structure of Community Body

We agree that SCIOs and BenComs should be allowed to be crofting community bodies. However, we also believe the community interest companies should be permitted to be a crofting community bodies. A community interest company is a new type of company for people that want to be involved in a business that helps the community (the population as a whole or a specific group), rather than just the owners, managers or employees – a social enterprise.

Removal of Provision for Auditing of Accounts

We have no objection to the Scottish Government’s proposals and agree that that the crofting community right to buy requirements should be the same as those for the general community right to buy. In general, we suggest that some financial scrutiny should still be required in order to promote good financial management.

Definition of Crofting Community

We agree that the definition of a crofting community should be expanded to include tenants and owner occupiers. However, we do not agree with the definition proposed. The inclusion of tenants on either the Registers of Scotland or Crofting Community Registers but only of owner occupiers on the Registers of Scotland Register is unfair. This is especially so when a tenant exercising the right to buy does not trigger registration in the Registers of Scotland register. The vast majority of crofting land is not on the Crofting Register. We therefore suggest that the definition be amended to also include land registered with the Crofting Commission.

Crofting Land Mapping

The proposed Government amendments go some way to simplifying the mapping requirements although we do not think that they go far enough. Satisfying the current
mapping requirements can be extremely difficult and complex. We believe that the proposed amendment would result in slightly less onerous application requirements but that problems would still remain.

We can see nothing to justify why the mapping requirements should be more onerous in a crofting context than in other contexts. We believe that the mapping requirements for the rural community right to buy should be no different to those required when submitting a first registration to Registers of Scotland.

Public Notice of Application

The explanatory notes provide that the amendments will lead to greater flexibility by providing that the form of advertisement is to be set out in regulations made by Ministers. However, it is difficult to comment on this until the regulations have been published. We do support measures aimed at increasing awareness of applications in the area to which the application relates. Advertising in the Edinburgh Gazette - and perhaps even by newspaper – is unlikely to generate the desired level of publicity. Additional means of publicity could include placing advertisements in shop windows in the locality. We therefore agree with the proposal in principle. However, further details on the form of advertising Ministers are proposing requires to be provided.

Identification of Owner, Tenants and Certain Creditors

We agree that the list of proposed persons should be properly identified in the application form. However, we anticipate that there may be some practical difficulties in identifying whether there is a sporting tenant. This information is unlikely to be available from the Land Register and therefore an applicant would have to ask the landlord for these details. The landlord would not be under any obligation to provide this information and even if he did then it would be difficult for the applicant to verify its validity. It would be undesirable if an application was rejected at the outset because of a failure to specify information that the applicant is unable to ascertain. We therefore suggest that a “reasonable endeavours” test should apply with respect to obtaining details of a person entitled to sporting interests.

The designation of the other proposed persons will be available from the Land Register or Companies House and therefore we do not foresee any difficulties in the application form requiring these parties to be correctly identified.

We suggest that floating charge holders (where the landlord is a UK limited company) is a further category that would be appropriate to identify on the application form. As these details would be available from Companies House, no difficulties in providing this information are foreseen.

Ballot Procedure

We have no objection to this proposal.

Reference to the Land Court

We believe that the right of reference should apply to:-
- The owner or person entitled to sporting interests in the land;
- The tenant, in the case of an application to purchase a tenant’s interest;
- The person entitled to sporting interests, depending on the nature of the land;
- A creditor in a standard security in relation to that land or those interests.

Furthermore, if the Scottish Government agrees with our proposal to include details of floating charge holders on the application form, as suggested above, then we believe that floating charge holders should also be listed in section 81(1).

**Valuation**

We agree that the timescale in which a valuer must notify the value of the land requires to be increased. However, we suggest that the increase should be to 12 weeks and not 8 weeks as proposed. The ability to extend the period on cause shown should be retained.

Parties regularly struggle to comply with the current 6 week time period and an extension of 2 weeks is unlikely to alleviate this problem. We acknowledge that an 8 week period would be analogous to that permitted under the wider community right to buy. However, the crofting community right to buy is utilised over a much bigger area of land. Often valuers will encounter difficulties obtaining accurate information from landlords because they are reluctant to sell. Therefore we believe that there are sound reasons why the permitted period should be longer in a crofting context.

We agree that provision should be made for counter-representations to be made. However, this should be limited to one opportunity for representations and counter-representations to be made. A requirement to obtain such representations would provide a further reason why we suggest that the permitted time period for the valuer to notify the value of the land should be 12 weeks and not 8 weeks as proposed.

**Compensation**

We do not object to the proposals.

**Outcome of Appeal to Land Court**

We accept that the existing 4 week time limit for the Land Court to give its decision is short. We therefore do not have any objection to this being removed and substituted for an 8 week period (or longer in exceptional circumstances where notification is given). However, it is in the interests of justice that decisions are provided as expeditiously as possible.
Written submission from the Crofting Commission

Proposed Amendments to Part 3 of the Land Reform (Scotland) Act 2003

Views of the Crofting Commission - Section 71 – Amend definition of ‘crofting community’.

The Crofting Commission has previously highlighted the anomalous situation which entails that two Acts with relevance to crofting provide different definitions of what constitutes a crofting community. The Crofters (Scotland) Act 1993 as amended defines the crofting community at Section 61(1) as “all the persons who (either or both) –

(a) occupy crofts within a township which consists of two or more crofts registered with the Crofting Commission;

(b) hold shares in a common grazing associated with that township;”

While the Land Reform (Scotland) Act 2003 refers to a crofting community body, it would be helpful, as recommended by the Crofting Commission and other respondents, if the terminology offered greater clarity between this and a crofting community.

The Crofting Commission notes specifically the amendments to section 71(5) for the purpose of admitting “more crofters who are excluded by the existing legislation.” In particular we note the change to subsection (5)(a)(ii). This no longer mentions the stipulated distance of 16 kilometres which itself was changed by the Crofting Reform (Scotland) Act 2010. For consistency of approach, the cross-reference with revised crofting legislation should continue to be recognised within this sub-section. In particular, the revised distance of 32 kilometres should also be a qualifying factor in this legislation.

The Crofting Commission recommends that the revised subsection should read:

are tenants of crofts in the crofting township whose names are entered in the Crofting Register, or the Register of Crofts, as the tenants of such crofts, and are complying with the duty to be ordinarily resident on, or within 32 kilometres of their crofts.

While the Commission agrees with the proposal to extend eligibility to owner-occupier crofter category, we do not understand the variation in registration requirements between that of a crofting tenant and that of an owner-occupier crofter. The category of owner-occupier crofter was again introduced by the Crofting Reform (Scotland) Act 2010. It is proper that the category should be recognised within the revision of this legislation also. However, it appears to have been recognised from the responses to the Call for Evidence that confining tenant participation to the Crofting Register was counter-productive in terms of what the amending legislation is trying to achieve. The same logic extends to owner-occupier crofter category, and we can see no logical reason for it not to include those who are registered on the Commission’s Register of Crofts.
The Crofting Commission recommends that the proposed subsection (5)(a)(iii) should read:

are owner-occupier crofters of owner-occupied crofts in the crofting townships whose names are entered Crofting Register, or the Register of Crofts, as the owner occupier crofters of such crofts, and are complying with the duty to be ordinarily resident on, or within 32 kilometres of their crofts.

Section 74(1) and 97B – Identification of owner, tenants and certain creditors

The Crofting Commission and other respondents have previously expressed reservations about the addition of the categories for identification as proposed at section 74(1). In particular, it was considered that there were limitations to what a crofting community body could be reasonably expected to source and provide. Requiring such onerous conditions, without recognitions of all reasonable endeavour to secure identity, appears contrary to the general purpose of the amendments.

The Crofting Commission recommends in the proposed amendments to section 74(1)(o) – (r) that wording of the following nature be introduced:

Having made all reasonable endeavours to identify such owners, tenants, sporting tenants or creditors by making appropriate enquiries in the relevant registers, including the Land Register, Register of Sasines, Books of Council and Session, Crofting Register and Register of Crofts.

The requirement to identify tenants or sporting tenants should be restricted to tenants whose lease is registered in one of the public registers, namely the Land Register, Register of Sasines, Books of Council and Session, Crofting Register and Register of Crofts.

The obligation to identify creditors should be restricted to creditors who have a Standard Security registered in the Land Register and Register of Sasines.

Section 73 – Croft land mapping

The Crofting Commission is generally in agreement with or has no specific comment to make on other proposed amendments. However, we would wish to make reference to Section 73. We welcome the proposed modification in subsection (5)(b)(i) which references the rights and interests known to the crofting community body and also the removal of the subsequent sub-paragraph (ii).

The Provision for recognition of what is known to the crofting community body in this instance is what the Commission considers should also be recognised in what has been related previously in terms of section 74(1). In addition, we note the proposed inclusion in Section 73(5) of the need to list those mentioned in the new subsection (5ZA). This relates to identifying owners, tenants, creditors and sporting interests. We would again recommend that this should contain the proviso – known to the crofting community body.

In this overall context the Crofting Commission would recommend that the mapping requirements are no more onerous than the mapping requirements for anyone making a registration to the Land Register.
Written submission from Scottish Land and Estates

CALL FOR EVIDENCE FOR THE PROPOSED COMMUNITY EMPOWERMENT (SCOTLAND) BILL AT STAGE 2 – CROFTING COMMUNITY RIGHT TO BUY

Scottish Land & Estates is a membership organisation representing landowners, land managers and rural businesses across Scotland and has a dedicated internal crofting group as well as being an active participant in the Scottish Parliament’s cross-party group on crofting. We welcome this opportunity to provide written evidence and have been closely involved with the wider aims of this Bill from our initial participation in the Terms of Reference Group.

We have reviewed the amendments brought forward by the Minister and would comment as follows:-

1. As previously indicated we are relaxed about the extension of legal structures which may constitute crofting community bodies to include SCIOs and BenComs and the repeal of the auditing of accounts requirement for crofting community bodies. However, we would question why there is provision for the SCIO or BenCom to withhold information contained in minutes. We would suggest that data protection legislation would already cover certain disclosures and if there is a “commercial” confidentiality or sensitivity angle then this needs to be more explicit than currently expressed in 1A(h)(i) and (ii) and 1B(h)(i) and (ii). Transparency is important and vexatious or spurious reasons for withholding information require to be avoided. Further explanation is needed as to what these provisions seek to achieve.

2. It is important that crofting community bodies are appropriately constituted as now, in terms of Company Limited by Guarantee or as is proposed in terms of SCIOs or BenComs referred to above. However, the proposed amendment (A1)(b) widens this to other bodies as may be prescribed. While again there are requirements to meet, we feel that the category of community body should be a matter for primary legislation and that the extension to SCIOs and BenComs is sufficiently broad at present. If there are other particular types of structure which the Scottish Government has in mind in addition to SCIOs and BenComs then these should be stated now.

3. Information about rights and interest in land is as important for crofting as other landholdings in Scotland. The Scottish Government is, in the interests of consistency and accountability, currently pressing ahead with land registration targets of which we are in principle supportive. However, we suggest that the proposed amendments to section 73 of the Land Reform (Scotland) Act 2003 (“the 2003 Act”) by way of sections 47(2)(ii) and 47(2)(f) would be a retrograde step and go against this wider policy approach towards title and ownership in Scotland. The existing provisions specified in section 73(5)(b)(ii) are not unduly onerous, in that the details sought regarding pipes, fences and other boundary matters are simply where “known to the applicant body or the existence of which it is, on reasonably diligent inquiry, capable of ascertaining”. Generally in terms of registration and valuation as well as from a practical perspective we are opposed to the amendment repealing these two subsections. Communities want to know what they are purchasing and land acquired by a crofting community
body is by and large not in isolation from adjoining land and any shared usage of facilities such as sewerage or water pipes where known should on a practical level be identified.

4. We agree to the proposals re Crofting Community Body paying for the ballot and the provisions for reimbursement in certain circumstances. However, we have concerns regarding the new (4A). In terms of (4A)(a) and(b), “Information” should only be to substantiate or supplement information already established and not additional information to circumvent due process. As we commented in our consultation response in relation to Part 2 Community Right to Buy there needs to be transparency, clarity and a tangible outcome and a ballot is the only way to legitimately demonstrate community support. Clarity is required as to what the Minister intends by this provision.

5. The amendment in relation to valuation requires to be re-visited. In our view the inclusion of counter representations is not required in this instance. Provided the valuer is appropriately qualified, properly experienced and has the ability to communicate effectively with both the owner of the land and the crofting community body seeking acquisition then (9A) is completely unnecessary and complicates the process which goes against the aims of this Bill.

6. A consequence of the proposed (9A) is that the right to buy process becomes more protracted as (9B) extends the period for determination of value from 6 weeks at present to 8 weeks. The longer the delay, the greater the detriment in both financial and potentially relationship terms between owner and crofting community body and we are opposed to (9B) unnecessarily lengthening the process. Should the Minister accept that (9A) is surplus to requirements then (9B) would naturally not be required.

7. As with valuation, the amendments proposed in relation to compensation do not in our view assist with the practical working of the crofting community right to buy process. The proposed new section 89(4) in the 2003 Act makes provision for the Minister to specify through secondary legislation amounts payable in compensation. While recognising that a mechanism is necessary, we would respectfully question whether the Minister is the appropriate assessor of the level of compensation. Clearly it is important that those owning land subject to compulsory acquisition are properly compensated and advice from qualified and experienced valuers should be expressly obtained. This would provide some welcome independence.

In terms of the proposed section 89(4)(d) the procedure under which claims are to be made is left to Ministerial Order as at present. While we accept that is the appropriate way to handle the detail of the procedure, we would affirm that in any consideration there needs to be parity between the level of detail sought in justifying a claim and the level of detail provided in determining the relative success or otherwise of a claim, as well as a clear time-limited period from receipt of a compensation claim to ultimate determination of that claim. Those who have suffered financial loss and delay require to be properly and timeously engaged with and have their claim progressed in a straightforward way.
8. We do not support the proposed amendment to section 92 of the 2003 Act. The period which the Land Court has to make determination has been doubled from 4 weeks to 8 weeks or potentially longer. While we would accept in exceptional and complex circumstances 4 weeks may not be a sufficiently long period, in those particular cases it should be for the Land Court to apply to Ministers for further time for consideration, demonstrating why the additional time is required, otherwise the 4 weeks period ought as a general rule to remain. As indicated previously, time limits are vital.

We understand that the Land Court’s own rules require decisions to be written and therefore think the references to written statements are superfluous. There would be an unfortunate inference drawn that the Land Court did not know what it was doing if it is unable to provide a written statement within a reasonable time period and the 4 weeks which operates to date is usually sufficient. We feel the provisions as drafted in the Minister’s amendment are too lax and that confidence in the Land Court will be undermined by this amendment as currently drafted.
Supplementary evidence from Community Land Scotland

Extract of email from Duncan Macpherson regarding proposals for Part 3 that communities must identify owners to land, people with standard securities over land, tenants, sporting interests.

a. Owner – I remember trying to find out who was the rightful owner of XXXXXXXXXX. It went through a series of transfers between related parties and finally to several named individuals; of whom all bar one were fictitious. We made our best guess regarding the likely owner and that was accepted for a part 2 registration. If you went for using ‘reasonable endeavours’ to find the owner that may also be difficult as it might be considered reasonable to go to court to have it decided who is the real owner. We are then back in a Pairc situation where funders will not pay for legal action and communities can’t afford to take it.

b. Creditors with a standard security and right to sell the land are irrelevant in a Part 3 situation, because land in crofting tenure is near valueless; hence the reason why no commercial lender will land in crofting tenure as security. I don’t see the need for such an exercise anyway as the creditor’s rights would be identified at due diligence in the sale process and dealt with then, as is normal in any transaction.

c. Every crofter is a tenant and there can be hundreds on some estates, including many absentees. In particular people may assume that one member of a family is the tenant when in fact it is another. This would be a nightmare. Tenants’ rights are clearly protected under crofting law so there is no effect upon their ability to croft by a change in landowner. It seems bizarre that at the moment an estate can be sold to anyone and the first thing that the tenants would know about it would be the change in name on the rent invoice. This presumably would not change but if the community wanted to purchase under Part 3 they would first have to identify every croft tenant.

d. The sporting interests would be unaffected as any lease would have to be complied with until the end of the term so there should be no need to identify the sporting tenants at point of registration. Once again this is a sale process issue.

Peter Peacock
Policy Director
Community Land Scotland
6 February 2015

Dear Rob

The Community Empowerment (Scotland) Bill will insert Part 3A to the Land Reform (Scotland) Act 2003, creating a right for communities to buy “eligible land” without a willing seller when certain criteria are met. Eligible land is defined in section 97C(1) of the 2003 Act (as inserted by the Bill) as land which, in the opinion of Ministers, is “wholly or mainly abandoned or neglected”. Concerns have been raised both in the Committee’s Stage 1 report, and by Committee members at the Stage 1 debate, that the concept of “abandoned or neglected” land does not have a clear definition. The Committee has also highlighted that it is has concerns that the concept of “abandoned or neglected” land will be applied in such a way that limits it to the land’s physical condition.

There is no definition on the face of the Bill of the terms “abandoned” and “neglected” because it is intended that these terms are given their ordinary meaning. It is intended to use the words “abandoned” and “neglected” as descriptions of land that may be eligible land for the purposes of the exercise of the new compulsory right to buy as the words are capable of a broad meaning. This is because it is expected that the broad expressions may apply to a multiplicity of circumstances and should be understood generally.

By using broad expressions, Parliament would therefore be able to confer on Ministers a wide discretion, exercisable in a multiplicity of circumstances, to consider whether particular land described in an application is eligible for the purposes of Part 3A. Although the exercise of that discretion is subject to judicial oversight, it would not be expected that the Court could read down “abandoned” or “neglected” in a narrow way.

I would also be concerned not to try and define the expressions any further because it appears to me that any attempt to do so is more likely than not to result in a situation where the words are given a narrower meaning than the broad meaning that would otherwise apply if they are not technically defined.
The approach which Ministers would adopt in applying the test whether the land in a particular application is neglected or abandoned would be determined having regard to guidance and to a multiplicity of different matters. It is understood that some of these matters would be mandatory for Ministers to have regard to and for that reason it is intended that the minimum categories of such matters should be prescribed in subordinate legislation. There is power to do so in Section 97C(2) and I have therefore attached for your consideration a draft of Regulations under that power which indicates the sorts of matters that we would suggest that Ministers must have regard to as a minimum.

The matters set out in the draft Regulations fall into three broad categories:

- the physical condition and its effect on the surrounding area, public safety and the environment;
- the use of the land, or lack of use as the case may be, including whether the land is a nature reserve, held for conservation purposes or used for public recreation;
- any designation or classification of the land, such as land which has been classed as contaminated land, or buildings which are listed buildings or scheduled monuments.

I would like to draw your attention to the matters referred to in regulations 2(2)(b) to (d) of the draft Regulations. For each of these matters, Ministers must have regard to the effect of such condition. In particular, regulation 2(2)(d) prescribes that Ministers must have regard to “whether the physical condition of the land or any building or other structure on the land is causing or is likely to cause environmental harm”. “Environmental harm” is given the meaning that it has in section 17(2) of the Regulatory Reform (Scotland) Act 2014, which is:

(a) harm to the health of human being or other living organism;
(b) harm to the quality of the environment, including (i) harm to the quality of the environment as a whole, (ii) harm to the quality of air, water or land, and (iii) other impairment of, or interference with, ecosystems;
(c) offence to the senses of human beings;
(d) damage to property; or
(e) impairment of, or interference with, amenities or other legitimate uses of the environment.

Regulation 2(1)(b) obliges the Minister to consider whether, and to what extent, the physical condition of the land or any building or other structure on it is detrimental to the amenity of the land which is adjacent to it. It is intended that “amenity” is given its ordinary meaning, being a desirable or useful feature or facility of a building or place.

I would also like to draw your attention to the matters referred to in regulations 2(3) and 2(4). The matters in regulation 2(3) all relate to the use, or lack of use, of the land, and the matters in regulation 2(4) relates to any particular designation of the land, for example, the land forms part of a nature reserve or conservation area is a matter that must be taken into account by Ministers.
The matters listed in the draft Regulations are matters that Ministers must have regard to so far as applicable to the land described in the particular application. For example, although one of the matters listed is whether the physical condition of the land complies with the standards for good agricultural condition, this would not require to be considered by Ministers in the case of land which is situated in a city centre. Also, I should highlight that Ministers may consider other matters not set out in the draft Regulations where these are relevant. The draft Regulations are a list of the matters to which Ministers must have regard as a minimum – in some cases Ministers may have to consider other matters which they deem relevant in order to have satisfied themselves that to approve an application is in the public interest and compatible with furthering the achievement of sustainable development.

I hope that the matters set out in the draft Regulations explains our approach to the interpretation of “abandoned” or “neglected” land.

Kind regards

AILEEN MCLEOD
Draft Regulations laid before the Scottish Parliament under section 98(5) of the Land Reform (Scotland) Act 2003, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2015 No.

LAND REFORM

The Community Right to Buy (Abandoned or Neglected Land) (Eligible Land) (Scotland) Regulations 2015

Made - - - -

Coming into force - -

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 97C(2) and 98(3) of the Land Reform (Scotland) Act 2003 and all other powers enabling them to do so.

In accordance with section 98(5) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Community Right to Buy (Abandoned or Neglected Land) (Eligible Land) (Scotland) Regulations 2015 and come into force on [ ].

(2) In these Regulations—

“conservation area” means a conservation area for the purposes of section 61 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997;

“environmental harm” has the meaning given to it in section 17(2) of the Regulatory Reform (Scotland) Act 2014;

“listed building” means a listed building for the purposes of section 1 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997;

“nature reserve” means a nature reserve for the purposes of section 15(1) of the National Parks and Access to the Countryside Act 1949;

“scheduled monument” means a scheduled monument for the purposes of section 1 of the Ancient Monuments and Archaeological Areas Act 1979;

(a) 2003 asp 2. Section 97C was inserted by the Community Empowerment (Scotland) Act 2015 (asp ), section 48. Section 98(1) of the Act contains definitions of ‘Ministers' and ‘prescribed’ relevant to the exercise of the statutory powers under which these Regulations are made.
“special site” means a special site for the purposes of section 78C(1) of the Environmental Protection Act 1990;

“standards for good agricultural and environmental condition” means the standards for good agricultural and environmental condition as set out in [Part 2 of the Schedule to The Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014].

Matters to which Ministers must have regard to in determining whether land is eligible land

2.—(1) In determining whether land is eligible for the purposes of Part 3A of the Land Reform (Scotland) Act 2003(a), the Scottish Ministers must have regard, so far as applicable, to the matters mentioned in paragraphs (2), (3) and (4).

(2) The matters mentioned in this paragraph are—

(a) the physical condition of the land or any building or other structure on the land, and the length of time for which it has been in such a condition;

(b) whether, and to what extent, the physical condition of the land or any building or other structure on the land is detrimental to the amenity of land which is adjacent to it;

(c) whether, and to what extent, the physical condition of the land is a risk to public safety;

(d) whether the physical condition of the land or any building or other structure on the land is causing or is likely to cause environmental harm(b);

(e) whether the physical condition of the land complies with the standards for good agricultural and environmental condition.

(3) The matters mentioned in this paragraph are—

(a) the purpose for which the land or any building or other structure is being used or has been used, and the length of time for which it has been so used;

(b) if it appears to the Scottish Ministers that the land or any building or other structure on the land is not being used for any particular purpose, the length of time for which it has not been so used;

(c) whether, and to what extent, the land or any building or other structure on the land is being used for public recreation;

(d) whether, and to what extent, the land is being held for the purposes of permanent preservation for the benefit of historic or national interest and for the preservation of its natural aspect and features and animal and plant life;

(e) whether, and to what extent, any building or other structure on the land is being held for the purposes of the permanent preservation for the benefit of historic or national interest and for the preservation of its architectural or historical features so far as of national or historic interest.

(4) The matters mentioned in this paragraph are—

(a) whether the land, or any part of the land, is or forms part of a nature reserve or conservation area;

(b) whether the land, or any part of the land, is designated a special site(c);

(a) Part 3A was inserted by the Community Empowerment (Scotland) Act 2015 (asp ), section 48.

(b) “Environmental harm” has the meaning given to it in section 17(2) of the Regulatory Reform (Scotland) Act 2014. “Environmental harm” therefore means: (a) harm to the health of human beings or other living organisms, (b) harm to the quality of the environment, including (i) harm to the quality of the environment as a whole, (ii) harm to the quality of air, water or land, and (iii) other impairment of, or interference with, ecosystems, (c) offence to the senses of human beings, (d) damage to property, or (e) impairment of, or interference with, amenities or other legitimate uses of the environment.

(c) A “special site” is defined as a “special site” for the purposes of section 78C(1) of the Environmental Protection Act 1990, which is an area of land that the local authority has decided should be designated as a special site because it is contaminated land.
(c) whether any building or structure on the land is a listed building;
(d) whether any building or structure on the land is a scheduled monument.

Name
A member of the Scottish Government

St Andrew’s House,
Edinburgh
Date
Community Empowerment (Scotland) Bill

1st Marshalled List of Amendments for Stage 2
(Local Government and Regeneration Committee)

The Bill will be considered in the following order—

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<td>52 to 98</td>
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<td>99 and 100</td>
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Long title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Alex Rowley

1043 In section 1, page 1, line 10, leave out <determine> and insert <by regulations prescribe>

Marco Biagi

1001 In section 1, page 1, line 11, leave out from <of> to end of line 23 and insert <, by the persons mentioned in subsection (1A), of the functions mentioned in subsection (1B).

(1A) The persons are—

(a) a cross-border public authority,
(b) any other Scottish public authority,
(c) any other person carrying out functions of a public nature.

(1B) The functions are—

(a) in the case of a cross-border public authority, any function that is exercisable in or as regards Scotland and does not relate to reserved matters,
(b) in the case of any other Scottish public authority, any function that does not relate to reserved matters,
(c) in the case of any other person carrying out functions of a public nature, any such function that is exercisable in or as regards Scotland and does not relate to reserved matters.

(1C) Nothing in subsection (1A) or (1B) requires the Scottish Ministers to determine outcomes under subsection (1) that result from, or are contributed to by, the carrying out of functions by the Scottish Parliament or the Scottish Parliamentary Corporate Body.

Marco Biagi

1002 In section 1, page 1, line 23, at end insert—
In determining the national outcomes, the Scottish Ministers must have regard to the reduction of inequalities of outcome which result from socio-economic disadvantage.

Alex Rowley

1044 In section 1, page 1, line 24, leave out subsection (2)

Marco Biagi

1003 In section 1, page 1, line 25, at end insert—

(a) having consulted the persons mentioned in paragraph (a), prepare draft national outcomes, and

(c) consult the Scottish Parliament on the draft national outcomes during the consultation period.

Marco Biagi

1004 In section 1, page 1, line 26, after <must> insert <, no earlier than the expiry of the consultation period.>

Marco Biagi

1005 In section 1, page 1, line 26, at end insert—

In subsections (2) and (3), “consultation period” means the period of 40 days beginning with the day on which the consultation mentioned in subsection (2)(c) commences; and in calculating the period of 40 days, no account is to be taken of any time during which the Scottish Parliament is dissolved or in recess for more than 4 days.

Drew Smith

1045 In section 1, page 1, line 26, at end insert—

In publishing the national outcomes, the Scottish Ministers must also publish a report on the consultation under subsection (2), setting out how—

(a) the national outcomes have been improved following consultation,

(b) the results of the consultation have influenced those improvements.

Marco Biagi

1006 In section 1, page 2, line 1, leave out subsections (4) to (6) and insert—

The persons mentioned in subsection (1A) in relation to whom the duty under subsection (1) applies must have regard to the national outcomes in carrying out the functions mentioned in subsection (1B).

Cameron Buchanan

1006A As an amendment to amendment 1006, line 3, leave out <have regard to> and insert <consider>

Cameron Buchanan

1046 In section 1, page 2, line 1, leave out <have regard to> and insert <consider>
After section 1

Alex Rowley

1049 After section 1, insert—

<Regulations under section 1(1): procedure>

(1) Regulations under section 1(1) must not be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.

(2) Before laying draft regulations before the Parliament under subsection (1), the Scottish Ministers must consult—

(a) individuals eligible to vote at a local government or parliamentary election,

(b) communities and community bodies,

(c) community planning partners,

(d) third sector interfaces,

(e) third sector bodies,

(f) children and young people and organisations working for and on behalf of children and young people, and

(g) such other persons as they consider appropriate.

(3) For the purposes of such a consultation, the Scottish Ministers must—

(a) lay a copy of the proposed draft regulations before the Parliament,

(b) publish in such manner as the Scottish Ministers consider appropriate a copy of the proposed regulations, and

(c) have regard to any representations about the proposed draft regulations that are made to them within 60 days of the date on which the copy of the proposed draft regulations are laid before the Parliament.

(4) In calculating any period of 60 days for the purposes of subsection (3)(c), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.

(5) When laying draft regulations before the Parliament under subsection (1), the Scottish Ministers must also lay before the Parliament an explanatory document giving details of—

(a) the consultation carried out under subsection (2),
(b) any representations received as a result of the consultation, and
(c) the changes (if any) made to the proposed draft regulations as a result of those representations.

Section 2

Marco Biagi

1008 In section 2, page 2, line 23, at end insert—

<( ) In carrying out a review of the national outcomes under subsection (1), (2) or (3), the Scottish Ministers must consult such persons as they consider appropriate.>

Marco Biagi

1009 In section 2, page 2, line 24, at end insert—

<(za) may propose revisions to the national outcomes,
(zb) must—
(i) where they propose to make revisions to the national outcomes, consult the Scottish Parliament on the proposed revisions during the consultation period,
(ii) where they do not propose to make revisions to the national outcomes, consult the Scottish Parliament during the consultation period on the national outcomes as most recently published under section 1(3) or paragraph (b)(i) or republished under paragraph (b)(ii).>

Marco Biagi

1010 In section 2, page 2, line 25, after <outcomes> insert <after the expiry of the consultation period>

Marco Biagi

1011 In section 2, page 2, line 28, after second <outcomes> insert <after the expiry of the consultation period>

Marco Biagi

1012 In section 2, page 2, line 29, leave out subsection (5)

Drew Smith

1050 In section 2, page 2, line 30, at end insert—

<( ) publish a report setting out the outcomes of the consultation.>

Marco Biagi

1013 In section 2, page 2, line 31, leave out <subsections (4) to (6) of section 1> and insert <section 1(4)>
Section 2

In subsection (4), “consultation period” means the period of 40 days beginning with the day on which the consultation mentioned in subsection (4)(zb)(i) or (ii) commences; and in calculating the period of 40 days, no account is to be taken of any time during which the Scottish Parliament is dissolved or in recess for more than 4 days.

Section 3

Alex Rowley

In section 3, page 2, line 39, leave out <prepare and publish reports> and insert <, as soon as practicable after the end of each 2 year period, lay before the Scottish Parliament a report>

In section 3, page 3, line 4, leave out subsection (3) and insert—

In preparing a report under subsection (1), the Scottish Ministers must consult—

(a) individuals eligible to vote at a local government or parliamentary election,
(b) communities and community bodies,
(c) community planning partners,
(d) third sector interfaces,
(e) third sector bodies,
(f) children and young people and organisations working for and on behalf of children and young people, and
(g) such other persons as they consider appropriate.

The Scottish Ministers must, as soon as practicable after laying a report under subsection (1) before the Scottish Parliament, publish the report in such manner as they consider appropriate.

In subsection (1), “2 year period” means—

(a) the period of 2 years beginning with the day on which this section comes into force, and
(b) each subsequent period of 2 years.

After section 3

Alex Rowley

After section 3, insert—

Interpretation of Part 1

In this Part—

“community” is, unless the Scottish Minsters otherwise direct, to be defined by reference to a postcode unit or postcode units and is to be regarded as comprising the persons from time to time—
(a) resident in that postcode unit or in one of those postcode units, and
(b) entitled to vote in a polling district which includes that postcode unit or
those postcode units (or part of it or them),

“postcode unit” means an area in relation to which a single postcode is used to
facilitate the identification of postal service delivery points within the area,

“third sector bodies” means organisations (other than bodies established under an
enactment) that exist wholly or mainly to provide benefits for society or the
environment,

“third sector interface” means third sector bodies which provide a single point of
access for support and advice for the third sector within a local area.

Section 4

Marco Biagi

1015 In section 4, page 3, line 9, leave out subsection (1) and insert—

(1) Each local authority and the persons listed in schedule 1 must carry out planning for the
area of the local authority for the purpose mentioned in subsection (2) (“community planning”).

Marco Biagi

1016 In section 4, page 3, line 12, leave out from beginning to <authority> in line 13 and insert <The
purpose is improvement in the achievement of outcomes>

Marco Biagi

1017 In section 4, page 3, line 15, leave out <(“community planning”)>

Marco Biagi

1018 In section 4, page 3, line 15, at end insert—

( ) In carrying out community planning, the local authority and the persons listed in
schedule 1 must—

(a) participate with each other, and

(b) participate with any community body (as mentioned in paragraph (c) of subsection
(5)) in such a way as to enable that body to participate in community planning to
the extent mentioned in that paragraph.

Drew Smith

1054 In section 4, page 3, line 16, leave out from beginning to <with> in line 17 and insert—

( ) A community planning partnership in setting outcomes of the type mentioned in
subsection (2) (“local outcomes”) must have regard to

Marco Biagi

1019 In section 4, page 3, line 19, leave out <In relation to the area of each> and insert <In carrying out
the functions conferred on them by this Part in relation to the area of a>
Marco Biagi

1020 In section 4, page 3, line 20, leave out from <and> to <planning> in line 21 and insert <for the area and the persons listed in schedule 1>

Marco Biagi

1021 In section 4, page 3, line 25, leave out <A> and insert <Each>

Marco Biagi

1022 In section 4, page 3, line 27, at end insert <having regard in particular to which of those bodies represent the interests of persons who experience inequalities of outcome which result from socio-economic disadvantage>

Marco Biagi

1023 In section 4, page 3, line 28, leave out <such> and insert <those>

Marco Biagi

1024 In section 4, page 3, line 30, leave out <such> and insert <those>

Alex Rowley

1055 In section 4, page 3, line 32, at end insert—

<( ) Each local authority must, for the purposes of subsection (5), maintain a list of all community bodies within its area.>

Schedule 1

Marco Biagi

1026 In schedule 1, page 78, line 13, at end insert—

<Historic Environment Scotland>

After section 4

Marco Biagi

1025 After section 4, insert—

<Socio-economic inequalities

In carrying out functions conferred by this Part, a community planning partnership must act with a view to reducing inequalities of outcome which result from socio-economic disadvantage unless the partnership considers that it would be inappropriate to do so.>

Alex Rowley

1056 After section 4, insert—
<Wellbeing of local communities assessment>

(1) A community planning partnership must prepare and publish an assessment of the state of wellbeing of the communities in the local authority area in relation to which its functions under this Part are exercisable.

(2) An assessment must—

(a) set out which communities form part of the area,
(b) include an analysis of the state of wellbeing in each such community and in the area as a whole,
(c) include an analysis of the state of wellbeing of any category of persons in the area whom the community planning partnership considers to be vulnerable or otherwise disadvantaged,
(d) include any further analysis that the community planning partnership has carried out by reference to criteria set and applied by it for the purpose of assessing wellbeing in the area or in any community forming part of the area,
(e) include predictions of likely future trends in the wellbeing of the area,
(f) include any other related analytical data and information that the community planning partnership considers appropriate.

(3) In this section—

“wellbeing” means the status in the area of—

(a) socio-economic inequality,
(b) economic development,
(c) regeneration,
(d) public health,
(e) social wellbeing,
(f) environmental wellbeing.

“area” means the area mentioned in subsection (1).

Section 5

Marco Biagi

1027 In section 5, page 4, leave out lines 10 and 11 and insert—

<(a) local outcomes to which priority is to be given by the community planning partnership with a view to improving the achievement of the outcomes,>

Marco Biagi

1028 In section 5, page 4, line 12, leave out <outcome> and insert <outcomes>

Alex Rowley

1057 In section 5, page 4, line 17, leave out from beginning to <appropriate,> and insert—

<( ) individuals normally resident in the area of the local authority to which the plan relates,
( ) bodies which represent the interests of persons who use or are likely to use any services provided by any of the community planning partners,

( ) community planning partners,

( ) third sector bodies.

Alex Rowley

1058 In section 5, page 4, line 18, at end insert—

<( ) In consulting on a local outcomes improvement plan, a community planning partnership must make all reasonable efforts to secure representations by virtue of subsection (3) from persons or representatives of persons identified in section (Wellbeing of local communities assessment)(2)(c).>

Alex Rowley

1059 In section 5, page 4, line 23, at end insert—

<( ) the most recently published wellbeing of local communities assessment published under section (Wellbeing of local communities assessment)(1).>

After section 5

Alex Rowley

1060 After section 5, insert—

<Community action plan

(1) Each local authority must, in relation to each community council area within its area, involve the bodies mentioned in subsection (2) in the preparation and publication of a community action plan.

(2) Those bodies are—

(a) the community council for the community council area, and

(b) community bodies.

(3) A community action plan is to—

(a) set out, in relation to each local outcome included in the area plan, the extent (if any) to which the proposed improvement in the achievement of the local outcome described in the area plan is planned to be delivered in the community council area to which the community action plan relates, and

(b) where an improvement in the achievement of a local outcome is proposed to be delivered to some extent in that area, set out—

(i) what actions will be taken to achieve the proposed improvement in that area, and

(ii) what information will be gathered in order to assess whether the proposed improvement is being achieved in that area.

(4) Local authorities and the bodies mentioned in subsection (2) must, when involved in the preparation of a community action plan for a community council area, have regard to—>
(a) where the area ranks in relation to other community council areas within the local authority’s area in terms of socio-economic disadvantage, and

(b) the need for the extent of the proposed improvements in the achievement of local outcomes set out in all of the community action plans for a local authority area taken together to match the extent of the proposed improvements in the achievement of local outcomes identified in the area plan.

(5) In this section, “community council area” includes any area identified in a scheme for the establishment of community councils approved under section 52 of the Local Government (Scotland) Act 1973 as an area for which the local authority that prepared the scheme considered a community council to be unnecessary; and in this section’s application in relation to such an area, subsection (2) is be read as if paragraph (a) was omitted.

(6) In this section—

“area plan” means the local outcomes improvement plan published in relation to the local authority area that includes the community council’s area, and

“community bodies” means bodies, whether or not formally constituted, established for purposes which consist of or include that of promoting or improving the interests of any communities (however described) resident or otherwise present in the community council area.

Section 6

Alex Rowley

1061 In section 6, page 5, line 3, at end insert—

<(  ) The duty in subsection (1) of section (Community action plan) (as read with subsections (2) and (3) of that section) applies in relation to a revised local outcomes improvement plan published under subsection (5) as it applies to a local outcomes improvement plan published under section 5(1).>

Section 7

Marco Biagi

1029 In section 7, page 5, line 5, after <prepare> insert <and publish>

Marco Biagi

1030 In section 7, page 5, line 7, after <out> insert—

<(  )>

Marco Biagi

1031 In section 7, page 5, line 9, leave out <to which the report relates> and insert <, and

( ) the extent to which—

(i) the community planning partnership has participated with community bodies in carrying out its functions under this Part during the reporting year, and
(ii) that participation has been effective in enabling community bodies to contribute to community planning.

Alex Rowley

1062 In section 7, page 5, line 10, at end insert—
<(  ) In relation to each such outcome, the progress report is also—
(a) to list each community action plan that identified that outcome as one in relation to which some or all of the proposed improvement in the achievement of the outcome would be delivered in the community council area to which the plan relates, and
(b) to include—
(i) an assessment, based on information gathered by virtue of sub-paragraph (ii) of section (Community action plan)(3)(b), of whether there has been any improvement in the achievement of the outcome in that area, and
(ii) an assessment of the extent to which any such improvement has resulted from the actions set out in the community action plan by virtue of sub-paragraph (i) of that section.>

Section 8

Marco Biagi

1032 In section 8, page 5, line 17, leave out <community planning partner> and insert <person>

Section 9

Cameron Buchanan

1063 In section 9, page 6, line 15, leave out <securing> and insert <inviting>

Section 10

Marco Biagi

1033 In section 10, page 6, line 24, leave out <comply with> and insert <have regard to>

Cameron Buchanan

1064 In section 10, page 6, line 24, leave out <comply with> and insert <consider>

Drew Smith

1065 In section 10, page 6, line 24, after <any> insert <statutory>

Marco Biagi

1034 In section 10, page 6, line 27, leave out <comply with> and insert <have regard to>
In section 10, page 6, line 27, leave out <comply with> and insert <consider>

Drew Smith

In section 10, page 6, line 27, after <any> insert <statutory>

Section 12

Marco Biagi

In section 12, page 7, line 2, leave out from <by> to <authority> in line 3 and insert <made jointly by each person mentioned in section 8(2)>

Marco Biagi

In section 12, page 7, line 5, leave out <(including in particular its conduct and co-ordination)>

Cameron Buchanan

In section 12, page 7, line 25, leave out from <or> to end of line 26

Section 13

Marco Biagi

In section 13, page 7, line 30, leave out <4(2)> and insert <4(1)>

After section 13

Alex Rowley

After section 13, insert—

<PART

COMMUNITY ENGAGEMENT STANDARDS

Community engagement standards

(1) The Scottish Ministers may by regulations make provision for or in connection with the introduction of community engagement standards.

(2) Regulations under subsection (1) may in particular make provision for, or in connection with, specifying—

(a) the ways in which the community planning partners mentioned in section 8(2) are to follow these standards in carrying out their functions under this Act,

(b) the manner in which the community planning partners mentioned in section 8(2) must carry out any consultations in relation to their functions under this Act,

(c) the ways in which public service authorities are to follow these standards in carrying out their functions.>
Section 96

Marco Biagi

1038 In section 96, page 76, line 17, after <section> insert <4(6), 8(3) or>

Alex Rowley

1070 In section 96, page 76, line 17, after <12(1)> insert <or (Community engagement standards)(1)>

Alex Rowley

1071 In section 96, page 76, line 19, at end insert—

<(  ) regulations under section 1(1).>

Schedule 4

Marco Biagi

1039 In schedule 4, page 80, line 3, at end insert—

<Local Government (Scotland) Act 1973

In the Local Government (Scotland) Act 1973—

(a) in section 99 (general duties of auditors), in subsection (1)(c), for “sections 15 to 17 (community planning) of the Local Government in Scotland Act 2003 (asp 1)” substitute “Part 2 of the Community Empowerment (Scotland) Act 2015 (community planning)”, and

(b) in section 102 (reports to Commission by Controller of Audit), in subsection (1)(c)—

(i) the words “and Part 2 (community planning)” are repealed, and

(ii) at the end insert “and Part 2 of the Community Empowerment (Scotland) Act 2015 (community planning)”.>

Marco Biagi

1040 In schedule 4, page 80, line 8, at end insert—

<Local Government in Scotland Act 2003

In section 57 of the Local Government in Scotland Act 2003 (power to modify enactments), in subsection (2)(a), for “, 13(1) or 15(1)” substitute “or 13(1)”.>

Marco Biagi

1041 In schedule 4, page 81, line 19, at end insert—

<Fire (Scotland) Act 2005

In the Fire (Scotland) Act 2005—

(a) in section 41E (local fire and rescue plans), in subsection (6), for “Local Government in Scotland Act 2003 (asp 1)” substitute “Community Empowerment (Scotland) Act 2015”, and
(b) in section 41J (Local Senior Officers), in subsection (2)(c), for “section 16(1)(d) of the Local Government in Scotland 2003 (asp 1) (duty to participate in community planning)” substitute “Part 2 of the Community Empowerment (Scotland) Act 2015 (community planning)”. 

**Police and Fire Reform (Scotland) Act 2012**

In the Police and Fire Reform (Scotland) Act 2012—

(a) in section 46 (duty to participate in community planning), in subsection (2), for “section 16(1)(e) of the Local Government in Scotland Act 2003” substitute “Part 2 of the Community Empowerment (Scotland) Act 2015”, and

(b) in section 47 (local police plans), in subsection (11), for “Local Government in Scotland Act 2003 (asp 1)” substitute “Community Empowerment (Scotland) Act 2015”.>

**Schedule 5**

**Marco Biagi**

1042 In schedule 5, page 81, line 30, at end insert—

<Section 57(2)(b).>
1st Groupings of Amendments for Stage 2
(Local Government and Regeneration Committee)

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the first day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**National outcomes: consultation, procedure and reporting**
1043, 1044, 1003, 1004, 1005, 1045, 1049, 1008, 1009, 1010, 1011, 1012, 1050, 1014, 1051, 1052, 1053, 1071

*Notes on amendments in this group*
Amendment 1044 pre-empts amendment 1003
Amendment 1012 pre-empts amendment 1050

**Functions to which national outcomes relate and duty of bodies exercising those functions**
1001, 1006, 1006A, 1046, 1047, 1048, 1007, 1013

*Notes on amendments in this group*
Amendment 1006 pre-empts amendments 1046, 1047 and 1048

**National outcomes: inequalities resulting from socio-economic disadvantage**
1002

**Duty to carry out community planning: general**
1015, 1016, 1017, 1018, 1019, 1020, 1026, 1027, 1028, 1032, 1037, 1038, 1039, 1040, 1041, 1042

**Relationship between national outcomes and local outcomes**
1054

**Effectiveness of community planning in involving communities, tackling inequality etc.**
1021, 1022, 1023, 1024, 1055, 1025, 1056, 1057, 1058, 1059, 1060, 1061, 1029, 1030, 1031, 1062
Extent of duty on community planning partners to contribute resources
1063

Community planning: status of guidance
1033, 1064, 1065, 1034, 1066, 1067

Notes on amendments in this group
Amendments 1033 and 1064 are direct alternatives
Amendments 1034 and 1066 are direct alternatives

Establishment of corporate bodies etc.
1035, 1036, 1068

Community engagement standards
1069, 1070
LOCAL GOVERNMENT AND REGENERATION COMMITTEE

EXTRACT FROM THE MINUTES

8th Meeting, 2015 (Session 4)

WEDNESDAY 4 MARCH 2015

Present:

Cameron Buchanan       Willie Coffey
Cara Hilton             Alex Rowley
Stewart Stevenson (Committee Substitute)  Kevin Stewart (Convener)
John Wilson (Deputy Convener)

Also present: Drew Smith.

Apologies were received from Clare Adamson.

Community Empowerment (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 1).

The following amendments were agreed to (without division): 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036 and 1037.

The following amendments were agreed to (by division)—

1043 (For 4, Against 3, Abstentions 0)
1049 (For 4, Against 3, Abstentions 0)
1051 (For 4, Against 3, Abstentions 0)
1052 (For 4, Against 3, Abstentions 0)
1053 (For 4, Against 3, Abstentions 0)
1025 (For 6, Against 1, Abstentions 0)

The following amendments were disagreed to (by division)—

1044 (For 2, Against 5, Abstentions 0)
1045 (For 3, Against 4, Abstentions 0)
1006A (For 3, Against 4, Abstentions 0)
1054 (For 3, Against 4, Abstentions 0)
1064 (For 1, Against 6, Abstentions 0)

The following amendments were moved and, no member having objected, withdrawn: 1063 and 1069.
The following amendments were pre-empted: 1046, 1047, 1048 and 1050.

The following amendments were not moved: 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1065, 1066, 1067 and 1068.

The following provisions were agreed to without amendment: sections 6, 9 and 11.

The following provisions were agreed to as amended: sections 1, 2, 3, 4, schedule 1 and sections 5, 7, 8, 10, 12 and 13.

The Committee ended consideration of the Bill for the day amendment 1069 having been disposed of.
The Convener: Agenda item 3 is consideration of the Community Empowerment (Scotland) Bill at stage 2. This is day 1 of the process.

I welcome to the meeting Marco Biagi, Minister for Local Government and Community Empowerment, his officials and Drew Smith MSP.

Before we move to consideration of the amendments, it will be helpful if I set out the procedure for stage 2 consideration. Everyone should have with them a copy of the bill as introduced, the marshalled list of amendments, which was published on Monday, and the groupings of amendments, which set out the amendments in the order in which they will be debated.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in each group to speak to and move their amendment, and to speak to all the other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate that by catching my attention in the usual way.

If the minister has not already spoken on the group, I will invite him to contribute to the debate just before I move to the winding-up speech. The debate on each group will be concluded by me inviting the member who moved the first amendment in the group to wind up.

Following debate on each group, I will check whether the member who moved the first amendment in the group wishes to press their amendment to a vote or to withdraw it. If they wish to press it, I will put the question on that amendment. If a member wishes to withdraw their amendment after it has been moved, they must seek the committee's agreement to do so. If any committee member objects, the committee must immediately move to the vote on the amendment.

If any member does not want to move their amendment when I call it, they should say, “Not moved.” Please remember that any other MSP may move such an amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote at stage 2. Voting in any division is by show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote.

The committee is required to indicate formally that it has considered and agreed to each section of the bill, so I will put a question on each section at the appropriate point.

**Section 1—National outcomes**

The Convener: We come to the first group of amendments. Amendment 1043, in the name of Alex Rowley, is grouped with amendments 1044, 1003 to 1005, 1049, 1008 to 1012, 1050, 1014, 1051 to 1053 and 1071. If amendment 1044 is agreed to, I cannot call amendment 1003, and if amendment 1012 is agreed to, I cannot call amendment 1050.

Alex Rowley (Cowdenbeath) (Lab): The purposes of my amendments 1043, 1044, 1049, 1051 to 1053 and 1071 are to ensure that the national outcomes for Scotland are created through a participative process that involves the people of Scotland and that all people have the opportunity to have a say in the outputs, and to require the Scottish ministers to lay a report before the Scottish Parliament every two years outlining the progress that has been made towards achieving the national outcomes. That will be an important part of democratic focus in Scotland and will improve the involvement of local people in setting national outcomes. The amendments are needed to ensure that the national outcomes for Scotland are created through a participative process that involves the people of Scotland. That is important because of the known benefits of focusing delivery on the achievement of outcomes.

For the bill to be sufficiently strengthened, it must involve all communities across Scotland and encourage their participation in setting the national outcomes. That is particularly true for communities that are the most disadvantaged, which are often described as the hardest to reach. To ensure that ministers have involved all people who live and work in Scotland in the determination of the national outcomes, it is suggested that there should be a parliamentary mechanism for scrutiny.

The bill states that reports must be prepared and published

“at such times as the Scottish Ministers consider appropriate.”

I argue that there needs to be a greater duty on ministers to report on progress towards achieving the national outcomes.

Under my suggestion, the Scottish ministers would have to present,

“as soon as practicable after the end of each 2 year period”,

a report to Parliament on the extent to which the national outcomes have been achieved. The preparation of the report must be a participative
exercise, with ministers consulting a full range of communities. That would ensure that progress towards achieving the national outcomes is transparent, and it would involve the Parliament much more in the national outcomes process. It would create far greater transparency and accountability and far greater involvement of local people and communities across Scotland.

I move amendment 1043.

The Convener: I call the minister to speak to amendment 1003 and the other amendments in the group.

The Minister for Local Government and Community Empowerment (Marco Biagi): Thank you—it is a pleasure to be in front of the committee again. I hope that this goes as well as the last stage 2 that I attended at the committee.

Alex Rowley has set out his view on how Parliament should be involved, and we have the Delegated Powers and Law Reform Committee’s recommendation that the Scottish Parliament should have a more active scrutiny role in relation to national outcomes. I agree with both that the scrutiny role of the Scottish Parliament in the process should be strengthened. I believe that the way to do that is through consultation under rule 17.5 of the Scottish Parliament’s standing orders. That process best reflects the separation of powers between an Executive that is responsible for setting the strategic direction of Government and a Parliament that is responsible for holding the Government to account for its progress. Therefore, I do not think that the procedure that Alex Rowley proposes is the best one.

I will go through my amendments in detail but, in summary, they would require Scottish ministers to consult the Parliament when determining, and when reviewing, national outcomes.

The effect of amendment 1003 is that, having consulted

“such persons as they consider appropriate”

in order to determine the draft national outcomes, Scottish ministers must then consult the Scottish Parliament.

Amendment 1004 is in consequence of amendment 1003 and provides that the national outcomes cannot be published until the Scottish Parliament has been consulted. Amendment 1005 sets the period for parliamentary consultation at 40 days, beginning with the day the consultation document is laid before the Parliament or otherwise provided to the clerk.

The process set out at rule 17.5 of the Scottish Parliament’s standing orders will apply to the consultation. I do not propose to go into further detail on that, unless members would find that helpful.

Amendment 1008 provides that, in any review of the national outcomes,

“the Scottish Ministers must consult such persons as they consider appropriate.”

Amendment 1012 removes the previous, more restricted, provision on that point, which had limited the consultation to where revisions were to be made.

Amendment 1009 provides that the Scottish Parliament is to be consulted in any review of the national outcomes. If, after a review has taken place, revisions to the national outcomes are proposed, that amendment provides that the Scottish Parliament will also be consulted on those revisions. If, after a review has taken place, no revisions are proposed, the Scottish Parliament will still be consulted on the existing national outcomes.

Amendment 1014 specifies that the period for the parliamentary consultation is 40 days. The process set out at rule 17.5 of the Scottish Parliament’s standing orders would apply to the consultation. Amendments 1010 and 1011 provide that national outcomes may not be republished until after the 40-day period of consultation with the Scottish Parliament.

There are some concerns about Alex Rowley’s proposal for a list of consultees. By identifying certain individuals and groups, the scope of the consultation is unavoidably narrowed, with some persons given greater significance in statute than others. For example, the list gives prominence to some organisations, such as those that work for children and young people, but not organisations that work in other sectors, such as those that work for homeless people or equality organisations.

The current wording allows flexibility for the consultation process to be appropriate to different situations. For example, where a review focuses on a specialist issue, it may be more appropriate to limit the scope of consultation to those who have expertise, experience and interest in that area. On the other hand, we anticipate that all Governments would want to consult widely and inclusively on the national outcomes as a whole. The duty needs to be carried out reasonably and, as such, entails that anyone who could reasonably expect to be consulted will be consulted. We also propose amendments that extend the requirement for consultation when the national outcomes are reviewed. The amendments ensure that, in the course of any review of the national outcomes, Scottish ministers are required to consult.

Both Alex Rowley and Drew Smith propose legislating for the provision of a report on the
consultation process. I agree with the principle behind that proposal, but I do not agree that it requires legislation. When the national outcomes are provided to the Parliament, we would, as a matter of good practice—as I believe any Government would—provide a note on the process and findings of the consultation. That would give the Parliament an opportunity to comment on the consultation process.

Finally, I turn to Alex Rowley's proposals for reporting on the national outcomes. I do not think that it is appropriate to legislate for how and when future Governments will report on the national outcomes, because the format and timing of the reporting should be for the Government of the day to decide. The way in which we communicate and receive information is moving at such a pace that we would rather allow for future innovative approaches to reporting.

There have been recent discussions in Parliament about the appropriateness of certain timescales for the reporting of data, and such a timescale should be something that can be adapted in the light of experience. For example, a case could be made for reporting on progress at any time of the year, at the beginning or end of the parliamentary session, before or alongside the draft budget, and so on. As such, I believe that it is best to leave the timescales flexible and subject to parliamentary scrutiny.

The Government reports through the Scotland performs website, which provides an up-to-the-minute picture of progress towards the national outcomes. Updates are continually made available as soon as the latest data is published, so Scotland performs always shows the most up-to-date information. We also provide a Scotland performs update to support the draft budget scrutiny process, including performance score cards and narrative to show performance against national outcomes. That is how we currently undertake our annual reporting.

09:45

We would rather not limit future Governments to an inflexible model by prescribing the format and timing of reporting. I do not think it is appropriate to ask that the Scottish ministers consult those listed in preparing any report on progress towards national outcomes. Any report on progress would be a factual statement based on evidence. Consultation on that does not seem appropriate in this context.

I therefore invite Alex Rowley to withdraw amendment 1043 and ask him and Drew Smith not to move their other amendments in the group. I ask the committee to support amendments 1003 to 1005, 1008 to 1012 and 1014.

The Convener: Thank you, minister. I call Drew Smith to speak to amendment 1045.

Drew Smith (Glasgow) (Lab): Thank you very much, convener, for the opportunity to take part in these stage 2 proceedings.

I note what the minister said and thank him for his agreement on the sentiment that we are exploring in my amendment 1045. The purpose of the amendment is to add greater consistency. The bill imposes a duty on community planning partnerships. The committee itself has previously concluded that the same standards of transparency and accountability should apply to others in the process. My argument is simply that the Scottish Government should lead by example in that respect.

Alex Rowley's amendments refer to reporting on progress towards achieving the national outcomes. The two additional points that my amendment would add are that the Government would set out how

"the national outcomes have been improved following consultation";

and would demonstrate how

"the results of the consultation have influenced those improvements."

The committee referred to that in paragraph 107 of its stage 1 report, where it suggested that we would want to see the Scottish Government "leading by example" in relation to consultation and engagement.

I note that the minister said that he does not feel that legislating is the most appropriate way to ensure that such consultation happens, but the bill requires community planning partnerships to report in that way, so it does not seem to me to be too onerous to expect the Government to do the same.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I want to address the content of Alex Rowley's amendment 1049, which I think raises some quite serious practical issues that are not adequately addressed in its drafting.

In particular, proposed subsection (3)(a) of the new section that the amendment would insert provides that the Scottish ministers must

"lay a copy of the proposed draft regulations before the Parliament."

That is fine, except that the amendment does not provide for the handcuffs that the Government has provided in its amendments, whereby the regulations cannot be withdrawn during the consultation period. Governments could find themselves in a position where they would wish to withdraw the regulations during the consultation, which would of course create considerable
difficulties for the consultees. In that respect, the Government’s approach is much to be preferred, because it would provide stability during the consultation period. The way in which amendment 1049 is drafted means that it does not provide such stability.

I also want to talk about the reporting issue. It is deceptively attractive to prescribe when reporting may be done, but the construct of the amendment means that, in essence, reporting cannot be done at other times. This is a wide-ranging bill that covers a wide range of policy areas and subjects. The minister’s reference to Scotland performs appropriate, because of course a Government may wish to provide updates at the timely point. I can see members getting intensely frustrated as they rise to their feet to question ministers at oral questions if the minister says, “I’m not allowed to report under the amendment to the Community Empowerment (Scotland) Bill that was agreed to on 4 March 2015, which does not allow me to report to Parliament until the particular date that was set out.” It is far better that the Government has the ability to make such reports, updates and disclosures as are possible in a timely and appropriate way across a wide range of policy areas, and that we do not pass a bill that prevents and inhibits members from questioning and demanding answers from ministers, which the amendment carries the very real danger of doing.

Alex Rowley: I thank the minister, as Drew Smith did, for his comments on the sentiment that we are discussing in relation to the bill. I should add that my name is pronounced “Alec” with a C.

With regard to reporting on national outcomes every two years, and Stewart Stevenson’s point in that respect, it is right that there should be a requirement to report. At that point, we will, as a Parliament, be able to see what progress is being made on the national outcomes and to hold the Government to account. It should not be left to the Government to decide when is an appropriate time to measure how much progress has been made. The provision in my amendment brings greater accountability to the process.

Likewise, the minister said that he wants to see a greater role for the Parliament than that which is currently outlined in the bill. The amendments that have been lodged create a greater role for Parliament, but communities should also have a far greater role and input in setting national outcomes and holding the Government of the day to account for them.

I repeat that I believe that the amendments will bring about greater transparency, involvement and accountability in the whole process. I press my amendment 1043.
aware of that material and to have reasons for any departure from it.

I therefore invite Cameron Buchanan not to move his amendments 1006A and 1046 to 1048, and I ask the committee to support my amendments 1001, 1006, 1007 and 1013.

I move amendment 1001.

Cameron Buchanan (Lothian) (Con): I have lodged amendment 1006A because I wanted to weaken the provision. I think that “have regard to” is too strong and that “consider” is a less draconian term.

Stewart Stevenson: I wanted to invite the minister in his concluding remarks to expand on proposed new subsection (1C), in which he excludes functions where the Scottish Parliament or the Scottish Parliamentary Corporate Body are contributing to an outcome. Is that more restrictive than he intends? I can envisage circumstances in which it would be perfectly proper for the responsibility to lie with the minister, but for a contribution to be made by the Scottish Parliament or the SPCB. I would be interested to hear the minister’s views on that. He might want to think about adjusting the provision at stage 3 in light of my comments.

Marco Biagi: We have a difference of opinion as to how much consideration should be given to the national outcomes. I am clear that we should be quite strong on those but should allow public bodies and organisations to depart where they have good reason. As I said, I think that “have regard to” fits the precedent on that and strikes the right balance.

On the issue raised by Stewart Stevenson, there have been discussions about concerns raised by the chief executive. Negotiation in the drafting process has tried to cover all the concerns raised by the Scottish Parliament. I do not believe that it will lead to unintended consequences; I am happy to re-examine the section to check that. I am confident that the amendment captures the separation of Parliament and Government that we are trying to ensure is clear in the bill.

Amendment 1001 agreed to.

The Convener: Group 3 is on national outcomes: inequalities resulting from socioeconomic disadvantage. Amendment 1002, in the name of Marco Biagi, is the only amendment in the group.

Marco Biagi: We are committed to building a fairer Scotland and reducing inequalities and we wish to make that aim more explicit throughout the bill. Amendment 1002 requires that when determining the national outcomes, “Scottish Ministers must have regard to the reduction of inequalities of outcome which result from socio-economic disadvantage”.

I hope that the committee will support that.

I move amendment 1002.

Amendment 1002 agreed to.

The Convener: Amendment 1044, in the name of Alex Rowley, has already been debated with amendment 1043. I remind members that if amendment 1044 is agreed to, I cannot call amendment 1003.

Amendment 1044 moved—[Alex Rowley].

The Convener: The question is, that amendment 1044 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)

Against
Buchanan, Cameron (Lothian) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 1044 disagreed to.

Amendments 1003 to 1005 moved—[Marco Biagi]—and agreed to.

The Convener: The question is, that amendment 1045 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)

Against
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 1045 disagreed to.

Amendment 1006 moved—[Marco Biagi].
Amendment 1006A moved—[Cameron Buchanan].

The Convener: The question is, that amendment 1006A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)

Against
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 1006A disagreed to.

Amendment 1006 agreed to.

Amendment 1007 moved—[Marco Biagi]—and agreed to.

The Convener: The question is, that section 1 be agreed to. Are we agreed?

Stewart Stevenson: I was wondering about the pre-emption, but it is all right.

The Convener: Okay. Are you questioning me?

Stewart Stevenson: No, I am seeking to be of assistance.

The Convener: Mr Stevenson, I think we are all right here.

Section 1, as amended, agreed to.

After section 1
Amendment 1049 moved—[Alex Rowley].

The Convener: The question is, that amendment 1049 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Wilson, John (Central Scotland) (Ind)

Against
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 1049 agreed to.

Section 2—Review of national outcomes
Amendments 1008 to 1011 moved—[Marco Biagi]—and agreed to.

The Convener: Amendment 1012, in the name of the minister, has already been debated with amendment 1043. I remind members that, if amendment 1012 is agreed to, I cannot call amendment 1050.

Amendments 1012 to 1014 moved—[Marco Biagi]—and agreed to.

Section 2, as amended, agreed to.

Section 3—Reports
Amendment 1051 moved—[Alex Rowley].

The Convener: The question is, that amendment 1051 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Wilson, John (Central Scotland) (Ind)

Against
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 1051 agreed to.

Amendment 1052 moved—[Alex Rowley].

The Convener: The question is, that amendment 1052 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Wilson, John (Central Scotland) (Ind)

Against
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 1052 agreed to.

Section 3, as amended, agreed to.

After section 3
Amendment 1053 moved—[Alex Rowley].
The Convener: The question is, that amendment 1053 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Wilson, John (Central Scotland) (Ind)

Against
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 1053 agreed to.

Section 4—Community planning

The Convener: Group 4 is on the duty to carry out community planning: general. Amendment 1015, in the name of the minister, is grouped with amendments 1016 to 1020, 1026 to 1028, 1032 and 1037 to 1042.

Marco Biagi: I point out that officials will be moving around the table at this point, because we are moving from part 1 of the bill to part 2. I do not intend any disruption or disrespect.

The Convener: That is fine, minister.

Marco Biagi: Group 4 contains amendments that will mainly adjust the wording of the bill to bring it closer to our policy intentions and to provide consistency in the language in different sections.

The essence of community planning under the bill is that public sector bodies should work together and with communities in order to improve outcomes for those communities. The bill should place duties on community planning partnerships and on community planning partners, but not on community bodies themselves.

Section 4(1) places a duty on community planning partners and community bodies to "participate with each other in community planning", and "community planning" is defined in section 4(2). Amendments 1015 to 1018 will adjust the wording to avoid placing duties on community bodies. Amendment 1015 will replace section 4(1) with a provision that imposes a duty on community planning partners to carry out community planning "for the purpose mentioned in subsection (2)".

Amendment 1016 will amend section 4(2) to provide that the purpose of community planning "is improvement in the achievement of outcomes resulting from, or contributed to by, the provision of services delivered by or on behalf of the" community planning partners.

Amendment 1017 is consequential to amendments 1015 and 1016.

Amendment 1018 will place a duty on community planning partners, when "carrying out community planning," to "participate with each other, and ... participate with any community body" that wishes "to participate in community planning" in a way that enables those bodies to participate to the extent that they wish to do so. Unlike section 4 of the bill as introduced, amendment 1018 will impose no duty on community bodies to participate in community planning.

Amendments 1019 and 1020 will make minor drafting changes to the definitions of "community planning partnership" and "community planning partner" in section 4(4). They will have no substantive effect.

I turn to amendment 1026. Under the Historic Environment Scotland Act 2014, historic environment Scotland is established and "has the general function of investigating, caring for and promoting Scotland's historic environment."

Historic environment Scotland will become fully operational on 1 October 2015. It will be a valuable community planning partner; indeed, the 2014 act places a specific duty on historic environment Scotland, in exercising its functions, to "have regard ... as may be appropriate in the circumstances, to the interests of local communities."

Having the role of a community planning partner will be one important way in which that duty can be delivered. We therefore consider it appropriate to include historic environment Scotland in the list of community planning partners in schedule 1.

Amendment 1027 will replace section 5(2)(a) with a reworded provision. It is a minor amendment, and will have no substantive effect.

Amendment 1028 is consequential to amendment 1027.

Section 5(1) provides that "Each community planning partnership must prepare and publish a local outcomes improvement plan."

Section 5(2)(a) provides that this plan must set out
“each local outcome to which the community planning partnership is to give priority with a view to improving the achievement of the outcome”.

Amendment 1032 is another amendment that seeks to simplify the language in the bill by adding consistency, so that we refer to “person” in both the first two subsections of section 8, which imposes governance duties in relation to the facilitation of community planning and the carrying out of community planning functions by community planning partnerships.

Section 8(1) refers to “each community planning partner”, whereas subsection (2) identifies “The persons” referred to as community planning partners in subsection (1).

Amendment 1037 is consequential to amendments 1015 and 1016, and reflects the fact that community planning will now be defined in section 4(1) rather than in section 4(2).

Amendment 1038 relates to section 4(6), which gives the Scottish ministers powers to make regulations modifying the list of persons in schedule 1 who are community planning partners to

“add a person or a description of person,”

or to remove or amend an entry.

That also relates to section 8(3), which gives the Scottish ministers powers to make regulations to

“add a person or a description of person”

to the list of community planning partners with governance duties, or to remove or amend an entry on the list. The bill currently proposes that the regulations on exercise of those powers will be subject to negative procedure. In my response, dated 19 December 2014, to the Delegated Powers and Law Reform Committee report, I indicated my agreement with its recommendations to change that to affirmative procedure. Amendment 1038 provides that regulations that modify the list of community planning partners or the list of governance partners will be subject to affirmative procedure and therefore to a higher level of scrutiny by the Scottish Parliament.

10:15

Amendments 1039, 1040 and 1041 will add to the list of consequential amendments to other legislation arising from schedule 4. To help the committee, I will briefly summarise what the amendments will do. Amendment 1039 will ensure that references to community planning duties in the Local Government (Scotland) Act 1973 relate to duties under this bill, and not under the Local Government in Scotland Act 2003. Section 99 of the 1973 act places a set of general duties on local government auditors, one of which is for auditors to satisfy themselves that the local authority is complying with its community planning duties. Section 102 of the 1973 act provides for the controller of audit to make reports to the Accounts Commission on how a local authority has discharged its community planning duties—it is important to bring that up to date.

Amendment 1040 will alter section 57(2)(a) of the Local Government in Scotland Act 2003, which allows ministers to

“by order, amend, repeal, revoke or disapply any enactment”
in certain situations. One of those situations is where ministers consider that the enactment prevents local authorities from discharging their community planning functions under section 15(1) of the 2003 act. As the bill will repeal part 2 of the 2003 act, amendment 1040 will remove the redundant reference.

Amendment 1041 will update references to community planning in the Fire (Scotland) Act 2005 and the Police and Fire Reform (Scotland) Act 2012. In both acts, those references to community planning apply to two issues, the first of which is in relation to local plans where proposed new section 41E of the 2005 act will require the Scottish Fire and Rescue Service to produce a local fire and rescue plan for each local authority area. Similarly, the 2012 act will require the relevant local police commander to produce a local police plan for each local authority area. In both those cases, the plans must, among other things, set out how fire and rescue and policing priorities and objectives will contribute to delivery of any relevant local outcomes that have been identified by community planning. Amendment 1041 will update statutory references to community planning for those purposes.

Another issue arises in relation to delegation of functions. The 2005 act requires the Scottish Fire and Rescue Service to delegate certain functions, including community planning functions, to a local senior officer. Likewise, the 2012 act requires the chief constable of Police Scotland to delegate his or her community planning functions to the local commander for an area. Amendment 1041 will update statutory references to community planning for those purposes.

Amendment 1042 will repeal section 57(2)(b) of the Local Government in Scotland Act 2003, which, under section 57(1), allows ministers to

“by order, amend, repeal, revoke or disapply any enactment”
in situations where ministers consider that the enactment prevents community planning partners from discharging their community planning functions under sections 15 and 16 of the 2003 act. The community planning provisions in the bill
will replace those in the 2003 act; schedule 5 will repeal part 2 of the 2003 act, and as a result section 57(2)(b) of the 2003 act will become redundant. We consider that there is no need to replicate that provision for community planning duties in the bill; section 97 will provide ministers with the means to cover that situation through a general power to “by order make ... incidental, supplementary, consequential, transitional or transitory provision”.

Having gone through all that, I ask the committee to agree to the amendments.

I move amendment 1015.

Amendment 1015 agreed to.

Amendments 1016 to 1018 moved—[Marco Biagi]—and agreed to.

The Convener: Amendment 1054, in the name of Drew Smith, is on the relationship between national outcomes and local outcomes, and is in a group on its own.

Drew Smith: Amendment 1054 returns us to section 4(3), on community planning. In the bill, the requirement is that local outcomes “must be consistent with the national outcomes”. The purpose and effect of my amendment would be to change the requirement so that community planning partnerships, in setting the outcomes, “must have regard to” national outcomes as opposed to having to “be consistent with” national outcomes.

We had an debate earlier about consistent use of language. Mr Buchanan’s view is that “have regard to” is perhaps a stronger position than “consider”. I contend that “must be consistent with” is stronger still and could run the risk of creating a situation in which national outcomes and local outcomes are in conflict. Perhaps as a result of a participation request, a local outcome might be set, but if the bill as drafted was passed, there could be a danger that the national outcome might be seen to override the local outcome.

I believe that there is certainly a case to be made that local partners should “have regard to” the national outcomes. However, I think that it is going too far to expect all local outcomes to be completely “consistent with” national outcomes.

I move amendment 1054.

Stewart Stevenson: Amendment 1054 would introduce the term “community planning partnership” into the replacement section 4(3). I feel slightly uneasy that by specifying that, and that alone, the scope that is covered by the amendment is more limited than the scope of what it would delete, which makes no such specific reference to community planning partnerships.

I am genuinely unclear in regard to that, so I invite Drew Smith to help me to understand whether my fears are correct or whether that is a matter that he has considered, and, in particular, to say why he chose to introduce the very specific term “community planning partnership” in amendment 1054. It is a term that does not occur in the words that he is proposing to delete at page 3, line 16.

The Convener: As no other member wishes to enter the debate, I ask the minister to comment.

Marco Biagi: Amendment 1054 would impose a duty on community planning partnerships to “have regard to” national outcomes in setting outcomes, rather than—as proposed in section 4—the achievement of local outcomes, as improved by “community planning”, having to “be consistent with ... national outcomes”.

Those are two changes, as the member pointed out.

Amendment 1054 also assumes a duty on community planning partnerships to set outcomes. A statutory provision requiring a CPP to “have regard to” national outcomes will not ensure that local outcomes reflect national outcomes in the way that a duty to “be consistent” will. A duty to “have regard to” national outcomes requires that they should be considered, not that they should be followed.

A local outcome could have a recognisable impact in a variety of ways on many national outcomes. For example, local objectives to improve mental health might impact on what we currently have as national outcome 6, which is that “We live longer, healthier lives”, and national outcome 7, which is that “We have tackled the significant inequalities in Scottish society”.

If the national outcomes are created by a participative process—we have set that out already—they will be all-encompassing and can be effectively aligned with local priorities, as well. The terminology needs to be consistent with that aim. We feel that we need that stronger link in order to link local plans with national plans and local outcomes with national outcomes. Keeping the original wording will enable us to ensure that local outcomes, which are objectives for local areas, are aligned with the national outcomes.

There is no duty on CPPs to set outcomes; there is a duty only to identify those that are to be prioritised under section 5(2). The requirement for local outcomes to be consistent with national outcomes arises from the description of community planning in section 4(2) in combination with section 4(3). Amendment 1054 could
therefore create difficulties and confusion around the purpose of CPPs in that regard, so I ask Drew Smith to seek to withdraw it.

Drew Smith: I listened carefully to the comments from Stewart Stevenson and the minister, and I understand the concerns that have been raised. However, I will press amendment 1054 because it is drafted to restrict its effect to community planning partnerships, which I believe have their own processes. Where it would be legitimate for CPPs to set their own local objectives, which should certainly have regard to national outcomes, I do not believe that those would be required to be completely consistent at all times. To require that they should be would go against the spirit of the bill. I therefore press amendment 1054.

The Convener: The question is, that amendment 1054 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)

Against
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 1054 disagreed to.

Amendments 1019 and 1020 moved—[Marco Biagi]—and agreed to.

The Convener: Group 6 is on effectiveness of community planning in involving communities, tackling inequality et cetera. Amendment 1021, in the name of the minister, is grouped with amendments 1022 to 1024, 1055, 1025, 1056 to 1061, 1029 to 1031 and 1062.

Marco Biagi: Amendment 1021 is a minor drafting amendment that has no substantive effect. It provides that duties for CPPs in section 4(5) apply to “Each” instead of “A” community planning partnership. Amendments 1023 and 1024 are likewise minor drafting amendments that have no substantive effect and simply replace “such” with “those”. Amendment 1030 is a minor technical amendment that provides spacing.

I turn to the substantive amendments in the group. Amendment 1022 relates to the focus on addressing inequalities. That theme was a feature of written submissions, and a recurrent subject of debate at stage 1 in committee evidence sessions.

We know that some communities are better placed than others to have their views considered and acted on. The Local Government and Regeneration Committee’s stage 1 report referred to the risk of empowering only the already empowered. Many organisations, including Barnardo’s Scotland, Oxfam and the Poverty Alliance, emphasised in their evidence that community planning partnerships need to ensure that they take account of those who are experiencing the disadvantages that are associated with socioeconomic inequalities.

Community planning partnerships are already addressing inequalities in their work, but we want them to do more. Amendment 1022 will make it explicit that community planning partnerships, in considering which community bodies are likely to contribute to community planning, must do so by “having regard in particular to which of those bodies represent the interests of persons who experience inequalities of outcome which result from socio-economic disadvantage.”

That will then trigger the requirement in the bill to make “all reasonable efforts to secure” their participation.

Amendment 1025 relates to the committee’s recommendation that “there should be a specific duty on CPP partners to reduce inequality and focus on ... prevention.”

10:30

The Scottish Government and our partners on the national community planning group agree that taking action to reduce inequalities should be at the heart of what community planning partnerships do. In fact, as we have shown from the outcomes, it should be at the heart of what the whole of government does. Amendment 1025 will introduce a general duty on community planning partnerships to “act with a view to reducing inequalities of outcome which result from socio-economic disadvantage”.

The duty will apply to the way in which community planning partnerships undertake all of their functions under part 2 of the bill, from securing participation by community bodies to the local outcomes that the CPPs prioritise in their local outcomes improvement plan. It also includes how community planning partnerships review progress on the continued suitability of their plans and how they report on progress each year to local communities.

The amendment includes a qualification that will allow a community planning partnership not to act with a view to reducing inequalities of outcome that result from socioeconomic disadvantage if it
"considers that it would be inappropriate to do so."

The qualification recognises that, although a community planning partnership may undertake its general duties with a view to reducing inequalities, it may have certain important actions that do not in isolation contribute to that. For instance, a community planning partnership should be able to support the development of high-skilled, high-earning employment opportunities, even though that might not in the first step contribute to a reduction in inequalities.

Alex Rowley’s amendment 1055 would require local authorities to maintain a list of community bodies that might participate in community planning. Although I am interested in the proposal, community planning partnerships already have access to a Scotland-wide directory of third sector organisations via the get involved website. That is a database that provides identification of local community bodies by postal code and activity. The information is maintained by the local third sector interfaces, which, among other things, are funded to build in the third sector to community planning in their local areas.

The database includes details of community body location, website, main contact, charitable and legal status, the number of paid staff, committee members, geographical reach, aims and objectives, main areas of work and financial data. The fields are fairly extensive. It is therefore not clear what additional benefit there would be in requiring each local authority to maintain a list of community bodies in its area, nor what potential implications there could be for a body that, for whatever reason, did not end up on the list. We do not intend to require any form of registration for community bodies to be allowed to participate in community planning.

Amendment 1056 would require community planning partnerships to produce an assessment of the wellbeing of communities in their areas, and amendment 1059 would place a duty on CPPs to take account of “the most recently published” assessment of the wellbeing of communities in their area before publishing their local outcomes improvement plan. The bill already requires community planning partnerships to understand the needs and circumstances of persons who reside in their area. Section 5(4) requires community planning partnerships to take account of those needs and circumstances as well as any representations that are received in their consultation with community bodies and others before publishing their local outcomes improvement plan.

Another issue is that there is no requirement to update the provisions. Amendment 1059 refers to “the most recently published” assessment, but there is no duty to regularly publish such assessments. A Welsh provision in a parallel bill has such a requirement.

Furthermore, wellbeing has been purposefully left undefined in local government legislation, and particularly in the 2003 act, which sets out the general power for local authorities to advance wellbeing. The introduction of the definition of the term in the bill could potentially cause confusion.

I do not believe that there is any need for Mr Rowley’s amendments 1055, 1056 and 1059. All that they would do would be to impose a new burden on community planning partnerships.

Amendment 1058 would require CPPs to “make all reasonable efforts to secure representations” from persons who are identified in the assessment of wellbeing as particularly vulnerable or otherwise disadvantaged. However, our amendment 1022 goes further than that, as it will require community planning partnerships, when considering which community bodies are likely to be able to contribute to community planning, to have particular regard to community bodies that represent disadvantaged communities. As I said, the community planning partnerships must make all reasonable efforts to secure the participation of those bodies and take reasonable steps to enable community bodies that wish to participate to do so. Furthermore, under amendment 1018, community planning partnerships will also be under a duty to participate with community bodies that wish to participate.

Unlike amendment 1058, our amendment 1022 will apply those duties of participation with community bodies to all aspects of community planning—not just the finalisation of the local outcomes improvement plan but the review of progress against the plan, the review of the plan’s continued suitability and progress reporting. Those are much broader in their scope.

Amendment 1057 seeks to impose a more explicit duty on CPPs to consult on the local outcome improvement plan. The bill secures the participation of community bodies throughout the community planning process. That goes beyond preparing a plan to include the review of progress against the plan, the review of the plan’s continued suitability and progress reporting on it. That focus on continuing participation with community bodies, including third sector bodies, distinguishes community planning from the development of other plans for which consultation provides the main formal means of engagement with service users and stakeholders. It is about partnership.

In that context, the existing provision seeks not to be overly prescriptive. It is purposefully broad so that a local CPP can determine from its knowledge of local needs, circumstances and
resources which community bodies and other persons it would be appropriate to consult. That broad provision is more effective than the narrow specification of bodies that Alex Rowley suggests. I also note that his amendment 1057 would have community planning partnerships consult their own partners, which seems a little unusual.

Amendments 1060 to 1062 represent an attempt to bring locality planning into the bill as part of community planning. I have very considerable sympathy for the intention behind the amendments. I am not sure that there are not other ways to achieve their aim, but I believe strongly in the value of neighbourhood planning. That level is where we really get the link between community planning, which can be quite strategic in its view, and the clearest example of people’s wellbeing in local places. It is also where we can often make the biggest difference in influencing priorities for public services and their delivery and contributing directly to the improvement of the community’s general wellbeing.

However, the community action plans that are described in amendments 1060 to 1062 would have a slightly more limited purpose. They would link the local outcomes in a community planning partnership’s local outcomes improvement plan with each community council area in the community planning area. The plans would set out the extent, if any, of improvement expected in that community council area for each of the local outcomes that are set out in the local outcomes improvement plan. I want the purpose of locality planning to be more ambitious, broader and high achieving. I want community planning partnerships to develop and apply neighbourhood-based approaches wherever they can offer the most value.

Amendments 1060 to 1062 have issues in that regard. To take the example of Fife, which Mr Rowley knows very well, they would require community planning partners to work with community councils and other community bodies to produce no fewer than 105 community action plans. That is the number of active and inactive community councils in Fife. That would be quite an immense bureaucracy to prescribe and would distract community planning partners and community bodies from efforts to improve outcomes where improvements were most needed, such as targeting additional work on more disadvantaged areas, or taking a more flexible approach to the definition of a neighbourhood than using the community council area.

We need to ensure that community planning can concentrate on where it can provide the most benefit—that is, improving the local outcomes and reducing inequalities on a set of priorities that is identified from the partnership’s planning and local understanding. That is the key principle of the CPP provisions in the bill. It reflects the recommendation in the Accounts Commission’s and Auditor General’s recent national audit report “Community planning: Turning ambition into action” that community planning partnerships should “set clearer improvement priorities focused on how they will add most value as a partnership, when updating their” single outcome agreements.

I wish to return to this in guidance, but I also think that there is potential to work with Mr Rowley to develop this to present more technically robust and perhaps more flexibly applied amendments that he could lodge at stage 3.

Amendment 1029 addresses the committee’s request in its stage 1 report for confirmation that the community planning partnership is required to publicly publish reports on progress. The amendment provides that community planning partnerships must publish their progress report for each reporting year. One of the principles for part 2 that has attracted universal support is the importance of community participation at the heart of community planning.

Amendment 1031 imposes a new duty on community planning partnerships to account for the participation by community bodies in community planning for the area. It requires that a community planning partnership’s annual report must report on the extent to which the partners have “participated with community bodies … during the reporting year” and the extent to which “that participation has been effective in enabling community bodies to participate in community planning”.

I commend the Government amendments in the group to the committee and I ask Alex Rowley not to move his amendments, although, as I have said, I am sympathetic to amendment 1058 in principle.

I move amendment 1021.

Alex Rowley: I am grateful to the minister because what he has said allows me to address some of the points that he picked up.

The Audit Scotland 2013 report, “Improving community planning in Scotland” states:

“Community planning takes account of a wide range of consultation activity, but there is a long way to go before services are truly designed around communities and the potential of local people to participate in, shape and improve local services is realised.”

That sums up where I am trying to go with my amendments. I am prepared to accept the minister’s point that he is committed to looking at
the idea of local community plans within the framework of the high-level plan. He says that the way to do that is through guidance, but putting it on the face of the bill at stage 2 would give us the opportunity to work together before stage 3 to address any technical or other difficulties that he envisages. I certainly do not envisage the difficulties that he envisages.

On establishing a register at local level, which local authorities would maintain, I accept that, as the minister said, there is a register held by a third sector organisation at national level. However, I suspect that many of the community organisations and groups that we are trying to reach are not on any register. That is why I propose having a register at local authority level of all local community groups, which can range from community councils to tenants and residents groups to sport and leisure groups; it can cover a range of local groups that have an input into the community planning process and its outcomes.

Take for example a high-level outcome in relation to health and wellbeing. A lot of the community planning partnerships tick the boxes year in, year out in achieving outcomes, but having sat on a community planning partnership for seven or eight years and having chaired the Fife community planning partnership for more than two years, I know that sometimes it is difficult to see the impact that that has in communities. It is certainly very difficult to see how or whether communities have been engaged or involved. Indeed, if you asked the majority of community groups and organisations what the community plan is, or how the community plan is impacting on their area and whether they are involved in it, the answer would be no. I am sure that that is the case all over Scotland.

On health and wellbeing, I would argue that the local bowling club, running club, football club and the local kids activity club should all have an input into setting priorities at local level. The minister talked about there being 105 community action plans in Fife. I am not in any way put off by that. Indeed, I would argue that if we continue to use Fife as an example, we can see that it has seven local area committees, some of which are better than others at trying to get down to community level.

10:45

In my constituency, coming from the topside, Benarty community council area has the second highest level of deprivation in Fife. It is part of the Lochs ward, along with my home village of Kelty; both of them have distinct issues and would have similar, but different, priorities set locally. Coming down to the bottom side of the constituency, to Dalgety Bay, Inverkeithing and Aberdour, we find that Dalgety Bay and Hillend community council also has priorities, but those priorities would be different, given the levels of deprivation in terms of health and wellbeing, support and so on, in comparison with the topside of the constituency.

Why would you not be able to go to that level and take a bottom-up approach to setting local priorities for local people? For me, that is in line with exactly what Audit Scotland talks about. The role of community planning in creating joint working between public bodies should not be confused with the purpose of involving communities in planning their future and planning public services for their area.

Over a number of years, the Government’s aim in establishing community planning partners was to try to get public organisations to work together. You may ask how difficult that is, but as the minister—and former ministers—and his civil servants will know, it is often quite difficult to get organisations to work together. Even within a local authority, the departments and different parts of the authority can work in silos. We see that happening in Government and in the Parliament. It is difficult to pull those together.

To take the next step and achieve what the bill says on the tin—community empowerment—we should create those registers, so that all local groups can sign up and know that they will not be missed out because they have been registered and so will be involved and participate in decisions. We should allow communities, at that level, to start to shape their priorities and the services that they need, because those will differ between communities and, as many groups have pointed out, in the spirit of the Christie commission, this fundamental shift in priorities has to take place. If we are serious about prevention, following the Christie commission, the best way to achieve that is from a local level and by a bottom-up approach. That is what the amendments set out to do.

In terms of wellbeing in local communities, it is important that we see what the issues are. As I said, I can take you through the different communities in my constituency, all of which are covered by geographical community council areas, some of which have a plethora of local organisations that are working away and should be empowered, and some of which do not and will need additional support to grow such organisations. Producing information on the wellbeing of communities would be part of that.

I am happy to work with the minister and the Government to firm up on any of the proposals. I would not want any of them to be a threat to community engagement. I do not believe that the amendments are a threat—quite the reverse, I believe that they would enhance the bill. If there
are specific issues, I am willing to work with the minister and the Government on them. I think that we should amend the bill and then work together to iron out any difficulties as we move towards stage 3.

**Stewart Stevenson:** I have several substantial difficulties with the proposals made by the amendments in Mr Rowley’s name. The wording of amendment 1055 reads:

“Each local authority must”—

not can—

“for the purposes of subsection (5), maintain a list of all community bodies within its area”.

In his remarks on his amendments, Mr Rowley said that local groups “can” sign up. If local groups can sign up, I am unclear how each local authority “must” maintain a list, because they can maintain a list only if local groups sign up, or they can go on a search-and-destroy mission to try and find groups that did not even realise that they are groups.

I illustrate that by the committee’s visit to the Seaton backies project in Aberdeen, where a couple of members of the community decided that the grass between the buildings in their area was untidy and needed to be cut and tidied up and debris removed, so they started to do that. At some point, from that initial thought from those first two individuals to the position that we are in today, they acquired some funding—a small amount, if I recall, of around £500—and they may have opened a bank account. They started to consider who should be on the group, which grew and acquired a degree of formality. At what point did they become a group that each local authority must, for the purposes set out in the amendment, maintain a list of? I do not know, and I suspect that the council would not know. It is a successful example of a grass-roots—no pun intended—organisation that started with a little idea and developed into something that is delivering a lot. Incidentally, the group did not know what regeneration was, even though it was probably the best example of regeneration that the committee found as it went round the country.

I am unclear how a local community can, in effect, deliver on the “must” in amendment 1055. Alex Rowley specifically mentioned sport and leisure, so that could include local golf clubs or a skateboarding group that might be quite informal and fluid in its structure as it uses the local park. Is that caught by the proposal? It is a community body, but it does not have any formality. It may not be a group with an annual general meeting and it may not have clear office bearers. Sewing bees could be included; I just do not know where the line is. By requiring groups to be on the list, which is the implication of the amendment, we carry the risk of genuinely disempowering people who do not feel that they want to engage with the kind of formality of the amendment that says that a list of all community bodies in an area “must” be maintained, so I have serious difficulties with that.

Amendment 1056 would insert the following:

“A community planning partnership must prepare and publish an assessment of the state of wellbeing” of local communities. It goes on to talk about an assessment that must “include an analysis of the state of wellbeing of any category of persons in the area whom the community planning partnership considers to be vulnerable or otherwise disadvantaged”.

That is a laudable aim, but it has a practical difficulty. There are certain kinds of disadvantage that affect relatively small numbers of individuals or groups, perhaps a number below which we normally suppress statistical data, which is five. There may be a single person with a health condition that creates a serious disadvantage for them, and the drafting of the amendment would mean that that person’s disadvantage would have to be reported, so that person could be identified by means of that report. There is a genuine difficulty in how that is drafted.

I have a minor point on amendment 1057, which refers to people who are “normally resident” in an area. It is perfectly possible, in legal terms, for people to be resident in more than one place. Those of us who are MSPs and have accommodation in Edinburgh as well as in our constituency are examples of people who are resident in more than one place.

Amendment 1060 is, in many ways, even more substantial. It places obligations on “Each local authority ... in relation to each community council area within its area”.

The point is, of course, that although there are defined community council areas—my constituency has more than 30 of them—they do not all have community councils.

In many of the areas there is no community council, and no prospect of a community council. Paragraph (a) of subsection (2) of the proposed new section in amendment 1060 refers to “the community council for the community council area”.

Proposed subsection (5) makes clear that a community council area may be excluded only if the council considers that a community council is “unnecessary”. In a defined community council area that has no community council, the non-existent community council must nonetheless be consulted, given the way in which amendment 1060 is drafted.
We would be unwise to draw Alex Rowley’s amendments into the bill at this stage, however much sympathy we may have for the policy objectives that underlie them. Alex Rowley would be well advised to take full advantage of, and exploit, the offer of help from the minister and his officials in developing some of those ideas. I do not think that now is the time to incorporate these amendments, which appear to present—at least in my reading of them—substantial difficulties in certain respects.

Cameron Buchanan: I have considerable sympathy with that view, because I find that the definition of wellbeing in amendment 1056 is too restrictive. I am mindful of what the minister said about placing an administrative burden in this area, and I feel that the amendment would result in such a burden. For that reason, I am reluctant to support the amendment.

In addition, I am not keen on amendment 1025, as it places particular emphasis on the inequality of disadvantaged communities. I am all for addressing that issue, but the amendment puts too much emphasis on it.

Stewart Stevenson referred to the provisions on residency in amendment 1057. It would be very difficult to define what would constitute being “normally resident in the area”.

I am pleased to hear that the minister will consult on the issue again before lodging an amendment at stage 3, so I am reluctant to support amendment 1057.

John Wilson (Central Scotland) (Ind): On amendment 1055, which states that local authorities must maintain a list of groups in their areas, the minister made great play of the national register that is kept by third sector organisations. However, such organisations continually complain about not having enough funding, and the register can be maintained only if the third sector organisations in a local area have the resources to carry out the work to maintain it.

I take on board Stewart Stevenson’s comments regarding some of the groups that are not covered by the third sector register; he referred to the example of a sewing bee. Although such groups are not on the national register, they may, at a local level, provide a valuable service for elderly people and others who take advantage of the social interaction and activity that is generated by participating in the group.

In my village, there is a group of pensioners—only about a dozen—who come together once a week to play bingo. Their group may not be registered but, in my view, it plays a vital part in delivering elderly care services. The communication and interaction that take place in the group may be meaningful for them, but it would not be flagged up in a national register. Amendment 1055 calls on local authorities to maintain a register that would include that type of group, rather than a register that lists third sector or voluntary organisations that may get national or local funding and can be easily identified by third sector interfaces to ensure that they are on it.

With regard to the other issues around community council schemes, Stewart Stevenson is right once again, and I seek guidance from the minister. I understand that every local authority has a community council scheme in operation. Local authorities know and set the boundaries for those community councils. Unfortunately, some community council boundaries do not mirror the natural boundaries of communities; in that regard, Mr Rowley and Mr Stevenson gave examples of how communities view their local areas. Credence is given to community council boundaries because they are already set out by local authorities, but we may have to look at that to find out whether community councils naturally cover areas that are much larger than areas of multiple deprivation, to ensure that we are targeting resources through community planning partnerships at those areas.

11:00 I think that this is a work in progress and I welcome the minister’s statement that, for stage 3, he could work with Alex Rowley to ensure that we get something in legislation that encompasses what we are trying to achieve here. The bottom line for everybody around this table and in the Parliament is that we achieve the goal of ensuring that the policies, the practice and the delivery of community planning partnerships are best suited to the communities that need most help. Community planning partnerships have been around for over 30 years but, unfortunately, in many cases they are still struggling to get the necessary resources for the communities that are most in need. I hope that we can get a piece of legislation in place that can achieve the best outcomes for those communities and for the nation as a whole.

The Convener: Thank you. I recognise that this is the first stage 2 process that many members have undertaken, so I should say that you are able to intervene on other members during the course of their speeches at stage 2. It would not be the norm for me to bring back in members who have already spoken, but under the circumstances I will allow Cameron Buchanan and Mr Rowley to come back in briefly.

Cameron Buchanan: Thank you very much, convener. My point about amendment 1055 is on the use of “must” in
“Each local authority must ... maintain a list of all community bodies within its area.”

I think that saying “must” rather than “should” would impose quite a burden. Mr Wilson and others made a point about bowling clubs and bingo groups. I think that it would be too restrictive.

**Alex Rowley:** I am grateful to you for allowing me to come back in, convener.

Stating that the local authority “must” maintain a register does not mean that the local sewing group or the local skateboarding group, for example, must sign up to the register. The point is that every local authority would maintain the register and organisations and groups would sign up to it so that they would be registered and guaranteed to be involved in the consultations that take place. If Mr Stevenson is right, the amendment would force local groups to sign up. I do not think that it does, but there could be a technical drafting issue that—

**Stewart Stevenson:** Will the member take an intervention?

**Alex Rowley:** Yes.

**Stewart Stevenson:** I am just trying to make the point that groups might feel that they should be registered. However, groups very often consist of free spirits who want nothing to do with the formal structures of government at any level. I wonder whether the member agrees that the phrasing that he has adopted in amendment 1055 appears to suggest that local authorities must list all groups regardless of whether they wish to be listed, because the amendment would put words to that effect in the bill.

**Alex Rowley:** If we establish the principle, any technical issue with the drafting can be picked up later. The principle is that local authorities hold the register. I would hope that local groups would be encouraged to register because more of them would want to be involved in setting the priorities in the local plans. The crucial point is that, in the next phase, local groups would be more involved in setting the local plans.

On Cameron Buchanan’s point about the administrative burden that would be placed on local authorities, I stress that all the information on wellbeing is available in every local authority in Scotland. The question is whether we make that information available for each local area and do it in such a way that it is transparent. That will influence the discussion and engage more people at a community level in setting out their priorities. I do not think that it would be an administrative burden, because the information is already there. Indeed, it could be argued that, if community planning partners were going about their business and setting their priorities for local communities in the correct way, they would be taking account of all that information in doing so. The amendment informs and empowers communities with the same level of information, so that they can start to make the case at a local level for what the priorities are for each community. That is its purpose.

**John Wilson:** I am sorry, convener—I was trying to intervene on Mr Rowley. Maybe the minister can help out with this.

I know what amendment 1055 says. I heard what Mr Rowley said about the fact that community organisations, if they so wished, could refuse to be on the register that is held by local authorities. I am slightly confused, because I would like local authorities to be aware of the existence of those community organisations—the bingo group, the sewing bee—so that they can consult them. I am concerned about community organisations being able to deregister from the council’s list. I am trying to get to a point where we—the Parliament, the Government, local authorities and communities—fully understand what organisations exist in an area and what services they deliver within that area, which may not be statutory services. What I am frightened of is the duplication that may take place when a health board or a local authority decides that it is going to provide social care services for the elderly that are already being delivered at a local level by a local community group. That is where I would agree with amendment 1055, but I am rather concerned now with Mr Rowley’s insistence that groups could deregister and not be on the list. I have a fear that we end up failing to understand what is happening at the local level and what is being delivered by communities at a local level, if groups are not on any list.

**The Convener:** I call the minister to wind up.

**Marco Biagi:** I have been patiently waiting rather than intervening because I knew that I would have this chance. I will go through the four issues that have broadly been the subject of debate.

The subject that was of least debate was Cameron Buchanan’s challenging of amendment 1025, but that amendment comes from the committee’s recommendation that there should be a specific duty on CPP partners to reduce inequality and focus on prevention. I know that in the past Cameron Buchanan has been skewered on what he has signed up to in committee, only to oppose it at a later date. I simply want to move on by saying that I believe that the committee will recognise the value of the amendment and endorse it.

The other issues are related to the amendments by Mr Rowley. On the register proposed in
amendment 1055, there are technical issues but there is also an issue of principle. As for the technical issues, the amendment states that each local authority must maintain a list of all community bodies within its area. As well as placing a burden on local authorities, that suggests to me that it would not be possible to deregister. If a group fitted the definition of a community body, it would have to be on the list, and the local authority would be under a duty to try to make it register.

In practice, I also think that there would be a danger that, as the register was in statute, it would become an authoritative list, and anybody who for any reason was not on it could be excluded for not having participated in the list process.

It is also important to remember that we had amendments earlier that removed inadvertent duties that the bill had placed on community bodies, because the purpose of the bill is to place duties on statutory bodies and local authorities, rather than on the voluntary sector and, in particular, the informal voluntary sector that makes up so much of what happens at the grass-roots level and which we have been referring to as "sewing bees" and so on.

The difficulty of principle with amendment 1055 is that the list would be a duplication of something that already happens. The term “national register” has been used, but what we actually have is a network of local registers that covers the entire nation. That work is done through the third sector interfaces, and there is funding from the Scottish Government for it. The total number of organisations on the registers, collectively, is 35,000, and we know that 12,500 of them are not registered charities. I have not looked at that in great detail, but it strikes me that they will be the mother-and-toddler groups and so on—the small, informal groups.

John Wilson: Minister, you said that there are 35,000 organisations on the national register. I seek clarification. I stand to be corrected if I am wrong, but my understanding is that the SCVO claims to have a membership of 55,000. If that is the case and there are 35,000 organisations on the register, where are the other 20,000? I know that the register omits certain very active community organisations. How can we gather information on all the other community organisations that are working away day and daily to deliver services in their local communities but are not on the national register?

Marco Biagi: I cannot speak for the membership of the SCVO. We will look at that, but the real question is whether if there are such organisations out there—12,500 groups on the list are not formally registered charities, and they must be in the informal sector—the register will be more comprehensive if it is run by local authorities rather than by the third sector interfaces. I am not convinced that that is the case.

I also wonder what the justification is for moving the responsibility from the third sector interfaces—in Edinburgh, that involves the Edinburgh Voluntary Organisations Council and the Edinburgh Social Enterprise Network, which are grass-roots, bottom-up organisations that are supposed to be constituted for the whole range of organisations—to the local authority. I am not clear about the justification for moving what is being done by the third sector to local authorities rather than to CPPs, for example. They could be given the responsibility in statute rather than local authorities, and that would create a list that would flow through to all the partners.

Alex Rowley: Does the minister accept that the principle is to try to establish a much more localised list that encourages local organisations to get involved in the process of community planning, and particularly in setting priorities and outcomes at a very local level? Does he accept that that is not happening under the current community planning regime?

Marco Biagi: The third sector interfaces exist to be interfaces between the community planning partnership and the third sector in their areas, reaching all the way down to informal pensioners’ lunches and so on. I agree with the objective that we want all those organisations to be able to participate in community planning. I went along to a pensioners’ lunch and I found out new things about parking in the local area that I then took up with the council. That sort of daily action at the grass-roots level, with ordinary people with ordinary lives being consulted and therefore informing action, is the kind of thing that we want to encourage.

If there is an issue with the TSIs in reaching all those people, is the solution to move the responsibility to local authority control and create a duty there? I do not see that that is the answer to the question that is being asked. I also expect that, in the event of duplication, with TSIs being funded to deliver a network of local databases for their local authority area and councils gaining a statutory responsibility, the funding that we give to the third sector interfaces would come under pressure from local authorities, which would say, “Given that we now have the statutory responsibility, it’s appropriate that you fund us.”

These are big questions. We might have sympathy with the principle of involving the third sector, but putting what is proposed into the bill, even for subsequent amendment, is something that I would strongly resist.
Stewart Stevenson: Does the minister also recognise that community groups are quite indifferent to council boundaries and can straddle two or even three of them?

11:15

Marco Biagi: That is another good point and another reason why putting the responsibility on local authorities would not be appropriate in principle.

The next of the other two points of contention is the wellbeing assessment. Section 5(4)(b) already requires that

"the community planning partnership must take account of ... the needs and circumstances of persons residing in the area of the local authority to which the plan relates."

It is pretty explicit that that provision requires community planning partnerships to assess and be aware of needs and circumstances. More importantly, it applies to everything that a CPP would do rather than being narrow.

I point out that the representations that will have to be secured from community bodies will also assist in that assessment. If community bodies have to be supported to make representations and the CPP has to understand the needs and circumstances, that means that an assessment is included in the bill—and it is much broader than what Alex Rowley proposes and it covers all the functions of CPPs.

I remain of the view that it is potentially difficult to introduce a definition of wellbeing into the bill when we have not introduced it into other legislation.

On localities, whenever I have gone around Scotland visiting local authorities, I have been impressed by what happens when we replicate a CPP at a lower level—when all the statutory bodies, voluntary groups and the council meet and plan at a more localised level—but I also notice that everybody does it slightly differently. Everybody has slightly different people around the table, has slightly different lines of accountability and deals with slightly different amounts of money at that level.

In Dundee, there are eight local ward-level decision-making bodies. Six of them have a budget of £125,000—two of them do not—because they are community regeneration forums in areas that need regeneration and a bit of extra effort.

I worry that the details of Alex Rowley’s proposals are prescriptive in that they focus on community council boundaries rather than other boundaries. If we require all community council areas to have local plans rather than provide the flexibility to have a ward-level plan and some additional top-up actions at local level, we might empower the already empowered, which is an issue that the committee has raised. As I said, however, I will speak only warmly about locality planning, which should be taken forward.

Alex Rowley: I am pleased that you seem to support the principle of locality planning, minister. Do you accept that I am not trying to create a large bureaucracy of Government officials or health officials sitting round tables in every locality coming up with their views? The problem with Government and community planning has been and is that the professionals tell the communities what is good for them. I am trying to change to the opposite of that—exactly what the bill says on the tin: community empowerment and community planning—so that communities set their priorities, set the agenda to which the public bodies and others have to work, and hold those public bodies to account to deliver on the outcomes and priorities that are set locally.

We must reverse the professionalism whereby the public services tell communities what is good for them. That is the principle that I was trying to establish with my amendments. I welcome the fact that you support it and I am sure that we can work together on it.

Marco Biagi: I did not disagree with a single word that Mr Rowley just said. That agreement in principle is a good foundation from which to proceed on the matter.

The Convener: That was a long debate on those amendments, but it was worth while.

Amendment 1021 agreed to.

Amendments 1022 to 1024 moved—[Marco Biagi]—and agreed to.

The Convener: I invite Alex Rowley to move or not move amendment 1055.

Alex Rowley: In light of the discussion and of the commitment from the minister, I do not intend to move any of my amendments in this group—I intend to work with the minister to try and take their provisions forward at stage 3.

The Convener: Okay—although I will deal with them one by one.

Amendment 1055 not moved.

Section 4, as amended, agreed to.

Schedule 1—Community planning partners

Amendment 1026 moved—[Marco Biagi]—and agreed to.

Schedule 1, as amended, agreed to.
After section 4
Amendment 1025 moved—[Marco Biagi].

The Convener: The question is, that amendment 1025 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

Against
Buchanan, Cameron (Lothian) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 1025 agreed to.
Amendment 1056 not moved.

Section 5—Local outcomes improvement plan
Amendments 1027 and 1028 moved—[Marco Biagi]—and agreed to.
Amendments 1057 to 1059 not moved.
Section 5, as amended, agreed to.

After section 5
Amendment 1060 not moved.

Section 6—Local outcomes improvement plan: review
Amendment 1061 not moved.
Section 6 agreed to.

Section 7—Local outcomes improvement plan: progress report
Amendments 1029 to 1031 moved—[Marco Biagi]—and agreed to.
Amendment 1062 not moved.
Section 7, as amended, agreed to.

Section 8—Governance
Amendment 1032 moved—[Marco Biagi]—and agreed to.
Section 8, as amended, agreed to.

The Convener: I think that at this point it might be wise to have a wee comfort break.

11:25
Meeting suspended.

11:31
On resuming—

Section 9—Community planning partners: duties

The Convener: Group 7 is on the extent of the duty on community planning partners to contribute resources. Amendment 1063, in the name of Cameron Buchanan, is the only amendment in the group.

Cameron Buchanan: I would like to leave out the word “securing” and replace it with “inviting”, because that would be less restrictive and prescriptive.

I move amendment 1063.

Marco Biagi: That was a relatively sketchy endorsement of the amendment and the reasons behind it. The reason for the provision in the bill is that we are keen to ensure that community bodies that a CPP considers are likely to be able to contribute to community planning are supported to participate to the extent that they wish to.

Although section 9(3)(b) uses the word “securing”, it refers to an earlier section, which is clear that community planning partnerships must “consider which community bodies are likely to be able to contribute” and “make all reasonable efforts to secure the participation of such community bodies”.

I note that no attempt has been made to amend that earlier instance of the word “secure”. Further, “to the extent ... that such community bodies wish to participate in community planning,” CPPs will have to “take such steps as are reasonable to enable the community bodies to participate in community planning”.

That is the spirit of section 9(3)(b). Each community planning partner will have to contribute funds, staff and other resources that the CPP considers appropriate to assist in securing the participation of bodies that wish to participate in community planning. A duty simply to invite bodies to participate would not ensure that invited bodies were supported to participate. That is why we think that it is important to have a duty to contribute resources to secure participation.

I ask Cameron Buchanan to seek to withdraw amendment 1063.
Cameron Buchanan: In view of what the minister says, I seek to withdraw the amendment. Amendment 1063, by agreement, withdrawn.

Section 9 agreed to.

Section 10—Guidance

The Convener: Group 8 is on the status of guidance on community planning. Amendment 1033, in the name of the minister, is grouped with amendments 1064, 1065, 1034, 1066 and 1067. Amendments 1033 and 1064 are direct alternatives, as are amendments 1034 and 1066.

Marco Biagi: Sections 10(1) and 10(2) provide that community planning partnerships and partners

“must comply with any guidance issued by the Scottish Ministers”.

All the amendments in the group seek to adjust that wording slightly.

The Government amendments in my name address the Delegated Powers and Law Reform Committee’s concerns about the term “comply”. The committee queried why guidance should be binding in the absence of provision for parliamentary scrutiny. The Government responded to the committee’s report by noting that concern and undertaking to lodge amendments.

Amendments 1033 and 1034 provide that community planning partnerships and partners are under a duty to have regard to guidance rather than to comply with guidance. That reflects the usual wording that is used in legislation in relation to guidance, is consistent with references elsewhere in the bill and will keep the DPLR Committee happy.

More broadly, I recognise the concerns that committees have raised over complex legal language. I will have to prejudge what Cameron Buchanan intends to say but, if he is attempting to simplify the language of the bill, I will explain that we have used the phrase “have regard to” for the reasons that I set out before—because it is the term that is generally used, it is well understood by the courts and there is substantial case law setting out how it is to be interpreted. It requires a person to attach the appropriate weight to different kinds of guidance that are available. The minister’s attempt to deal with that by inserting the words “have regard to” addresses the issue and, given that I argued that “have regard to” was a better alternative earlier at stage 2, I am happy to indicate when appropriate that I will not move my amendments.

Amendments 1033 and 1034 provide that community planning partnerships and partners are under a duty to have regard to guidance rather than to comply with guidance. That reflects the usual wording that is used in legislation in relation to guidance, is consistent with references elsewhere in the bill and will keep the DPLR Committee happy.

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Drew Smith’s amendments 1065 and 1067 would change the wording to refer to statutory guidance. I have not heard from the member, but it is not usual practice to refer to guidance that is issued in pursuance of legislative provision as statutory guidance—certainly not in an act. Officials have run an initial electronic search of legislation and have found no references to “statutory guidance” as a term in primary legislation. Statutory guidance might well be what we call guidance that is mentioned in statute, but the term is not commonplace in primary legislation.

I therefore ask Cameron Buchanan and Drew Smith not to move their amendments and I ask members to back the Government amendments, which do much the same thing and will keep the DPLR Committee happy.

Cameron Buchanan: I refer to amendment 1006A, which had the same sort of wording as amendments 1064 and 1066. I really want less restrictive provisions, which is why I feel that “consider” is better than “comply”, so I will be moving amendment 1064.

Drew Smith: I think that there is a difference between statutory guidance and advisory guidance. I understand what the minister says about using the term “statutory” in the bill. I will just reflect that it is interesting that the Government uses precedent as an argument both for and against things from time to time.

Stewart Stevenson: Will the member take an intervention?

Drew Smith: I am speaking only briefly, Mr Stevenson. I will conclude by saying that there is a difference when it comes to allowing local partners to attach the appropriate weight to different kinds of guidance that are available. The minister’s attempt to deal with that by inserting the words “have regard to” addresses the issue and, given that I argued that “have regard to” was a better alternative earlier at stage 2, I am happy to indicate when appropriate that I will not move my amendments.

Stewart Stevenson: I invite the minister—if he can—to identify what instruments would be excluded by qualifying the word “guidance” with the insertion of the word “statutory” before it, which Drew Smith was seeking to introduce. Clearly, if a particular category that is statutory is described, that by definition excludes other categories. Is the minister in a position to describe what instruments would be excluded by using the word “statutory”?

The Convener: Minister, it is your turn to wind up. I wish you well in answering Mr Stevenson’s question.

Marco Biagi: It has to be said that amendments 1065 and 1067 led to a considerable collective scratching of heads, because the Scottish ministers have—by statute—a general guidance-making power, so we could argue that any guidance that we issue under the statute that...
gives us that general power is statutory guidance. I am not clear that there is a distinction that would have much effect, but I welcome Drew Smith’s position that he will not move the amendments.

Stewart Stevenson: Will the minister take an intervention?

Marco Biagi: Yes, of course—always.

Stewart Stevenson: Nonetheless, adding an adjective before the noun would—if it has any effect—restrict what is described to only those things to which the adjective can apply and therefore exclude those to which that adjective cannot apply.

Marco Biagi: Yes, although one could say that the term “all” would not be in any way restrictive, even though that would be added as an adjective before the noun. In this case, that might be an appropriate parallel.

We agree that what matters is the importance that must be attached to the guidance. We have three options: what is in the bill unamended, which is “comply with”; the Government’s amendment, which is “have regard to”; and Cameron Buchanan’s suggestion of “consider”. I think that “have regard to” strikes the best balance and is in accord with the general expectations of the treatment of guidance in law.

Amendment 1033 agreed to.

Amendment 1064 moved—[Cameron Buchanan].

The Convener: The question is, that amendment 1064 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)

Against
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 1064 disagreed to.

Amendment 1065 not moved.

Amendment 1034 moved—[Marco Biagi]—and agreed to.

Amendment 1066 not moved.

Drew Smith: I seek the committee’s agreement not to move amendment 1067. Thank you for your welcome and I wish you well with the rest of stage 2 proceedings.

The Convener: Thank you.

Amendment 1067 not moved.

Section 10, as amended, agreed to.

Section 11 agreed to.

Section 12—Establishment of corporate bodies

The Convener: Amendment 1035, in the name of the minister, is grouped with amendments 1036 and 1068.

Marco Biagi: The amendments relate to the establishment of a corporate body for community planning purposes. Under section 19 of the Local Government in Scotland Act 2003, the Scottish ministers may “on the application of the local authority together with one or more of the bodies, office-holders and other persons participating in community planning ... by order establish a body corporate” for community planning purposes.

Section 12 also provides for the establishment of a body corporate for community planning purposes and has the same application requirements—an application must be made by the local authority for the area and at least one other community planning partner.

That application process, which reflects our responsibility for community planning, has applied until now, with the relevant local authority being under a statutory duty to initiate, facilitate and maintain community planning. That will no longer be the case under the bill. Section 8(1) places duties of governance to “facilitate community planning” and “take reasonable steps to ensure that the community planning partnership carries out its functions ... efficiently and effectively” on a number of community planning partners—not just local authorities—including the local health board, Scottish Enterprise, Highlands and Islands Enterprise, the chief constable of Police Scotland and the Scottish Fire and Rescue Service, as well as the local authority.

11:45

Amendment 1035 will provide that an application to establish a corporate body for community planning purposes is valid only if it is made jointly by all the governance partners that are listed in section 8(2). That reflects the fact that
all those partners are collectively responsible for the effective governance of the CPP.

The original purpose of allowing corporate bodies to be formed was to enable them to co-ordinate or further community planning, not to substantially deliver services themselves. However, since the bill was introduced, we have noted representations, including the evidence from the chair of the Accounts Commission to the Public Audit Committee on 3 December 2014, that have suggested possible value in establishing a community planning partnership as a corporate body that delivers services directly.

We do not know of any CPP that wishes to establish itself as a corporate body, but amendment 1035 makes it clear that such incorporation could proceed for the purposes of delivering services. It is clear that, in any such scenario, a CPP that wished to establish itself as a corporate body would have to demonstrate the merits of the conversion before the Scottish ministers would lay draft regulations before Parliament and before the Parliament would approve the draft regulations to give effect to any such change.

Amendment 1036 will remove the words “including in particular its conduct and co-ordination” from section 12(1), with a view to clarifying that the community planning functions of a corporate body could be wider than that. Although there has been continued background interest in the possibility of establishing CPPs as incorporated bodies, there has to date never been a firm proposal, and we are not aware of any proposed applications for incorporation down the line.

Cameron Buchanan’s amendment 1068 would mean that another enactment or rule of law could prevent a body that was established by regulation from carrying out a function that is set out in the regulations. The bill acts as a safeguard to support the carrying out of functions by any new corporate body so that a new and yet-to-be-established corporate body could carry out community planning functions. If such an application were received, it would be subject to ministerial approval and parliamentary scrutiny, which would include consideration of all matters referred to in section 12, including which functions such a body would have.

It would not be helpful to restrict the operation of section 12 by removing subsection (4)(b). I therefore invite Cameron Buchanan not to move amendment 1068, and I ask the committee to support amendments 1035 and 1036.

I move amendment 1035.
body that might contain two or more partners and the community planning partnership? Does the minister envisage a potential conflict between the status of the corporate body and the status of the community planning partnership?

Marco Biagi: I should clarify that the existing power in the 2003 act refers to a local authority in partnership with another, so, in that respect, there would be two participants.

John Wilson: I am not disagreeing with you, but that does not make the 2003 act right.

Marco Biagi: I was going to point out that that was the power in the 2003 act, whereas the particular provision that we are discussing would require all to participate and jointly apply. It is not like the power in the 2003 act, which applies to two organisations, one of which is the local authority; this is a joint application by all community planning partnership governance partners. All would have to be content and collectively agree to such a move, which would remove the prospect of two partners creating something that would cause difficulties for others. With this approach, the option is left open for a CPP, collectively, to come together and make a case for corporate body status, subject to parliamentary scrutiny.

Amendment 1035 agreed to.

Amendment 1036 moved—[Marco Biagi]—and agreed to.

Amendment 1068 not moved.

Section 12, as amended, agreed to.

Section 13—Interpretation of Part 2

Amendment 1037 moved—[Marco Biagi]—and agreed to.

Section 13, as amended, agreed to.

After section 13

The Convener: Amendment 1069, in the name of Alex Rowley, is grouped with amendment 1070.

Alex Rowley: Amendment 1069 seeks to ensure consistency in the application of community engagement standards across Scotland to take account of local circumstances, without compromising the development of standards. Although there is much good practice in the public sector with regard to consulting communities, the fact is that practice is not of a consistently high standard. If communities are to be genuinely involved in the design of public services, ensuring that they have high-quality involvement in local decision making must become second nature to public services and part of their everyday core purpose.

By seeking to put national standards for community engagement on a statutory basis, my amendments will ensure that, in the development of the national outcomes in part 1 of the bill and the local outcomes improvement plans in part 2, best practice in community engagement is adhered to.

Concern has been expressed that placing the national standards for community engagement in statute will limit the development of standards at the local level and that public bodies will be hampered in developing participative techniques to fit local structures. As they stand, the amendments would not have that effect.

It should be possible for public bodies to use a range of participative techniques, but, in certain circumstances, to be required to apply the national standards for community engagement. In particular, community planning partners should have to follow the standards for community engagement when engaging with communities in drawing up local outcomes improvement plans.

I ask the committee to support the amendments.

I move amendment 1069.

Stewart Stevenson: Right at the end of his remarks, Alex Rowley used the phrase “local outcomes improvement plans”. That goes to the very heart of the matter. We are focusing on processes that carry the real danger of removing—or, from the perspective of community bodies, appearing to remove—flexibility in how community bodies undertake their tasks, and of inhibiting the development of new and innovative ways of engaging with communities. At the end of the day, to communities, this is all just noises off; what actually matters are the outcomes and the sense of empowerment that communities gain from the passage of the bill and everything that flows from it.

I am uncomfortable with making this statutory and requiring everyone to step up to the mark; I would prefer to see local communities working out for themselves, and therefore having ownership of and commitment to, what they want to do. A standard that relates to outcomes is by all means welcome, but a standard that relates to processes gives me cause for doubt, even if the Government is in favour of it.

Marco Biagi: I agree with the intention behind amendment 1069 and I recognise that we all want to make the public sector engage efficiently and effectively with communities across Scotland. We know that local government and other public bodies are increasingly using an impressive range of community engagement activities to consult people and offer them opportunities to participate in activities, plans and service delivery. However, we also know that the range and degree of
participation can vary considerably and that although the national standards for community engagement provide a good practice model for both formal and informal community engagement, its use over time has been patchy.

There are better ways to secure the objective that we share. A great deal of impact can be realised through the use of guidance, which is much more adaptable and flexible. For example, in the stage 1 debate, I highlighted the fact that the national standards for community engagement pre-date the mass use of social media in Scotland, which is very important for any kind of community outreach and engagement.

We know from our discussion on section 10, which we have just amended, that local authorities, community planning partners and public service authorities will be required to have regard to guidance in exercising their functions. I repeat the commitments made by my predecessor, Derek Mackay, that we will specify the national standards for community engagement as part of the guidance, and update and refresh them to reflect the new context.

If we were to lay regulations, as Amendment 1069 suggests, we would have to provide further supplementary guidance to exemplify what good practice would look like and how it should be applied. To borrow a phrase from the Local Government and Regeneration Committee’s earlier statements, we would have to take the gobbledygook out of the act and translate it into something that people working at the coalface would use. There would need to be guidance either way.

I would be concerned about embedding the term “community engagement” in the bill. Over the past few months, some stakeholders have suggested that “community participation” or “community empowerment” might be better terms for the refreshed standards. If we put “community engagement” into the statute, we will maintain one model.

12:00

The new context that we are trying to develop with stakeholder organisations and the public sector should not be underestimated. The bill will change in its entirety the landscape of participation and engagement. It will make clear—if clarity was needed—that community bodies have a right to participate in the decisions that affect them and that public authorities have a duty to respond to that. I expect public authorities to look for guidance to help them to do that and that, as good practice continues to evolve, the guidance that accompanies the bill will need to change and keep up. Secondary legislation is not the best way to do that.

I accept that there may well be space in the bill to improve it further to ensure greater participation by the public and by communities across Scotland in the activities of public bodies and local authorities. There could be a much broader power than the one that is specified to promote and facilitate participation across the board in all the activities of a very wide range of bodies. In order to have that broad impact, I expect—indeed, I intend—any such amendments to come later in the bill, rather than focusing on CPPs.

I note that Amendment 1069 refers only to the CPP partners that are engaged in governance under section 8, and not to all partners, as listed in Schedule 1. I expect the national standards to be considered by local authorities, for example, in their consultations on the common good.

As I said, I agree with the intention behind Amendment 1069, but I think that there is a better way to achieve its aims. I ask Mr Rowley to withdraw it and not to move Amendment 1070. If, after the conclusion of stage 2, he is still unsatisfied with where the bill is, I would be happy to speak to him to see whether he believes that still more needs to be done, and we can do that together. However, as I said, I expect further developments later in the bill that will cover the entirety of the bill, rather than focusing narrowly on CPPs.

Alex Rowley: I will come to Stewart Stevenson’s point first. He simply misunderstands what is intended. It is not about trying to tell communities how to consult; it is about putting the national guidelines into statute so that community planning partners in their consultations will abide by nationally recognised standards for community engagement.

I welcome the minister’s statement that the national standards have to be updated and refreshed. That needs to happen. I really cannot understand why, when that is being done, we would not set minimum standards for consultation by public bodies. That is a key point.

At this stage, I certainly do not have the same enthusiasm for the bill that the minister has in terms of how it will transform the engagement of communities, get a lot of public bodies to engage to the extent that they need to engage, and get communities to set their own agenda. I do not think that the bill as it stands will do that, but I want to work with the minister to try to improve it.

With the commitment that the minister has given, I am happy to withdraw Amendment 1069 so that we can discuss the matter further. If we both want to achieve the same thing—to have communities setting their agenda—let us work for
that. Therefore, given the minister's commitment, I am happy to withdraw amendment 1069 at this stage.

Amendment 1069, by agreement, withdrawn.

The Convener: We will deal with amendment 1070 and a number of other amendments that we have discussed today at future meetings. That ends consideration of amendments for today.

I remind members that amendments to parts 3 and 5 of the bill should be lodged with the clerks to the legislation team by 12 noon this Friday.

I thank members for their participation and their patience with me. We move into private session.

12:04
Meeting continued in private until 12:09.
### Community Empowerment (Scotland) Bill

**2nd Marshalled List of Amendments for Stage 2**  
(Local Government and Regeneration Committee)

The Bill will be considered in the following order—

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Amendments marked * are new (including manuscript amendments) or have been altered.

**After section 13**

Tavish Scott  

1091 After section 13, insert—

<PART>

LOCAL AUTHORITY’S POWER OF GENERAL COMPETENCE

Local authority’s general power of competence

(1) A local authority has power to do anything that individuals generally may do.

(2) Subsection (1) applies to things that an individual may do even though they are in nature, extent or otherwise—

   (a) unlike anything the authority may do apart from subsection (1), or

   (b) unlike anything that other public bodies may do.

(3) In this section “individual” means an individual with full capacity.

(4) Where subsection (1) confers power on the authority to do something, it confers power (subject to sections (Boundaries of the general power) to (Limits on doing things for commercial purposes in exercise of general power) to do it in any way whatever, including—

   (a) power to do it anywhere in the United Kingdom or elsewhere,

   (b) power to do it for a commercial purpose or otherwise for a charge, or without charge, and

   (c) power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area.

(5) The generality of the power conferred by subsection (1) (“the general power”) is not limited by the existence of any other power of the authority which (to any extent) overlaps the general power.
Any such other power is not limited by the existence of the general power (but see section (Powers to make supplemental provision)(2)).

Tavish Scott

1092 After section 13, insert—

<Boundaries of the general power

(1) If exercise of a pre-commencement power of a local authority is subject to restrictions, those restrictions apply also to exercise of the general power so far as it is overlapped by the pre-commencement power.

(2) The general power does not enable a local authority to do—

(a) anything which the authority is unable to do by virtue of a pre-commencement limitation, or

(b) anything which the authority is unable to do by virtue of a post-commencement limitation which is expressed to apply—

(i) to the general power,

(ii) to all of the authority’s powers, or

(iii) to all of the authority’s powers but with exceptions that do not include the general power.

(3) The general power does not confer power to make or alter—

(a) arrangements of a kind which may be made under sections 56 (arrangements for discharge of authority’s functions by committees, joint committees, officers etc.) or 62B (establishment of joint boards) of the Local Government (Scotland) Act 1973,

(b) any other arrangements that authorise a person to exercise a function of a local authority.

(4) In this section—

“post-commencement limitation” means a prohibition, restriction or other limitation expressly imposed by a statutory provision that—

(a) is contained in an Act passed after [the end of the session of the Scottish Parliament in which this Act is passed], or

(b) is contained in an instrument made under an Act and comes into force on or after the commencement of section (Local authority’s general power of competence),

“pre-commencement limitation” means a prohibition, restriction or other limitation expressly imposed by a statutory provision that—

(a) is contained in this Act, or in any other Act passed no later than [the end of the session of the Scottish Parliament in which this Act is passed], or

(b) is contained in an instrument made under an Act and comes into force before the commencement of section (Local authority’s general power of competence),

“pre-commencement power” means power conferred by a statutory provision that—
(a) is contained in this Act, or in any other Act passed no later than [the end of the session of the Scottish Parliament in which this Act is passed], or
(b) is contained in an instrument made under an Act and comes into force before the commencement of section (Local authority’s general power of competence).>

Tavish Scott

1093 After section 13, insert—

<Limits on charging in exercise of general power

(1) Subsection (2) applies where—
   (a) a local authority provides a service to a person otherwise than for a commercial purpose, and
   (b) its providing the service to the person is done, or could be done, in exercise of the general power.

(2) The general power confers power to charge the person for providing the service to the person only if—
   (a) the service is not one that a statutory provision requires the authority to provide to the person,
   (b) the person has agreed to its being provided, and
   (c) ignoring this section and section 1 of the Local Authorities (Goods and Services) Act 1970 (supply of goods and services by local authorities), the authority does not have power to charge for providing the service.

(3) The general power is subject to a duty to secure that, taking one financial year with another, the income from charges allowed by subsection (2) does not exceed the costs of provision.

(4) The duty under subsection (3) applies separately in relation to each kind of service.>

Tavish Scott

1094* After section 13, insert—

<Limits on doing things for commercial purpose in exercise of general power

(1) The general power confers power on a local authority to do things for a commercial purpose only if they are things which the authority may, in exercise of the general power, do otherwise than for a commercial purpose.

(2) Where, in exercise of the general power, a local authority does things for a commercial purpose, the authority must do them through a company.

(3) A local authority may not, in exercise of the general power, do things for a commercial purpose in relation to a person if a statutory provision requires the authority to do those things in relation to the person.

(4) In this section “company” means—
   (a) a company within the meaning given by section 1(1) of the Companies Act 2006, or
(b) a registered society within the meaning the Co-operative and Community Benefit Societies Act 2014 or a society registered or deemed to be registered under the Industrial and Provident Societies Act (Northern Ireland) 1969.

Tavish Scott

1095 After section 13, insert—

<Powers to make supplemental provision>

(1) If the Scottish Ministers think that a statutory provision (whenever passed or made) prevents or restricts local authorities from exercising the general power, the Scottish Ministers may by regulations amend, repeal, revoke or disapply that provision.

(2) If the Scottish Ministers think that the general power is overlapped (to any extent) by another power then, for the purpose of removing or reducing that overlap, the Scottish Minister may by regulations amend, repeal, revoke or disapply any statutory provision (whenever passed or made).

(3) The Scottish Ministers may by regulations make provision preventing local authorities from doing, in exercise of the general power, anything which is specified, or is of a description specified, in the regulations.

(4) The Scottish Ministers may by regulations provide for the exercise of the general power by local authorities to be subject to conditions, whether generally or in relation to doing anything specified, or of a description specified, in the regulations.

(5) The power under subsection (1), (2), (3) or (4) may be exercised in relation to—

(a) all local authorities,
(b) particular local authorities, or
(c) particular descriptions of local authority.

(6) The power under subsection (1) or (2) to amend or disapply a statutory provision includes power to amend or disapply a statutory provision for a particular period.

(7) Before making regulations under subsection (1), (2), (3) or (4) the Scottish Ministers must consult—

(a) such local authorities,
(b) such representatives of local government, and
(c) such other persons (if any),

as the Scottish Ministers consider appropriate.

Tavish Scott

1096 After section 13, insert—

<Limits on power under section (Powers to make supplemental provision)(1)>

(1) The Scottish Ministers may not make provision under section (Powers to make supplemental provision)(1) unless the Scottish Ministers consider that the conditions in subsection (2), where relevant, are satisfied in relation to that provision.

(2) Those conditions are that—

(a) the effect of the provision is proportionate to the policy objective intended to be secured by the provision,
(b) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it,
(c) the provision does not remove any necessary protection,
(d) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise,
(e) the provision is not of constitutional significance.

(3) Regulations under section (Powers to make supplemental provision)(1) may not make provision for the delegation or transfer of any function of legislating.

(4) For the purposes of subsection (3) a “function of legislating” is a function of legislating by order, rules, regulations or other subordinate instrument.

(5) Regulations under section (Powers to make supplemental provision)(1) may not make provision to abolish or vary any tax.

Tavish Scott
1097 After section 13, insert—

<Procedure for regulations under section (Powers to make supplemental provision)

(1) If, as a result of any consultation required by section (Powers to make supplemental provision)(7) with respect to proposed regulations under section (Powers to make supplemental provision)(1), it appears to the Scottish Ministers that it is appropriate to change the whole or any part of the Scottish Ministers’ proposals, the Scottish Ministers must undertake such further consultation with respect to the changes as the Scottish Ministers consider appropriate.

(2) If, after the conclusion of the consultation required by section (Powers to make supplemental provision)(7) and subsection (1), the Scottish Ministers consider it appropriate to proceed with the making of regulations under section (Powers to make supplemental provision)(1), the Scottish Ministers must, when laying a draft of the regulations, also lay before the Scottish Parliament an explanatory document explaining the proposals and giving details of—

(a) the Scottish Ministers’ reasons for considering that the conditions in section (Limits on power under section (Powers to make supplemental provision)(1))(2), where relevant, are satisfied in relation to the proposals,
(b) any consultation undertaken under section (Powers to make supplemental provision)(7) and subsection (1),
(c) any representations received as a result of the consultation, and
(d) the changes (if any) made as a result of those representations.

(3) If provision under section (Powers to make supplemental provision)(2) is included in draft regulations under section (Powers to make supplemental provision)(1) laid in the circumstances described in subsection (2), the explanatory document laid with the draft regulations must also explain the proposals under section (Powers to make supplemental provision)(2) and give details of any consultation undertaken under section (Powers to make supplemental provision)(7) with respect to those proposals.

(4) Section (Powers to make supplemental provision)(7) does not apply to regulations under section (Powers to make supplemental provision)(3) or (4) which are made only for the purpose of amending earlier such regulations—
(a) so as to extend the earlier regulations, or any provision of the earlier regulations, to a particular authority or to authorities of a particular description, or
(b) so that the earlier regulations, or any provision of the earlier regulations, ceases to apply to a particular authority or to authorities of a particular description.

Tavish Scott

1098 After section 13, insert—

<Interpretation of Part

In this Part—

“the general power” means the power conferred by section (Local authority’s general power of competence)(1),

“statutory provision” means a provision of an Act or of an instrument made under an Act.

Section 14

John Wilson

1099 Leave out section 14

Section 15

John Wilson

1100 Leave out section 15

Section 16

Cameron Buchanan

1101 In section 16, page 8, line 34, leave out subsection (2)

Section 17

John Wilson

1102 In section 17, page 9, line 29, leave out <community participation body> and insert <person or body (“the requester”)>.

John Wilson

1103 In section 17, page 9, line 30, leave out <body> and insert <requester>

John Wilson

1104 In section 17, page 9, line 31, leave out <community participation body> and insert <requester>
John Wilson  
1105 In section 17, page 9, line 34, leave out <community participation body considers it> and insert <requester considers the requester>

John Wilson  
1106 In section 17, page 9, line 36, leave out <community participation body> and insert <requester>

John Wilson  
1107 In section 17, page 9, line 39, leave out <community participation body> and insert <requester>

John Wilson  
1108 In section 17, page 9, line 39, leave out <its> and insert <the requester’s>

Tavish Scott  
1109 In section 17, page 10, line 1, leave out <community participation> and insert <persons or>

Tavish Scott  
1110 In section 17, page 10, line 2, at end insert—

<(3A) A participation request may include a request that one or more public service authorities other than the authority to which the request is made participate in the outcome improvement process along with the authority to which the request is made.> 

Section 18

Tavish Scott  
1111 In section 18, page 10, line 19, at end insert—

<( ) the procedure to be followed by public authorities in relation to requests that include a request of the type mentioned in section 17(3A),>

Alex Rowley  
1112 In section 18, page 10, line 21, at end insert <,

( ) ways in which public service authorities are to promote the use of participation requests,

( ) support that public service authorities are to make available to community participation bodies to enable such bodies to make a participation request and participate in any outcome improvement process resulting from such a request,

( ) types of communities that may need additional support in order to form community participation bodies, make participation requests and participate in outcome improvement processes.>
**Section 19**

**John Wilson**
1113 In section 19, page 10, line 24, leave out <by a community participation body>

**Cameron Buchanan**
1114 In section 19, page 10, leave out lines 32 to 38

**Marco Biagi**
1072 In section 19, page 10, line 38, at end insert—

<(  ) whether agreeing to the request would be likely—

 (i) to reduce inequalities of outcome which result from socio-economic disadvantage,

 (ii) to lead to an increase in participation in the outcome improvement process to which the request relates by persons who experience socio-economic disadvantage,

 (iii) otherwise to lead to an increase in participation by such persons in the design or delivery of a public service the provision of which results in, or contributes to, the specified outcome mentioned in the request,>

**Cameron Buchanan**
1115 In section 19, page 11, line 1, leave out <other>

**Cameron Buchanan**
1116 In section 19, page 11, line 4, leave out subsection (4)

**John Wilson**
1117 In section 19, page 11, line 10, leave out <community participation body> and insert <requester>

**John Wilson**
1118 In section 19, page 11, line 15, leave out <community participation body> and insert <requester>

**Section 20**

**John Wilson**
1119 In section 20, page 11, line 23, leave out <community participation body> and insert <requester>

**John Wilson**
1120 In section 20, page 11, line 28, leave out <community participation body> and insert <requester>
In section 20, page 11, line 35, leave out <community participation body> and insert <requester>.

Section 21

In section 21, page 12, line 2, leave out <community participation body> and insert <requester>.

In section 21, page 12, line 4, leave out <community participation body> and insert <requester>.

In section 21, page 12, line 11, leave out <community participation body> and insert <requester>.

Section 22

In section 22, page 12, line 19, leave out <where>

In section 22, page 12, line 25, after <may> insert <, except where the body making the new request is a different body from that which made the previous request,>

In section 22, page 12, line 31, at end insert <, and

In section 22, page 12, line 32, leave out subsection (4).
Section 24

John Wilson

1131 In section 22, page 12, line 32, leave out <body> to <that> in line 33 and insert <person or body making a new request is the same person or body as, or a different person or body from, the person or body>

John Wilson

1132 In section 24, page 13, line 4, leave out <community participation body> and insert <requester>

John Wilson

1133 In section 24, page 13, line 5, leave out <community participation body> and insert <requester>

After section 24

Alex Rowley

1134 After section 24, insert—

<Appeals

Appeals

(1) Subsection (2) applies where—

(a) a participation request is refused by a public service authority, or

(b) a public service authority agrees to a participation request from a community participation body and issues a decision notice as mentioned in—

(i) section 20(2), but the body has significant concerns about provisions within the decision notice (whether relating to that body’s participation in the outcome improvement process described in the decision notice or that process more generally), or

(ii) section 20(3), but after making representations under section 21(2), the body still has significant concerns about provisions within the decision notice or the notice given to the body under section 21(5) (whether relating to that body’s participation in the outcome improvement process or that process more generally).

(2) The community participation body may appeal to the Scottish Ministers.

(3) The Scottish Ministers may by regulations prescribe—

(a) the procedure to be followed in connection with appeals under subsection (2),

(b) the manner in which such appeals are to be conducted, and

(c) the time limits within which such appeals must be brought.

(4) On an appeal under subsection (2), the Scottish Ministers may—

(a) direct the public service authority—

(i) in the case of an appeal by virtue of subsection (1)(a), to agree to participation request,
in the case of an appeal by virtue of subsection (1)(b), to make such alterations to the decision notice (or, as the case may be, the notice issued under section 21(5)) as the Scottish Ministers specify, or

(b) dismiss the appeal.

Section 25

John Wilson

1135 In section 25, page 13, line 19, leave out <community participation body> and insert <requester>

John Wilson

1136 In section 25, page 13, line 22, leave out <community participation body> and insert <requester>

Alex Rowley

1137 In section 25, page 13, line 25, at end insert—

<(2A) In preparing the report mentioned in subsection (2), the public service authority must seek the views of the bodies mentioned in subsection (2B) in relation to—

(a) the way in which the outcome improvement process was conducted, and

(b) the outcomes of the process, including whether (and, if so, how and to what extent) the specified outcome to which the process related has been improved.

(2B) The bodies referred to in subsection (2A) are—

(a) the community participation body which made the participation request to which the outcome improvement process related, and

(b) any other community participation bodies which participated in that process.>

After section 25

Marco Biagi

1073 After section 25, insert—

<Annual reports

(1) A public service authority must publish a participation request report for each reporting year.

5 (2) A participation request report is a report setting out, in respect of the reporting year to which it relates—

(a) the number of participation requests the authority received,

(b) the number of such requests which the authority—

(i) agreed to, and

10 (ii) refused,
(c) the number of such requests which resulted in changes to a public service provided by or on behalf of the authority, and

(d) any action taken by the authority—

(i) to promote the use of participation requests,

(ii) to support a community participation body in the making of a participation request.

(3) In this section, “reporting year” means a period of one year beginning on 1 April.

John Wilson

1073A As an amendment to amendment 1073, line 15, leave out <community participation body> and insert <requester>

John Wilson

1073B As an amendment to amendment 1073, line 16, at end insert—

<(  ) A participation request report must be published no later than the last working day in May following the end of each reporting year.>

John Wilson

1073C As an amendment to amendment 1073, line 17, at end insert—

<“working day” means any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland.>

Marco Biagi

1074 After section 25, insert—

<Guidance

Guidance

(1) A public service authority must have regard to any guidance issued by the Scottish Ministers about the carrying out of functions by the authority under this Part.

(2) Before issuing such guidance, the Scottish Ministers must consult such persons as they think fit.>

Section 26

John Wilson

1138 In section 26, page 13, leave out lines 34 to 37

Cameron Buchanan

1139 In section 26, page 14, leave out lines 1 to 3
John Wilson

1140 In section 26, page 14, line 7, at end insert—

<“requester” has the meaning given by section 17(1),>  

Section 51  

Cameron Buchanan

1141 In section 51, page 48, line 2, leave out subsection (2)  

Section 52  

Tavish Scott

1142 In section 52, page 48, line 38, at end insert <, or

(c) in relation to a service provided (or the provision of which is secured) by a relevant authority, for the community transfer body to provide the service (or part of the service).>  

Tavish Scott

1143 In section 52, page 49, line 7, after <land> insert <or service (or part of the service)>  

Tavish Scott

1144 In section 52, page 49, line 8, leave out <or (b)(ii)> and insert <, (b)(ii) or (c)>  

Section 53  

Marco Biagi

1075 In section 53, page 49, line 28, at end insert—

<( ) it is a community benefit society the registered rules of which include provision that the society must have not fewer than 20 members,>  

Section 54  

Alex Rowley

1145 In section 54, page 50, line 32, at end insert—

<(4) Without prejudice to the generality of subsection (3), regulations under that subsection must require a relevant authority, on request, to provide a community transfer body with such of the pieces of information listed in subsection (5) as are relevant to the body’s proposed asset transfer request.

(5) Those pieces of information are—

(a) the—

(i) sale value,
(ii) annual rental value,

of the land to which the asset transfer request relates,

(b) the annual running costs associated with that land,

(c) details (including the cost) of any repairs or maintenance likely to be required in connection with that land of which the relevant authority is aware but which it does not expect to have undertaken prior to the asset transfer request being made,

(d) the energy efficiency of that land.

Section 55

Cameron Buchanan
1146 In section 55, page 51, leave out lines 3 to 8

Marco Biagi
1076 In section 55, page 51, line 8, at end insert—

<whether agreeing to the request would be likely to reduce inequalities of outcome which result from socio-economic disadvantage,>

Cameron Buchanan
1147 In section 55, page 51, line 9, leave out <other>

Tavish Scott
1148 In section 55, page 51, line 11, after <land> insert <or service (or part of the service)>

Cameron Buchanan
1149 In section 55, page 51, line 21, leave out subsection (4)

Section 56

Tavish Scott
1150 In section 56, page 52, line 2, leave out subsection (1) and insert—

<(1) Where a relevant authority decides to agree to an asset transfer request made by a community transfer body under—

(a) section 52(2)(a) or (b), subsections (2) to (10) apply,

(b) section 52(2)(c), subsection (11) applies.>

Cameron Buchanan
1151 In section 56, page 52, line 25, at beginning insert <Subsection (6A) applies>

Cameron Buchanan
1152* In section 56, page 52, line 26, leave out from first <the> to <not> in line 27 and insert <.
(6A) A failure to conclude a contract as mentioned in subsection (5) is:

Tavish Scott
1153 In section 56, page 53, line 2, at end insert—

<(11) The decision notice relating to the request must specify the terms on which, and any conditions subject to which, the authority would be prepared to transfer responsibility to provide the service (or part of the service).>

Section 58

Marco Biagi
1077 In section 58, page 53, line 38, at end insert <, or

(c) a person, or a person that falls within a class of persons, specified in an order made by the Scottish Ministers for the purposes of this section.>

Cameron Buchanan
1154 In section 58, page 54, line 8, leave out from <any> to end of line 9 and insert <those parts of the decision of the relevant authority to which the appeal relates,>

Tavish Scott
1155 In section 58, page 54, line 21, at end insert <, as the case may be, transfer responsibility to provide the service (or part of the service), or>

Tavish Scott
1156 In section 58, page 54, line 29, at end insert—

<(a) in the case of an appeal relating to an asset transfer request under section 52(2)(c), specifying the terms on which, and any conditions subject to which, the authority would be prepared to transfer responsibility to provide the service (or part of the service), or

(b) in the case of an appeal relating to an asset transfer request under section 52(2)(a) or (b)—>

Section 59

Michael Russell
1088 In section 59, page 55, line 41, at end insert <, and

(b) must be issued within—

(i) a period prescribed in regulations made by the Scottish Ministers, or

(ii) such longer period as may be agreed between the local authority and the community transfer body that made the asset transfer request.>
Michael Russell

1089 In section 59, page 56, line 7, at end insert—

<(  ) In section 56 of the Local Government (Scotland) Act 1973 (arrangements for the
discharge of functions by local authorities), after subsection (6A) insert—

“(6B) The duty to carry out a review of a case imposed on an authority under section
59(2) of the Community Empowerment (Scotland) Act 2015 (reviews by local
authorities of asset transfer requests) must be discharged only by the authority
or a committee or sub-committee of the authority; and accordingly no such
committee or sub-committee may arrange for the discharge under subsection
(2) of the duty by an officer of the authority.”.>

Marco Biagi

1078 After section 59, insert—

<Review of decisions by the Scottish Ministers

(1) Subsection (2) applies in a case where—

(a) an asset transfer request is made to the Scottish Ministers by a community transfer
body, and

(b) the Scottish Ministers—

(i) refuse the request,

(ii) agree to the request but the decision notice relating to the request specifies
material terms or conditions which differ to a significant extent from those
specified in the request, or

(iii) do not give a decision notice relating to the request to the community
transfer body within the period mentioned in paragraph (a) or (where
applicable) paragraph (b) of section 55(8).

(2) On an application made by the community transfer body, the Scottish Ministers must
carry out a review of the case.

(3) The Scottish Ministers may by regulations make provision about reviews carried out
under subsection (2) including, in particular, provision in relation to—

(a) the procedure to be followed in connection with reviews,

(b) the appointment of such persons, or persons of such description, as may be
specified in the regulations for purposes connected with the carrying out of
reviews,

(c) the functions of persons mentioned in paragraph (b) in relation to reviews
(including a function of reporting to the Scottish Ministers),

(d) the manner in which reviews are to be conducted, and

(e) the time limits within which applications for reviews must be brought.

(4) The provision that may be made by virtue of subsection (3) includes provision that—>
(a) the manner in which a person appointed by virtue of paragraph (b) of that subsection carries out the person’s functions in relation to a review, or any stage of a review, is to be at the discretion of the person,

(b) the manner in which a review, or any stage of a review, is to be carried out by the Scottish Ministers is to be at the discretion of the Scottish Ministers.

(5) Having regard to any report they receive by virtue of subsection (3)(c), the Scottish Ministers may, in relation to a decision reviewed under subsection (2)—

(a) confirm the decision,

(b) modify the decision, or any part of the decision (including any terms and conditions specified in the decision notice to which the asset transfer request relates), or

(c) substitute a different decision for the decision.

(6) Following a review under subsection (2), the Scottish Ministers must—

(a) issue a decision notice as respects the asset transfer request to which the review relates, and

(b) provide in the decision notice the reasons for their decision.

(7) A decision notice issued under subsection (6) replaces any decision notice relating to the asset transfer request in respect of which the review was carried out.

(8) Subsections (3) to (5) of section 55 apply in relation to a decision relating to an asset transfer request in a review under subsection (2) of this section as they apply in relation to a decision relating to the request under subsection (2) of that section.

(9) Section 56 applies in relation to a decision to agree to an asset transfer request (including a decision to confirm such an agreement) following a review under subsection (2) as it applies in relation to a decision mentioned in subsection (1) of that section.

Michael Russell

1090 After section 59, insert—

<Appeals from reviews under section 59

(1) Subsection (2) applies in a case where, following a review carried out under section 59(2), a local authority—

(a) refuses the asset transfer request to which the review relates,

(b) agrees to the request but the decision notice issued under section 59(6) specifies material terms or conditions which differ to a significant extent from those specified in the request, or

(c) does not issue the decision notice within the prescribed period mentioned in subparagraph (i) or (where applicable) (ii) of paragraph (b) of subsection (7) of section 59.

(2) The community transfer body making the asset transfer request may appeal to the Scottish Ministers.
(3) Subsections (3) to (10) of section 58 apply to an appeal under subsection (2) of this section as they apply to an appeal under subsection (2) of that section, subject to the modification that any references to the relevant authority in the subsections so applied are to be read as references to the local authority mentioned in subsection (1) of this section.

Marco Biagi

1079 After section 59, insert—

<<Decisions by relevant authority specified under section 58(2)(c): reviews

(1) Subsection (2) applies in a case where—
   (a) an asset transfer request is made to a relevant authority specified in an order under section 58(2)(c), and
   (b) the relevant authority—
      (i) refuses the request,
      (ii) agrees to the request but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or
      (iii) does not give a decision notice relating to the request to the community transfer body within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 55(8).

(2) Subsections (2) to (9) of section 59 apply to the case mentioned in subsection (1).

(3) Subsection (2) is subject to subsection (4).

(4) The Scottish Ministers may by order—
   (a) make provision for subsections (2) to (9) of section 59 to apply as mentioned in subsection (2) subject to such modifications (if any) as they think appropriate,
   (b) specify, in relation to an application for a review under section 59(2) applied as mentioned in subsection (2)—
      (i) the local authority to which the application is to be made,
      (ii) factors determining the local authority to which the application is to be made.>>

Section 60

Cameron Buchanan

1157 Leave out section 60

Section 61

Cameron Buchanan

1158 In section 61, page 57, line 7, after <may> insert <, except where the body making the new request is a different body from that which made the previous request.>>
Cameron Buchanan

1159 In section 61, page 57, line 17, at end insert <, and
( ) there are no other significant differences between the two requests.>

Cameron Buchanan

1160 In section 61, page 57, line 18, leave out subsection (5)

After section 61

Marco Biagi

1080 After section 61, insert—

<Registers of relevant authorities’ land

Duty to publish register of land

(1) Each relevant authority must establish and maintain a register of land mentioned in subsection (2).

(2) The land is land which, to the best of the authority’s knowledge and belief, is owned or leased by the authority.

(3) Every relevant authority must—
   (a) make arrangements to enable members of the public to inspect, free of charge, its register of land at reasonable times and at such places as the authority may determine, and
   (b) make its register of land available on a website, or by other electronic means, to members of the public.

(4) The Scottish Ministers may by regulations specify land, or descriptions of land, that a relevant authority need not include in its register of land.

(5) Relevant authorities must have regard to any guidance issued by the Scottish Ministers in relation to the duties imposed on the authorities under this section.

(6) Before issuing such guidance, the Scottish Ministers must consult the relevant authorities.

(7) The omission of any land owned or leased by a relevant authority from the authority’s register of land does not prevent an asset transfer request being made in respect of the land.>

Marco Biagi

1081 After section 61, insert—

<Annual reports

Annual reports

(1) A relevant authority must publish an asset transfer report for each reporting year.

(2) An asset transfer report is a report setting out, in respect of the reporting year—
   (a) the number of asset transfer requests the relevant authority received,
   (b) the number of such requests which the relevant authority—
(i) agreed to, and
(ii) refused,

(c) the number of such requests made to the relevant authority which resulted in—

(i) a transfer of ownership of land to a community transfer body,
(ii) a lease of land to such a body,
(iii) rights in respect of land being conferred on such a body,

(d) the number of appeals under section 58 relating to such requests made to the relevant authority that have—

(i) been allowed,
(ii) been dismissed,
(iii) resulted in any part of the decision of the authority being varied or reversed,

(e) in relation to a decision of the relevant authority reviewed under section 59 or (Review of decisions by the Scottish Ministers), the number of such decisions that have been—

(i) confirmed,
(ii) modified,
(iii) substituted by a different decision, and

(f) any action taken by the relevant authority during the reporting year—

(i) to promote the use of asset transfer requests,
(ii) to support a community transfer body in the making of an asset transfer request.

(3) In this section, “reporting year” means a period of one year beginning on 1 April.

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John Wilson

1081A As an amendment to amendment 1081, line 29, at end insert—

<( ) An asset transfer report must be published no later than the last working day in May following the end of each reporting year.>

John Wilson

1081B As an amendment to amendment 1081, line 30, at end insert—

<“working day” means any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland.>

Marco Biagi

1082 After section 61, insert—


Guidance

(1) A relevant authority must have regard to any guidance issued by the Scottish Ministers about the carrying out of functions by the authority under this Part.

(2) Before issuing such guidance, the Scottish Ministers must consult such persons as they think fit.

Section 62

Marco Biagi

1083 In section 62, page 57, line 23, at end insert—

“community benefit society” means a registered society (within the meaning of section 1 of the Co-operative and Community Benefit Societies Act 2014) registered as a community benefit society under section 2 of that Act; and “registered rules” has the meaning given by section 149 of that Act (as that meaning applies in relation to community benefit societies).

Cameron Buchanan

1161 In section 62, page 57, leave out lines 28 to 30

After section 62

Marco Biagi

1084 After section 62, insert—

PART

DELEGATION OF FORESTRY COMMISSIONERS’ FUNCTIONS

Meaning of “community body” in Forestry Act 1967

(1) Section 7C of the Forestry Act 1967 (delegation of functions under section 7B: community bodies) is amended as follows.

(2) In subsection (1)—

(a) for the words from “company”, where it first occurs, to “include” substitute “body corporate having a written constitution that includes”,

(b) for the word “company”, wherever it appears in paragraphs (a) to (e), substitute “body”,

(c) after paragraph (d) insert—

“(da) provision that membership of the body is open to any member of the community,

(db) a statement of the body’s aims and purposes, including the promotion of a benefit for the community,”, and

(d) in paragraph (e), for “and the auditing of its accounts” substitute “, and

(f) provision that any surplus funds or assets of the body are to be applied for the benefit of the community.”.
(3) In subsection (2), for “(d)” substitute “(db)”.

(4) Subsections (4) to (6) are repealed.

Section 65

Marco Biagi

1085 In section 65, page 59, line 17, at beginning insert <where the local authority is Aberdeen City Council, Dundee City Council, the City of Edinburgh Council or Glasgow City Council,>

Marco Biagi

1086 In section 65, page 59, line 17, after <area,> insert—

<() where the local authority is any other council, any community council whose area consists of or includes the area, or part of the area, to which the property mentioned in subsection (1) related prior to 16 May 1975,>

Section 96

Marco Biagi

1087 In section 96, page 76, line 13, after <section> insert <16(2) or (3), 51(2) or (3), 58(2)(c) or>

Marco Biagi

1038 In section 96, page 76, line 17, after <section> insert <4(6), 8(3) or>

Alex Rowley

1070 In section 96, page 76, line 17, after <12(1)> insert <or (Community engagement standards)(1)>

Tavish Scott

1162 In section 96, page 76, line 17, after <12(1)> insert—

<() section (Powers to make supplemental provision)(1),

() section (Powers to make supplemental provision)(2) containing provisions which add to, replace or omit any part of the text of an Act,

() section (Powers to make supplemental provision)(3), other than regulations made only for the purpose mentioned in section (Procedure for regulations under section (Powers to make supplemental provision))(4)(b),

() section (Powers to make supplemental provision)(4), other than regulations made only for that purpose or for imposing conditions on the doing of things for a commercial purpose,>

Alex Rowley

1071 In section 96, page 76, line 19, at end insert—

<() regulations under section 1(1),>
Schedule 4

Marco Biagi

1039 In schedule 4, page 80, line 3, at end insert—

<Local Government (Scotland) Act 1973

In the Local Government (Scotland) Act 1973—

(a) in section 99 (general duties of auditors), in subsection (1)(c), for “sections 15 to 17 (community planning) of the Local Government in Scotland Act 2003 (asp 1)” substitute “Part 2 of the Community Empowerment (Scotland) Act 2015 (community planning)”, and

(b) in section 102 (reports to Commission by Controller of Audit), in subsection (1)(c)—

(i) the words “and Part 2 (community planning)” are repealed, and

(ii) at the end insert “and Part 2 of the Community Empowerment (Scotland) Act 2015 (community planning)”.>

Marco Biagi

1040 In schedule 4, page 80, line 8, at end insert—

<Local Government in Scotland Act 2003

In section 57 of the Local Government in Scotland Act 2003 (power to modify enactments), in subsection (2)(a), for “, 13(1) or 15(1)” substitute “or 13(1)”.>

Marco Biagi

1041 In schedule 4, page 81, line 19, at end insert—

<Fire (Scotland) Act 2005

In the Fire (Scotland) Act 2005—

(a) in section 41E (local fire and rescue plans), in subsection (6), for “Local Government in Scotland Act 2003 (asp 1)” substitute “Community Empowerment (Scotland) Act 2015”, and

(b) in section 41J (Local Senior Officers), in subsection (2)(c), for “section 16(1)(d) of the Local Government in Scotland 2003 (asp 1) (duty to participate in community planning)” substitute “Part 2 of the Community Empowerment (Scotland) Act 2015 (community planning)”.>

Police and Fire Reform (Scotland) Act 2012

In the Police and Fire Reform (Scotland) Act 2012—

(a) in section 46 (duty to participate in community planning), in subsection (2), for “section 16(1)(e) of the Local Government in Scotland Act 2003” substitute “Part 2 of the Community Empowerment (Scotland) Act 2015”, and

(b) in section 47 (local police plans), in subsection (11), for “Local Government in Scotland Act 2003 (asp 1)” substitute “Community Empowerment (Scotland) Act 2015”.

Marco Biagi
Schedule 5

Marco Biagi

1042 In schedule 5, page 81, line 30, at end insert—

<Section 57(2)(b).>

Tavish Scott

1163 In schedule 5, page 81, line 30, at end insert—

<Part 3.>
Community Empowerment (Scotland) Bill

2nd Groupings of Amendments for Stage 2
(Local Government and Regeneration Committee)

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the second day of Stage 2 consideration, set out in the order in which they will be debated. THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.

Groupings of amendments

Local authority power of general competence
1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1162, 1163

Removal of requirement for participation request to be made by formally constituted body
1099, 1100, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1113, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1128, 1131, 1132, 1133, 1135, 1136, 1073A, 1138, 1140

Notes on amendments in this group
Amendment 1131 is pre-empted by amendment 1130 in the group “Power to decline certain participation requests and asset transfer requests”

Power to amend meaning of “public service authority” in Part 3 and “relevant authority” in Part 4
1101, 1141

Request for public service authorities to work together in outcome improvement process
1110, 1111

Support in relation to participation requests and asset transfer requests etc.; regulations, reports, guidance
1112, 1073, 1073B, 1073C, 1074, 1081, 1081A, 1081B, 1082

Factors to be considered in decision on whether to agree to participation request or asset transfer request
1114, 1072, 1115, 1116, 1139, 1146, 1076, 1147, 1149, 1161
Power to decline certain participation requests and asset transfer requests
1127, 1129, 1130, 1158, 1159, 1160

Notes on amendments in this group
Amendment 1130 pre-empts amendment 1131 in the group “Removal of requirement for participation request to be made by formally constituted body”

Right of appeal against refusal of participation request
1134

Involvement of community participation bodies in preparation of report summarising outcome improvement process
1137

Asset transfer requests to cover requests to run services
1142, 1143, 1144, 1148, 1150, 1153, 1155, 1156

Community transfer bodies that may request transfer of ownership of land
1075, 1083

Provision of information in connection with asset transfer requests
1145

Effect of failure to conclude contract following agreement to asset transfer request
1151, 1152

Asset transfer requests: reviews and appeals
1077, 1154, 1088, 1089, 1078, 1090, 1079

Asset transfer requests: disapplication of certain lease restrictions
1157

Duty to publish register of land
1080

Delegation of Forestry Commissioners’ functions
1084

Disposal and use of common good property: consultation
1085, 1086

Procedure for certain orders
1087

Amendments already debated

National outcomes: consultation, procedure and reporting
With 1043 – 1071
Duty to carry out community planning: general
With 1015 – 1038, 1039, 1040, 1041, 1042

Community engagement standards
With 1069 – 1070
Present:

Clare Adamson
Willie Coffey
Alex Rowley
John Wilson (Deputy Convener)

Cameron Buchanan
Margaret McCulloch (Committee Substitute)
Kevin Stewart (Convener)

Also present: Michael Russell and Tavish Scott.

Apologies were received from Cara Hilton.

Community Empowerment (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 2).

The following amendments were agreed to (without division): 1110, 1111, 1112, 1072, 1137, 1073, 1074, 1075, 1076, 1151, 1152, 1077, 1088, 1089, 1078, 1090, 1079, 1080, 1081, 1082, and 1083.

Amendment 1134 was agreed to (by division: For 4, Against 3, Abstentions 0). The following amendments were disagreed to (by division)—

1091 (For 2, Against 5, Abstentions 0)
1114 (For 1, Against 6, Abstentions 0)
1127 (For 1, Against 6, Abstentions 0)
1139 (For 1, Against 6, Abstentions 0)
1146 (For 1, Against 6, Abstentions 0)
1154 (For 1, Against 6, Abstentions 0)
1157 (For 1, Against 6, Abstentions 0)
1158 (For 1, Against 6, Abstentions 0)
1159 (For 1, Against 6, Abstentions 0)
1160 (For 1, Against 6, Abstentions 0)

The following amendments were moved and, no member having objected, withdrawn: 1099, 1101, 1142 and 1145.

The following amendments were not moved: 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1100, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1113, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1128, 1129, 1130, 1131, 1132, 1133, 1135, 1136, 1073A, 1073B, 1073C, 1138, 1140, 1141, 1143, 1144, 1147, 1148, 1149, 1150, 1153, 1155, 1156, 1081A, 1081B and 1161.
The following provisions were agreed to without amendment: sections 14, 15 and 16, schedule 2, sections 20, 21, 22, 23, 24, 26, 50 and 51, schedule 3 and sections 52, 54, 57, 60 and 61.

The following provisions were agreed to as amended: sections 17, 18, 19, 25, 53, 55, 56, 58, 59 and 62.

The Committee ended consideration of the Bill for the day section 62 having been agreed to.
Scottish Parliament
Local Government and Regeneration Committee
Wednesday 11 March 2015

[The Convener opened the meeting at 09:30]

Community Empowerment (Scotland) Bill: Stage 2

The Convener (Kevin Stewart): Good morning and welcome to the ninth meeting in 2015 of the Local Government and Regeneration Committee. If anyone wishes to use tablets or mobile phones during the meeting, please switch them to flight mode, as they may affect the broadcasting system. Some committee members may consult tablets during the meeting; this is because we provide meeting papers in digital format.

We have received apologies from Cara Hilton. I welcome to the meeting Margaret McCulloch, who is substituting for Cara this morning.

Our first item of business is day 2 of our consideration of the Community Empowerment (Scotland) Bill at stage 2.

I welcome back Marco Biagi, the Minister for Local Government and Community Empowerment. I also welcome Tavish Scott. Later in the proceedings, we will be joined by Michael Russell, who is currently debating amendments to the bill with our colleagues in the Rural Affairs, Climate Change and Environment Committee.

Members should have with them a copy of the bill as introduced, the latest marshalled list of amendments and the latest groupings of amendments, which sets out the amendments in the order in which they will be debated.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in each group to speak to and move their amendment and to speak to all the other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate that by catching my attention in the usual way. If the minister has not already spoken on the group, I will invite him to contribute to the debate just before I move to the winding-up speech. The debate on each group will be concluded by my inviting the member who moved the first amendment in the group to wind up.

Following the debate on each group, I will check whether the member who moved the first amendment in the group wishes to press their amendment to a vote or to withdraw it. If they wish to press ahead, I will put the question on that amendment.

If a member wishes to withdraw their amendment after it has been moved, they must seek the committee’s agreement to do so. If any committee member objects, the committee must immediately move to the vote on the amendment.

If any member does not want to move their amendment when I call it, they should say, “not moved.” Please remember that any other MSP may move such an amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members or their official substitutes are allowed to vote at stage 2. Voting in any division is by a show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote.

The committee is required to indicate formally that it has considered and agreed to each section of the bill and so I will put a question on each section at the appropriate point.

We are now ready for the off.

After section 13

The Convener: Amendment 1091, in the name of Tavish Scott, is grouped with amendments 1092 to 1098, 1162 and 1163. I call Tavish Scott.

Tavish Scott (Shetland Islands) (LD): Thank you, convener. Having done this a number of times over the course of parliamentary sessions, I am always very envious of conveners who have to read out that great list of instructions that we all must follow.

The reason behind my amendments is to introduce a power of general competence for local authorities, putting it beyond doubt that they may do anything that is not expressly prohibited by law. Some of us who have been in the Parliament for some time might have reflected on the introduction in previous legislation of a power of wellbeing, and I recollect both the parliamentary processes that that provision went through and the thinking behind it.

Although the power of wellbeing has undoubtedly been of some assistance to local government across Scotland—I am sure that colleagues will be aware of examples of its use—there is no question but that it has some downsides. I admit that some of those downsides were pointed out by the official Opposition when I was part of the Administration that introduced the provision. I accept that some of the arguments made at the time by colleagues on the Scottish National Party benches were entirely fair and reasonable.
One of those arguments was that the term “wellbeing”, as currently set out in the legislation, is ambiguous. In practical terms, its restrictions, or the understandable concerns about them, mean that local authorities might not be doing all that they might wish to in serving people and communities to the best of their ability.

Before the introduction of a power of general competence in England and Wales, 10 councils in London were legally blocked from forming a mutual insurance firm—a service that I am sure most colleagues would consider to be beneficial to people in that part of the country. To my mind, that was a setback that deterred others from an innovative use of the power of wellbeing.

Today, I seek to introduce a power of general competence into what I think is a good bill. The minister should take credit for a lot of progressive, sensible ideas, but we can strengthen a particular aspect of the bill for local government.

In framing the amendments, I have sought to ensure that they give councils the capacity to do anything that an individual can do. Thus, they would not enable a local authority to introduce a new tax—I am sure that that will be of some relief to the Cabinet Secretary for Finance, Constitution and Economy and to the Government’s spending departments—as individuals are not able to do that either. Further, as the United Kingdom Department for Communities and Local Government put it in their impact assessment of similar proposals south of the border, the amendments would not "enable local councillors to wage thermonuclear war due to existing preventative legislation".

I was a bit taken aback by that, but, unbelievably, that was apparently what the DCLG argued. I would never have a sensible minister such as Mr Biagi use such extraordinary measures to knock down amendments, but there we have it—in another place, that is what happened.

In the past few months, there have been significant advances towards more powers for this Parliament. Indeed, another committee that I sit on is dealing with that matter tomorrow. I argue that devolution should not stop in this building; rather, we should ensure that local government and those who serve communities, representing all political parties and none, have the ability to use the power of general competence in the most sensible and constructive way for the people whom they serve.

In that spirit, I move amendment 1091.

The Minister for Local Government and Community Empowerment (Marco Biagi): The amendments in this group essentially seek to import into Scotland the English Localism Act 2011—the provisions are pretty much a copy of those that were introduced by the UK Government to the UK Parliament, and which were debated and scrutinised there.

The aim behind the amendments is to use those provisions to replace part of the Local Government in Scotland Act 2003, the bill for which, as has been alluded to, went through an extensive process of consultation, deliberation and scrutiny in the Scottish Parliament.

Our concern is that the power to advance wellbeing, as set out in the 2003 act, already gives Scottish councils a very similar wide-ranging power of first resort, enabling them to do anything that they consider is likely to promote or improve the wellbeing of their area and the people in it. That power was intended to do what the power of general competence—which was not introduced in England until 2011—was intended to do. The intention was also to signal our trust in local accountability.

I will quote from the debate in the chamber in October 2002:

"the power encapsulates the principle of subsidiarity, as it allows local government to take responsibilities that it should have and allows the Parliament to extend the devolution process beyond this chamber and ensure that that process continues down or up—depending on one’s perspective—to local government. The Parliament should applaud that important principle."—[Official Report, 2 October 2002; c 11292.]

Those wise words were from Tavish Scott.

It is fair to say that there were criticisms from the other side of the chamber—we are not in a complete political changeroo situation here. However, many of those criticisms about exemplification and understanding have been dealt with subsequently through statutory guidance and dialogue.

There is a purposeful intent to leaving wellbeing undefined, as in the 2003 act, so as not to constrain local government, and to ensure that local government can take a broad interpretation of actions that could improve wellbeing. In that respect, the provisions in the 2003 act are much broader than the provisions that the English Localism Act 2011 replaced. The previous wellbeing power south of the border was restricted to "economic, social and environmental well-being", which was defined. That may have led to some restrictions such as the London example that has been set out. Our power is already far beyond the power that was in place in England.

Alex Rowley (Cowdenbeath) (Lab): How has the wellbeing power operated in local government? Do local government lawyers often advise councillors to be tame, in terms of what
they want to do, because there is not a clear definition?

**Marco Biagi:** Far be it from me to alienate the officials to my left and right, but there is always a debate to be had between elected members and officers of any body as to how far interpretations of statute can be stretched. The provisions that are set out in the amendments do not exemplify what could be done; they merely create a general competence.

The issue is not just that, as the previous wellbeing power south of the border was less extensive than the Scottish power, the Localism Act 2011, which went through the UK Parliament, was trying to come from behind, if you like. It is also the case that the Westminster Parliament, in conferring any powers on local government, will automatically be able to confer a broader range of powers than this Parliament can, because we can confer broader powers only in areas that are within the competence of the Scottish Parliament under the Scotland Act 1998.

I am aware that a tension has recently been expressed about the power to advance wellbeing with regard to social security and the bedroom tax. However, this Parliament cannot confer through a general power of competence a clear position on what local authorities can do to ameliorate a social security issue any more than it could do that through a power to advance wellbeing. We cannot give local authorities powers over things over which we do not have powers. The same is true for Westminster, but ultimately Westminster has power over pretty much everything, under parliamentary sovereignty.

**The Convener:** Is this something that the Government may look at again, as more powers, or whatever we end up getting, come through via Smith?

**Marco Biagi:** It would be very reasonable to look at the matter again once we know what powers we may be able to confer on local government and what powers would be captured in the term “general competence”. The question whether the power to advance wellbeing in the 2003 act applies only to the powers that could be applied in 2003 or whether it would apply to powers existing at any given moment is one for lawyers; I am not sure that I know the answer to that. We will need to come back to the matter when we have clarity on the exact powers that we can confer and what the term “general competence” might cover.

Tavish Scott’s amendments would introduce provisions that would prevent or restrict local authorities from exercising the general power. I recognise that that might be an attempt to prevent excesses. However, under the Local Government in Scotland Act 2003, Scottish ministers have powers to modify enactments to remove barriers to community planning, the power to advance wellbeing or the achievement of best value.

We are very open to having a debate about allowing councils to do something under secondary powers if they tell us that they want to do it but are not sure whether they can, or even if they tell us that they do not think that they can do it but think that they should be able to. However, we have not seen evidence that the power to advance wellbeing is limited. We have not been given examples of things that councils are unable to do under the existing power—and we have asked. It is not clear what additional powers, if any, the proposed new part would bring.

**John Wilson (Central Scotland) (Ind):** You mentioned that you have not been approached about the current power. Are you saying that neither the Convention of Scottish Local Authorities nor any local authority has approached you?

**Marco Biagi:** We have not been given examples of things that local authorities cannot do under the power. There have been question marks over the bedroom tax, for example, but that is a separate issue because we do not have the power to give local authorities power over social security.

In conversations, we have tried to explore the issue through things such as the city deal and so on, but we can give no concrete examples that we have not already given. If there is an understanding gap, there are other ways to address that gap.

The committee considered the legislative issues relating to local authorities in its inquiry into the flexibility and autonomy of local government, but it did not say in its report that there were substantial legislative barriers.

09:45

Finally, the amendments have not been consulted on. The proposal that they contain has been consulted on, scrutinised and debated in another Parliament—it has basically been copied into amendments that Tavish Scott aims to introduce at stage 2 into a bill that is largely about other things. We need to hear, through formal processes, from those who would use the powers. Fundamentally, I think that doing such direct importing sets a dangerous precedent.

In a briefing, the Convention of Scottish Local Authorities said that it thought that the proposal was a good thing. In the first sentence, it says that it “welcomes this amendment”. However, the following two paragraphs provide caveats, and the briefing ends up saying that, ultimately,
“COSLA is of the view that it would be simpler and preferable to further the power of local government through the Bill by using this opportunity to embed the European Charter on Local Self-Governance in the Act.”

That is an alternative route that has been discussed, debated and considered, so it may well be the appropriate focus for debate and amendment in this area.

Tavish Scott has made his points. Given what I have just said and the fact that I believe that there is quite a degree of commonality between us with regard to what we want local authorities to be able to do, I ask him to withdraw amendment 1091 and to not move the other amendments in the group. If he presses amendment 1091, I hope that the committee will respect its own position and its right to scrutinise extensively any changes to local government and that it will reject the amendment, so that we can have a full process of examination in the Scottish Parliament rather than simply importing an act of the United Kingdom Government.

Tavish Scott: A lot of the minister’s remarks are fair but some of his observations are less so. I will deal with some of his points in reverse.

The minister is quite right about COSLA’s assessment of the proposal. If the Government’s view is that the bill could embed the European charter on local self-government, it could do that itself. If the Government’s objection to the proposal is an in-principle one, I can understand that. If it is to do with the detail, I point out that stage 2 is when the principle of issues is dealt with and that the detail can be tidied up at stage 3. His Government does that regularly, as did the Government of which I was part. It is a pretty accepted part of the Scottish Parliament’s conventions. Whether it is right is neither here nor there; we do not have a revising chamber, so that is the way in which we have to do our business.

I was not sure whether the minister was objecting to the proposition in principle or was objecting to the practicalities. If the problem involves the practicalities, I completely accept that some of the measures need to be tidied up, but that could be done by the Government at stage 3—he will have more advice than I could possibly have in that regard.

Marco Biagi: For clarity, let me say that I think that the amendments require more than a tidying-up exercise. The proposal would need a stage 1 call for evidence on the question whether a power of general competence is an appropriate replacement for a power to advance wellbeing. The full parliamentary process would need to be followed, because the proposal could end up bringing about a major change. It might not, of course, but we would need to consult on that, via the full process. We simply would not have time between now and stage 3 to consult everybody as we would want to.

Tavish Scott: That might or might not be a reasonable point. Of course, this Government has a bit of a track record of introducing pretty far-reaching changes to legislation at late stages in the bill process, without consultation. I think that the minister would have to accept that one of the measures that the Rural Affairs, Climate Change and Environment Committee is dealing with today has not had a heck of a lot of scrutiny in that context. If I may say so, the argument can cut both ways.

I was not terribly worried about the perspective on what happens south of the border. The minister is quite right with regard to the issue of finding wording to give effect to my desire to bring about a power of general competence.

However, if the minister wants to play a game about what is happening south of the border, I point out that the truth is that what is being considered to a significant extent south of the border—for instance, in Greater Manchester—is an extremely far-reaching transfer of powers to local government, which is not happening in Scotland. I welcome those developments. Very exciting things are happening for local government in particular parts of England. I wish that we were as brave north of the border, as I would like to see much of that happening here too. I counsel against running down what may be happening south of the border when there are, for those of us who strongly believe in local government, some genuinely positive developments under consideration for different parts of England.

My purpose is not to say what local government should do; that is not where I come from, philosophically, in politics. I do not believe in top-down government; the minister was quite right to read out my words from some years back, because I believe in the principle of giving local government the space and freedom, within the confines of the law and the exercise of power and law, to look at how best to serve its people in different ways.

Alex Rowley: I cannot resist commenting. Is it not the case that, in opposition, politicians want to give loads of powers to local government, but in power, as has been demonstrated, things are different?

Tavish Scott: Mr Rowley makes an eminently fair point, and I would be the first to accept it. I do not suppose that I was—indeed, I would go so far as to say that I am sure that I was not—the perfect minister when I had some of the responsibilities that Mr Biagi now has. I accept that point, but it does not alter my fundamental argument, which is that I do not seek to prescribe what local
government should do and would rather allow things to develop and evolve in our 32 local authorities across Scotland.

If the minister seeks arguments with regard to local government looking for areas that it would wish to develop, I advise him to look no further than the our islands, our future campaign. Areas of Scotland are seeking to enhance their powers: they would, for example, take much of what Marine Scotland currently does as part of central Government and deal with it far more efficiently and effectively—in my view—at a local level.

Marco Biagi: That is why we have the island areas ministerial working group, which met just a few weeks ago. Along with Derek Mackay, the Minister for Transport and Islands, Fergus Ewing, the Minister for Business, Energy and Tourism, and the leaders of the three island areas councils, I discussed that issue and, together, we agreed a programme of work to take forward.

We are open to any specific approach in that respect, and we have certainly been involved in the city deals that are in place in Scotland. I would characterise our position as being interested in and positive towards facilitating local government to take on more responsibilities.

Tavish Scott: I agree with and welcome that, as it is very positive. I also think that it is entirely consistent with authorities having the power of general competence. I press amendment 1091.

The Convener: The question is, that amendment 1091 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
McCulloch, Margaret (Central Scotland) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)

Against
Adamson, Clare (Central Scotland) (SNP)
Buchanan, Cameron (Lothian) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 1091 disagreed to.
Amendments 1092 to 1098 not moved.

Section 14—Meaning of “community-controlled body”

The Convener: Amendment 1099, in the name of John Wilson, is grouped with amendments 1100, 1102 to 1109, 1113, 1117 to 1126, 1128, 1131 to 1133, 1135, 1136, 1073A, 1138 and 1140. I draw members’ attention to the information on pre-emption that is shown on the groupings paper.

John Wilson: The reason for lodging the amendments is that I feel that the bill, as presented by the Government, is too restrictive with regard to participation requests. I understand, and I fully agree, that some conditions have to apply, and I think that the Government made a brave attempt to define the types of groups that would be able to make participation requests.

However, I am aware of a number of issues that have arisen recently when local authorities have made decisions and put them out to consultation. Examples that spring to mind include when an incinerator is proposed or fracking is proposed in an area where there is not an existing community body. Under the bill, people may be kept from making participation requests because they are not a formally constituted body or are not organised in the way that is described in section 14. A very ad hoc participation request might come forward.

Under the bill, the question is whether, in those circumstances, local authorities would treat such participation requests in the same way as they would treat a request from a community organisation that is constituted and has its membership within the community. Some of the groups that are being established may be established in reaction to decisions that are being made. Going back to Mr Scott’s earlier assessment and the committee’s discussion, the difficulty is that local authorities are risk averse. If a council is risk averse, it may just say, “We are just going to go as per the bill.” Therefore, any new group that is established and makes a participation request regarding, for example, an incinerator or fracking, would be denied the opportunity to participate because the group did not exist prior to the council making the decision on the issue at hand.

Amendment 1099 is trying to widen the bill’s scope to ensure that any community group, whether it is constituted or not, and any individual has the right to make a participation request.

There are a number of consequential amendments in the group. In terms of other sections, I have included a provision to make sure that the vexatious nature of any participation request can be dealt with by a local authority.

At present I feel that, in society, community groups are very fluid. The decisions that are being made can be made within a matter of months, and the inability of a group of people to become constituted and recognised as a representative body within that time by a local authority or other body may debar them from making participation requests to local authorities.
I move amendment 1099.

Clare Adamson (Central Scotland) (SNP): I thank John Wilson for explaining the rationale behind his amendments. I have sympathy for his position. However, by its nature, the bill should be about communities coming together to work together.

I have some concerns about the reference to “frivolous or vexatious” requests, because it would give local authorities additional powers to deem a request to be frivolous or vexatious. If an authority was minded to block a development, that provision would make it more difficult for communities to use the bill as intended.

10:00

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I will ask John Wilson to clarify one point. Is it your intention that individuals or groups could use the process?

John Wilson: My intention is to allow individuals to use the process, because they may form the backbone of any future community organisation that is established. The references in the bill to “constituted” community groups present a difficulty. If someone identifies an issue and wishes to make an initial request and form a group after that, the initial request would, under the bill, be refused by the local authority because the person was not part of a constituted group.

Willie Coffey: So, amendment 1099 would allow individual people to use the process to pursue their personal agendas.

The Convener: I think that that is what John Wilson is saying.

Alex Rowley: I understand completely what John Wilson is saying. I have seen situations in communities in which groups of people come together and want to organise because a specific issue has arisen in their community. The minister might want to touch on the question of how such a situation can be addressed. For local authorities simply to rule that only groups should use the process, and that people with an interest must come together, would be wrong, and I can see what would happen.

However, I would raise one concern with John Wilson. A number of organisations have suggested to me that there is a danger in what he proposes. If a commercial organisation or an individual came along, and they were not part of a constituted group, that would raise a legitimate concern. Although I support the principle behind the amendments, I wonder what Mr Wilson thinks about that concern.

The Convener: If John Wilson could deal with that point in summing up, that would be grand.

Marco Biagi: I meant to say earlier that in going through the amendments for today’s meeting I have been challenged in a lot of ways. There are in amendments that have been lodged by various members suggestions that I wish to support, and I want to put that on record.

I understand the intention behind the amendments in the group, given what John Wilson has said. The difficulty is that, on reflection, and having thought in particular about our discussions at last week’s meeting about sewing bees and pensioners’ lunches, and the ability of such groups to contribute to decision making and outcome improvement plans, I believe that the amendments would open up that process to individuals.

The bill was designed to allow participation requests for groups that come together with a common interest and a common purpose; I think that we completely agree on that. The issue here is the “constituted” nature of such groups. I do not think that a constitution is a massively onerous burden, but I recognise that for many groups that would have the scope to participate and would be able to do so positively, the requirement may prove to be quite legalistic. That might be the case only in people’s understanding rather than in reality, but it could pose a barrier to the kind of community participation that we want.

I am willing to come back at stage 3 with amendments that would be focused on groups that are not formally constituted and which would introduce some kind of test that would have to be applied so that a group that was not formally constituted would be much the same as one that was, in terms of the requirement for a constitution in the bill. That would mean that the process would be open to everyone in a community. You know such a group when you see it; I would leave it to the lawyers to define that, but it would be a group that could be recognised as an informal unconstituted group that has come together with a common interest and a common purpose and which has something to contribute.

I do, however, have serious issues with the amendments in the group as they are, because they would open the process up to individuals. We know from constituency experience that a lot of individuals would say, with regard to the test that was suggested, “I’m about to organise a group but I haven’t done it yet. Can I have a seat at the table?” If they got that seat at the table, they might then take a little while to form the group.

There is also the commercial aspect that was raised. Ultimately, the bill is about giving particular input routes to decision making for open, broad community action involving groups that are open,
inclusive, representative and controlled by the community that they want to represent. There would be a risk to the reputation of participation requests if they were available to individuals to further their own agendas. The Scottish Community Development Centre and the Community Development Alliance Scotland express serious reservations about the changes in an email that has been sent round the committee.

The structure of part 3 will also require an outcome improvement process that would be quite disproportionate for individuals, so if we were to open up participation requests to individuals there could be serious resource implications because of the volume of such requests. In addition, there are issues with the power in respect of frivolous or vexatious requests, as it leaves a fair bit of discretion to a public service authority, which may—I do not intend to impugn the willingness of any public service authority—use the power to ensure it has an easy life. In drafting legislation, we should always think about what would happen if somebody wanted to go in the opposite direction.

The bill’s aim is to empower communities, and I am happy to take away the point that has been raised about informally organised communities that are still recognisable communities. I will lodge amendments at stage 3 that will capture such communities while excluding individuals who would fundamentally change the nature of participation requests and make an unhelpful contribution.

I thank John Wilson for lodging the amendments and, having given that undertaking, I hope that he is content to seek to withdraw amendment 1099 and not to move his other amendments.

John Wilson: On Alex Rowley’s point, there is always a danger that commercial interests will intervene in communities in a number of ways to try to influence community organisations. I have seen commercial organisations do that. We must all recognise that commercial interests can influence existing organisations—never mind the setting up of new organisations—in a number of ways.

I understand the SCDC’s arguments about protection of constituted groups. It has the right to do that; it also assists groups in becoming constituted. It can take time for a group to become constituted, depending on how the local authority deals with it. It can take up to 28 days to hold a public annual general meeting to elect office bearers and get a committee established, and within that timescale the shift can be made.

On requests from individuals who say that they want to represent the community and will work to set up a community organisation, local authorities can build in safeguards whereby they could say, “Fine. You can have a seat at the table”, but give the individual X days to prove that they are genuinely committed to establishing a community organisation to represent the issues that they have raised.

I fully understand the concerns in relation to frivolous and vexatious requests; the difficulty is in how we define such requests and how local authorities deal with them. I hope that the bill, when it becomes legislation, will give local authorities an assurance that the Scottish Government and others are keen to see the widest possible consultation and engagement with communities.

Marco Biagi: I have not been able to give details about this in the past, because we were still finalising it, but today we are lodging an amendment to introduce at the end of the bill a new part that will give very wide powers to promote, encourage and, indeed, require participation. That may well be the best route for individuals to participate in the decision-making processes. Those powers will be very broad and will apply widely across public service authorities, which may deal with the problem of individuals who wish to make requests, which I think are the key danger with the amendments in the group.

John Wilson: Based on the minister’s comments and the assurances that the committee has received today, I seek to withdraw amendment 1099 and will not move the other amendments in the group. However, I reserve the right to lodge amendments at stage 3 if the amendments that the Government lodges do not satisfy the intention of the amendments in the group.

Amendment 1099, by agreement, withdrawn.  
Section 14 agreed to.

Section 15—Meaning of “community participation body”

Amendment 1100 not moved.  
Section 15 agreed to.

Section 16—Meaning of “public service authority”

The Convener: Amendment 1101, in the name of Cameron Buchanan, is grouped with amendment 1141.

Cameron Buchanan (Lothian) (Con): Amendment 1101 is a probing amendment to find out not about the desirability of the bill’s aims, but its definitions. All I really want to know is whether the bill should be about empowering communities to set their own priorities and aims.
I move amendment 1101.

Marco Biagi: I am a little bit confused. Amendments 1101 and 1141 would remove Scottish ministers’ ability to remove or amend entries in the schedules that list public service authorities, in respect of participation requests, and relevant authorities, in respect of asset transfer requests. I assume that we are on the correct amendments here.

We must retain ministers’ flexibility to remove, amend and add to entries in the lists of authorities that will be covered by the bill. The committee will be aware that I have lodged amendments to ensure that any changes of that nature are made under affirmative procedure, in line with the recommendation by the Delegated Powers and Law Reform Committee. There will be parliamentary scrutiny of any changes to the schedules and the lists of organisations therein. A public body may be abolished, or its name or functions may be changed, so we need to be able to accommodate changes of that nature in the public sector landscape. It seems that the amendments would challenge that.

Cameron Buchanan: That is a very satisfactory explanation, so I wish to withdraw amendment 1101.

Amendment 1101, by agreement, withdrawn.

Section 16 agreed to.

Schedule 2 agreed to.

Section 17—Participation requests

Amendments 1102 to 1109 not moved.

The Convener: Amendment 1110, in the name of Tavish Scott is grouped with amendment 1111.

Tavish Scott: I am very tempted to take the Cameron Buchanan approach and say that my amendment is a probing amendment, and then leave it to the minister to do all the speaking. That is a commendable approach, which I must remember for future bills. However, let me try to help the minister by explaining what I am trying to achieve here, then he might be able to help me as to whether I have got it right.

The bill contains a provision that a community participation body—or, indeed, two or more bodies jointly—may make

“a participation request ... to a public service authority.”

It has been suggested that that will lead to a slightly strange position in which two community groups can make a request to participate in a process to improve a service in relation only to one public authority. There will obviously be examples involving more than one public authority. I am sure that the minister and committee colleagues can think of such examples.

Therefore, amendment 1110 seeks to give effect to the ability of such a community group or groups to engage with more than one public authority where that is evidently necessary in a particular set of circumstances. I hope that, in that sense, it is a constructive measure that will make it easier to achieve what I am sure the minister and the Government are trying to deliver through the bill.

I move amendment 1110.

Marco Biagi: I thank Tavish Scott for his amendments. He has made a very reasonable case about a policy aim that I am happy to support, so I am happy to accept amendments 1110 and 1111.

We will probably look at the wording in advance of stage 3 to ensure that amendments 1110 and 1111 will add the flexibility that we want, and that they are covered and will fit with the rest of the bill. On that basis, I am very happy to ask members to support the amendments.

Tavish Scott: I am grateful to the minister for that. I am sure that the amendments could technically be better—indeed, I have been told that by the clerks—so I might leave it to the minister and his powers of persuasion to get that right. I am happy to see the amendments move forward.

Amendment 1110 agreed to.

Section 17, as amended, agreed to.

Section 18—Regulations

Amendment 1111 moved—[Tavish Scott]—and agreed to.

The Convener: Amendment 1112, in the name of Alex Rowley, is grouped with amendments 1073, 1073B, 1073C, 1074, 1081, 1081A, 1081B and 1082.

Alex Rowley: My amendments are designed to strengthen the provision in part 3 on the rights of communities and other bodies when making a participation request. I welcome the current provision, but there are gaps that, if they are not addressed, will leave community bodies and others at a significant disadvantage. That would be likely to affect communities that are vulnerable and already disadvantaged because of socioeconomic factors and other circumstances.

Amendment 1112, in my name, is designed to avoid that happening and to make sure that all communities that wish to make a request to participate can do so. The amendment would
allow the regulations by the Scottish ministers to include provisions that require public service authorities to publish the fact that communities can make participation requests, to set out what support those authorities must make available to communities in relation to making and completing a request and to set out the types of communities that might require additional support.

I strongly believe that my amendments would redress the current imbalance in the bill whereby communities with the resources and the capacity will be most likely to make the most of the opportunity that participation requests offer. A significant gap in the bill is that, once a request has been made, whether to accept it will be up to the public service authority. I believe that amendment 1112 and the other amendments in my name would improve the bill and I hope that the minister and the committee will support the amendments.

I move amendment 1112.

Marco Biagi: I am happy to support Alex Rowley’s amendment 1112. As with all regulations under the bill, the regulations under section 18 will be developed in partnership, so that community bodies and public authorities can help to shape the detail and determine what is appropriate for legislation and what should be in guidance. As examples of what should be included in the regulations, the promotion of participation requests and support for communities seem important enough to be included in the bill.

Amendments 1073 and 1081, in my name, respond to recommendations made in the committee’s stage 1 report to provide for monitoring of the use of the bill’s provisions. They require each public service authority and each relevant authority to produce an annual report setting out how many requests they have received, how many have been agreed to or rejected and how many have resulted in change or the transfer of an asset. That is in addition to the report that must be produced on the outcome of each participation request.

For asset transfer requests, the report must include the number of requests for which a review or appeal has been requested and the outcomes. That will make clear whether authorities are making the right decisions first time.

As with Alex Rowley’s amendment 1112, we recognise the importance of authorities making communities aware of the potential to make requests and helping them to do so. Reports must therefore include information on the action that an authority has taken to promote the use of participation and asset transfer requests and to support communities directly in making such requests. I hope that the committee will support Alex Rowley’s amendment 1112 and my amendments 1073 and 1081.

John Wilson’s amendments would require a report to be published no later than the last working day of May, with a definition of what a working day means. That might throw up practical issues, but I am happy to return with a firm deadline for reports. If he wishes to press for those provisions at stage 2 and have them amended thereafter, following consultation with everybody to ascertain what would be practical, expected and reasonable, I encourage him to pursue that. However, he might wish not to move his amendments, to allow us to come back or offer him information about what has emerged from consultation, as appropriate, and he might then wish to lodge amendments at stage 3. I am neutral on the proposal, but I am content with the point about having such a timescale in the bill.

Amendments 1074 and 1082 will fill a gap by requiring public service authorities and relevant authorities to have regard to guidance issued by the Scottish ministers on participation requests and asset transfer requests. The bill provides a framework for those requests, and there are powers for ministers to make regulations in a number of areas to provide for procedures, deadlines and so on. However, regulations can get only to a certain level of detail; they cannot easily provide examples of best practice or a range of options to be used as appropriate.

We have every intention of issuing detailed guidance on those provisions, which, as the committee has discussed and as was emphasised in the stage 1 debate, will include the national standards for community engagement. For asset transfer, the guidance will cover issues relating to valuation and disposal at less than market value. The two amendments will ensure that authorities cannot ignore that guidance.

Amendments 1074 and 1082 will also require the Scottish ministers to consult before issuing guidance. We expect to develop the procedures and guidance relating to the bill through an inclusive process—it is, after all, a bill on community empowerment—with the participation of community organisations as well as the authorities to which the guidance is directed. I therefore ask the committee to support amendments 1074 and 1082, in my name.

John Wilson: I lodged amendments 1073B and 1073C to allow proper parliamentary scrutiny of participation requests because, although we are keen to engage with communities, as we have made clear during the committee’s scrutiny of the bill and in the engagement that we have had throughout Scotland, we feel that it is only right that a parliamentary committee has the
opportunity to scrutinise what is happening with participation requests.

The reason for putting in a specific timetable is to allow us the opportunity to deal with the issues prior to the summer recess. That would allow the committee to timetable in the matter for June each year, which would provide us with an understanding of what is happening and would allow for consideration of any recommendations for change. We could advise the Government of any such issues when they were identified.

I am keen to ensure that the bill delivers on what it sets out to do. If we say that there should be more opportunity for participation requests, we must scrutinise that, and the only way in which we can do so—apart from the Government carrying out a due diligence process—is to allow a committee to undertake such scrutiny.

Alex Rowley: I press amendment 1112.

Amendment 1112 agreed to.

Section 18, as amended, agreed to.

Section 19—Participation requests: decisions

Amendment 1113 not moved.

The Convener: Amendment 1114, in the name of Cameron Buchanan, is grouped with amendments 1072, 1115, 1116, 1139, 1146, 1076, 1147, 1149 and 1161.

Cameron Buchanan: My amendments are about not the desirability of local aims but the purpose and limitations of the bill and what we are setting out to do. The bill should not set out what the local aims should be—it should empower communities to set their own priorities and aims. That is the reason for my amendments, which would remove specific criteria for refusing or agreeing to participation requests.

I move amendment 1114.

Marco Biagi: Group 6 relates to the sections that set out the issues that public service authorities and relevant authorities must consider in reaching their decisions on participation requests and asset transfer requests. Under the bill, the authority must consider whether agreeing to the request

“would be likely to promote or improve—

(i) economic development,

(ii) regeneration,

(iii) public health,

(iv) social wellbeing, or

(v) environmental wellbeing”

and consider

“(d) any other benefits that might arise … and

(e) any other matter (whether or not included in or arising out of the request) that the authority considers relevant.”

That is not a prescriptive but an illustrative list of benefits, and the bill does not require every request to hit all those targets. The list simply indicates the benefits that we might expect to arise from community proposals.

One can argue for including in the bill a simple requirement to consider any benefits, but it is helpful to have a list—albeit not a prescriptive list—to which community bodies and authorities can refer. Indeed, rather than remove the list of issues to be considered, I want to add to it.

It is a priority of the Government to reduce inequalities and create a fairer Scotland. The bill is a part of that process, as we believe that empowering communities to take control of the decisions that affect them will help to reduce inequality and ensure a more participative economy and society.

I realise that many people have—at stage 1 in particular—expressed concern that the bill could empower communities that are already empowered, while other communities will continue to be left behind. However, we intend to empower all communities, and the provisions are there for everyone to use. I recognise that communities will need varying degrees of support to be able to take advantage of the bill’s provisions and, to that end, we are investing £19.4 million in the empowering communities fund, in addition to the support that we give the third sector. We also expect all public bodies and local authorities to engage communities in the design and delivery of services, and to support them to participate in those processes. As I have said, the national standards for community engagement will feature heavily in guidance on the bill, and the Government will introduce a further part to the bill that will—should the committee consent to it—promote greater participative democracy.

Amendments 1072 and 1076 will further ensure that the bill works to reduce inequalities. They add the need to reduce socioeconomic inequalities to the matters that are to be considered when a decision is made on a participation request or an asset transfer request. They make explicit the idea that reducing inequalities is something to be supported. If there are competing requests, the degree to which those requests would reduce inequalities could be the deciding factor.

It is essential that people who are experiencing socioeconomic disadvantage are involved in shaping the services that they use, because they know best what will work to tackle inequality. Therefore, amendment 1072, on participation requests, also requires authorities to consider
whether agreeing to a request would not just improve the outcomes for disadvantaged people but increase their participation in the request process and, as a result of the request, more widely in the design and delivery of the service.

Cameron Buchanan's amendments would not allow us to place the additional focus on inequalities, and they would remove the requirement for authorities to reach their decisions in a manner that encourages equal opportunities. I appreciate that all authorities will be subject to the equal opportunity requirement under other statutes, but I think that it is important to be explicit. We all want the bill to have an impact on addressing socioeconomic inequalities and encouraging equal opportunities, and we should state clearly that proposals that help that should be supported.

I ask Cameron Buchanan to withdraw amendment 1114 and not to move his other amendments in the group, and I hope that the committee will support amendments 1072 and 1076.

I ask Cameron Buchanan to withdraw amendment 1114 and not to move his other amendments in the group, and I hope that the committee will support amendments 1072 and 1076.

10:30

Clare Adamson: I appreciate why the minister wants to open out this area to cover equal opportunities. I am concerned that Cameron Buchanan's amendment 1114 could narrow the criteria and that wellbeing and other community requirements could take second place if the criteria were defined in the way that he proposes.

Cameron Buchanan: I do not think that amendment 1114 would narrow the criteria at all. I think that section 19 is too prescriptive, which is why I wanted an explanation. I want the provisions to be as wide as possible. We should empower communities to set their own priorities, which is why we do not think that section 19(3)(c) is worth while. I press amendment 1114.

The Convener: The question is, that amendment 1114 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)

Against
Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 1114 disagreed to.
requests that are just the same but are hoping for a different answer.

Cameron Buchanan’s amendments would remove the ability of authorities to decline repeat requests where they are made by a different body. That is quite a significant change, as people may belong to more than one group, and those who wish to bring the same request again might well move between groups or reconstitute their group under a different name in order to get round that provision. As I have already said, the authority is not required to decline repeat requests; the provisions just give them discretion to do so, and I think that we should allow them the discretion to judge whether a group is truly different or not.

The extensive reporting requirements that have now been placed on participation requests will help to ensure that there is transparency and adequate scope for scrutiny. I am sure that an organised group that is inappropriately declined from using the measures would be able to find extensive evidence showing that, and could illustrate it quite heavily in the local community discourse through the normal channels.

Amendments 1129 and 1159 seek to make it clear that a new request is to be treated as being “the same, or substantially the same” as a previous request where there are no significant differences between the two requests. I do not consider that it is necessary to add those words, as they have the ordinary meaning of the words that are already included in sections 22 and 61.

I ask Cameron Buchanan to withdraw amendment 1127 and not to move the other amendments in the group.

Cameron Buchanan: I do not think that bodies should be prevented from participating solely because another body also wants to participate. That is the whole point of my amendments. They would remove a statement that is irrelevant, whether a body is making a new request or whether the matter concerns a different body from the one that made the previous request. I therefore wish to press amendment 1127.

The Convener: Before I put the question on amendment 1127, I advise the committee that we have managed to skip the question on section 19, and I am scared that I might get a visit from the lawyers. I therefore now put the question, that section 19 be agreed to.

Section 19, as amended, agreed to.

The Convener: Thank you—apologies for that.

The question is, that amendment 1127 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)

Against
Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 1127 disagreed to.

Amendments 1128 to 1131 not moved.

Section 22 agreed to.

Section 23 agreed to.

Section 24—Modification of outcome improvement process

Amendments 1132 and 1133 not moved.

Section 24 agreed to.

After section 24

The Convener: Amendment 1134, in the name of Alex Rowley, is in a group on its own.

Alex Rowley: Amendment 1134 is important because it will allow communities to appeal to Scottish ministers when a public service authority refuses a participation request and when a participation request is agreed to but the community body objects to certain provisions in the decision notice.

The amendment would allow a community to appeal when it has significant concerns about how an outcome improvement process is being undertaken and how it will work. The amendment would leave it to Scottish ministers to design the appeals process and set out such things as the way in which appeals are made, how they are concluded and the timescales for making them.

Amendment 1134 would give considerable comfort to communities, which can often feel that although their views are listened to they are then dismissed, for reasons that are unclear. It is important that we give such assurances to communities. If it was possible for participation requests to be dismissed without a right to appeal, that would send out the wrong message. By agreeing to the amendment we would strengthen the bill, so I ask the committee and the minister to support it.

I move amendment 1134.
Marco Biagi: I thank the member for lodging the amendment. The issue has been a subject of discussion and debate in the past, and I know that at stage 1 the committee heard calls for appeal procedures for decisions on participation requests. The committee decided not to recommend such procedures in its stage 1 report. I was not privy to the discussions on that report, so I do not know why the committee reached that decision, but there are good reasons for that approach.

Participation requests are a new mechanism that is intended to support community groups to come forward proactively with ideas. We are putting that in statute, and public authorities will have a duty to set up a process to listen to those ideas. At section 19(5), public authorities must agree to a request to participate “unless there are reasonable grounds for refusing it.”

John Wilson: The definition of the phrase “reasonable grounds” can be used by lawyers to make lots of money. If a local authority said that it had reasonable grounds not to grant a participation request, who would be the arbiter who would decide whether that decision was reasonable?

10:45

Marco Biagi: The amendment has been useful in proactively throwing up the issue that that sits in the bill without broad guidance. As a result of amendments that have already been agreed to, we now have a power to make guidance in relation to participation requests and I envisage doing that to exemplify what reasonable requests are. We envisage fairly limited grounds for not granting a request—for example, if the body making the request is not an eligible body, or if the request would not lead to a service provided on behalf of the public service authority. Guidance underpinned by statute would help to clarify the situation and would mean that the matter would not go to judicial review, which is the current backstop and the ultimate course of appeal in the event of such a law being broken.

The problem that I have with any appeal mechanism—the difficulty that it poses—is that what we are talking about is different from asset transfer, in that asset transfer requires the movement of something physical whereas this is about something that is intangible; it is about dialogue, communicating and getting a place at the table. Any community group that went to an appeal to get to sit down and have a discussion with a public authority could not expect that to happen in a positive way, and I do not think that that would be a route to creating the kind of dialogue that we want.

Participation requests exist to make it absolutely clear to all public service authorities that they should be involving community groups that can express an interest and ideas about how to improve local outcomes. If we can do that only at the point of a ministerial appeal, the hope of fostering that relationship, changing the mindset and effecting a culture change is gone. You can imagine the situation as two groups walk tensely into a room, do not engage in any conversation, sit down, go through the motions and leave. I think that an appeal process would cause those community groups that were unhappy about having to use the process to have unnecessarily sour relationships. We cannot legislate to make people talk to each other—the bill is the closest thing that we have to that.

In addition, if we do not have a provision in local authorities for local authority review, which other amendments set out, any issue would go straight to ministers. That would not just annoy the local authority; it would cause wider issues for relationships and internal decision making.

John Wilson: Minister, we already do that in the planning process. We have a process for appeals against planning decisions that are made by local authorities, and the local authorities have the right to take matters to the Scottish ministers. I understand what you are saying about the need to get this right, but we must ensure that public bodies fully understand the intention of the Government, and the Parliament, to widen public participation as much as possible.

You mentioned judicial review. No community group would go to judicial review unless it had the financial resources to do that. To be honest, a ministerial appeal is cheaper than pursuing a judicial appeal or going to the Court of Session. Many community groups would tell you that the cost of taking planning decisions to judicial review is beyond their means. We want to ensure that groups are not penalised for not being financially able to go to judicial appeal.

Marco Biagi: In planning, there is a concrete—pardon the pun—physical result: a building either gets built or does not get built. In asset transfers, something changes hands. However, this is about dialogue, and dialogue that is introduced at the point of an appeal will not be positive and constructive. The bill is an attempt to create a culture change as broadly as we can. We want to ensure that any community group can point to a section in an act that says that it has the right to sit down at the table with a decision-making body, put its suggestions forward and be listened to. It is about a right to be listened to.

If an appeals process were to be introduced, that would simply result in the possibility that such listening would be perfunctory and not in keeping
with the spirit of the bill. I would love it if there were a way to legislate to make public service bodies change the mindset with which they engage, so that we need only sign a bill into law and everybody would enter discussions in complete good faith. I do not believe that that can be done through legislation, but the bill makes absolutely clear the right that is there, without—I hope—facilitating the bad feeling, tension and resentment that getting there only by an appeal might provoke.

I understand that there will be community groups that will be disappointed and may want to appeal, but I do not see the material benefit to them of continuing a discussion that has been soured. As I said, the Government intends to introduce a new part to the bill that will be strong on participative powers. That will come at the end, and will perhaps offer an avenue for us to make even clearer to public service authorities that they should be as positive, whole-hearted and enthusiastic as possible about the process.

The Scottish Government is extending that agenda through our dialogue with those bodies; through the ministerial powers of the bully pulpit with those that report to us; and, more positively, through powers of dialogue in partnership with local authorities that have been verbally supportive of the principles behind the provisions in the bill.

I would hope that an appeals process would not be necessary. It would, if it were introduced, be counter-productive, and I ask Alex Rowley to withdraw amendment 1134.

**Alex Rowley:** Amendment 1134 is important if the bill is to have any teeth. The bill has come about in many senses because there is a view that legislation is needed to empower communities. The minister argues that this element of the bill is about a culture change and about talking, but a participation request is about more than dialogue. Local authorities and community groups may go to the trouble of working up participation requests, which in many cases will involve a significant piece of work if they wish the request to succeed, only to hear at the end the response, “Well, that was great—we had a dialogue with you. Thanks, but no thanks.”

**John Wilson:** Does Alex Rowley agree or disagree—it is up to him—that the amendment may actually encourage local authorities to be more open to dialogue, because they would know full well that if they were not, the communities could use the appeals process to pursue any grievances regarding the decision that is made by the local authority or public body?

**Alex Rowley:** Mr Wilson is absolutely correct on that. I have talked to people in various public organisations about the bill in general and about participation requests in particular, which are a significant element of the bill. The general response from those people has been, “Yeah, but we don’t have to agree to the request.” They are right when they say that they do not have to agree to a request, but if that is their view, I am not sure that, without some kind of appeals process in place, community organisations and groups would have the confidence that they are getting from the bill what it says on the tin. I strongly believe that.

**Marco Biagi:** I can easily visualise situations in which people would say, “Well, we do not have to agree to it.” What they are agreeing to do is permit a body to participate in an outcome improvement process. If a body were forced to agree to a request, the community body in question would be sitting down with people who were completely uninterested in them being there. That would waste a considerable amount of time and generate greater ill feeling. It is a legitimate problem to identify, but I do not believe that the amendment is the solution to it.

**Alex Rowley:** I would respond using Mr Wilson’s point. If we have a local outcome improvement process that is robust and fair from the beginning to the end, the likelihood of major appeals would be lessened by the very fact that an appeals process exists. That is why I have been careful to say that the amendment would leave it to Scottish ministers to design the appeals process. I assume that they would do so in consultation with public bodies and organisations.

I press amendment 1134, because I think that it is important in giving people confidence that we are serious about the participation request process in the first place. I am happy to work with the minister to strengthen the amendment as we proceed to stage 3, but I think that it is crucial that we get it on the face of the bill.

The Convener: The question is, that amendment 1134 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)
McCulloch, Margaret (Central Scotland) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Wilson, John (Central Scotland) (Ind)

Against
Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 1134 agreed to.

Section 25—Reporting
Amendments 1135 and 1136 not moved.

The Convener: Amendment 1137, in the name of Alex Rowley, is in a group on its own.

Alex Rowley: Section 25 requires that a public service authority must publish a report summarising the outcomes of the improvement process,

"describing how and to what extent ... the community participation body ... influenced the process and the outcomes,"

and that the authority must

"keep the community participation body ... informed about ... changes in the ... process".

Amendment 1137 would require the public service authority, in preparing a report on the outcome improvement process, to seek the views of those bodies that made a participation request on how the process was conducted—and, more important, on whether it led to local improvements.

The amendment would be the final piece in ensuring that the process is as open and transparent as possible and that the views of communities are reflected in the final report. That is particularly important, because public service authorities need to be able to take communities with them in improving local outcomes. That is the Government’s stated view. Failure to do that would mean that progress would stall and improvements, in my view, would not be made. Amendment 1137 is about improving the bill and I hope that the committee and the minister will consider supporting it.

I move amendment 1137.

Marco Biagi: It seems quite reasonable that, when preparing a report on the outcome improvement process, the public service authority should seek the views of the community participation bodies that were involved in that process. I urge committee members to support the amendment.

Alex Rowley: I am grateful to the minister for that support. I press amendment 1137.

Amendment 1137 agreed to.

Section 25, as amended, agreed to.

After section 25

Amendment 1073 moved—[Marco Biagi].

Amendments 1073A, 1073B and 1073C not moved.

Amendment 1073 agreed to.

Amendment 1074 moved—[Marco Biagi]—and agreed to.

Section 26—Interpretation of Part 3

Amendment 1138 not moved.

11:00

The Convener: Amendment 1139, in the name of Cameron Buchanan, was debated with amendment 1114.

Cameron Buchanan: Like amendment 1116, it is to remove the words “equal opportunities”, which I wish to do because I think that that is too descriptive.

Amendment 1139 moved—[Cameron Buchanan].

The Convener: The question is, that amendment 1139 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Buchanan, Cameron (Lothian) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)

McCulloch, Margaret (Central Scotland) (Lab)

Rowley, Alex (Cowdenbeath) (Lab)

Stewart, Kevin (Aberdeen Central) (SNP)

Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 1139 disagreed to.

Amendment 1140 not moved.

Section 26 agreed to.

Section 50 agreed to.

Section 51—Meaning of “relevant authority”

Amendment 1141 not moved.

Section 51 agreed to.

Schedule 3 agreed to.

Section 52—Asset transfer requests

The Convener: Amendment 1142, in the name of Tavish Scott, is grouped with amendments 1143, 1144, 1148, 1150, 1153, 1155 and 1156.

Tavish Scott: I want to make a very simple case. Amendment 1142 is based on ensuring that an asset transfer request can be made in a case in which a community group wants to run a local service but there is no land involved, which asset transfer requests currently have to relate to. The other amendments are, as I understand it, consequential and give effect to that policy request.

It is important to note that the amendment enables an organisation to request the transfer of
a specific service but not to require it. It empowers local community organisations by creating the circumstances in which it would be possible for them to take control of a service affecting their area.

I can give a practical example. There used to be a very good laundry on the island I live on, which was predominantly used by old folk but—as run by a great lady, the late Sheila Henderson—was so successful that working folk and lots of other people ended up using it. It was run under the auspices of the local council, and at a certain point the council decided to close it, for reasons that were understandable in many ways. However, had this kind of provision existed—although the minister may have better ideas as to how to do this—I do not think that there is any doubt that the local community would have said, “Look, this is a service that we value, and it serves a wider purpose than the original intention, so let us see if there is a way in which we can maintain and, indeed, enhance it.”

What the amendment seeks to do is simply to create the potential for a community group—in that case, it would have had to have been some grouping of folk who came together on the island—to take over a service. I appreciate that the minister might have a point about assets, because I suppose that they could have taken over the washing machines, which might have been another way to achieve the same effect. However, it seems to me that that is a legitimate objective, which I hope will be consistent with the measures that he is seeking to introduce to Parliament today.

I move amendment 1142.

Marco Biagi: That example is hauntingly familiar. I have a constituency case regarding the future of a laundry that a group of my constituents wish to continue, so I can relate to Tavish Scott’s experience.

We are slightly in danger of confusing the asset transfer and participation request provisions. The case that Tavish Scott described would be open to an asset transfer of the physical facility to a community group. The bill, unamended, already provides for that.

We also have the participation request mechanism, which would allow a community body to propose to take on the delivery of a service that is more abstract. When we consulted on the proposals for the bill, we looked at the English example of the right to challenge, which allows a community to request that a service is put out to tender and allows a community body to bid for it. However, we found that the important thing—the thing of value—is for communities to be able to influence how services are designed. That has been backed up by a recent report on the right to challenge.

Some community groups feel that they could take on delivery of a service themselves, but not every community wants to do that or has the capacity to do that straight away. Participation requests allow each community body to bring forward what they want, and to discuss with the service provider how they feel the outcomes of the service—which in the case of the laundry would be dealing with economic disadvantage and providing a facility that could not be provided elsewhere—can be improved and how the community can best contribute to those improvements.

John Wilson: I understand the intention behind Tavish Scott’s amendment. He used the example of the laundry, and we can see the laundry’s tangible assets: the building and the machines in it. However, a community group might make a request regarding childcare, which a public body might provide in a community facility. The community group may not want an asset transfer of that facility. Another example would be elderly care in the community. Minister, what is your view of community group requests to deliver services that do not involve tangible assets?

Marco Biagi: In such a situation, a participation request would be the appropriate means. We are not talking about the transfer of an asset; we are talking about how a community group can participate in—this is the jargon and gobbledygook that the committee pointed to before—the outcome improvement process.

I forget the exact line in the national outcomes, but the improvement is about young people living fulfilling lives and having the best start. The proposal that John Wilson talks about would be made under all the mechanisms that are set out for participation requests. The ability of the community to contribute to the service would be considered and there would be ample opportunity. I want to see that happen, and we would share that objective.

Community-controlled childcare bodies have a lot to give. I have met a community centre that has a childcare aspect, and I am scheduling visits to community-controlled childcare organisations in the coming months. It is a really exciting area in which there can be a real—I hate to use this word—synergy of the aims of community empowerment and better childcare. Everybody can win.

In the consultation we did not hear any dissatisfaction with the mechanism of participation requests for such situations. If there was dissatisfaction and issues were raised, we would look at them again.
Let us look at the division: there are participation requests, through which communities can participate in ongoing processes, and there are asset transfer requests for material things— principally land. We should not confuse those two things. If there were to be some kind of change, it might be better to make it to participation requests, but I think that participation requests already have ample scope.

There has not been any consideration of this specific proposal in consultation with stakeholders, so we do not know stakeholders’ views or the wrinkles that might be found if we were to blur the distinction between asset transfer and participation requests.

I ask that Tavish Scott, having made the point, withdraws the amendment. I suggest that we perhaps meet to explore working examples of how participation requests could be used to achieve the aim that he has set out. If further amendments are needed, I would be happy to lodge them following that dialogue.

The Convener: I invite Tavish Scott to wind up and to press or withdraw his amendment.

Tavish Scott: The minister makes an eminently fair point. Mr Wilson’s example of childcare seemed to be quite relevant. My children used to go to the local public hall in Bressay for childcare, so I can think of exactly the scenario that he painted. I take the minister’s assurance in how he responded to the issue, and I will take him up on his offer of a meeting.

I mention in passing Alex Rowley’s earlier amendment on the right of appeal. Although the minister was not hugely in favour, it strikes me that it would strengthen exactly what we have just been discussing and that, in the context of the bill overall, it may absolutely provide for the objective that I suspect we all share.

On that basis, I would be very happy to withdraw the amendment.

Amendment 1142, by agreement, withdrawn.

Amendments 1143 and 1144 not moved.

Section 52 agreed to.

Section 53—Community transfer bodies that may request transfer of ownership of land

The Convener: Amendment 1075, in the name of the minister, is grouped with amendment 1083.

Marco Biagi: Amendments 1075 and 1083 together add community benefit societies to the types of community body that can make an asset transfer request for ownership under the bill.

Stakeholders called for that addition throughout the lead-up to the bill, and it has always been our intention to include community benefit societies. Members will note that amendment 1083 refers to the Co-operative and Community Benefit Societies Act 2014. The act had not passed when this bill was introduced and there was no point in referring to old legislation when the reference would need to be amended immediately. We can now add community benefit societies to the bill with an up-to-date reference to an act that is now in force.

I hope that the committee will support the amendments. I move amendment 1075.

Amendment 1075 agreed to.

Section 53, as amended, agreed to.

Section 54—Asset transfer requests: regulations

The Convener: Amendment 1145, in the name of Alex Rowley, is in a group on its own.

Alex Rowley: Amendment 1145 is taken from the committee report recommendation:

relevant authorities will be required to provide to community groups relevant information before they decide to request the transfer of an asset.

Examples of maintenance costs and energy efficiency have been provided in that regard.

The committee received a number of suggestions of what respondents considered vital to inform a community’s assessment of whether to obtain an asset. The amendment seeks to ensure that the following information is provided to community groups: the value of the asset, where appropriate; the rental value, where appropriate; the yearly running costs; the details of impending repairs or maintenance costs; and the energy efficiency of the building.

I would hope that the minister can take on board the principle that I am trying to establish, because that is important for community groups. Only yesterday, I met local groups. I tried to encourage them to go after a building in Kelty that will become surplus to requirement to Fife Council. The council has disposed of a number of buildings to the community. What the amendment calls for seems to me to be common sense, because it would be difficult for communities to make such decisions without that level of information.

I seek the minister’s advice on whether my amendment is the best way to achieve that. However, as I said, in lodging the amendment, I am trying to achieve the principle.

I move amendment 1145.
11:15

John Wilson: I support the intention of amendment 1145. I am the chair of a local community organisation that has taken on the lease of a community centre. We attempted to get information from the local authority on the building’s state of repair, only to find out six months after we had taken on the building that there were three major leaks in the main hall, which has meant that we have had to shut down services that we deliver.

It is important that when community asset transfers take place—especially when they relate to land or buildings—communities are given full details of any information that is held by the local authority to ensure that they are fully versed in the issues that relate to the building or land that they might acquire. That is why I intend to support amendment 1145.

Marco Biagi: I thank Alex Rowley for highlighting the issue. I give a cast-iron guarantee that it is our intention to use the power in the bill to make regulations on all such issues and more. We want to do that in partnership with the organisations that are involved in asset transfers so that we capture everything and not just the pieces of information that are set out in amendment 1145.

I have two issues with putting specific requirements on the information that would have to be provided in primary legislation. One is that we would have to get them right not quite for all time but with a very high threshold of specificity between now and the passage of the bill, because it would be very hard to change them after that.

Amendment 1145 specifies that information would have to be provided on running costs, which might be very different if a community group took over a facility, because the public authority might have had access to different tariffs. Similarly, sale price or market value can be split in many different ways by accountants.

I would not be averse in principle to putting something on the issue in primary legislation, but the question is whether by the end of the bill’s consideration we could get to a point at which we could be absolutely certain that whatever requirements we put into the bill would be robust and would resist any foot dragging by organisations or creative pathways around the provisions. It would be better to deal with the issue by statutory instrument, which could be updated relatively quickly to address any such circumstances.

I give a cast-iron guarantee that all the issues that Mr Rowley has included in amendment 1145—and probably more, in the light of what stakeholders say—will be dealt with in the statutory instrument that we bring forward. We would be able to keep that up to date on an ongoing basis to take account of any experiences that we had with its implementation along the way.

The Convener: I ask Mr Rowley to wind up and to press or withdraw amendment 1145.

Alex Rowley: I am grateful to John Wilson for the example that he gave, which highlights what the issues are. I am also grateful to the minister for his assurance that the matter will be looked at and that a statutory instrument will be brought forward under the bill. Therefore, I am happy to seek to withdraw amendment 1145.

Amendment 1145, by agreement, withdrawn.

Section 54 agreed to.

Section 55—Asset transfer requests: decisions

Amendment 1146 moved—[Cameron Buchanan].

The Convener: The question is, that amendment 1146 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)

Against
Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 1146 disagreed to.

Amendment 1076 moved—[Marco Biagi]—and agreed to.

Amendments 1147 to 1149 not moved.

Section 55, as amended, agreed to.

Section 56—Agreement to asset transfer request

Amendment 1150 not moved.

The Convener: At this point, we will have a suspension.
Meeting suspended.

On resuming—

The Convener: Amendment 1151, in the name of Cameron Buchanan, is grouped with amendment 1152.

Cameron Buchanan: Amendment 1151 would make a wording change and remove the provision that failure to conclude negotiations does not count as a refusal for the purposes of an appeal—in other words, it would enable a failure to conclude contracts to be brought to appeal. A failure to conclude contracts should not negate the initial agreement entirely. Powers to extend negotiation should be used in addition to that scenario, but it should not be excluded from appeals. If a body cannot agree to a deal because the terms are unacceptable, it should be able to appeal the decision and restart contractual negotiations.

I move amendment 1151.

Marco Biagi: The effect of amendments 1151 and 1152 would be that a community transfer body could make an appeal under section 58 on the basis that no contract had been concluded within the required period after an offer was made in the event of an asset transfer. We did not originally propose an appeal in that area, because negotiations for transfer of a property can fail for many reasons, and there is not necessarily any fault. For example, a community transfer body may be unable to secure funding, or there may be other changes of circumstances.

There are already some safeguards for a community after an asset transfer request has been agreed. First, an appeal can look at the terms and conditions of the contract and, secondly, a community body can apply to the Scottish ministers to extend the period of time for concluding a contract if an extension cannot be agreed with the relevant authority. During that process, the asset cannot be disposed of.

However, I recognise the concerns of communities that relevant authorities could—it might be envisaged—use the negotiation process as a way of backing out of a transfer that has been agreed to. They could also deliberately—I take care to highlight that I am not making an accusation but simply setting out a possibility in law—delay matters until the community is exhausted or its funding has lapsed. I cannot imagine that an appeal on those grounds would be used often, but it may be productive to fill that space with a useful backstop.

We will need to look at the detail, and we may want to tweak the provisions at stage 3. However, I am happy to endorse the principle of ensuring that the failure to conclude a contract could be subject to appeal, and I urge the committee to accept the amendments.

Amendment 1151 agreed to.

Amendment 1152 moved—[Cameron Buchanan]—and agreed to.

Amendment 1153 not moved.

Section 56, as amended, agreed to.

Section 57 agreed to.

Section 58—Appeals

The Convener: Amendment 1077, in the name of the minister, is grouped with amendments 1154, 1088, 1089, 1078, 1090 and 1079.

Marco Biagi: Group 14 is substantial, and I will start with the amendments in my name. The purpose of amendment 1077 is to enable ministers to specify whether asset transfer decisions that are made by a particular relevant authority should be subject to appeal to ministers or to review by a local authority. The default position in the bill is that a community transfer body can appeal to the Scottish ministers over an asset transfer decision unless the request was made to a local authority. The default position in the bill is that a community transfer body can appeal to the Scottish ministers over an asset transfer decision unless the request was made to a local authority, in which case they can request a review by the local authority. There are other amendments that will adjust that, which we will come to later.

Section 51(3) allows ministers to designate additional bodies as relevant authorities. One class of bodies that we are considering adding comprises arm’s-length external organisations, where those are wholly owned by one or more relevant authorities, and by local authorities in particular. It seems appropriate that their decisions should come under the umbrella of the local authority appeals process rather than the ministerial appeals process that is set out for public services in the bill as drafted.

The amendment to section 58 will give ministers a power to specify relevant authorities whose decisions are not subject to ministerial appeal. Amendment 1079 will add a new section after section 59, and will apply the local authority review provisions of section 59 to any relevant authority that is specified under amendment 1077. As I said, the local authority review provisions themselves may change as a result of other amendments. Amendment 1079 will also enable ministers to make provision for them to apply with modifications as necessary.

Finally, ministers may specify to which local authority an application for review should be made, either individually or by setting out factors.
determining how that should be decided. For example, it might be determined by the location of the land to which the request relates.

Amendment 1078 will introduce a mechanism for review of decisions on asset transfer requests that are made to the Scottish ministers. The bill already includes provision for review or appeal of decisions where requests are made to local authorities or other public bodies, and that mechanism will fill in the last part of that jigsaw.

The procedure that is set out is similar to those for other organisations. A community transfer body can request a review if its request is refused; if the decision specifies terms and conditions for the transfer that are significantly different from those that the community body proposed; or if no decision is made within the required period. The review can result in the decision being confirmed, overturned or amended, which would include amendments to the terms and conditions, and the Scottish ministers can make regulations about the procedure to be followed and so on.

The key difference with regard to the reviewing of ministerial decisions is that ministers will be able to appoint persons in connection with the review and must have regard to any report that those persons make in deciding the review’s outcome. That approach will allow us to establish a panel of independent advisers to consider these reviews so that we do not just have ministers reviewing their own decisions and that there is a degree of external scrutiny.

Cameron Buchanan: Does this amendment not give too much power to ministers?

Marco Biagi: It relates to reviews of decisions that, under the bill, will already have been taken by ministers. Where a matter goes to ministers, the appeals mechanism will also include a review by an independent advisory body instead of an appeal against a ministerial decision being a case of simply asking the minister to look at the matter again. This amendment creates an additional safeguard with regard to the ministerial appeal mechanism that is already in the bill.

I can see that, in lodging amendment 1154, Cameron Buchanan perhaps intends to make the appeal process more predictable by ensuring that only the parts of the decision to which the appeal relates can be reversed or varied. However, I think that that could have unintended consequences. For a start, it would restrict Scottish ministers’ ability to alter other parts of the decision in consequence of their decision on the issue to which the appeal directly relates. If we were unable to adapt to consequential decisions, there might be restrictions on what an appeal could find.

The approach that is taken in amendment 1154 would also limit ministers’ ability to look at the decision in the round. The current wording follows a standard approach to enable the appeal to be dealt with in a suitable manner and to allow ministers dealing with an appeal to consider matters that had been raised during the course of the appeal as well as matters that had been raised at the start of the process. I therefore ask the member not to move amendment 1154 when the time comes.

I will leave it to Michael Russell to describe the intention behind amendments 1088 to 1090, but essentially they provide for a right of appeal to Scottish ministers in relation to decisions on local authority asset transfers. This is an interesting set of amendments. I have some sympathy with Mr Russell’s aims and experiences, and I look forward to hearing the case that he makes and the views of other committee members.

I move amendment 1077.

Cameron Buchanan: I think that the approach outlined by the minister is going to give too much power to ministers. They should not be able to assess any part of the decision, whether or not it is part of the appeal. If that were to be the case, they would be able to decide the whole outcome, and I think that ministers should be able to review only those parts of the decision that are included in the appeal. As I have said—and in spite of the minister’s comments—I am concerned that the power for ministers is too wide.

Michael Russell (Argyll and Bute) (SNP): I have two reasons for lodging amendments 1088 to 1090, the first of which is particular to my constituency. It is not the launderette experience that Mr Scott related, but a wider experience that concerns Castle Toward. My second reason relates to the Rural Affairs, Climate Change and Environment Committee’s survey of local authorities’ attitude to the disposal of assets.

On the case of Castle Toward, which as I have said is in my constituency, it is fair to say that those who wished to take over that asset, who had a very clear business plan for it, who had a key core tenant for it and who would have created between 90 and 100 jobs, were for a long time frustrated by a local authority that had no intention of selling it. Indeed, were the review process to have been in place, there would have been no faith in it in these circumstances, because the relationship of trust between the community and the local authority had completely broken down. The sense of frustration that was felt and which still exists in the south Cowal area and across the community at the failure of the sale of Castle Toward persuades me that, for exceptional circumstances in which the process has been extraordinarily difficult and as a result of which there is no trust in the local authority review process, the community should have a further
opportunity to have its case considered. Such an approach parallels to some extent the appeals process for rural school closures.

The wider issue of the Rural Affairs, Climate Change and Environment Committee’s survey should concern the entire committee—and to members who have not accessed that material, I should say that I think that they might find it useful. It appears that most local authorities, while expressing good will towards the asset transfer process, are still somewhat confused about what it means. They are still influenced by a view of best consideration or best value that, of course, does not apply in all circumstances to the transfer of community assets and which can be set aside.

There also appears to be a very corporate view of what local authorities regard as their estate. If we are to see a real process of asset transfer in Scotland, it is extremely important that that corporate view of assets belonging to local authorities as opposed to being held in trust for communities and citizens by local authorities is changed. The appeal process, where it exists—it will not exist in every local authority—will undoubtedly give the opportunity for that to be overturned.

11:45

Finally, I note that COSLA has views on the amendments. It has written to me and other members to give those views. Indeed, it regards one of the amendments as offensive to local government. I invite COSLA to speak to the leader of Argyll and Bute Council, whose actions through his local authority have been offensive to the community of south Cowal, and to consider that the amendments will at least put rest to that and will also enable real community empowerment in the transfer of assets.

John Wilson: Mike Russell has given a good account of why we need to consider his amendments.

I have seen on many occasions how local authorities have effectively stopped communities pursuing the takeover of community assets not necessarily by deciding not to allow the transfer to take place but by placing cost and other burdens on the communities.

We need to get the message over to public bodies that a community asset transfer does not involve just a monetary value and that economic and social values must be included in the decisions that are being made. As Mr Russell indicated, the plan for Castle Toward and the jobs that there would be clearly showed that there would be real economic gain for the community in that area. I know some of the history of Castle Toward and about some of the jobs that were lost during 2005-06 through redundancies and the plans that were made.

What I have said applies to many communities throughout Scotland that have a vision to take forward issues and deliver jobs, security and other services in their communities. That has to be taken into account, because best value is still confusing many officials in local authorities throughout Scotland. They are confused about what best value is. We have to send the clear message out to those local authority officials and public bodies that best value should include the long-term return that can be made within communities when they take on resources and facilities. Best value is not about a monetary figure; it is about what can and could be delivered by communities for their benefit.

I am minded to support Mike Russell’s amendments.

Willie Coffey: I hoped to return to the issue in relation to ALEOs that the minister introduced. Are ALEOs currently outwith the reach and scope of community requests for asset transfer?

Marco Biagi: ALEOs are not prescribed on the face of the bill. There is a power to allow the Scottish ministers to designate additional bodies that will come within the scope of the bill, and it is my firm intention to ensure that ALEOs are included.

It is appropriate that, where something is wholly owned by and reports back to a local authority, it should be subject to the same strictures that the authority is. It may already be the case that, where there is a service level agreement, ALEOs are covered because of the connection that that makes with the local authority, but we intend to return to the area in regulations to designate ALEOs appropriately. That may have to be done on a one-by-one basis, as a category or as a definition, but we are working on that, because we want to make it very clear that, whether an asset is held directly by a public body or local authority or is held through an ALEO, it should be subject to the same provisions as the rest of that organisation’s estate. The section in question will ensure that there is consideration of that for appeals, so that if it is a local authority ALEO, it will qualify for the local authority appeals route. It is important to future proof it so that, once we get ALEOs in, which I assure the member will not take a long time in parliamentary terms, their processes will be properly thought through. My intervention is over.

Willie Coffey: Thank you for that intervention.

Alex Rowley: I have some sympathy with Mike Russell’s arguments, particularly in relation to achieving best value. I also note what COSLA says, although it seems a bit defensive. There are
local authorities out there that recognise the wider benefits of community transfer. I had an example in Fife a few years ago. I was supportive of a former fire station being transferred and turned into an arts centre, but without the political drive behind that, the officials would not have gone for it. There had to be a political drive to say that there was a wider benefit to the community. I have experienced that from the point of view of having to drive it politically, so I have some sympathy with what is proposed.

I do not know whether the minister will pick up on the points that Mike Russell made about best value and the ability to look more broadly than simply at the financial gain or what the local authority thinks it might lose.

The Convener: I ask the minister to wind up and press or withdraw amendment 1077.

Marco Biagi: It has been a useful discussion. It is never easy to set up appeals mechanisms or to deal with areas where there are interactions between local and national Government. Against what I asked the committee to do, there is now an appeal to ministers on participation requests, which was introduced by Mr Rowley. I can see a parallel with appeals to ministers on asset transfers. It is appropriate that the focus of any review of local authority decisions is the local authority itself. We have structures in the bill that will create the two-stage process, and Mr Russell’s amendments will ensure that those are political decisions rather than delegated ones, but there is no doubt that, in a very few exceptional cases, giving community bodies a route of appeal to Scottish ministers could be beneficial because it would strengthen part of the bill’s focus on openness, transparency and consistency. It may well be a proportionate measure.

Cameron Buchanan: I also have sympathy with Mr Russell. In Edinburgh, we too have had places where nobody really wants to transfer assets. The local authority does not want to do it for various reasons, which are rather spurious. Basically, it wants to hold on to them.

However, our concern is that there are not too many appeals. Appeals can go on and on. I am not sure how we would do it, but there should be a limit on the number of appeals. However, there must be an appeal.

Marco Biagi: A finite number of appeals is set out and I suppose that, for particularly enthusiastic community groups, there is always judicial review on top of that. I know of one example in my constituency where that happened, all the appeal mechanisms having been used, but I probably cannot say anything more about that. There is a finite set or a finite route, and my amendments add one more at a national level. As I said, it is a proportionate response.

I press amendment 1077.

Amendment 1077 agreed to.

Amendment 1154 moved—[Cameron Buchanan.]

The Convener: The question is, that amendment 1154 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)

Against
Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 1154 disagreed to.

The Convener: Amendments 1155 and 1156 are in the name of Tavish Scott, who is no longer here. Does anyone else want to move them?

Members: No.

Amendments 1155 and 1156 not moved.

Section 58, as amended, agreed to.

Section 59—Review by local authority

Amendments 1088 and 1089 moved—[Michael Russell]—and agreed to.

Section 59, as amended, agreed to.

After section 59

Amendment 1078 moved—[Marco Biagi]—and agreed to.

Amendment 1090 moved—[Michael Russell]—and agreed to.

Amendment 1079 moved—[Marco Biagi]—and agreed to.

Section 60—Disapplication of restrictions in lease of land to relevant authority

The Convener: Amendment 1157, in the name of Cameron Buchanan, is in a group on its own.

Cameron Buchanan: Amendment 1157 would remove section 60, which allows conditions in leases between multiple relevant authorities that restrict the subletting to be overridden if an asset transfer is made. That could become a threat to
contracts. It is not for the bill to nullify contracts. It would be much fairer and more practical to remove that bar and allow contracts to take account of the bill's provisions—if the bill comes into effect.

I move amendment 1157.

Marco Biagi: Section 60 is a helpful provision for community bodies that seek to lease or otherwise use land or premises. It applies where both the owner and lessee of the land are relevant authorities under the bill. It disapplies any restrictions in the lease that would prevent the lessee from subletting or sharing occupation of the land. That means that the community transfer body can negotiate directly with the authority that they see occupying the premises and does not have to worry about any constraints on that authority as a result of its lease.

We do not want a community body's aspirations to be thwarted simply because of a head lease that prevents subletting or sharing occupancy of land. There is protection in place for the person leasing the land to the authority in section 60(4). The authority remains liable for all matters under the lease and cannot assign it. I do not see a value for community bodies in removing the flexibility that section 60 provides to them. I ask Mr Buchanan to withdraw amendment 1157.

Cameron Buchanan: In spite of what the minister said, I will press amendment 1157.

The Convener: The question is, that amendment 1157 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)

Against
Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 1158 disagreed to.

Amendment 1159 moved—[Cameron Buchanan]

The Convener: The question is, that amendment 1159 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)

Against
Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 1159 disagreed to.

Amendment 1160 moved—[Cameron Buchanan]

The Convener: The question is, that amendment 1160 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)

Against
Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 1160 disagreed to.
Section 61 agreed to.

After section 61

The Convener: Amendment 1080, in the name of the minister, is in a group on its own.

Marco Biagi: I am pleased to introduce amendment 1080, which will require all relevant authorities to publish registers of the land that they own or lease. That will help community bodies to know what properties might be available for asset transfer so that they can identify those that are most suitable for their needs.

Publishing the register should not be an onerous task for relevant authorities. They should have property management systems that tell them what they own—I will not refer to any current issues in Edinburgh.

John Wilson: It is not only Edinburgh that has a problem with what land a local authority owns, leases or holds in trust.

There are issues with what ownership rights the community might have if it applied for a transfer of land that was held in trust. I hope that, when the minister considers the matter, he will take on board all the land issues that might apply to a community asset transfer.

Marco Biagi: Indeed. In some ways, the amendment is parallel to the common good register provisions in the bill, in that it provides authority to list. We know that there are gaps in some places. The requirement is for local authorities to list what they own or lease "to the best of" their "knowledge and belief".

The Government has made a commitment that all public bodies will complete registration of their titles within five years. That will improve our knowledge.

Ministers will be able to specify types of land that do not need to be included in the register. The legal definition of land is very wide, as it includes rights and interests in land as well as the land and buildings.

Local authorities’ property registers might, for example, include ground rents for traffic lights and responsibility for retaining walls. Those might not necessarily be at the top of communities’ asset transfer lists, although I would be interested to see an asset transfer request for a community group to operate a traffic light because it would be such a legal curiosity.

The power to exclude types of land will allow us to focus the register on the kinds of property that communities will want. We will consider all the complexities of land law in that context because this is about providing information for communities; information about access rights and underground cables can be provided when an inquiry is made. That is, perhaps, more suitable.

Loads of—I am getting away from ministerial language; it has been quite a morning. Many community groups have requested asset registers and I am happy to amend the bill to ensure that it makes provision for them.

I move amendment 1080.

The Convener: You have tempted fate, minister, because I know folks who are very interested in Belisha beacons.

Marco Biagi: I have had correspondence about a community takeover of a public toilet, so the sky is the limit.

Amendment 1080 agreed to.

Amendment 1081 moved—[Marco Biagi].

Amendments 1081A and 1081B not moved.

Amendment 1081 agreed to.

Amendment 1082 moved—[Marco Biagi]—and agreed to.

Section 62—Interpretation of Part 5

Amendment 1083 moved—[Marco Biagi]—and agreed to.

Amendment 1161 not moved.

Section 62, as amended, agreed to.

The Convener: That ends stage 2 consideration of the bill for today. All remaining amendments should be lodged with the clerks to the legislation team by 12 noon this Friday.

I thank everybody for their participation. We now move into private.

12:06

Meeting continued in private until 12:28.
Community Empowerment (Scotland) Bill

3rd Marshalled List of Amendments for Stage 2
(Local Government and Regeneration Committee)

The Bill will be considered in the following order—

- Sections 1 to 4
- Sections 5 to 16
- Sections 17 to 26
- Schedule 3
- Schedules 4 and 5
- Schedule 1
- Sections 50 and 51
- Sections 52 to 98
- Sections 99 and 100
- Long title

Amendments marked * are new (including manuscript amendments) or have been altered.

After section 62

Marco Biagi

1084 After section 62, insert—

<PART
DELEGATION OF FORESTRY COMMISSIONERS’ FUNCTIONS

Meaning of “community body” in Forestry Act 1967

(1) Section 7C of the Forestry Act 1967 (delegation of functions under section 7B: community bodies) is amended as follows.

(2) In subsection (1)—

(a) for the words from “company”, where it first occurs, to “include” substitute “body corporate having a written constitution that includes”,

(b) for the word “company”, wherever it appears in paragraphs (a) to (e), substitute “body”,

(c) after paragraph (d) insert—

“(da) provision that membership of the body is open to any member of the community,

(db) a statement of the body’s aims and purposes, including the promotion of a benefit for the community,”, and

(d) in paragraph (e), for “and the auditing of its accounts” substitute “, and

(f) provision that any surplus funds or assets of the body are to be applied for the benefit of the community.”.

(3) In subsection (2), for “(d)” substitute “(db)”.  

(4) Subsections (4) to (6) are repealed.>
After section 62, insert—

**PART**

SUPPORTERS’ TRUST’S RIGHT TO BUY SCOTTISH PROFESSIONAL FOOTBALL LEAGUE CLUBS

Key definitions

Meaning of “supporters’ trust”
In this Part “supporters’ trust” means a body—

(a) which is a community benefit society registered under the Co-operative and Community Benefit Societies Act 2014 (referred to in this Part as the “2014 Act”), that is—

(i) a society registered under the 2014 Act on or after 1 August 2014, or

(ii) (by virtue of section 150(1) of the 2014 Act) a society that immediately before that date was registered or treated as registered under the Industrial and Provident Societies Act 1965.

(b) related to one Scottish Professional Football League club (referred to in this Part as “football club”).

Meaning of “Scottish Professional Football League club”
(1) In this Part, “Scottish Professional Football League club” means a football club which is for the time being a member of the Scottish Professional Football League or any successor body recognised as the senior competitive league by the Scottish Football Association.

(2) The Scottish Ministers may by regulations modify the meaning of football club in subsection (1).

(3) Before making regulations under subsection (2), the Scottish Ministers must consult such persons as they consider appropriate.

Supporters trust register
(1) The Keeper of the Registers of Scotland must establish and maintain a public register of supporters’ trusts who have registered an interest in a football club in accordance with section (supporters’ trust registration of interest in buying a football club).

(2) The register established under subsection (1) is to be known as the Supporters’ Trust Register.

(3) In this Part—
the “Keeper” means the Keeper of the Registers of Scotland,
the “register” means the Supporters’ Trust Register, and
“registered” means registered in the register; and cognate expressions are to be construed accordingly.

Alison Johnstone
Supported by: Ken Macintosh

1234 After section 62, insert—

<Meaning of “ownership”

(1) In this Part “ownership” in relation to a football club means having a controlling interest in the football club whether that controlling interest is held by—

(a) an individual,
(b) a community benefit society within the meaning of the 2014 Act,
(c) a registered company,
(d) a group of registered companies, or
(e) such other body as the Scottish Ministers may prescribe.

(2) In this Part—

“controlling interest” means, in relation to the football club, shares carrying in the aggregate more than half of the voting rights exercisable at general meetings of the club,

“registered company” means a company for the purposes of the Companies Act 2006.

Alison Johnstone
Supported by: Ken Macintosh

1235 After section 62, insert—

<Registration of interests

Supporters’ trust registration of interest in buying a football club

(1) A supporters’ trust interest in buying a football club may be registered only upon an application to the Scottish Ministers in the prescribed form and accompanied by information of the prescribed kind.

(2) An application by a supporters’ trust may only be made in relation to one football club.

(3) More than one supporters’ trust may be registered in respect of the same football club.

(4) On receipt of an application, the Scottish Ministers must—

(a) send a copy of the application and the accompanying information to the owner or operator of the football;
(b) invite the owner or operator of the football club to send them, so as to be received not later than 21 days after the sending of the invitation, views in writing on the application;
(c) send a copy of the invitation under paragraph (b) to the supporters’ trust; and
by notice sent to the owner or operator of the football club, prohibit the owner or operator from taking, during the period beginning with the date on which the owner or operator receives the notice and ending on the date on which the Scottish Ministers determine whether an interest is to be registered, any action which, if the interest had been registered, would be prohibited under section \(\textit{effect of registration}\).

(5) The Scottish Ministers may not decide that a supporters’ trust interest in a football club is to be entered into the register unless they are satisfied that—

(a) the application pertains to a football club which is for the time being a member of the Scottish Professional Football League,

(b) a significant number of the members of the supporters’ trust have a substantial connection with the club,

(c) membership of the supporters’ trust is open to all fans of the relevant football club at an affordable rate,

(d) there is within the supporters’ trust a level of support sufficient to justify such registration, and

(e) that it is in the public interest that the supporters’ trust interest be so registered.

(6) Where the Scottish Ministers decide that a supporters’ trust interest is to be entered in the Register they must direct the Keeper to so enter the interest with effect from the date on which the Scottish Ministers made the decision.

\[\text{Alison Johnstone}\]
\[\text{Supported by: Ken Macintosh}\]

1236 After section 62, insert—

\(<\text{Effect of registration}\>

(1) For so long as a supporters’ trust’s interest in a football club is registered the owner or operator of the football club is prohibited from—

(a) transferring ownership of that football club,

(b) taking any action with a view to the transfer of ownership of that football club, except in accordance with this Part of this Act.

(2) A transfer of ownership in breach of subsection (1)(a) is of no effect.

(3) Action is taken with a view to a transfer of ownership of a football club for the purposes of this section when—

(a) the football club is, by or with the authority of the owner or operator of the football club advertised or otherwise exposed for sale,

(b) the owner or operator of the football club, or a person acting on behalf of the owner or operator, enters into negotiations with another person with a view to the transfer of ownership of the football club, or

(c) the owner or operator of the football club, or a person acting on behalf of the owner or operator, proceeds further with any proposed transfer of the ownership of the football club which was initiated prior to the date on which the interest was registered.

(4) Where—
(a) a supporters’ trust’s interest in a football club is registered, and
(b) an owner or operator of that football club sells shares in the club in such a way as to transfer the controlling interest in the club without exposing the club for sale, the owner or operator of the club is not acting in accordance with this section and those shares must be offered for re-sale to the supporters’ trust or trusts with a registered interest in the club.

Alison Johnstone
Supported by: Ken Macintosh

1237 After section 62, insert—

<Procedure for late applications

(1) This section applies in relation to an application to register a supporters’ trust interest in a football club—

(a) where the application is received by the Scottish Ministers—

(i) after the date on which the owner or operator of the football club has taken action which, if a supporters’ trust interest had been registered, would be prohibited under section (effect of registration), and

(ii) before the date on which—

(A) transfer of ownership of the football club is concluded, or

(B) an option to buy the football club is conferred, in pursuance of that action, or

(b) where another supporters’ trust has registered an interest in the football club, where the application is received by the Scottish Ministers—

(i) after the date on which the owner or operator of the football club has, under section (supporters’ trust right to buy), notified that supporters’ trust that a transfer is proposed, and

(ii) before the Scottish Ministers have consented, under section (exercise of right to buy: approval of supporters’ trust and consent of the Scottish Ministers), to a transfer to that supporters’ trust.

(2) Where this section applies in relation to an application the owner or operator of the football club must, on receipt of an invitation under section (supporters’ trust registration of interest in buying a football club), inform the Scottish Ministers that this section applies.

(3) Where this section applies in relation to an application, the Scottish Ministers may not decide that a supporters’ trust interest is to be entered in the Register unless they are (additionally to the matters as to which they are to be satisfied under section (supporters’ trust registration of interest in buying a football club)) satisfied—

(a) that there were good reasons why the supporters’ trust did not secure the receipt of an application before the owner or operator of the football club took the action, or gave the notice, such as is mentioned in subsection (1).
(b) that the level of support within the supporters’ trust for such registration is significantly greater than that which the Scottish Ministers would, have considered sufficient for the purposes of section (supporters’ trust registration of interest in buying a football club)(5)(d) had the application been received before that action was taken or, as the case may be, the notice was given, and

c) that the factors bearing on whether it is or is not in the public interest that the supporters’ trust be registered are strongly indicative that it is.

(4) Where a supporters’ trust interest in a football club is registered in pursuance of an application in relation to which this section applies—

(a) the owner or operator of the football club is, for the purposes of this Part of this Act (other than section (assessment of value of football club)(4)), deemed to have, on the date on which that interest is so registered, given notice under section (procedure for buying) that a transfer is proposed,

(b) section (procedure for buying) does not apply in so far as it relates to that interest, and

(c) for the purposes of sections (procedure for buying) and (assessment of value of football club), the supporters’ trust is deemed to have sent the confirmation which the Scottish Ministers would, had section (procedure after activation of right to buy) applied, have required to seek under subsection (2)(a) of that section on the date on which the interest is registered.

(5) Where, but for the provision made by subsection (1)(a)(ii), this section would apply in relation to an application to register a supporters’ trust interest in a football club the Scottish Ministers must decline to consider the application.

Alison Johnstone
Supported by: Ken Macintosh

1238 After section 62, insert—

<Activation of right to buy

Activation of supporters’ trust right to buy

(1) The right to buy a football club in which a supporters’ trust interest has been registered arises and may be exercised when the owner or operator of that club is deemed to have given notice under subsection (2)—

(a) of an intention to transfer ownership of the club, or

(b) that the club has entered into formal insolvency.

(2) Where subsection (1)(a) or (b) apply the owner or operator of the football club in respect of which the supporter trust interest is registered shall notify that fact to—

(a) the supporters’ trust, or trusts, in respect of which the interest is registered, and

(b) the Scottish Ministers.

(3) Notification under subsection (2) must be given in such form and otherwise in accordance with such provisions as are prescribed.

Alison Johnstone
Supported by: Ken Macintosh

1239 After section 62, insert—
Supporters’ trust right to buy

The right to buy a football club in which a supporters’ trust interest has been registered may be exercised at any time after that interest has been entered into the register by the Keeper.

Alison Johnstone
Supported by: Ken Macintosh

1240 After section 62, insert—

Procedure after activation of right to buy

(1) On receipt of a notification under section (activation of supporters’ trust right to buy), the Scottish Ministers must direct the Keeper to enter particulars of the notification in the Register.

(2) Not later than 7 days after such receipt of the notification the Scottish Ministers must—
   (a) send to the supporters’ trust or trusts which has registered the interest in the football club a notice in the prescribed form seeking its confirmation in writing that it will exercise its right to buy the football club, and
   (b) send to the owner or operator of the football club a notice in the prescribed form narrating their compliance with paragraph (a).

(3) A notice under subsection (2)(a) must specify the date referred to in and narrate the effect of subsection (4) below.

(4) If, by the date specified in the notice, being a date not later than 30 days after it was sent, the supporters’ trust has not caused its confirmation to be received by the Scottish Ministers, Ministers must be deemed to have received written notice from the supporters’ trust under subsection (1) of section (declinature or extinction of right to buy) that it will not exercise its right to buy the football club and subsections (2) to (4) of that section must apply accordingly.

(5) The Scottish Ministers must send a copy of—
   (a) the notice sent under subsection (2)(a), and
   (b) any confirmation received by them in pursuance of this section, to the owner of the club and to the Keeper.

(6) Any failure to comply with the time limit specified in subsection (2) above does not affect the validity of anything done under this section.

Alison Johnstone
Supported by: Ken Macintosh

1241 After section 62, insert—

Exercise of right to buy: approval of supporters’ trust and consent of the Scottish Ministers

(1) A supporters’ trust must not proceed to buy the football club under this Part of this Act without—
   (a) the approval of the supporters’ trust, and
   (b) the consent of the Scottish Ministers.
(2) The supporters’ trust are to be taken as having given their approval for the purposes of subsections (1) and (3) if Scottish Ministers are satisfied—

(a) that—

(i) at least half of the members of the supporters’ trust, as defined for the purposes of section (meaning of “supporters’ trust”), have voted in a ballot conducted by the supporters’ trust on the question whether the supporters’ trust should buy the football club, or

(ii) where less than half of the members of the supporters trust have so voted, the proportion which did vote is, in the circumstances, sufficient to justify the supporters’ trust proceeding to buy the football club,

(b) that the majority of those voting have voted in favour of the proposition that the supporters’ trust buy the football club, and

(c) that this vote should have taken place within five months prior to the issue of the notice within section (activation of supporters’ trust right to buy) or during the 30 day period specified within section (procedure after activation of right to buy).

(3) The Scottish Ministers may not consent for the purposes of subsection (1) unless the supporters’ trust have given their approval and the Scottish Ministers are satisfied—

(a) that the football club is a club within the meaning of section (meaning of “Scottish Professional Football League club”),

(b) that the supporters’ trust continues to comply with the provisions of section (meaning of supporters’ trust),

(c) that the proposed purchase of the football club is in the public interest, and

(d) that there has not, since the date on which they decided the supporters’ trust’s interest should be registered, been a change in any matters to the extent that, if the application to register the supporters’ trust interest were made afresh, they would decide that the interest is not to be entered in the Register.

(4) A supporters’ trust may require the Scottish Ministers to treat as confidential any information or document relating to arrangements for the raising or expenditure of money to enable the football club to be purchased.

(5) The Scottish Ministers must, within the time limit specified in subsection (6), send notice of their decision as to consent and their reasons for it in writing to the supporters’ trust and to the owner of the football club and must direct the Keeper to enter a record of that decision in the Register.

(6) That time limit is—

(a) where one supporters’ trust has confirmed that it will exercise its right to buy the football club, the 21 days following receipt of notification, under section (activation of supporters’ trust right to buy), of the result of the ballot conducted by the body, or

(b) where two or more supporters’ trusts have confirmed that they will exercise their right to buy the club, the 21 days following receipt of such notification in respect of the last of the ballots conducted by those bodies.

(7) Any failure to comply with the time limit specified in subsection (6) above does not affect the validity of anything done under this section.
1242 After section 62, insert—

<Declinature or extinction of right to buy

(1) If, at any time, a supporters’ trust which has registered a supporters’ trust interest decides that it will not exercise its right to buy the football club, it must give the Scottish Ministers written notice of its decision.

(2) On receipt of a notice under subsection (1) above, the Scottish Ministers must—
   (a) send a copy of it to the Keeper and direct the Keeper to delete the supporters’ trust interest from the Register, and
   (b) notify the owner or operator of the football club of that fact.

(3) Where, when that notice is given, that right to buy has arisen, the right is then extinguished.

(4) Nothing in or done under subsections (1) to (3) above prevents a supporters’ trust from registering a supporters’ trust interest in the same football club for a second or subsequent time.

(5) If, at any time after the owner or operator of the club has given notice under section (activation of supporters’ trust right to buy) but before the owner has concluded missives with a supporters’ trust for the sale and purchase of the football club in respect of which a right to buy has arisen, the owner or operator of the football club decides not to proceed further with the proposed transfer the owner shall give written notice of that fact to—
   (a) the Scottish Ministers, and
   (b) each supporters’ trust which has registered an interest in the football club.

(6) The Scottish Ministers must send a copy of the notice given under subsection (5) to the Keeper.

(7) Where a notice is given under subsection (5), the right to buy the football club which arose under section (activation of supporters’ trust right to buy) is extinguished.

(8) Nothing in subsection (7) above prevents a right to buy a football club from arising for a second or subsequent time.>

1243 After section 62, insert—

<Right to buy same club exercisable by only one supporters’ trust

(1) Only one supporters’ trust may exercise the right to buy a football club in which two or more supporters’ trust bodies have registered supporters’ trust interests.

(2) Where two or more supporters’ trusts have confirmed that they will exercise their rights to buy such a football club it is for the Scottish Ministers to decide which one is to proceed.

(3) On the Scottish Ministers so deciding—
   (a) the other supporters’ trust’s right to buy the football club is extinguished, and
(b) they must—
   (i) direct the Keeper to delete its interest from the Register, and
   (ii) notify the owner or operator of the football club and the supporters’ trusts
        of that fact.

Alison Johnstone
Supported by: Ken Macintosh

After section 62, insert—

<Procedure for buying

Procedure for buying

(1) It is for the supporters’ trust to make the offer to buy in exercise of the right conferred
    by this Part of this Act.

(2) The offer shall be at a price—
   (a) agreed between the supporters’ trust and the owner or operator of the football
       club; or
   (b) where no such agreement is reached, equal to—
       (i) the value assessed by the appointed valuer, or
       (ii) if that value is the subject of an appeal under section (appeals), the value
            determined by the appeal, and shall specify the date of transfer of
            ownership and of payment of the price in accordance with subsection (3).

(3) The date of transfer of ownership and payment of the price shall be—
   (a) a date not later than 6 months from the date when the supporters’ trust sent the
       confirmation sought by the Scottish Ministers under section (procedure after
       activation of right to buy) of its intention to buy,
   (b) where the price assessed by the appointed valuer is the subject of an appeal under
       section (appeals) which has not, within the period of 4 months after the date when
       the supporters’ trust sent that confirmation, been—
       (i) determined, or
       (ii) abandoned following agreement between the supporters’ trust and the
            owner of the club, a date not later than 2 months after the appeal is so
            determined or, as the case may be, abandoned, or
       (iii) such later date as may be agreed between the supporters’ trust and the
            owner of the club.

(4) The offer may include such other reasonable conditions as are necessary or expedient to
    secure the efficient progress and completion of the transfer.

(5) If a supporters’ trust has not, within the period fixed by or agreed under subsection (3)
    above, done any of the things mentioned in subsection (6) below, the supporters’ trust
    right to buy the club is extinguished and the Scottish Ministers must—
    (a) direct the Keeper to delete its interest in the club from the Register, and
    (b) notify the owner of the club of that fact.

(6) The things referred to in subsection (5) above are—
(a) concluding missives with the owner or operator of the football club for its sale to the supporters’ trust,

(b) if the supporters’ trust has not so concluded missives, taking all steps which, in the opinion of the Scottish Ministers, it could reasonably have taken in the time available towards so concluding missives.

(7) The Scottish Ministers may, by regulations, make provision about when ownership is to be treated as transferred for the purposes of this section.

Alison Johnstone
Supported by: Ken Macintosh

1245 After section 62, insert—

<Application for funding

(1) Subject to the provisions of this section, the Scottish Ministers may make payments to a supporters’ trust applying to the Scottish Ministers for funding in order to make an offer to buy a football club in exercise of the right conferred by this Part of this Act.

(2) Any supporters’ trust applying for funding must have—

(a) obtained the approval of the supporters’ trust to proceed to buy the football club,

(b) obtained the consent of the Scottish Ministers to proceed to buy the football club,

(c) met any other conditions as the Scottish Ministers may so prescribe.

(3) Any application for funding must be made in such form and manner and by such date as the Scottish Ministers may prescribe, and the applicant in question shall provide such particulars and information relating to the application as the Scottish Ministers may reasonably require.

(4) The applicant shall furnish to the Scottish Ministers such further information and evidence in relation to the application as the Scottish Ministers reasonably may require in order to allow proper consideration of the application.

(5) A person may submit more than one application under this paragraph.

(6) The Scottish Ministers shall inform an applicant in writing whether the application is approved or not and if it is not approved shall give reasons in writing for not approving it.

Alison Johnstone
Supported by: Ken Macintosh

1246 After section 62, insert—

<Assessment of value of football club

(1) The Scottish Ministers must, within 7 days of the receipt of a confirmation, sought by them under section (procedure after activation of right to buy)(2)(a), that a supporters’ trust will exercise its right to buy the football club, appoint a valuer, being a person who appears to the Scottish Ministers to be suitably qualified, independent and to have knowledge and experience of valuing a club.

(2) The validity of anything done under this section is not affected by any failure by the Scottish Ministers to comply with the time limit specified in subsection (1) above.
(3) In assessing the value of the football club in pursuance of an appointment under subsection (1) above, a valuer—
   (a) does not act on behalf of the owner or operator of the club or the supporters’ trust which is exercising its right to buy the football club, and
   (b) shall act as an expert and not as an arbiter.

(4) The value to be assessed is the market value of the football club—
   (a) as at the date of notification under section (activation of supporters’ trust right to buy)(1) which gave rise to the right to buy the football club; or
   (b) in a case where the supporters’ trust’s interest was registered in pursuance of an application to which section (procedure for late applications) applied, as at the date of the Scottish Ministers’ receipt of that application.

(5) The “market value” of the football club, for the purposes of subsection (4), is the aggregate of the value it would have on the open market as between a seller and a buyer both of whom are, as respects the transaction, willing; and

(6) In assessing, for those purposes, the value which the football would have in the circumstances mentioned in subsection (5) above—
   (a) account may be taken, insofar as a seller and a buyer of the football club such as are mentioned in subsection (5) would do so, of any factor attributable to the known existence of a person who (not being the supporters’ trust which is exercising its right to buy the club) would be willing to buy the football club at a price higher than other persons because of a characteristic of the club which relates peculiarly to that person’s interest in buying it;
   (b) no account shall be taken of—
      (i) the registration of an interest in or the exercise of a right to buy the football club by a supporters’ trust under this Part of this Act,
      (ii) the absence of the period of time during which the football club would, on the open market, be likely to be advertised and exposed for sale,
      (iii) the expenses of the valuation or otherwise related to the sale and purchase of the club.

(7) The expense of a valuation under this section shall be met by the Scottish Ministers.

Alison Johnstone
Supported by: Ken Macintosh

1247 After section 62, insert—

<Appeals

Appeals

(1) An owner or operator of a football club may, by summary application, appeal to the sheriff against—
   (a) a decision by the Scottish Ministers that a supporters’ trust interest in the football club is to be entered in the Register,
   (b) a decision by the Scottish Ministers to give consent to the exercise by a supporters’ trust of its right to buy the football club
   (c) a decision by the independent valuer on the valuation of the football club.
(2) A supporters’ trust may, by summary application, appeal to the sheriff against—
   (a) a decision by the Scottish Ministers that its supporters’ trust interest is not to be entered in the Register or
   (b) a decision by the Scottish Ministers not to give consent to the exercise by the supporters’ trust of its right to buy,
   (c) a decision by the independent valuer on the valuation of the football club.
(3) A person who is a member of a supporters’ trust as defined for the purposes of section (meaning of “supporters’ trust”) in relation to a supporters’ trust or who has any interest in the football club giving rise to a right which is legally enforceable by that person may, by summary application, appeal to the sheriff against—
   (a) a decision by the Scottish Ministers that a supporters’ trust interest in a football club is to be entered in the Register on the application of the supporters’ trust, or
   (b) a decision by the Scottish Ministers to consent to the exercise of the supporters’ trust right to buy a football club.
(4) An appeal under subsection (1), (2) or (3) above shall be lodged within 28 days of the date on which the Scottish Ministers decided whether to enter the supporters’ trust interest or, as the case may be, whether to consent to the exercise of the right to buy the football club.
(5) The sheriff in whose sheriffdom the land or any part of it is situated has jurisdiction to hear an appeal under this section.
(6) Where an appeal is made—
   (a) under subsection (1) above the owner or operator shall intimate that fact to—
      (i) the supporters’ trust, and
      (ii) the Scottish Ministers;
   (b) under subsection (2) above the supporters’ trust shall intimate that fact to—
      (i) the owner or operator; and
      (ii) the Scottish Ministers; or
   (c) under subsection (3) above the member of the supporters’ trust shall intimate that fact to—
      (i) the supporters’ trust;
      (ii) the owner or operator; and
      (iii) the Scottish Ministers.
(7) The decision of the sheriff in an appeal under this section—
   (a) may require rectification of the Register;
   (b) may impose conditions upon the appellant;
   (c) is final.

Alison Johnstone
Supported by: Ken Macintosh

1248 After section 62, insert—
Supporters trust right to buy shares in a football club

(1) A supporters’ trust with a registered interest in a football club has a right to buy a proportion of the shares in that football club at any point when the right to buy that football club has been activated in accordance with section (activation of supporters’ trust right to buy).

(2) In buying shares under subsection (1), the supporters trust—
   (a) may buy a proportion of shares that would enable the supporters’ trust to have a controlling interest in the football club,
   (b) must buy at least 5% of the shares in the club.

(3) This section does not—
   (a) preclude a supporters’ trust with a registered interest in a football club from purchasing shares in that football club at any other point at which shares are made available for sale,
   (b) require a supporters’ trust with a registered interest in a football club to purchase shares in that club where a right to buy that club has been activated in accordance with section (activation of supporters’ trust right to buy).

Section 65

Marco Biagi

1085 In section 65, page 59, line 17, at beginning insert <where the local authority is Aberdeen City Council, Dundee City Council, the City of Edinburgh Council or Glasgow City Council,>

Marco Biagi

1086 In section 65, page 59, line 17, after <area,> insert—
   <( ) where the local authority is any other council, any community council whose area consists of or includes the area, or part of the area, to which the property mentioned in subsection (1) related prior to 16 May 1975,>

Section 66

Cameron Buchanan

1249 In section 66, page 59, line 30, leave out subsection (2)

Cameron Buchanan

1250 In section 66, page 59, line 32, leave out <or (2)>

Section 68

Ken Macintosh

1164 In section 68, page 60, line 14, leave out <is>
Ken Macintosh
1165 In section 68, page 60, line 15, at beginning insert <is>

Ken Macintosh
1166 In section 68, page 60, line 16, at beginning insert <is>

Ken Macintosh
1167 In section 68, page 60, line 17, at beginning insert <is>

Cameron Buchanan
1251 In section 68, page 60, leave out line 20

Aileen McLeod
1229 In section 68, page 60, leave out line 21 and insert—
   <(d) no more than 250 square metres in area.>

Ken Macintosh
1168 In section 68, page 60, leave out line 21 and insert—
   <(d) meets one of the requirements as to size set out in subsections (2) and (3).
   
   (2) The requirement is that the land is of a size of approximately 250 square metres.
   (3) The requirement is that the land is of such size (being a size smaller than that set out in
   subsection (2)) as has been requested by the person leasing or intending to lease the land
   from the authority.>

Cameron Buchanan
1252 In section 68, page 60, line 21, leave out <prescribed> and insert <determined by a local authority
in relation to its area.>

After section 69

Aileen McLeod
1230 After section 69, insert—

<Regulations as to size of allotments

Regulations as to size of allotments

(1) The Scottish Ministers must by regulations make provision for or in connection with the
size or sizes of an allotment (but without affecting section 68(d)).

(2) Before making any regulations under subsection (1), the Scottish Ministers must consult—
   (a) each local authority, and
   (b) such other persons as they consider appropriate.>
Section 70

Aileen McLeod

1169 In section 70, page 60, line 34, leave out <who has a physical impairment>

Aileen McLeod

1170 In section 70, page 61, line 2, after <to> insert <an allotment site or>

Cameron Buchanan

1253 In section 70, page 61, line 8, leave out <28> and insert <14>

Section 72

Cameron Buchanan

1254 In section 72, page 61, line 29, leave out <one half of>

Ken Macintosh

1171 In section 72, page 61, line 30, at end insert <, and>

( ) that the number of persons so entered who have been on the list for more than five years is zero.>

Alex Rowley

1255* In section 72, page 61, line 39, at end insert—

<( ) Where the duty imposed by subsection (1) applies, a local authority must, in taking the reasonable steps mentioned in that subsection, have regard to the need for allotments to be made available in areas that are in reasonable proximity to the areas where persons on the list mentioned in that subsection reside.>

After section 72

Aileen McLeod

1172 After section 72, insert—

<Access to allotment and allotment site>

(1) Where a local authority leases an allotment to a tenant, it must provide reasonable access to the allotment and any allotment site on which the allotment is situated.

(2) Where a local authority leases an allotment site to a tenant, it must provide reasonable access to the allotment site and allotments on the site.>
Section 73

Aileen McLeod

1173 In section 73, page 62, line 24, after <rent> insert <, including a method of determining fair rent that takes account of—

(i) services provided by, or on behalf of, the local authority to tenants of allotments,

(ii) the costs of providing those services, and

(iii) circumstances that affect, or may affect, the ability of a person to pay the rent payable under the lease of an allotment>

Ken Macintosh
Supported by: John Wilson

1174 In section 73, page 62, line 32, at end insert—

<(3A) Provision made by virtue of subsection (3)(b) must secure that the rent to be paid by allotment tenants represents an appropriate balance between the level of services provided in relation to the allotments (and the cost of providing and maintaining those services) and the rent being affordable for current and prospective allotment tenants.

(3B) Each local authority must publish, in such manner as it considers appropriate, a statement explaining why it considers that the rent to be paid by allotment tenants represents an appropriate balance between the things mentioned in subsection (3A).>

Aileen McLeod

1175 In section 73, page 62, leave out line 35

Cameron Buchanan

1256 In section 73, page 63, leave out lines 3 and 4 and insert—

<( ) Regulations under subsection (1) may not include provision for or in connection with the sale of surplus produce.>

Aileen McLeod

1176 In section 73, page 63, line 3, leave out from <(in> to <87(1))> in line 4

Aileen McLeod

1177 In section 73, page 63, line 6, leave out <types of allotment site> and insert <allotment sites>

Section 75

Aileen McLeod

1178 In section 75, page 64, line 19, after first <of> insert <the whole or part of>
Aileen McLeod

1179 In section 75, page 64, line 19, after second <of> insert <the whole or part of>

Aileen McLeod

1180 In section 75, page 64, line 20, at end insert—

<( ) Before deciding whether to grant consent, the Scottish Ministers must—

(a) seek the views of the local authority on the proposed decision, and

(b) consult such other persons appearing to them to have an interest in the proposed disposal or change of use.>

Aileen McLeod

1181 In section 75, page 64, line 24, after <on> insert <the whole or part of>

Aileen McLeod

1182 In section 75, page 64, line 25, after <allotment> insert <—

( ) on the allotment site, or>

Aileen McLeod

1183 In section 75, page 64, line 28, at end insert—

<( ) Any transfer of ownership of the whole or part of the allotment site, and any deed purporting to transfer such ownership, without the consent of the Scottish Ministers is of no effect.>

Cameron Buchanan

1257 Leave out section 75

Section 76

Aileen McLeod

1184 In section 76, page 64, line 31, after first <of> insert <the whole or part of>

Aileen McLeod

1185 In section 76, page 64, line 33, after second <of> insert <the whole or part of>

Aileen McLeod

1186 In section 76, page 64, line 35, at end insert—

<( ) Before deciding whether to grant consent mentioned in subsection (2) or (3), the Scottish Ministers must—

(a) seek the views of the local authority on the proposed decision, and

(b) consult with such other persons appearing to them to have an interest in the proposed renunciation or change of use.>
Aileen McLeod

1187 In section 76, page 65, line 1, after <on> insert <the whole or part of>

Aileen McLeod

1188 In section 76, page 65, line 2, after <allotment> insert <—

( ) on the allotment site, or>

Aileen McLeod

1189 In section 76, page 65, line 5, at end insert —

<( ) Any renunciation of the local authority’s lease of the whole or part of the allotment site, and any deed purporting to renounce the lease, without the consent of the Scottish Ministers is of no effect.>

Cameron Buchanan

1258 Leave out section 76

Section 77

Cameron Buchanan

1259 In section 77, page 65, line 7, leave out <Each local authority must> and insert <A local authority may>

Cameron Buchanan

1260 In section 77, page 65, line 8, leave out subsection (2)

Alex Rowley

1261 In section 77, page 65, line 20, at end insert —

<( ) The description required by subsection (3)(c) must in particular describe whether and how the authority intends to increase the types of provision referred to in paragraphs (a) and (b) of that subsection in communities which experience socio-economic disadvantage.>

Cameron Buchanan

1262 In section 77, page 65, line 21, leave out subsection (4)

Section 78

Cameron Buchanan

1263 Leave out section 78
Aileen McLeod

1190 In section 79, page 65, line 37, at end insert—

<( ) where the whole of an allotment site is leased from the authority by one person, the proportion of land on the allotment site (excluding any land falling within paragraph (b) of the definition of “allotment” in section 69) that is not subleased from the tenant of the allotment site,>

Aileen McLeod

1191 In section 79, page 66, line 1, leave out <the proportion of land on each> and insert <where allotments on an allotment site are leased from the authority by more than one person, the proportion of land on the>

Aileen McLeod

1192 In section 79, page 66, line 11, at end insert—

<( ) the number of persons mentioned in paragraph (g) who, on the final day of the reporting year to which the report relates, have been entered in the list mentioned in that paragraph for a continuous period of more than 5 years,>

Aileen McLeod

1193 In section 79, page 66, line 15, leave out <who has a physical impairment>

Aileen McLeod

1194 In section 79, page 66, line 17, leave out <who has a physical impairment>

Section 81

Aileen McLeod

1195 In section 81, page 67, line 36, at end insert—

<( ) This section applies where—

(a) a local authority owns or leases an allotment site, and

(b) one or more allotments on the allotment site are leased to tenants.>

Aileen McLeod

1196 In section 81, page 67, line 37, leave out <the tenants of each allotment on an allotment site> and insert <all or a majority of the tenants>

Aileen McLeod

1197 In section 81, page 67, line 38, leave out <that owns or leases the site>
In section 81, page 68, line 26, after <include> insert <valid>

Section 82

In deciding whether to incur, or incurring, any expenditure for the purpose mentioned in paragraphs (a) and (b) of subsection (1), a local authority must have regard to the desirability of incurring such expenditure in relation to communities which experience socio-economic disadvantage.

After section 82

After section 82, insert—

Use of local authority premises for meetings

(1) In relation to an allotment site, the persons mentioned in subsection (2) may make a request to the local authority in whose area the site is situated to use free of charge the premises mentioned in subsection (3) for the purpose of holding a meeting of the tenants of allotments on the site about the site.

(2) The persons are—

(a) a tenant of the allotment site,

(b) a person referred to in section 81(1).

(3) The premises are—

(a) premises in a public school or grant-aided school within the area of the local authority,

(b) other premises within the area of the local authority which are maintained by the authority.

(4) The request must—

(a) be made in writing,

(b) include the name and address of the person making the request,

(c) include information about the proposed date, time, location and purpose of the proposed meeting,

(d) be made at least one month before the date on which the meeting is proposed to take place.

(5) The local authority must, before the end of the period of 14 days beginning with the day on which it receives the request, write to the person who made the request to—

(a) grant the request,

(b) offer the person an alternative date, time or location for the proposed meeting, or

(c) refuse the request.
(6) In this section, “public school” and “grant-aided school” have the meanings given by section 135(1) of the Education (Scotland) Act 1980.

Section 83

Aileen McLeod

1199 In section 83, page 69, line 11, at beginning insert <Despite any provision to the contrary in the lease of an allotment or an allotment site,>

Aileen McLeod

1200 In section 83, page 69, line 11, leave out <an allotment or an> and insert <the allotment or>

Aileen McLeod

1201 In section 83, page 69, line 12, after <date> insert <; but may do so only>

Cameron Buchanan

1266 In section 83, page 69, line 22, leave out from <Scottish> to end of line 29 and insert <local authority intends to—>

(a) dispose of,
(b) change the use of, or
(c) renounce its lease of,

the allotment site subject to the lease or, as the case may be, the allotment site on which the allotment is situated.

Section 84

Aileen McLeod

1202 In section 84, page 70, line 23, leave out first <of> and insert <to the contrary in>

Aileen McLeod

1203 In section 84, page 70, line 24, after <site> insert <; but may do so only>

Aileen McLeod

1204 In section 84, page 70, leave out line 28

Cameron Buchanan

1267 In section 84, page 70, line 28, leave out from beginning to <resumption,>

Aileen McLeod

1205 In section 84, page 70, line 30, at end insert <, and>

( ) the Scottish Ministers have consented to the notice given under paragraph (c).>
In section 84, page 70, line 36, leave out subsections (4) and (5)

Section 85

In section 85, page 71, leave out lines 10 to 12 and insert—

<(  ) an allotment site is leased to a local authority,
    (  ) the authority has granted a sublease of—
    (i) the allotment site, or
    (ii) an allotment on the allotment site,>

In section 85, page 71, line 13, after third <of> insert <the whole or part of>

In section 85, page 71, line 13, at end insert <, and

(  ) the sublease is of land that is the same as, or forms part of, the land to which the notice relates.>

In section 85, page 71, line 15, at end insert <the subtenant of the sublease, and

(  ) notify the subtenant of the sublease—
    (i) of the date on which the lease of the whole or part of the allotment site is terminated, and
    (ii) that the subtenant’s sublease is terminated on that date.>

In section 85, page 71, leave out lines 16 to 21

Section 86

In section 86, page 71, line 24, leave out from <a> to <tenant> in line 25 and insert <notice under section 83(1) or 84(2), or sends a copy of a notice under section 85(2)(a), to the tenant of the whole or part>

In section 86, page 71, line 26, leave out from beginning to <tenant,> in line 27 and insert—

<(  ) the tenant subleases allotments on the whole or part of the allotment site to one or more subtenants,>
Aileen McLeod

1213 In section 86, page 71, line 28, leave out from first <of> to end of line and insert <represents the interests of the subtenants>

Aileen McLeod

1214 In section 86, page 71, leave out lines 31 to 34 and insert—

- notify each subtenant—
  - (i) of the date on which the lease of the whole or part of the allotment site is terminated, and
  - (ii) that the subtenant’s sublease is terminated on that date.>

Before section 87

Aileen McLeod

1215 Before section 87, insert—

-Prohibition against assignation or subletting

1. The tenant of an allotment must not assign the lease of the whole or part of the allotment without the consent of the local authority which granted the lease.

2. The tenant of an allotment must not sublet the whole or part of an allotment to any person.

3. A purported assignation of the lease of the whole or part of an allotment contrary to subsection (1) is of no effect.

4. A purported sublease of the whole or part of an allotment contrary to subsection (2) is of no effect.>

Section 87

Aileen McLeod

1216 In section 87, page 71, line 37, at beginning insert <Subject to any regulations under section 73(1),>

Cameron Buchanan

1269 In section 87, page 71, line 37, leave out <(other than with a view to making a profit)>

Aileen McLeod

1217 In section 87, page 71, line 38, leave out from <if> to end of line 3 on page 72

Section 88

Aileen McLeod

1218 In section 88, page 72, line 8, at end insert—
Section 89

Aileen McLeod

1219 In section 89, page 72, line 24, leave out <in whose area the allotment is situated> and insert <giving or, as the case may be, receiving a notice mentioned in paragraph (a) of subsection (1)>.

Aileen McLeod

1220 In section 89, page 72, line 25, leave out <subsection (1)(b)> and insert <paragraph (b) of that subsection>.

Section 90

Aileen McLeod

1221 In section 90, page 73, line 26, leave out <(3)> and insert <(4)>. 

Section 91

Cameron Buchanan

1270 In section 91, page 73, line 36, after <is> insert <, except where the tenant had a reasonable opportunity to remove the crop prior to the resumption,>.

Section 92

Aileen McLeod

1222 In section 92, page 74, line 20, leave out <the> and insert <a>.

After section 93

Marco Biagi

1223 After section 93, insert—

<PART

PARTICIPATION IN PUBLIC DECISION-MAKING

Participation in decisions of certain persons exercising public functions

(1) The Scottish Ministers may by regulations make provision for or in connection with the purpose mentioned in subsection (2).

(2) The purpose is promoting or facilitating participation in relation to decisions of such persons as may be specified (in this section, “relevant persons”) relating to activities carried out, or proposed to be carried out, by or on behalf of those persons.

(3) Regulations under subsection (1) may enable relevant persons to determine—
(a) the persons whose participation in relation to such decisions is to be promoted or facilitated, and
(b) which of those decisions persons so determined may participate in relation to.

(4) Regulations under subsection (1) may provide that activities as mentioned in subsection (2) include the allocation of—
(a) financial resources, and
(b) such other resources as may be specified.

(5) Regulations under subsection (1) may, in particular, include provision—
(a) (without prejudice to subsection (3)), conferring functions on relevant persons,
(b) specifying activities as mentioned in subsection (2) in relation to which the regulations apply, or do not apply,
(c) specifying classes of such activities in relation to which the regulations apply, or do not apply,
(d) specifying criteria for determining such activities in relation to which the regulations apply, or do not apply,
(e) requiring relevant persons to prepare and publish a report, at such intervals as may be specified, describing the steps taken by the persons in connection with the carrying out of functions conferred on them by the regulations.

(6) Relevant persons must have regard to any guidance issued by the Scottish Ministers relating to functions conferred on them by regulations under subsection (1).

(7) Regulations under subsection (1) may specify a person in relation to whose decisions participation is to be promoted or facilitated only if the person is—
(a) a part of the Scottish Administration, or
(b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998).

(8) In this section, “specified” means specified in regulations made under subsection (1).>

Section 94

Cameron Buchanan
1271 In section 94, page 75, line 24, after <to> insert <the authority’s expenditure, income and>

Section 96

Marco Biagi
1087 In section 96, page 76, line 13, after <section> insert <16(2) or (3), 51(2) or (3), 58(2)(c) or>

Marco Biagi
1038* In section 96, page 76, line 17, after <section> insert <4(6), 8(3),>
Marco Biagi

1224 In section 96, page 76, line 17, after <12(1)> insert <or (Participation in decisions of certain persons exercising public functions)>.

Alex Rowley

1071 In section 96, page 76, line 19, at end insert—

<( ) regulations under section 1(1),>

Schedule 4

Aileen McLeod

1225 In schedule 4, page 80, line 3, at end insert—

<Small Landholders (Scotland) Act 1911

In section 26 of the Small Landholders (Scotland) Act 1911 (supplementary provisions and restrictions), in subsection (3)(e), for “the Allotments (Scotland) Act, 1892, or the Local Government (Scotland) Act, 1894” substitute “Part 7 of the Community Empowerment (Scotland) Act 2015”.

Compensation (Defence) Act 1939

In section 18 of the Compensation (Defence) Act 1939 (application to Scotland and Northern Ireland), in subsection (1), for “the Allotments Act, 1922 shall be construed as a reference to the Allotments (Scotland) Act, 1922” substitute “allotment gardens within the meaning of the Allotments Act, 1922 is omitted”.

Agriculture (Scotland) Act 1948

(1) Section 86 of the Agriculture (Scotland) Act 1948 is amended as follows.

(2) In the proviso to subsection (1), in paragraph (a), for “allotment gardens” substitute “allotments”.

(3) In subsection (3), for the definition of “allotment garden” substitute—

““allotment” has the meaning given by section 68 of the Community Empowerment (Scotland) Act 2015;”.

Opencast Coal Act 1958

(1) The Opencast Coal Act 1958 is amended as follows.

(2) In section 41 (provisions as to allotment gardens and other allotments), in subsection (3), for the words from “the”, where it third occurs, to the end substitute “section 68 of the Community Empowerment (Scotland) Act 2015”.

(3) In the Eighth Schedule (tenancies of allotment gardens and other allotments), in paragraph 10—

(a) for sub-paragraph (a) substitute—

“(a) paragraph 1 applies as if sub-paragraph (2) were omitted;”;

(b) for sub-paragraph (b) substitute—
“(b) sub-paragraph (1) of paragraph 3 applies as if for “the Act of 1908 or the Act of 1922 or the Allotments Act, 1950, or by virtue of any other enactment relating to allotments” there were substituted “Part 7 of the Community Empowerment (Scotland) Act 2015”;”,

(c) for sub-paragraph (c) substitute—

“(c) sub-paragraph (2) of paragraph 3 applies as if—

(i) for “any of the enactments mentioned in the next following sub-paragraph” there were substituted “Part 7 of the Community Empowerment (Scotland) Act 2015 (but excluding any compensation for disturbance)”,

(ii) “garden” were omitted, and

(iii) for “subsection (2) of section two of the Act of 1922” there were substituted “section 84(2) of the Community Empowerment (Scotland) Act 2015;”,

(d) in sub-paragraph (e), for the words from “for” to the end substitute “any reference to the Allotments Act, 1950 is to be read as a reference to Part 7 of the Community Empowerment (Scotland) Act 2015”, and

(e) for sub-paragraph (f) substitute—

“(f) sub-paragraph (1) of paragraph 5 applies as if for “section four or section five of the Act of 1922, or of subsection (4) of section forty-seven of the Act of 1908” there were substituted “section 88 of the Community Empowerment (Scotland) Act 2015”;”.

Marco Biagi

1039 In schedule 4, page 80, line 3, at end insert—

<Local Government (Scotland) Act 1973

In the Local Government (Scotland) Act 1973—

(a) in section 99 (general duties of auditors), in subsection (1)(c), for “sections 15 to 17 (community planning) of the Local Government in Scotland Act 2003 (asp 1)” substitute “Part 2 of the Community Empowerment (Scotland) Act 2015 (community planning)”, and

(b) in section 102 (reports to Commission by Controller of Audit), in subsection (1)(c)—

(i) the words “and Part 2 (community planning)” are repealed, and

(ii) at the end insert “and Part 2 of the Community Empowerment (Scotland) Act 2015 (community planning)”.

Marco Biagi

1040 In schedule 4, page 80, line 8, at end insert—

<Local Government in Scotland Act 2003

In section 57 of the Local Government in Scotland Act 2003 (power to modify enactments), in subsection (2)(a), for “, 13(1) or 15(1)” substitute “or 13(1)”.

Marco Biagi
Marco Biagi

1041 In schedule 4, page 81, line 19, at end insert—

<Fire (Scotland) Act 2005

In the Fire (Scotland) Act 2005—

(a) in section 41E (local fire and rescue plans), in subsection (6), for “Local Government in Scotland Act 2003 (asp 1)” substitute “Community Empowerment (Scotland) Act 2015”, and

(b) in section 41J (Local Senior Officers), in subsection (2)(c), for “section 16(1)(d) of the Local Government in Scotland 2003 (asp 1) (duty to participate in community planning)” substitute “Part 2 of the Community Empowerment (Scotland) Act 2015 (community planning)”.>

Police and Fire Reform (Scotland) Act 2012

In the Police and Fire Reform (Scotland) Act 2012—

(a) in section 46 (duty to participate in community planning), in subsection (2), for “section 16(1)(e) of the Local Government in Scotland Act 2003” substitute “Part 2 of the Community Empowerment (Scotland) Act 2015”, and

(b) in section 47 (local police plans), in subsection (11), for “Local Government in Scotland Act 2003 (asp 1)” substitute “Community Empowerment (Scotland) Act 2015”.>

Schedule 5

Aileen McLeod

1226 In schedule 5, page 81, line 27, at end insert—

<Agricultural Land (Utilisation) Act 1931 Section 24(j).

Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 Section 1(4)(b).>

Aileen McLeod

1227 In schedule 5, page 81, line 28, at end insert—


Opencast Coal Act 1958 In the Eighth Schedule, in paragraph 10(h), the words from “but” to the end.

Town and Country Planning (Scotland) Act 1959 Section 26.>

Aileen McLeod

1228 In schedule 5, page 81, line 29, at end insert—
Local Government etc. (Scotland) Act 1994

Marco Biagi

1042 In schedule 5, page 81, line 30, at end insert—

<Section 57(2)(b).>
Community Empowerment (Scotland) Bill

3rd Groupings of Amendments for Stage 2
(Local Government and Regeneration Committee)

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the third day of Stage 2 consideration, set out in the order in which they will be debated. THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.

Groupings of amendments

Delegation of Forestry Commissioners’ functions
1084

Supporters’ trust’s right to buy Scottish Professional Football League clubs
1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248

Disposal and use of common good property: consultation and guidance
1085, 1086, 1249, 1250

Size of allotments
1164, 1165, 1166, 1167, 1229, 1168, 1252, 1230

Notes on amendments in this group
Amendments 1229 and 1168 are direct alternatives
Amendments 1229 and 1168 both pre-empt amendment 1252

Sale of allotment produce
1251, 1256, 1176, 1216, 1269, 1217

Notes on amendments in this group
Amendment 1256 pre-empts amendment 1176

Access and adjustments to allotments for disabled persons
1169, 1170, 1193, 1194

Period in which request for allotment must be acknowledged
1253
Duty to provide allotments: number of persons, and length of time, on waiting list and proximity between new allotments and places of residence of persons on list
1254, 1171, 1255, 1192

Access to allotments and allotment sites
1172

Rent for allotments
1173, 1174

Minor amendments
1175, 1177, 1190, 1191, 1218

Disposal and change of use of part of allotment site
1178, 1179, 1181, 1182, 1184, 1185, 1187, 1188

Ministerial consent for disposal, change of use or resumption of allotment or allotment site
1180, 1183, 1257, 1186, 1189, 1258, 1266, 1267, 1268

Notes on amendments in this group
Amendment 1267 in this group is pre-empted by amendment 1204 in the group “Termination of leases of allotments or allotment sites”

Preparation of food growing strategy to be optional
1259, 1260, 1262, 1263

Provision and promotion of allotments in areas of socio-economic disadvantage
1261, 1265

Delegation of management of allotment sites
1195, 1196, 1197, 1264

Use of local authority premises for meetings
1198

Termination of leases of allotments or allotment sites
1199, 1200, 1201, 1202, 1203, 1204, 1205

Notes on amendments in this group
Amendment 1204 in this group pre-empts amendment 1267 in the group “Ministerial consent for disposal, change of use or resumption of allotment or allotment site”

Notice of termination: subleases
1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214

Prohibition against assignation or subletting of allotments
1215
Compensation for disturbance, deterioration of allotments and loss of crops
1219, 1220, 1221, 1270, 1222

Participation in public decision-making
1223, 1224

Schemes for reduction and remission of rates: matters to which rating authority must have regard
1271

Procedure for certain orders
1087

Minor and consequential amendments and repeals of enactments: allotments
1225, 1226, 1227, 1228

Amendments already debated

National outcomes: consultation, procedure and reporting
With 1043 – 1071

Duty to carry out community planning: general
With 1015 – 1038, 1039, 1040, 1041, 1042
Present:
Cameron Buchanan          Willie Coffey
Cara Hilton                Alex Rowley
Stewart Stevenson          Kevin Stewart (Convener)
                        (Committee Substitute)
John Wilson (Deputy Convener)

Also present: Marco Biagi (Minister for Local Government and Community Planning), Alison Johnstone, Ken Macintosh, Alison McInnes

Apologies were received from Clare Adamson.

Community Empowerment (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 3).

The following amendments were agreed to (without division): 1084, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1085, 1086, 1230, 1169, 1170, 1253, 1255, 1172, 1173, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1261, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1265, 1198, 1199, 1200, 1201, 1202, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1227, 1271, 1087, 1038, 1224, 1071, 1225, 1039, 1040, 1041, 1226, 1227, 1228 and 1042.

The following amendments were agreed to (by division)—

1164 (For 4, Against 3, Abstentions 0)
1165 (For 4, Against 3, Abstentions 0)
1166 (For 4, Against 3, Abstentions 0)
1167 (For 4, Against 3, Abstentions 0)
1168 (For 4, Against 3, Abstentions 0)
1171 (For 4, Against 3, Abstentions 0)
1204 (For 6, Against 1, Abstentions 0)

The following amendments were disagreed to (by division)—

1251 (For 1, Against 6, Abstentions 0)
1229 (For 3, Against 4, Abstentions 0)
1256 (For 1, Against 6, Abstentions 0)
1259 (For 1, Against 6, Abstentions 0)
1268 (For 1, Against 6, Abstentions 0)

Amendment 1254 was moved and, no member having objected, withdrawn.

The following amendments were pre-empted: 1252 and 1267.

The following amendments were not moved: 1249, 1250, 1174, 1257, 1258, 1260, 1262, 1263, 1264, 1266, 1269 and 1270.

The following provisions were agreed to without amendment: sections 66, 67, 69, 71, 74, 78, 80, 91, 93, 95, 97, 98, 99 and 100.

The following provisions were agreed to as amended: 65, 68, 70, 72, 73, 76, 77, 79, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 92, 94 and 96, schedules 4 and 5 and the long title.

The Committee completed Stage 2 consideration of the Bill.
Scottish Parliament
Local Government and Regeneration Committee

Wednesday 18 March 2015

[The Convener opened the meeting at 09:30]

Community Empowerment (Scotland) Bill: Stage 2

The Convener (Kevin Stewart): Good morning, and welcome to the 10th meeting in 2015 of the Local Government and Regeneration Committee. If people wish to use tablets or mobile phones during the meeting, they should please switch them to flight mode, as they may affect the broadcasting system. Committee members may consult tablets during the meeting, because we provide meeting papers in digital format.

We have received apologies from Clare Adamson, and I welcome Stewart Stevenson as Clare’s substitute this morning.

Agenda item 1 is the Community Empowerment (Scotland) Bill. It is day 3 of our stage 2 consideration of the bill. I welcome back Marco Biagi, the Minister for Local Government and Community Empowerment. I also welcome Alison Johnstone and Ken Macintosh. Later in the proceedings, we will also be joined by Alison McInnes.

Everyone should have a copy of the bill as introduced, the latest marshalled list of amendments and the list of groupings of amendments, which sets out the amendments in the order in which they will be debated. There will be one debate on each group of amendments. I will call the member who lodged the first amendment in each group to speak to and move their amendment and to speak to all the other amendments in the group.

Members who have not lodged amendments in the group but who wish to speak should indicate that by catching my attention in the usual way. If the minister has not already spoken on the group, I will invite him to contribute to the debate just before I move to the winding-up speech. The debate on each group will be concluded by my inviting the member who moved the first amendment in the group to wind up.

Following the debate on each group, I will check whether the member who moved the first amendment in the group wishes to press their amendment to a vote or to withdraw it. If they wish to press it, I will put the question on that amendment. If a member wishes to withdraw their amendment after it has been moved, they must seek the committee’s agreement to do so. If any committee member objects to that, the committee must immediately move to the vote on the amendment.

If any member does not want to move their amendment when I call it, they should say, “Not moved.” Please remember that any other MSP may move such an amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members or their official substitutes are allowed to vote at stage 2. Voting in any division is by a show of hands, and it is important that members keep their hands clearly raised until the clerk has recorded the vote.

The committee is required to indicate formally that it has considered and agreed each section of the bill, so I will put the question on each section at the appropriate point.

After section 62

The Convener: Amendment 1084, in the name of the minister, is in a group on its own.

The Minister for Local Government and Community Empowerment (Marco Biagi): Amendment 1084 responds to the committee’s recommendation to review the legislation relating to Forestry Commission Scotland leasing land to communities for forestry purposes. The amendment is supported by a number of stakeholders, not least the Scottish Woodlot Association.

The existing legislation allows FCS to delegate its forest management functions on the basis of the requirements of the community right-to-buy provisions under part 2 of the Land Reform (Scotland) Act 2003. It requires a community body to be a company limited by guarantee and to define its community by postcode units. The amendment supports a number of stakeholders, not least the Scottish Woodlot Association.

The amendment will allow any form of corporate body to take on a forestry lease, and the community that is represented by that body need not be defined by geographical boundaries. It also brings the requirements for a community body into line with the criteria for a community-controlled body, which can make an asset transfer request. I should make it clear that those criteria apply only to leases for forestry purposes, which are typically for 25 years or more. FCS also leases and sells land to community organisations for other purposes such as recreation and housing through...
the national forest land scheme. In the future, all those transactions will come under the rules for asset transfer requests as set out in the bill, but relevant authorities will be free to set their own policies for leases depending on the length and type of agreement. It just happens that, for FCS, that policy has to be set out in legislation, and that is what the amendment seeks to do.

I move amendment 1084.

Amendment 1084 agreed to.

The Convener: Amendment 1231, in the name of Alison Johnstone, is grouped with amendments 1232 to 1248.

Alison Johnstone (Lothian) (Green): I thank the committee for its time today, and I thank the convener for agreeing that this important issue should be considered at stage 2. I know that you have a lot of amendments to cover, so I will keep this summary brief. I will explain the purpose and rationale first, and I will then quickly summarise the practical operation of the amendments in the group.

The problem that I am asking Parliament to fix is straightforward, and it should be obvious to everyone. Football has been dragged from the back pages of Scotland's newspapers to the front pages by a series of catastrophic failures, from those of small clubs such as Gretna to those of clubs at the very top, such as Hearts and Rangers. The current model of ownership has failed. We know from examples both in Scotland and elsewhere that fan ownership works, and that fans will obviously be the people with the long-term interests of their clubs closest to their hearts. However, it is hard for fans to assemble the money and an appropriate structure without a right to buy.

My proposals would not force fans to buy—in fact, there would still be substantial hurdles to doing so—but would mean that, if a well-organised fans trust had the support of the fans, it could secure first right of refusal if the club was being sold anyway or if, like so many clubs recently, it fell into administration. That is the base proposal, the key structural elements of which are covered in amendments 1231 to 1238 and 1240 to 1248.

Amendment 1239, on which members may wish to vote separately, would mean that the right to buy would apply at any time, giving fans trusts with clear backing from supporters the ability to make a bid for their club. This is how that would work. First, a trust would express an interest in the purchase of its club, and it would seek to be on the public register of fans trusts. Ministers can reject an application if it is not clear that the trust is predominantly composed of fans of the club, if the trust is not open to join at an affordable rate or if it is not clear that members of the trust are sufficiently supportive of a bid to buy the club. There is also a general public interest test.

If their expression of interest is accepted, fans are assured prefered bidder status for their club if it comes up for sale or goes into administration. Again, that must be approved both by a vote of the trust and by Scottish ministers.

If my second proposal—amendment 1239—is accepted, the trust would be able to buy the club, either for an agreed price or following an independent valuation, at any time. In cases where more than one trust applies to buy a particular club, only one may be permitted to proceed. In most cases, that should encourage fans to bring different bodies together to support a bid, as has happened through the Foundation of Hearts.

The base amendments also propose that trusts should be eligible to apply for funding from the Scottish Government to assist with a purchase. It is not specified in the amendments, but my expectation is that that assistance would be likely to come in the form of loans or underwriting, rather than direct grants, especially if fans of larger clubs apply successfully.

The last two provisions in the base amendments are to allow an appeal by an owner against the exercise of the right to buy, as required by the European convention on human rights, and an option to buy a smaller proportion of the shares in a club, particularly in cases where the trust cannot afford to buy the club outright.

Every party represented around this table is on record as supporting fans, and there will never be a better opportunity to put fans in the driving seat of Scottish football. I urge all members to support my amendments.

I move amendment 1231.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I do not seek to pick at the underlying principle of this group of amendments, but I seek information about the implementation of that principle.

I will start with something that central belt members might have overlooked: the status and issues relating to the clubs in the Scottish Highland Football League, of which I have three in my parliamentary constituency—in Buckie, Banff and Fraserburgh. As we know, Highland league clubs have successfully been a feeder for more senior leagues. Examples of that are Ross County, which was my father's club, and of course Caley Jags, which interestingly was formed from the merger of two of the three clubs in Inverness—Clachnacuddin refused to play. That immediately opens up one of the issues, which is that a purchase might relate not to a single club but to
the circumstances in which clubs are merging. The
construction of the amendments that are before us
would probably exclude action by supporters in
those circumstances. The mover and supporter of
the amendments might care to think about that,
because I suspect that that is not their intention.

I will by no means cover all the detail, which is
substantial, but I will perhaps cover just enough to
show that further thinking is needed. There is
perhaps a little misunderstanding of how share
ownership and voting works—the two might not be
as easily connected as is thought. The
amendments talk about a majority of the voting
shares, which is fine, but there may be
circumstances in which previous owners retain a
single share that does not have the characteristics
of a vote that may cause something to happen, but
which carries with it the right to veto a proposed
action. When Governments have sold off
companies, they have exercised that right, and it
also happens in commercial environments. The
construction of the amendments perhaps does not
fully address that way in which things may happen.

The amendments talk about the purchase of the
majority of a club. I understand what is intended,
but the difficulty is that an individual purchase
could well not be about buying a majority of a club,
as it might be about adding to a significant
shareholding to create a majority. I suspect that
the mover and supporter of the amendments do
not seek to exclude that, so they might need to
look at the construction of the amendments in that
regard.

Another issue is that there may be
circumstances in which the transfer of ownership
or part of the ownership of a club takes place
without any value exchange. Again, the mover and
supporter are unlikely to seek to exclude that.
However, that is very tricky territory, so a wee bit
more thinking requires to be done.

I have a more general question to which I
genuinely do not know the answer. It is simply
whether, in operating with the provisions of the
Companies Act 2006, which is clearly a reserved
matter, we are crossing the line into ultra vires
issues. I am sure that advice will have been taken
on that, but it would be helpful if the mover of the
amendments could give us comfort that that issue
has been considered. I would hate to see the
initiative fall for that particular reason, above all.

Finally, I sound a note of caution about the use
of the word “fans”. Fans come in all shapes and
forms. We should not discount the idea that David
Murray was a fan of Rangers—a fan with sufficient
money that he could act alone in what he thought
was the club’s interest. We need to be careful
about how we talk about and define fans.

In principle, the amendments are a very good
and eminently supportable effort, but further work
is required on some of the detail. I do not pretend
that I have exhausted all the issues that I might
have found if I was a regular member of the
committee—rather than someone who was
parachuted in at comparatively late notice—and
had spent a wee bit more time on the matter.

Cameron Buchanan (Lothian) (Con): I, too,
am concerned about the technicalities of the bill,
legal and otherwise. We discussed the issue at
our group meeting, but I would have liked more
time to consider the matter. I think that the
principle is agreed, but there is a lack of detail. I
share Stewart Stevenson’s disquiet about certain
aspects of the amendments. It is difficult to
understand the legal actions and technicalities.
However, I am not of a mind to push that issue.

09:45

Willie Coffey (Kilmarnock and Irvine Valley)
(SNP): I thank Alison Johnstone for the
amendments, which I am broadly supportive of.
When Alison sums up, I wonder whether she
might give us a little bit more clarity on the
problems that fans groups and trusts will face in
mounting a bid, with regard to getting the
necessary funding to do so and, at the end of that,
putting in place any finance that might be required
to make the process successful.

Alison Johnstone referred to possible funding
eligibility at the beginning of the process by way of
loans, underwriting and so on. In my experience,
the stumbling block for fans groups when they try
to assemble a credible bid can be around getting
enough sufficient funding to mount the process to
begin with and to demonstrate to all parties
concerned that they have sufficient funds to carry
it through. I would welcome a wee bit more clarity
on those aspects of Alison Johnstone’s
amendments.

Alex Rowley (Cowdenbeath) (Lab): I support
the amendments. I should say that I am a Kelty
Hearts Junior Football Club supporter, but no
matter what team people support, if they go
regularly to games, they feel quite passionate
about the issue. These past few years, there has
been disbelief at the events that have taken place
in some of the biggest football clubs, as well as
some of the lower league football clubs—in clubs
such as Dunfermline, for example. When
Dunfermline was going through its difficulty, I met
the fans regularly and I knew what they were
going through as their club came very close to
being put out of business.

We need to look at the principle behind the
amendments, which is about empowering fans. If
there are some technical issues—such as drafting
that needs to be tightened up—they could be addressed as the bill goes forward to stage 3. However, getting the amendments into the bill today would be the right thing to do. We can support the principle of the amendments. If there is work to be done, it can be done between now and stage 3. If the amendments are moved today, I will certainly support them.

Ken Macintosh (Eastwood) (Lab): I also want to speak in support of amendment 1231, in the name of Alison Johnstone, and in favour of all the amendments in the group. This is about extending the right to buy to football clubs and communities across Scotland. It is a proposal that all my colleagues in Scottish Labour are proud to support.

I believe that members in the committee and across the Parliament are united in support of the principles behind the Community Empowerment (Scotland) Bill but, in many ways, the proposals on community ownership are the most exciting part of the legislation. The right to buy that was introduced through the Land Reform (Scotland) Act 2003 has been a hugely important practical as well as symbolic change to how communities interact with the land that they occupy across Scotland. Its benefits have been felt not just in rural areas such as the Highlands and Islands but in urban areas such as Neilston in East Renfrewshire, where local people, through the development trust, now own a wind farm in their community and have exerted direct influence over the community that they live in and the shape of that community.

I believe that it is time that we took that experience and those principles to the next stage and I believe that football club ownership is the ideal place to start. I believe that it would be difficult for anyone in this room—or, frankly, across Scotland—to stand up and argue that the current state of Scottish football, in terms of its accountability, its sustainability, or simply its success, is a model that should be continued.

Successive ownership models, including that of the sugar daddy or the foreign oligarch, have proved an unmitigated disaster and have ruined many once-proud local football clubs. Football fans and local communities have not only lost out but been made to feel powerless. They have even been taken advantage of and had their good will exploited. If we compare those models with fan ownership models such as Barcelona or as practised by virtually every club in Germany, we can see that there are some examples that we should be emulating.

No one is arguing that fan ownership is the only answer or even the best option in every case, but it deserves to at least be one of the options for the future of Scottish football clubs.

I will not repeat the many safeguards and caveats already outlined by Alison Johnstone, but it is clear that, if we accept the amendments, football clubs in Scotland can operate in the fans’ interests, in the community’s interests and in the public interest. I noted the points that Stewart Stevenson, Cameron Buchanan and Willie Coffey made, and they were particularly hesitant about the current framing of the sections before us. I do not entirely accept the argument that they made, but what is more important about the sections before us is that we accept—

Stewart Stevenson: Will Mr Macintosh take an intervention?

Ken Macintosh: I will.

Stewart Stevenson: Would you be sympathetic to the idea that we should extend the provision to the Highland league?

Ken Macintosh: I am delighted that Stewart Stevenson wants to build on the amendments in this group before we have even accepted them, but I think that we should take it one step at a time. I accept the set of proposals for the major Scottish football clubs. I suggest to Cameron Buchanan, who is concerned about technicalities, that there may be minor concerns but the provision that is before us is lifted almost in its entirety from the 2003 act, so it is not new legislation; it is modelled exactly on existing legislation that has been proved to work and to be effective and which is practised currently in Scotland. Not only that, it is not a new approach. There are already many fans in Scotland who have bought out their football clubs, Dunfermline being just one example. However, the current state of legislation in Scotland makes it difficult for them to do so. It puts all sorts of obstacles in their way.

I do not think that we should continue down that route. If we have concerns and we do not adopt the proposals now at stage 2, it is unlikely that we will adopt them at stage 3. It is more important that we adopt the principles and accept the amendments at stage 2, and then work on the technicalities at stage 3. On that basis, I urge all members of the committee to support the amendments.

Marco Biagi: I thank the members who have lodged amendments. I have heard a lot that I can agree with. The Scottish Government is extremely supportive of supporter involvement and ownership, and that is something that we can endorse as an aim. We have already convened a working group under Stephen Morrow, bringing together supporters groups, the Scottish Football Association and the Scottish Professional Football League to construct a consensus way forward.
I can personally relate to the issue. It is not something that is widely known, but the team that I followed in my youth had financial issues, bad management and bankruptcy, and it plummeted four divisions and ended up having to reregister under a different name. Before you assume what club that was, let me tell you that it was the serie A club Fiorentina, which shows that such financial problems can happen in a wide range of contexts and countries and that it is an issue that many football leagues have to grapple with.

On reflection, and in consultation with colleagues, we are convinced that legislation could be helpful in ensuring that this aim is advanced. Therefore, it would be our intention at stage 3 to introduce amendments to allow much of this to be achieved mainly by regulations, but with an explicit reference in the bill to achieving the aim. That would allow us to consult and to co-produce the detail of the regulations with supporters groups, ensuring that we have a system that does not just express the principle and express sympathy but which could actually work.

There are a number of issues with the approach that is taken by the amendments both in detail and in principle. Stewart Stevenson has already brought some of his financial and company law expertise to bear on the detail, and I presume that he has been able to see the amendments only for the past few days. They are complex amendments, almost amounting to a new bill that, if it were to be introduced as a bill, would probably go either to the Health and Sport Committee or, because it concerns the right to buy, to the Rural Affairs, Climate Change and Environment Committee. In making such big changes to a bill, we need to afford due opportunities for parliamentary scrutiny by other subject committees, as well as the opportunity for widespread public consultation. The Scottish Government has not been able to consult directly on the amendments in the way that we would normally consult on proposals if we were going to legislate on anything.

John Wilson (Central Scotland) (Ind): Could the minister give me a clear steer on whether he is minded not to accept the amendments today, or whether he is minded to accept them on the basis that the Scottish Government, along with others, can lodge the amendments that it wishes at stage 3? Like other committee members, I am keen to get something in the bill now that we can move forward with and which, if need be, can be refined at stage 3, rather than voting down the amendments. We might be in a similar position at stage 3 and, perhaps, have less time because we will be able to consider amendments for just a couple of days prior to the stage 3 debate. Is the minister minded to support the amendments in the name of Alison Johnstone and supported by Ken Macintosh to allow the matter to move forward and allow us to work around the issues that have been identified in them?

Marco Biagi: Can I perhaps get to that? I was working towards it but, at this point, I want to highlight the issues with the detail. If the amendments were agreed to, the detail that has already been highlighted would be in primary legislation pending the stage 3 amendments that we would lodge.

Clubs are not land. A lot of their value is intangible and depends on the players who are with them as well as the complex structures of ownership, whereby a stadium might be owned by one holding company and something else might be owned by another. In Fiorentina’s case, the stadium was owned by the municipality. That would be an interesting approach for the Local Government and Regeneration Committee to take, but I do not think that we would quite be at that point in Scotland.

John Wilson: As I understand it, the grounds that some clubs use are owned by the local authorities, so there is already local authority ownership of football grounds in Scotland. One of the difficulties that we and fans have had is in trying to determine what exactly a club is because, as you say, a club’s ground is owned by one company, its name is owned by someone else and the players are employed by another organisation.

I hope that the amendments in this group will help to clarify exactly what entity a football club is in Scotland. At the moment, various different corporations claim to own different parts of clubs and the fans are unaware of what exactly constitutes the ownership of the club.

Marco Biagi: I apologise for my slightly irreverent aside about local authority ownership of stadia in Italy. The point that I was aiming at was made effectively by the deputy convener, who pointed out the complex ownership structures and the need to get valuation systems right if ownership is to operate in the way that is proposed.

If clubs are at the point of insolvency and then hold for six months pending a fan group coming together, that could make liquidation more likely because, in that period, there might be a flight of players or other bidders might be unable to come in. Therefore, an unintended consequence might be that we end up with more clubs going into liquidation than at present. That is the kind of unintended consequence that none of us wants to happen and we have to ensure that the amendments, or whatever legislation is put in place, will not lead to such consequences.

Non-league clubs and potentially competing claims, which are known from land reform, are
also issues. There is no test in the amendments for whether a community bid would be financially viable.

Those are all important details of the amendments. However, there is a principle involved. We want to ensure that fans have a greater opportunity to participate in the running and ownership of clubs. We are all on the same page for that, which is great. A better approach would be to include a specific reference to it in the bill and then to develop the detail thereafter through secondary legislation.

The question is whether we can get the matter right by stage 3. If the amendments are agreed to, we can certainly further amend the bill in that direction or move more towards a secondary legislation approach. If we agree to the amendments and then amend them at stage 3, a lot will be riding on getting everything right in the next six weeks, because it is very hard to amend primary legislation. Indeed, introducing primary legislation requires a process of consultation and development that, for the most part—except in emergencies—takes a lot longer than six weeks.

10:00

Using affirmative procedure to develop the details, with the bill setting out the aim, would allow for consultation with the wider footballing community and—appropriately—with Parliament. It would ensure that, rather than just endorsing the principle, we get right any legislation that is introduced and keep it more easily updated in light of developments and changing circumstances, and any experience that we gain during its implementation.

I hope that everyone can see the benefits of that approach. We will introduce amendments to that end at stage 3 because, as I said, we all agree with the aim of increasing supporter involvement and ownership, and we consider that legislation would be helpful in advancing that aim.

With that in mind, I ask members not to press their amendments but, in any case, the Government will proceed at stage 3 in the way that I described by lodging amendments for Parliament to consider.

Alison Johnstone: I would certainly be happy to work with the minister before stage 3, but I am afraid that those commitments do not yet cover the essentials of my proposal. I, too, am grateful for the work that Stephen Morrow and his group put in, but the group was expressly asked not to look at this issue, which I think was unfortunate.

It is important to note that, when we initially polled people, 95 per cent supported a right to buy at sale or administration and that, in our latest survey, 81 per cent of people supported the right to buy at any time, with a third of those who responded representing fans trusts.

It is important that this is in the bill. The minister has spoken about regulations, but we as a Parliament cannot amend those regulations. We can only agree or disagree to them.

I want to give members a flavour of some of the support that we have received for the proposals. Dave Scott from Nill by Mouth said that the charity “would be supportive of proposals for greater fan control and ownership of their clubs and feel that this could be an exciting opportunity for the silent majority of fans to find their voice and use their increased position to bring about the real changes required to bring the Scottish game into the 21st century.”

Stuart Duncan, a former director of Greenock Morton Football Club and Supporters Direct UK, said:

“I’m very excited at the prospect of fans being given the right to buy. Clubs provincial and otherwise are community assets as shown by my own club Greenock Morton who now have a vibrant and highly successful community trust, a fan led initiative, which is in their own words, ‘the heartbeat of Inverclyde’. These community assets are best protected by people who have the club as the hub of the community at heart, fans.”

A Kilmarnock fan said to us:

“Community ownership is one of the few sustainable and viable ways of running football clubs in Scotland.”

It is fair to say that the bulk of responses from Rangers fans were supportive, but many were also libellous. [Laughter] I will not read out any of those ones, but here is one that should be safe:

“I support Rangers so it would avoid a situation arising like the one that arose over the past few years. Rangers fans are the only people who will take proper care of Rangers football club.”

A St Mirren fan said simply:

“Give us the tools to do the job.”

I could read out quotes all day, but that would probably guarantee the rejection of my amendments by the committee.

Marco Biagi: Those are sentiments that I think we have all broadly expressed in the committee, and they certainly show a positive approach to supporter ownership that the Government would endorse. However, there is a distinction between those sentiments and what is in the amendments that are before us. In quoting sentiments that we all broadly agree with while speaking to your amendments, you are perhaps manufacturing a disagreement when in fact we agree on those principles and sentiments.

Alison Johnstone: If we agree in principle, and if we are as supportive as we all purport to be, we should support the amendments today and look at...
the technicalities before stage 3. If the amendments are passed today, I will work with all parties here to achieve consensus on any refinements that may be required at stage 3 concerning the nature of the organisations that can bid, the role of the Scottish ministers and any other issues that are raised by fans or members. Agreeing to the amendments today could be the last chance for years to ensure a proper fan-led reform of the Scottish game. If the committee does not back fan ownership today, how many clubs will stumble from one crisis to another? How many will fold? How many enterprising groups of local people will continue to be shut out of a role? I urge all members to vote for my amendments today.

I press amendment 1231.

Amendment 1231 agreed to.

Amendments 1232 to 1248 moved—[Alison Johnstone]—and agreed to.

**Section 65—Disposal and use of common good property: consultation**

**The Convener:** Amendment 1085, in the name of the minister, is grouped with amendments 1086, 1249 and 1250.

**Marco Biagi:** I was happy to lodge amendments 1085 and 1086 in response to the committee’s recommendations. As you know, the aim of the bill in relation to common good is to increase people’s awareness of what property is common good and their involvement in decisions about it. When a local authority proposes to dispose of or change the use of any common good property, the bill requires it to consult people about that change. Specifically, it must notify and seek representations from community councils in the local authority area and any community bodies that are known to have an interest in the property.

Many local authorities have separate common good funds for different towns. We recognise that, especially for authorities that cover large geographical areas, it may be burdensome to consult all the community councils in the local authority area over one common good property. Under the Local Government etc (Scotland) Act 1994, in administering their common good property, local authorities are required to “have regard to the interests of the inhabitants of the area to which the common good relates”.

That does not apply to the four city councils, however, as their common good funds cover the whole of their areas. The amendment therefore limits the consultation requirement to those community councils whose area covers all or part of the area to which the common good in question relates. As that implements one of the committee’s recommendations, which arose from the experience of Highland Council, I hope that my amendments will be supported.

The effect of Cameron Buchanan’s amendments would be to remove the requirement for local authorities to have regard to guidance on the management and use of property that forms part of the common good, although they would still be required to have regard to guidance on the specific duties imposed by the bill in relation to common good. I appreciate that Cameron Buchanan may want local authorities to have more freedom in their management of common good property, but the message that I am hearing—I know that the committee has heard it, too—is that people do not feel that common good property is always being managed properly even when no disposal or change of use is involved. I therefore think that we should retain the option of issuing guidance on any aspect of common good management, and I ask Mr Buchanan not to move his amendments.

I move amendment 1085.

**Cameron Buchanan:** I was going to say that amendment 1249 is a probing amendment. It is all very well that Scottish ministers can issue guidance on the management and use of a property that forms part of the common good, but I wanted to hear—I think that the minister has explained this—what form that guidance would take under the present Government. I would also like him to explain whether the guidance would be technical or policy based.

**Marco Biagi:** I am not sure that I understand the distinction that Mr Buchanan is making between policy-based guidance and technical guidance. Policy-based guidance can be quite technical. Can he please clarify what he means?

**Cameron Buchanan:** I really wanted the minister to explain what form the guidance would take. I am not going to move the amendments in my name; I just want to know what form the guidance would take.

**Marco Biagi:** All guidance is developed in partnership with everyone involved. We know that strong views have been expressed on the management and maintenance of common good assets, and we think that this power will allow us to address some of the uncertainty that is out there and create something that will give local authorities and communities certainty about what they should expect from common good.

Amendment 1085 agreed to.

Amendment 1086 moved—[Marco Biagi]—and agreed to.

**Section 65, as amended, agreed to.**
Section 66—Disposal etc of common good property: guidance

Amendments 1249 and 1250 not moved.

Section 66 agreed to.

Section 67 agreed to.

Section 68—Meaning of “allotment”

The Convener: Amendment 1164, in the name of Ken Macintosh, is grouped with amendments 1165 to 1167, 1229, 1168, 1252 and 1230. I draw members’ attention to the information in the groupings paper about pre-emptions and direct alternatives in the group.

Ken Macintosh: I will speak to a number of amendments about allotments on behalf of and with the support of the Scottish Allotments and Gardens Society, which is the key organisation representing plot holders and the allotment community. First, I thank the members of SAGS for taking the time and effort to brief MSPs, including ministers, on this important subject. I believe that the minister and I are among a number of members who enjoyed SAGS’s hospitality at its international conference centre—I should point out to those who have not been there that that is a portakabin with a solar-power-panelled roof in Inverleith in Edinburgh.

It is fair to say that SAGS appreciates the Government’s commitment to allotments and ministerial efforts to offer some statutory protection to allotment sites in the bill. However, it is also fair to say that the allotment community is hugely anxious that, whatever their good intentions, ministers run the risk of getting things fundamentally wrong with some sections in the bill.

I remind members that, at stage 1, SAGS felt that plot holders might be better off if part 7 were scrapped altogether. SAGS has moved on from that position, and it now believes that the bill will be a move in the right direction if the Parliament can address three outstanding issues: fair rent, waiting times and the size of a standard allotment plot, which is the first issue that we are dealing with this morning.

Section 68(d) defines an allotment as being “of such size as may be prescribed.”

However, the pressure on local authorities to meet the demand for allotments—I should add that that pressure will become a legal obligation for them under the bill—has resulted in many councils dividing and subdividing existing plots. The real fear that SAGS has expressed is that, unless the size of a plot is defined and protected in statute, local authorities will reduce plot sizes further in order to reduce their waiting lists. That is already happening in Glasgow, Edinburgh, Fife and elsewhere across Scotland.

My amendment 1168 would require the land that is offered to a potential plot holder to be approximately 250m$^2$, which is roughly half the size of this room or, for those of a sporting bent, roughly the size of a tennis court. SAGS argues that that amendment to define the size of a standard allotment plot is essential to protecting the unique identity and role of allotments, and it points out that it has been accepted for decades that the amount of land required to provide most of a family unit’s needs is in the region of 250m$^2$. Such space can provide year-round activity for the retired and the unemployed and SAGS is worried that, unless the size of an allotment is so defined, plot holders might not have access to the area of land that is necessary for their needs.

I highlight to the minister and committee members that allotments are a fundamental part of the Scottish Government’s food and drink policy to support and encourage people across Scotland to grow their own fruit and vegetables. A 250m$^2$ allotment would enable a family unit to grow most of the fruit and vegetables that it consumes, and a definition of size is necessary in primary legislation to stop local authorities subdividing plots to reduce their waiting lists and forcing people to accept smaller plots than they require.

The allotment community accepts that not everyone needs or wants 250m$^2$, but amendment 1168 would also ensure that smaller plots could be made available for those who want them. In any case, the choice will be theirs, not imposed on them. The amendment also allows for existing allotments that might be over 250m$^2$.

10:15

SAGS has indicated that, whatever her good intentions are, it does not support amendment 1229, in the name of Aileen McLeod, which contains the phrase “no more than 250 square metres in area.”

SAGS firmly believes that that will allow local authorities to offer plot sizes that suit them, the providers, rather than the plot holders. Even with regulations, it will be up to ministers and local authorities to determine what is offered under that process, instead of allowing people and local associations to determine the area that they wish to cultivate. I remind fellow MSPs that the bill’s basic purpose is supposedly to empower communities and give people more control over their own lives and not have government at whatever level dictating what people want and need. The bill’s basic tenet is subsidiarity.
I believe that the City of Edinburgh Council has a waiting list of seven to 10 years, but we also know that, once people are offered half a plot, that plot will be subdivided for ever. Accordingly, I urge members to support amendment 1168 in my name and the consequential amendments 1164 to 1167.

I move amendment 1164.

Marco Biagi: This group of amendments addresses the size of an allotment. The fact that we are faced with three options reflects the considerable debate that there has been on the issue.

Allotments have a long and proud history in this country. Although several factors distinguish them from other forms of growing, one of the most important is scale. In the past few months, we have worked closely with the Scottish Allotments and Gardens Society to understand and, wherever possible, meet its needs. We have been listening.

Although 250m² has been discussed as a reference size, I know that the society has recognised that not everyone will want an allotment of that size at all stages of their life. Some new allotment holders might want to start small and move up to a larger area later, and others might no longer feel able to manage such an area and would welcome a smaller piece of ground to grow on.

The amendments in the name of Aileen McLeod provide that flexibility. Amendment 1229 sets the maximum size of an allotment at 250m², which, as Ken Macintosh pointed out, is just smaller than a standard-sized tennis court, while amendment 1230 requires the Government to make further provision in secondary legislation in connection with the sizes of allotments. Our intention is for the maximum size to apply only prospectively; transitional provisions will ensure that existing allotments that are larger than 250m² are protected. In the definition of an allotment, such an approach gives a clear indication of the scale of allotment growing, as opposed to community growing spaces, which, in comparison, are predominantly on a much smaller scale. The approach therefore recognises the uniqueness of allotments.

As well as providing flexibility, we will provide security by introducing secondary legislation that will make further provisions on size. Through that process, we will have the necessary time to encourage and foster collaborative working relationships between the allotment-growing community and local authority allotment providers, which in some instances—although not all—are strained at the moment. That time will allow us to develop secondary legislation to provide the flexibility that everyone agrees is needed, and the intended outcome is secondary legislation that meets the needs of all interested parties.

Ken Macintosh's amendments seek the same outcome as Dr McLeod's amendment 1229—to establish a maximum size of an allotment while providing flexibility to have smaller allotments where they are wanted. However, there is a difficulty with the wording. Defining an allotment as being

"of a size of approximately 250 square metres"

is too imprecise in law for local authorities and tenants to know what it means. Consequently, it is unclear how subsection (3) in the amendment, which refers to meeting a request for an allotment of

"a size smaller than that set out in subsection (2)",

would operate.

The definition in subsection (3)—that an allotment should be of whatever size "as has been requested"—may appear attractive in principle, but it would be impractical on the ground, and it would be exceptionally onerous to implement from a local authority perspective. We can imagine an authority having to measure and deliver plots of different sizes to every individual to any level of specificity.

Amendment 1229, in the name of Dr McLeod, is more precise. Introducing secondary legislation will provide the necessary time to ensure that we get the provisions right to meet everyone's competing needs.

John Wilson: I wish to discuss the points that have been made about the 250m² size that SAGS has recommended for a standard-size plot. During our stage 1 consideration, we discussed the issue of plots being subdivided—either halved or quartered—to suit the needs of people coming into allotments, as Ken Macintosh indicated, or those heading out of and taking up retirement from allotment growing.

I am keen for any discussions about the sizes that are offered to be carried out in conjunction with local allotment growers societies. I do not want local authorities to offer people with the only chance that they may get of having an allotment a plot of, say, 50m² or 70m²—anything below the recommended 250m².

I am trying to get clarification on that from the minister in his closing remarks. What would be the problem with an agreement to set the defined size that we can work with, while ensuring that any negotiations and any offers that are made about the size that is given at the first stage are in conjunction with the local allotment growers society, so that it controls the sizes that are allocated, rather than the local authority being the
arbiter of the sizes that are offered in the first instance to any new members who wish to take up allotment growing?

The Convener: The minister will not be making the closing remarks for the group, of course, because the lead amendment in the group is in Mr Macintosh’s name. On you go, minister.

Marco Biagi: It was a rather long intervention, but let me be clear that the secondary legislation could deliver what has been described. Members have heard from what I have said about the value of the partnership that we want to build. We want to build bridges between groups where relationships have been strained in some cases.

Ultimately, we can require a lot of consultation, and a lot of consultation mechanisms are strongly provided for in the bill for issues such as rent, which we will come to, where we want to emphasise the importance of development in partnership with local growers. The secondary legislation provides an opportunity to ensure that that happens.

We have committed to a tripartite group, involving ministers and SAGS, which will take an overview of the situation on a more national, strategic level, to ensure that what happens at the local level represents the needs of everybody, with a food-growing strategy that emphasises collaborative working.

A lot of levers will be pulled to ensure local and national collaboration. If everybody is in trenches taking pot shots at one another, we will not get anything done but, if we can manage to find common ground, we can deliver a system that will be practically implementable and which will reflect the views of people who want allotments. We want more people to have allotments, and we are not ashamed to say that. We have to make that happen in a way that everybody on the ground locally can accept.

I will add something about Cameron Buchanan’s amendment 1252. Leaving the size of allotments entirely for local authorities to determine goes against some of the debates that we have had, stakeholders’ views and what the community is asking us to do and consider. I hope that Cameron Buchanan will at least consider not moving that amendment.

I urge members to support amendments 1229 and 1230, as they are the better of two broadly similar options for determining the size of allotments. They are better for implementation and provide a more practical way of achieving the objectives, which we share.

Cameron Buchanan: Amendment 1252 would give local authorities the power to determine allotment sizes in their areas. I acknowledge and share the intention for allotment holders to have an allotment of a reasonable size, but we must recognise the need for flexibility, which is what I am trying to achieve. To allow allotments to be given to as many people as possible and to minimise waiting lists, which is important, the bill should make it clear that local authorities have the freedom to adjust allotment sizes to fit demand and supply in all local circumstances. That is the point of amendment 1252.

Alex Rowley: I should perhaps declare an interest, in that I am a keen allotment grower and have an allotment in Kelty. I have often discussed with council officials the fact that they need to be more innovative in engaging people in allotment growing.

In Kelty, over the past few years, a number of young mums with kids have been given an allotment. My allotment is bigger than half the size of this room, and the problem is that people find it difficult to maintain and manage an allotment of that size.

From talking to some of the parents, I have found that they want to get the message across to their kids about how food is grown and produced. There are interesting projects. For example, there is a community allotment, and NHS Fife has allotments for one of its mental health projects. However, I do not think that Fife Council has been ambitious enough.

When the size issue came up at stage 1, I did not quite grasp that an unforeseen consequence could be that, to meet the requirements in the bill, councils would start to have smaller allotments. I was thinking more about the fact that councils need to be more innovative and have starter plots, such as quarter or half plots. To do that, it is important that we define roughly what a plot is. Having since looked at the issue further and talked to allotment holders and the Scottish Allotments and Gardens Society, I think that there is rightly a genuine concern that councils will meet the bill’s requirements simply by reducing the size of plots, which would be devastating. I talked about starter plots because, as people get used to growing and managing an allotment and become more successful at it, they find that they want to grow more.

I hope that we can find a way to deal with the issue, and I think that the minister acknowledges that there is an issue. If possible, by working with the Government, we should find a way to have a maximum or ideal size, so that councils cannot simply reduce the size to meet the requirements in the bill.

Alison McInnes (North East Scotland) (LD): I am grateful to the committee for the opportunity to speak on this group of amendments. I want to take
a moment to reflect on the work that the committee has done on the issue. I am impressed by members’ efforts in seeking the views of allotment holders and other interested parties in taking evidence.

The many benefits of allotment gardening are now recognised. The active lifestyle, healthy eating and healthy ageing combined with community interaction mean that those with allotments reap all sorts of benefits. As many members have done, I have discussed the bill with the Scottish Allotments and Gardens Society, and I am sympathetic to its argument that we need specific provision for the size of allotments so that land is not unduly divvied up to meet demand, while retaining flexibility.

I therefore support Ken Macintosh’s amendment 1168, which would mean that a plot is 250m² unless the person seeking to lease the land requests that it be smaller. As Ken Macintosh said, the society notes that it has long been held that that is the size of plot that is needed to ensure that a family of four could grow most of their own fruit and vegetables. I know that the society believes that that will help ensure an appropriate balance between the needs of the allotment community and the needs of the local authority.

10:30

Stewart Stevenson: I want to pose some specific questions to Ken Macintosh about the definition of “approximately 250 square metres”. Does it include 25m², 100m², 200m², 300m², 500m²? In other words, how far does the approximation extend? If—for the sake of illustration and not because I advocate this—the definition were “between 200m and 300m”, that would be precise and it would be approximately 250m, but what the amendment actually says is “approximately 250 square metres”. It would be helpful to try to understand at what point something ceases to be approximately 250m. Is it as low as 25m? Is it as high as 500m? Those numbers are entirely arbitrary.

Ken Macintosh: I thank all members for their contributions to this set of amendments. I will deal with the points in reverse order and therefore start with Stewart Stevenson’s point. The word “approximately” is well used in legislation. It is used repeatedly in legislation and there is no difficulty for local authorities—or, for that matter, a court of law, if it came to it—in interpreting that word. I suggest that the term “approximately 250 square metres” is used, because the previous measures included measurements such as poles and other such long-gone units of measurement. The size of 250m² is one that has been agreed on not just by me and SAGS but by the Government. The Government accepts that 250m² is the standard size that we are trying to define. I suggest that Stewart Stevenson’s worries about how far the word “approximately” stretches are ill founded in this case.

The Convener: The minister is trying to intervene. Are you going to take his intervention?

Ken Macintosh: Sorry, yes of course. I did not hear him.

Marco Biagi: I am too softly spoken for my own good sometimes. I was wondering which legislation you looked at as the model for this and whether there is an interaction with “smaller than”, which seems to be an issue here. It is not just a case of where “approximately” kicks in—at 220m or 230m—because there is a subsequent reference to “smaller than” approximately 250m², which, if you will pardon my saying so, is a bit of a recipe for confusion. We would not want something as simple as the size of allotments to end up in court over the interpretation of the primary legislation.

Ken Macintosh: I was going to come on to that point next. One of the reasons why I have not brought several examples of the use of the word “approximately” is that there are so many that it was not worth my quoting or listing them. It is a well-used and well-founded term—it is used by the Scottish Government in fact. I do not accept that this will be a contentious issue. I do not believe that there will be a difficulty in either local authorities or allotment holders defining what is meant by “approximately 250 square metres.”

The minister said that the use of the term “a size smaller than” is not defined. I would suggest that it is very clear what “a size smaller than” means. I contrast his questioning of the definition of “a size smaller than” with his support for the amendment moved by Aileen McLeod that says up to 250m². What is the difference between up to 250m² and “a size smaller than” 250m²?

Marco Biagi: It is a difference between up to 250 and smaller than “approximately 250”. Where does something cease being smaller than approximately 250 and start being approximately 250? Is it 220? Is it 230? Is it 210? That is the doubt that is thrown up by the amendment, the aim of which I have great sympathy with.

The Convener: Minister?

Ken Macintosh: Minister? Thank you for that vote of confidence—if only it were the case.

The Convener: Sorry—Mr Macintosh. I beg your pardon.

Ken Macintosh: The minister’s point is fairly spurious. If you accept up to 250m², you can accept smaller than 250m².
Alex Rowley: I do not know whether I was picking it up correctly, but I understood that the Government was accepting the principle that there is a standard size of allotment. If we all accept the principle of that, can something be worked out with the Government?

Ken Macintosh: Indeed. That is a very helpful comment. In fact, I want to pick up on Mr Rowley's earlier comment as well. I believe that there is clearly good will and the minister has clearly been listening. He talked about listening to SAGS and others and working with them and I know that he has gone out of his way to meet them to try to address their concerns. I think that Alex Rowley captured the spirit of this discussion and of the minister's intention. I think that we can proceed from stage 2 to stage 3 and continue to collaborate and make sure that we agree on the definitions.

The point is that there is very little contention about the standard size of allotment. We are all agreed that it should be 250m². The issue comes back to two questions—one raised by Cameron Buchanan and the other by John Wilson—about flexibility and control. The amendments before us all offer flexibility but as regards flexibility and control, it is about who exercises the discretion. In one case, it is exercised entirely by the local authority. In the case of my amendments, it is exercised by the individuals. It is about empowering individuals and empowering communities.

John Wilson: The difficulty that I have with giving individuals that flexibility is that when individuals are offered an allotment by a local authority, they may take the size that the local authority gives because they may see that as the only option that they have.

My earlier suggestion to the minister was that the decision to offer smaller-sized allotments should be taken in conjunction with SAGS in that area so that there is no undermining of its authority that would diminish what we are trying to achieve in relation to the approximate 250m² allotment size. There is a danger that people might believe that they will only be offered 50m² or 100m² by the local authority without the consultation with SAGS that should exist; it should be assisting in the management of that allotment area.

Ken Macintosh: Mr Wilson makes a very good point. It is similar to the point that Mr Rowley made earlier, which is that there is undoubtedly a process of collaboration—in fact, the one that the minister alluded to—between local authorities, SAGS and plot holders. By innovative thinking about bringing in starter plots and so on and by making sure that the options are clearly spelled out to those who are applying for a plot, we can reach exactly the right solution.

What is crucial, and what is captured in my amendment and not in the other amendments, is that we put in place the protection that existing allotment holders believe they need. If you go to the Inverleith allotment, for example, and have a look round, you can see quite a few allotment plots that are the standard size, but you can also see rows and rows of sheds back to back, which is the result of subdivided plots, where people are being forced into ever smaller areas of land. It is not necessarily their choice and, in many cases, they would like to upsize, but they do not have that opportunity.

We are putting in the bill a particular legal obligation on councils to do something about waiting lists. Councils will be acutely aware of their legal responsibilities and will act on those to cut waiting lists. However, with that pressure to cut waiting lists, councils might take the easy option—if I may put it that way—and, rather than find the land that might be needed, take the existing allotments and cut them in half and cut them in half again. That is exactly what is happening at the moment and that is what allotment holders fear.

That is the fear that we have to address and I believe that the way to address it is by putting in some protection on the face of the bill—in the primary legislation—while working with the minister and SAGS as we approach stage 3 to further define and further refine how we approach this measure.

I urge members, in the spirit of the discussion of the measure, to support the amendments in my name. I press amendment 1164.

The Convener: The question is, that amendment 1164 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Wilson, John (Central Scotland) (Ind)

Against
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 1164 agreed to.
Amendment 1165 moved—[Ken Macintosh].

The Convener: The question is, that amendment 1165 be agreed to. Are we agreed?
Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Wilson, John (Central Scotland) (Ind)

Against
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 1165 agreed to.

Amendment 1166 moved—[Ken Macintosh].

The Convener: The question is, that amendment 1166 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Wilson, John (Central Scotland) (Ind)

Against
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 1166 agreed to.

Amendment 1167 moved—[Ken Macintosh].

The Convener: The question is, that amendment 1167 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Wilson, John (Central Scotland) (Ind)

Against
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 1167 agreed to.

The Convener: Amendment 1251, in the name of Cameron Buchanan, is grouped with amendments 1256, 1176, 1216, 1269 and 1217. I draw members’ attention to the fact that amendment 1256 pre-empts amendment 1176.

Cameron Buchanan: Amendment 1251 concerns making a profit out of an allotment.

I find it very difficult to know how one could define profit when selling produce. There are a number of provisions in the bill that seek to prohibit any profit being made from an allotment's produce. It is totally unclear to me why allotment users should be prevented from making a profit.

How does one define profit? Is it when they grow it, or when they buy the seeds? Is it not just the selling price? It is very difficult to define profit.

I think that it would be an issue if large retailers were taking up allotments to supply their stores, but that is not what this is about; they are not taking them up.

We are talking about members of the public who wish to enjoy the use of an allotment space to cultivate vegetables, fruits, herbs or flowers. If they happen to have excess produce and wish to sell it, who are we to forbid it? We heard the example of one person who is a member of SAGS: once a month everyone in their allotments got together to sell their produce openly on a particular day. It was not like a farmers market; it was in the allotments.

I think that, realistically, allotment users can take pride in selling the produce that they have worked hard to cultivate. Any profits gained from such sales are not intended for companies’ balance sheets, but are rather a small reward for the labours that allotment users have put in.

Furthermore, other areas of the bill seek to avoid waste of crops and to allow for compensation where it is due. To simultaneously prohibit any sale of an allotment's produce seems to be contradictory.

For the avoidance of doubt, my amendments in this regard intend to make it clear that allotment holders may sell their produce for a profit if they wish. Small sales for relatively small amounts of money are not a cog in a corporate supply chain but a chance for waste to be avoided and for compensation for hard work to be obtained where it is deserved.

I move amendment 1251.

10:45

Marco Biagi: The amendments from Cameron Buchanan would result in surplus produce on allotments being able to be sold for profit. In addition, they would remove the ability of local authorities to include provisions about the sale of surplus produce in regulations about allotments. That would prevent local authorities from taking
account of local factors in determining how surplus produce on the allotments in their area may be sold.

The amendments could have the unintended consequence of bringing allotment holders within the scope of the Agricultural Holdings (Scotland) Act 1991, as such production could fall within the definition of “agricultural land”, which includes land that is being used “for the purposes of a trade or business.”

That would mean that allotments could fall under an entirely different statutory regime that is not tailored specifically to them.

Additionally, the Scottish Allotments and Gardens Society has argued very strongly that the purpose of an allotment is to provide self-sufficiency and good food rather than being a means to provide additional income. SAGS considers that any proceeds from sale should only go back to the allotment association to be reinvested in that community of allotment holders.

Amendments 1176, 1216 and 1217, in the name of Dr McLeod, loosen the provisions relating to the sale of surplus produce. The amendments remove the need for Scottish ministers to prescribe what produce may be sold and will allow produce of any type to be sold subject to any regulations that are made by a local authority. The amendments do not affect the definition of an allotment, which will still need to be used otherwise than with a view to making a profit.

Alex Rowley: I am trying to get one point straight in my mind. I know that, during the growing season, some allotments have a table with people selling produce, not only for the allotment committee but to cover the cost of seeds and heating for bringing the plants on. Would that be able to continue?

Marco Biagi: The bill is specifically intended to allow the sale of surplus produce on a not-for-profit basis. That was a request from stakeholders, and we are trying to ensure that that remains the case. If allotments become essentially small agricultural businesses, that would completely change their nature and the type of legislation that they would fall under.

Cameron Buchanan: I do not need to say any more on the subject. I press amendment 1251.

The Convener: The question is, that amendment 1251 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)

Against
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 1251 disagreed to.

The Convener: Amendment 1229, in the name of Aileen McLeod, was debated with amendment 1164. I remind members that amendments 1229 and 1168 are direct alternatives, which means that although both can be agreed to, the text that would be inserted by amendment 1168 will replace that which would be inserted by amendment 1229. In addition to that, if either amendment is agreed to, amendment 1252 cannot be called.

Amendment 1229 moved—[Marco Biagi].

The Convener: The question is, that amendment 1229 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Against
Buchanan, Cameron (Lothian) (Con)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 1229 disagreed to.

Amendment 1168 moved—[Ken Macintosh].

The Convener: The question is, that amendment 1168 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Wilson, John (Central Scotland) (Ind)
Against
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 1168 agreed to.

Section 68, as amended, agreed to.

Section 69 agreed to.

After section 69

Amendment 1230 moved—[Marco Biagi]—and agreed to.

Section 70—Request to lease allotment

The Convener: Amendment 1169, in the name of Aileen McLeod, is grouped with amendments 1170, 1193 and 1194.

Marco Biagi: The bill currently allows for “a disabled person who has a physical impairment” to include information about their needs on the ground of disability when making a request for an allotment, and requires the local authority to include in its annual allotment report information about “the number of allotments ... that are accessible” and which have been adjusted during the year to be “accessible by a disabled person who has a physical impairment”.

In recognition that the provisions should acknowledge a broader definition of disability, amendments 1169, 1193 and 1194 seek to remove the reference to “a physical impairment” and ensure that the provision makes broader reference to “a disabled person”.

Section 70(3) already allows a disabled person who is making a request to lease an allotment to include information about their needs relating to access to an allotment or allotment site, and about possible adjustments to an allotment that might be needed on the ground of disability. Amendment 1170 seeks to extend that provision to ensure that when a disabled person makes a request for an allotment, the request may also include information about possible adjustments to the allotment site that would be needed by that person on the ground of disability. That will enable local authorities to ensure that opportunities for growing food on allotments are open to all, including people who have disabilities, and that authorities are assisted in that by being made aware of any adjustments that might be needed.

The amendments will ensure that the allotments provisions support the equality agenda, so I hope that the committee will support them.

I move amendment 1169.

Stewart Stevenson: I hope that in his concluding remarks the minister will confirm that the disablements in question include those that are temporary or intermittent. After all, I am sure that we would wish to extend those rights to people in that category.

Marco Biagi: The reference to “a disabled person” in the amendments will cover anyone who is disabled, temporarily or otherwise, but I am happy to check that.

Amendment 1169 agreed to.

Amendment 1170 moved—[Marco Biagi]—and agreed to.

The Convener: Amendment 1253, in the name of Cameron Buchanan, is in a group on its own.

Cameron Buchanan: As members can see, amendment 1253 is quite a simple amendment that seeks to speed up the process for members of the public who apply to lease an allotment. As many submissions point out, it can take a long time for people to move up the allotment waiting list; the last thing that they need is unnecessary delay in getting the process started. As a result, I propose that the time within which the local authority must confirm receipt of a request to lease an allotment be reduced from a lengthy 28 days to a more reasonable 14 days.

I move amendment 1253.
Marco Biagi: As Cameron Buchanan has made clear, amendment 1253 seeks to reduce the time for confirming receipt of a request to lease an allotment from 28 to 14 days, and I am happy to support it.

Amendment 1253 agreed to.

Section 70, as amended, agreed to.

Section 71 agreed to.

10:56
Meeting suspended.

11:05
On resuming—

Section 72—Duty to provide allotments

The Convener: Amendment 1254, in the name of Cameron Buchanan, is grouped with amendments 1171, 1255 and 1192.

Cameron Buchanan: Amendment 1254 is another probing amendment. I am all for the principle that waiting lists should be kept as small as possible so that the time that it takes for people to be given an allotment is minimised. That follows on from my amendment 1253. However, I am concerned that the target of maintaining on the waiting list a number that is "no more than one half the total number of allotments owned and leased by the authority" will have unwanted consequences that distort incentives. Can the minister assure me that the target will not create an incentive for local authorities to refuse requests to join the waiting list?

I move amendment 1254.

Ken Macintosh: I will speak to my amendment 1171 and in favour of Alex Rowley’s amendment 1255.

Section 72 places on local authorities a legal duty to provide allotments and to take action to deal with waiting lists. It does so by requiring councils to ensure that the number of people who are waiting for plots is no greater than "half the number of allotments owned and leased by the authority".

My amendment 1171 would put in place an additional caveat or stipulation that no one should wait more than five years.

Amendment 1255, in the name of my colleague Alex Rowley, would ensure that plots are created near the communities that need them—particularly otherwise socioeconomically deprived communities.

The Scottish Allotments and Gardens Society estimates that average plot turnover for most allotments is about 5 per cent a year. Even with the 50 per cent trigger point in the bill, that could easily mean waiting 10 or more years for a plot. Several witnesses have testified that the current waiting time in Edinburgh, for example, is between seven and 10 years.

My amendment 1171 would create an additional trigger point, or time limit, of five years. SAGS believes that that is a reasonable request that would not place an undue burden on local authorities. I believe that it originally wanted the amendment to stipulate a period of three years, but it was willing to compromise on five years. Under the bill, when the trigger point is reached, local authorities are required only to take reasonable steps to make additional provision. There are no absolute deadlines by which additional provision must be in place.

I am sure that members are aware of the many benefits that allotments provide to the community. People need plots for healthy food, to help to recover from physical or mental illness, as a family activity with their children or when facing unemployment or retirement. Allotments offer opportunities for all those who wish to enjoy the benefits of gardening and working in the outdoors.

This is also an issue of social justice. People in areas of multiple deprivation often do not have access to gardens, and they should not have to wait for 10 years for an allotment. It is also important that, in meeting their needs, the geographic area that we consider is the local community rather than the entire local authority area. That is the focus of Alex Rowley’s amendment 1255, which I also urge members to support.

I understand that some local authorities are concerned about the availability of land and the cost of developing allotments, but those fears can be addressed. Very little land is required to fulfil current demand, even in the major cities. To continue the sport analogy that was used earlier, an area the size of a football pitch would satisfy the current demand from a settlement of 10,000 people, and Edinburgh’s entire waiting list of more than 2,500 people could be accommodated on an area of land that is less than that which is required for a golf course.

If land is provided and local authorities work in partnership with allotment associations, the funding that is required to create allotments can be generated from a variety of sources and need not put a strain on local authority finances. I ask members to agree to amendments 1171 and 1255.
Alex Rowley: Amendment 1255 is supported by the Scottish Allotments and Gardens Society. The bill currently sets the trigger point above which local authorities are required to take reasonable steps to provide additional allotments.

Amendment 1255 seeks to set a limit on the geographical area to which the trigger point would apply. It proposes that the allocation of allotments should be organised around communities rather than entire local authority areas. I feel that the inclusion in the bill of a trigger point will be ineffective if those who have registered an interest in gaining access to an allotment are told that they can get an allotment only in a location that is unsuitable by virtue of its being too far from their community. For example, if someone in Ballingry in my constituency was told that they could have an allotment along in Methil, that would involve two bus rides and it would take them an hour or so to get there and back. Such an arrangement would not be practical, even though the allocated allotment would be within the local authority area. Therefore, a provision such as the one that is proposed in amendment 1255 is needed.

Under a health and wellbeing and food-growing strategy, people should be able to access an allotment in their community without having to drive to it or to rely on a bus or some other form of public transport to get there. I do not feel that amendment 1255 would place an undue burden on local authorities, and I think that it would help to solidify the trigger-point principle that is contained in the bill.

In relation to Ken Macintosh’s amendment 1171, five years seems like a long time to wait, but I know that in some communities, particularly in the cities, some people have to wait even longer. I support the proposed provision.

I commend the Government for dealing with allotments in the bill, and I hope that it will spur local authorities to recognise the importance of the food-growing strategies. I also hope that, in time, the idea of having to wait for five years for an allotment will seem quite alien, but for now such a provision is necessary.

Marco Biagi: The amendments in the group take different approaches to waiting lists and the provision of allotments.

I am aware that members of the Scottish Allotments and Gardens Society have experienced great variability in the performance of local authorities in meeting their current duty to provide allotments. In developing the bill, the Government looked at various ways of framing a revised duty—by timescale, by demand or by population. A key point is that the bill will, for the first time, require local authorities to maintain a waiting list so that demand for allotments is absolutely clear, and we have linked the duty to take reasonable steps to provide allotments to the number of people on the waiting list. Making a link with a clear demand for allotments seems to us to be the most appropriate way to frame the duty.

I recognise that the turnover of allotments can be slow; SAGS has sought an additional timescale-based measure. However, local authorities have expressed the view that linking the duty to a specific timescale would create a substantial practical burden, which is why we have not added a timescale to the duty and why I cannot support Ken Macintosh’s amendment 1171.

What we propose in amendment 1192, in the name of my colleague Dr McLeod, is that a local authority must include in its annual allotments report the number of persons who have been on its waiting list for a continuous period of more than five years. We believe that that would lead to substantial pressure to ensure that the number is kept down. Amendment 1192 will be supplemented by supporting guidance on the bill that will detail expectations about waiting times, and it will ensure that people in the community and elsewhere are all able to monitor a local authority’s performance.

Based on the information that is available to us, we believe that that provision, in tandem with a strengthened duty to take reasonable steps to provide allotments, has the potential to deliver almost 1,000 additional allotments, once the bill is enacted. I believe that our proposal strikes an appropriate balance between the desire to shorten the time that people have to wait for an allotment and the abilities of local authorities.

I note that it is ironic that, at the Convention of Scottish Local Authorities convention that Ken Macintosh and I attended on Friday, he made some comments about the Scottish Government wishing to dictate to local authorities from on high and to engage in centralised decision making. I believe that our proposed measures in this area strike the right balance between practicality and local autonomy.

11:15

In addition, Dr McLeod has made a commitment to establish a tripartite group that will meet annually. It will include the Scottish ministers, local authorities and the Scottish Allotments and Gardens Society. That group will assess the progress that has been made on implementation of part 7 of the bill and will, we hope, help to foster the more trusting, positive and constructive working relationship that I referred to earlier.

Furthermore, the Government will use the duty in the bill to develop a food-growing strategy as a
way to progress a constructive partnership between all parties, including local authorities, SAGS and community growers. We expect that one of the key areas of discussion will be—I do not think that anybody would deny that it will be—the road map for how local authorities will deliver, take reasonable steps and meet the requirement to carry forward the provisions in the bill.

One of the risks that was raised with us was that, if local authorities are under pressure to provide more allotments, allotments might be provided in locations that are distant from the people who want them. Alex Rowley’s amendment 1255 would make it explicit that allotments should be provided where they are wanted. That seems to be a matter of common sense, so I am happy to support the amendment.

Cameron Buchanan’s amendment 1254 would move the bill in completely the opposite direction from what the Government and Ken Macintosh, in particular, are trying to achieve, by lengthening a potential waiting list before the local authority was required to take steps to provide more allotments. I do not know whether Cameron Buchanan supports that flexibility and longer waiting lists, which would be at odds with Ken Macintosh’s amendments, but to clarify the point that he raised, no grounds are set out in the bill for refusing a request to go on a waiting list for an allotment. Therefore, there is no question of perverse incentives being created.

As Cameron Buchanan has got that clarification from me, I ask him to seek to withdraw amendment 1254, and I ask Ken Macintosh—perhaps more in hope than expectation—not to move amendment 1171. I urge members to support the amendment.

Amendment 1254, by agreement, withdrawn.

The Convener: Does Mr Macintosh wish to move or not move amendment 1171?

Ken Macintosh: Can you clarify, convener, whether I get a chance to sum up?

The Convener: No—you must move or not move the amendment.

Amendment 1171 moved—[Ken Macintosh].

The Convener: The question is, that amendment 1171 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Wilson, John (Central Scotland) (Ind)

Against
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 1171 agreed to.

Amendment 1255 moved—[Alex Rowley]—and agreed to.

Section 72, as amended, agreed to.

After section 72

The Convener: Amendment 1172, in the name of Aileen McLeod, is in a group on its own.

Marco Biagi: Amendment 1172 will require local authorities to provide reasonable access for tenants of allotments and allotment sites.

Nourish Scotland told the committee:

"Less ground is being used for allotments in Scotland than there is derelict land in Edinburgh."—[Official Report, Local Government and Regeneration Committee, 5 November 2014; c 26.]

Tackling waiting lists is vital to sustaining a new generation of allotment gardeners. Low turnover is, of course, an indication of success in this case, and Alex Rowley is right to stress the need for provision for folks in their local community.

Amendments 1171 and 1255 could foster the process of land reform and encourage local authorities to perceive vacant land as a resource that should be utilised whenever possible.

Cameron Buchanan: It was certainly not my intention to lengthen the waiting lists; it was more to prescribe that they would not stay the same. In view of the minister’s assurance, I seek to withdraw amendment 1254.

Amendment 1254, by agreement, withdrawn.

The Convener: Does Mr Macintosh wish to move or not move amendment 1171?

Ken Macintosh: Can you clarify, convener, whether I get a chance to sum up?

The Convener: No—you must move or not move the amendment.

Amendment 1171 moved—[Ken Macintosh].

The Convener: The question is, that amendment 1171 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Buchanan, Cameron (Lothian) (Con)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Wilson, John (Central Scotland) (Ind)

Against
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 1171 agreed to.

Amendment 1255 moved—[Alex Rowley]—and agreed to.

Section 72, as amended, agreed to.
reasonable access would be to that site and allotments situated on it. That is a restatement of section 15 of the Allotments (Scotland) Act 1922 as amended and, therefore, will not result in an additional burden on local authorities.

The amendment implements in part one of the five-point propositions put forward by the Scottish Allotments and Gardens Society, which sought basic infrastructure including, among other things, paths.

I move amendment 1172.

Amendment 1172 agreed to.

Section 73—Allotment site regulations

The Convener: Amendment 1173, in the name of Aileen McLeod, is grouped with amendment 1174.

Marco Biagi: Amendment 1173 will require local authorities to make regulations that include a method of determining a fair rent.

Following extensive discussion with SAGS, amendment 1173 builds on an initial requirement on local authorities to make regulations about allotment sites in their areas, including provisions relating to rent, and to develop the regulations through extensive consultation. The amendment will require a local authority, in setting its rent levels, to take account of

"services provided by, or on behalf of, the local authority to tenants of allotments ... the costs of providing those services ... and circumstances that affect, or may affect, the ability of a person to pay the rent".

Therefore, amendment 1173 will further ensure that people who are on low incomes will not be dissuaded from participating in growing food on allotments on the basis of a lack of affordability.

Amendment 1174, which was lodged by Ken Macintosh, would introduce requirements on regulations about rent that have some similarity to the provisions of amendment 1173, lodged by Aileen McLeod. I would say only that great minds sometimes think alike. However, the amendment in the name of Dr McLeod goes one step further than Mr Macintosh’s proposal and, in effect, defines affordability as

"circumstances that affect, or may affect, the ability of a person to pay the rent payable under the lease of an allotment".

I recognise Mr Macintosh’s desire to have a statement published by an authority about how affordability has been considered, as provided for in proposed subsection (3B) that amendment 1174 would insert into section 73. Local authorities are, of course, already required to consult before making allotment regulations and such a statement could be included in the consultation document. However, if members are concerned that a statement about affordability should be made more explicit, I am happy to consider that with a view to my colleague Dr McLeod lodging an amendment at stage 3.

I urge members to support amendment 1173, in Dr McLeod’s name, which seeks to achieve broadly the same thing as Ken Macintosh seeks to achieve but does it with more precision and stronger safeguards.

I ask Ken Macintosh, having made his point and, perhaps, expressed his agreement—a great sense of consensus is breaking out on the committee—not to move his amendment 1174.

I move amendment 1173.

Ken Macintosh: Allotment and plot holders have long benefited from the protection of a fair rent clause and I suspect—or, at least, I hope—that it was simply an oversight that no such provision appeared in the bill. Without such a provision, there would be nothing to prevent a local authority from increasing rents to generate additional funds, or simply to use rent as a tool to price people off their allotments, thereby enabling it to reduce its waiting list.

Although they are worded differently, the only essential difference between the two amendments in the group is the addition of the reporting provision in amendment 1174, which would ensure transparency in the rent-setting process.

I thank the minister for his comments and his acceptance of the fair rent principle. Fair rent is a social justice issue. A fair rent that takes into account ability to pay will enable people in deprived areas who wish to do so to contribute to their own food supply. It will help community groups to afford to cultivate a plot. In addition, local allotment associations will be able to work with local authorities to determine the level of services required and therefore the rent for the site. Such devolved management incorporates the basic principles of community empowerment and partnership working.

As the minister also alluded to, allotments can contribute to Government policy on food, social justice, health and wellbeing, reducing carbon emissions and enhancing the natural environment. I think that we are all agreed that rents should be set to enable those who are on a low income to participate and not be excluded. I urge members to support either of the amendments in the group. I believe that the only difference is that one has a reporting provision, but both capture the essence of fair rent.

Marco Biagi: To provide a slight insight, the concern about the existing fair rent provision is that it is not precisely defined and there is no understanding out there or in legislation about
what fair rent is or how it can be tested. That emphasises the importance of having fairly precise legislation on the issue. The amendment in the name of Aileen McLeod uses the phrase “fair rent”, which makes the intention clear and will allow the level of acceptance from the community that we really need in allotments legislation.

I hope that members will support amendment 1173, given the commitment to include a reporting clause at stage 3.

Amendment 1173 agreed to.

Amendment 1174 not moved.

The Convener: Amendment 1175, in the name of Aileen McLeod, is grouped with amendments 1177, 1190, 1191 and 1218.

Marco Biagi: This is a group of minor amendments relating to allotment site regulations, annual reports and the removal of items from an allotment by the tenant.

Amendment 1175 simply tidies the drafting and removes repetition. Amendment 1177 relates to section 73(5), which provides that local authority regulations “may make different provision for different areas or different types of” allotment sites. The amendment removes the words “types of” so that different regulations can be made for any allotment site.

Amendments 1190 and 1191 are about the annual report that local authorities will be required to prepare and publish under section 79. Under section 79(2)(c), local authorities will have to set out the proportion of land on each site that is used for allotments—as opposed to communal areas in the site—that is not leased from the authority. The amendments will split the paragraph to ensure that information about the proportion of allotments that are unlet is reported for sites on which a local authority leases allotments directly and for sites that a local authority leases to one person, such as an allotment association, that then subleases the allotments.

Section 88 sets out the items that a tenant may remove from an allotment before the end of the lease, which include

“any buildings (or other structures) erected by or on behalf of the tenant”.

Amendment 1218 will expand the section to include

“any buildings (or other structures) acquired by the tenant”.

I ask the committee to support the amendments in the group.

I move amendment 1175.

Amendment 1175 agreed to.

The Convener: Amendment 1256, in the name of Cameron Buchanan, was debated with amendment 1251. I remind members that, if amendment 1256 is agreed to, I cannot call amendment 1176.

Amendment 1256 moved—[Cameron Buchanan].

The Convener: The question is, that amendment 1256 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Buchanan, Cameron (Lothian) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 1256 disagreed to.

Amendments 1176 and 1177 moved—[Marco Biagi]—and agreed to.

Section 73, as amended, agreed to.

Section 74 agreed to.

Section 75—Disposal etc of allotments and allotment sites owned by local authority

The Convener: Amendment 1178, in the name of Aileen McLeod, is grouped with amendments 1179, 1181, 1182, 1184, 1185, 1187 and 1188.

11:30

Marco Biagi: The amendments in this group relate to circumstances in which a local authority proposes to dispose of, or change the use of, an allotment site that it owns, or proposes to renounce the lease or change the use of an allotment site that it leases. The majority of the amendments clarify that the provisions apply whether the local authority’s proposals relate to the whole or part of the allotment site.

The current provisions require a local authority in such circumstances to offer a tenant of an allotment an alternative allotment in the local authority area, unless ministers were to be satisfied that that is unnecessary or not reasonably practicable. Amendments 1182 and 1188 broaden the duty to include that a tenant may be offered an allotment on the same allotment site, as well as an alternative site, so that if only part of a site is disposed of, the tenant
may be offered an alternative allotment on the same site.

I ask the committee to support the amendments.

I move amendment 1178.

Amendment 1178 agreed to.

Amendment 1179 moved—[Marco Biagi]—and agreed to.

The Convener: Amendment 1180, in the name of Aileen McLeod, is grouped with amendments 1183, 1257, 1186, 1189, 1258 and 1266 to 1268. I draw members’ attention to the information about pre-emption in the list of groupings.

Marco Biagi: The allotment community has made it clear that allotment sites should be protected whether they are on land that is owned by a local authority or land that is leased by a local authority. That position has been supported through public consultation. We have been listening and have included provisions in the bill that build on the existing protection against change of use of allotments without ministerial consent, which is provided in section 73 of the Local Government (Scotland) Act 1973.

The provisions in the bill as set out at sections 75 and 76 provide protection for allotments against disposal, change of use and, where the land is leased by a local authority for allotments, renunciation of the lease without the Scottish ministers’ consent. In addition, section 84 provides protection against the resumption of possession of the whole or part of an allotment or an allotment site that is let by a local authority without the Scottish ministers’ consent. In each case, the Scottish ministers’ consent may be granted only where each tenant is to be offered an alternative allotment, unless that is unnecessary or not reasonably practicable.

Amendments 1180 and 1186, in the name of Aileen McLeod, will in addition require Scottish ministers to consult the local authority and any other person appearing to have an interest before making any such decision about providing consent. That will allow all parties to have their say on the proposals.

Amendments 1183 and 1189 clarify the consequences of an authority transferring ownership or renouncing a lease of an allotment site without ministerial consent. They provide that such a transfer or renunciation will have no effect without ministerial consent.

Cameron Buchanan’s amendments in this group would remove the requirement for local authorities to obtain the Scottish ministers’ consent before disposing of, changing the use of, renouncing the lease of or resuming possession of an allotment site. Removing that requirement for ministerial consent would be contrary to everything that allotment holders have told us they want in terms of protecting allotment sites from closure, and I urge the committee to reject those amendments.

I ask the committee to support amendments 1180, 1183, 1186 and 1189.

I move amendment 1180.

Cameron Buchanan: Amendment 1257 seeks to enable a local authority to dispose of, or change the use of, an owned allotment site independently without needing the consent of the Scottish ministers. I think that that would be a productive change for two reasons. First, removing the need for ministerial consent would prevent allotment sites from being stuck in a deadlock between opposing local and national Administrations. Secondly, it is likely that local authorities would be less willing to open up new allotment sites if they were, from then onwards, unable to decide what to do with the land themselves. If local authorities were able to decide for themselves what to do with the allotment sites, which is what my amendments would achieve, more sites might be opened up for use. With control staying in their hands, local authorities would be more likely to be willing to use the land as allotment sites in the first place.

Stewart Stevenson: I have some technical questions. It would be helpful if the minister could confirm that the definition of land includes water, as it does elsewhere in legislation—be that standing water, river water, ditch water, tidal water or water in any other form. Also, will the amendments and the bill in general prevent the acquisition of allotment land and its removal from the allotment site for purposes of wayleave or by the Ministry of Defence or other United Kingdom bodies that have rights to acquire land?

The Convener: Mr Stevenson is keeping you on your toes, minister, as usual.

Marco Biagi: Yes. Believe it or not, the standard legal definition of land includes water. Section 75, which is the subject of our concern here, is on “allotment sites”, which are defined in section 69 as

“land consisting wholly or partly of allotments”.

I will consult the lawyers later to check, but I assume that if there was a stream running through an area that was comprised

“wholly or partly of allotments”,

that would be included as part of the overall allotment site, which would be the bit that was being operationalised under the bill.

Stewart Stevenson: Just to make it clear, my concern is primarily that the paths of rivers can vary and nature can modify what is on an
allotment site. That is the particular context that I have in mind, although there could be others.

Marco Biagi: I undertake to go away and reflect on that issue. There is an allotment site next to a body of water in my constituency. Were that site to flood, I am not sure what the effects would be in legislation, but I am happy to think about that.

Amendment 1180 agreed to.

Amendments 1181 to 1183 moved—[Marco Biagi]—and agreed to.

Amendment 1257 not moved.

Section 75, as amended, agreed to.

Section 76—Disposal etc of allotments and allotment sites leased by local authority

Amendments 1184 to 1189 moved—[Marco Biagi]—and agreed to.

Amendment 1258 not moved.

Section 76, as amended, agreed to.

Section 77—Duty to prepare food-growing strategy

The Convener: Amendment 1259, in the name of Cameron Buchanan, is grouped with amendments 1260, 1262 and 1263.

Cameron Buchanan: Amendment 1259 would replace the word “must” with “may”, to avoid making the provision too prescriptive. That is really all that I have to say.

I move amendment 1259.

Marco Biagi: Amendment 1259, as was stated, would replace the duty on each local authority to prepare a food-growing strategy, instead making the power optional. Amendments 1260, 1262 and 1263 would remove the duties on local authorities to publish a food-growing strategy and review it at least every five years.

I have heard from allotment holders that they have experienced variable performance by local authorities in delivering on the current duty to provide allotments, and that in some cases they have found it difficult to engage with their authority on the issue. The duty to prepare and review a food-growing strategy is a key way of bringing together the allotment community with local authorities and community growers as a means of developing and progressing positive partnerships and relationships between all those parties. In a public consultation in November 2013, there was strong agreement from respondents that local authorities should have a duty to produce a food-growing strategy and review it at least every five years.

If it were made an option for each local authority to prepare a food-growing strategy, local authorities would not be required to describe how they intend to increase provision of allotments to meet their duty to take reasonable steps to meet demand.

I add that, in the light of our previous discussions about the power to advance wellbeing, there is nothing to prevent a local authority right now from using its discretion to create and implement a food-growing strategy. Therefore, if Cameron Buchanan’s amendments were agreed to, it would make no difference whether the duty was in the bill at all. It is important that the duty remains and that we make local authorities accountable in relation to it.

I ask Mr Buchanan to withdraw amendment 1259 and not to move the other amendments in the group.

Cameron Buchanan: Amendment 1259 would remove the obligation on local authorities to prepare a food-growing strategy. It would be very burdensome for local authorities to have that obligation, and fulfilling it would detract from their other duties. The amendment would make it a possibility rather than a necessity.

I lodged the amendments in the group to remove the obligation on local authorities to prepare and publish a food-growing strategy, on the basis that it would be burdensome. A better use of local authorities’ time and resources would be to focus on providing allotments and minimising waiting lists, rather than their having to compile documents to comply with a centrally imposed duty.

I am sure that most people would agree that local authorities should be judged on their ability to provide and maintain allotments rather than on their ability to compile a document. Should a certain council wish to spend its resources on publishing a food-growing strategy, that should be a decision for that council to make, hence the idea of making the requirement a “may” rather than a “must”.

I press amendment 1259.

The Convener: The question is, that amendment 1259 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Buchanan, Cameron (Lothian) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)
The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 1259 disagreed to.
Amendment 1260 not moved.

The Convener: Amendment 1261, in the name of Alex Rowley, is grouped with amendment 1265.

Alex Rowley: People can use an allotment plot to grow healthy food, to help to recover from physical or mental illness, as a family activity with their children, when facing unemployment or retirement or simply because they enjoy growing food and giving it away. Allotments offer an opportunity for all those who wish to enjoy the benefits of gardening and working in the outdoors.

Amendment 1261 will ensure that, as part of a local authority’s duty to prepare a food-growing strategy and identify land that it considers may be used for allotment sites and/or community cultivation, it will be required to describe whether and how that will increase provision in areas that are affected by socioeconomic disadvantage. In many senses, that links to the local community plans, because there are many healthy eating strategies and healthy eating or cooking projects that already exist as part of local authorities’ health and wellbeing approach. The amendment would simply mean that local authorities would identify particular areas of disadvantage. Communities in which there are high levels of disadvantage should have access to growing sites, so it is important that local authorities identify that as part of their food-growing strategy.

11:45

Amendment 1265 will ensure that local authorities pay particular regard to communities in which there is a high level of socioeconomic disadvantage when they are looking to promote allotments and provide training to tenants or potential tenants. The amendment will ensure that those communities that might benefit the most from allotments but often contain the hardest-to-reach citizens know about allotments and have the skills and training to be able to access them.

I move amendment 1261.

Marco Biagi: Mr Rowley is right to point out the connection between the amendments that the Government lodged on community planning and these ones. I welcome the fact that they will develop the theme of ensuring that the provisions explicitly address socioeconomic disadvantage and inequalities.

We know that, when people have the opportunity to grow their own food, it can help to tackle food poverty and issues with physical and mental health and social isolation. The amendments will ensure that local authorities think about the areas that experience socioeconomic disadvantage when they are looking at the provision of allotments and other land for community growing.

Growing your own food benefits everyone and amendment 1265 will encourage local authorities to promote allotments and provide related training to disadvantaged communities to ensure that they see it as something that is for them.

The lawyers tell me that they might need to look at the wording at stage 3. I see Mr Rowley nodding; he knows and those sorts of caveats will be quite familiar to him by now. I urge the committee to support a helpful set of amendments.

Alex Rowley: Yes. We seem to be in agreement, minister. Making this part of the community planning approach is right. We will see what happens at stage 3. I will press the amendment.

Amendment 1261 agreed to.
Amendment 1262 not moved.
Section 77, as amended, agreed to.

Section 78—Duty to review food-growing strategy
Amendment 1263 not moved.
Section 78 agreed to.

Section 79—Annual allotments report
Amendments 1190 to 1194 moved—[Marco Biagi]—and agreed to.
Section 79, as amended, agreed to.
Section 80 agreed to.

Section 81—Delegation of management of allotment sites

The Convener: Amendment 1195, in the name of Aileen McLeod, is grouped with amendments 1196, 1197 and 1264.

Marco Biagi: Section 81 allows a person representing the interests of allotment tenants, such as an allotment association, to request that a local authority delegates management functions of an allotment site to them. All the amendments in the group are minor adjustments to that section.

Amendment 1195 clarifies the allotment sites to which the section applies. Amendment 1197 is a consequential amendment to remove duplication. Amendment 1196 makes clear that the person applying for delegation of the management of a site should represent all or a majority of the tenants.
I turn to the amendments in the name of Cameron Buchanan. A further provision of section 81 enables a local authority to agree to or refuse the request. If the local authority refuses the request, it must provide reasons for its decision. Amendment 1264, which was lodged by Mr Buchanan, would require that the reasons for refusing the request be “valid”. It is not necessary to include the word “valid”. Local authorities are already under a common-law duty to act reasonably and make rational decisions or face the risk of judicial review. Both the taking of decisions about delegation of management and the duty to give reasons must be exercised reasonably, and the offering of invalid reasons would be quite a strong example of not acting reasonably. In addition, it is unclear who is to determine what constitutes a “valid” reason for refusing a request. The inclusion of “valid” in that context is unnecessary and it also creates a lack of clarity. I therefore ask Cameron Buchanan not to move amendment 1264.

I ask the committee to support amendments 1195 to 1197, in the name of Aileen McLeod. I move amendment 1195.

Cameron Buchanan: My reason for lodging amendment 1264, which is a probing amendment, was that I wanted to see whether a local authority would send an applicant a decision notice setting out the reasons for refusal. I just wanted some clarification on that.

Marco Biagi: As I said, if the local authority were to offer invalid reasons, or reasons that were not worthy of respect or were unreasonable, there would be consequences. I therefore consider the word “valid” to be unnecessary.

Amendment 1195 agreed to.

Amendments 1196 and 1197 moved—[Marco Biagi]—and agreed to.

Amendment 1264 not moved.

Section 81, as amended, agreed to.

Section 82—Promotion and use of allotments: expenditure

Amendment 1265 moved—[Alex Rowley]—and agreed to.

Section 82, as amended, agreed to.

After section 82

The Convener: Amendment 1198, in the name of Aileen McLeod, is in a group on its own.

Marco Biagi: This group of amendments is to clarify the provisions in sections 83 and 84.

Section 83—Termination of lease of allotment or allotment site

The Convener: Amendment 1199, in the name of Aileen McLeod, is grouped with amendments 1200 to 1205. I draw members’ attention to the information shown on the list of groupings about pre-emptions in the group.

Marco Biagi: This group of amendments is to clarify the provisions in sections 83 and 84.

Section 83(1) sets out the circumstances in which a local authority may terminate the lease of an allotment or an allotment site. Amendments 1199, 1200 and 1201 clarify that those
circumstances override any provision in the lease to the contrary about termination of the lease and that they are the only circumstances in which a lease can be terminated.

Section 84(2) sets out the circumstances in which a local authority may resume possession of the whole or part of an allotment or allotment site and requires that the Scottish ministers give consent to resumption. Amendments 1202 and 1203 clarify that those circumstances override any provision in the lease to the contrary about resumption and that they are the only circumstances in which possession may be resumed. Amendments 1204 and 1205 have the effect of providing that it is the giving of notice of resumption to which the Scottish ministers must consent rather than the resumption itself.

I ask the committee to agree to these clarifying amendments, and I move amendment 1199.

Amendment 1199 agreed to.

Amendments 1200 and 1201 moved—[Marco Biagi]—and agreed to.

Amendment 1206 moved—[Marco Biagi].

12:00

The Convener: The question is, that amendment 1204 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

Against
Buchanan, Cameron (Lothian) (Con)

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

Amendment 1204 disagreed to.

Section 84, as amended, agreed to.

Section 85—Notice of termination: sublease

The Convener: Amendment 1206, in the name of Aileen McLeod, is grouped with amendments 1207 to 1214.

Marco Biagi: This group of amendments is to clarify the provisions of sections 85 and 86.

Section 85 deals with the arrangements for notice of termination where a local authority leases an allotment site from another person and receives notice of termination of that lease. Amendment 1206 clarifies that section 85 applies where the local authority leases an allotment site and has granted a sublease either to an allotment association for the whole site or to an individual for an allotment. Amendments 1207 and 1208 clarify that the notice received by the local authority may relate to the termination of either the whole or part of its lease. Amendments 1209 and 1210 set out that the affected subtenants should be notified of the date of termination and that their subleases are terminated on that date.

Section 86 deals with arrangements for notice of termination where the local authority leases a site to a tenant, such as an allotment association, who represents the interests of subtenants.

Amendments 1211 to 1213 clarify the circumstances in which section 86 applies and that the notice may relate to either the whole or part of an allotment site.

Amendment 1214 sets out that, in these circumstances, the tenant must notify each subtenant of the date that the whole or part of the lease is terminated and that their sublease is terminated on that date.

I ask the committee to agree to these clarifying amendments. I move amendment 1206.
Amendment 1206 agreed to.

Amendments 1207 to 1210 moved—[Marco Biagi]—and agreed to.

Section 85, as amended, agreed to.

Section 86—Notice of termination: sublease by allotment association

Amendments 1211 to 1214 moved—[Marco Biagi]—and agreed to.

Section 86, as amended, agreed to.

Before section 87

The Convener: Amendment 1215, in the name of Aileen McLeod, is in a group on its own.

Marco Biagi: Convener, I will reacquaint you with your old friend, the Allotments (Scotland) Act 1892. Amendment 1215 restates, with some amendments, section 7(3) of the 1892 act, which prohibits the subletting of allotments by a tenant. The amendment expands that provision to include the prohibition of assignation of an allotment without the local authority’s consent. In addition, the amendment identifies the consequence of such transactions being that they are of no effect.

Given that the provisions in part 7 of the bill will provide greater transparency of the actions that a local authority is taking to meet demand for allotments in its area and that an authority will be required to report annually on its allotment provision, it is essential that a local authority is able to identify who is responsible for growing food on and the upkeep of an allotment in its area. Amendment 1215 will ensure that local authorities are able to identify the tenant of an allotment.

I move amendment 1215.

Amendment 1215 agreed to.

Section 87—Sale of surplus produce

Amendment 1216 moved—[Marco Biagi]—and agreed to.

Amendment 1269 not moved.

Amendment 1217 moved—[Margo Biagi]—and agreed to.

Section 87, as amended, agreed to.

Section 88—Removal of items from allotment by tenant

Amendment 1218 moved—[Marco Biagi]—and agreed to.

Section 88, as amended, agreed to.

Section 89—Compensation for disturbance

The Convener: Amendment 1219, in the name of Aileen McLeod, is grouped with amendments 1220, 1221, 1270 and 1222.

Marco Biagi: The amendments in Dr McLeod’s name in this group are minor and technical.

Section 91 provides that if a local authority resumes possession of an allotment, or part of an allotment, the local authority is required to compensate the tenant for loss of any crop by the tenant as a result of the resumption. The period of notice required for resumption, under section 84, is “at least three months”.

Amendments 1219 and 1220 adjust the provisions to provide that it is the local authority that gives notice, or which has received notice of termination of its own lease of the site, that is liable to pay compensation to the tenant. That will ensure that it is the local authority with which the tenant has the lease that is responsible for paying compensation, even if the local authority has granted a lease outwith its own area.

Amendments 1221 and 1222 make minor corrections.

I ask the committee to support the amendments in Aileen McLeod’s name.

Amendment 1270, which was lodged by Cameron Buchanan, would provide that a local authority would not be liable to pay a tenant compensation for loss of a crop “where the tenant had a reasonable opportunity to remove the crop prior to the resumption”.

I argue that the three-month notice period specified in the bill is a “reasonable opportunity”, if the crop is harvested or ready for harvest at the right time.

However, amendment 1270 fails to take account of the seasonal cycle of food production on allotments. Some crops may have just been put in the ground at the time of the notice being served and so may not be ready for harvest once the notice period is up. Also, fruit trees are normally planted in late autumn or early winter, if there is no ground frost, and would not yield a crop until the summer, so a period of notice given at a point during the planting season and even into early spring would mean that a tenant who had made the investment in a tree would suffer a loss of crop.

Section 91 requires Scottish ministers to make regulations about compensation for loss of crops following resumption and to consult before making those regulations. The regulations must make provision for the procedure for compensating for loss of crops and for an assessment of the amount
of compensation for which the authority is liable. That provides safeguards both for the local authority and for tenants. The regulations will be an important piece of legislation to get right.

I ask Cameron Buchanan not to move amendment 1270.

I move amendment 1219.

Cameron Buchanan: In view of the minister’s comments, I do not wish to speak to amendment 1270.

Amendment 1219 agreed to.

Amendment 1220 moved—[Marco Biagi]—and agreed to.

Section 89, as amended, agreed to.

Section 90—Compensation for deterioration of allotment

Amendment 1221 moved—[Marco Biagi]—and agreed to.

Section 90, as amended, agreed to.

Section 91—Compensation for loss of crops

Amendment 1270 not moved.

Section 91 agreed to.

Section 92—Set-off of compensation etc

Amendment 1222 moved—[Marco Biagi]—and agreed to.

Section 92, as amended, agreed to.

Section 93 agreed to.

After section 93

The Convener: Amendment 1223, in the name of the minister, is grouped with amendment 1224.

Marco Biagi: I am delighted to speak to amendments 1223 and 1224.

Amendment 1223 provides a new regulation-making power that will enable ministers to require Scottish public authorities—including the Scottish Government—to promote and facilitate the participation of members of the public in the authority’s decisions and activities, including the allocation of its resources. We believe that that will support participatory budgeting in particular.

We know that involving people and communities in decision making helps to build community capacity and also helps the public sector to identify local needs and target budgets more effectively. We also know that decisions that are taken closer to people and through the participation of those who are affected are better decisions. It is clear that, when people know that they have a genuine say in an issue that matters, they will get involved. Our job is to make it clear that their voice matters. A key concern for the committee, and a big concern for me, is how we can give people and communities more opportunity to have their say in the decisions that matter to them in order to make real the objective of community empowerment.

The intention is that the new power will ensure that participatory activity takes place and that the associated guidance will drive the quality and depth of that participatory activity over time. I wanted any legislative solution to have the flexibility to build up, change and develop over time. Given the different functions, budgets and structures of public authorities, I knew that having a single approach would not work.

Amendment 1223 will ensure not only that, through the regulations, promotion and facilitation of participation by Scotland’s public bodies will take place, but that we will be able to refine the regulations so that the participation is relevant for the activities of each public body in its distinct role. In addition, through the regulations, ministers will be able to require public bodies to prepare and publish a report describing the steps that they have taken to promote and facilitate participation.

Amendment 1223 also provides that public bodies will have to regard to any guidance on the matter that is issued by the Scottish ministers.

We have committed to refreshing and renewing the national standards for community engagement, and they will be prominent in the process. However, we will also need to develop guidance on other aspects, including participatory budgeting—about which I have spoken on many occasions and for which I am a terrific enthusiast—and how public bodies can ensure that the decisions that they take on budgets and grants can be developed to encompass meaningful participation.

All of that will be a challenge for public bodies, but local government and other public authorities increasingly use a range of community engagement activities to seek views on their activities, plans and service delivery.

There has been tremendous interest in the Scottish Government’s offer of training and support for participatory budgeting exercises, with more than half of Scotland’s councils taking up the offer. In the next year, the money to be allocated through participatory budgeting methods—if everything goes through—potentially runs into the millions. The range and degree of participation from people and communities can vary considerably. The new power will lead to greater consistency and will improve the quality of that
participation over time. It will not happen from day 1, but it will happen. The Parliament will continue to have a role to play as we move forward with this agenda.

Amendment 1224 provides that any regulations laid under the new section to be inserted by amendment 1223 will be subject to the affirmative procedure.

I look forward to developing and implementing participatory budgeting, which will be a major strand of the community empowerment agenda. I hope that the committee will be keen to work with us.

I move amendment 1223.

12:15

Alex Rowley: I am happy to support amendment 1223. Participatory budgets need to have a meaning that people can identify with.

I hope that, in the coming weeks as we move towards stage 3, we can have a discussion about some of the amendments on locality planning, which complement the idea of participatory budgeting. Children’s services and education take up 50-odd per cent of a local authority’s budget; if we include health and social care, the figure can increase to 70-odd per cent. If there was a formula in place such that 1 per cent of a local authority’s budget was down at the community level, more people would take part in participatory budgeting because they would be able to identify their priorities and the budget to finance those priorities.

I know that there are some good examples of participatory budgeting. However, a concern for me is that, sometimes, it is a bit like the wee green token that you get as you leave Asda, which you have to stick into one of three pots. Participatory budgeting has to be about a lot more than that. If amendment 1223 can work alongside amendments that we have already agreed to, we could enhance participation. People would be able not only to set their local priorities but to finance some of them. I welcome the amendment.

The Convener: Bravo, minister. I think that a lot of folk out there will applaud amendment 1223. The committee will continue to scrutinise the provision as the bill process continues.

Marco Biagi: I will briefly reflect on a point that Mr Rowley made. I am aware of the supermarket exit form of deciding charitable donations, in which it is noticeable that certain causes do better than others. However, that is not a participative process. It does not bring people together to have the discussion and put cases forward, and it is quite a shallow form of engagement. In public decision making, we want to get past shallow forms of engagement and achieve much deeper forms of participation.

Mr Rowley is right to say that a great deal of a budget can be taken up by statutory requirements. However, we do not want a participatory budgeting process in which a community comes together and decides that it no longer wants to spend any money on having a school. Clearly, some things are obligations. It is in the area of discretionary spend—the priority given to maintenance or expansion, for example—where participatory budgeting offers real opportunities to ensure that budgets target local needs.

John Wilson: Does the minister agree that, when it comes to participatory budgeting, communities need to know about the larger resources? He used the example of a school, and it might be helpful if communities, in their discussions with local authorities and other agencies, were made aware of the bigger-spend items, how they impact on those communities and where the participatory element of budgets could be better utilised to complement those services. The alternative is to ignore totally the fact that many people in communities do not realise where the bulk of the resources spent by local government and other agencies goes in supporting and delivering services for communities.

Marco Biagi: I agree. People need to realise how the spend that they decide on relates to everything else. Ultimately, we hope that the result will be everyone pulling in the same direction.

Amendment 1223 offers a tremendous opportunity to re-empower people and to give our spirit of democratic renewal some real teeth, so that people are able not just to go along and be consulted on something, but to participate directly in decision making. That is a completely different level of involvement.

I am glad that the committee is so enthusiastic, and I press amendment 1223.

Amendment 1223 agreed to.

Section 94—Schemes for reduction and remission of non-domestic rates

The Convener: Amendment 1271, in the name of Cameron Buchanan, is in a group on its own.

Cameron Buchanan: I agree that the rating authority should have regard to the interests of persons liable to pay council tax set by the authority before reducing or remitting non-domestic rates. As it stands, however, section 94 suggests that any loss of income due to non-domestic rate cuts would have to be offset from other income raised by the authority.
My amendment seeks to clarify that, before reducing or remitting non-domestic rates, a rating authority should have regard to its own expenditure, income and financial sustainability. In other words, rating authorities could accommodate any change in income due to non-domestic rate cuts by reviewing either their expenditure or their income.

I move amendment 1271.

**Marco Biagi:** Amendment 1271 would add to the test in the bill, which requires a council to have regard to the interests of persons liable to pay council tax, as well as to the council’s wider statutory financial obligations.

The amendment would make explicit that councils have to have regard to their income and expenditure when exercising the local rates relief power. I think that councils would do so as a matter of course, given the framework and statutory obligations that they operate under, but I am content to support the amendment to reinforce the point in law.

**Cameron Buchanan:** I thank the minister for agreeing to my point.

Amendment 1271 agreed to.

**Section 94—Subordinate legislation**

**The Convener:** Amendment 1224, in the name of the minister, is in a group on its own.

**Marco Biagi:** The Delegated Powers and Law Reform Committee recommended that, where there are powers for ministers to amend the lists of bodies that are subject to the provisions of the bill, those powers should be subject to affirmative, rather than negative, procedure. I agree that changes to the bodies included could make a significant change to the scope of the bill’s powers, so I am happy to make that change to the procedure.

Amendment 1087 provides that changes to the list of public service authorities, in relation to participation requests, and changes to the list of relevant authorities, in relation to asset transfer requests, will be subject to affirmative procedure. It also provides for affirmative procedure where the Scottish ministers specify a relevant authority as subject to local authority review of its decisions in the first instance, rather than ministerial appeal.

Members will remember that that power was discussed last week, as a measure to assist the inclusion of ALEOs in asset transfer.

I move amendment 1087 and ask members to support it.

**Stewart Stevenson:** I am happy to support the amendment, but I invite the minister to take away for further consideration and discussion with colleagues the thought that, as a matter of good practice, when Governments amend lists by secondary legislation, they should consider publishing the entire amended list in the update. There have been occasions where lists have been amended more than 20 times and it is then all but impossible to work out what the list looks like, as there is no central list of the lists to which reference can be made.

I do not ask the minister for a commitment at this stage, but I ask that he considers the matter.

**Marco Biagi:** I will take that away for consideration. If I am still the minister when the first amendment to the list is made, I will be sure to put the suggestion into practice.

Amendment 1087 agreed to.

**The Convener:** Amendment 1038 was debated with amendment 1015, on day 1 of stage 2, on 4 March 2015.

Amendment 1038 moved—[Marco Biagi]—and agreed to.

**The Convener:** That is our biggest ever skipping back to a discussion on an amendment.

Amendment 1224 moved—[Marco Biagi]—and agreed to.

Amendment 1071 moved—[Alex Rowley]—and agreed to.

Sections 96, as amended, agreed to.

Sections 97 and 98 agreed to.

**Schedule 4—Minor and consequential amendments**

**The Convener:** Amendment 1225, in the name of Aileen McLeod, is grouped with amendments 1226 to 1228.

**Marco Biagi:** So that other antiquated acts do not feel lonely—and bearing in mind the convener’s love of the 1892 act—I note that amendment 1225 seeks to deal with the Small Landholders (Scotland) Act 1911, the Compensation (Defence) Act 1939, the Agriculture (Scotland) Act 1948 and the Opencast Coal Act 1958, all of which contain various references to allotments. As the committee might imagine, we have to update quite a few references in previous legislation as a result of the bill. Amendment 1225 seeks to insert into schedule 4, which sets out minor and consequential amendments to other legislation, additional consequential amendments that have been identified since the bill was introduced, while amendments 1226, 1227 and 1228 insert into schedule 5, which sets out
existing legislation to be repealed as a consequence of the bill’s provisions, additional repeals to existing legislation that again have been identified since the bill was introduced.

I move amendment 1225.

Amendment 1225 agreed to.

Amendments 1039 to 1041 moved—[Marco Biagi]—and agreed to.

The Convener: Before I put the question on schedule 4, I remind members that we are agreeing to the schedule as amended by the Rural Affairs, Climate Change and Environment Committee as well as by this committee today. The Rural Affairs, Climate Change and Environment Committee agreed to amendments 38 to 41, 88, 46, 47 and 57.

Schedule 4, as amended, agreed to.

Schedule 5—Repeals

Amendments 1226 to 1228 and 1042 moved—[Marco Biagi]—and agreed to.

The Convener: Before I put the question on schedule 5, I remind members that we are agreeing to the schedule as amended by the Rural Affairs, Climate Change and Environment Committee as well as by this committee today. In this case, the Rural Affairs, Climate Change and Environment Committee agreed to amendment 42.

Schedule 5, as amended, agreed to.

Sections 99 and 100 agreed to.

The Convener: Although this committee does not have any amendments to the long title to consider, I remind members that the Rural Affairs, Climate Change and Environment Committee agreed to one amendment to the long title, which was amendment 43. As a result, we are agreeing to the long title as amended by that amendment.

Long title, as amended, agreed to.

The Convener: That ends stage 2 consideration of the bill. The version of the bill as amended at stage 2 will be available from tomorrow morning. I should also say that stage 3 amendments may also be lodged from tomorrow, although we do not yet know when stage 3 will take place.

I thank everyone for their participation. We now move into private session, and I appeal to folks who are leaving to do so quickly.

12:29

Meeting continued in private until 12:35.
Community Empowerment (Scotland) Bill

1st Marshalled List of Amendments for Stage 2
(Rural Affairs, Climate Change and Environment Committee)

The Bill will be considered in the following order—

Sections 27 to 49
Sections 95 to 98
Schedules 4 and 5
Sections 99 to 100
Long title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 27

Aileen McLeod
12 In section 27, page 14, line 18, leave out <mineral rights to oil, coal, gas, gold or silver which are> and insert <a separate tenement which is>

Aileen McLeod
13 In section 27, page 14, line 19, leave out <they are> and insert <it is>

Aileen McLeod
14 In section 27, page 14, line 19, at end insert <(subject to subsection (2A))>

Aileen McLeod
15 In section 27, page 14, line 21, leave out from beginning to <includes> in line 22

Aileen McLeod
16 In section 27, page 14, line 24, at end insert <(other than rights to oil, coal, gas, gold or silver)>

Aileen McLeod
17 In section 27, page 14, line 26, after <exigible> insert <is not “excluded land” (and so is land in which a community interest may be registered under this Part)>

Section 28

Aileen McLeod
18 In section 28, page 14, line 34, leave out <or (1A)> and insert <, (1A) or (1B)>

Aileen McLeod
19 In section 28, page 15, line 3, at end insert—

<(  ) in paragraph (c), for “20” substitute “10”,
(  ) for paragraph (d) substitute—}
“(d) provision that at least three quarters of the members of the company are members of the community,”.

Aileen McLeod

20 In section 28, page 15, line 26, leave out <20> and insert <10>

Aileen McLeod

21 In section 28, page 15, line 27, leave out <the majority of the members of the SCIO is to consist of> and insert <at least three quarters of the members of the SCIO are>

Aileen McLeod

22 In section 28, page 15, line 42, at end insert—

<(1B) A body falls within this subsection if it is a community benefit society the registered rules of which include the following—

(a) a definition of the community to which the society relates,

(b) provision enabling the society to exercise the right to buy land under this Part,

(c) provision that the society must have not fewer than 10 members,

(d) provision that at least three quarters of the members of the society are members of the community,

(e) provision under which the members of the society who consist of members of the community have control of the society,

(f) provision ensuring proper arrangements for the financial management of the society,

(g) provision that, on the request of any person for a copy of the minutes of a meeting of the society, the society must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,

(h) provision that, where a request of the type mentioned in paragraph (g) is made, the society—

(i) may withhold information contained in the minutes, and

(ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and

(i) provision that any surplus funds or assets of the society are to be applied for the benefit of the community.”.

Aileen McLeod

23 In section 28, page 16, line 1, leave out <or (1A)(c)> and insert <, (1A)(c) or (1B)(c)>

Aileen McLeod

24 In section 28, page 16, line 3, leave out <and (1A)> and insert <, (1A) and (1B)>

Aileen McLeod

25 In section 28, page 16, line 16, at end insert—
"community benefit society" means a registered society (within the meaning of section 1 of the Co-operative and Community Benefit Societies Act 2014) registered as a community benefit society under section 2 of that Act,
“registered rules” has the meaning given by section 149 of that Act (as that meaning applies in relation to community benefit societies).

Section 29

Aileen McLeod
26 In section 29, page 16, line 25, leave out <or constitution> and insert <, constitution or registered rules (as defined in section 34(8))>

Aileen McLeod
27 In section 29, page 16, line 38, leave out <or constitution> and insert <, constitution or registered rules (as defined in section 34(8))>

After section 29

Aileen McLeod
28 After section 29, insert—

Public notice of certain applications
In section 37 of the 2003 Act (registration of interest in land)—
(a) in subsection (4)(b), at the beginning, insert “(except in the case of a proposed application of the type mentioned in subsection (4B))”, and
(b) after subsection (4) insert—
“(4A) Ministers are not to be satisfied under subsection (3) in relation to a proposed application of the type mentioned in subsection (4B) unless the applicant community body has given public notice of the proposed application by advertising it in such manner as may be prescribed.

(4B) The type of proposed application is one to register a community interest in land consisting of salmon fishings, or mineral rights, which are owned separately from the land in respect of which they are exigible.”.

Section 30

Dave Thompson
Supported by: Sarah Boyack
48 In section 30, page 17, line 7, leave out <6> and insert <12>

Aileen McLeod
29 In section 30, page 17, line 8, at end insert—

<(2B) Ministers may by regulations amend subsection (2A) so as to substitute for the period of time for the time being specified there a different period of time.>
Section 31

Aileen McLeod

30 In section 31, page 17, line 10, leave out <in accordance with this section> and insert <as follows>

Aileen McLeod

31 In section 31, page 18, line 26, at end insert—

"(3ZA) Despite subsection (3), Ministers may decide that a community interest is to be entered in the Register even though the conditions in paragraphs (a) and (aa) of that subsection are not satisfied in relation to the interest, if Ministers are satisfied that there are good reasons—

(a) why the conditions are not satisfied, and

(b) for allowing the interest to be entered in the Register.>

Dave Thompson
Supported by: Sarah Boyack

50 In section 31, page 18, line 26, at end insert—

"(3ZA) Subsection (3) is subject to subsection (3ZB).

(3ZB) If the relevant work or relevant steps mentioned in paragraph (a) of subsection (3) is or are—

(a) not carried out, Ministers may disregard that paragraph and paragraph (aa) of that subsection provided they are satisfied that there is good and sufficient reason why that work was, or those steps were, not carried out,

(b) carried out but the requirements of sub-paragraph (i) of paragraph (aa) are not met, Ministers may disregard that sub-paragraph provided that they are satisfied that there is a good and sufficient reason why those requirements were not met.>

Alex Fergusson

49* In section 31, page 18, line 26, at end insert—

"(3ZA) Where this section applies in relation to an application, Ministers shall not decide that a community interest is to be entered in the Register if prior to the making of the application the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land has—

(a) made an offer to sell the land to the community body making the application, but the community body did not proceed with that offer,

(b) a process was begun to transfer the land to the ownership of the community body, but the community body did not proceed with that process.>

Dave Thompson
Supported by: Sarah Boyack

51 In section 31, page 19, line 5, leave out <subsection (3)> and insert <subsections (3) and (3ZB)>
After section 33

Dave Thompson  
Supported by: Sarah Boyack

44  After section 33, insert—

<Duration of registration>
In section 44 of the 2003 Act (duration and renewal of registration), in each of subsections (1) and (4), for the word “five” substitute “ten”.

Dave Thompson

52  After section 33, insert—

<Notification of expiry of registration period>
In section 44 of the 2003 Act (duration and renewal of registration), after subsection (1) insert—

“(1A) A community body which has registered a community interest will be notified by the Keeper of the date on which that period expires twelve months before that date occurs.”

Dave Thompson  
Supported by: Sarah Boyack

53  After section 33, insert—

<Renewal of registration>
In section 44 of the 2003 Act (duration and renewal of registration), for subsections (2) and (3) substitute—

“(2A) A community body which has registered a community interest may at any time within the year preceding the expiry of that period apply to Ministers, under this subsection, to re-register that interest.

(2B) On such an application, Ministers may direct the Keeper to re-enter the interest in the Register.

(2C) Without prejudice to the generality of subsection (2B) above, it is to be presumed that a direction will be given under that subsection where, in the opinion of Ministers, there has been no material change in circumstances since the community interest was first registered under section 37 above.

(2D) Ministers may by regulations prescribe—

(a) a form for any application under subsection (2A) above,
(b) the procedure to be followed in making and disposing of any such application,
(c) subject to the presumption mentioned in subsection (2C) above, the matters as to which Ministers must be satisfied if they are to make a direction under subsection (2B) above, and
(d) factors to which (with such other factors, if any, as Ministers think appropriate in any particular case) Ministers must have regard in determining whether there has been a material change in circumstances for the purposes of subsection (2C) above.
(2E) Before making any regulations under subsection (2D) above, Ministers must consult such persons or bodies as Ministers consider appropriate.

**After section 45**

Aileen McLeod

32 After section 45, insert—

*Appeals to Lands Tribunal as respects valuations of land*

1. Section 62 of the 2003 Act (appeals to Lands Tribunal: valuations) is amended as follows.

2. In subsection (7), after “reasons”, where it second occurs, insert “—

(a) within 8 weeks of hearing the appeal, or

(b) where subsection (7A) applies, by such later date referred to in paragraph (b)(ii) of that subsection.”.

3. After section (7) insert—

“(7A) This section applies where—

(a) the Lands Tribunal considers that it is not reasonable to issue a written statement mentioned in subsection (7) by the time limit specified in paragraph (a) of that subsection, and

(b) before the expiry of that time limit, the Lands Tribunal has notified the parties to the appeal—

(i) that the Tribunal is unable to issue a written statement by that time limit, and

(ii) of the date by which the Tribunal will issue such a written statement.”.

4. In subsection (8), for the words from “to” to the end of the subsection substitute “—

(a) to comply with the time limit specified in paragraph (a) of subsection (7) above, or

(b) to issue a written statement by the date referred to in paragraph (b) of that subsection.”.

**After section 47**

Aileen McLeod

33 After section 47, insert—

*Modifications of Part 3 of the Land Reform (Scotland) Act 2003*

**Crofting community bodies**

1. Section 71 of the 2003 Act (crofting community bodies) is amended as follows.

2. Before subsection (1), insert—

“(A1) A crofting community body is, subject to subsection (4)—

(a) a body falling within subsection (1), (1A) or (1B), or
(b) a body of such other description as may be prescribed which complies with prescribed requirements.”.

(3) In subsection (1)—

(a) for the words “crofting community body is, subject to subsection (4) below,” substitute “body falls within this subsection if it is”,
(b) in paragraph (b), after “land” insert “, the interest mentioned in section 69A(3)”,
(c) in paragraph (c), for “20” substitute “10”,
(d) for paragraph (d) substitute—

“(d) provision that at least three quarters of the members of the company are members of the crofting community,”,
(e) in paragraph (f), the words “and the auditing of its accounts” are repealed, and
(f) in paragraph (h)—

(i) after “land” insert “, interest in land”, and
(ii) in sub-paragraph (i), for the words “or community body” substitute “, community body or Part 3A community body (as defined in section 97D)”.

(4) After subsection (1), insert—

“(1A) A body falls within this subsection if it is a Scottish charitable incorporated organisation (a “SCIO”) the constitution of which includes the following—

(a) a definition of the crofting community to which the SCIO relates,
(b) provision enabling the SCIO to exercise the right to buy land, the interest mentioned in section 69A(3) and sporting interests under this Part,
(c) provision that the SCIO must have not fewer than 10 members,
(d) provision that at least three quarters of the members of the SCIO are members of the crofting community,
(e) provision under which the members of the SCIO who consist of members of the crofting community have control of the SCIO,
(f) provision ensuring proper arrangements for the financial management of the SCIO,
(g) provision that, on the request of any person for a copy of the minutes of a meeting of the SCIO, the SCIO must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,
(h) provision that, where a request of the type mentioned in paragraph (g) is made, the SCIO—

(i) may withold information contained in the minutes, and
(ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and

(i) provision that any surplus funds or assets of the SCIO are to be applied for the benefit of the crofting community.

(1B) A body falls within this subsection if it is a community benefit society the registered rules of which include the following—

(a) a definition of the crofting community to which the society relates,
(b) provision enabling the society to exercise the right to buy land, the interest mentioned in section 69A(3) and sporting interests under this Part,

c) provision that the society must have not fewer than 10 members,

d) provision that at least three quarters of the members of the society are members of the crofting community,

e) provision under which the members of the society who consist of members of the crofting community have control of the society,

f) provision ensuring proper arrangements for the financial management of the society,

g) provision that, on the request of any person for a copy of the minutes of a meeting of the society, the society must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,

h) provision that, where a request of the type mentioned in paragraph (g) is made, the society—

(i) may withhold information contained in the minutes, and

(ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and

(i) provision that any surplus funds or assets of the society are to be applied for the benefit of the crofting community.”.

(5) In subsection (2), after“(1)(c)” insert “, (1A)(c) or (1B)(c)”.

(6) After subsection (4), insert—

“(4A) Ministers may by regulations from time to time amend subsections (1), (1A) and (1B).

(4B) If provision is made under subsection (A1)(b), Ministers may by regulations make such amendment of section 72(1) in consequence of that provision as they consider necessary or expedient.”.

(7) In subsection (5)—

(a) after “(1)(a)” insert “, (1A)(a) or (1B)(a)”, and

(b) in paragraph (a)—

(i) in sub-paragraph (i), after “Act” insert “and who are entitled to vote in local government elections in the polling district or districts in which that township is situated”,

(ii) the word “or” immediately following sub-paragraph (i) is repealed,

(ii) in sub-paragraph (ii), for the words from “being” to the end of the paragraph substitute—

“(ii) are tenants of crofts in the crofting township whose names are entered in the Crofting Register, or the Register of Crofts, as the tenants of such crofts;

(iii) are owner-occupier crofters of owner-occupied crofts in the crofting township whose names are entered in the Crofting Register as the owner-occupier crofters of such crofts; or
(iv) are such other persons, or are persons falling within a class of such other persons, as may be prescribed;”.

(8) In subsection (6)—
   (a) for “(5)(a)(i)” substitute “(5)(a),
   (b) after “above” insert “—”, and
   (c) at the end insert—

   “‘owner-occupied croft’ has the meaning given by section 19B(5) of the Crofters (Scotland) Act 1993,
   “owner-occupier crofter” is to be construed in accordance with section 19B of that Act.”.

(9) In subsection (8)—
   (a) after “section” insert “—”, and
   (b) at the end insert—

   “‘community benefit society’ means a registered society (within the meaning of section 1 of the Co-operative and Community Benefit Societies Act 2014) registered as a community benefit society under section 2 of that Act,
   “registered rules” has the meaning given by section 149 of that Act (as that meaning applies in relation to community benefit societies),
   “Scottish charitable incorporated organisation” has the meaning given by section 49 of the Charities and Trustee Investment (Scotland) Act 2005.”.

Aileen McLeod

2 After section 47, insert—

<Modification of memorandum or articles of association or constitution

In section 72 of the 2003 Act (provisions supplementary to section 71)—
   (a) in subsection (1), for “or articles of association” substitute “, articles of association, constitution or registered rules (as defined in section 71(8))”, and
   (b) after subsection (2) insert—

   “(3) Subsection (2) does not apply if the crofting community body would no longer be entitled to buy the land because the land is not eligible croft land.

   (4) Where the power conferred by subsection (2) is (or is to be) exercised in relation to land, Ministers may make an order relating to, or to matters connected with, the acquisition of the land.

   (5) An order under subsection (4) may—

   (a) apply, modify or exclude any enactment which relates to any matter as to which an order could be made under that subsection,
   (b) make such modifications of enactments as appear to Ministers to be necessary or expedient in consequence of any provision of the order or otherwise in connection with the order.”.
Aileen McLeod

3 After section 47, insert—

<Application: information about rights and interest in land>

(1) Section 73 of the 2003 Act (application by crofting community body for consent to buy croft land etc.) is amended as follows.

(2) In subsection (5)—

(a) after “form” insert “, shall specify the persons mentioned in subsection (5ZA)”,

(b) in paragraph (b)—

(i) in sub-paragraph (i), after “application” insert “known to the crofting community body”, and

(ii) the words from “(ii)” to the end of the paragraph are repealed, and

(c) paragraph (f) is repealed.

(3) After subsection (5) insert—

“(5ZA)The persons are—

(a) the owner of the land,

(b) any creditor in a standard security over the land or any part of it with a right to sell the land or any part of it,

(c) the tenant of any tenancy of land over which the tenant has an interest,

(d) the person entitled to any sporting interests, in respect of which the right to buy is sought to be exercised.”.

(4) In subsection (11), for paragraphs (a) and (b) substitute “in such manner as may be prescribed”.

Aileen McLeod

4 After section 47, insert—

<Criteria for consent by Ministers>

In section 74 of the 2003 Act (criteria for consent by Ministers), in subsection (1)—

(a) the word “and” immediately following paragraph (m) is repealed, and

(b) after paragraph (n) insert—

“(o) that the owner of the land to which the application relates is accurately identified in the application,

(p) that any creditor in a standard security over the land to which the application relates or any part of it with a right to sell the land or any part of it is accurately identified in the application,

(q) in the case of an application made by virtue of section 69A(2), that the tenant whose interest is the subject of the application is accurately identified in the application, and

(r) that the person entitled to any sporting interests to which the application relates is accurately identified in the application.”.
After section 47, insert—

**<Ballot: information and expenses**

(1) Section 75 of the 2003 Act (ballot to indicate approval for the purposes of section 74(1)(m)) is amended as follows.

(2) After subsection (4) insert—

“(4A) Ministers may require the crofting community body—

(a) to provide such information relating to the ballot as they think fit, and

(b) to provide such information relating to any consultation with those eligible to vote in the ballot undertaken during the period in which the ballot was carried out as Ministers think fit.

(4B) Subject to subsection (6), the expense of conducting a ballot under this section is to be met by the crofting community body.”.

(3) After subsection (5) insert—

“(6) Ministers may by regulations make provision for or in connection with enabling a crofting community body, in such circumstances as may be specified in the regulations, to apply to them to seek reimbursement of the expense of conducting a ballot under this section.

(7) Regulations under subsection (6) may in particular make provision in relation to—

(a) the circumstances in which a crofting community body may make an application by virtue of that subsection,

(b) the method to be applied by Ministers in calculating the expense of conducting the ballot,

(c) the criteria to be applied by Ministers in deciding whether to make a reimbursement to the applicant,

(d) the procedure to be followed in connection with the making of—

(i) an application to Ministers,

(ii) an appeal against a decision made by Ministers in respect of an application,

(e) persons who may consider such an appeal,

(f) the powers of such persons.”.

**<Application by more than one crofting community body**

In section 76 of the 2003 Act (right to buy same croft land exercisable by only one crofting community body), for subsection (4)(b)(i) substitute—

“(i) each person invited, under section 73(8)(a), to send them views on the application,”.
After section 47, insert—

<Reference to Land Court of questions on applications>
In section 81 of the 2003 Act (reference to Land Court of questions on applications), in subsection (1)—

(a) after paragraph (b) insert—

“(ba) the owner of the land which is the subject of the application,

(bb) the person entitled to any sporting interests which are the subject of the application,”, and

(b) in paragraph (ca), after “interest”, where it first occurs, insert “—

(i) the tenant; and

(ii)”.

After section 47, insert—

<Valuation: views on representations and time limit>
In section 88 of the 2003 Act (assessment of value of croft land etc.)—

(a) after subsection (9), insert—

“(9A) Where written representations under subsection (9) are received—

(a) from the owner of the land, the tenant or the person entitled to the sporting interests, the valuer must invite the crofting community body which is exercising its right to buy the land, tenant’s interest or sporting interests to send its views on the representations in writing,

(b) from the crofting community body which is exercising its right to buy the land, tenant’s interest or sporting interests, the valuer must invite the owner of the land, the tenant or the person entitled to the sporting interests to send the views of the owner, tenant or (as the case may be) person on the representations in writing.

(9B) In carrying out a valuation under this section, the valuer must consider any views sent under subsection (9A).”, and

(b) in subsection (13), for the word “6” substitute “8”.

After section 47, insert—

<Compensation>
In section 89 of the 2003 Act (compensation), for subsection (4) substitute—

“(4) Ministers may, by order, make provision for or in connection with specifying—

(a) amounts payable in respect of loss or expense incurred as mentioned in subsection (1),
(b) amounts payable in respect of loss or expense incurred by virtue of this Part by a person of such other description as may be specified,
(c) the person who is liable to pay those amounts,
(d) the procedure under which claims for compensation under this section are to be made.”.

Aileen McLeod

10 After section 47, insert—

<Land Court: reasons for decision under section 92

In section 92 of the 2003 Act (appeals to Land Court: valuation)—

(a) in subsection (5), for the words “within 4 weeks of the hearing of the appeal” substitute “—

(a) within 8 weeks of the hearing of the appeal, or
(b) where subsection (5A) applies, by such later date referred to in paragraph (b)(ii) of that subsection.”,

(b) after subsection (5) insert—

“(5A) This subsection applies where—

(a) the Land Court considers that it is not reasonable to issue a written statement mentioned in subsection (5) by the time limit specified in paragraph (a) of that subsection, and
(b) before the expiry of that time limit, the Land Court has notified the parties to the appeal—

(i) that the Land Court is unable to issue a written statement by that time limit, and
(ii) of the date by which the Land Court will issue such a written statement.”, and

(c) in subsection (6), for the words from “to” to the end of the subsection substitute “—

(a) to comply with the time limit specified in paragraph (a) of subsection (5) above, or
(b) to issue a written statement by the date referred to in paragraph (b) of that subsection.”.

Aileen McLeod

11 After section 47, insert—

<Meaning of creditor in standard security with right to sell

After section 97A of the 2003 Act insert—

“97B Meaning of creditor in standard security with right to sell

Any reference in this Part to a creditor in a standard security with a right to sell land is a reference to a creditor who has such a right under—

(a) section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970, or
(b) a warrant granted under section 24(1) of that Act.”.

Section 48

Michael Russell 34  In section 48, page 29, line 15, at end insert <, or

( ) otherwise in substantial need of sustainable development.>

Sarah Boyack 54  In section 48, page 29, leave out lines 27 to 29

Michael Russell 35  In section 48, page 31, line 30, leave out <Abandoned or Neglected> and insert <Eligible>

Michael Russell 36  In section 48, page 33, line 19, leave out <wholly or mainly abandoned or neglected> and insert <eligible land for the purposes of this Part>

Michael Russell 37  In section 48, page 35, line 4, leave out <wholly or mainly neglected or abandoned> and insert <eligible land for the purposes of this Part>

Dave Thompson 45  In section 48, page 36, leave out lines 15 to 17 and insert—

<( ) that the achievement of sustainable development in relation to the land would be unlikely to be furthered by the owner of the land continuing to be its owner,>

Schedule 4

Aileen McLeod 38  In schedule 4, page 80, line 10, leave out <in accordance with this paragraph> and insert <as follows>

Aileen McLeod 39  In schedule 4, page 80, line 11, at end insert—

<( ) in subsection (4)(a), after “sought” insert “to be registered”,>

Aileen McLeod 40  In schedule 4, page 81, line 16, leave out <“or 94” substitute “> and insert <“78 or 94” substitute “72(4), 78,>

Aileen McLeod 41  In schedule 4, page 81, line 17, leave out <or (4A)> and insert <, (4A) or (4B), 38(2B), 71(A1)(b), (4A) or (4B),>
Dave Thompson  
**Supported by: Sarah Boyack**

55 In schedule 4, page 81, line 17, after  
\(<\left(4A\right),>\) insert  
\(<\left(2D\right),>\)

Michael Russell

46 In schedule 4, page 81, line 18, at end insert—

\(<\left(\right)\>\) after subsection (5) insert—

“\(\left(5A\right)\) In making any decision under Part 2, 3 or 3A, Ministers are to have regard to the International Covenant on Economic, Social and Cultural Rights (adopted and opened to signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966).”,>

Graeme Dey

47 In schedule 4, page 81, line 18, at end insert—

\(<\left(\right)\>\) after subsection (5) insert—

“\(\left(5B\right)\) Where a community body is seeking to acquire land under Part 2, 3 or 3A, Ministers may, on being requested to do so by the owner of the land or by the community body, take such steps as Ministers consider appropriate for the purpose of arranging, or facilitating the arrangement of, mediation with regard to the proposed acquisition.”,>

Claudia Beamish

56 In schedule 4, page 81, line 19, at end insert—

\(<\left(\right)\>\) after subsection (8), insert—

“\(\left(9\right)\) A community body which has made a written application under Part 2, 3 or 3A may, at any time before the application is disposed of, correct in writing a clerical or other non-material error in that application.”,>

Claudia Beamish

57 In schedule 4, page 81, line 19, at end insert—

\(<\left(\right)\>\) After section 98 insert—

“\(98A\) **Special application of certain provisions of Parts 2 and 3A**

(1) This section applies to any provision of Part 2 or 3A of this Act which includes the words “before the end of the period of 7 days”, “within 7 days” or “within the period of 7 days”.

(2) Ministers may determine, where they are satisfied that there is a good and sufficient reason for doing so, that in the application of the provision to a particular case, the 7 days in question are to be extended to 14 days.

(3) Where Ministers make a determination under subsection (2), they must issue their determination in writing accompanied by a statement of their reasons for being satisfied that there are good and sufficient reasons to extend the period.”,
Schedule 5

Aileen McLeod

42 In schedule 5, page 82, line 7, leave out <, (6) and (8)> and insert <and (6)>

Long title

Aileen McLeod

43 In the long title, page 1, line 3, leave out <Part 2> and insert <Parts 2 and 3>
Community Empowerment (Scotland) Bill

1st Groupings of Amendments for Stage 2
(Rural Affairs, Climate Change and Environment Committee)

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the first day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Nature of land in which community interest may be registered under Part 2 of 2003 Act: separate tenements**
12, 13, 14, 15, 16, 17

**Ways in which community bodies and crofting community bodies may be constituted**
18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 33, 2, 40

**Salmon fishings and mineral rights: public notice of certain applications under Part 2 of 2003 Act**
28

**Period for indicating approval under section 38 of 2003 Act**
48, 29

**Minor amendments in relation to Parts 2 and 3 of 2003 Act (including procedure for certain regulations)**
30, 38, 39, 41, 43

**Late applications for registration under Part 2 of 2003 Act**
31, 50, 49, 51

**Duration and renewal of registration under Part 2 of 2003 Act**
44, 52, 53, 55

**Appeals to Lands Tribunals as respects valuations of land under Part 2 of 2003 Act**
32, 42
Information to be included in application under Part 3 of 2003 Act
3

Criteria for Ministerial consent under Part 3 of 2003 Act
4

Ballots under Part 3 of 2003 Act
5

Application by more than one crofting community body
6

References to Land Court under Part 3 of 2003 Act etc.
7, 10

Valuations under Part 3 of 2003 Act
8

Part 3 of 2003 Act: compensation for certain losses
9

Meaning of creditor in standard security with right to sell in Part 3 of 2003 Act
11

Abandoned and neglected land
34, 54, 35, 36, 37, 45

Ministers to have regard to International Covenant on Economic, Social and
Cultural Rights
46

Acquisitions of land under Parts 2, 3 or 3A of 2003 Act: mediation
47

Applications under Parts 2, 3 or 3A of 2003 Act: correction of errors
56

Parts 2 and 3A of 2003 Act: extension of periods of 7 days to 14 days in certain
circumstances
57
Present:

Christian Allard (Committee Substitute)  Claudia Beamish
Sarah Boyack  Graeme Dey (Deputy Convener)
Alex Fergusson  Rob Gibson (Convener)
Jim Hume  Angus MacDonald

Apologies were received from Dave Thompson.

Community Empowerment (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 1).

The following amendments were agreed to (without division): 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11.

The following amendments were moved and, no member having objected, withdrawn: 48 and 44.

The following amendments were not moved: 50, 49, 51, 52 and 53.

The following provisions were agreed to without amendment: sections 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46 and 47.

The following provisions were agreed to as amended: sections 27, 28, 29, 30 and 31.

The Committee ended consideration of the Bill for the day amendment 11 having been disposed of.
On resuming—

**Community Empowerment (Scotland) Bill: Stage 2**

**The Convener:** The third item on our agenda today is to begin our consideration of amendments to part 4 of the Community Empowerment (Scotland) Bill at stage 2.

I welcome the ofﬁcials joining the Minister for Environment, Climate Change and Land Reform— and I welcome the minister again. The ofﬁcials are: Dave Thomson of the Scottish Government’s land reform and tenancy unit; Elizabeth Connell, a Scottish Government lawyer; and David McLeish, who is parliamentary counsel.

Everyone should have with them a copy of the bill as introduced, the marshalled list of amendments, which was published on Monday, and the groupings, which sets out the amendments in the order in which they will be debated.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in the group to speak to and move that amendment, and to speak to all the other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate that by catching my eye. If the minister has not already spoken on the group, I will invite her to contribute to the debate just before moving to the winding-up speech.

The debate on each group will be concluded by me inviting the member who moved the first amendment in the group to wind up. Following the debate on the group, I will check whether the member who moved the amendment wishes to press it to a vote or to withdraw it. If the member wishes to press ahead, I will put the question on the amendment. If a member wishes to withdraw their amendment after it has been moved, I will check whether any other member objects. If any committee member does object, the amendment is not withdrawn and the committee must immediately move to vote on it.

If any member does not wish to move their amendment when it is called, they should say “Not moved.” Any other MSP present may move such an amendment. If no one moves the amendment, however, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote. Voting on any division is by show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote. The committee is required to indicate formally that it has considered and agreed each section of the bill, so I will put a question on each section at the appropriate point.

We have agreed to consider sections 27 to 47 and any amendments inserting new sections after section 47 today. If we do not get that far, we will stop at an appropriate point and pick up where we left off next week.

**Section 27—Nature of land in which community interest may be registered**

**The Convener:** We start with group 1, which is on the nature of land in which community interest may be registered under part 2 of the 2003 act—separate tenements. Amendment 12, in the name of the minister, is grouped with amendments 13 to 17.

**Aileen McLeod:** The provisions of the Land Reform (Scotland) Act 2003 state at section 33(1), in part 2:

“The land in which a community interest may be registered under this Part of this Act ... is any land other than excluded land.”

Excluded land is deﬁned in section 33(2) of the 2003 act as:

“land described as such in an order made by Ministers.”

The bill as introduced amended the deﬁnition of excluded land so that it is land

“consisting of mineral rights to oil, coal, gas, gold or silver which are owned separately from the land in respect of which they are exigible”;

with the exception of

“salmon fishings, or ... mineral rights”.

The current provisions do not exclude other separate tenements such as oyster or mussel-gathering rights, rights of port and ferry, and sporting rights.

10:45

The purpose of amendments 12 to 17 is to exclude from the land in respect of which a community interest may be registered all separate tenements that are owned separately from the land, except salmon fishings and mineral rights other than rights to oil, coal, gas, gold or silver. That means that salmon fishings and mineral rights other than the rights to oil, coal, gas, gold or silver are the only separate tenements that are land in which a community interest may be registered under part 2 of the 2003 act.

Specifically, amendment 12 inserts speciﬁc reference to “a separate tenement”. Amendment 13 changes the wording from the plural to the singular, to take account of the change in
Amendment 14 inserts reference to the exceptions to the definition of excluded land, as set out in proposed new subsection (2A) of section 33 of the 2003 act—for example, salmon fisheries or certain mineral rights. Amendment 15 amends proposed new subsection (2A) to take account of the change of structure to that section of the 2003 act, which is caused by the new reference to separate tenements. Amendment 16 ensures that rights to oil, coal, gas, gold or silver are not included in the exception of mineral rights from the definition of excluded land.

This group of amendments seeks to bring part 2 of the 2003 act in line with part 3, section 68, of that act, which describes “eligible croft land”. I invite the committee to support these amendments.

I move amendment 12.

Alex Fergusson: I am not against the proposal at all but, so that I can better understand exactly what the implications are, can you tell me whether there is a full list of what those other tenements include? I feel that we are being asked to agree something that appears to be fairly open ended. You have mentioned oyster, mussel and salmon fishing, but I wonder whether it is possible to define what the phrase “a separate tenement” actually includes.

Aileen McLeod: We can provide a full list around that. We are trying to ensure clarity around what the separate tenements owned separately from the land are eligible for—and a community body can specify its interest. We would be happy to provide a full list.

Alex Fergusson: That would be useful before stage 3.

Amendment 12 agreed to.

Amendments 13 to 17 moved—[Aileen McLeod]—and agreed to.

Section 27, as amended, agreed to.

Section 28—Meaning of “community”

The Convener: Group 2 is on ways in which community bodies and crofting community bodies may be constituted. Amendment 18, in the name of the minister, is grouped with amendments 19 to 27, 33, 2 and 40.

Aileen McLeod: I am conscious that there is quite a lot for us to get through here. I will try to go through this as quickly as I can.

Stakeholders have indicated a need for legislation to offer a wider range of legal bodies that a community could use when forming a community body for the purposes of registering an interest in land or of exercising a right to buy under part 2 of the Land Reform (Scotland) Act 2003. The amendments in this group offer community bodies more flexibility in deciding which form of community body best suits them.

Stakeholders highlighted Scottish charitable incorporated organisations—SCIOs—and community benefit companies as being suitable bodies for the purposes of the community right to buy. An amendment to the 2003 act, which provides that a community body can take the form of a SCIO, in addition to the option of being a company limited by guarantee, is set out in section 28 of the bill as introduced.

Amendment 18, which is a technical amendment paving the way for amendment 22, seeks to add community benefit societies as another type of legal entity that a community can use to form a community body for the purposes of registering an interest in land and exercising the community right to buy. Amendments 18 and 22 have been lodged in response to stakeholders’ requirements for greater flexibility in the types of body that are considered to be suitable for a community body.

Under amendments 19 to 21, in order to be a community body the legal entity forming the community body—which if amendments 18 and 22 are agreed to will be a company limited by guarantee, a Scottish incorporated charitable organisation or a community benefit society—must have articles of association, a constitution or registered rules that meet certain requirements. One of the current requirements is that the articles, constitution or registered rules must state that the community body must have at least 20 members.

Amendment 19 seeks to amend in two respects the list of requirements that a company limited by guarantee’s articles must comply with in order to be a community body. First, it amends the requirements to provide that they state that the community body must have at least 10 members instead of the current minimum requirement of 20. That is intended to address difficulties, highlighted by this committee, of certain smaller or remote communities finding enough members to form the community body. Secondly, it seeks to amend the requirements to increase the proportion of members of a community body who must be members of the community from a majority to three quarters. That will ensure that, even for community bodies with a small number of members, the interests of the local community are protected.

Amendment 20 seeks to amend the list of requirements that a Scottish charitable incorporated organisation’s constitution must...
comply with in order to be a community body so that it stipulates that the constitution has to contain a provision that the community body must have at least 10 members instead of the current minimum requirement of 20. Amendment 21 also amends one of the requirements of the constitution of a community body that is a Scottish incorporated charitable organisation to increase the proportion of members of the body who must be members of the community from a majority to three quarters. Amendment 22 seeks to set out the requirements that the registered rules of a community benefit society must contain in order for it to be a community body.

With regard to amendment 23, ministers currently have the power to disapply the requirement that the articles of a company limited by guarantee or constitution of a Scottish charitable incorporated organisation must state that the community body must have at least 20 members. If amendments 19, 20 and 21 are agreed to, the minister will have the power to disapply the requirement that the articles or constitution state that the community body must have 10 members instead of disapplying the requirement that they have 20. Amendment 23 extends that power to the requirement that the registered rules of community benefit societies must state that the community body must have a minimum number of 10 members.

On amendment 24, ministers have under the bill as introduced the power to amend the subsection listing the types of legal entities that communities can use to form a community body. Amendment 24 seeks to enable ministers to amend provisions relating to community benefit societies as inserted by amendment 22.

Amendment 25, which is a consequential amendment resulting from the addition of community benefit societies as a type of body that communities can use to form a community body, adds the definitions of “community benefit society” and “registered rules” to the bill.

On amendment 26, in accordance with the 2003 act and the bill as introduced, community bodies are prohibited from modifying their memorandum, articles of association or constitution without ministers’ consent in writing during the period beginning with the application being made and ending with any of the following: the registration of the community interest in land; a decision by ministers that the community interest should not be registered; ministers declining to consider the application; or the application’s withdrawal. Amendment 26 extends that to include a prohibition on modifying a community body’s registered rules in the case of community benefit societies.

On amendment 27, in accordance with the 2003 act and the bill as introduced, community bodies are prohibited from modifying their memorandum, articles of association or constitution without ministers’ consent in writing for as long as the interest remains registered or, as the case may be, the land remains in its ownership. Amendment 27 extends that to include a prohibition on modifying a community body’s registered rules in the case of a community body that is a community benefit society.

On amendment 33, the crofting community right to buy in part 3 of the Land Reform (Scotland) Act 2003 can be exercised only by crofting community bodies. At the moment, those bodies must take the form of companies limited by guarantee that meet certain requirements. In keeping with the proposed amendments to part 2, amendment 33 seeks to add Scottish charitable incorporated organisations and community benefit societies as types of legal entity that crofting communities may use to form crofting community bodies for the purposes of exercising the crofting community right to buy. In addition, the amendment seeks to provide that the Scottish ministers can add additional types of legal entity at a later date, should that be deemed necessary.

Amendment 33 also seeks to amend the requirements of the articles of association of a crofting community body that is a company limited by guarantee. It proposes to amend the requirement that the articles of a crofting community body that is a company limited by guarantee must state that the body has a majority of members who are members of the crofting community; the amendment seeks to increase the requirement so that the articles state that three quarters of the membership must be members of the crofting community.

The amendment also seeks to remove the requirement for a crofting community body to arrange for its accounts to be audited, while retaining the requirement for crofting community bodies to ensure proper arrangement for financial management. The change aims to avoid confusion among crofting community bodies about the types of audit that they must carry out, and it will prevent unnecessary duplication of effort. The body will continue to submit an audit of accounts by the appropriate governing body, which will be Companies House, Office of the Scottish Charity Regulator or the Financial Conduct Authority as appropriate to the type of legal entity. That is in line with the proposed amendments to part 2 of the 2003 act.

Amendment 33 also addresses issues relating to the definition of a crofting community for the purposes of the crofting community right to buy. At present, the definition might not always include all
those who would consider themselves to be members of the crofting community, and the amendment seeks to change that definition in an attempt to capture those persons who consider themselves to be members of the crofting community but who at present might find themselves excluded from the definition. One example might be 16 or 17-year-old crofters who would consider themselves to be members of the crofting community but who are excluded from the definition because they are not on the electoral register.

At the moment, two registers contain details of crofters: the register of crofts, which is held by the Crofting Commission; and the newer crofting register, which is held by Registers of Scotland. We want communities to be able to rely on the information that is held on either of the registers in determining who the crofters are on the land that they are trying to purchase, including tenants and owner-occupiers. Information on tenants is held on both registers but, as was made clear last week, the Crofting Commission does not have a duty to collect information on owner-occupiers. That means that at this stage we cannot amend the bill to make it clear that the definition of a crofting community should rely on information about owner-occupier crofts held in the register of crofts.

We therefore propose to give ministers the power to make regulations to extend the definition of a crofting community at a later date. If the Crofting Commission’s requirements in relation to keeping owner-occupiers’ details on the register of crofts should change in the future, ministers could use the power to extend the definition accordingly. We certainly propose to liaise with the Crofting Commission on this issue.

Amendment 33 also seeks to remove the requirement that members of the crofting community must be resident within 16km of the crofting township that is situated in or which is otherwise associated with the croft land. If accepted, the changes proposed would mean that the definition of a crofting community would be all those persons who: are resident in the crofting township that is situated in, or otherwise associated with, the croft land that the crofting community body has a right to buy, and who are entitled to vote in local government elections in the polling district or districts in which that township is situated; are tenants of crofts in the crofting township whose names are entered in the crofting register or register of crofts as tenants of those crofts; are owner-occupier crofters of owner-occupied crofts in the crofting township whose names are entered in the crofting register as the owner-occupier crofters of such crofts; or are such other persons, or are persons falling within a class of such other persons, as may be set out by ministers in regulations.

11:00

Ministers will retain their current power to define a crofting community in another way if it is, in their opinion, inappropriate to define it as set out in the 2003 act.

I am nearly there.

The purpose of amendment 2 is to extend section 72 so that it includes reference to the constitution of a Scottish charitable incorporated organisation and the registered rules of community benefit society, in addition to the memorandum or articles of a company limited by guarantee. That will ensure that crofting community bodies that are Scottish charitable incorporated organisations or community benefit societies cannot modify their constitutions or registered rules without ministers’ consent in writing once they have bought the crofting land.

Amendment 2 also seeks to insert provisions that will allow ministers to make an order relating to, or to matters connected with, the compulsory purchase of croft land by ministers under section 72. It also seeks to insert a power for ministers to make such modifications of enactments as appear necessary or expedient, in consequence of any provision of such an order, or otherwise in connection with the order. That is to mirror the power that is included in section 97E(4) and (5) of the proposed new part 3A of the 2003 act.

Amendment 40 is consequential to amendment 2 and ensures that, when ministers, under section 72 of the Land Reform (Scotland) Act 2003, exercise the power to compulsorily acquire land, and by virtue of amendment 2, exercise the power to make an order relating to that, the order will be subject to affirmative procedure.

All in all, this group of amendments seeks to give communities greater flexibility to choose the type of community body that suits their needs and to lessen the burden on communities by removing the need for the auditing of accounts. It ensures that smaller communities can take advantage of the right to buy by reducing the minimum number of members while ensuring that the community focus is strengthened.

I encourage the committee to support the amendments.

I move amendment 18.
They are satisfied about its main purpose, ensuring that it is consistent with furthering the achievement of sustainable development. It would be for ministers to do that in written confirmation for each individual request.

Sarah Boyack: And for paragraphs (g) and (h)?

Aileen McLeod: It would be for the community body to decide for each individual request.

Sarah Boyack: So there is no interpretation of what “reasonable” is or any explanation of who you would expect would wish to get access to the information.

Aileen McLeod: This is in line with freedom of information requests.

Sarah Boyack: Okay.

Michael Russell: Viewers at home—if there are any left—will understand the classic Highland definition of a croft being a piece of land bounded by regulation.

I strongly welcome amendment 33. In his evidence to the committee in November, Peter Peacock pointed out that the Land Reform (Scotland) Act 2003—welcome as it was—is for communities “hugely cumbersome, difficult and bureaucratic”.—[Official Report, Rural Affairs, Climate Change and Environment Committee, 26 November 2014; c 37.]

That is partly because of the inflexibility of the legislation.

In amendment 33, subsection (6) of the proposed new section gives the opportunity—if I am right—to define by secondary legislation both a crofting community body and a crofting community. Both of those definitions create a flexibility that is not in present community right-to-buy legislation.

Just for the record—this is the sort of thing for which, if there is a dispute about legislation, what is said at the various stages of bill consideration is important—it is presumably in the Government’s mind to use that flexibility in a constructive way, rather than in a restrictive way, to consider the emergence of new community bodies, which is the issue around the definition of a community body, and to ensure that crofting communities are defined as working communities, which is the burden of what the Crofting Commission does, rather than being defined in any way that would assist those who are not working their crofts. I just want to ensure that we understand that the measure is progressive and flexible, rather than one that might be used regressively.

Aileen McLeod: I can give the member the commitment and the assurance that we are trying to simplify the process as much as we can and to
get greater flexibility into it. Obviously, that involves taking a ministerial power to expand via the regulations the definition of a crofting community, but that is to be in a progressive and productive way.

**The Convener:** I ask you to clarify one point, minister. You talked about people who have to live within 16km from their croft. What is the power in relation to the 32km rule, which I think was brought in latterly? Does that impinge on the amendments that you have lodged?

**Aileen McLeod:** At the moment, the Crofting Reform (Scotland) Act 2010 uses 32km and the bill obviously uses 16km. The two pieces of legislation are currently out of sync. We are trying to ensure that there is greater alignment.

**Angus MacDonald:** I would be concerned if the overall distance were reduced from 32km to 16km.

**The Convener:** That is not likely.

**Aileen McLeod:** No.

**The Convener:** We will seek clarity afterwards on the two pieces of legislation, which do not seem to be in sync. Do you want to wind up, minister?

**Aileen McLeod:** I am quite happy to press our amendments.

**The Convener:** That is not likely.

**Aileen McLeod:** I am quite happy to press our amendments.

**The Convener:** We are happy with that, too.

**Amendment 18** agreed to.

**Amendments 19 to 25 moved—[Aileen McLeod]—and agreed to.

**Section 28, as amended, agreed to.**

**Section 29—Modification of memorandum, articles of association or constitution**

**Amendments 26 and 27 moved—[Aileen McLeod]—and agreed to.**

**Section 29, as amended, agreed to.**

**After section 29**

**The Convener:** Group 3 is on salmon fishings and mineral rights: public notice of certain applications under part 2 of the 2003 act. Amendment 28, in the name of the minister, is the only amendment in the group.

**Aileen McLeod:** I assure the committee that this will be a lot shorter than the debates on the previous groups.

In circumstances where a community body is seeking to register an interest in salmon fishings or mineral rights and those rights are owned separately from the land, it is not possible to affix a notice to those rights. Therefore, in circumstances where the community body is seeking to register an interest in salmon fishings or mineral rights that are owned separately from the land, amendment 28 removes the requirement for a conspicuous notice to be affixed to the land where the owner is unknown or cannot be found. The amendment inserts a ministerial power to set out in regulations the type of advertisement that is required in those circumstances. I ask the committee to support it. I move amendment 28.

**Amendment 28 agreed to.**

**Section 30—Period for indicating approval under section 38 of 2003 Act**

**11:15**

**The Convener:** Amendment 48, in the name of Dave Thompson, is grouped with amendment 29.

**Michael Russell:** This is a probing amendment that fits in well with the discussion that we have had about flexibility in the bill. Section 30 amends section 38 of the 2003 act, which sets out the criteria for registration of community interests. Section 30(b) proposes to insert into section 38 new subsection (2A), which says:

“Ministers may not take into account ... the approval of a member of the community if the approval was indicated earlier than 6 months before the date on which the application to register the community interest in land to which the approval relates was made.”

The amendment proposes to substitute a period of 12 months for the period of six months, in order to give more flexibility. However, to be fair, I would say that amendment 29 probably does the job better, in the sense that it follows the consistency of amendment 33, and gives the minister the right to make a variation that is not tied to a particular figure.

I believe that the purpose of amendment 48 is met by amendment 29. If the minister is prepared to confirm, as she did earlier, that the intention of amendment 29 is to use the power to increase rather than decrease the period, I will have no great difficulty in not pressing amendment 48.

I move amendment 48.

**Aileen McLeod:** I welcome the probing amendment and agree with Mr Russell’s view that amendment 29 better meets the purpose.

Amendment 48 seeks to increase the period of approval from six months to 12 months, so that
ministers may take into account the approval of a member of the community if that approval has been indicated within 12 months of the date of application. The amendment is intended to give more flexibility to Scottish ministers to have regard to certain matters.

The Scottish Government believes that it is important for the approval of the members of the community to be current. If the approval of the member of the community was given 12 months prior to the date of application, it may be the case that the community’s plans or the community itself have changed during that time. I therefore ask Mr Russell not to press the amendment.

To cater for the event that the six-month approval period causes difficulties for communities in the future, the Scottish Government has lodged amendment 29 to give ministers the power, by regulations, to amend the six-month time limit in which the approval of a member of the community supporting a community body’s application must be dated. That will allow ministers to respond to any changes in the needs of communities and will give greater flexibility in terms of the time limit in which the approval of a member of the community must be dated.

Amendment 29 gives ministers the power to amend the time limit, should it be considered in the future that the six-month qualifying timescale is a barrier to communities exercising their right to buy, or is causing difficulty to communities when demonstrating support for applications to register an interest in land. I ask that the committee support amendment 29.

Sarah Boyack: I would like you to clarify, on the record, that you see the potential regulation as being used to increase the six-month period, not decrease it. I am keen for the issue to be explored, because regulations would take some time to come through Parliament. The proposal gives more flexibility and will let ministers change the timescale, but I would like you to state clearly that it is about increasing the opportunities for communities by increasing that period, not reducing it.

Aileen McLeod: We do not intend to reduce the timescale at all.

Amendment 48, by agreement, withdrawn.

Amendment 29 moved—[Aileen McLeod]—and agreed to.

Section 30, as amended, agreed to.

Section 31—Procedure for late applications

The Convener: Group 5 contains minor amendments in relation to parts 2 and 3 of the 2003 act, including procedure for certain regulations. Amendment 30, in the name of the minister, is grouped with amendments 38, 39, 41, and 43.

Aileen McLeod: These are minor amendments that ensure consistency of wording across the bill and provide that the long title of the bill includes part 3 of the Land Reform (Scotland) Act 2003, in line with the inclusion of proposed changes to that part of the 2003 act.

Amendment 30 is a minor drafting amendment to the wording of section 31(1) of the bill, purely for the purposes of consistency with sections 28(1) and 29(1). The wording is changed from “in accordance with this section”, to “as follows”.

Amendment 38 will ensure consistency of wording across the bill. It is a technical amendment that does not have a substantive effect. The amendment changes the words of paragraph 2(1) of schedule 4 to the bill, so that it provides that the 2003 act is amended to “as follows” rather than “in accordance with this paragraph”.

Section 37(4)(a) of the 2003 act refers to “land in which a community interest is sought”. Amendment 39 is a technical amendment that will amend the wording to refer to “land in which a community is sought to be registered”. That wording is consistent with other provisions in the 2003 act.

Amendment 41 reinserts the provision that the validity of anything done under part 2 of the 2003 act will not be affected by any failure of the Lands Tribunal to comply with the time limits.

The long title of the bill currently refers to the 2003 act but only to part 2 of that act, which relates to the community right to buy. That is because, at the time of the bill’s introduction, no amendments to part 3 of the 2003 act were proposed. Amendment 43 changes the long title of the bill to take account of the proposed amendments to part 3 of the 2003 act that have been lodged at stage 2.

I invite the committee to support the amendments.

I move amendment 30.

Amendment 30 agreed to.

The Convener: Group 6 contains amendments that relate to late applications for registration under part 2 of the 2003 act. Amendment 31, in the name of the minister, is grouped with amendments 50, 49 and 51.
Aileen McLeod: The bill as introduced amends the late application process for the community right to buy in part 2 of the Land Reform (Scotland) Act 2003. The amendments to part 2 of the 2003 act will require a community body to show that “relevant work” or “relevant steps” were carried out by a person, although not necessarily the community body, before the land was put up for sale. That is in place of the current provisions, which require a community body to show that it has “good reasons” for submitting a late application.

We propose amendment 31 to make changes to the late application process more flexible for communities. That is because there could sometimes be circumstances in which, for example, land has been on sale for a period of time prior to a need being identified by the community. That would currently result in the community that wished to purchase the land being unable to do so, because it could not show that a person took relevant steps or carried out relevant work before the land was marketed for sale. It may be that there is no other land in the area that would be suitable for the community’s purposes, and there could therefore be a good reason why the application should be approved, even though the relevant work or steps have not been carried out.

Amendment 31 seeks to insert provisions to the effect that ministers may approve a late application if it can be shown that there are good reasons why relevant work or relevant steps were not undertaken to submit an application before the land was put up for sale, and, in addition, if it can be shown that there are good reasons why the late application should succeed, notwithstanding the fact that no such relevant steps or work were undertaken. For an application to succeed under amendment 31, ministers would still have to be satisfied that the level of support within the community for the registration is significantly greater than that which ministers would have considered sufficient in a timeous application, and that there are factors that the minister considers to be strongly indicative that it is in the public interest to register the community interest.

I move amendment 31.

Michael Russell: The concerns that were expressed by Dave Thompson have in the public interest to register the community interest.

I accept that, as the email that Community Land Scotland sent yesterday states, it would make more sense if there was a timescale attached to the amendment. I understand that. What I would like to explore with the minister—perhaps she will comment on this in summing up—is whether she agrees to the principle of amendment 49, as
Community Land Scotland seems to. Will she consider lodging an amendment of this nature at stage 3? If not, I will probably not move amendment 49 but will bring back a similar amendment at stage 3, bearing in mind Community Land Scotland’s critique of it. I would very much like to hear the minister’s views of the amendment when she sums up.

11:30

Claudia Beamish: Following on from Alex Fergusson’s comments on amendment 49, I note that, in correspondence yesterday, Community Land Scotland highlighted that it would be helpful to change “prior to the making of the application” in the amendment to, say, “within a year of any subsequent application”; to make it clear that the offer would be no greater than an independent valuer’s valuation, which would bring it in line with other parts of the 2003 act; and to provide ministers with the flexibility to consider any case made by the community regarding any unreasonable conditions and any offer or other factors which, in the opinion of the minister, made refusal of the offer by the community a reasonable action.

I highlight those points because we hope to reach a conclusion on the matter either at this stage or at stage 3.

Aileen McLeod: I agree with the concerns behind amendment 49 in that community bodies should seek to agree to purchase land in preference to using the community right to buy where that is an option. Any test along the lines suggested in the amendment would need to take into account factors such as the price, the terms under which the land was offered and the community’s reasons for rejecting the offer or not completing the purchase. I am happy to consider developing those factors with Mr Fergusson to ensure that the bill is fair to all parties and I propose to lodge a more detailed amendment at stage 3.

Amendment 31 agreed to.
Amendment 50 not moved.

Alex Fergusson: Given the minister’s closing remarks, I am happy not to move amendment 49. Amendments 49 and 51 not moved.
Section 31, as amended, agreed to.
Sections 32 and 33 agreed to.

After section 33

The Convener: We now come to group 7, which concerns the duration and renewal of registration under part 2 of the 2003 act. Amendment 44, in the name of Dave Thompson, is grouped with amendments 52, 53 and 55. I call Michael Russell to move amendment 44 and speak to all the amendments in the group.

Michael Russell: Again, this is an issue of flexibility. Registration is a complex process. I appreciate that, under this bill, it is being made simpler and I think that communities will find it easier to do.

However, I know that communities find reregistration, which is necessary in certain circumstances, to be onerous. The question is how the issue of reregistration can be better tackled by the bill. There are two proposals in this group of amendments that do that. I think that the minister has moved a considerable distance to make sure that the issues are addressed, but I just want to make the point.

Amendment 44 would double the period for which registration lasts, from five years to 10 years. That change was recommended by the land reform review group in its 2014 report. There should be at least some consideration of why the land reform review group would say that and whether it is something that should be supported.

Amendment 53 is on the renewal of registration. Clearly, things change in communities over a period of time, but going through the process of reregistration is difficult and if nothing material has changed in the applicant’s circumstances, application for reregistration, at the very least, should be made as simple as possible; really, it should simply pick up those circumstances that have changed. If it were to be done electronically, the application could simply present what was applied for last time and what conditions were pertaining, and the applicant would change only those things that have changed.

Both amendments seek commitments from the minister to make sure that there is simplicity and flexibility in the process and that reregistration, where it is necessary, is something that communities can come to without considerable trepidation and in the knowledge that the likelihood and the default position is that they will succeed in it, which is essentially the purpose.

I move amendment 44.

Sarah Boyack: I very much want to speak in support of the objectives of the amendments. As Mike Russell has said, it is about making it easy and straightforward for communities where there has not really been a change—rather than putting them through an onerous reregistration process—and making it as simple as possible. It would be good to get the minister’s views on the matter on the record.
Amendment 52 is quite interesting in that it seeks to make sure that a community knows when its registration is within 12 months of expiring. That would be a very useful prompt. Again, I am keen to hear what the minister has to say on the issue.

If the purpose is to make the process straightforward and transparent for communities, I am very keen to hear, on the record, how the minister thinks that the legislation could be applied to ensure that communities are not put off by a bureaucratic hurdle just because somebody did not notice an expiry date. The secretary of the group might be away for a few months, for example. A trigger mechanism of this kind would be very helpful and would ensure that the legislation is fit for purpose.

Aileen McLeod: I found the comments from both Mike Russell and Sarah Boyack very helpful. Under the existing provisions of the Land Reform (Scotland) Act 2003, a community is required to reregister their interest in the land every five years. Amendment 44 seeks to extend the time period for which a registration of interest lasts, from the current five years to 10 years. The amendment is intended to reduce the burden on communities that feel that the reregistration process is an onerous task.

However, that would no longer provide an indication of the community’s support for the acquisition. It could also be the case that ministers would be unaware of other important changes to the circumstances that justified the original registration of interest. That is why I would propose to retain the current five-year period and why I would ask Mr Russell to withdraw amendment 44, for reasons that I will set out in respect of the other amendments.

Amendment 52 would require the keeper of the registers of Scotland to notify a community body 12 months before its registered interest in the land will expire. The amendment is intended to provide adequate notice to the community body of the impending lapse of its registered interest in the land, in order to provide the body with sufficient time to prepare its application for reregistration.

Under section 36 of the Land Reform (Scotland) Act 2003, the register of community interests must include the name and address of the company that is the community body that registered the interest. However, we do not consider it appropriate to place on the keeper the burden of being the appropriate person to notify the community body of the time limit for expiry of its registered interest. We believe that it would be more appropriate for that matter to fall to ministers, because the data held on the register of community interests is owned by ministers and held by the keeper on behalf of ministers.

I appreciate the concerns behind amendment 52, so to address them I propose that the Scottish Government lodges an amendment at stage 3. The proposed amendment would require ministers to contact the community body and notify it of the expiry of its registered interest in the land 12 months before the registered interest is due to expire. Consideration will need to be given to whether community bodies should be required to provide ministers with up-to-date contact details for ministers to notify the appropriate person. As a matter of courtesy, ministers currently contact the community body as the five-year registration period nears expiry in order to notify the body that it will require to submit its reregistration if it wishes its registration of interest in the land to continue.

I ask Mr Russell not to press amendment 52, given that the Scottish Government will lodge an alternative amendment at stage 3.

Amendment 53 seeks to introduce a presumption in favour of a community body’s reregistration if there has been no material change in circumstances since the first registration of the interest. At the moment, a community body may reregister at any point from six months before its registration expires. As part of its work processes, the community right to buy team in the Scottish Government sends the community body a reminder one year before the expiry date, which gives a community six months in which to collect the information required for reregistration.

The Land Reform (Scotland) Act 2003 allows ministers to set out a separate application form for the reregistration process and what information must be provided on that form. We have already undertaken to provide a separate application form for reregistration. In doing so, we can introduce a simplified form whereby the community body can either confirm that there have been no changes to their original application or detail the aspects that might have changed.

We would still need the community body to demonstrate that it has a sufficient level of community support for the continued registration, even if the plans that the community body has for the land have not changed; therefore, the community body must demonstrate the continued support each time it makes an application to reregister the interest. In essence, where there have been no material changes to the information provided in the original application form, the reregistration application form will require very little information other than evidence of the continued support of the community.

The main difference between the changes that we are proposing to the application form and those that amendment 53 proposes is that the amendment proposes a presumption in favour of registration where there have been no material
changes in circumstances. The amendment also seeks to give ministers the power to set out the form and procedure for reregistration and to set out matters about which they must be satisfied to allow the reregistration and factors to which they must have regard when deciding whether there has been a material change of circumstances. So, what amendment 53 seeks would mean that it would be for ministers to consider whether there had been a material change in circumstances rather than to make a fresh assessment of whether the tests for registration in section 38 of the 2003 act had been met. The tests in section 38 include ministers considering whether reregistration is still in the public interest and whether there is still community support for registering an interest.

Obviously, I am very sympathetic to concerns about the issue of registration. However, Scottish Government plans to simplify the reregistration process by way of a separate application form will achieve the aim of making it less onerous for community bodies to reregister the community interest. In addition, they will ensure that there is still community support for the plans, that they remain in the public interest and that the process is open and transparent.

I reassure the committee of my commitment to ensure that the process is as open, transparent, simplified and straightforward as we can make it. I therefore ask Mr Russell not to move amendment 53.

Michael Russell: I am grateful to the minister for her positive comments on amendment 52. Clearly, her point is a valid and germane one, and I would welcome an amendment from the Government to address it.

I seek clarification from the minister on one small point. Will the information that is to be in the application form be defined in guidance to the bill, or in another way? I am certainly not questioning the bona fides that you are giving, minister; I just want to know where we will find that out.

Aileen McLeod: There is no reason why that cannot be in the guidance.

11:45

Michael Russell: If there is an assurance that the form will be covered in guidance to the bill, that is okay. The principles that you have given are entirely correct, and I accept the point that the ministerial role needs to be clarified.

That leaves us with amendment 44. The land reform review group’s recommendation was for a 10-year period, and there is a strong body of opinion that a five-year period is too short. Although I will not—with the committee’s permission—press the amendment when we come to it, I ask the minister to consider, as she moves towards stage 3, whether that advice from the land reform review group requires further thought.

I am sure that Dave Thompson will want to consider whether he wishes to press the issue by lodging an amendment at stage 3. We might seek some sort of procedure after five years, such as reregistration or confirmation of details, but I think that a longer period of time may be desirable for a community, and it has been seen as such by others.

Aileen McLeod: I am happy to have another look at amendment 44.

Michael Russell: Thank you.

Amendment 44, by agreement, withdrawn.

Amendments 52 and 53 not moved.

Sections 34 to 45 agreed to.

After section 45

The Convener: Group 8 is on appeals to Lands Tribunal as respects valuations of land under part 2 of the 2003 act. Amendment 32, in the name of the minister, is grouped with amendment 42.

Aileen McLeod: The Land Reform (Scotland) Act 2003 requires that the Lands Tribunal must give reasons in writing for its decision on an appeal as to the valuation of land within four weeks of the hearing of the appeal. The bill as introduced removes that four-week time limit. However, I propose to re-insert the time limit for the Lands Tribunal to issue written reasons for its decisions, while extending the four-week time limit to eight weeks after the hearing of the appeal. That is proposed in order to provide the Lands Tribunal with greater flexibility in scheduling its cases.

In addition to inserting an eight-week time limit, amendment 32 provides an option for the Lands Tribunal, if it considers that "it is not reasonable to issue a written statement" of reasons within that eight-week time limit, to notify the parties to the appeal of a new date by which it will issue its written reasons.

In addition to inserting an eight-week time limit, amendment 32 provides an option for the Lands Tribunal, if it considers that "it is not reasonable to issue a written statement" of reasons within that eight-week time limit, to notify the parties to the appeal of a new date by which it will issue its written reasons.

I lodged amendment 32 to provide greater flexibility for the Lands Tribunal in scheduling its workload, while at the same time ensuring that the parties to an appeal have a degree of certainty as to when they will receive the written statement of reasons. The amendment aligns part 2 with the proposed amendments to part 3 of the bill and proposed new part 3A of the 2003 act.

Amendment 42 is linked to amendment 32. Currently, schedule 5 to the bill removes the requirement in section 62 of the 2003 act for the
Lands Tribunal to decide an appeal and issue a written statement of reasons within four weeks of the hearing of an appeal under section 62. Schedule 5 to the bill also removes section 62(8) of the 2003 act, which provides that a failure by the Lands Tribunal to comply with that time limit does not affect the validity of anything that is done under part 2 of the 2003 act.

Amendment 32 inserts the eight-week time limit within which the Lands Tribunal must issue a written statement of reasons. The amendment also allows the Lands Tribunal, where it considers that “it is not reasonable to issue a written statement” within eight weeks, to notify the parties to the appeal of the date by which it will issue its written statement.

Amendment 42 removes the repeal of section 62(8) of the 2003 act, so providing that failure by the Lands Tribunal to comply with the time limit in amendment 32 will not affect the validity of anything done under part 2 of the 2003 act.

Amendments 32 and 42 are intended to ease the burden on the Lands Tribunal and give it more flexibility when scheduling its case load. Although there are no consequences should the Lands Tribunal be unable to meet the time limit, stakeholders were clear about the need to provide a date by which the Lands Tribunal is expected to provide its written decision, in order to give an element of certainty to all parties to an application.

I invite the committee to support the amendments.

I move amendment 32.

Michael Russell: What is proposed is admirable and could be applied in all legal circumstances, but we should remember what Derek Flyn said in evidence—it is important that the committee notes his view. He said that there is no sanction for the Scottish Land Court in such circumstances. Indeed, I cannot imagine those in charge of the Land Court, or any other court, accepting such a sanction. Although a time limit is clearly desirable, and I am sure that the committee and everybody else hopes that it will be observed, I do not think that the provision will, of itself, produce the result that we wish for, which is that crofting cases do not take for ever.

Aileen McLeod: In response to Mr Russell’s points, I reassure him that, if the Lands Tribunal is late, that will have no effect on the application.

Amendment 32 agreed to.

Sections 46 and 47 agreed to.

After section 47

Amendments 33 and 2 moved—[Aileen McLeod]—and agreed to.

The Convener: We move to group 9, on information to be included in an application under part 3 of the 2003 act. Amendment 3, in the name of the minister, is the only amendment in the group.

Aileen McLeod: Amendment 3 relates to the requirements of an application by a crofting community body under part 3 of the Land Reform (Scotland) Act 2003. The amendment sets out that the application form must identify

“the owner of the land, ... any creditor in a standard security over the land or any part of it with a right to sell the land or any part of it, ... the tenant of any tenancy of land over which the tenant has an interest,”

and

“the person entitled to any sporting interests”.

It is important that the owner or person entitled to any interest being purchased is identified because of the nature of the legislation. The mechanism in the legislation is such that the owner or person entitled to the interest must be identified in order to transfer the land to the crofting community body.

Section 86(4) of the 2003 act provides for the completion of purchase by the crofting community body by way of the owner of the land or interest transferring title. Section 86(6) of the 2003 act provides that

“If the owner or person entitled to the interest refuses or fails to effect

the transfer,

“the Land Court may ... authorise its ... clerk to execute

the deeds on their behalf. It is therefore essential to the process that the owner of the land or person entitled to the interest is identified.

The procedure in the 2003 act is different from other compulsory purchase procedures where, if the landowner is unknown or cannot be found, the purchasing authority can declare title, by way of a general vesting declaration that is registered in the land register.

Amendment 3 also seeks to simplify the mapping requirements for crofting community bodies. Currently, the application form that ministers must prescribe in regulations must include provision that the crofting community is required to identify “all rights and interests” in the subjects of the application. Those are:

“sewers, pipes, lines, watercourses or other conduits and fences, dykes, ditches or other boundaries in or on the land, known to the applicant body or the existence of which
it is, on reasonably diligent inquiry, capable of ascertaining”.

We consider that in some cases it could be particularly difficult for a crofting community body to identify all those rights and interests. Amendment 3 proposes to simplify the requirement by stating that crofting community bodies must identify “all rights and interests in the subjects of the application” that are “known to the crofting community body”.

We propose to remove the requirement to identify the “sewers, pipes, lines, watercourses ... and fences, dykes, ditches or other boundaries”.

We lodged amendment 3 because we recognise that the current mapping requirements are particularly complex. Ministers will still set out in regulations the information that is required for the application, but including those interests that I have mentioned as being considered particularly difficult to identify will no longer be required.

Amendment 3 also amends the provisions relating to public notice requirements in section 73(11) of the 2003 act. Currently, public notice of the application must be given “by advertisement ... in such newspaper circulating in the area where the subjects of the application are situated as Ministers think appropriate; and ... in the Edinburgh Gazette.”

Amendment 3 removes those requirements and replaces them with a power for ministers to set out in regulations the public notice requirements.

I ask the committee to support the amendment.

I move amendment 3.

Sarah Boyack: I very much welcome amendment 3. It makes the process more straightforward and it will therefore be more likely that the legislation can be used as intended.

Are we covering amendment 5 as well?

The Convener: No.

Sarah Boyack: I will hold off from commenting on amendment 5 at the moment.

The Convener: I think that, given their experience of various buyouts, many people in the crofting communities are very much in favour of the proposals in amendment 3.

Amendment 3 agreed to.

The Convener: Group 10 is on criteria for ministerial consent under part 3 of the 2003 act.

Amendment 4, in the name of the minister, is the only amendment in the group.

Aileen McLeod: Section 74 of the Land Reform (Scotland) Act 2003 sets out the criteria of which ministers must be satisfied before approving an application by a crofting community body to purchase eligible croft land compulsorily.

Amendment 4 seeks to add to the conditions that are set out in section 74(1) of the 2003 act so that, in order to consent to an application under part 3, ministers must be satisfied that the owner, tenant, person entitled to sporting interests or creditor in a standard security in relation to the land or interests, are correctly identified in the application that is submitted by the crofting community body. Amendment 4 will ensure that all relevant parties are accurately identified during the application process, in line with amendment 3. That will ensure that all parties to the application are fully involved in the process and will be given the opportunity to comment on the application. It will also ensure that ministers will have received all available evidence on which to make a decision on the crofting community right-to-buy application.

As with amendment 3, it is important that the owner of any interest that is being purchased is identified because of the nature of the legislation. The mechanism of the legislation is such that the owner must be identified in order to transfer the land to the crofting community body.

Section 86(4) of the 2003 act provides for completion of purchase by the crofting community body by way of the owner of the land or interest transferring title. Section 86(6) provides that “If the owner of the land or person entitled to the interests refuses or fails to effect such ... transfer ... the Land Court may ... authorise its ... clerk to ... execute ... such deeds” on their behalf. It is therefore essential to the process that the owner of the land or person entitled to the interest is identified. That is different from other compulsory purchase legislation, in which the purchasing authority can register a general vesting declaration in the land register to declare that it has title to the land. I invite the committee to support amendment 4.

I move amendment 4.

Amendment 4 agreed to.

The Convener: Group 11 relates to ballots under part 3 of the 2003 act. Amendment 5, in the name of the minister, is the only amendment in the group.

Aileen McLeod: I have lodged amendment 5 to clarify that the crofting community body is required to meet the expense of conducting the ballot.
However, the amendment will also give ministers the power to make regulations setting out circumstances in which a crofting community body can seek to recover the cost of running the ballot from the Scottish ministers, in certain circumstances.

The reason why we do not propose to lodge an amendment to the effect that ministers will pay for the cost of all ballots carried out under the crofting community body right-to-buy provisions is that, unlike in the procedure for the community right to buy under part 2 of the Land Reform (Scotland) Act 2003, the ballot is the first indication of whether or not there is community support for the application. Under part 2 of the 2003 act, by the time the ballot takes place the community body must have already indicated community support for registration of its interest in the land.

There is also the issue of the timing of the ballot. Under part 2 of the 2003 act, a ballot would take place after a community’s application to register an interest had been approved. Under part 3, it would take place before the application is received by the Scottish Government. That means that ministers would not have had the opportunity to assess the application in any way before agreeing to pay for the ballot.

Amendment 5 also seeks to give ministers the power to request further relevant information—as they see fit—from the crofting community body in relation to the ballot, including information relating to any consultation of those who are eligible to vote in the ballot. That information will assist ministers with their decision making in relation to the crofting community body’s right-to-buy application. The amendments are in line with the proposed new part 3A of the 2003 act. I urge the committee to support amendment 5.

I move amendment 5.

Sarah Boyack: I want to dig into the reasons why the crofting community has to pay for the ballot. I take the point that the legislation is slightly different, but I am wondering why you have not changed the legislation to make the process the same, or at least more straightforward.

Can you clarify the circumstances in which the community body could seek reimbursement? Would it be when the vote is in favour of the proposal, rather than when the vote is against it? I am asking so that people’s expectations are absolutely clear when we pass the bill.

Aileen McLeod: The ballot is carried out before the application, so someone has to see the application before going forward. In terms of the circumstances—[interruption.]

The Convener: Dave Thomson wants to advise the minister on that point.

Aileen McLeod: If community support were there for the community right to buy that would be a very good reason for the Government to pay for that ballot.

Sarah Boyack: I just wanted to ensure that that was on the record.

Amendment 5 agreed to.

The Convener: Group 12 relates to an application by more than one crofting community body. Amendment 6, in the name of the minister, is the only amendment in the group.

Aileen McLeod: When more than one crofting community body applies to purchase the same land or interests, only one application can proceed and all others are extinguished.

Amendment 6 will ensure that when more than one crofting community body applies to buy the same land or interests and an application is extinguished, all persons who are invited to give views on the applications are notified that an application has been extinguished. That is in line with the provisions of the proposed new part 3A of the 2003 act. I ask the committee to support the amendment.

I move amendment 6.

Amendment 6 agreed to.

The Convener: Group 13 is on references to the Land Court under part 3 of the 2003 act etc. Amendment 7, in the name of the minister, is grouped with amendment 10.

Aileen McLeod: The Land Reform (Scotland) Act 2003 specifies the persons who are connected to a crofting community right-to-buy application and who may refer a question to the Land Court before a decision is made on the application. Section 81(1) of the 2003 act lists certain persons who have a right to refer a question to the Land Court at any time before ministers reach a decision on an application. Currently, the persons who have the right to refer are:

“(a) Ministers;
(b) any person who is a member of the crofting community ... ;
(c) any person who has any interest in the land or sporting interests which are the subject of the application giving rise to a right which is legally enforceable by that person;

(can) where the subject of the application is a tenant’s interest, any person who has an interest in the lease, being an interest giving rise to a right which is legally enforceable by that person; or

d) any person who is invited ... to send views to Ministers on the application”

Amendment 7 will extend the list of persons who have a right to refer a question to the Land Court
The Convener: I have two questions. Is there enough capacity in the Land Court? Will the processes of the Land Court in such cases be simplified in any way in order to avoid delays in replying?

Aileen McLeod: We are happy to look into the capacity in the Land Court.

The Convener: We would appreciate it if you got in touch with us about that.

Aileen McLeod: I am happy to write formally to the committee on that.

The Convener: Thank you.

Amendment 7 agreed to.

The Convener: Group 14 is on valuations under part 3 of the 2003 act. Amendment 8, in the name of the minister, is the only amendment in the group.

Aileen McLeod: The Land Reform (Scotland) Act 2003 sets out in section 88 the procedure for the assessment of the value of the croft land or interests that are being purchased. The procedure currently requires the valuer to invite the owner of the land, the tenant or the person who is entitled to the sporting interests, as well as the crofting community body, to make representations in writing about the value of the land. Amendment 8 will allow for counter-representations to be made in relation to comments that are made on the valuation of the land, and will allow the valuer adequate time to take those into account.

Amendment 8 will extend the time limit for notification of the determination by the valuer from six weeks to eight weeks. It seeks to allow counter-representations to be made by the owner of the land, the tenant or the person who is entitled to sporting interests, in response to representations that are made by the crofting community body. The amendment also seeks to allow counter-representations to be made by the crofting community body in response to representations that are made by the owner of the land, the tenant or the person who is entitled to sporting interests. The effect of amendment 8 will be to ensure that the valuer takes account of the views of all parties to the application and has time to do so. The amendment seeks to assist the valuer in reaching a fair assessment of the value of the land or interest that is the subject of the crofting community body’s right-to-buy application.

Amendment 8 will align the provisions of part 3 of the 2003 act with the proposed provisions in part 2 and the proposed new part 3A of that act.

I move amendment 8.

Amendment 8 agreed to.

The Convener: Group 15 is on compensation under part 3 of the 2003 act for certain losses. Amendment 9, in the name of the minister, is the only amendment in the group.

Aileen McLeod: Amendment 9 will replace the requirement under section 89(4) with a power for ministers to make an order to specify the amounts payable by a crofting community body in respect of loss or expense incurred; and the person, including persons other than the crofting community body, who is liable to pay those amounts, along with the procedure under which claims for compensation are to be made.

Amendment 9 will align part 3 with provisions in proposed new part 3A of that act. I ask the committee to support the amendment.

I move amendment 9.

Amendment 9 agreed to.

The Convener: Group 16 is on the meaning of the term “creditor in a standard security with a...
right to sell" in part 3 of the 2003 act. Amendment 11, in the name of the minister, is the only amendment in the group.

**Aileen McLeod:** Amendment 11 will insert a meaning of the expression "creditor in a standard security with a right to sell", for the purposes of the crofting community right-to-buy provisions in part 3 of the 2003 act, just to ensure that there is clarity on the definition of the term. I ask the committee to support the amendment.

I move amendment 11.

*Amendment 11 agreed to.*

**The Convener:** That ends stage 2 for today, although I think that some members want the chance to go on, now that their dander is up. However, I am restraining them, because we have to have another session next week. All amendments for consideration by the committee should be lodged with the clerks to the legislation team by 12 noon this Friday.

I thank the minister and her officials. That was a bit of a marathon, but we have succeeded in getting this far.

At our next meeting, the committee will continue stage 2 of the Community Empowerment (Scotland) Bill and will consider petition PE1547, on conserving Scottish wild salmon. So it is groundhog day next week, then.

*Meeting closed at 12:13.*
10 March 2015

Dear Rob

At the Committee meeting on 25 February, I offered to write to the Committee to confirm several points. These are addressed below.

Graeme Dey: Do you have any figures for how many times you anticipate the Land Court would miss the target?

The change in the timescales for the Land Court to issue its decisions on appeals as respects valuations in land, in writing, were reached through discussion with the Land Court themselves, who were happy with the extension from four to eight weeks and did not ask for a further extension. The Land Court has given us no indication that it is going to miss the eight-week limit.

To date, there have been no instances where the land court has failed to meet the current deadlines set.

Dave Thompson: Does the Government have the legal power to insist on mediation in relation to disputes under the legislation?

The Scottish Government does not have any powers to enforce mediation under the legislation. Mediation, by its very nature, is a voluntary process, so whilst we can certainly strengthen the guidance to suggest mediation as a viable option, we do not intent to enforce it.

The short life working group that is currently being set up as part of the work towards having 1m acres of land under community ownership, will look at the potential functions and role of a community land agency, one of which could be to facilitate or arrange for such mediation.
Rob Gibson: The Scotland Act 1998 says that we are responsible for ECHR issues. Given that there will almost certainly be challenges in the courts, is it not time that we went back with something that overrides the ECHR?

The ECHR is a very important Convention and one which Scottish Ministers are very supportive of. The requirements of the Convention not only constrain how Scottish Ministers act (since they have no power to act incompatibly with convention rights) but they also place limits on what Acts of the Scottish Parliament may provide (since a provision of such an Act is not law so far as it is incompatible with any of the Convention rights or with EU law). We would not wish to override (nor could we competently purport to override) the ECHR. Currently, Ministers are separately obliged by the Scottish Ministerial Code to comply with international law, including the International Covenant on Economic, Social and Cultural Rights, though that is not a legally enforceable duty.

The Scottish Government acknowledges the importance of the Covenant on Economic, Social and Cultural Rights (“Covenant”) and is committed to giving effect to international human rights treaties in a way that works for Scotland. As can be seen by the Scottish Government’s Contribution to the UK Periodic Report (as appended to this letter) the Scottish Government’s purpose is central to the realisation of economic, social and cultural rights and it has taken a number of steps to realise these rights in Scotland.

However, the current position is that, whilst we have regard to the provisions of the Covenant, the Scottish Ministers have no power to act incompatibly with the rights under the ECHR (by virtue of the Scotland Act 1998) when making Ministerial decisions, and must therefore make decisions in accordance with the rights set out in the ECHR. Nor does the Scottish Parliament have legislative competence to make provision in an Act of the Scottish Parliament that is incompatible with the rights under the ECHR. Although Ministers are separately obliged by the Scottish Ministerial Code to comply with international law, including the Covenant, it cannot override the provisions of the ECHR.

We cannot prevent challenges to being made to the provisions of the Bill. However, we consider that the Bill as introduced is compatible with the ECHR, and still allows Ministers to take account of the Covenant when making decisions about individual right to buy applications, provided that such decisions are compatible with the ECHR.

With kind regards

AILEEN MCLEOD
International Covenant on Economic, Social and Cultural Rights

Scottish Government

Contribution to UK Periodic Report

(E/C.12/GBR/CO/5)

30 September 2013

1 http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx
PART 1: REPORT ON REALISATION OF ICESCR ARTICLES

1. The Scottish Government is committed to creating a modern, inclusive Scotland which protects, respects and realises internationally-recognised human rights. We strongly believe in and subscribe to the principles laid out in the International Covenant for Economic, Social and Cultural Rights (ICESCR). Within the current constitutional settlement, Scotland’s devolved institutions have a key role in implementing and upholding human rights standards. In those areas where we already have competence, Scotland takes a distinctive approach, reflecting our progressive values. We are committed to giving effect to international human rights treaties, in a way that works for Scotland. We are working to ensure that Scotland’s distinctive approach is incorporated into the UK’s reporting to and examination under ICESCR and other international treaties to which the UK is a signatory.

2. The Scottish Government’s purpose is central to the realisation of economic, social and cultural rights. The purpose is to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. This Purpose is measured by a National Performance Framework, which contain 16 National Outcomes and 50 National Indicators. Progress is reported on annually. The Purpose is further unpinned by the following strategic objectives:
   - **Wealthier and Fairer**: enabling businesses and people to increase their wealth and more people to share fairly in that wealth;
   - **Healthier**: helping people to sustain and improve their health, especially in disadvantaged communities, ensuring better, local and faster access to health care;
   - **Safer and Stronger**: helping communities to flourish, becoming stronger, safer places to live, offering improved opportunities and a better quality of life;
   - **Smarter**: expanding opportunities to succeed from nurture through to lifelong learning ensuring higher and more widely shared achievements; and
   - **Greener**: improving Scotland’s natural and built environment and the sustainable use and enjoyment of it.

3. Equality and non-discrimination is at the heart of everything the Scottish Government does; our ambition for Scotland embraces the principles of equality, fairness and social justice. These are at the heart of the vision for a new Scotland. Equality is integral to delivery on our purpose of sustainable economic growth; it is integral to the public service reform agenda and to the increasing shift to prevention.

4. On the right to work, we believe that creating the conditions for sustainable economic growth to flourish will provide more and better opportunities to work. Our educational and vocational training system is one of the most important building blocks, and we are working to integrate our approach into the wider Scottish education and employment systems.
5. On the right to social security, this is generally reserved to the UK Government. However, the Scottish Government is committed to creating a more equal society, and aims to ensure that all our people receive fair and decent support. This includes taking a long term, preventative approach to tackling poverty across Scotland.

6. On the requirement to afford the widest possible protections to children and families, we are taking forward a range of activity which builds on the requirements of the United Nations Convention on the Rights of the Child (UNCRC). In April 2013 we introduced the Children & Young People (Scotland) Bill, which will support the effective and consistent implementation of Getting it right for every child across Scotland, improve services and support for looked after children and those leaving care, increase provision of free and flexible childcare and introduce new powers and duties which explicitly recognise the role of the UNCRC in influencing service planning and delivery. In addition to strengthening the law, we are committed to taking practical steps to improve the culture and practice which exists amongst and within frontline services and which ultimately impacts on the quality of outcomes that we can expect for our children and young people.

7. On the right to an adequate standard of living (including food, clothing and shelter), the Scottish Government is implementing a National Food and Drink Policy that seeks to address issues of quality, health and wellbeing and environmental sustainability whilst recognising the need for access and affordability. On housing, the “Homes Fit for the 21st century” sets out our vision for housing in 2020, and the steps required to make that a reality. Effective supply, choice and quality are our key priorities.

8. On the right to the highest attainable standard of physical and mental health, we are working to help people sustain and improve their health, particularly in disadvantaged communities, by ensuring better, local and faster access to healthcare.

9. On the right to education, our curriculum for excellence aims to achieve a transformation in education in Scotland for 3-18 year olds, by creating a more flexible and enriched curriculum, raising standards in learning and teaching and improving our children’s life chances. Likewise, our lifelong learning strategy aims to ensure that everyone develops the skills, knowledge and attribute they will need for learning, work and life. The Education (Scotland) Act 1980 continues to place a statutory duty on all local authorities to provide religious education and observance.

10. On the right to participate freely in cultural life, we believe that supporting our creative communities, while creating the conditions to allow for meaningful access and participation, will enriches our lives, enhance our learning and strengthen both our society and our economy.

Scottish Government
30 September 2013
### PART 2: RESPONSE TO COMMITTEE CONCLUDING OBSERVATIONS

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<td>Bearing in mind that it is that State party which is responsible for the implementation of the Covenant in all its territories, the Committee urges the State party to ensure the equal enjoyment of the economic, social and cultural rights by all individuals and groups of individuals under its jurisdiction, and recommends that the State party adopt a national strategy for the implementation of the Covenant throughout the State party’s territories.</td>
<td>The Scottish Government is working closely with the Scottish Human Rights Commission and others to develop Scotland’s first National Action Plan for Human Rights (SNAP), which will include reference to CESCR and economic, social and cultural rights.</td>
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<td>The Committee urges the State party to ensure that the Covenant is given full legal effect in its domestic law, that the Covenant rights are made justiciable, and that effective remedies are available for victims of all violations of economic, social and cultural rights. The Committee reiterates its recommendation that, irrespective of the system through which international law is incorporated in the domestic legal order (monism or dualism), following ratification of an international instrument, the State party is under a legal obligation to comply with such an instrument and to give it full effect in its domestic legal order. In this respect, the Committee again draws the attention of the State party to its general comment no. 9 (1998) on the domestic application of the Covenant.</td>
<td>The Scottish Government is committed to giving effect to international human rights treaties, in a way that works for Scotland. We are working to ensure that Scotland’s distinctive approach is incorporated into the UK’s reporting to international treaty bodies and their subsequent examination of our human rights records under UN and Council of Europe Conventions and Treaties to which the UK is a signatory.</td>
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<td>The Committee recommends once again that the State party adopt a national human rights plan of action which includes specific programmes regarding the realization of economic, social, and cultural rights. It also encourages the State party to consult widely with civil society and national human rights institutions in the preparation of the national human rights plan of action.</td>
<td>As stated, the Scottish Government is working closely with the Scottish Human Rights Commission and others to develop Scotland’s first National Action Plan for Human Rights (SNAP). The intention is that SNAP will be evidence based, developed in an inclusive way and independently monitored. It will set out realistic and practical ways to fill ‘gaps’, build on good practice and help Scotland look outwards and move forward in relation to the realisation of human rights – particularly the most vulnerable and marginalised in society.</td>
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<td>The Committee recommends that the State party take effective measures to increase awareness of economic, social and cultural rights among the public at large as well as among judges, public officials, police and law enforcement officials, medical practitioners, and other health care-related professionals, including by lending adequate support to civil society and national human rights institutions in their efforts in relation to awareness-raising. It also recommends that the State party take steps to improve awareness of the Covenant rights as justiciable human rights and not merely rights as part of the “Welfare State”.</td>
<td>The Scottish Human Rights Commission, established under legislation in 2006, continues to have a key role in promoting rights in Scotland, including economic, social and cultural rights. It also works with public sector organisations to support the development of a human rights based approach. In the context of the development of Scotland’s National Action Plan for Human Rights, the Scottish Government will consider further how rights holders and duty bearers may be further empowered and enabled to ensure the realisation of economic, social and cultural rights.</td>
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<td>The Committee recommends that the State party take remedial steps to enforce existing legal prohibitions of discrimination and to enact, without delay, a comprehensive anti-discrimination law, guaranteeing protection against discrimination in the enjoyment of economic, social and cultural rights, as stipulated in article 2, paragraph 2, of the Covenant. It also recommends that the State party consider making such comprehensive anti-discrimination legislation applicable to Northern Ireland.</td>
<td>Equality legislation is largely reserved to the Westminster Government. However, Scottish Ministers have powers to make specific duties to enable the better performance of the public sector equality duty in the Equality Act 2010. The specific duties were made in May 2012 and require public authorities to set equality outcomes, report on mainstreaming equality, gather and use employee information, and assess the impact of applying a new or revised policy or practice against the public sector equality duty.</td>
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<td>The Committee recommends that the State party ensure that its counter-terrorism measures do not have a discriminatory effect on the enjoyment of the Covenant rights on certain groups in the State party, in particular ethnic and religious minorities.</td>
<td>The Scottish Government agrees wholeheartedly that the UK Government should ensure that the equality characteristics (particularly race and faith) should be taken into account when considering counter-terrorism legislation.</td>
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<td>The Committee, in line with its general comment no. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, recommends that the State party conduct a comprehensive review of its policies to overcome gender inequalities. It also recommends that the State party continue intensifying its efforts to enhance equality between men and women in the workplace, particularly with regard to equal pay for work of equal value in all sectors of employment. The Committee encourages the State party to take into consideration the findings of the inquiry to be conducted by the Equality and Human Rights Commission and to ensure that the Equality Bill contains effective provisions aimed at closing the wage gap in the private sector.</td>
<td>The Scottish Government recognises that solutions to the problem of equal pay is not straightforward, linked as it is to the issue of occupational segregation. Many of the changes needed are cultural or behavioural and as we know these types of changes are the most difficult to make. A large amount of progress has been made over the last 50 years but there is still a long way to go and progress has been slow. We believe a coordinated, collaborative and cooperative approach provides the best chance of success and have established 3 separate but related groups to drive this agenda forward: the Strategic Group on Women and Work; the Occupational Segregation Cross-Directorate Working Group; and the Science and Engineering Profession Working Group on Equality and Diversity.</td>
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<td>The Committee recommends that the State party introduce a more flexible scheme for paternity and parental leave, taking into consideration the report “Working Better” by the Equality and Human Rights Commission.</td>
<td>The Scottish Government acknowledges the important role which flexible working plays in helping parents and carers to manage the twin responsibilities of work and caring. This was a key theme of both the National Business Summit and the Women’s Employment Summit, hosted by Scottish Ministers in 2013. It was also considered as part of the Scottish Parliament Equal Opportunities Committee’s recent report into Women and Work. We will continue to work with employers and unions in Scotland to identify ways of encouraging and supporting flexible working in Scotland.</td>
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<td>The Committee recommends that the State party strengthen its measures to reduce the substantial number of unemployed persons and to counteract the impact of the economic downturn on employment in order to implement fully the right to work, in particular with regard to the most disadvantaged and marginalized individuals and groups. It also calls upon the State party to reinforce its measures aimed at ensuring that persons with disabilities, including those with learning disabilities, have equal opportunities for productive and gainful employment, equal pay for work of equal value, and provide them with improved, expanded and equal opportunities to gain the necessary qualifications, in line with its general comment no. 5 (1994) on persons with disabilities.</td>
<td>Employment is reserved to the UK Government. Notwithstanding, the Scottish Government is working hard to reduce high levels of unemployment and help the most vulnerable into employment. Youth Employment Scotland and Community Jobs Scotland aspire to create 11,000 jobs for young people in 2013/14, 1,000 of which will be jobs created in the Third sector through Community Jobs Scotland. 200 of those CJS jobs will be ring-fenced for vulnerable groups including disabled people. European Social Fund monies are also used to support most disadvantaged groups into work, which has stimulated the creation of 205 jobs (2013-2014) for disabled people in the Third Sector. The Scottish Government’s Supported Employment Framework sets out the range of work underway to ensure the provision of consistent high quality services across Scotland to help more disabled people into employment. In driving up workforce capacity and quality of services, we have developed a professional development award for the workforce which has been tested and is currently being evaluated. Local employability partnerships in every local authority area continue to work together to ensure that suitable employability interventions area available to support people towards work, regardless of the barriers they may face. They are supported by a Scottish Government learning network, which includes a website, regular bulletins and quarterly meetings to share learning and agree joint responses to shared challenges. The Scottish Government is also committed to helping people with learning disabilities who want to work to work, and it is our ambition that with the right support, they are able to find work in mainstream employment, suitable to their skills. We requires local authorities, NHS Boards and Third sector organisations to develop a range of supports employment opportunities for people with learning disabilities by 2018.</td>
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<td>The Committee recommends that the State party take immediate and appropriate measures to reduce unemployment among ethnic minorities and provide them with better employment opportunities.</td>
<td>In Scotland, the significant differential between minority ethnic (ME) employment rates and the rest of the population is largely due to the wide gap in female employment rates (2.9 percentage points for ME and white males but 20.3 percentage points for ME and white females). This is a complex area, work is underway to support women to meet their full potential in the labour market, and we are seeking evidence on successful interventions for ME women. We are developing case studies and evaluating the women only employability services provided by Women onto Work in Edinburgh, which will offer an insight into the benefits for ME women of such female only services. The Scottish Government will also fund development and delivery of vocational learning for refugee women this year; in addition to supporting refugee women into traditional sectors such as retail, hospitality and care, work to develop this in bio-medical roles is also underway. As part of the Scottish Government’s refresh of its race equality strategy in 2013/14, we will consider how to address employability amongst ethnic minority communities.</td>
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<td>The Committee encourages the State party to ensure that the conditions of work of all migrant workers comply with the provisions of article 7 of the Covenant and calls upon the State party to take all necessary measures to investigate the activities of companies employing migrant workers and ensure that employers contravening the law in this regard are prosecuted and sanctioned.</td>
<td>Responsibility for employment rights and duties is generally reserved to the UK Government. However, under the Agricultural Wages (Scotland) Act 1949, which established the Agricultural Wages Board for Scotland, both the employer and worker are responsible for ensuring that all requirements of the Wages Order are complied with in full. In order to ensure that all employers comply with the terms and conditions of the Wages Order, Scottish Government officials have the power to conduct routine spot-checks on agricultural premises. The inspection can be the result of a random annual control test inspection regime or the inspection may be the consequence of a direct complaint from an agricultural worker.</td>
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<td>The Committee recommends that the State party reinforce its measures to combat violence against women. It further recommends that the State party intensify its efforts to raise awareness of the gravity of this offence and the mechanisms available to victims of domestic violence, to improve training for police and law enforcement officials and judges in relation to rape cases, and to increase the support services for victims at the local level. The Committee further recommends that the State party take appropriate measures to ensure that complaints of rape are diligently and impartially investigated and prosecuted without any inherent bias or scepticism towards alleged victims. The Committee reiterates its recommendation that physical punishment of children in the home be prohibited by law.</td>
<td>The Scottish Government has committed £34.5 million (2012 – 15) for initiatives to tackle all forms of violence against women, including rape and sexual assault. In collaboration with our partners, we are also currently refreshing Scotland’s strategic approach to violence against women. In relation to rape, in December 2010 the Sexual Offences (Scotland) Act came into effect, which brought greater clarity to the prosecution of sexual crimes. In establishing the National Sex Crimes Unit, the Crown Office have established a team of specialist prosecutors to ensure these cases are given the best available consideration and preparation. Police Scotland has established a National Rape Task Force which includes Rape Investigation Units in each of the 14 local divisions across Scotland. These units are led by Detective Inspectors and staffed by specially trained officers. In relation to physical punishment of children, the Scottish Government has no wish to criminalise parents for lightly smacking their child. The Criminal Justice (Scotland) Act 2003 makes it illegal to punish a child using an implement, by shaking the child, or by hitting the child on the head. The Act also gives the court clear guidance about the factors it must consider when determining whether punishment of a child was a proper exercise of parental authority. The National Parenting Strategy published last year gives a commitment to developing practical advice on different approaches to assist parents in managing their children’s behaviour.</td>
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<td>The Committee encourages the State party to ensure that asylum-seekers are not restricted in their access to the labour market while their claims for asylum are being processed. It also recommends that the State party review section 4 of the Immigration and Asylum Act 1999 on support and provision regulating essential services to rejected asylum-seekers, and undocumented migrants, including the availability of HIV/AIDS treatment, when necessary.</td>
<td>The Scottish Government is clear that asylum seekers should be able to work while they await the decision on their application and we have urged the UK Government to reconsider their position on this matter. In Scotland, healthcare for asylum seekers (including refused asylum seekers) is free at the point of use, in the same way as it is for indigenous Scottish citizens.</td>
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<td>The Committee urges the State party to intensify its efforts to combat poverty, fuel poverty, and social exclusion, in particular with regard to the most disadvantaged and marginalized individuals and groups and in the most affected regions and city areas. It also calls upon the State party to develop human rights-based poverty-reduction programmes, taking into consideration the Committee’s Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights of 2001 (E/C.12/2001/10). The Committee also encourages the State party to intensify its efforts aimed at achieving its target of reducing child poverty by half by 2010.</td>
<td>In Scotland, our approach is reflected in our key social policy frameworks: the Child Poverty Strategy for Scotland, Achieving Our Potential, Equally Well and the Early Years Framework. These frameworks outline our commitment to collaborative working and investment at a national and local level to tackle the long term drivers of poverty and income inequality. Our Child Poverty Strategy for Scotland expresses our commitment to tackle the long term drivers of poverty through early intervention and prevention. We focus on maximising household resources and improving children’s wellbeing and life chances. This preventative approach to tackling poverty is crucial to our vision of a Scotland that is wealthier and fairer. Most recent figures show that Child Poverty in Scotland has fallen substantially since devolution, from 28% in 1999-00 to 15% in 2011-12. The Scottish Government is protecting household incomes through the Social Wage. This includes free personal care for the elderly, abolition of tuition fees, scrapping of bridge tolls and prescription charges, free eye examinations, freezing of council tax, concessionary bus passes and increasing the provision of free nursery education.</td>
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The Committee calls upon the State party, in line with its general comment no. 4 (1991) on the right to adequate housing, to intensify its efforts to ensure that everyone has access to housing and to review its policies and develop effective strategies, including a gender impact assessment, aimed at increasing the levels of affordable housing, including social housing. The Committee also recommends that the State party take into consideration the Homelessness etc. (Scotland) Act 2003 as best practice, especially its provision relating to the right to housing as an enforceable right.

The Scottish Government published its strategy and action plan for housing “Homes Fit for the 21st Century”, in February 2011. The vision for 2020 is that all people in Scotland live in high-quality sustainable homes that they can afford and that meet their needs. In order to achieve this we are working to increase the number of new homes in all sectors. The Scottish Government has set a target to deliver 30,000 new affordable homes by 2016, at least two thirds of which will be for social housing, recognising the vital role of social housing in providing people with an affordable home and a platform for getting on in life. Equalities impact assessments are a routine part of housing policy review and development. The Committee will wish to note that since 31 December 2012, all unintentionally homeless households have been entitled to settled accommodation as set out in the Homelessness etc (Scotland) Act 2003. Alongside the legislative change, a prevention/housing options approach has been taken by local authorities. Most recent figures show that homelessness applications have fallen by 13% between 2011/12 and 2012/13 (currently standing at 39,827 applications).
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<td>The Committee recommends that the State party ensure the provision of sufficient, adequate and secure stopping sites for Roma/Gypsies and Irish Travellers. It also recommends that the State party, in the organization of mega-events, ensure the protection of the most disadvantaged and marginalized individuals and groups, which may be disproportionately affected by such events, in line with the Committee’s general comment no. 7 (1997) on the right to adequate housing: forced evictions. It also encourages the State party to review the provisions of the Unauthorised Encampments (Northern Ireland) Order 2005 and to provide for suitable accommodation arrangements for Roma/Gypsies and Irish Travellers.</td>
<td>The Scottish Government recognises that the lack of provision of suitable stopping sites causes difficulties for both the Gypsy/Traveller and settled community. That is why we continue to work with local authorities to address this and to identify suitable land and/or existing sites which require upgrading. In the autumn, The Scottish Government will start working with a broad range of stakeholders including local government, NHS Scotland, Police Scotland, the Gypsy/Traveller community, schools and other educational institutes to produce an overarching strategy document to which a broad range of stakeholders working with Gypsies/Travellers can refer. The Scottish Government considers that key decisions about these issues are best made at the local level. Local authorities must prepare local housing strategies based on their assessment of the needs and demands for housing in their areas, and must consider the needs of the Gypsy/Traveller community in doing so. In response to the a Scottish Parliament report published in March 2013 (Where Gypsies/Travellers Live), the Scottish Government is establishing a group to consider the issue of Gypsy/Traveller site provision and quality, tenancy arrangements, unauthorised sites, and the rights and responsibilities of those living on sites. We do not believe there is a one-size-fits-all solution to these issues. However we are keen to facilitate dialogue between all the parties involved and to promote the spreading of good practice, so that the most effective approaches can be used across the whole of Scotland to address the needs both of Gypsies/Travellers and of the settled community.</td>
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<td>In line with general comment no. 14 (2000) on the right to the highest attainable standard of health, the Committee recommends that the State party intensify its efforts to overcome the health inequalities and unequal access to health care, in particular for the most disadvantaged and marginalized individuals and groups. It also urges the State party in this regard to fulfil its commitment to reduce health inequalities by 10 per cent by 2010, measured by infant mortality and life expectancy at birth as benchmarks which the State party has set for itself. It also recommends that the State party gather appropriate disaggregated data on an annual basis of the reporting cycle in this respect with a view to assessing the progress made and providing such information to the Committee in its next periodic report.</td>
<td>The Scottish Government’s vision for health and care in Scotland is that by 2020 everyone is able to live longer, healthier lives at home or in a homely setting. Responding to the needs of people with a mental health problem and reducing inequalities is a key element of delivering that ambition. The Scottish Government recognises that mental illness is a significant public health challenge and we are working with our partner agencies to build on our successes and deliver our mental health, dementia and suicide prevention strategies. These set out the key changes and improvements which we want to see to improve outcomes, quality of care and recovery for people who experience mental illness. Our vision also sets out that, whatever the setting, care will be provided to the highest standards of quality and safety, with the person at the centre of all decisions. The development of information and support to enable people to manage their conditions effectively at home and during times of transition is one of the key deliverables identified in the Route Map to the 2020 Vision. A Person-Centred Health and Care Collaborative is also underway, to test and implement changes that keep the person at the centre of their care. This includes implementing a series of actions to better address the needs of people whose access to health and healthcare is impeded by poor health literacy, which contributes to unequal health outcomes. Furthermore, the Scottish Government is committed to tackling the health inequalities of people with learning disabilities. The keys to life strategy has a strong emphasis on the health issues of people with a learning disability and is committed to addressing the stark fact that people with learning disabilities die 20 years earlier than the general population.</td>
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<td>18</td>
<td>The Committee recommends that the State party take immediate steps to address, as a matter of priority, the poor health conditions for persons with mental disabilities, as well as the regressive measures taken in funding mental health services.</td>
<td>The keys to life strategy has the human rights of people with learning disabilities at its heart. The Strategy has a strong emphasis on the health issues of people with a learning disability and is committed to addressing the stark fact that people with learning disabilities die 20 years earlier than the general population.</td>
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<td>19</td>
<td>The Committee recommends that the State party undertake: (a) training programmes for doctors and health-care professionals about the State party’s Covenant obligations, as well as with regard to the prevention and treatment of dementia and Alzheimer’s diseases; (b) awareness-raising campaigns about these diseases among the public at large.</td>
<td>The Scottish Government recognise the important role that health professionals have in supporting the right to the highest attainable standard of health. We are exploring with our educational and training agency, NHS Education for Scotland, to identify how existing education and training aligns to economic, social and cultural rights, and consider what scope exists to more explicitly recognise these links within training programmes. We also recognise that there are some training and educational criteria, for example undergraduate and postgraduate medical curricula, and aspects of Continuous Professional Development, that are approved and delivered on a UK-wide basis thus requiring Scotland to work with other UK administrations to effect any change. We will utilise existing governance mechanisms to approach other UK administrations with a view to seeking co-operation and engagement in any efforts to better align training and educational content to economic, social and cultural rights. With regards to dementia, <em>Promoting Excellence</em> is the national dementia skills and competencies framework for health and social services staff across Scotland. It is designed to help services meet the <em>Standards of Care for Dementia in Scotland</em>. Both were key parts of Scotland’s first 3-year dementia strategy (2010-13). An initial 2-year <em>Promoting Excellence</em> implementation plan was published in 2011 and a second plan is running from 2013-16 as part of Scotland’s second 3-year strategy. On dementia awareness-raising, we piloted this in 2009 in Tayside, and the findings from this fed into the establishment of a 3-year HEAT target from this year that everyone diagnosed from 1 April will receive a minimum of a year’s dedicated post-diagnostic support, coordinated by an appropriately trained Link Worker.</td>
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The Committee recommends that the State party intensify its efforts to decrease the number of suicides among mental health patients by dealing with the causes of suicide and strengthening the provision of psychological counselling services, as well as training of health professionals on the causes and symptoms of depression and other mental health problems. It also recommends that the State party take all appropriate measures to ensure access of such patients to the complaints system.

Since the publication of Choose Life (Scotland’s anti-suicide strategy) in 2002, much work has taken place all over Scotland to help prevent suicide and respond to those affected by suicide. The work has contributed to a 17% reduction in the suicide rate in Scotland in a 10 year period. Key actions underway include locally tailored suicide prevention action plans, co-funding the annual UK Confidential Inquiry into Suicide and Homicide by People with Mental Illness, and funding the Suicide Information Database for Scotland (SCOTSID) established in 2009 and delivered by NHS Health Scotland / NHS National Services Information Services Division. The Scottish Government is currently considering future strategy and action on prevention of suicide and self-harm, in the context that the Choose Life strategy is approaching the end of its 10 year lifetime. The aim is to publish a new national strategy on suicide and self-harm in autumn 2013. In terms of psychological therapies, the HEAT target ‘Deliver faster access to mental health services by delivering 18 weeks referral to treatment for Psychological therapies from December 2014’ was approved by the Scottish Government in November 2010. NHS Boards have made good progress in improving access to many psychological therapies. This target focuses further attention on access to psychological therapies and mental health service improvement more widely. By December 2014 the standard for referral to the commencement of treatment in psychological therapy will be a maximum of 18 weeks, irrespective of age, illness or therapy. The Scottish Government committed to increasing the availability of evidence-based psychological therapies in a range of settings. This includes, for example, NHS Living Life – a nationally available telephone cognitive behavioural therapy (CBT) service for people who are feeling low, depressed or anxious. In terms of access to complaints, all patients have access to the NHS complaints process either directly or through a representative. The Charter of Patient Rights and Responsibilities was published in October 2012. It sets out what people can expect from the NHS in Scotland and what the NHS expects from its users. The Charter includes information on how to have any concerns or complaints dealt with in the most appropriate way.
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<td>21</td>
<td>The Committee recommends that the State party adopt all appropriate measures to reduce the achievement gap in terms of school performance between British pupils and pupils belonging to ethnic, religious or national minorities in the field of education, inter alia, by ensuring the adequate provision of English-language courses for those students who lack adequate language proficiency and avoiding the overrepresentation of minority students in classes for children with learning difficulties. The Committee further recommends that the State party undertake further studies on the correlation between school failure and social environment, with a view to elaborating effective strategies aimed at reducing the disproportionate dropout rates affecting minority pupils.</td>
<td>The Scottish Government is committed to improving outcomes for all pupils. As part of the Scottish Government's Equality Outcomes and Mainstreaming Report specific equality outcomes were set for education. Within the longer term outcome that all children and young people will be able to make the most of the education opportunities available to them to reach their full potential, there will be progress by 2017 in the experience of those with protected characteristics who are currently disadvantaged or underperforming.</td>
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<td>22</td>
<td>The Committee recommends that the State party place sufficient emphasis on the inclusion of enforceable economic, social and cultural rights when drawing conclusions from the consultations on a possible Bill of Rights and Responsibilities.</td>
<td>We would wish the Committee to note that the Scottish Government is opposed to the introduction of a UK Bill of Rights. The European Convention on Human Rights remains embedded within the Scotland Act, and we would expect this to continue to be the case under existing constitutional arrangements. We have spoken positively of the place of economic, social and cultural rights within Scotland’s constitutional landscape.</td>
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<td>23</td>
<td>The Committee recommends that the State party consider giving workers from 18 to 20 years of age the same minimum wage which is given to those beyond the age of 21.</td>
<td>The Scottish Government fully support the principles of the living wage campaign and its aims to make a real difference to the people of Scotland, by encouraging employers to reward their staff fairly. We are protecting the pay of the lowest earners we have direct responsibility for and are leading by example by ensuring all staff covered by our public sector pay policy are paid the Scottish Living Wage (currently £7.45 p/h). We are encouraging other employers in the public, private and third sectors to do likewise.</td>
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<td>24</td>
<td>The Committee requests data, in the State party's next periodic report, on the effects of the Welfare Reform agenda that are disaggregated on an annual basis, according to the prohibited grounds of discrimination.</td>
<td>The Scottish Government remains concerned about the impact of the UK Government's welfare reforms on people in Scotland, including some of the most vulnerable in our society. We continue to press the UK Government for fairer reform and to ensure that safeguards are in place for those who need them most. We are doing all we can, within our existing powers and resources, to mitigate the worst impacts where possible. For example, we are providing an additional £9.2 million for the new Scottish Welfare Fund, giving a total Fund the £33 million which has the capacity to support around 200,000 people in Scotland. We are also providing an additional £7.9 million for advice and support services to help those affected by the reforms.</td>
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<td>26</td>
<td>In line with general comment no. 13 (1999) on the right to education, the Committee encourages the State party to review its policy on tuition fees for tertiary education with a view to implementing article 13 of the Covenant, which provides for the progressive introduction of free education at all levels. It also recommends that the State party eliminate the unequal treatment between European Union member State nationals and nationals of other States regarding the reduction of university fees and the allocation of financial assistance.</td>
<td>The Scottish Government firmly believes that access to education for Scottish domiciled students should be based on the ability to learn rather than the ability to pay. For this reason, Scottish and EU students undertaking a first, full-time, under-graduate degree course do not pay tuition fees for attending a Scottish university. Tuition fee levels for these students are regulated by Scottish Ministers and paid by the Student Awards Agency for Scotland. However, tuition fees for international students are not regulated and universities are therefore able to set their own tuition fees for these students. From the start of academic year 2012-13, we made the decision to also de-regulate tuition fees for new students from other parts of the UK. This change was necessary to maintain the cross-border flow of students and to ensure that we were able to safeguard places at Scottish Universities for Scottish students. Had we not made this change, the substantially increased levels of tuition fees in England would have resulted in unprecedented numbers of students from the rest of the UK applying to study at Scottish universities.</td>
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<td>27</td>
<td>The Committee requests the State party to disseminate the present concluding</td>
<td>The Scottish Government engages regularly with stakeholders on these matters, and held a round table discussion in June 2013 to discuss preparations for both the mid-term Universal Periodic Review update and our contribution to the CESCR periodic report. Written representations were sought on both, and have been considered as part of Scotland's contribution to this process.</td>
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<td>observations widely among all levels of society, in particular among State</td>
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<td>officials, the judiciary and civil society organizations, to translate and</td>
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<td>publicize them as far as possible in the languages of the United Kingdom, and</td>
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<td>to inform the Committee on the steps taken to implement them in its next</td>
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<td>periodic report. It also encourages the State party to continue engaging</td>
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<td>national human rights institutions, non-governmental organizations and other</td>
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<td>members of civil society in the process of discussion at the national level</td>
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<td>prior to the submission of its next periodic report.</td>
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Community Empowerment (Scotland) Bill

2nd Marshalled List of Amendments for Stage 2
(Rural Affairs, Climate Change and Environment Committee)

The Bill will be considered in the following order—

Sections 27 to 49
Sections 95 to 98
Schedules 4 and 5
Sections 99 and 100
Long title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 48

Aileen McLeod

58 In section 48, page 29, line 13, at end insert—

< ( ) The land which may be bought by a Part 3A community body under this Part is eligible land.>

Michael Russell
Supported by: Sarah Boyack

34 In section 48, page 29, line 15, at end insert <, or

( ) otherwise in substantial need of sustainable development.>

Aileen McLeod

59 In section 48, page 29, line 16, after <eligible> insert <for the purposes of this Part>

Sarah Boyack

89 In section 48, page 29, line 17, at end insert—

< (2A) Ministers must, before making regulations under subsection (2) and within one year of this subsection coming into force, consult such persons as they consider appropriate about the content of those regulations.>

Aileen McLeod

60 In section 48, page 29, line 20, leave out from <unless> to end of line 21

Sarah Boyack

54 In section 48, page 29, leave out lines 27 to 29
In section 48, page 29, line 32, leave out <to be treated as being an individual’s> and insert <, or are to be treated as, a>

In section 48, page 30, line 2, leave out <below,> and insert —

(a) a body falling within subsection (1A), (1B) or (1C), or
(b) a body of such other description as may be prescribed which complies with prescribed requirements.

(1A) A body falls within this subsection if it is

In section 48, page 30, line 8, leave out <20> and insert <10>

In section 48, page 30, line 9, leave out <the majority of the members of the company is to consist of> and insert <at least three quarters of the members of the company are>

In section 48, page 30, line 23, at end insert —

(1B) A body falls within this subsection if it is a Scottish charitable incorporated organisation (a “SCIO”) the constitution of which includes the following—
(a) a definition of the community to which the SCIO relates,
(b) provision enabling the SCIO to exercise the right to buy land under this Part,
(c) provision that the SCIO must have not fewer than 10 members,
(d) provision that at least three quarters of the members of the SCIO are members of the community,
(e) provision under which the members of the SCIO who consist of members of the community have control of the SCIO,
(f) provision ensuring proper arrangements for the financial management of the SCIO,
(g) provision that, on the request of any person for a copy of the minutes of a meeting of the SCIO, the SCIO must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,
(h) provision that, where a request of the type mentioned in paragraph (g) is made, the SCIO—
(i) may withhold information contained in the minutes, and
(ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and
(i) provision that any surplus funds or assets of the SCIO are to be applied for the benefit of the community.

(1C) A body falls within this subsection if it is a community benefit society the registered rules of which include the following—

(a) a definition of the community to which the society relates,

(b) provision enabling the society to exercise the right to buy land under this Part,

(c) provision that the society must have not fewer than 10 members,

(d) provision that at least three quarters of the members of the society are members of the community,

(e) provision under which the members of the society who consist of members of the community have control of the society,

(f) provision ensuring proper arrangements for the financial management of the society,

(g) provision that, on the request of any person for a copy of the minutes of a meeting of the society, the society must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,

(h) provision that, where a request of the type mentioned in paragraph (g) is made, the society—

   (i) may withhold information contained in the minutes, and

   (ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and

(i) provision that any surplus funds or assets of the society are to be applied for the benefit of the community.

Aileen McLeod

66 In section 48, page 30, line 25, leave out <(1)(c)> and insert <(1A)(c), (1B)(c) or (1C)(c)>

Aileen McLeod

67 In section 48, page 30, line 27, leave out <(1)> and insert <(1A)>

Aileen McLeod

68 In section 48, page 30, line 31, at end insert—

   <(4A)> Ministers may by regulations from time to time amend subsections (1A), (1B) and (1C).

   (4B) If provision is made under subsection (1)(b), Ministers may by regulations make such amendment of section 97E(1) in consequence of that provision as they consider necessary or expedient.

Aileen McLeod

69 In section 48, page 30, line 33, leave out <(1)(a)> and insert <(1A)(a), (1B)(a) and (1C)(a)>
In section 48, page 31, line 8, at end insert—

“community benefit society” means a registered society (within the meaning of section 1 of the Co-operative and Community Benefit Societies Act 2014) registered as a community benefit society under section 2 of that Act,

“registered rules” has the meaning given by section 149 of that Act (as that meaning applies in relation to community benefit societies),

“Scottish charitable incorporated organisation” has the meaning given by section 49 of the Charities and Trustee Investment (Scotland) Act 2005.

In section 48, page 31, line 12, leave out <or articles of association> and insert <, articles of association, constitution or registered rules (as defined in section 97D(8))>

In section 48, page 31, line 16, after <community> insert <body>

In section 48, page 31, line 30, leave out <Abandoned or Neglected> and insert <Eligible>

In section 48, page 33, line 19, leave out <wholly or mainly abandoned or neglected> and insert <eligible land for the purposes of this Part>

In section 48, page 33, line 23, at end insert <known to the Part 3A community body>

In section 48, page 33, line 24, leave out from beginning to end of line 27

In section 48, page 33, leave out lines 29 to 32

In section 48, page 35, line 4, leave out <wholly or mainly neglected or abandoned> and insert <eligible land for the purposes of this Part>
Dave Thompson
Supported by: Sarah Boyack

45 In section 48, page 36, leave out lines 15 to 17 and insert—

<( ) that the achievement of sustainable development in relation to the land would be unlikely to be furthered by the owner of the land continuing to be its owner,>

Sarah Boyack

90* In section 48, page 36, line 18, at end insert <or,>

( ) the Part 3A community body has exercised all reasonable diligence in seeking to identify that person but is not able to accurately identify the owner,>

Aileen McLeod

76 In section 48, page 36, line 19, after <it> insert <with a right to sell the land or any part of it>

Aileen McLeod

77 In section 48, page 37, line 40, at beginning insert <Subject to subsection (6A),>

Aileen McLeod

78 In section 48, page 37, line 41, at end insert—

<(6A) Ministers may by regulations make provision for or in connection with enabling a Part 3A community body, in such circumstances as may be specified in the regulations, to apply to them to seek reimbursement of the expense of conducting a ballot under this section.>

(6B) Regulations under subsection (6A) may in particular make provision in relation to—

(a) the circumstances in which a Part 3A community body may make an application by virtue of that subsection,
(b) the method to be applied by Ministers in calculating the expense of conducting the ballot,
(c) the criteria to be applied by Ministers in deciding whether to make a reimbursement to the applicant,
(d) the procedure to be followed in connection with the making of—

(i) an application to Ministers,
(ii) an appeal against a decision made by Ministers in respect of an application,
(e) persons who may consider such an appeal,
(f) the powers of such persons.>
Aileen McLeod

79  In section 48, page 39, line 3, leave out <the prescribed period, prescribed persons> and insert <such period as may be specified in the regulations, persons so specified>

Aileen McLeod

80  In section 48, page 39, line 7, leave out <prescribing> and insert <specifying>

Aileen McLeod

81  In section 48, page 39, line 9, leave out from first <prescribed> to end of line 11 and insert <such persons as may be specified in the regulations, in such circumstances as may be so specified, to register in the Register of Community Rights in Abandoned or Neglected Land notices as may be so specified.>

Aileen McLeod

82  In section 48, page 39, leave out lines 12 and 13 and insert—

   <(c) requiring, in such circumstances as may be specified in the regulations, such information as may be so specified to be incorporated into deeds relating to the land as may be so specified.>

Aileen McLeod

83  In section 48, page 39, line 15, leave out <the prescribed period> and insert <such period as may be specified in the regulations>

Aileen McLeod

84  In section 48, page 39, line 17, leave out <prescribed> and insert <so specified>

Aileen McLeod

85  In section 48, page 39, line 21, leave out <prescribed circumstances> and insert <such circumstances as may be specified in the regulations>

Sarah Boyack

91  In section 48, page 41, line 43, at end insert—

   <(1A) Ministers must, within 7 days of the appointment of a valuer under subsection (1), give written notice of the appointment to—

   (a) the owner of the land,

   (b) the Part 3A community body.

   (1B) A written notice under subsection (1A) must invite written representations on the appointment to be made to Ministers within 7 days of the day on which the owner of the land or, as the case may be, the Part 3A community body, received the notice.

   (1C) No sooner than 3 days after the expiry of the period of 7 days mentioned in subsection (1B) and after having regard to any representations received by virtue of that subsection, Ministers must—>
(a) appoint a new valuer, being a person who appears to Ministers to be suitably qualified, independent and to have knowledge and experience of valuing land of a kind which is similar to the land being bought, to replace the valuer appointed under subsection (1) and assess the value of the land to which the application mentioned in that subsection relates, or

(b) confirm the appointment of the valuer appointed under subsection (1) and provide a written explanation of this decision to any person who submitted written representations under subsection (1B) objecting to the appointment of the valuer.

Aileen McLeod

86 In section 48, page 43, line 1, at end insert—

<(8A) Where written representations under subsection (8) are received—

(a) from the owner of the land, the valuer must invite the Part 3A community body which is exercising its right to buy the land to send its views on the representations in writing,

(b) from the Part 3A community body which is exercising its right to buy the land, the valuer must invite the owner of the land to send the owner’s views on the representations in writing.

(8B) In carrying out a valuation under this section, the valuer must consider any views sent under subsection (8A).>

Aileen McLeod

87 In section 48, page 46, line 9, at end insert <and must issue a written statement of these reasons—

(a) within 8 weeks of the hearing of the appeal, or

(b) where subsection (5A) applies, by such later date referred to in paragraph (b)(ii) of that subsection.

(5A) This subsection applies where—

(a) the Lands Tribunal considers that it is not reasonable to issue a written statement mentioned in subsection (5) by the time limit specified in paragraph (a) of that subsection, and

(b) before the expiry of that time limit, the Lands Tribunal has notified the parties to the appeal—

(i) that the Lands Tribunal is unable to issue a written statement by that time limit, and

(ii) of the date by which the Lands Tribunal will issue such a written statement.

(5B) The validity of anything done under this Part is not affected by any failure of the Lands Tribunal—

(a) to comply with the time limit specified in paragraph (a) of subsection (5) above, or

(b) to issue a written statement by the date referred to in paragraph (b) of that subsection.>
In section 48, page 47, line 4, at end insert—

**Financial support for Part 3A community bodies**

(1) Ministers must adjust the application criteria that apply in relation to any fund maintained by them for the purpose of providing financial support to community bodies in respect of the purchase of land under Part 2 of this Act so as to achieve the effect mentioned in subsection (2).

(2) The effect is that Part 3A community bodies have, in respect of the purchase of abandoned and neglected land under Part 3A of this Act, the same access to any such fund as community bodies have in respect of the purchase of land under Part 2 of this Act.

After section 48

After section 48, insert—

**Persistently abandoned and neglected land: compulsory sale order**

**Persistently abandoned and neglected land: compulsory sale order**

After section 97Z of the 2003 Act (inserted by section 48), insert—

**“PART 3B**

**PERSISTENTLY ABANDONED AND NEGLECTED LAND: COMPULSORY SALE ORDER**

**97ZA Part 3B: Interpretation**

In this Part—

“community body” has the meaning given in section 97D,

“land” has the meaning given in section 97B.

**97ZB Register of persistently abandoned and neglected land**

(1) Each local authority must establish and maintain a register of land in its area which in the opinion of the authority is persistently abandoned or neglected (an “abandoned land register”).

(2) An abandoned land register must include—

(a) a description of the location and boundaries of land included in the register,

(b) information on—

(i) any permission, the period for undertaking development under which has not expired, granted in respect of the land or any part of it under the Town and Country Planning (Scotland) Act 1997,

(ii) any plan under that Act affecting the land or any part of it, and

(c) such other information as—

(i) the local authority sees fit,
(ii) may be prescribed.

(3) The local authority must publish its abandoned land register in such a way as it may determine.

(4) Land may be included on the abandoned land register—

(a) at the initiative of the local authority, or

(b) on an application by a community body.

(5) Land is eligible to be included in an abandoned land register if in the opinion of the local authority it—

(a) has been abandoned or neglected for a continuous period of at least 3 years,

(b) is not land which falls within section 97C(3),

(c) may be in the public interest for the land to be subject to a compulsory sale order under section 97ZD.

(6) Before including land on its abandoned land register, a local authority must—

(a) send notice in writing that it is considering whether to do so to—

(i) the owner of the land, and

(ii) any creditor in a standard security over the land or any part of it, and

(b) invite those persons to make representations in respect of whether the land should be included on the register.

(7) Subsection (6)(a) does not apply if the local authority is unable to trace the person.

(8) In determining whether to include land on its abandoned land register, the local authority must have regard to—

(a) any representations made under subsection (6)(b),

(b) where an application has been made under subsection (4)(b), any information provided with the application.

(9) The local authority must make arrangements for those persons specified in subsection (11) to be notified of its determination under subsection (8).

(10) The local authority must make arrangements for those persons specified in subsection (11) to apply for a review of a determination by the authority as to whether land is to be included on its abandoned land register.

(11) The persons mentioned in subsections (9) and (10) are—

(a) a person mentioned in subsection (6)(a),

(b) a community body.

(12) The local authority must not include land on its abandoned land register until—

(a) the period for making an application for a review under subsection (10) has expired without an application having been made, or

(b) where an application for a review has been made, that review has been determined.
(13) A local authority must—
   (a) make arrangements to enable members of the public to inspect, free of charge, its abandoned land register at reasonable times and at such places as the authority may determine, and
   (b) make its abandoned land register available, free of charge, on a website, or by other electronic means, to members of the public.

(14) The Scottish Ministers may by regulations make such further provision in connection with abandoned land registers as they think fit.

(15) Regulations under subsection (14)—
   (a) without prejudice to the generality of that subsection, may in particular make provision about—
      (i) arrangements that are to apply where land falls within the area of more than one local authority,
      (ii) fees that may be charged by local authorities in respect of abandoned land registers,
   (b) are subject to the affirmative procedure.

97ZC Guidance about abandoned land registers
   (1) In carrying out any of the duties imposed on it by section 97ZB, a local authority must have regard to any guidance issued by the Scottish Ministers in relation to the duties.
   (2) Before issuing any such guidance, the Scottish Ministers must consult—
      (a) local authorities,
      (b) community councils, and
      (c) such other persons as the Scottish Ministers think fit.

97ZD Compulsory sale orders
   (1) Where land has been included on an abandoned land register for a continuous period of at least 3 years, the local authority must, if requested to do so by a community body, by notice in writing (a “compulsory sale order”) require the owner of the land to offer the land for sale.
   (2) Where required to offer the land for sale under subsection (1), the owner of the land must do so at a public auction within the period of 6 months beginning with the date of issue of the notice under subsection (1).
   (3) Where either subsection (4) or (5) applies, the local authority must offer the land for sale at a public auction as soon as practicable after the end of the period described in subsection (2).
   (4) This subsection applies if the owner of the land has not offered the land for sale in accordance with subsection (2).
   (5) This subsection applies if—
      (a) the owner of the land has offered the land for sale in accordance with subsection (2),
(b) the land was—
   (i) not sold at the public auction, or
   (ii) sold on terms that in the opinion of the local authority are not in the public interest, and
(c) in the opinion of the local authority the arrangements made for the auction were unsatisfactory in a way that had a material effect on the land not being sold or the terms on which the land was sold.

(6) Where subsection (7) applies, no further application for a compulsory sale order may be made until the expiry of the period of 3 years beginning with the date of the public auction.

(7) This subsection applies if—
   (a) the owner of the land has offered the land for sale in accordance with subsection (2), and
   (b) the land was not sold at the public auction.

97ZE  Power of local authority where land not put to use

(1) Subsection (2) applies if—
   (a) land has been sold in accordance with section 97ZD, and
   (b) in the opinion of the local authority no satisfactory steps towards appropriate development or use of the land have commenced within the period of 3 years beginning with the date the land was sold.

(2) The local authority may acquire the land compulsorily.

97ZF  Regulations on compulsory sale orders

(1) The Scottish Ministers may by regulations make such further provision as they see fit in connection with—
   (a) compulsory sale orders under section 97ZD,
   (b) the exercise by local authorities of the power in section 97ZE.

(2) Without prejudice to the generality of subsection (1), regulations may in particular make provision about—
   (a) arrangements for payment to the owner of the consideration paid for land sold under section 97ZD(3),
   (b) the circumstances in which and the extent to which local authorities may recover from such sums any costs reasonably incurred by them in carrying out their functions under section 97ZD.

(3) Regulations under this section are subject to the affirmative procedure.”.>
Community right to register an interest in land

After section 97Z of the 2003 Act (as inserted by section 48), insert—

“PART 3C

COMMUNITY RIGHT TO REGISTER AN INTEREST IN LAND

97ZG Community right to register an interest in land

(1) A community body may make an application to Ministers for its interest in registerable land to be registered.

(2) An application under subsection (1) must be made in the prescribed form and accompanied by information of the prescribed kind, including information (provided, where appropriate, by or by reference to maps or drawings) about the location and boundaries of the land.

(3) Where Ministers decide that it is in the public interest for the interest of a community body to be entered in the Register of Community Interests in Land they shall direct the Keeper to so enter the interest with effect from the date on which Ministers made the decision.

(4) Where an interest has been registered in accordance with subsection (4), the Keeper must notify—

(a) the owner of the land; and

(b) any creditor in a standard security over an interest in the land.

(5) Where a person mentioned in subsection (4) proposes to—

(a) transfer the land (or any land of which that land forms part);

(b) take any action with a view to the transfer of that land (or any land of which that land forms part); or

(c) undertake any development of a prescribed kind on the land (or any land of which that land forms part),

that person must notify the community body of the proposal.

(6) In this Part—

“community body” has the meaning given by section 34,

“the Keeper” has the meaning given by section 36(9),

“registerable land” has the meaning given by section 33,

“Register of Community Interests in Land” means the register set up under section 36.”.

Sarah Boyack

95 After section 48, insert—

<Duty of local authorities to support community bodies, crofting community bodies and Part 3A community bodies

Before section 98 of the 2003 Act, insert—
Duty of local authorities to support community bodies, crofting community bodies and Part 3A community bodies

(1) It is the duty of each local authority to provide support—

(a) to bodies or groups of persons within the authority’s area seeking to constitute themselves as a community body, crofting community body or a Part 3A community body with a view to registering an interest in land under, and exercising a right to buy land conferred by, Part 2, 3 or, as the case may be, 3A of this Act in so constituting themselves,

(b) to community bodies, crofting community bodies and Part 3A community bodies within the authority’s area seeking—

(i) to register an interest in land under, or

(ii) to exercise a right to buy land conferred by,

Part 2, 3 or, as the case may be 3A of this Act in so doing.

(2) Ministers must issue guidance to local authorities about the carrying out of the function conferred on local authorities by subsection (1); and local authorities must comply with such guidance.

(3) Ministers must, before issuing guidance under subsection (2) and within one year of this subsection coming into force, consult such persons as they consider appropriate about the content of that guidance.

After section 49

Sarah Boyack

Review of compulsory purchase legislation and guidance

(1) The Scottish Ministers must, for the purpose of considering how communities could be further empowered in relation to the better use or acquisition of land which is of significance to them, conduct a review of legislation which allows the Scottish Ministers, a local authority or any other public authority to acquire land compulsorily and any guidance associated with such legislation.

(2) In conducting such a review, the Scottish Ministers are in particular to consider—

(a) the extent to which powers to acquire land compulsorily contribute, or could contribute, to achieving sustainable development,

(b) whether communities are sufficiently involved in compulsory acquisition processes,

(c) whether a right for community bodies to request the initiation of a compulsory acquisition process should be created and, if so, the circumstances in which such a right should apply,

(d) whether compulsory acquisition processes could be made more efficient and effective (in particular, for communities involved to any extent in such processes).

(3) The Scottish Ministers must publish a report of the review under subsection (1) no later than two years after this section comes into force.
Schedule 4

Aileen McLeod

38 In schedule 4, page 80, line 10, leave out <in accordance with this paragraph> and insert <as follows>

Aileen McLeod

39 In schedule 4, page 80, line 11, at end insert—

<( ) in subsection (4)(a), after “sought” insert “to be registered”>

Aileen McLeod

40 In schedule 4, page 81, line 16, leave out <“or 94” substitute “> and insert <“78 or 94” substitute “72(4), 78,>.

Aileen McLeod

41 In schedule 4, page 81, line 17, leave out <or (4A)> and insert <, (4A) or (4B), 38(2B), 71(A1)(b), (4A) or (4B),>.

Dave Thompson
Supported by: Sarah Boyack

55 In schedule 4, page 81, line 17, after <(4A),> insert <44(2D),>.

Aileen McLeod

88 In schedule 4, page 81, line 18, after <(4),> insert <97D(4A) or (4B),>.

Michael Russell
Supported by: Sarah Boyack

46 In schedule 4, page 81, line 18, at end insert—

<( ) after subsection (5) insert—

“( ) In making any decision under Part 2, 3 or 3A, Ministers are to have regards to the International Covenant on Economic, Social and Cultural Rights (adopted and opened to signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966).”>

Graeme Dey
Supported by: Sarah Boyack

47 In schedule 4, page 81, line 18, at end insert—

<( ) after subsection (5) insert—

“( ) Where a community body is seeking to acquire land under Part 2, 3 or 3A, Ministers may, on being requested to do so by the owner of the land or by the community body, take such steps as Ministers consider appropriate for the purpose of arranging, or facilitating the arrangement of, mediation with regard to the proposed acquisition.”>
Claudia Beamish

56  In schedule 4, page 81, line 19, at end insert—

<(< ) after subsection (8), insert—

“( ) A community body which has made a written application under Part 2, 3 or 3A may, at any time before the application is disposed of, correct in writing a clerical or other non-material error in that application.”.

Claudia Beamish

57  In schedule 4, page 81, line 19, at end insert—

<(< ) After section 98 insert—

“98A  Special application of certain provisions of Parts 2 and 3A

(1) This section applies to any provision of Part 2 or 3A of this Act which includes the words “before the end of the period of 7 days”, “within 7 days” or “within the period of 7 days”.

(2) Ministers may determine, where they are satisfied that there is a good and sufficient reason for doing so, that in the application of the provision to a particular case, the 7 days in question are to be extended to 14 days.

(3) Where Ministers make a determination under subsection (2), they must issue their determination in writing accompanied by a statement of their reasons for being satisfied that there are good and sufficient reasons to extend the period.”.

Schedule 5

Aileen McLeod

42  In schedule 5, page 82, line 7, leave out <, (6) and (8)> and insert <and (6)>

Section 99

Sarah Boyack

97  In section 99, page 76, line 36, at end insert—

<(< )  Section 48 comes into force on the day after Royal Assent, but only to the extent required to enable the consultation referred to in section 97C(2A) of the Land Reform (Scotland) Act 2003 to take place.”.

Sarah Boyack

98  In section 99, page 76, line 36, at end insert—

<(< )  Section (Duty of local authorities to support community bodies, crofting community bodies and Part 3A community bodies) comes into force on the day after Royal Assent, but only to the extent required to enable the consultation referred to in section 97ZH(3) of the Land Reform (Scotland) Act 2003 to take place.”.
Long title

Aileen McLeod

43 In the long title, page 1, line 3, leave out <Part 2> and insert <Parts 2 and 3>
Community Empowerment (Scotland) Bill

2nd Groupings of Amendments for Stage 2
(Rural Affairs, Climate Change and Environment Committee)

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the second day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Land which is eligible to be bought under Part 3A of 2003 Act**
58, 34, 59, 89, 60, 54, 61, 35, 36, 37, 97

**Ways in which Part 3A community bodies may be constituted etc.**
62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 88

**Applications for consent to buy under Part 3A of 2003 Act: information to be included in application and criteria for consent**
73, 74, 75, 45, 90, 76

**Reimbursement of costs of holding ballot under Part 3A of 2003 Act**
77, 78

**Effect of Ministers’ decision on right to buy under Part 3A of 2003 Act**
79, 80, 81, 82, 83, 84, 85

**Valuation of land under Part 3A of 2003 Act: representations about appointment of valuer and valuation of land, and reasons for Lands Tribunal decisions**
91, 86, 87

**Financial support for Part 3A community bodies**
92

**Persistently abandoned and neglected land: compulsory sale order**
93
Right to register an interest in land and be notified of proposed changes in its use
94

Duty of local authorities to support community bodies, crofting community bodies and Part 3A community bodies
95, 98

Review of compulsory purchase legislation and guidance
96

Decisions under Parts 2, 3 or 3A of 2003 Act: Ministers to have regard to International Covenant on Economic, Social and Cultural Rights
46

Acquisitions of land under Parts 2, 3 or 3A of 2003 Act: mediation
47

Acquisitions of land under Parts 2, 3 or 3A of 2003 Act: correction of errors
56

Parts 2 and 3A of 2003 Act: extension of periods of 7 days to 14 days in certain circumstances
57

Amendments already debated

Ways in which community bodies and crofting community bodies may be constituted
With 18 – 40

Minor amendments in relation to Parts 2 and 3 of 2003 Act (including procedure for certain regulations)
With 30 – 38, 39, 41, 43

Duration and renewal of registration under Part 2 of 2003 Act
With 44 – 55

Appeals to Lands Tribunals as respects valuations of land under Part 2 of 2003 Act
With 32 – 42
Present:
Claudia Beamish  Sarah Boyack
Graeme Dey (Deputy Convener)  Alex Fergusson
Rob Gibson (Convener)  Jim Hume
Angus MacDonald  Michael Russell
Dave Thompson

**Community Empowerment (Scotland) Bill:** The Committee considered the Bill at Stage 2 (Day 2).

The following amendments were agreed to (without division): 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 47, 57, 42 and 43.

The following amendments were agreed to (by division)—
45 (For 7, Against 2, Abstentions 0)
46 (For 8, Against 0, Abstentions 1).

The following amendments were disagreed to (by division)—
89 (For 4, Against 5, Abstentions 0)
90 (For 2, Against 7, Abstentions 0).

The following amendments were moved and, no member having objected, withdrawn: 91, 92, 93, 94, 95, 96 and 56.

The following amendments were not moved: 34, 54, 35, 36, 37, 55, 97 and 98.

**Section 49 was agreed to without amendment.**

**Section 48 was agreed to as amended.**

The Committee completed its Stage 2 consideration of the Bill.
Scottish Parliament
Rural Affairs, Climate Change and Environment Committee

Wednesday 11 March 2015

[The Convener opened the meeting at 10:00]

Community Empowerment (Scotland) Bill: Stage 2

The Convener (Rob Gibson): Good morning, everybody, and welcome to the 10th meeting of the Rural Affairs, Climate Change and Environment Committee in 2015.

Before we move to the first item on the agenda, I remind people that mobile phones should be switched off, as they can affect the broadcasting system. However, committee members may use tablets for the business of the meeting.

Agenda item 1 is stage 2 of the Community Empowerment (Scotland) Bill. Today we will consider further amendments to the bill. I welcome to the meeting the Minister for Environment, Climate Change and Land Reform, Dr Aileen McLeod, and her officials. Dr McLeod is accompanied by Stephen Pathirana, Dave Thomson, Rachel Rayner, Elizabeth Connell and Annalee Murphy.

I now have to read this out—it is nearly as long as one of the explanations from the minister last week about a certain amendment.

Everyone should have with them a copy of the bill as introduced, the marshalled list of amendments, which was published on Monday, and the groupings paper, which sets out the amendments in the order in which they will be debated.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in the group to speak to and move that amendment, and to speak to all the other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate that by catching my attention in the usual way. If the minister has not already spoken on the group, I will invite her to contribute to the debate just before I move to the winding-up speech.

The debate on each group will be concluded by me inviting the member who moved the first amendment in the group to wind up. Following the debate on the group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or to withdraw it.

If the member wishes to press the amendment, I will put the question on the amendment. If a member wishes to withdraw their amendment after it has been moved, I will check whether any other member objects. If any committee member does object, the amendment is not withdrawn and the committee immediately moves to a vote on it.

If a member does not wish to move their amendment when it is called, they should say "Not moved." Any other MSP present may move the amendment. If no one moves the amendment, however, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote. Voting on all divisions is by a show of hands. It is important that members keep their hands clearly raised so that the clerk can record the vote. The committee is required to indicate formally that it has considered and agreed to each section of the bill, so I will put a question on each section at the appropriate moment.

This is our second day of consideration of amendments at stage 2. [Interruption.]

Section 48—Abandoned and neglected land

The Convener: We come now to section 48 and the first grouping of amendments, on land which is eligible to be bought under part 3A of the Land Reform (Scotland) Act 2003. Amendment 58, in the name of the minister, is grouped with amendments 34, 59, 89, 60, 54, 61, 35 to 37 and 97.

The Minister for Environment, Climate Change and Land Reform (Aileen McLeod): Amendment 58 is a technical amendment that seeks to clarify that the land that might be bought under proposed new part 3A of the Land Reform (Scotland) Act 2003 is to be given the term “eligible land”, and seeks to bring proposed new part 3A of the 2003 act into alignment with section 68 of the Land Reform (Scotland) Act 2003, which relates to the crofting community right to buy.

On amendment 34, in the name of Michael Russell, which seeks to expand the type of land that will be eligible under proposed new part 3A of the 2003 act from land that is “abandoned or neglected” to land that is “in substantial need of sustainable development”, I note, first of all, that the bill builds on the 2003 act, which gave communities in crofting areas a compulsory purchase power and those in the rest of Scotland a pre-emptive right to buy. Although the bill will improve those powers, it will also introduce a new compulsory purchase power for communities to buy land that is neglected and abandoned, wherever they might be.
Although that represents another important and progressive step on Scotland's land reform journey, it is clear from the consultation and the committee's considerable work on the matter that the proposal is narrower in scope than what the committee was seeking. Amendment 34 would allow a community body to apply to purchase land under the new right-to-buy provisions on the ground that the land is

"in substantial need of sustainable development",

and ministers would not need to be satisfied that the land is

"wholly or mainly abandoned or neglected".

I have considered amendment 58 extremely carefully and have listened to the committee’s views and concerns. As I explained when I gave evidence to the committee, any amendment to the bill needs to fall within the competence of the Scottish Parliament, and that includes ensuring that the amendment complies with the European convention on human rights. A right to buy engages the right in ECHR to “peaceful enjoyment of ... possessions”, because the legislation provides for a scheme under which an owner of land can be required to sell that land without their consent. A right to buy will be compatible with ECHR if it is in accordance with law and if it pursues a legitimate aim in a proportionate way.

The phrase “in accordance with law” means that legislation must be clearly stated, foreseeable in its effects and not arbitrary. The test that land must be

"wholly or mainly abandoned or neglected"

provides all owners of land with foreseeability, as it allows those who are actively managing their land in a sustainable manner to continue to do so without concerns that they might face unnecessary processes to purchase their land when there is no intention on their part to sell it.

Having taken further legal advice, I consider that amendment 34 would be outwith the competence of the Scottish Parliament. In allowing a community body to make an application under the new right to buy on the ground that the land is

"in substantial need of sustainable development",

it does not meet the requirement that legislation be clearly stated, be foreseeable in its effect and not operate in an arbitrary manner. Unlike the requirement that land be neglected or abandoned, a requirement for the land to be

"in substantial need of sustainable development"

is not of itself sufficiently precise to provide an owner of land with sufficient foreseeability and predictability as to when the right to buy may be triggered.

The Scottish Government made it clear in its stage 1 response to the committee that we understand the committee’s concerns and would actively consider whether we could extend the description of land to which the right to buy applies beyond neglected and abandoned land to other problem land. Although the Scottish Government accepts in principle the committee’s desire to broaden the scope, it remains concerned that the proposal and the words that have been chosen are so broad that they would take section 48 outwith the Parliament’s competence. For that reason, the Government cannot support amendment 34.

At the same time, the Government is extremely keen to try to find a solution that broadens out the reference to neglected and abandoned land to add a third test or leg to the proposal and which offers a better and much stronger definition of “eligible land”. I am extremely keen about, and am absolutely committed to, working with the committee prior to stage 3 to craft such a solution. I hope that the committee accepts my offer and will work with the Government to look for a suitable solution. On that basis, I ask Michael Russell not to move amendment 34.

On amendment 59, section 97C(2) of the bill states:

“In determining whether land is eligible, Ministers must have regard to prescribed matters.”

Amendment 59 seeks to avoid confusion by confirming that ministers are not to consider whether each and every holding of land in Scotland is “eligible land”, regardless of whether or not an application has been made, and are to consider only whether land is eligible if and when that land is the subject of an application under proposed new part 3A of the 2003 act.

With regard to amendment 89, proposed new section 97C(2) of the 2003 act will require ministers to make regulations that set out matters that ministers “must have regard to” in determining whether land is wholly or mainly neglected or abandoned for the purposes of the new right to buy neglected and abandoned land. Amendment 89 seeks to provide that, before making such regulations, ministers are required to

“consult such persons”
or bodies

“as they consider appropriate”.

The amendment also requires that the consultation take place within a year and a day of proposed new section 97C(2) coming into force.

I assure the committee that stakeholder engagement is an essential part of the regulation-making process and that stakeholders and appropriate persons will, as has already been the
case, be consulted as draft regulations are prepared. I therefore do not consider it necessary to put in the bill a requirement to consult before making draft regulations, or an associated timescale for consultation. Indeed, stakeholders were consulted on the draft regulations setting out matters that ministers must have regard to in determining whether land is eligible land before the draft regulations were sent to the committee in February. With that assurance, I ask Sarah Boyack not to move amendment 89.

On amendments 60 and 61, the definition of eligible land for the purposes of proposed new part 3A of the 2003 act does not include land on which there is a building or other structure that is an individual’s home unless the building or structure falls within such a class or classes as may be prescribed in regulations. Amendment 60 seeks to remove the regulation-making powers to prescribe homes that are to be exceptions to the general exclusion of homes from the definition of “eligible land”.

Last September, the Delegated Powers and Law Reform Committee queried the requirement for that additional power and, after consideration, I agree that the power is not required. The Scottish Government is clear that homes should not be subject to the community right to buy under proposed new part 3A of the 2003 act, and the bill needs to make it clear that an individual’s home, or a building that could be treated as an individual’s home, is not considered to be eligible land.

Amendment 61 seeks to give ministers the power, via regulations, to specify what classes of building or structure are an individual’s home for the purposes of proposed new part 3A of the 2003 act. At the moment, ministers can specify only the classes of building or structure that “are to be treated as” an individual’s home; in other words, ministers are allowed to set out only what kinds of buildings are to be “treated” as homes for the purposes of proposed new part 3A of the 2003 act, even if they are not homes. Moreover, the amendment allows ministers to specify in regulations what classes of building or structure are an individual’s home, and that power will be used to avoid confusion about what is meant by the reference to “an individual’s home” for the purposes of the right to buy under proposed new part 3A of the 2003 act.

On amendment 54, land that is classed as bona vacantia or ultimus haeres is currently excluded from the definition of “eligible land” by virtue of section 97C(3)(e) of proposed new part 3A of the 2003 act. Bona vacantia is ownerless property that by law passes to the Crown, and ultimus haeres is land that belonged to a deceased person for whom no spouse, partner or living blood relative can be traced. Amendment 54 seeks to remove bona vacantia and ultimus haeres land from the list of such excluded land and to allow it to be subject to proposed new part 3A of the 2003 act.

Land that is classed as bona vacantia and ultimus haeres is claimed by the Crown through the Queen’s and Lord Treasurer’s Remembrancer, whose purpose is to seek to realise the value of any land that falls to the Crown as bona vacantia or ultimus haeres. The remembrancer seeks to resolve the Crown interest in such land either by a disposal, where there is interest in the land, or a notice of disclaimer in which the remembrancer’s interest in the land is declared—for example where there is no reasonable prospect of a disposal proceeding.

10:15

There are good reasons why bona vacantia and ultimus haeres land is excluded from the definition of eligible land. The remembrancer does not to seek to retain land in order to allow time for an acquisition of the land to be completed under part 3A of the Land Reform (Scotland) Act 2003. It is not in the remembrancer’s interest to do so as no disposal income would be generated and the remembrancer is not resourced to manage such land on an on-going or long-term basis. The remembrancer also seeks to avoid retaining land because of the risks of liabilities arising in relation to it. It follows from the sources of land falling to the Crown as bona vacantia that it can often be in a poor condition, bringing with it the risk of future problems if the Crown interest in it is not resolved.

In circumstances in which land has fallen to the Crown as bona vacantia or ultimus haeres land, the community body has the option of contacting the remembrancer with a view to acquiring the land. There would, in such circumstances, be no need to rely on the proposed new part 3A process.

For those reasons, I ask Sarah Boyack not to move amendment 54.

Amendment 35 seeks to change the title of the online register on which an application form and all documentation relating to an application under proposed new part 3A of the 2003 act will be maintained. The register is maintained by the keeper of the registers of Scotland in a manner and form that is convenient for public inspection. The amendment seeks to amend the title of the register from the “Register of Community Interests in Abandoned or Neglected Land” to the “Register of Community Interests in Eligible Land”.

Proposed new part 3A of the 2003 act concerns communities’ right to buy abandoned or neglected land, and it is important that that be reflected in the title of the register. Rejecting the amendment will
ensure that the title of the register accurately reflects its purpose, and that it is appropriate and relevant to the information relating to abandoned and neglected land that it contains. For that reason, I ask Michael Russell not to move amendment 35.

On amendment 36, section 97G(6)(b) of proposed new part 3A of the 2003 act requires a part 3A community body to give reasons why it considers that the land that is subject to its application is "wholly or mainly abandoned or neglected".

Michael Russell has lodged amendment 34, which is linked to amendment 36. It seeks to expand the definition of eligible land for the purposes of proposed new part 3A of the 2003 act, so that it includes land that is "otherwise in substantial need of sustainable development". Amendment 36 is a consequential amendment to change the reference to "wholly or mainly abandoned or neglected" land in section 97G(6)(b) to a reference to "eligible land". As I have asked Mr Russell not to move amendment 34, I also ask him not to move amendment 36.

Amendment 37 is also linked to amendment 34. The purpose of amendment 37 is to obtain the landowner's views on whether they consider that the land is "eligible", rather than whether the land is "wholly or mainly abandoned or neglected".

That would be consequential to amendment 34. Again, as I have asked Mr Russell not to move amendment 34, I also ask him not to move amendment 37, for the reasons that I have set out already.

Amendment 97 is linked to amendment 89. It seeks to ensure that consultation on the draft regulations that are to be made under proposed new section 97C(2) of the 2003 act takes place within a year and a day of the bill's receiving royal assent.

I assure Sarah Boyack that, as I said, stakeholder engagement is an absolutely essential part of the regulation-making process, and that stakeholders and appropriate persons will be consulted as any draft regulations are prepared. For those reasons, it is not necessary to place in the bill a requirement for consultation before making draft regulations or an associated timescale for consultation. I therefore ask Sarah Boyack not to move amendment 97.

I move amendment 58.

Michael Russell (Argyll and Bute) (SNP): Most people would agree that section 48 is at the heart of the part of the bill that we are considering. I will address my amendments and the minister's comments together.

The key issue that the bill presents is how we enable and assist—indeed, empower—communities to take possession of land for their use. That is not a judgment on other landlords; it is about treating land as an asset and a resource, the possession and use of which can enrich, enable and empower communities. If we make the process difficult in any way, we run the risk of not achieving the bill's central objectives.

We know from the experience of the operation of land reform legislation in Scotland that, despite the strong good intentions that lay behind it and the Parliament's strong support, there have been difficulties for communities in taking possession of land. The process is an incremental one that involves finding out what works and ensuring that that is in legislation so that it may work well.

My problem with leaving the bill as it stands is that the terms “abandoned” and “neglected” as they are presented are in many people's view—not simply mine—not sufficient to achieve the bill's objectives. The minister argued cogently that there are difficulties in the wording of amendment 34 and that the phrase "in ... need of sustainable development" is too vague. I think that she said that a better and stronger definition is needed.

The minister also said that terms should not be subjective. However, I believe that the term "neglected" as presented in the bill is subjective. It is perfectly possible to look at a piece of land in many different ways. For example, someone might say that a piece of land has been subject to benign neglect. Landowners who do not wish the bill to operate—there are some—will undoubtedly use the law to say that land that appears to be abandoned or neglected is not abandoned or neglected. As the committee heard in evidence, they will also use the legal definitions of abandoned and neglected as a barrier to allowing land to be bought.

The minister referred to a third leg. There needs to be something in addition that buttresses the terms “abandoned” and “neglected” in a way that fulfills the bill's intention.

My view, which I know is the view of others, is that the term “sustainable development” is clear and has been used before in legal proceedings—for example, it was used in the Pairc judgment. We should insist that the term becomes more common in legal usage. If we add the phrase "in ... need of sustainable development", 

Michael Russell (Argyll and Bute) (SNP): Most people would agree that section 48 is at the
when we judge whether a piece of land is abandoned or neglected, we will be able to see much more clearly what a community might be entitled to do.

However, if there is a difficulty with the term “sustainable development”, we need to find another term that will allow proposed new part 3A of the 2003 act to operate effectively. As I understand it, the Government has moved from its position at the start of the process to the position that the minister articulated, which is that the Government wishes to work with the committee to address the issue that we all raised in the stage 1 report of needing to find the third leg—the other term that will allow us to move forward.

If the minister confirms in summing up that that is the case and that the Government fully accepts that a third leg is required and will work with the committee, I will be willing, with some reluctance, not to move amendments 34 to 37 at this stage. As a new member of the committee and as a recently returned back bencher, I am mindful that it gets harder to amend bills the longer the process continues and that, when we get to stage 3, it becomes considerably harder. We are proceeding very much on trust, but I very much trust the minister to do what she says.

Sarah Boyack will speak to her amendments, but there was a proposal to remove the terms “abandoned” and “neglected” entirely from the bill. I can understand that but, the more I look at the bill, the more I think that that would create additional confusion, because we would be using the terms in one part of Scotland and not in another part, which would create problems for communities.

Provided that I am assured that the Government absolutely accepts that the terms are not yet fully and properly expressed and that, after consultation with the committee, there will be a stage 3 amendment to strengthen the bill and allow communities to use the bill with the third leg in place, I will be prepared not to move my amendments. I say that reluctantly, because my objectives and those of the committee are exactly the same as the Government’s—we want to do everything possible to empower communities, but the provisions that we are discussing do not yet achieve that.

Sarah Boyack (Lothian) (Lab): I look forward to hearing the minister’s wind-up speech. I agree with Mike Russell that this debate is key to the whole bill. I will speak about amendment 89, which is minor, before moving on to amendment 54 and making general comments.

The regulations that follow on from the bill will be crucial. The debates that we have had throughout the process have been about what is in the bill and the regulations that will follow from that. The combination of those will be the test of whether the bill makes it possible for communities to exercise the rights that the Government intends for them. Part of the issue is the commitment to ensuring that people are properly consulted, which is an easy thing to agree about, but a commitment must also be made on timescales.

Proposed new section 97C(2) of the 2003 act requires ministers to make regulations setting out the factors that they must have regard to in deciding whether land is, in their opinion, eligible under part 3. Amendment 89, along with consequential amendment 97, would require ministers to consult on the regulations within a year of the bill receiving royal assent. I have suggested a timescale because we need to get on with the bill. Once we have passed the detail in the bill, it is important that the next stage is followed through swiftly because, until that happens, communities will feel unsure and there will be uncertainty.

Today’s debate about eligible land is a key aspect of our consideration of the bill. The debates that will follow about how the eligibility of land will be judged, and the minister setting out at more length how she sees that happening in practice, will be crucial. For example, we are only now seeing the public duty from the Climate Change (Scotland) Act 2009 coming into effect.

The commitment that I am looking for is not just from the minister but from the whole Government system. Having been a minister, I echo Mike Russell’s point that being a minister is about getting everybody and all the resources aligned, which is why I am asking for a commitment not just from the minister but from the whole system.

Amendment 54 is about the exemption of certain types of Crown land. New section 97C(3) of the 2003 act makes provision for land that is exempted from part 3A, and amendment 54 would remove paragraph (e), which exempts “land which is owned or occupied by the Crown by virtue of its having vested as bona vacantia in the Crown, or its having fallen to the Crown as ultimus haeres”.

I have listened to the minister and I will probably want to go away and read the Official Report. It was not clear why some categories of Crown land are exempted in proposed new part 3A of the 2003 act when other Crown land is included by virtue of section 100(2) of that act and there is not a similar exemption from the definition of eligible crofting land in part 3. I have listened to what the minister said and I want to think about her reflection on why the exemption is at all necessary; she gave reasons, but I want to think about them further.
I have some comments on amendments 34 and 35, which Mike Russell lodged. I have problems with the bill referring only to “wholly ... abandoned or neglected” land. I have problems with what is meant according to the dictionary definition. The last time she came to speak to us, the minister said that she is using the normal understanding of the words and that we should look them up in a dictionary.

I have concerns about the situation in urban and rural settings. The Government’s intentions that led to the bill might be frustrated by the interpretation of neglected and abandoned land if that is not properly defined. I have concerns about how the minister suggested that it would be defined.

10:30

The 2003 act was all about furthering sustainable development; the bill is about removing barriers to sustainable development. The policy memorandum to the bill is absolutely clear that

“The Scottish Government considers that there is a general public interest in removing barriers to sustainable development of land by enabling community bodies to purchase neglected and abandoned land.”

I agree with that ambition, but we have to make that a real outcome of the bill. That is why it is important to include the term “sustainable development”. It is a legally defined and accepted term, as Mike Russell said. It appears in environment legislation and planning legislation and it is internationally accepted. Including that is important because the land does not need to be neglected or abandoned. The idea of benign neglect is interesting. The issue is all about perception.

It is questionable, for example, whether the Eigg buyout would have met the requirements in the bill. I also have in mind the Calton test from Glasgow. I visited the east end of Glasgow, where there is land that has been lying for years with no proposals to do anything with it, which causes blight to the community. For how long does land have to be in a neglected or abandoned state before it counts under the minister’s definition in the bill?

In an urban context, we can take for example a piece of land for which a planning proposal— which might be completely against the local plan policy—is made regularly but has no chance of success. Would that land be accepted as being neglected or abandoned, given that, even though the owner has some ambition for it, there is no prospect of that being given planning permission?

The point extends to buildings. There is the Odeon test from the Edinburgh south side, where that building has been vacant for a decade. The owners have ambitions for the site, but there is no prospect of their being given planning permission.

As the bill stands, it is not clear to me how communities will be able to exercise the right to buy. It is good to have the minister’s commitment, which I very much welcome, that she is prepared to look at the issue further. Everybody round the table agrees with the objectives in the policy memorandum; the issue is about making sure that they are delivered.

The minister referred to the ECHR requirements. It is really important that this is tested properly. The test that she mentioned was that the legislation is clear and is not arbitrary—it is about foreseeability and predictability. If we look at planning legislation or the secondary legislation on antisocial behaviour that we have passed, we can see that legislation means that landowners do not have unlimited or unrestricted rights to enjoy their property—their right to enjoy their property is already limited by legislation. This needs to be pinned down and teased out.

I am very supportive of the commitment that the minister has given to look at this further. The challenge is that, once we have got through stage 2, the clock really starts ticking. The opportunity that we will have to debate the subject over the next two or three weeks or over the recess is important. I ask the minister to say how she will take matters forward. She has given a good commitment. We all agree that this is the key issue in the bill. It is about not just environmental sustainability but the social and economic impacts of neglected and abandoned land. We are frustrated that the terms as they appear in the bill will take us back rather than move us forward, in both urban and rural contexts.

I have spoken at more length than I normally would, convener, but this is such an important issue for the bill that I was keen to state our position and draw out how the minister will deliver her good commitment to making sure that we can make this the bill that we all want it to be during a difficult stage that is usually just a rush towards stage 3, because that would help us all.

Alex Fergusson (Galloway and West Dumfries) (Con): I will be brief. I absolutely agree with Mike Russell and Sarah Boyack that section 48 is the core of the bill. It is also important to put it on the record that it is the only area of the bill on which there was not unanimous agreement in the committee’s stage 1 report.

When the minister gave evidence, I asked her to confirm what the policy memorandum states—that the powers under section 48 would be used only as a last resort—and, if I recall correctly, she
confirmed that that is the case. I can quite happily support that in principle.

What concerns me about Mike Russell’s amendment 34—although I understand that he is likely not to move it at this stage—is that I do not believe that it provides the clarity that the bill requires. Good law is clear, unambiguous and properly defined, and I am concerned that his amendment would take us into areas that require interpretation and definition. A definition of sustainable development is a bit like beauty—sometimes it is in the eye of the beholder and very much open to interpretation. That makes for bad law.

I am happy to welcome the minister’s commitment to go away and look at the matter and try to provide some clarity, because section 48 of the bill really needs it. However, I hope that the Government will stick to its intention that the powers under proposed new part 3A of the 2003 act will be used only as a last resort.

I will make a brief comment on Sarah Boyack’s amendment 54, on the QLTR. I listened carefully to what the minister said about that. I have a situation in my constituency at the moment, of which the minister will be well aware, and it seems to me that the fact that the land has now fallen into not the ownership but the caretakership—if there is such a word—of the QLTR is helping the process of community purchase of the asset. The process would have been much longer and more drawn out if that had not been the case. I know that Sarah Boyack said that she would go away and think about the issue, but that is just one example of where the situation helps rather than hinders the process of community empowerment. I will leave it at that.

Claudia Beamish (South Scotland) (Lab): Good morning, minister. I seek clarification in relation to amendment 60. Will there be a definition, if not in the bill then in regulations, of the amount of land that can surround a home? That might need clarification.

Graeme Dey (Angus South) (SNP): I support Sarah Boyack’s concluding comments, in which she sought an understanding from the minister as to how in practice the minister and the committee will be able to work together to find an appropriate third leg. It would be useful to understand that. Given the consideration that the minister has already given the issue, and as she is aware of the committee’s views, realistically, how optimistic is she that we can between us come up with a third leg that ensures that the bill works as we all want it to work in practice?

The Convener: I will make a couple of comments. First, on a point that was raised about making land available, this is a process and not an event, as we know. I understand that the forthcoming land reform bill might look at aspects of compulsory purchase. Will you confirm that, minister? That might well be a short cut in some cases towards achieving some of the ends that we are interested in.

Secondly, you suggested that Michael Russell’s amendment 34 might be ultra vires—in other words, that it is outwith the Scottish Parliament’s competence. Will you explain that a little further, please? It is important for members to grasp why, if the amendment was pressed, it might be illegal. We need to know something of that.

Aileen McLeod: I will try to answer the points that committee members have raised and I will start with amendment 34. I recognise the case that the committee has put forward, and we are continuing to explore every avenue and every option within the confines of the law.

I give members my absolute commitment that I will sit down with the committee and my officials ahead of stage 3. I have asked my private office to have that discussion with me so that, if the committee decides to go down that route, we can get a date in the diary for us all to sit down, work through the bill and try to find a solution that meets the policy objectives that we all want to achieve and delivers them in practice. I hope that that will enable us to lodge appropriate amendments at stage 3.

I am absolutely committed to working with the committee and our stakeholders to achieve greater clarity. We can find better ways of meeting the objectives that we are pursuing in the bill, and I am committed to doing that by sitting down with the committee together with my officials to see what solutions we can find.

On Graeme Dey’s point, I am optimistic that we can find some agreement. It might not be easy, because the issue is complex, but you have my commitment that I am keen to ensure that committee members can sit down and discuss the bill with me and my officials.

On amendments 89 and 97, I reassure Sarah Boyack that our stakeholders will be engaged as an essential part of the process. We will ensure that stakeholders are consulted on the draft regulations, and I commit to engaging with our stakeholders at the earliest possible opportunity.

On amendment 54, the QLTR is exempted because the process is such that the QLTR does not hold on to land for any length of time; it seeks to release land as quickly as possible. If amendment 54 were agreed to, it would delay that process. Communities can approach the QLTR to see whether they can get land, and I agree with the points that Mr Fergusson made.
Claudia Beamish made points about amendment 60. We can certainly consider setting out an amount of land in regulations, along with considering other regulations.

On the convener’s point about amendment 34, I confirm that the proposal would be outwith the Parliament’s competence, as it would not be in accordance with the law. That is because the amendment is not clearly enough stated for its effects to be foreseeable. The landowner could not have sufficient foreseeability as to when the right to buy would apply.

Amendment 58 agreed to.

The Convener: Amendment 34, in the name of Michael Russell, has already been debated with amendment 58.

Michael Russell: On the basis of the minister’s reassurances, I will not move amendment 34.

Amendment 34 not moved.

Amendment 59 moved—[Aileen McLeod]—and agreed to.

The Convener: Amendment 89, in the name of Sarah Boyack, has already been debated with amendment 58.

Sarah Boyack: I would like to move amendment 89, because it is not just about consultation with interested parties; for me, it is also a timescale issue. I would hope that, if a consultation on regulations were held within the year, we would have both the same minister and the same bill team. The expertise that we have at this point needs to be followed through, and the commitments need to be followed through to the regulations. I am keen to push my amendment, so that the consultation can be done and the regulations can be introduced within the year.

Amendment 89 moved—[Sarah Boyack].

The Convener: The question is, that amendment 89 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against
Dey, Graeme (Angus South) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 89 disagreed to.

10:45

Amendment 60 moved—[Aileen McLeod]—and agreed to.

Amendment 54 not moved.

Amendment 61 moved—[Aileen McLeod]—and agreed to.

The Convener: We move to group 2, which is on ways in which proposed new part 3A community bodies may be constituted et cetera. Amendment 62, in the name of the minister, is grouped with amendments 63 to 72 and 88.

Aileen McLeod: During consultation on the bill, respondents have been clear about the need for ministers to offer a wider range of entities that a community body could use. Stakeholders in particular highlighted Scottish charitable incorporated organisations, or SCIOs, and community benefit companies, or bencoms, as being suitable.

At the moment, the right to register an interest in property and the community right to buy in proposed new part 3A of the Land Reform (Scotland) Act 2003 can be exercised only by “community bodies”. The bill as introduced sets out the types of legal entities that members of the community may form to be a “community body”. The amendments in this group will add SCIOs and bencoms to the types of legal body that are eligible to be part 3A community bodies under proposed new part 3A of the 2003 act, and will align that part with parts 2 and 3 of the 2003 act.

Amendments 62 and 65 specifically include community benefit societies and SCIOs as eligible legal bodies for the purposes of proposed new part 3A of the 2003 act. Their effect is that community bodies will be able to take the form of a company limited by guarantee, a community benefit society or a SCIO when they form their part 3A community body. That will provide communities with more flexibility to select the type of body that best meets their requirements.

The amendments will mean that the registered rules of a community benefit society and the constitution of a Scottish charitable incorporated organisation must satisfy certain requirements in order for a body to be a community body for the purposes of the community right to buy. Those requirements are similar to those that are currently in place for companies limited by guarantee. The amendments will have a similar effect to the amendments that the committee agreed to last week in relation to parts 2 and 3 of the 2003 act.

Amendment 65 seeks to insert new subsection (1B) into proposed new section 97D of the 2003
act. Paragraph (g) of that new subsection includes a provision that,

“on the request of any person for a copy of the minutes of a meeting of the SCIO, the SCIO must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes”.

The right would be open to a wide range of interested parties. Among the more obvious ones would be the owner of the land in question, members of the community or even other community bodies that were looking for examples of good practice.

As far as what would be considered a reasonable request is concerned, I would expect community bodies making such a decision to base it on common sense. If the request were for the minutes of an annual general meeting, for example, that would be perfectly reasonable, but if it were for the minutes of a meeting that was held, say, 15 years ago or for the minutes of all meetings over the previous 10 years, that would be another matter entirely. Public bodies must make similar considerations in relation to freedom of information requests, although community bodies are not subject to the freedom of information legislation.

Amendment 65 also provides some measure of protection for the community body against unreasonable requests by including a provision that, where a request is made, the community body

“may withhold information that is contained in the minutes”.

Information that could be withheld could be personal information or anything—either personal or commercial—that was provided in confidence. Again, we would expect community bodies to base their decisions on factors that are similar in nature to those that are set out in freedom of information legislation, at least in terms of what would be reasonable to withhold.

Amendment 65 also includes a provision that

“any surplus funds or assets of the society are to be applied for the benefit of the community.”

It would be for the community body to decide how to use those surplus funds; the provision is simply there to ensure that any such surplus funds are, in keeping with the bill’s policy aims, used solely for the benefit of the community.

I turn to amendments 63 and 64. At present, proposed new section 97D(1) of the 2003 act sets out that a part 3A community body must be a company limited by guarantee that meets certain requirements. Amendment 63 seeks to amend that list of requirements. The bill as introduced states that the articles of association of a community body must provide that the body has at least 20 members, and amendment 63 seeks to reduce the minimum number of members to 10. The intention is to address the difficulties, as highlighted by the committee, that some smaller or remote communities may experience in finding enough members to form the community body.

Amendment 64 also seeks to amend the list of requirements of the articles of association of a community body. Currently, the requirement is that the articles must provide that the majority of members of a community body must be members of the community. The amendment seeks to change that so that the articles must provide that three quarters of the members of the community body are members of the community. That is to ensure that, even in relation to community bodies in which the number of members is small, the interests of the local community are protected. I note that, last week, the committee agreed to similar amendments in relation to community bodies under part 2 of the 2003 act, and to crofting community bodies under part 3.

Amendment 66 will allow ministers to disapply the requirement for a company limited by guarantee, and a community benefit society or Scottish charitable incorporated organisation, as inserted by the amendments in this group, to have no fewer than 10 members if ministers think that that is in the public interest.

Amendment 67 will renumber a subsection following the insertion of the additional types of legal body. Amendment 68 will insert a power to enable ministers to amend at a future date the subsections listing the types of legal entities that communities can use to form part 3A community bodies. The amendment will enable ministers to add to the types of legal entities that communities may use to form community bodies under proposed new part 3A of the 2003 act.

Amendment 69 is a consequential amendment that specifies how a community benefit society and Scottish charitable incorporated organisation, in addition to a company limited by guarantee, will define their community by reference to

“a postcode unit or postcode units or a prescribed type of area”.

Amendment 70 is a consequential amendment following the insertion of community benefit societies and Scottish charitable incorporated organisations as types of body that communities can use to form a community body. It will add definitions of “community benefit society”, “registered rules” and “Scottish charitable incorporated organisation” to the bill.

I turn to amendment 71. The bill as introduced does not permit a part 3A community body to modify its memorandum or articles of association without ministers’ consent in writing, as long as the land or any part of it remains in its ownership.
Amendment 71 will apply that prohibition to a Scottish charitable incorporated organisation’s constitution and a community benefit society’s registered rules, following the inclusion of those two types of legal body as eligible bodies for the purposes of proposed new part 3A.

Amendment 72 is a technical change that will add the omitted word “body” after “community” in new section 97E(3) of the 2003 act, as inserted by section 48 of the bill. Amendment 88 is linked to amendment 68 and will subject the ministerial powers inserted by amendment 68 to the affirmative procedure.

I move amendment 62.

Claudia Beamish: I support all the amendments in the group. It is welcome that SCIOs and bencoms are to be included in the bill, and it is right that the eligibility requirements are very carefully defined so that everyone knows where they are. The extension of ministerial discretion over numbers provides a useful flexibility. It is important that, while land bought under proposed new part 3A of the 2003 act remains in the ownership of a community body, that community body cannot change its rules without ministerial permission. That will give reassurance to communities and the wider public. The broadening of the range of bodies, with the clarification on membership numbers and a range of other issues, including reasonable transparency, is important.

Aileen McLeod: I thank Claudia Beamish for her support. The key purpose of this group of amendments is to ensure that we protect our smaller communities. We want to ensure that smaller communities are not disadvantaged if they are unable to identify 20 members. By proposing the decrease in the number of members, we ensure that the interests of such communities are protected.

Amendment 62 agreed to.

Amendments 63 to 72 moved—[Aileen McLeod]—and agreed to.

Amendments 35 and 36 not moved.

The Convener: The next group is on applications for consent to buy under proposed new part 3A of the 2003 act: information to be included in application and criteria for consent. Amendment 73 is grouped with amendments 74, 75, 45, 90 and 76.

Aileen McLeod: The mapping requirements that are proposed in part 3A are similar to the mapping requirements in part 3 of the Land Reform (Scotland) Act 2003 on the crofting community right to buy. I propose the group of amendments to replace the proposed mapping requirements in part 3A, taking account of stakeholder feedback in relation to the mapping requirements in part 3 of the 2003 act, and to incorporate the proposed amendments in part 3A of the 2003 act.

Currently, the application form that ministers must prescribe requires the community body to identify all rights and interests in the subjects of the application. Those rights and interests are “sewers, pipes, lines, watercourses or other conduits and fences, dykes, ditches or other boundaries in or on the land ... known to the applicant body or the existence of which it is, on reasonably diligent inquiry, capable of ascertaining”.

Those requirements are widely recognised as likely to be particularly onerous and complex for a community body.

We propose the amendments because we recognise that the current mapping requirements are particularly complex. Ministers will still set out the required information for the application in regulations, but there will no longer be a requirement to include those interests that I mentioned as being considered particularly difficult to identify.

The purpose of amendment 73 is to clarify that the part 3A community body is required to include in the application all rights and interests known to the part 3A community body.

Amendment 74 removes the provision requiring a part 3A community body to specify “all sewers, pipes, lines, watercourses etc.” and simplifies the mapping requirements to a more reasonable level, in the same way as it does for part 3.

11:00

Amendment 75 removes another particularly onerous provision, which requires a part 3A community body to detail how its “proposed use, development and management of the land” would affect any of the sewers, pipes, lines, watercourses, fences, boundaries and so on.

Section 97H sets out the matters about which ministers have to be satisfied before they can grant consent to an application. Section 97H(c) provides that, in order to approve an application, ministers must be satisfied that, if the owner of the land were to remain as its owner, that ownership would be inconsistent with “furthering the achievement of sustainable development in relation to the land”.

The purpose of amendment 45 is to introduce a different standard of test of which ministers must be satisfied in order to approve the application. The test that is proposed in the amendment is that ministers must refuse consent unless they are
satisfied that it is unlikely that the owner’s continuing ownership would further the achievement of sustainable development in relation to the land.

Section 97G(6) states that the part 3A community body must demonstrate in its application that its proposals are “compatible with furthering the achievement of sustainable development”.

When considering section 97H(c), ministers must satisfy themselves that, if the land were to remain with its current owner, “that ownership would be inconsistent with furthering the achievement of sustainable development in relation to the land”.

That is not something that the part 3A community body is required to demonstrate. Ministers will come to a decision based on all the facts and circumstances.

Of course, the part 3A community body has the option to demonstrate in its application that it is in the public interest for the application to be approved because the current ownership would not be consistent with the sustainable development of the land, but that is not a requirement. Equally, it would be open to the landowner to make representations to the effect that their continued ownership would be consistent with the sustainable development of the land.

In essence, the purpose of section 97H(c) is to ensure that the application is not approved in cases where the current owner has demonstrated that his continued ownership of the land would further the achievement of sustainable development of the land, because if that is the case, the policy objectives of the bill will already have been met.

Amendment 45 seeks to achieve a similar goal. Having listened very carefully to the view of the committee, I am very happy to support the amendment. In deciding whether to consent to the exercise of the right to buy, ministers will have to act reasonably and that will include taking account of all relevant information, including any plans that the landowner has for the land. The change that is made by amendment 45 will not affect that.

The community body is required to accurately identify the current owner of the land in a part 3A application in order for the application to be valid. If the application does not accurately identify the owner, ministers are bound to reject it. Amendment 90 proposes the removal of the requirement for the community body to accurately identify the current owner. The community body would instead be required to have exercised all reasonable diligence in seeking to identify the owner, although the community body is not able to provide an accurate identification of the landowner in the application.

The effect of amendment 90, in circumstances where a part 3A application had been approved without an owner being identified, would be to require title to land to be transferred to a community body even though the current landowner is unknown. First, that amendment could deny landowners the opportunity to comment on the application to buy their land and thus make it difficult for ministers to come to a fair decision about the application.

Further, in circumstances where a community body has tried and failed to identify the owner, the community body has the option of contacting the Queen’s and Lord Treasurer’s Remembrancer to see whether the land has been deemed bona vacantia. If so, the body could take steps to acquire the land when the land is disposed of by the QLTR. For those reasons, I ask Sarah Boyack not to move amendment 90.

One of the current criteria for approval of an application under part 3A is that the application accurately identifies creditors in a standard security over the land that is the subject of the application. Amendment 76 seeks to restrict that so that only creditors in a standard security with a right to sell the land must be identified, and not all creditors in a standard security.

Amendment 76 seeks to make the application process less onerous on the community body, whilst ensuring that the appropriate creditors are identified. If the amendment is approved, there will be no requirement for the community body to identify a creditor in a standard security over the land that is the subject of the application.

I move amendment 73.

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): I will not say very much because the minister has said that she is happy to support amendment 45. I am pleased to hear that. The test that will be put in place because of amendment 45 will be much more reasonable and communities will be able to comply with it. In contrast, the previous test would have been very difficult, if not impossible.

Sarah Boyack: I welcome amendments 73, 74 and 75 because they will help to remove hurdles to community purchase. In some circumstances, it can be a huge challenge to identify the detail of sewers and pipes—that is a level of detail that is not required in relation to pursuing the option of community ownership.

If I understood correctly, the minister now accepts Dave Thompson’s amendment 45. Amendment 45 proposes a more proportionate
test of ownership, rather than requiring bodies to prove that

“if the owner of the land were to remain as its owner, that
ownership would be inconsistent with furthering the
achievement of sustainable development in relation to the
land”.

Amendment 45 is an improvement to the bill and I
welcome the minister’s acceptance of it.

I am disappointed that the minister does not feel
able to support amendment 90, which seeks to
ensure that where a community group has
exercised all reasonable diligence in seeking to
identify the owner, that is sufficient. The new
section 97H of the 2003 act sets out that

“Ministers must not consent to an application”

for a part 3 community right to buy, unless they
are satisfied about the matters that are listed in the
section. Paragraph (d) provides that ministers
must refuse consent unless they are satisfied

“that the owner of the land is accurately identified in the
application”.

Community Land Scotland raised concerns that
that sets a high bar for part 3 community bodies to
meet, given the often complex process of
determining ownership. Amendment 90 would give
the minister flexibility to consent to an application
where the community body has exercised all reasonable diligence in seeking to identify the
landowner, but has not been able to do so. What if
there is a complex trail of ownership and,
ultimately, the land is owned overseas and the
community body cannot track that?

There is a similar provision in section 73(5)(b) of
the 2003 act, in relation to applications by crofting
community bodies for consent to buy croft land.
That section requires the inclusion of information
regarding all

“rights and interests in the subjects of the application ... known to the applicant body or the existence of which it is,
on reasonably diligent inquiry, capable of ascertaining”.

I want to tease out from the minister whether
she objects to the principle or the detail of my
amendment. I could understand it if the land in
question was regarded as bona vacantia; in that
respect, I go back to my earlier amendment 54,
which I did not move. However, the real question
is how much time and resource communities are
expected to put into tracking down owners. There
is a lack of clarity, and my amendment seeks to
ensure that a community will not be frustrated in
bringing forward its proposals merely because the
ownership of the land is hidden or the trail of
ownership is too complex for it to understand. We
are not talking about bona vacantia; the land in
question is owned, but a community is unable to
track down the owner. That frustrates the bill’s
ambition for communities to be able to exercise
their right to buy in line with the bill’s aims.

I am keen for the Government to give
amendment 90 proper consideration, because I
think that there is a real reason why it should be
accepted.

Alex Fergusson: I return to the issue of clarity
that I highlighted earlier. What disturbs me about
Dave Thompson’s amendment 45—and the
reason why I am afraid I cannot support it—is the
inclusion of the word “unlikely”, which I think takes
us into the realms of cloudiness. It lacks the clarity
that I believe we need. I have some difficulties with
this part of the bill anyway, but I have great
difficulties with the lack of clarity in the
amendment. For a start, I do not know who would
be called on or asked to determine whether

“sustainable development … would be … furthered”

by the ownership of land. Someone has to sit
there and make those judgments; I assume that it
would be Scottish ministers, but I am afraid that
the lack of clarity that has been highlighted means
that I cannot support amendment 45.

Aileen McLeod: I tried to point out in my
remarks that, if agreed to, amendment 90 would
require title to land to be transferred when the land
was purchased, even if the current landowner
were unknown. It would also deny landowners the
opportunity to make representations on the
application. An owner has to be identified for land
to be purchased; it cannot be bought from an
unknown entity. The Government is committed to
completing the land register to assist us in this
task, and as part of the land reform legislation we
consulted on ways of improving transparency of
ownership. For those reasons, I ask Sarah Boyack
not to move amendment 90.

Amendment 73 agreed to.

Amendments 74 and 75 moved—[Aileen
McLeod]—and agreed to.

Amendment 37 not moved.

Amendment 45 moved—[Dave Thompson].

The Convener: The question is, that
amendment 45 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Dey, Graeme (Angus South) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

Against

Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)
The Convener: The result of the division is: For 7, Against 2, Abstentions 0.
Amendment 45 agreed to.

The Convener: Does Sarah Boyack wish to move amendment 90?

Sarah Boyack: I will move the amendment because we could be waiting years before we have clarity on land ownership.

Amendment 90 moved—[Sarah Boyack].

11:15

The Convener: The question is, that amendment 90 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)

Against
Dey, Graeme (Angus South) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Hume, Jim (South Scotland) (LD)
MacDonald, Angus (Falkirk East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 90 disagreed to.

Amendment 76 moved—[Aileen McLeod]—and agreed to.

The Convener: The next group is on the reimbursement of costs of holding a ballot under part 3A of the 2003 act. Amendment 77 is grouped with amendment 78.

Aileen McLeod: As introduced, the bill requires the part 3A community body to meet the expense of conducting a ballot. Amendment 78 introduces subsections (6A) and (6B) into new section 97J. They give ministers regulation-making powers, which will allow a part 3A community body, in particular prescribed circumstances, to apply to ministers to seek reimbursement of the cost of conducting the ballot. For example, one such circumstance could be if community support were demonstrated as a result of the ballot. We would develop those ideas further in discussions with stakeholders, should the bill be passed.

Amendment 77 provides that the current obligation under proposed new section 97J(6), that the part 3A community body is to meet the expenses of a ballot, is subject to the new regulation-making power inserted by amendment 78.

Amendments 77 and 78 bring part 3A into alignment with part 3 of the 2003 act, on the crofting community right to buy.

I move amendment 77.

Sarah Boyack: The minister has said that there might be circumstances in which Scottish ministers would reimburse communities for the cost of conducting a ballot. She said today that that would be the case if there had already been an indication of support in the community and the ballot merely confirmed that support. I would be interested to hear where the minister thinks that it would not be appropriate to provide financial support for a ballot. In what circumstances can she conceive of that happening?

Where crofting communities already have buy-in to a proposal and have considered the community support to satisfy the legislation, I would expect the community to be given support automatically. I cannot see why there is a set of criteria given that we do not really know why it would not be appropriate and why a community might not automatically get the cost of the ballot reimbursed. It would be much clearer to allow communities to have the finance to conduct a ballot automatically. I still do not see why the minister would not do that for them.

Alex Fergusson: I agree with Sarah Boyack’s issue, but for an entirely different reason. I find it very difficult to see which way to go on the matter without knowing the circumstances under which the reimbursement would apply. There could be a huge cost implication. Without knowing more of the details, I find it difficult to know where to go. It would be useful if the minister were to give us further explanation in her summing up.

The Convener: We discussed the issue last week and there was some explanation then. I look forward to the minister clarifying it again for members.

Aileen McLeod: I can say that the ballot in part 3A would be held before the application is received by the Scottish Government, so at that point we would not know anything about the community. An example of the circumstances that I was referring to might be that there is a protest group that wishes to delay a particular sale or development and all that it would have to do would be to say that it was holding a ballot, which the Scottish Government would then have to run and pay for, even if the protest group knew that it did not have the support of the majority of the community.

Amendment 77 agreed to.

Amendment 78 moved—[Aileen McLeod]—and agreed to.
The Convener: The next group is on the effect of ministers’ decisions on the right to buy under part 3A of the 2003 act. Amendment 79 is grouped with amendments 80 to 85.

Aileen McLeod: Amendments 79 to 85 address the Delegated Powers and Law Reform Committee’s concerns regarding the wording of the provisions in proposed new section 97N, and seek to clarify the nature of the regulation-making powers that are set out in that section. The revised wording makes it clear that the powers that will be given to ministers by section 97N are to make provision in regulations for or in connection with prohibiting, during such periods as may be specified in the regulations, specified persons from transferring or dealing with land that is the subject of a part 3A application. The regulations may specify transfers and dealings that are not prohibited; require or enable specified persons to register notices in the register of community rights in abandoned or neglected land; and, in specified circumstances, require information to be incorporated into deeds relating to the land.

I move amendment 79.

Claudia Beamish: I will be brief. I support the group of amendments, which I regard as tidying up the language of the provision. Clarity is always key.

Aileen McLeod: I thank Claudia Beamish for supporting the amendments.

Amendment 79 agreed to.

Amendments 80 to 85 moved—[Aileen McLeod]—and agreed to.

11:23

Meeting suspended.

11:34

On resuming—

The Convener: The next group of amendments is on the valuation of land under part 3A of the 2003 act: representations about appointment of valuer and valuation of land, and reasons for Lands Tribunal decisions. Amendment 91 is grouped with amendments 86 and 87.

Sarah Boyack: I am proposing amendment 91 to ensure that there is another way to deal with the issue of valuation if either of the parties is unhappy about the valuer appointed. It is quite an important issue to tease out.

New section 97S of the 2003 act sets out the procedure for a valuation of the land in respect of which a part 3A community body is exercising its right to buy. Section 97S(1) requires ministers to appoint a valuer to assess the value of that land within seven days of consenting to an application. It is not unreasonable to imagine a scenario in which one of the parties to a part 3A community right to buy might have an objection to the appropriateness of the valuer selected by ministers.

My amendment 91 would require ministers to notify the landowner and the community body of the appointment and give them the opportunity to raise any concerns. It would then be at ministers’ discretion whether to appoint a different valuer, based on the strength and nature of the objection, or to press ahead with the original valuer, providing an explanation to the objector as to why that was being done.

Amendment 91 would give more legitimacy and transparency and allow us to achieve a better outcome.

I move amendment 91.

Aileen McLeod: Amendment 91 would require ministers, within seven days of the appointment of a valuer, to invite written representations from the landowner and part 3A community body on the appointment of the valuer. The landowner and part 3A community body would then have seven days in which to respond. Ministers would have to have regard to written representations received and, within three days of the expiry of the deadline for written representations, appoint another suitably qualified valuer or confirm the appointment of the valuer and provide a written explanation of that decision to any person who submitted written representations objecting to the appointment of the valuer. That whole process could take up to 17 days, eating into the eight-week timetable for the completion of the valuation process, unless that timescale was also amended.

New section 97S(1) already requires ministers to appoint a valuer whom ministers consider “to be suitably qualified, independent and to have knowledge and experience of valuing land of a kind which is similar to the land being bought”.

Subsection (11) requires the valuation to be carried out within eight weeks of the appointment of the valuer, or such other period as ministers agree to, following an application by the valuer.

If amendment 91 were agreed to, a further amendment would be needed to ensure that the eight-week period for carrying out the valuation
began only when the new valuer’s appointment was made or the original valuer’s appointment was confirmed. Amendment 91 would extend the valuation period and therefore delay the application process.

The bill as introduced requires the valuer to invite the owner of the land and the community body to make representations in writing about the value of the land. If Government amendment 86 is agreed to, the landowner and part 3A community body will have the opportunity to make counter-representations on the value of the land. The landowner will be invited to make counter-representations on the community body’s representations and vice-versa. Seeking counter-representations will allow the valuer to take all circumstances into consideration.

The valuer will take account of all representations and counter-representations received when assessing the value of the land in order to reach a fair assessment. Should the landowner or the part 3A community body dispute the valuation, the parties already have the option of appealing to the Lands Tribunal in relation to the valuation of the land.

I urge Sarah Boyack to withdraw amendment 91, on the basis that there are currently enough safeguards in place to ensure a fair valuation process.

The current provisions of proposed new part 3A of the Land Reform (Scotland) Act 2003 require the valuer to invite the owner of the land, the tenant or the person who is entitled to the sporting interests—whichever it may be—and the community body to make representations in writing about the value of the land.

In the interests of completeness, I lodged amendment 86, which would allow for counter-representations to be made on comments that were made relating to the valuation of the land, and to allow the valuer adequate time to take those into account. The amendment seeks to allow counter-representations to be made by the owner of the land, the tenant or the person who is entitled to sporting interests, in response to representations made by the part 3A community body.

Amendment 86 also seeks to allow counter-representations to be made by the part 3A community body in response to representations made by the owner of the land, the tenant, or the person who is entitled to sporting interests. The amendment’s effect is to ensure that the valuer takes account of all parties’ views on the application and has time to do so.

The Government amendments seek to assist the valuer in reaching a fair assessment of the value of the land or interest that is the subject of the part 3A community body’s right-to-buy application.

Amendment 86 aligns the provisions of proposed new part 3A with the provisions in parts 2 and 3 of the 2003 act, as agreed by the committee last week, and I ask the committee to support it.

I move on to amendment 87. New section 97W(5) of the 2003 act, which will be inserted by section 48 of the bill, states:

“The Lands Tribunal must give reasons for its decision on an appeal under this section.”

However, currently, there is no time limit on when a written decision should be provided. With amendment 87, I propose to insert a time limit of eight weeks after the hearing of the appeal for the Lands Tribunal to issue written reasons for its decisions. That limit is proposed in order to provide the Lands Tribunal with flexibility when scheduling its cases.

In addition to inserting an eight-week time limit, the amendment also provides an option for the Lands Tribunal, if it considers that it is not reasonable to issue a written statement of reasons within the eight-week time limit, to notify the parties to the appeal of a new date by which it will issue its written reasons.

I propose amendment 87 in order to provide flexibility for the Lands Tribunal when scheduling its workload while at the same time ensuring that the parties to the appeal have a degree of certainty as to when they will receive the written statement of reasons. The amendment also provides that the validity of anything done under part 3A is not affected by failure by the Lands Tribunal to comply with these provisions.

Amendment 87 aligns proposed new part 3A of the 2003 act with the changes to parts 2 and 3 of the 2003 act that were agreed to by the committee last week, and I ask the committee to support it.

Sarah Boyack: I have listened carefully to what the minister said. I can see that amendment 86 would provide more clarity and new opportunities for the parties to reply to each other’s representations. That is a very good thing.

However, the minister did not address what would happen when either party is fundamentally not happy about the valuer, for whatever reason. I still think that this is an important new opportunity to address that situation, and the minister did not say why addressing it would not be a good thing. I would like the minister to come back between now and the stage 3 debate to clarify why amendment 91 is not an intelligent addition to the bill, as a safeguard. I will not press amendment 91 at this point.
Amendment 91, by agreement, withdrawn.

Amendments 86 and 87 moved—[Aileen McLeod]—and agreed to.

The Convener: The next group is on financial support for part 3A community bodies. Amendment 92, in the name of Sarah Boyack, is the only amendment in the group. Sarah Boyack will speak first; other members can listen carefully to see whether they wish to join in.

11:45
Sarah Boyack: At present, community bodies utilising the provisions in part 2 of the 2003 act are able to apply to the Scottish land fund, which provides practical and funding support. Funding comes from the Scottish Government and is delivered in partnership by the Big Lottery Fund and Highlands and Islands Enterprise.

My purpose in lodging amendment 92 is to ask whether that support will be replicated for part 3A community bodies and to have a discussion about that. The amendment places a requirement on the Scottish Government to adjust the application criteria for the land fund to include part 3A community bodies.

I am interested to hear the minister’s thoughts on how the operation of the land fund will be modified in light of the bill, because the bill expands the areas where communities will be able to use the community right to buy, and a key lesson from the Land Reform (Scotland) Act 2003 was the importance of supporting communities financially to enable them to buy land. If we are expanding the scope of the legislation to cover more communities, it begs the question of how the new legislation will be implemented and what funds will be available to those communities.

I am keen to hear the minister’s comments about the principle and the detail of amendment 92. I certainly hope that she will support the principle. I hope that I have got the detail right, although that can never be guaranteed. I am also keen to hear the minister’s comments on the intention behind the amendment. I hope that she will support it and that I have at least got some of the detail right.

I move amendment 92.

Aileen McLeod: I welcome the intention behind Sarah Boyack’s amendment 92. The amendment requires ministers to adjust the application criteria that apply to any funds that are maintained by ministers and which provide financial support to community bodies for the purchase of land. That ensures that funding provision is made for both part 3A and part 2 community bodies, so that they will have the same access to funds for the acquisition of land.

Current funding would be available, via the Scottish land fund, to part 3A community bodies in the same way that funding is currently available to part 2 community bodies. The current Scottish land fund, which funds land acquisitions, runs until March 2016. We are considering how the fund will operate, and the scope of its eligibility throughout Scotland, from 2016 to 2020.

As the First Minister announced in June last year, a further £3 million has been allocated to the Scottish land fund for 2015-16, with a total of £9 million since 2012-13. We have also committed to extending the Scottish land fund until 2020. Community bodies can, of course, also seek funding from sources other than funds that are maintained by ministers.

On that basis, I ask Sarah Boyack to withdraw amendment 92.

Sarah Boyack: If I understand the minister rightly, she has said that communities already have the rights that I am intending to include in the bill. She has made that commitment on the record—I will seek clarity that my understanding is correct after the meeting. For that reason, I will not press amendment 92. However, I reserve the right to bring an amendment back if my understanding of that commitment is in any way not 100 per cent right.

Amendment 92, by agreement, withdrawn.

Section 48, as amended, agreed to.

After section 48

The Convener: The next group is on persistently abandoned and neglected land: compulsory sale order. Amendment 93, in the name of Sarah Boyack, is the only amendment in the group.

Sarah Boyack: The package of changes that we are debating should include amendment 93, because it was one of the recommendations of the land reform review group’s final report. When we debated the Scottish Government consultation on the Community Empowerment (Scotland) Bill many months ago, the then Minister for Local Government and Planning, Derek Mackay, said that he would address extending local authorities’ compulsory purchase powers. I was keen for the Scottish Government to do that, but I do not see it in the bill.

I want to address the gap in respect of the potential role of local authorities as the key democratic and civic players with the capacity to bring land back into use for public benefit and to assist and empower community groups to identify new and better uses for that land. That is especially important in an urban context, where land can lie abandoned or neglected for years and
become a blight on the community, thereby frustrating social and economic progress.

Amendment 93 would introduce a new part 3B to the 2003 act, to address
“persistently abandoned or neglected land”,
through the introduction of compulsory sale orders. Proposed new section 97ZB will introduce a requirement for local authorities to establish and maintain an abandoned land register. Subsection (5) sets out that
“Land is eligible to be included in an abandoned land register if in the opinion of the local authority it ... has been abandoned or neglected for a continuous period of at least 3 years”
and it
“may be in the public interest for the land to be subject to a compulsory sale order under section 97ZD.”

Land that is excluded from proposed new part 3A of the 2003 act’s provisions on the community right to buy abandoned or neglected land will also be excluded from proposed new part 3B. Proposed new section 97B(4) provides that
“Land may be included on the abandoned land register ... at the initiative of the local authority, or ... on an application by a community body.”

Under subsection (6), the local authority is required to send notice to the land owner and any creditor and to invite representations, although, under subsection (7), that it is not required if the individuals cannot be identified. The local authority must notify its decision on whether land is to be included in the abandoned land register to owners, creditors and the community body, as set out in subsection (9), and make arrangements for those parties to apply for a review of the decision under subsection (10).

Proposed new section 97B(13) of the 2003 act provides that the local authority must make its abandoned land register available for inspection in person and online. Subsection (14) provides ministers with the power to make regulations on further provisions in relation to abandoned land registers, as they see fit.

Proposed new section 97ZC of the 2003 act states that
“a local authority must have regard to any guidance issued by the Scottish Ministers in relation to the duties”
that will be imposed by section 97ZB.

Proposed new section 97ZD of the 2003 act will introduce compulsory sale orders so that where
“land has been included on an abandoned land register for a continuous period of at least 3 years, the local authority must, if requested to do so by a community body,”
issue a compulsory sale order, requiring the owner to offer the land for sale through a public auction. That public auction must take place within six months of the order being issued. Under subsections (2) to (5), after that period, if certain conditions are met, the local authority
“must offer the land for sale at a public auction as soon as practicable”.

Where land is put up for sale at a public auction and the land is not sold, no further application for a compulsory sale order may be made for at least three years from the date of auction. Where land has been purchased following a compulsory sale order, the owners have three years to at least commence work towards appropriate development, or the local authority may acquire the land for itself.

Proposed new section 97ZF of the 2003 act makes provision for ministers to make further provisions by regulations, as they see fit, in connection with the powers of the part.

Amendment 93 is based on recommendations from the land reform review group’s final report. There is a gap in the proposed legislation that needs to be filled. I am concerned that land is blighted year on year. The amendment would improve the capacity to deliver on the objectives that have been set out in the policy memorandum by ministers. I hope that the minister will look favourably on the proposals that I have made.

I move amendment 93.

Aileen McLeod: The purpose of amendment 93 is to require each local authority to establish and maintain a register of
“persistently abandoned or neglected land”
in its area—that is, land which has been continuously neglected or abandoned for at least three years. Amendment 93 would enable a community body to request that a local authority instruct the landowner to offer the abandoned or neglected land for sale. The land would have to be offered for sale via public auction within six months of the landowner’s being instructed to do so by the local authority. The amendment would also require the local authority to offer the land for sale via public auction, and allow the local authority to compulsorily acquire land that had been sold via public auction, in certain circumstances.

I appreciate what Sarah Boyack is trying to achieve with amendment 93, and the ideas behind it. However, a great deal of careful thought and consultation would be required for such far-reaching proposals, and no consultation of local authorities has yet taken place.

The aim of the abandoned and neglected land provisions in proposed new part 3A is to get such land back into productive use. It might be difficult for community bodies to obtain funding to use the
proposed provisions and bid for the land at auction. The proposals require land to have been abandoned or neglected for a total period of six years before the local authority can, at a community body’s instigation, require the landowner to sell the land at public action. However, the bill as drafted will allow a community body to acquire abandoned or neglected land six months from the date on which ministers consent to the application.

I consider that the provisions in section 48 offer far more to communities, while balancing the rights of landowners, and will ensure that land is brought back into productive and sustainable use far more quickly and effectively than amendment 93 proposes.

Section 48 will ensure that a community body’s proposals will further sustainable development of the abandoned or neglected land, and that acquisition of the land is permitted only where that is in the public interest. It will also ensure that landowners are fully compensated for sale of their land by way of the provisions that require an appropriate valuation to be carried out, which attracts appeal rights, and it will ensure that the landowner is properly compensated for any loss or expense that is incurred in connection with an application that is made by a proposed new part 3A community body.

The section 48 provisions will ensure that a community body must demonstrate that it has plans to use the abandoned or neglected land in a way that will further the achievement of sustainable development of the land. However, there are in amendment 93 no such requirements for when the land is sold via public auction. I do not consider that the proposals are sufficient to ensure that the issues that are afflicting land that is classified as abandoned or neglected would be fully and properly addressed. For that reason, I ask Sarah Boyack to seek to withdraw amendment 93.

Sarah Boyack: I listened carefully to the minister’s comments. She said that there are better provisions for communities in the bill as drafted and that there are flaws in some of the detail of what I suggest in terms of the timescale. I want to look at that and may bring the issue back at stage 3. Accordingly, I seek agreement to withdraw the amendment. However, I think that there is an issue in relation to involving local authorities and enabling local authorities to play a role that I think they do not currently have under the bill.

The minister said that the detail has not been consulted on. That is true, but the provision is something that was talked about in the land reform review group report. The ambition to allow stronger community purchase powers by local authorities was also something that was in the initial consultation.

I will consider the drafting of my amendment, but I dispute the view that there has been no discussion of the issue, because ministers themselves floated the prospect of using some form of local authority compulsory purchase order process to ensure easier access to community right to buy.

Amendment 93, by agreement, withdrawn.

The Convener: Amendment 94, which concerns the right to register an interest in land and be notified of proposed changes in its use, is in the name of Sarah Boyack and is the only amendment in the group.

Sarah Boyack: I lodged amendment 94 in order to try and implement a community right to register an interest in land, as recommended by the land reform review group in its final report. The review group referred to that right as “a low threshold opportunity to register an interest in land”.

Essentially, a community group’s registering an interest would result in that group being notified of sales and changes in owner. The benefit of that approach is explained in the review group’s report. The group noted that such a register of interest would reduce the chances of community interests being damaged, by making landowners and planning authorities aware of those interests.

It is also suggested that the approach could encourage greater co-operation between landowners and communities, and that it would help communities to be better prepared to make use of part 2 of the Land Reform (Scotland) Act 2003, with the knock-on effect of reducing late and missed applications.

12:00
In the stage 1 evidence sessions, the committee was keen to avoid communities missing the boat and having to make use of late applications. The proposed new section of the 2003 act that amendment 94 would insert would raise awareness among owners and communities, and it would shift the balance of power.

Rather than land and buildings remaining empty for years, the measures would potentially change how we think about unused land. They would provide a hugely valuable opportunity to enable community development, which would strengthen the opportunities and influence of communities and local authorities in bringing that about.

I move amendment 94.

Aileen McLeod: Amendment 94 seeks to give a community body the power to request that an
interest in land be registered. Ministers could direct the keeper of the registers of Scotland to register that interest if they decided that that was in the public interest.

Where an interest was registered, amendment 94 would require the keeper to notify the landowner and any creditor in a standard security of the registered interest. Where the landowner or creditor in a standard security proposes to transfer or take any action with a view to transferring the land or to undertake development of a kind set out in regulations in relation to the land, the amendment would place a duty on the landowner or creditor to notify the community body of the proposal.

Where an interest is registered, under amendment 94 a landowner or creditor who is proposing to take steps to transfer their land, or who is developing their land in certain ways, would be required to notify the community bodies that have registered an interest of the intention to do so. However, there are no timescales within which the landowner or creditor in a standard security must do that. There is nothing in the amendment to stop the owner or creditor immediately selling the land directly after notifying the community body of their intention to do so. That would mean that, even if a community body was notified of the intention to sell the land, it would not necessarily have time to take any action to acquire the land before it was sold to someone else.

There are no prohibitions placed on the landowner in relation to disposal of the land, which would give the community time to take steps to acquire the land after notification to the community body. The landowner or creditor will be freely able to transfer or develop the land, notwithstanding the existence of the registration of interest. The landowner is not prevented from taking steps to transfer the land, so there may not be an opportunity or time for a community body to submit a late application under part 2 of the 2003 act or to contact the landowner with a view to purchasing the land.

Further, amendment 94 does not contain any enforcement provisions that would place any kind of sanction on the landowner or creditor if they did not comply with the provisions of the amendment and just sold or developed the land without notifying the community body. That is different from part 2 of the 2003 act, which places certain prohibitions on landowners throughout the application process in order to ensure that the landowner cannot undertake avoidance measures to avoid the effect of the provisions of part 2 of the 2003 act.

Unlike part 2 of the 2003 act, which contains well-considered checks and balances throughout the application procedure, the provisions in amendment 94 could place a disproportionate burden on landowners. It could be the case that many community bodies register their interest in a piece of land, which would require the landowner to notify each of those community bodies each and every time the landowner took any action with a view to selling the land or developing the land in certain ways.

Amendment 94 seeks to include notification requirements when a landowner is undertaking development on the land in certain ways, but I do not think that it is necessary to deal with the development of land in that way. Planning legislation already includes requirements for public consultation.

The provisions of amendment 94 do not require a community body to undertake any further work after its initial registration of interest. Unlike under part 2, the community body would not be required to carry out further work for a potential acquisition—for example, preparing its business plan and demonstrating why its plans will further the achievement of sustainable development. However, it is clear that stakeholders welcome measures that encourage communities to be proactive when seeking to purchase land. The provisions of part 2 of the 2003 act currently achieve that aim, but amendment 94 would not.

I know that the proposal behind amendment 94 is the first in the land reform review group’s menu of land rights, but we are still considering the review group’s final report and recommendations, through the likes of the land reform bill consultation. For those reasons, I ask Sarah Boyack to seek to withdraw amendment 94.

The Convener: No other members wish to speak, so I invite Sarah Boyack to wind up and to say whether she wishes to press or withdraw her amendment.

Sarah Boyack: I welcome the fact that what I am proposing is not ruled out for the future, even though the minister has said why she thinks the detail of amendment 94 is not fit for purpose. However, the matter could be considered as part of the next stage of land reform. In the absence of a queue of colleagues speaking in support of amendment 94, I shall graciously withdraw it, with the committee’s permission.

Amendment 94, by agreement, withdrawn.

The Convener: We move on to a duty on local authorities to support community bodies, crofting community bodies and part 3A community bodies. Amendment 95, in the name of Sarah Boyack, is grouped with amendment 98.

Sarah Boyack: The backdrop to amendment 95 is that, having been involved in the local government brief over the past three years, I am
keen that local authorities and communities work together. The intention behind the amendment is to add another route to help communities to exercise the right to buy.

The provisions in the bill will significantly strengthen the legal framework for communities to work together to take ownership of local assets for the benefit of local people, but I hope to explore more closely with amendment 95 and the consequential amendment 98 how the bill will support that in practice. Even with the streamlined processes that the bill seeks to introduce, the journey for a community from the initial idea to taking ownership remains complex. I know from my work as an MSP how challenging that process can be for communities, so I am keen to ensure that information and support are available to communities from the outset to help them to take forward their ideas.

For the purposes of getting this important issue discussed, my amendments suggest that local authorities could be of great assistance in providing support in the first instance. Amendment 95 would place a duty on local authorities to provide support to groups seeking to constitute themselves as community bodies for the purposes of parts 2 and 3 and proposed new part 3A of the 2003 act, and to provide support to groups that are already constituted as community bodies and are seeking to register interest or progress the right to buy.

I understand that that is a significant change, so ahead of that duty coming into force, the Scottish Government would be required to consult and issue guidance to local authorities on how they would be expected to carry out that function. I am not trying to set out the detail of exactly how that would happen; I accept that to do that in the bill is not the best way. However, one of the things that concerns me is that it is not just a question of legislation but one of community capacity. We are seeking to increase community empowerment, and although there are many communities out there for whom the potential in the legislation could be fantastic, we have to accept that skills, resources and knowledge are not equally distributed throughout society and that not all community groups will have the necessary first-hand experience on day 1.

Amendment 95 is about communities having the capacity to exercise the provisions of the bill, however they end up in detail once we have gone through stages 2 and 3. I am very keen that the human aspect of the bill be assisted and promoted, and that social and community aspects will be supported, so that communities can exercise the new powers in the bill.

If the Scottish Government does not see local authorities as the best route to achieving that aim, I would be keen to hear from the minister how she thinks community empowerment might be taken forward. Do you see, for example, Co-operative Development Scotland having a role, with the new community bodies definition bringing co-operative organisations into play? Do you see Highlands and Islands Enterprise’s powers being expanded? Do you see Scottish Enterprise, which does not currently have a social aspect to its constitution, becoming an alternative way to support communities? If Scottish Enterprise were to be involved, that would change its purpose.

I strongly prefer the local authority route, because it would be consistent across the country. Local authorities already have community development functions and community development experience. There is an accountability issue, which would apply across the whole country. That would be a better route, in terms of clarity and consistency. I am not suggesting what should be the detail; amendment 95 is more about competence for local authorities. I hope that the minister will look favourably on my intentions and the detail of my amendment.

I move amendment 95.

Aileen McLeod: I appreciate where Sarah Boyack is coming from with amendment 95 and I welcome the local government experience that she brings to the discussion, with regard to local authorities and community capacity.

Amendment 95 would place a duty on local authorities to provide support to groups of people within a local authority area who are seeking to form bodies for the purposes of exercising the various rights to buy in the Land Reform (Scotland) Act 2003. The amendment would also place a duty on local authorities to support “community bodies, crofting community bodies and Part 3A community bodies” in exercising the various rights to buy under the 2003 act.

Amendment 95 would also require ministers to issue local authorities with guidance to assist them in carrying out the support services that they would provide under the amendment. Finally, amendment 95 would also provide that, before issuing that guidance to local authorities and within one year of the provision coming into force, ministers would be required to consult such persons or bodies as they considered appropriate.

I recommend that the amendment be rejected as I do not believe that the duty to provide a support service to community groups is best placed on local authorities. There are currently a number of sources of support for community groups that wish to exercise the rights to buy under parts 2 and 3 of the 2003 act. Those
sources of support include the Scottish Government and Highlands and Islands Enterprise, both of which support communities through the entire right-to-buy processes. It is ministers’ intention that the support provided by the Scottish Government will be extended to communities that wish to exercise a right to buy under the new part 3A of the 2003 act.

I take Sarah Boyack’s point about the building of community capacity, but that could be a function of the community land agency that is to be created and which was announced in the programme for government. Once established, the agency may have a key role in supporting all communities that wish to exercise the various rights to buy under the 2003 act, and to support them through the processes.

I do not believe that there is a need to include in the bill provisions that state that there must be consultation on any guidance issued by Scottish ministers about the various rights to buy. Stakeholder engagement is an essential part of such a process, and stakeholders and appropriate persons will be consulted as any draft guidance is prepared.

Amendment 98, which is linked to amendment 95, seeks to require ministers to consult on the guidance to be issued under amendment 95 within a year and a day of royal assent to the bill. As I said, stakeholder engagement is always an essential part of the process, and stakeholders and appropriate persons will be consulted as any guidance is prepared by Scottish ministers on the changes that the bill makes to the community right to buy and the crofting community right to buy and on the new right to buy neglected and abandoned land.

For those reasons I ask Sarah Boyack to withdraw amendment 95 and not move amendment 98.

12:15

Sarah Boyack: I welcome some of the comments in the minister’s speech. I note the reference to the proposed community land agency. There may be opportunities, through the agency, to help with this process.

The point that I wanted to draw attention to was that, if we are thinking about social justice, not all community bodies will be equally placed at the start of the journey to exercise greater influence on their communities. Areas that have been economically deprived and socially held back will struggle with the complexity of implementing the bill and with how they can make use of its provisions.

Although I will reflect on what the minister has said, I wanted to ensure that Co-operative Development Scotland, HIE and Scottish Enterprise were mentioned in the Official Report in relation to the bill. We should be thinking about the range of agencies that could promote community ownership and community use of land. Local authorities are a key interest group. They have a unique democratic legitimacy that the community land agency and HIE do not have at the local level.

I am interested in the idea that the Scottish Government itself will provide support to communities. I support the localism principle—I have not seen colleagues queueing up to support it, so perhaps I will speak to them afterwards about it—so I think that we should not pass legislation that looks to the centre to provide all the support. The shape of the community land agency might be the solution. However, I was keen to explore with colleagues, in public, the idea that local authorities, with their range of experience and other social and economic obligations, might be a beneficial player in the process. I seek leave to withdraw amendment 95.

Amendment 95, by agreement, withdrawn.

Section 49 agreed to.

After section 49

The Convener: We come to review of compulsory purchase legislation and guidance. Amendment 96, in the name of Sarah Boyack, is in a group on its own.

Sarah Boyack: Right, colleagues, my last few amendments have not been universally supported. Why have I lodged this one? One of the opportunities of stage 2 is to anticipate how the legislation will work in practice, to test the strength of the proposals in the bill and to ensure that, when ministers respond to our amendments, they make commitments in public, on the official record.

I have raised the issue of a review of compulsory purchase legislation. It was a commitment from ministers, in the chamber, when we debated the bill at an early stage, before a committee had been allocated to take it forward. When I was on the case as local government spokesperson, I was keen to explore the opportunities of using compulsory purchase legislation. During the initial consultation, the Government asked whether communities should have the right to request that a local authority use a compulsory purchase order on their behalf.

The minister said that the detail of my previous amendment was not fit for purpose and that there were better alternatives in the bill. One of the things that we have to do, in passing legislation, is to ensure that that legislation will last, not just for
the first couple of years but for a significant period. In a way, I would like to future proof the legislation.

The consultation document highlighted that, under their existing guidance, local authorities can use CPO powers to bring vacant and unused property back into use and that there is the possibility of transferring property to a community group once it has been purchased. It was noted at the time that powers have not been used for such a purpose. The analysis of responses to the Government’s initial consultation, which was published in December 2012, found overall support from respondents for communities having the right to request that the local authority use CPO powers on their behalf. Many community groups and third sector representatives saw that as representing a significant shift in the balance towards community empowerment.

In response to questions about the extension of the community right to buy, the Glasgow and West of Scotland Forum of Housing Associations noted that such an extension would be “a useful additional route” to CPO, which it described as the “most obvious route” for bringing unused buildings back into productive use.

However, in the Government’s second, more detailed consultation in November 2013, all reference to community purchase was gone, with the focus shifting to a compulsory right for communities to purchase land that would later evolve into the part 3 provisions in the bill.

Amendment 96 seeks to return us to the discussion on whether compulsory purchase could be a useful route by which communities can bring assets back into productive use. If ministers do not like my previous amendment, amendment 93, they may view this one as providing a less prescriptive route. It would require ministers to conduct a review of compulsory purchase powers as they sit at present and to report on the outcome. Such a review would allow consideration of how community purchase contributes to sustainable development; whether communities are sufficiently involved; whether communities should have the right to request the initiation of compulsory purchase; and whether the process could be made more efficient.

As with the community right to register an interest in land, which we discussed earlier, the right to request a CPO was recommended by the land reform review group. Amendment 96 would help to take us towards that point.

The amendment would also potentially provide future proofing. We know that local authorities will change over time and that experience will grow following the initial implementation of the bill. I would like the option that the amendment provides to be available, certainly in principle. The amendment is a lot less prescriptive than the others that I have lodged.

I would like local authorities to be part of the process in the future. If there is a complex network of land ownership in an urban area, there may be circumstances in which one might want the local authority to bring some of that land into use, potentially for housing that could be delivered either by the local authority or by other housing providers. We might want to guarantee that there is a community option, so that land can be acquired and given to the community. It might be about thinking about the community from day 1 when a bigger CPO is taking place.

The amendment offers a slightly different route. It would require the Government not necessarily to bring forward a right to request a CPO at this stage but to make a commitment that there will be a review over time. For that reason, it would be a useful addition to the bill.

I move amendment 96.

Michael Russell: I have considerable sympathy with Sarah Boyack’s point about the involvement of communities in compulsory acquisition processes. That is an element that is missing, and local authorities have been notoriously unwilling to undertake compulsory purchase actions in circumstances in which they should have undertaken them. One of the reasons is that local authorities are reluctant to find themselves the owners of property on which they then have to expend resources.

The involvement of communities in compulsory purchase actions would solve that problem, and would in fact create a virtuous circle. I can think of a number of circumstances in my constituency in which communities would very much favour an action of compulsory purchase by the local authority if that led to the transfer of the asset to the community.

The issue is genuine and important, and the fact that the land reform review group made the recommendation adds weight to it. However, I do not think that the bill is the place in which to stipulate a Government review. That is problematic: if the review took place and the Government reported, that part of the bill would go out of use, unless the Government carried on reviewing. There is no indication in amendment 96 that a review should take place every five or 10 years, which is the sort of stipulation that would have a place in the bill.

The bill is not the place for specifying a review, but I hope that the minister might commit to considering the issue again. If a specific proposal was made at stage 3 to introduce the ability for communities to request compulsory purchase, that would, although the issue is complex, certainly be
of interest. If the minister and the Government were to look again at the use of compulsory purchase in order to transfer assets to communities, perhaps with a view to bringing forward a proposal in further land reform legislation, that would meet the objective, which is a genuine one.

The Convener: As no other members wish to comment, I invite the minister to respond.

Aileen McLeod: Amendment 96 would require ministers to carry out a review of compulsory purchase legislation and guidance in order to consider how communities could be further empowered in relation to the better use or acquisition of land. I take on board the points that were very eloquently made by Mr Russell. I appreciate that it is an important issue.

It is not appropriate to add provisions to the bill that would require a review to be carried out of compulsory purchase legislation. In December 2014, the Scottish Law Commission published its discussion paper on compulsory purchase, and it seeks responses to its consultation by June. The discussion paper examines the current statute law on compulsory purchase, suggests that it is antiquated, outdated and unfit for purpose, and proposes that it should be replaced by a comprehensive modern statute. Following consultation, the Scottish Law Commission will issue its final report and recommendations for future action. We will be happy to consider that as part of the consultation process on the proposed land reform bill.

I therefore ask Sarah Boyack to withdraw amendment 96.

Sarah Boyack: I welcome Mike Russell’s supportive comments. I think that the amendment deals with an important issue, and I welcome the minister’s comment that it can be looked at in the future.

We are talking about bringing in an important additional route. A review of CPO powers is under way, and I hope that I have highlighted the importance of bringing communities into that discussion. We should seek opportunities to expand the existing compulsory purchase legislation and the capacity to use it in the interests of community groups so that, in the context of the bill, we can make better use of land that is not meeting its full potential.

On those grounds, I seek the committee’s permission to withdraw amendment 96.

Amendment 96, by agreement, withdrawn.

Schedule 4—Minor and consequential amendments

Amendments 38 to 41 moved—[Aileen McLeod]—and agreed to.

Amendment 55 not moved.

Amendment 88 moved—[Aileen McLeod]—and agreed to.

The Convener: The next group is on decisions under parts 2, 3 or 3A of the 2003 act: ministers to have regard to the International Covenant on Economic, Social and Cultural Rights. Amendment 46, in the name of Mike Russell, is the only amendment in the group.

Michael Russell: I will quote from the covenant. I apologise for the gender-specific language, but it was written in 1966. It says:

“Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant”.

12:30

The Scotland Act 1998 places an obligation on the Scottish Parliament to observe and implement international obligations. That is a matter that is devolved. Of course, it is not entirely clear what that means, and there are some difficulties with it. However, in light of what I have quoted, it is important to ensure that those rights are respected and that everything that we can do is focused on ensuring that we meet our international obligations.

If we fail to recognise those wider rights and are mindful only of, for example, the European convention on human rights, we are promoting—always promoting—the concept of individual rights and never promoting the concept of community rights. It is important, at least at the base of decision making by ministers, that they should be mindful of those wider obligations.

In the area of land reform, it is also important that they are mindful of those wider obligations, because, as we can see in the developing debate over land reform, the issue will, at times, become a debate between the rights and expectations of an individual and the rights and expectations of a community. Ministers have to be able at least to
consider the wider obligations that the Parliament and the Government owe to a community.

The international covenant lays out a wide range of obligations, not all of which are relevant, but it would be helpful to ministers to have reference to it; it would be helpful to the land reform debate; and, most importantly, it would be helpful to communities, which would be able to see that they are not always pitted alone against individuals, some of whom are extremely powerful, but have a wider body of law and international agreement on which to draw.

In my view, this is a modest amendment. I know that there are those who are of the school of thought that says that the more you put into a bill, the more can be challenged, and who might therefore think that the amendment could add a complication, but I think that it would reassure communities that, when they find themselves challenging powerful individuals, there is a wider, global context and there is protection for their rights.

I hope that this modest proposal will prove acceptable to my colleagues on the committee and to the Government.

I move amendment 46.

The Convener: In a 2013 review of the application of the covenant, the Scottish Government said that it is committed to giving effect to international human rights treaties in a way that works for Scotland. It said:

“We are working to ensure that Scotland’s distinctive approach is incorporated into the UK’s reporting to international treaty bodies and their subsequent examination of our human rights records under UN and Council of Europe Conventions and Treaties to which the UK is a signatory."

That underlines the fact that the covenant has a purpose that is reviewed regularly.

To back up what Michael Russell says about the interests of communities, it might well be that the convention becomes something that it is even more important to have incorporated into domestic law as we move into the land reform processes. I would like to give my support to Michael Russell’s comments.

Alex Fergusson: As we all did, I received a letter from the minister yesterday that seems to indicate that the covenant is subservient—that might not be the right technical expression—to the ECHR. Can she clarify that when she responds? I see that heads are being shaken, but that was the impression that I got from the letter.

Claudia Beamish: I support the amendment, in view of the sometimes very powerful individual interests in relation to matters concerning urban and rural land. I believe that the inclusion of the amendment will be a recognition of the importance and value of the rights of communities to be empowered and take forward their own destiny.

Aileen McLeod: As we have heard, amendment 46 requires ministers to have regard to the International Covenant on Economic, Social and Cultural Rights when making decisions under parts 2, 3 or 3A of the 2003 act.

As Mr Russell has explained, the covenant is an international human rights treaty that sets out certain rights that state parties agree to recognise, and aspirations to work towards. As is highlighted in the Scottish Government’s contribution to the UK’s periodic report to the Committee on Economic, Social and Political Rights, a copy of which I provided to the committee as an appendix to my letter of yesterday, we are committed to giving effect to international human rights treaties in a way that works for Scotland, and that document sets out the steps that the Scottish Government has already taken to give effect to the treaty.

In response to the question that Mr Fergusson asked, I note that neither the ECHR nor the covenant is subservient. They are taken into account together.

The rights in the covenant are high-level and aspirational rights that are suitable for implementation by Governments as part of, for example, a legislative programme. The introduction of the bill could be considered evidence of Scotland’s commitment to take into consideration the rights that are recognised by the covenant.

Amendment 46 would place the responsibility for testing and directing Scotland’s approach to the covenant at the door of the courts, even though the covenant’s wording does not easily translate into clear, enforceable rights. The terms of the covenant have not been drafted in a way that lends itself to interpretation by the courts. However, it is absolutely certain that acts of the Scottish Parliament and decisions of ministers are not law if they are incompatible with the rights that are set out in the European convention on human rights, and the amendment would not affect that.

Ministers must in any event have regard to the covenant and other international treaties in order to comply with their obligations under the ministerial code. I appreciate that Mr Russell is keen to ensure that ministerial decisions about the right to buy are taken subject to appropriate safeguards to ensure that they are fair and in the public interest. I consider that the 2003 act and the bill already provide for that. However, in the interest of stating the Government’s support for the covenant within those rights to buy, I support amendment 46.
If the committee agrees to the amendment, I will need to consider whether any amendments are needed at stage 3 to ensure that the amendment is effective.

The Convener: I call on Mike Russell to wind up and press or withdraw amendment 46.

Michael Russell: I very much welcome the minister’s comments. At the risk of using this as an advertising slot, I note that the Scottish Human Rights Commission and Community Land Scotland, along with me, will be hosting an event in the Parliament on 1 April, which members are welcome to attend, to consider the wider question of human rights and land reform. That is just a little plug for that event. I press amendment 46.

The Convener: I hope that the event will be after midday so that it is not an April fool.

The question is, that amendment 46 be agreed to. Are we agreed?

Alex Fergusson: I will say something briefly, convener, if I am allowed to. I wish to abstain to keep my options open at stage 3.

The Convener: There will be a division.

For
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Dey, Graeme (Angus South) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Hume, Jim (South Scotland) (LD)
MacDonald, Angus (Falkirk East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

Abstention
Fergusson, Alex (Galloway and West Dumfries) (Con)

The Convener: The result of the division is: For 8, Against 0, Abstentions 1.

Amendment 46 agreed to.

The Convener: The next group is on acquisitions of land under parts 2, 3 or 3A of 2003 act: mediation. Amendment 47, in the name of Graeme Dey, is the only amendment in the group. I call on Graeme Dey, who has waited a long time for this, to speak to and move his amendment.

Graeme Dey: Thank you, convener. I will be brief.

It would be nice to think that the aims of the Community Empowerment (Scotland) Bill, which the past two and a half hours have demonstrated everyone round the table supports, will be realised without any instances of disagreement or indeed conflict. However, we live in the real world and there will be scenarios of that nature—and often, once the dust settles, those who have been involved in the process will have to live alongside each other or at least come into contact on occasion. Therefore, if it is practically possible to facilitate mediation when it is requested, common sense tells us that that should be done.

It is in everyone’s interests to make the bill work as simply and cleanly as possible, and stakeholders such as Peter Peacock of Community Land Scotland and Sandy Murray of NFU Scotland were clear in their evidence to the committee about the merits of being able to call on mediation. Certainly, private discussions that I have had with landowning interests suggest that they, too, would favour it. I hope that this amendment is one that the Government might be prepared to accept.

I move amendment 47.

Alex Fergusson: I very much agree with the principles that have been put forward by Mr Dey, and I am very supportive of the amendment.

Aileen McLeod: The purpose of amendment 47 is to give ministers the power to introduce a mediation service to assist with the negotiated transfers of land from landowners to those community bodies that wish to exercise their right to buy under parts 2, 3 or 3A of the Land Reform (Scotland) Act 2003.

That would enable ministers to make the necessary arrangements and would enable their departments and agencies to arrange the facilitation of negotiated transfers of land that would otherwise be the subject of a proposed acquisition under the community right to buy, the crofting community right to buy or the new right to buy abandoned or neglected land.

Such a service could well be a function of the dedicated resource for community land ownership that was announced in the programme for government, such as a community land agency. A short-life working group will be set up as part of the 1 million acres target work and will look into that.

In proposing the amendment, Graeme Dey is giving a clear indication of this Government’s commitment to support all parties in trying to find solutions that are acceptable to everyone concerned, and for that reason I support amendment 47. However, I also propose lodging an amendment at stage 3 to ensure that it refers to community bodies, crofting community bodies and part 3A community bodies specifically, as well as ensuring that the amendment is technically correct.

Graeme Dey: I welcome that support and I press amendment 47.

Amendment 47 agreed to.

The Convener: The next group is on acquisitions of land under parts 2, 3 or 3A of 2003 act: mediation.
Claudia Beamish: Part 4 of the Community Empowerment (Scotland) Bill builds on the experience that we have gathered over the past decade—and far back from that as well—in relation to the community right to buy and the findings of the land reform review group.

We have heard strong evidence highlighting the complexity of the process for community bodies, and a number of provisions in part 4 are about streamlining that process. My amendments aim to recognise and ease the pressure that is placed on community bodies during the right-to-buy process in two very specific ways.

Amendment 56 would give community bodies under parts 2, 3, and 3A of the 2003 act the opportunity to correct clerical and other non-material errors in an application at any time before it is disposed of. Given the complexity of the process, that would reduce pressure on community bodies and ensure that applications are as accurate as possible.

Amendment 57 seeks to provide some flexibility in the numerous short timescales throughout parts 2 and 3A, which principally fall on community bodies. I recognise the need for those timescales and, as drafted, they are not unreasonable. However, although community bodies should seek to meet the timescales—

The Convener: We are only talking about amendment 56 at this point.

Claudia Beamish: I apologise. I moved on to amendment 57—my mistake.

I move amendment 56.

Jim Hume (South Scotland) (LD): Amendment 56 is clearly a reasonable amendment, and I would be quite happy to support Claudia Beamish if she is so minded to press the amendment.

The Convener: Thank you. We will see whether the minister thinks that it is reasonable when she responds.

Aileen McLeod: There are no provisions in the 2003 act that allow a community body to amend its application to correct any errors. If an application contains a technical error, ministers will be bound to reject the application. However, Scottish Government officials work closely with community bodies during the application process to reduce the likelihood of a technical error being made in the application.

Amendment 56 seeks to enable a community body to correct any clerical or non-material error in its application before a ministerial decision is made on the application or the application is otherwise disposed of. We should consider the overall effect that that would have on the timing of the application process.

If a process were introduced to allow the amendment of applications, an additional time period would need to be introduced to allow the other parties to reconsider the amended application. Additional time would also be required to enable counter-representations to be made on that amended application.

In addition, amendment 56 could open up the potential for applications to be appealed if they have been changed to any large extent. We believe that the assistance that officials give the applicants in submitting their application is sufficient to deal with the issue of clerical or non-material errors.

For those reasons, I ask Claudia Beamish to withdraw amendment 56.

12:45

Claudia Beamish: In view of the minister's remarks, I will withdraw the amendment. I will consider whether to reintroduce the proposal with more clarity and detail at stage 3, possibly following discussion with the minister.

Amendment 56, by agreement, withdrawn.

The Convener: We move on to parts 2 and 3A of the 2003 act and the extension of periods of seven days to 14 days in certain circumstances. Amendment 57 is the only amendment in the group.

Claudia Beamish: Thank you convener, and my apologies for rushing on to speak about amendment 57 earlier.

Amendment 57 seeks to provide some flexibility in the numerous short timescales throughout parts 2 and 3A, which principally fall on community bodies. I recognise the need for the timescales and, as drafted, they are not unreasonable. However, although community groups should seek to meet the timescales—

The Convener: Thank you. We will see whether the minister thinks that it is reasonable when she responds.

Alex Fergusson: I feel that, if the provisions in the amendment are appropriate, we should just extend the timescale to 14 days anyway. I am concerned that we are creating two categories of timescale.
Aileen McLeod: The effect of amendment 57 would be to allow ministers to extend the seven-day timescale in which either community bodies or ministers are required to take certain action, such as for the community body to provide certain information in connection with its application or ballot, or for the ministers to appoint a valuer. It is proposed that ministers may have discretion to extend the timescale to 14 days, when there are good and sufficient reasons for doing so, in order to give community bodies an element of additional flexibility should they require it.

If the option to extend these seven-day limits is offered, when time is of the essence it could cause timing issues for a community body, as ministers would have to set out their reasons for any decision to extend the time limit. If the request is considered to be invalid and is refused, most of the original seven days will, by then, have passed.

As you know, convener, I always like to end on a positive note. Therefore, to ensure that key stages of the process are met, I would propose bringing forward an amendment at stage 3 to ensure that amendment 57 achieves the intended effect and is technically correct. On that basis, I support amendment 57.

Claudia Beamish: I am pleased that the minister has accepted the amendment.

Amendment 57 agreed to.

Schedule 5—Repeals

Amendment 42 moved—[Aileen McLeod]—and agreed to.

Section 99—Commencement

Amendments 97 and 98 not moved.

Long title

Amendment 43 moved—[Aileen McLeod]—and agreed to.

The Convener: That ends this committee’s stage 2 consideration of the Community Empowerment (Scotland) Bill. The amended version of the bill will be printed once the Local Government and Regeneration Committee has completed its stage 2 consideration. Stage 3 amendments may be lodged after that point.

I thank the minister and members for the process. It has been a useful debate that has thrown up various issues that still have to be settled at stage 3, but it has made a lot of progress on behalf of the aims of the bill and in terms of improvements to it.
26 March 2015

Dear Rob

At the Committee meeting on 4 March, I offered to write to the Committee to confirm two points. These are addressed below.

Your first query related to the discussions about an amendment, which was agreed to by the Committee, which means that the Scottish Land Court will have 8 weeks rather than 4 to issue its written statement of reasons in response to an appeal under the crofting community right to buy. The amendment also provides that, where the Land Court considers it will not be able to meet that 8 week timescale, it will be able to set a new date by which it will issue its written statement of reasons. During that discussion you asked whether or not the Land Court has the capacity to cope with any appeals that may arise in relation to the crofting community right to buy.

I have been in contact with the Land Court on the question of whether or not they have enough members of the bench to cope with the work in hand. Whether the Court will need more members to allow it to deal timeously with appeals or references under the provisions of the Land Reform (Scotland) Act 2003 (“2003 Act”) as amended by the Community Empowerment (Scotland) Bill will very much depend on how many appeals there are.

Since the 2003 Act came into force, the Land Court has dealt with only one reference in relation to the crofting community right to buy under section 81 of the 2003 Act (Scottish Ministers v Pairc Trust Ltd and Others 2007 SLCR 166) and there have been no appeals to the Land Court about valuations for the crofting community right to buy under section 92.

The Land Court keep their workload under review and, whilst appointing new members to the Land Court could take a minimum of 6 months, they would have no hesitation in asking for more resources if they were needed.
Secondly, an amendment was agreed at Committee on 4 March to exclude certain separate tenements from the definition of “registrable land” for the purposes of the community right to buy in Part 2 of the Land Reform (Scotland) Act 2003. Mr Russell asked me to update the Committee with a list of the types of separate tenements that exist in Scotland.

There are two types of separate tenements in Scotland: legal separate tenements and conventional separate tenements.

Legal separate tenements include rights to salmon fishings, rights to gather mussels and oysters, rights to port and ferry, rights to hold fairs and markets, rights to mine minerals (gold, silver, petroleum, natural gas and coal), rights to “teinds” (which relates to the rights of churches to parts of land), and rights to unclaimed wrecks. Conventional separate tenements arise expressly in conveyancing transactions, and include rights to minerals and individual tenement flats.

Therefore, the effect of the amendment is that all separate tenements are excluded from the right to buy in Part 2, with the exception of the rights to salmon fishing and rights to minerals (other than rights to oil, gas, gold or silver).

I hope that answers your queries in full.

With kindest regards

AILEEN MCLEOD
Community Empowerment (Scotland) Bill
[AS AMENDED AT STAGE 2]

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Community Empowerment (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about national outcomes; to confer functions on certain persons in relation to services provided by, and assets of, certain public bodies; to amend Parts 2 and 3 of the Land Reform (Scotland) Act 2003; to enable certain bodies to buy abandoned or neglected land; to make provision for registers of common good property and about disposal and use of such property; to restate and amend the law on allotments; to enable local authorities to reduce or remit non-domestic rates; and for connected purposes.

PART 1

NATIONAL OUTCOMES

1 National outcomes

(1) The Scottish Ministers must by regulations prescribe outcomes for Scotland (referred to in this Part as “the national outcomes”) that result from, or are contributed to by, the carrying out, by the persons mentioned in subsection (1A), of the functions mentioned in subsection (1B).

(1A) The persons are—

(a) a cross-border public authority,
(b) any other Scottish public authority,
(c) any other person carrying out functions of a public nature.

(1B) The functions are—

(a) in the case of a cross-border public authority, any function that is exercisable in or as regards Scotland and does not relate to reserved matters,
(b) in the case of any other Scottish public authority, any function that does not relate to reserved matters,
(c) in the case of any other person carrying out functions of a public nature, any such function that is exercisable in or as regards Scotland and does not relate to reserved matters.

(1C) Nothing in subsection (1A) or (1B) requires the Scottish Ministers to determine outcomes under subsection (1) that result from, or are contributed to by, the carrying out of functions by the Scottish Parliament or the Scottish Parliamentary Corporate Body.
(1D) In determining the national outcomes, the Scottish Ministers must have regard to the reduction of inequalities of outcome which result from socio-economic disadvantage.

(2) Before determining the national outcomes, the Scottish Ministers must—
   (a) consult such persons as they consider appropriate,
   (b) having consulted the persons mentioned in paragraph (a), prepare draft national outcomes, and
   (c) consult the Scottish Parliament on the draft national outcomes during the consultation period.

(3) The Scottish Ministers must, no earlier than the expiry of the consultation period, publish the national outcomes.

(3A) In subsections (2) and (3), “consultation period” means the period of 40 days beginning with the day on which the consultation mentioned in subsection (2)(c) commences; and in calculating the period of 40 days, no account is to be taken of any time during which the Scottish Parliament is dissolved or in recess for more than 4 days.

(4) The persons mentioned in subsection (1A) in relation to whom the duty under subsection (1) applies must have regard to the national outcomes in carrying out the functions mentioned in subsection (1B).

(7) In this section—
   “cross-border public authority” has the meaning given by section 88(5) of the Scotland Act 1998,
   “reserved matters” is to be construed in accordance with that Act.

1A Regulations under section 1(1): procedure

(1) Regulations under section 1(1) must not be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.

(2) Before laying draft regulations before the Parliament under subsection (1), the Scottish Ministers must consult—
   (a) individuals eligible to vote at a local government or parliamentary election,
   (b) communities and community bodies,
   (c) community planning partners,
   (d) third sector interfaces,
   (e) third sector bodies,
   (f) children and young people and organisations working for and on behalf of children and young people, and
   (g) such other persons as they consider appropriate.

(3) For the purposes of such a consultation, the Scottish Ministers must—
   (a) lay a copy of the proposed draft regulations before the Parliament,
   (b) publish in such manner as the Scottish Ministers consider appropriate a copy of the proposed regulations, and
(c) have regard to any representations about the proposed draft regulations that are made to them within 60 days of the date on which the copy of the proposed draft regulations are laid before the Parliament.

(4) In calculating any period of 60 days for the purposes of subsection (3)(c), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.

(5) When laying draft regulations before the Parliament under subsection (1), the Scottish Ministers must also lay before the Parliament an explanatory document giving details of—

(a) the consultation carried out under subsection (2),

(b) any representations received as a result of the consultation, and

(c) the changes (if any) made to the proposed draft regulations as a result of those representations.

2 Review of national outcomes

(1) The Scottish Ministers may review the national outcomes at any time (but subject to subsections (2) and (3)).

(2) The Scottish Ministers must begin a review of the national outcomes before the expiry of the period of 5 years beginning with the date on which the national outcomes were published under section 1(3).

(3) The Scottish Ministers must begin further reviews of the national outcomes before the expiry of each 5 year period.

(3A) In carrying out a review of the national outcomes under subsection (1), (2) or (3), the Scottish Ministers must consult such persons as they consider appropriate.

(4) Following a review, the Scottish Ministers—

(za) may propose revisions to the national outcomes,

(zb) must—

(i) where they propose to make revisions to the national outcomes, consult the Scottish Parliament on the proposed revisions during the consultation period,

(ii) where they do not propose to make revisions to the national outcomes, consult the Scottish Parliament during the consultation period on the national outcomes as most recently published under section 1(3) or paragraph (b)(i) or republished under paragraph (b)(ii),

(a) may revise the national outcomes after the expiry of the consultation period, and

(b) must—

(i) where the national outcomes are revised, publish the outcomes as revised,

(ii) where the national outcomes are not revised, republish the outcomes after the expiry of the consultation period.

(6) References to the national outcomes in section 1(4) and in section 3 include references to the national outcomes revised under subsection (4)(a) of this section.
(7) In subsection (3), “5 year period” means the period of 5 years beginning with the date on which the national outcomes were published under sub-paragraph (i) of paragraph (b) of subsection (4) or, as the case may be, republished under sub-paragraph (ii) of that paragraph.

(8) In subsection (4), “consultation period” means the period of 40 days beginning with the day on which the consultation mentioned in subsection (4)(zb)(i) or (ii) commences; and in calculating the period of 40 days, no account is to be taken of any time during which the Scottish Parliament is dissolved or in recess for more than 4 days.

3 Reports

(1) The Scottish Ministers must, as soon as practicable after the end of each 2 year period, lay before the Scottish Parliament a report about the extent to which the national outcomes have been achieved.

(2) The Scottish Ministers must include in reports published under subsection (1) information about any change in the extent to which the national outcomes have been achieved since the publication of the previous report under that subsection.

(4) In preparing a report under subsection (1), the Scottish Ministers must consult—

(a) individuals eligible to vote at a local government or parliamentary election,

(b) communities and community bodies,

(c) community planning partners,

(d) third sector interfaces,

(e) third sector bodies,

(f) children and young people and organisations working for and on behalf of children and young people, and

(g) such other persons as they consider appropriate.

(5) The Scottish Ministers must, as soon as practicable after laying a report under subsection (1) before the Scottish Parliament, publish the report in such manner as they consider appropriate.

(6) In subsection (1), “2 year period” means—

(a) the period of 2 years beginning with the day on which this section comes into force, and

(b) each subsequent period of 2 years.

3A Interpretation of Part 1

In this Part—

“community” is, unless the Scottish Ministers otherwise direct, to be defined by reference to a postcode unit or postcode units and is to be regarded as comprising the persons from time to time—

(a) resident in that postcode unit or in one of those postcode units, and

(b) entitled to vote in a polling district which includes that postcode unit or those postcode units (or part of it or them),
“postcode unit” means an area in relation to which a single postcode is used to facilitate the identification of postal service delivery points within the area,

“third sector bodies” means organisations (other than bodies established under an enactment) that exist wholly or mainly to provide benefits for society or the environment,

“third sector interface” means third sector bodies which provide a single point of access for support and advice for the third sector within a local area.

**PART 2**

**COMMUNITY PLANNING**

**10 4 Community planning**

(1) Each local authority and the persons listed in schedule 1 must carry out planning for the area of the local authority for the purpose mentioned in subsection (2) (“community planning”).

(2) The purpose is improvement in the achievement of outcomes resulting from, or contributed to by, the provision of services delivered by or on behalf of the local authority or the persons listed in schedule 1.

(2A) In carrying out community planning, the local authority and the persons listed in schedule 1 must—

(a) participate with each other, and

(b) participate with any community body (as mentioned in paragraph (c) of subsection (5)) in such a way as to enable that body to participate in community planning to the extent mentioned in that paragraph.

(3) Outcomes of the type mentioned in subsection (2) (“local outcomes”) must be consistent with the national outcomes determined under section 1(1) or revised under section 2(4)(a).

(4) In carrying out the functions conferred on them by this Part in relation to the area of a local authority—

(a) the local authority for the area and the persons listed in schedule 1 are collectively referred to in this Part as a “community planning partnership”, and

(b) the authority and each such person is referred to in this Part as a “community planning partner”.

(5) Each community planning partnership must—

(a) consider which community bodies are likely to be able to contribute to community planning having regard in particular to which of those bodies represent the interests of persons who experience inequalities of outcome which result from socio-economic disadvantage,

(b) make all reasonable efforts to secure the participation of those community bodies in community planning, and

(c) to the extent (if any) that those community bodies wish to participate in community planning, take such steps as are reasonable to enable the community bodies to participate in community planning to that extent.
(6) The Scottish Ministers may by regulations modify schedule 1 so as to—
   (a) add a person or a description of person,
   (b) remove an entry listed in it,
   (c) amend an entry listed in it.

(7) Regulations under subsection (6) may provide that a person or a description of person listed in schedule 1 is to participate in community planning for a specific purpose.

(8) In this section, “community bodies”, in relation to a community planning partnership, means bodies, whether or not formally constituted, established for purposes which consist of or include that of promoting or improving the interests of any communities (however described) resident or otherwise present in the area of the local authority for which the community planning partnership is carrying out community planning.

4A Socio-economic inequalities

In carrying out functions conferred by this Part, a community planning partnership must act with a view to reducing inequalities of outcome which result from socio-economic disadvantage unless the partnership considers that it would be inappropriate to do so.

5 Local outcomes improvement plan

(1) Each community planning partnership must prepare and publish a local outcomes improvement plan.

(2) A local outcomes improvement plan is a plan setting out—
   (a) local outcomes to which priority is to be given by the community planning partnership with a view to improving the achievement of the outcomes,
   (b) a description of the proposed improvement in the achievement of the outcomes,
   (c) the period within which the proposed improvement is to be achieved.

(3) In preparing a local outcomes improvement plan, a community planning partnership must consult—
   (a) such community bodies as it considers appropriate, and
   (b) such other persons as it considers appropriate.

(4) Before publishing a local outcomes improvement plan, the community planning partnership must take account of —
   (a) any representations received by it by virtue of subsection (3), and
   (b) the needs and circumstances of persons residing in the area of the local authority to which the plan relates.

6 Local outcomes improvement plan: review

(1) Each community planning partnership must keep under review the question of whether it is making progress in improving the achievement of each local outcome referred to in section 5(2)(a).

(2) Each community planning partnership—
(a) must from time to time review the local outcomes improvement plan published by it under section 5,

(b) may, following such a review, revise the plan.

(3) Subsections (3) and (4) of section 5 apply in relation to a local outcomes improvement plan revised under subsection (2)(b) as they apply in relation to a local outcomes improvement plan prepared and published under subsection (1) of that section (but subject to the modification in subsection (4)).

(4) The modification is that the reference in subsection (4)(a) of section 5 to representations received by virtue of subsection (3) of that section is to be read as if it were a reference to representations received by virtue of that subsection as applied by subsection (3) of this section.

(5) Where a community planning partnership revises a local outcomes improvement plan under subsection (2)(b), it must publish a revised plan.

(6) Subsection (2) applies in relation to a revised local outcomes improvement plan published under subsection (5) as it applies in relation to a local outcomes improvement plan published under section 5; and the duty in subsection (5) applies accordingly.

7 Local outcomes improvement plan: progress report

(1) Each community planning partnership must prepare and publish a progress report for each reporting year.

(2) A progress report is a report setting out—

(a) the community planning partnership’s assessment of whether there has been any improvement in the achievement of each local outcome referred to in section 5(2)(a) during the reporting year, and

(b) the extent to which—

(i) the community planning partnership has participated with community bodies in carrying out its functions under this Part during the reporting year, and

(ii) that participation has been effective in enabling community bodies to contribute to community planning.

(3) In this section, “reporting year” means—

(a) a period of one year beginning on 1 April, or

(b) in relation to a particular community planning partnership, a period of one year beginning on such other date as may be specified in a direction given by the Scottish Ministers to the community planning partnership.

8 Governance

(1) For the area of each local authority, each person mentioned in subsection (2) must—

(a) facilitate community planning,

(b) take reasonable steps to ensure that the community planning partnership carries out its functions under this Part efficiently and effectively.

(2) The persons are—
(a) the local authority,

(b) the Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978 whose area includes, or is the same as, the area of the local authority,

(c) Highlands and Islands Enterprise where the area within which, or in relation to which, it exercises functions in accordance with section 21(1) of the Enterprise and New Towns (Scotland) Act 1990 includes the whole or part of the area of the local authority,

(d) the chief constable of the Police Service of Scotland,

(e) the Scottish Fire and Rescue Service,

(f) Scottish Enterprise.

(3) The Scottish Ministers may by regulations modify subsection (2) so as to—

(a) add a person or a description of person,

(b) remove an entry listed in it,

(c) amend an entry listed in it.

9 Community planning partners: duties

(1) Despite the duties imposed on community planning partners by this Part, a community planning partnership may agree—

(a) that a particular community planning partner need not comply with a duty in relation to a particular local outcome, or

(b) that a particular community planning partner need comply with a duty in relation to a particular local outcome only to such extent as may be so agreed.

(2) Each community planning partner must co-operate with the other community planning partners in carrying out community planning.

(3) Each community planning partner must, in relation to a community planning partnership, contribute such funds, staff and other resources as the community planning partnership considers appropriate—

(a) with a view to improving, or contributing to an improvement in, the achievement of each local outcome referred to in section 5(2)(a), and

(b) for the purpose of securing the participation of the community bodies mentioned in section 4(5)(a) in community planning.

(4) Each community planning partner must provide such information to the community planning partnership about the local outcomes referred to in section 5(2)(a) as the community planning partnership may request.

(5) Each community planning partner must, in carrying out its functions, take account of the local outcomes improvement plan published under section 5 or, as the case may be, section 6(5).
10 Guidance

(1) Each community planning partnership must have regard to any guidance issued by the Scottish Ministers about the carrying out of functions conferred on the partnership by this Part.

(2) Each community planning partner must have regard to any guidance issued by the Scottish Ministers about the carrying out of functions conferred on the partner by this Part.

(3) Before issuing guidance of the type mentioned in subsection (1) or (2), the Scottish Ministers must consult such persons as they think fit.

11 Duty to promote community planning

The Scottish Ministers must promote community planning when carrying out any of their functions which might affect—

(a) community planning,

(b) a community planning partner.

12 Establishment of corporate bodies

(1) Following an application made jointly by each person mentioned in section 8(2), the Scottish Ministers may by regulations establish a body corporate with such constitution and functions about community planning as may be specified in the regulations.

(2) The application referred to in subsection (1) must include information about the following matters—

(a) any consultation about the question of whether to make the application,

(b) representations received in response to any such consultation,

(c) the functions to be specified in regulations made under subsection (1),

(d) such other matters as may be prescribed by the Scottish Ministers by regulations.

(3) Regulations under subsection (1) may include provision about—

(a) the membership of the body established by the regulations,

(b) the proceedings of the body,

(c) the transfer of property and other rights and liabilities to and from the body,

(d) the appointment and employment of staff by the body,

(e) the supply by other persons of services to the body,

(f) the audit of accounts by the body,

(g) the dissolution of the body, and

(h) such other matters as the Scottish Ministers think fit.

(4) A function may be specified in regulations under subsection (1) even if another enactment or rule of law—

(a) provides that the function is to be carried out by a person other than the body established by virtue of subsection (1), or

(b) prevents the carrying out of the function by that body.
13 **Interpretation of Part 2**

In this Part—

“community bodies” has the meaning given by section 4(8),

“community planning” has the meaning given by section 4(1),

“community planning partner” has the meaning given by section 4(4),

“community planning partnership” has the meaning given by section 4(4),

“local outcomes” has the meaning given by section 4(3).

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**PART 3**

**PARTICIPATION REQUESTS**

**Key definitions**

14 **Meaning of “community-controlled body”**

In this Part, a “community-controlled body” means a body (whether corporate or unincorporated) having a written constitution that includes the following—

(a) a definition of the community to which the body relates,

(b) provision that the majority of the members of the body is to consist of members of that community,

(c) provision that the members of the body who consist of members of that community have control of the body,

(d) provision that membership of the body is open to any member of that community,

(e) a statement of the body’s aims and purposes, including the promotion of a benefit for that community, and

(f) provision that any surplus funds or assets of the body are to be applied for the benefit of that community.

15 **Meaning of “community participation body”**

(1) In this Part, “community participation body” means—

(a) a community-controlled body,

(b) a community council established in accordance with Part 4 of the Local Government (Scotland) Act 1973, or

(c) a body mentioned in subsection (2).

(2) The body is a body (whether corporate or unincorporated)—

(a) that is designated as a community participation body by an order made by the Scottish Ministers for the purposes of this Part, or

(b) that falls within a class of bodies designated as community participation bodies by such an order for the purposes of this Part.

(3) Where the power to make an order under subsection (2)(a) is exercised in relation to a trust, the community participation body is to be the trustees of the trust.
16  Meaning of “public service authority”

(1) In this Part, “public service authority” means—
   (a) a person listed, or of a description listed, in schedule 2, or
   (b) a person mentioned in subsection (3).

(2) The Scottish Ministers may by order modify schedule 2 so as to—
   (a) remove an entry listed in it,
   (b) amend an entry listed in it.

(3) The person is a person—
   (a) that is designated as a public service authority by an order made by the Scottish
       Ministers for the purposes of this Part, or
   (b) that falls within a class of persons designated as public service authorities by such
       an order for the purposes of this Part.

(4) An order under subsection (3) may designate a person, or class of persons, only if the
    person, or (as the case may be) each of the persons falling within the class, is—
    (a) a part of the Scottish Administration,
    (b) a Scottish public authority with mixed functions or no reserved functions (within
        the meaning of the Scotland Act 1998), or
    (c) a publicly-owned company.

(5) In subsection (4)(c), “publicly-owned company” means a company that is wholly owned
    by one or more public service authorities.

(6) For that purpose, a company is wholly owned by one or more public service authorities
    if it has no members other than—
    (a) the public service authority or (as the case may be) authorities,
    (b) other companies that are wholly owned by the public service authority or (as the
        case may be) authorities, or
    (c) persons acting on behalf of—
        (i) the public service authority or (as the case may be) authorities, or
        (ii) such other companies.

(7) In this section, “company” includes any body corporate.

(8) Subsection (9) applies where the Scottish Ministers make an order under subsection (3).

(9) The Scottish Ministers may specify in the order a public service that is or may be
    provided by or on behalf of the person designated, or (as the case may be) a person
    falling within the class designated, in respect of which a specified outcome may not be
    specified in a participation request.

Participation requests

17  Participation requests

(1) A community participation body may make a request to a public service authority to permit the body to participate in an outcome improvement process.
(2) In making such a request, the community participation body must—

(a) specify an outcome that results from, or is contributed to by virtue of, the provision of a service provided to the public by or on behalf of the authority,

(b) set out the reasons why the community participation body considers it should participate in the outcome improvement process,

(c) provide details of any knowledge, expertise and experience the community participation body has in relation to the specified outcome, and

(d) provide an explanation of the improvement in the specified outcome which the community participation body anticipates may arise as a result of its participation in the process.

(3) A participation request may be made jointly by two or more community participation bodies.

(3A) A participation request may include a request that one or more public service authorities other than the authority to which the request is made participate in the outcome improvement process along with the authority to which the request is made.

(4) In this Part—

“outcome improvement process”, in relation to a public service authority, means a process established or to be established by the authority with a view to improving an outcome that results from, or is contributed to by virtue of, the provision of a public service,

“participation request” means a request made under subsection (1),

“public service” means a service provided to the public by or on behalf of a public service authority,

“specified outcome” means an outcome of the type mentioned in subsection (2)(a).

18 Regulations

(1) The Scottish Ministers may by regulations make further provision about participation requests.

(2) Regulations under subsection (1) may in particular make provision for or in connection with specifying—

(a) the manner in which requests are to be made,

(b) the procedure to be followed by public service authorities in relation to requests,

(ba) the procedure to be followed by public authorities in relation to requests that include a request of the type mentioned in section 17(3A),

(c) the information to be provided in connection with requests (in addition to that required under section 17(2)),

(d) ways in which public service authorities are to promote the use of participation requests,

(e) support that public service authorities are to make available to community participation bodies to enable such bodies to make a participation request and participate in any outcome improvement process resulting from such a request,
(f) types of communities that may need additional support in order to form community participation bodies, make participation requests and participate in outcome improvement processes.

Decisions about participation requests

19 Participation requests: decisions

(1) This section applies where a participation request is made by a community participation body to a public service authority.

(2) The authority must decide whether to agree to or refuse the participation request.

(3) In reaching its decision under subsection (2), the authority must take into consideration the following matters—

(a) the reasons set out in the request under section 17(2)(b),

(b) any other information provided in support of the request (whether such other information is contained in the request or otherwise provided),

(c) whether agreeing to the request mentioned in subsection (2) would be likely to promote or improve—

(i) economic development,
(ii) regeneration,
(iii) public health,
(iv) social wellbeing, or
(v) environmental wellbeing,

(ca) whether agreeing to the request would be likely—

(i) to reduce inequalities of outcome which result from socio-economic disadvantage,
(ii) to lead to an increase in participation in the outcome improvement process to which the request relates by persons who experience socio-economic disadvantage,
(iii) otherwise to lead to an increase in participation by such persons in the design or delivery of a public service the provision of which results in, or contributes to, the specified outcome mentioned in the request,

(d) any other benefits that might arise if the request were agreed to, and

(e) any other matter (whether or not included in or arising out of the request) that the authority considers relevant.

(4) The authority must exercise the function under subsection (2) in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.

(5) The authority must agree to the request unless there are reasonable grounds for refusing it.

(6) The authority must, before the end of the period mentioned in subsection (7), give notice (in this Part, a “decision notice”) to the community participation body of—

(a) its decision to agree to or refuse the request, and
(b) if its decision is to refuse the request, the reasons for the decision.

(7) The period is—

(b) such longer period as may be agreed between the authority and the community participation body.

(8) The Scottish Ministers may by regulations make provision about—

(b) the manner in which a decision notice is to be given.

20 **Decision notice: information about outcome improvement process**

(1) This section applies where a public service authority gives a decision notice agreeing to a participation request by a community participation body.

(2) Where the authority at the time of giving the notice has established an outcome improvement process, the decision notice must—

(a) describe the operation of the outcome improvement process,

(b) specify what stage in the process has been reached,

(c) explain how and to what extent the community participation body is expected to participate in the process, and

(d) if any other person participates in the process, describe how the person participates.

(3) Where the authority at the time of giving the notice has not established an outcome improvement process, the decision notice must—

(a) describe how the proposed process is intended to operate,

(b) explain how and to what extent the community participation body which made the participation request is expected to participate in the proposed process, and

(c) if any other person is expected to participate in the proposed process, describe how the person is expected to participate.

21 **Proposed outcome improvement process**

(1) This section applies where a public service authority gives a community participation body a decision notice as mentioned in section 20(3).

(2) The community participation body may make written representations in relation to the proposed outcome improvement process.

(3) Any representations under subsection (2) must be made before the end of the period of 28 days beginning with the day on which the notice is given.

(4) Before giving notice under subsection (5), the authority must take into consideration any representations made under subsection (2).

(5) The authority must, before the end of the period of 28 days beginning with the day after the expiry of the period mentioned in subsection (3), give a notice to the community participation body containing details of the outcome improvement process that is to be established.
(6) The authority must publish such information about the process as may be specified in regulations made by the Scottish Ministers.

(7) The authority must publish the information mentioned in subsection (6) on a website or by other electronic means.

22 Power to decline certain participation requests

(1) Subsection (2) applies where—
   
   (a) a participation request (a “new request”) is made to a public service authority,
   
   (b) the new request relates to matters that are the same, or substantially the same, as matters contained in a previous participation request (a “previous request”), and
   
   (c) the previous request was made in the period of two years ending with the date on which the new request is made.

(2) The public service authority may decline to consider the new request.

(3) For the purposes of subsection (1)(b), a new request relates to matters that are the same, or substantially the same, as matters contained in a previous request only if both requests relate to—
   
   (a) the same public service, and
   
   (b) the same, or substantially the same, outcome that results from, or is contributed to by virtue of, the provision of the public service.

(4) For the purposes of this section, it is irrelevant whether the body making a new request is the same body as, or a different body from, that which made the previous request.

Outcome improvement processes

23 Duty to establish and maintain outcome improvement process

A public service authority that gives notice under section 21(5) must—

   (a) before the end of the period of 90 days beginning with the day on which the notice is given, establish the outcome improvement process in respect of which the notice is given by taking whatever steps are necessary to initiate the process, and
   
   (b) maintain that process.

24 Modification of outcome improvement process

(1) This section applies where a public service authority establishes an outcome improvement process under section 23(a) following a participation request by a community participation body.

(2) Following consultation with the community participation body, the authority may modify the outcome improvement process.

(3) Where the outcome improvement process is modified under subsection (2), the authority must publish such information about the modification as may be specified in regulations made by the Scottish Ministers.
24A Appeals

(1) Subsection (2) applies where—

(a) a participation request is refused by a public service authority, or

(b) a public service authority agrees to a participation request from a community
participation body and issues a decision notice as mentioned in—

(i) section 20(2), but the body has significant concerns about provisions within
the decision notice (whether relating to that body’s participation in the
outcome improvement process described in the decision notice or that
process more generally), or

(ii) section 20(3), but after making representations under section 21(2), the
body still has significant concerns about provisions within the decision
notice or the notice given to the body under section 21(5) (whether relating
to that body’s participation in the outcome improvement process or that
process more generally).

(2) The community participation body may appeal to the Scottish Ministers.

(3) The Scottish Ministers may by regulations prescribe—

(a) the procedure to be followed in connection with appeals under subsection (2),

(b) the manner in which such appeals are to be conducted, and

(c) the time limits within which such appeals must be brought.

(4) On an appeal under subsection (2), the Scottish Ministers may—

(a) direct the public service authority—

(i) in the case of an appeal by virtue of subsection (1)(a), to agree to
participation request,

(ii) in the case of an appeal by virtue of subsection (1)(b), to make such
alterations to the decision notice (or, as the case may be, the notice issued
under section 21(5)) as the Scottish Ministers specify, or

(b) dismiss the appeal.

(5) A direction under subsection (4)(a) may specify particular information that is to be
included in the decision notice to be issued as a consequence of the participation request
being agreed to.

25 Reporting

(1) This section applies where—

(a) a participation request has been made, and

(b) the outcome improvement process relating to that request is complete.

(2) The public service authority that established the process must publish a report—

(a) summarising the outcomes of the process, including whether (and, if so, how and
to what extent) the specified outcome to which the process related has been
improved,
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(b) describing how and to what extent the participation of the community participation body that made the participation request to which the process related influenced the process and the outcomes, and

(c) explaining how the authority intends to keep the community participation body and any other persons informed about—

(i) changes in the outcomes of the process, and

(ii) any other matters relating to the outcomes.

(2A) In preparing the report mentioned in subsection (2), the public service authority must seek the views of the bodies mentioned in subsection (2B) in relation to—

(a) the way in which the outcome improvement process was conducted, and

(b) the outcomes of the process, including whether (and, if so, how and to what extent) the specified outcome to which the process related has been improved.

(2B) The bodies referred to in subsection (2A) are—

(a) the community participation body which made the participation request to which the outcome improvement process related, and

(b) any other community participation bodies which participated in that process.

(3) The authority must publish the report mentioned in subsection (2) on a website or by other electronic means.

(4) The Scottish Ministers may by regulations make provision about reports published under subsection (2), including the information (in addition to that required under that subsection) that reports are to contain.

25A Annual reports

(1) A public service authority must publish a participation request report for each reporting year.

(2) A participation request report is a report setting out, in respect of the reporting year to which it relates—

(a) the number of participation requests the authority received,

(b) the number of such requests which the authority—

(i) agreed to, and

(ii) refused,

(c) the number of such requests which resulted in changes to a public service provided by or on behalf of the authority, and

(d) any action taken by the authority—

(i) to promote the use of participation requests,

(ii) to support a community participation body in the making of a participation request.

(3) In this section, “reporting year” means a period of one year beginning on 1 April.
Guidance

25B Guidance

(1) A public service authority must have regard to any guidance issued by the Scottish Ministers about the carrying out of functions by the authority under this Part.

(2) Before issuing such guidance, the Scottish Ministers must consult such persons as they think fit.

Interpretation of Part 3

26 Interpretation of Part 3

In this Part—

“community-controlled body” has the meaning given by section 14,

“community participation body” has the meaning given by section 15(1),

“constitution”, in relation to a company, means the memorandum and articles of association of the company,

“decision notice” is to be construed in accordance with section 19(6),

“equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 (equal opportunities) of Part 2 of Schedule 5 to the Scotland Act 1998,

“outcome improvement process” has the meaning given by section 17(4),

“participation request” has the meaning given by section 17(4),

“public service” has the meaning given by section 17(4),

“public service authority” has the meaning given by section 16,

“specified outcome” has the meaning given by section 17(4).

PART 4

COMMUNITY RIGHT TO BUY LAND

27 Nature of land in which community interest may be registered

(1) In section 33 of the 2003 Act (registrable land)—

(a) in subsection (1)—

(i) the words “The land in which” are repealed,

(ii) for the words “(registrable land)” is” substitute “in”,

(b) in subsection (2), for the words “described as such in an order made by Ministers” substitute “consisting of a separate tenement which is owned separately from the land in respect of which it is exigible (subject to subsection (2A))”,

(c) after subsection (2), insert—

“(2A) Land consisting of—

(a) salmon fishings, or
(b) mineral rights (other than rights to oil, coal, gas, gold or silver),
which are owned separately from the land in respect of which they are exigible
is not “excluded land” (and so is land in which a community interest may be
registered under this Part).”, and

(d) subsections (3) to (7) are repealed.

(2) The title to section 33 of the 2003 Act becomes “Land in respect of which community
interest may be registered”.

28 Meaning of “community”

(1) Section 34 of the 2003 Act (definition of “community”) is amended as follows.

(2) Before subsection (1), insert—

“(A1) A community body is, subject to subsection (4)—

(a) a body falling within subsection (1), (1A) or (1B), or

(b) a body of such other description as may be prescribed which complies
with prescribed requirements.”.

(3) In subsection (1)—

(a) for the words “community body is, subject to subsection (4) below” substitute
“body falls within this subsection if it is”,

(aa) in paragraph (c), for “20” substitute “10”,

(ab) for paragraph (d) substitute—

“(d) provision that at least three quarters of the members of the company are
members of the community,”,

(b) in paragraph (f), the words “and the auditing of its accounts” are repealed,

(c) after paragraph (f) insert—

“(fa) provision that, on the request of any person for a copy of the minutes of a
meeting of the company, the company must, if the request is reasonable,
give the person within 28 days of the request a copy of those minutes,

(fb) provision that, where a request of the type mentioned in paragraph (fa) is
made, the company—

(i) may withhold information contained in the minutes, and

(ii) if it does so, must inform the person requesting a copy of the
minutes of its reasons for doing so,”, and

(d) in paragraph (h)—

(i) in sub-paragraph (i), for “or crofting community body” substitute “,
crofting community body or Part 3A community body (as defined in
section 97D)”, and

(ii) in sub-paragraph (ii), for “or crofting community body” substitute “,
crofting community body or Part 3A community body (as so defined)”. 

(4) After subsection (1), insert—

“(1A) A body falls within this subsection if it is a Scottish charitable incorporated
organisation (a “SCIO”) the constitution of which includes the following—
(a) a definition of the community to which the SCIO relates,

(b) provision enabling the SCIO to exercise the right to buy land under this Part,

(c) provision that the SCIO must have not fewer than 10 members,

(d) provision that at least three quarters of the members of the SCIO are members of the community,

(e) provision under which the members of the SCIO who consist of members of the community have control of the SCIO,

(f) provision ensuring proper arrangements for the financial management of the SCIO,

(g) provision that, on the request of any person for a copy of the minutes of a meeting of the SCIO, the SCIO must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,

(h) provision that, where a request of the type mentioned in paragraph (g) is made, the SCIO—

(i) may withhold information contained in the minutes, and

(ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and

(i) provision that any surplus funds or assets of the SCIO are to be applied for the benefit of the community.

(1B) A body falls within this subsection if it is a community benefit society the registered rules of which include the following—

(a) a definition of the community to which the society relates,

(b) provision enabling the society to exercise the right to buy land under this Part,

(c) provision that the society must have not fewer than 10 members,

(d) provision that at least three quarters of the members of the society are members of the community,

(e) provision under which the members of the society who consist of members of the community have control of the society,

(f) provision ensuring proper arrangements for the financial management of the society,

(g) provision that, on the request of any person for a copy of the minutes of a meeting of the society, the society must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,

(h) provision that, where a request of the type mentioned in paragraph (g) is made, the society—

(i) may withhold information contained in the minutes, and

(ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and

(i) provision that any surplus funds or assets of the society are to be applied for the benefit of the community.”.
(5) In subsection (2), after “(1)(c)” insert “, (1A)(c) or (1B)(c)”.

(6) After subsection (4), insert—

“(4A) Ministers may by regulations from time to time amend subsections (1), (1A) and (1B).

(4B) If provision is made under subsection (A1)(b), Ministers may by regulations make such amendment of section 35(A1) and (1) in consequence of that provision as they consider necessary or expedient.”.

(7) In subsection (5)—

(a) the words “Unless Ministers otherwise direct” are repealed,
(b) in paragraph (a), at the end, insert “or a prescribed type of area (or both such unit and type of area)”;
(c) in paragraph (b)(i), at the end, insert “or in that prescribed type of area”, and
(d) in paragraph (b)(ii), after “units” insert “or that prescribed type of area”.

(8) In subsection (8)—

(a) after “section” insert “—”, and
(b) at the end insert—

“‘community benefit society’ means a registered society (within the meaning of section 1 of the Co-operative and Community Benefit Societies Act 2014) registered as a community benefit society under section 2 of that Act,

‘registered rules’ has the meaning given by section 149 of that Act (as that meaning applies in relation to community benefit societies),

‘Scottish charitable incorporated organisation’ has the meaning given by section 49 of the Charities and Trustee Investment (Scotland) Act 2005.”.

29 Modification of memorandum, articles of association or constitution

(1) Section 35 of the 2003 Act (provisions supplementary to section 34) is amended as follows.

(2) Before subsection (1) insert—

“(A1) During the relevant period, a community body may not modify its memorandum, articles of association, constitution or registered rules (as defined in section 34(8)) without Ministers’ consent in writing.

(A2) In subsection (A1), “relevant period” means the period—

(a) beginning on the day on which the community body submits an application under section 37(1) for registration of a community interest in land, and

(b) ending with—

(i) registration of the community interest in land,

(ii) a decision by Ministers that the community interest in land should not be registered,
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(iii) Ministers declining, by virtue of section 39(5), to consider the
application, or
(iv) withdrawal of the application.”.

(3) In subsection (1), for “or articles of association” substitute “, articles of association,
constitution or registered rules (as defined in section 34(8))”.

29A Public notice of certain applications

In section 37 of the 2003 Act (registration of interest in land)—

(a) in subsection (4)(b), at the beginning, insert “(except in the case of a proposed
application of the type mentioned in subsection (4B))”, and

(b) after subsection (4) insert—

“(4A) Ministers are not to be satisfied under subsection (3) in relation to a proposed
application of the type mentioned in subsection (4B) unless the applicant
community body has given public notice of the proposed application by
advertising it in such manner as may be prescribed.

(4B) The type of proposed application is one to register a community interest in land
consisting of salmon fishings, or mineral rights, which are owned separately
from the land in respect of which they are exigible.”.

30 Period for indicating approval under section 38 of 2003 Act

In section 38 of the 2003 Act (criteria for registration)—

(a) in subsection (2), at the beginning insert “Subject to subsection (2A) below,”,

(b) after that subsection, insert—

“(2A) Ministers may not take into account, for the purposes of subsection (2), the
approval of a member of the community if the approval was indicated earlier
than 6 months before the date on which the application to register the
community interest in land to which the approval relates was made.

(2B) Ministers may by regulations amend subsection (2A) so as to substitute for the
period of time for the time being specified there a different period of time.”.

31 Procedure for late applications

(1) Section 39 of the 2003 Act (procedure for late applications) is amended as follows.

(2) For subsection (1), substitute—

“(1) This section (other than subsections (4A) and (5)) applies in relation to an
application to register a community interest in land which satisfies—

(a) the conditions mentioned in subsection (1A), or

(b) the condition mentioned in subsection (1B).

(1A) The conditions are that—
(a) before the date on which the application is received by Ministers, the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land has taken action which, if a community interest had been registered, would be prohibited under section 40(1), and

(b) on the date on which the application is received by Ministers—

(i) missives for the sale and purchase of the land in pursuance of that action have not been concluded, or

(ii) an option to acquire the land in pursuance of that action has not been conferred.

(1B) The condition is that, where another community body has registered an interest in the land, the application is received by Ministers—

(a) after the date on which the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land has, under section 48(1), notified that community body that a transfer is proposed, and

(b) before Ministers have consented, under section 51(1), to a transfer to that community body.”.

(3) In subsection (2)—

(a) after paragraph (a), insert—

“(aa) Ministers may, before the end of the period of 7 days following receipt of the views of the owner of the land or, as the case may be, such a creditor under that section, request—

(i) the owner, such a creditor or the community body making the application to provide such further information as they consider necessary in connection with their being informed as mentioned in paragraph (a), and

(ii) that the further information be supplied within 7 days of the request.”, and

(b) in paragraph (b)(ii), after “‘30’” insert “or (in a case where further information is requested under paragraph (aa)) ‘44’”.

(4) In subsection (3), for paragraph (a) substitute—

“(a) that—

(i) such relevant work as Ministers consider reasonable was carried out by a person, or

(ii) such relevant steps as Ministers consider reasonable were taken by a person,

(aa) that the relevant work was carried out or the relevant steps were taken—

(i) at a time which, in the opinion of Ministers, was sufficiently in advance of the owner of the land or, as the case may be, the creditor taking the action such as is mentioned in subsection (1A), or giving notice such as is mentioned in subsection (1B),
(ii) in respect of land with a view to the land being used for purposes that are the same as those proposed for the land in relation to which the application relates, and

(iii) by the community body making the application or by another person with a view to the application being made by the community body.”.

(5) After subsection (3), insert—

“(3ZA) Despite subsection (3), Ministers may decide that a community interest is to be entered in the Register even though the conditions in paragraphs (a) and (aa) of that subsection are not satisfied in relation to the interest, if Ministers are satisfied that there are good reasons—

(a) why the conditions are not satisfied, and

(b) for allowing the interest to be entered in the Register.

(3A) Ministers may, before the end of the period of 7 days following receipt under section 37(5) of the views of the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land, request—

(a) any person they believe may be able to provide them with such further information as they consider necessary in connection with the matters mentioned in subsection (3) to provide the information, and

(b) that the information be supplied within 7 days of the request.”.

(6) In subsection (4)(c), after “59(1)” insert “, 60A(1)”.

(7) After subsection (4), insert—

“(4A) Subsection (5) applies in relation to an application to register a community interest in land where the application is received by Ministers after the following have occurred—

(a) the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land has taken action which, if a community interest in land had been registered, would be prohibited under section 40(1), and

(b) either—

(i) missives for the sale and purchase of the land are concluded, or

(ii) an option to acquire the land is conferred.”.

(8) In subsection (5), the words from “Where” to “land” are repealed.

(9) After subsection (5), insert—

“(6) In subsection (3)—

“relevant work” means anything done by way of preparation of an application to register a community interest in land,

“relevant steps” means any steps towards securing ownership of land by a community body.

(7) In subsection (6), “land” means any land whether or not it is land in respect of which an application in relation to which this section applies is made.”.
32 Evidence and notification of concluded missives or option agreements

After section 39 of the 2003 Act, insert—

“39A Evidence and notification of concluded missives or option agreements

(1) Subsection (2) applies where—

(a) an application to register a community interest in land is made,

(b) on the date on which the application is received by Ministers—

(i) missives for the sale and purchase of the land have been concluded, or

(ii) an agreement conferring an option to acquire the land exists, and

(c) the application does not disclose that such missives have been concluded or such an agreement has been conferred.

(2) The owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land must, within 21 days of receiving a copy of the application under section 37(5)(a)—

(a) provide Ministers with evidence of the concluded missives or (as the case may be) the agreement,

(b) where there is an agreement such as is mentioned in subsection (1)(b)(ii) which contains a date on which it will expire—

(i) notify Ministers of that date, and

(ii) provide Ministers with information about whether, and if so how, the agreement is capable of being extended.

(3) Subsection (4) applies where—

(a) an application to register a community interest in land is made,

(b) on the date on which the application is received by Ministers—

(i) missives for the sale and purchase of the land have been concluded, or

(ii) an agreement conferring an option to acquire the land exists,

(c) the application discloses that such missives have been concluded or such an agreement has been conferred, and

(d) accordingly, by virtue of section 39(4A) and (5), no copy of the application is sent to the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land.

(4) Ministers must—

(a) send a copy of the application and the accompanying information to the owner of the land or, as the case may be, the creditor,

(b) notify the owner of the land or, as the case may be, the creditor that Ministers must decline to consider the application by virtue of section 39(5), and
(c) require the owner of the land or, as the case may be, the creditor to provide Ministers with the information mentioned in subsection (5) within 21 days of receipt of the copy of the application sent under paragraph (a).

(5) The information is—

(a) evidence of the concluded missives or, as the case may be, the agreement, and

(b) where there is an agreement such as is mentioned in subsection (3)(b)(ii) which contains a date on which it will expire—

(i) that date, and

(ii) information about whether, and if so how, the agreement is capable of being extended.”.

33 Notification of transfer

In section 41 of the 2003 Act (provisions supplementary to and explanatory of section 40), after subsection (2), insert—

“(3) Where an owner of land or a creditor in a standard security having a right to sell land makes a transfer of land as mentioned in any of paragraphs (a) to (h) of subsection (4) of section 40, the owner of the land or, as the case may be, the creditor must within 28 days of the transfer—

(a) notify Ministers of—

(i) the transfer, and

(ii) the name and address of the person to whom the land was transferred, and

(iii) the date of the transfer, and

(b) provide Ministers with a description of the land transferred, including maps, plans or other drawings prepared to such specifications as may be prescribed.”.

34 Changes to information relating to registered interests

After section 44 of the 2003 Act, insert—

“44A Duty to notify changes to information relating to registered interest

(1) This section applies where a community interest in land is registered in pursuance of an application under section 37.

(2) Where—

(a) the application contains information enabling Ministers to contact the community body which made the application, and

(b) there is a change in that information,

the community body must, as soon as reasonably practicable after the change, notify Ministers of the change.

(3) Where—
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(a) the application contains information enabling Ministers to contact the owner of the land to which the application relates, and
(b) there is a change in that information,
the owner must, as soon as reasonably practicable after the change, notify Ministers of the change.

(4) Where—
(a) the application contains information relating to a creditor in a standard security over an interest in the land, and
(b) there is a change in that information,
the owner of the land to which the application relates must, as soon as reasonably practicable after the change, notify Ministers of the change.

(5) Subsection (6) applies where—
(a) there is a creditor in a standard security over an interest in the land to which the application relates, but
(b) the application does not disclose the existence of the creditor (whether because the standard security did not exist at the time the application was made or otherwise).

(6) The owner of the land to which the application relates must, as soon as reasonably practicable after the interest in land is registered—
(a) notify Ministers of the existence of the creditor, and
(b) provide Ministers with such information relating to the creditor as would enable Ministers to contact the creditor.

(7) Subsection (8) applies where there is a change in information provided by a community body or an owner of land in pursuance of the duty under subsection (2), (3), (4) or (6).

(8) The community body or, as the case may be, the owner of the land must as soon as reasonably practicable after the change notify Ministers of the change.”.

Notification under section 50 of 2003 Act

In section 50 of the 2003 Act (power to activate right to buy land where breach of Part 2)—
(a) in subsection (3)(b), after “land”, insert “, to any creditor in a standard security with a right to sell the land”, and
(b) after subsection (5), insert—
“(6) For the purposes of subsection (2)(c), the circumstances in which a community interest in land remains in effect include that—
(a) the community body that applied under subsection (1) has, in accordance with subsection (2) of section 44, applied to re-register the interest, and
(b) the Keeper has, by virtue of a direction under subsection (3) of that section, re-entered the interest in the Register.”.
36 Approval of members of community to buy land
In section 51 of the 2003 Act (exercise of right to buy: approval of community and consent of Ministers), in subsection (2)(a)—

(a) in sub-paragraph (i)—

(i) for the words “at least half” substitute “the proportion”,

(ii) after “above,” insert “who”, and

(iii) after “land” insert “is, in the circumstances, sufficient to justify the community body’s proceeding to buy the land;”,

(b) the word “; or” immediately following sub-paragraph (i) is repealed, and

(c) sub-paragraph (ii) is repealed.

37 Appointment of person to conduct ballot on proposal to buy land
After section 51 of the 2003 Act, insert—

“51A Ballots under section 51: appointment of ballotter, etc.

(1) The ballot is to be conducted by a person (the “ballotter”) appointed by Ministers who appears to them to be independent and to have knowledge and experience of conducting ballots.

(2) Ministers must, within the period mentioned in subsection (3), provide the ballotter with—

(a) a copy of the application made by the community body under section 37 to register an interest in the land in relation to which the body has confirmed it will exercise the right to buy, and

(b) such other information as may be prescribed.

(3) The period is the period of 28 days beginning with the date on which a valuer is appointed under section 59(1) in respect of the land in relation to which the community body has confirmed it will exercise the right to buy.

(4) Ministers must provide the community body with such details of the ballotter as will enable the community body to contact the ballotter.

(5) The community body must, before the end of the period of 7 days following receipt of notification under section 60(2) of the valuation of the land, provide the ballotter with wording for the proposition mentioned in section 51(2)(b); and the ballotter must conduct the ballot on the basis of such wording.

(6) At the same time as providing that wording, the community body must also provide the ballotter, in such form as may be prescribed, with such information as may be prescribed relating to—

(a) the community body,

(b) its proposals for use of the land in relation to which it has confirmed it will exercise its right to buy,

(c) the valuation, and

(d) any other matters.

(7) The expense of conducting the ballot is to be met by Ministers.”.
Consent under section 51 of 2003 Act: prescribed information

After section 51A of the 2003 Act (inserted by section 37), insert—

“51B  Consent under section 51: duty to provide information

(1) For the purposes of deciding whether they are satisfied as mentioned in section 51(3) in relation to a community body, Ministers must take into account—

(a) the information mentioned in subsection (2), and
(b) any other information they consider relevant.

(2) The information referred to in subsection (1)(a) is information—

(a) provided by the community body, and
(b) that is of such a kind as may be prescribed.

(3) Information mentioned in subsection (2) must be provided in the prescribed form.

(4) Information that may be prescribed under subsection (2)(b) includes, in particular—

(a) information relating to the matters mentioned in section 51(3), and
(b) additional information relating to such information.

(5) Ministers may, no later than 7 days after receiving the information mentioned in subsection (2), request the community body to provide such further information as they consider necessary.

(6) The community body must, no later than 7 days after receiving any such request, provide Ministers with the further information requested.”.

Representations etc. regarding circumstances affecting ballot result

(1) After section 51B of the 2003 Act (inserted by section 38), insert—

“51C  Circumstances affecting result of ballot

(1) Within 7 days of receipt by the community body of notification under section 52(3) of the result of the ballot, the body may make representations to Ministers in writing about any circumstances that the body considers have affected the result of the ballot.

(2) Where the community body makes such representations it must, when making them—

(a) provide Ministers with such evidence as is reasonably necessary to establish the existence and effect of the circumstances to which the representations relate, and
(b) send a copy of the representations and the evidence to the owner of the land to which the ballot relates.

(3) Within 7 days of receipt of any representations under subsection (1), Ministers may request the community body to provide such further information relating to the representations or related evidence as they think fit.

(4) Within 7 days of receiving such a request, the community body must respond to it.
(5) Within 7 days of receipt of a copy of the representations and evidence under subsection (2)(b), the owner of the land may provide Ministers with comments on the representations and evidence.

(6) Where the owner of the land provides comments under subsection (5) the owner must, when providing them, send a copy of the comments to the community body.

(7) Within 7 days of receipt of a copy of comments under subsection (6), the community body may give Ministers views on the comments.

(8) Within 7 days of receipt of any views under subsection (7), Ministers may request the community body to provide such further information relating to the views as they think fit.

(9) Within 7 days of receiving such a request, the community body must respond to it.

(10) In deciding whether they are satisfied as mentioned in section 51(2)(a), Ministers must take account of any—

(a) representations made under subsection (1),
(b) evidence provided under subsection (2)(a),
(c) further information provided under subsection (4) or (9),
(d) comments under subsection (5), and
(e) views under subsection (7)."

(2) In section 51 of the 2003 Act (exercise of right to buy: approval of community and consent of Ministers), after subsection (6), insert—

“(6A) Where a community body makes representations under section 51C(1), the references to 21 days in paragraphs (a) and (b) of subsection (6) are to be read as references to 35 days.”.

40 Ballot not conducted as prescribed

In section 52 of the 2003 Act (ballot procedure), after subsection (6) (inserted by schedule 4), insert—

“(7) Provision may be prescribed for or in connection with—

(a) reviewing whether a ballot was conducted in accordance with provision prescribed under subsection (1),
(b) providing notification to such persons, or description of persons, as may be prescribed that a ballot has not been so conducted,
(c) in a case where a ballot has not been so conducted, requiring a further ballot to be conducted on such a basis, and by such persons or description of persons, as may be prescribed,
(d) requiring any such further ballot to be conducted—

(i) in compliance with such conditions as may be prescribed (including conditions that the ballot be conducted in accordance with provision prescribed under subsection (1)),
(ii) within such timescales as may be prescribed,"
(e) specifying persons, or descriptions of persons, who are to meet the expenses of conducting any such further ballot,

(f) specifying that any review mentioned in paragraph (a) be carried out by—

(i) such persons,

(ii) such description of persons, or

(iii) such a court or tribunal,

as may be prescribed,

(g) specifying the action that may be taken by such persons, persons of such description or such a court or tribunal following such a review.”.

41 Period in which ballot results and valuations are to be notified

(1) In section 52 of the 2003 Act (ballot procedure), in subsection (4), for the words from “28 days” to the end of the subsection, substitute “12 weeks beginning with—

(a) the date on which a valuer is appointed under section 59(1) in respect of the land in relation to which the community body has confirmed it will exercise its right to buy, or

(b) where—

(i) the ballotter receives notification under subsection (3C) of section 60, and

(ii) the date notified under paragraph (c) of that subsection is after the end of the 12 week period beginning with the date on which a valuer is appointed as mentioned in paragraph (a) above, the day following the date notified to the ballotter under paragraph (c) of that subsection.”.

(2) In section 60 of the 2003 Act (procedure for valuation), after subsection (3) insert—

“(3A) An application under subsection (3) must be made within the period of 21 days beginning with the date of appointment of the valuer.

(3B) Any longer period as mentioned in that subsection must be fixed under that subsection within the period of 7 days beginning with the day on which the application was received.

(3C) Where such a longer period is fixed, Ministers must notify the persons mentioned in subsection (3D) of—

(a) the fact that a longer period has been so fixed,

(b) the length of the period, and

(c) the date on which the period ends.

(3D) The persons are—

(a) the community body which is exercising its right to buy the land,

(b) the person appointed to conduct the ballot in relation to the land, and

(c) the owner of the land.”.
Exercise of right to buy: date of entry and payment of price

In section 56 of the 2003 Act (procedure for buying)—

(a) in subsection (3)(a), for the word “6” substitute “8”, and

(b) after subsection (6), insert—

“(7) Where a later date is agreed as mentioned in subsection (3)(c), the community body must, within 7 days of the agreement—

(a) notify Ministers in writing of the agreement,

(b) inform Ministers—

(i) of the date on which the agreement was made, and

(ii) what the later date is, and

(c) provide evidence to Ministers of the matters mentioned in paragraph (b).”.

Views on representations under section 60 of 2003 Act

In section 60 of the 2003 Act (procedure for valuation)—

(a) after subsection (1), insert—

“(1A) Where written representations under subsection (1) are received—

(a) from the owner of the land, the valuer must invite the community body which is exercising its right to buy the land to send its views on the representations in writing,

(b) from the community body which is exercising its right to buy the land, the valuer must invite the owner of the land to send the owner’s views on the representations in writing.

(1B) In carrying out a valuation under section 59, the valuer must consider any views sent under subsection (1A).”, and

(b) in subsection (3), for the word “6” substitute “8”.

Expenses of valuation of land

After section 60 of the 2003 Act, insert—

“60A Liability of owner of land for valuation expenses

(1) Subsection (2) applies where—

(a) Ministers have received a confirmation sought by them under section 49(2)(a) that a community body will exercise its right to buy land in which it has a registered interest, and

(b) after Ministers have appointed a valuer under section 59(1) to assess the value of the land, the owner of the land gives notice under section 54(5) of the owner’s decision not to proceed further with the proposed transfer.

(2) Ministers may require the owner of the land to pay any expense incurred by them in connection with the valuation of the land under section 59 by sending the owner a demand for payment of the expense.”
(3) Where Ministers are considering sending a demand under subsection (2), they may request the owner of the land to provide such information as they consider necessary for the purposes of enabling Ministers to determine whether or not to send the demand.

(4) The owner of the land may, within 21 days of the receipt of a demand under subsection (2), appeal to the sheriff against the demand.

(5) The decision of the sheriff in an appeal under subsection (4) is final.

(6) The owner of the land must pay the amount specified in a demand under subsection (2)—

(a) within 28 days of receipt, or

(b) where an appeal against the demand is made under subsection (4) and not upheld, within 28 days of the determination of the appeal.”.

45 Creditors in standard security with right to sell land: appeals

In section 61 of the 2003 Act (appeals)—

(a) after subsection (3), insert—

“(3A) A creditor in a standard security with a right to sell land may appeal to the sheriff against—

(a) a decision by Ministers that a community interest in the land is to be entered in the Register, or

(b) a decision by Ministers to give consent to the exercise by a community body of its right to buy the land.”,

(b) in subsection (4), for the words “or (3)” substitute “, (3) or (3A)”, and

(c) in subsection (6)—

(i) the word “and” immediately following paragraph (a)(i) is repealed,

(ii) in paragraph (a), after sub-paragraph (ii), insert “and

(iii) any creditor in a standard security with a right to sell the land to which the appeal relates;”,

(iii) the word “and” immediately following paragraph (b)(i) is repealed,

(iv) for the word “or” immediately following paragraph (b)(ii) substitute “and

(iii) any creditor in a standard security with a right to sell the land to which the appeal relates;”,

(v) the word “and” immediately following paragraph (c)(ii) is repealed,

(vi) in paragraph (c), after sub-paragraph (iii), insert “and

(iv) any creditor in a standard security with a right to sell the land to which the appeal relates;”, and

(vii) after paragraph (c), insert “or

(d) under subsection (3A) above, the creditor must intimate that fact to—

(i) the community body,

(ii) the owner, and
(iii) Ministers.”.

45A Appeals to Lands Tribunal as respects valuations of land

(1) Section 62 of the 2003 Act (appeals to Lands Tribunal: valuations) is amended as follows.

(2) In subsection (7), after “reasons”, where it second occurs, insert “—

(a) within 8 weeks of hearing the appeal, or

(b) where subsection (7A) applies, by such later date referred to in paragraph (b)(ii) of that subsection.”.

(3) After section (7) insert—

“(7A) This section applies where—

(a) the Lands Tribunal considers that it is not reasonable to issue a written statement mentioned in subsection (7) by the time limit specified in paragraph (a) of that subsection, and

(b) before the expiry of that time limit, the Lands Tribunal has notified the parties to the appeal—

(i) that the Tribunal is unable to issue a written statement by that time limit, and

(ii) of the date by which the Tribunal will issue such a written statement.”.

(4) In subsection (8), for the words from “to” to the end of the subsection substitute “—

(a) to comply with the time limit specified in paragraph (a) of subsection (7) above, or

(b) to issue a written statement by the date referred to in paragraph (b) of that subsection.”.

46 Calculation of time periods in Part 2 of 2003 Act

After section 67 of the 2003 Act, insert—

“67A Calculation of time periods

(1) In calculating for the purposes of this Part any period of time within which an act requires to be or may be done, no account is to be taken of any public or local holidays in the place where the act is to be done.

(2) Subsection (1) does not apply to a period of time specified in—

(a) section 56(3)(a) or (b),

(b) section 60(3), or

(c) Chapter 6 of this Part.”.

47 Duty to provide information about community right to buy

After section 67A of the 2003 Act (inserted by section 46), insert—
“67B Duty to provide information about community right to buy

(1) Ministers may, for the purpose of monitoring or evaluating any impact that the right to buy land conferred by this Part has had or may have, request a person mentioned in subsection (2) to provide them with the information mentioned in subsection (3).

(2) The persons are—
   (a) a community body,
   (b) the owner or former owner of land in respect of which an application to register a community interest under section 37 was made.

(3) The information is such information as Ministers may reasonably require for the purpose mentioned in subsection (1) relating to the effects that the operation of the provisions of this Part have had, or may be expected to have, on such matters as may be specified in the request.

(4) A person to whom a request under subsection (1) is made must, to the extent that the person is able to do so, provide Ministers with the information requested.”.

Modifications of Part 3 of the Land Reform (Scotland) Act 2003

47A Crofting community bodies

(1) Section 71 of the 2003 Act (crofting community bodies) is amended as follows.

(2) Before subsection (1), insert—

“(A1) A crofting community body is, subject to subsection (4)—
   (a) a body falling within subsection (1), (1A) or (1B), or
   (b) a body of such other description as may be prescribed which complies with prescribed requirements.”.

(3) In subsection (1)—
   (a) for the words “crofting community body is, subject to subsection (4) below,” substitute “body falls within this subsection if it is”,
   (b) in paragraph (b), after “land” insert “, the interest mentioned in section 69A(3)”,
   (c) in paragraph (c), for “20” substitute “10”,
   (d) for paragraph (d) substitute—

   “(d) provision that at least three quarters of the members of the company are members of the crofting community,”,
   (e) in paragraph (f), the words “and the auditing of its accounts” are repealed, and
   (f) in paragraph (h)—

   (i) after “land” insert “, interest in land”, and
   (ii) in sub-paragraph (i), for the words “or community body” substitute “, community body or Part 3A community body (as defined in section 97D)”.

(4) After subsection (1), insert—

“(1A) A body falls within this subsection if it is a Scottish charitable incorporated organisation (a “SCIO”) the constitution of which includes the following—
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(a) a definition of the crofting community to which the SCIO relates,
(b) provision enabling the SCIO to exercise the right to buy land, the interest mentioned in section 69A(3) and sporting interests under this Part,
(c) provision that the SCIO must have not fewer than 10 members,
(d) provision that at least three quarters of the members of the SCIO are members of the crofting community,
(e) provision under which the members of the SCIO who consist of members of the crofting community have control of the SCIO,
(f) provision ensuring proper arrangements for the financial management of the SCIO,
(g) provision that, on the request of any person for a copy of the minutes of a meeting of the SCIO, the SCIO must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,
(h) provision that, where a request of the type mentioned in paragraph (g) is made, the SCIO—
   (i) may withhold information contained in the minutes, and
   (ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and
(i) provision that any surplus funds or assets of the SCIO are to be applied for the benefit of the crofting community.

(1B) A body falls within this subsection if it is a community benefit society the registered rules of which include the following—

(a) a definition of the crofting community to which the society relates,
(b) provision enabling the society to exercise the right to buy land, the interest mentioned in section 69A(3) and sporting interests under this Part,
(c) provision that the society must have not fewer than 10 members,
(d) provision that at least three quarters of the members of the society are members of the crofting community,
(e) provision under which the members of the society who consist of members of the crofting community have control of the society,
(f) provision ensuring proper arrangements for the financial management of the society,
(g) provision that, on the request of any person for a copy of the minutes of a meeting of the society, the society must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,
(h) provision that, where a request of the type mentioned in paragraph (g) is made, the society—
   (i) may withhold information contained in the minutes, and
   (ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and
(i) provision that any surplus funds or assets of the society are to be applied for the benefit of the crofting community.”.

(5) In subsection (2), after “(1)(c)” insert “, (1A)(c) or (1B)(c)”.

(6) After subsection (4), insert—

“(4A) Ministers may by regulations from time to time amend subsections (1), (1A) and (1B).

(4B) If provision is made under subsection (A1)(b), Ministers may by regulations make such amendment of section 72(1) in consequence of that provision as they consider necessary or expedient.”.

(7) In subsection (5)—

(a) after “(1)(a)” insert “, (1A)(a) or (1B)(a)”, and

(b) in paragraph (a)—

(i) in sub-paragraph (i), after “Act” insert “and who are entitled to vote in local government elections in the polling district or districts in which that township is situated”;

(ii) the word “or” immediately following sub-paragraph (i) is repealed,

(iii) for the words from “being” to the end of the paragraph substitute—

“(ii) are tenants of crofts in the crofting township whose names are entered in the Crofting Register, or the Register of Crofts, as the tenants of such crofts;

(iii) are owner-occupier crofters of owner-occupied crofts in the crofting township whose names are entered in the Crofting Register as the owner-occupier crofters of such crofts; or

(iv) are such other persons, or are persons falling within a class of such other persons, as may be prescribed;”.

(8) In subsection (6)—

(a) for “(5)(a)(i)” substitute “(5)(a)”;

(b) after “above” insert “—”, and

(c) at the end insert—

“‘owner-occupied croft’ has the meaning given by section 19B(5) of the Crofters (Scotland) Act 1993,

“‘owner-occupier crofter’ is to be construed in accordance with section 19B of that Act.”.

(9) In subsection (8)—

(a) after “section” insert “—”, and

(b) at the end insert—

“‘community benefit society’ means a registered society (within the meaning of section 1 of the Co-operative and Community Benefit Societies Act 2014) registered as a community benefit society under section 2 of that Act,
“registered rules” has the meaning given by section 149 of that Act (as that meaning applies in relation to community benefit societies),

“Scottish charitable incorporated organisation” has the meaning given by section 49 of the Charities and Trustee Investment (Scotland) Act 2005.”.

47B Modification of memorandum or articles of association or constitution

In section 72 of the 2003 Act (provisions supplementary to section 71)—

(a) in subsection (1), for “or articles of association” substitute “, articles of association, constitution or registered rules (as defined in section 71(8))”, and

(b) after subsection (2) insert—

“(3) Subsection (2) does not apply if the crofting community body would no longer be entitled to buy the land because the land is not eligible croft land.

(4) Where the power conferred by subsection (2) is (or is to be) exercised in relation to land, Ministers may make an order relating to, or to matters connected with, the acquisition of the land.

(5) An order under subsection (4) may—

(a) apply, modify or exclude any enactment which relates to any matter as to which an order could be made under that subsection,

(b) make such modifications of enactments as appear to Ministers to be necessary or expedient in consequence of any provision of the order or otherwise in connection with the order.”.

47C Application: information about rights and interest in land

(1) Section 73 of the 2003 Act (application by crofting community body for consent to buy croft land etc.) is amended as follows.

(2) In subsection (5)—

(a) after “form” insert “, shall specify the persons mentioned in subsection (5ZA)”,

(b) in paragraph (b)—

(i) in sub-paragraph (i), after “application” insert “known to the crofting community body”, and

(ii) the words from “(ii)” to the end of the paragraph are repealed, and

(c) paragraph (f) is repealed.

(3) After subsection (5) insert—

“(5ZA) The persons are—

(a) the owner of the land,

(b) any creditor in a standard security over the land or any part of it with a right to sell the land or any part of it,

(c) the tenant of any tenancy of land over which the tenant has an interest,

(d) the person entitled to any sporting interests,

in respect of which the right to buy is sought to be exercised.”.
(4) In subsection (11), for paragraphs (a) and (b) substitute “in such manner as may be prescribed”.

47D Criteria for consent by Ministers

In section 74 of the 2003 Act (criteria for consent by Ministers), in subsection (1)—

(a) the word “and” immediately following paragraph (m) is repealed, and

(b) after paragraph (n) insert—

“(o) that the owner of the land to which the application relates is accurately identified in the application,

(p) that any creditor in a standard security over the land to which the application relates or any part of it with a right to sell the land or any part of it is accurately identified in the application,

(q) in the case of an application made by virtue of section 69A(2), that the tenant whose interest is the subject of the application is accurately identified in the application, and

(r) that the person entitled to any sporting interests to which the application relates is accurately identified in the application.”.

47E Ballot: information and expenses

(1) Section 75 of the 2003 Act (ballot to indicate approval for the purposes of section 74(1)(m)) is amended as follows.

(2) After subsection (4) insert—

“(4A) Ministers may require the crofting community body—

(a) to provide such information relating to the ballot as they think fit, and

(b) to provide such information relating to any consultation with those eligible to vote in the ballot undertaken during the period in which the ballot was carried out as Ministers think fit.

(4B) Subject to subsection (6), the expense of conducting a ballot under this section is to be met by the crofting community body.”.

(3) After subsection (5) insert—

“(6) Ministers may by regulations make provision for or in connection with enabling a crofting community body, in such circumstances as may be specified in the regulations, to apply to them to seek reimbursement of the expense of conducting a ballot under this section.

(7) Regulations under subsection (6) may in particular make provision in relation to—

(a) the circumstances in which a crofting community body may make an application by virtue of that subsection,

(b) the method to be applied by Ministers in calculating the expense of conducting the ballot,

(c) the criteria to be applied by Ministers in deciding whether to make a reimbursement to the applicant,
(d) the procedure to be followed in connection with the making of—
   (i) an application to Ministers,
   (ii) an appeal against a decision made by Ministers in respect of an
        application,
   (e) persons who may consider such an appeal,
   (f) the powers of such persons.”.

47F Application by more than one crofting community body

In section 76 of the 2003 Act (right to buy same croft land exercisable by only one

47G Reference to Land Court of questions on applications

In section 81 of the 2003 Act (reference to Land Court of questions on applications), in

47H Valuation: views on representations and time limit

In section 88 of the 2003 Act (assessment of value of croft land etc.)—
47I  Compensation

In section 89 of the 2003 Act (compensation), for subsection (4) substitute—

“(4) Ministers may, by order, make provision for or in connection with specifying—

(a) amounts payable in respect of loss or expense incurred as mentioned in subsection (1),

(b) amounts payable in respect of loss or expense incurred by virtue of this Part by a person of such other description as may be specified,

(c) the person who is liable to pay those amounts,

(d) the procedure under which claims for compensation under this section are to be made.”.

47J  Land Court: reasons for decision under section 92

In section 92 of the 2003 Act (appeals to Land Court: valuation)—

(a) in subsection (5), for the words “within 4 weeks of the hearing of the appeal” substitute “—

(a) within 8 weeks of the hearing of the appeal, or

(b) where subsection (5A) applies, by such later date referred to in paragraph (b)(ii) of that subsection.”,

(b) after subsection (5) insert—

“(5A) This subsection applies where—

(a) the Land Court considers that it is not reasonable to issue a written statement mentioned in subsection (5) by the time limit specified in paragraph (a) of that subsection, and

(b) before the expiry of that time limit, the Land Court has notified the parties to the appeal—

(i) that the Land Court is unable to issue a written statement by that time limit, and

(ii) of the date by which the Land Court will issue such a written statement.”, and

(c) in subsection (6), for the words from “to” to the end of the subsection substitute “—

(a) to comply with the time limit specified in paragraph (a) of subsection (5) above, or

(b) to issue a written statement by the date referred to in paragraph (b) of that subsection.”.

47K  Meaning of creditor in standard security with right to sell

After section 97A of the 2003 Act insert—
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“97B Meaning of creditor in standard security with right to sell

Any reference in this Part to a creditor in a standard security with a right to sell land is a reference to a creditor who has such a right under—

(a) section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970, or

(b) a warrant granted under section 24(1) of that Act.”.

Abandoned and neglected land

48 Abandoned and neglected land

After section 97A of the 2003 Act, insert—

“PART 3A
COMMUNITY RIGHT TO BUY ABANDONED OR NEGLECTED LAND

97B Meaning of “land”

In this Part, “land” includes—

(a) bridges and other structures built on or over land,

(b) inland waters,

(c) canals, and

(d) the foreshore, that is to say, the land between the high and low water marks of ordinary spring tides.

97C Eligible land

(A1) The land which may be bought by a Part 3A community body under this Part is eligible land.

(1) Land is eligible for the purposes of this Part if in the opinion of Ministers it is wholly or mainly abandoned or neglected.

(2) In determining whether land is eligible for the purposes of this Part, Ministers must have regard to prescribed matters.

(3) Eligible land does not include—

(a) land on which there is a building or other structure which is an individual’s home,

(b) such land pertaining to land of the type mentioned in paragraph (a) as may be prescribed,

(c) eligible croft land (as defined in section 68(2)),

(d) any croft occupied or worked by its owner or a member of its owner’s family,

(e) land which is owned or occupied by the Crown by virtue of its having vested as bona vacantia in the Crown, or its having fallen to the Crown as ultimus haeres,

(f) land of such other descriptions or classes as may be prescribed.
(4) Ministers may prescribe descriptions or classes of building or structure which are, or are to be treated as, a home for the purposes of subsection (3)(a).

(5) In subsection (3)(d), the reference to a croft being occupied includes—

(a) a reference to its being occupied otherwise than permanently, and

(b) a reference to its being occupied by way of the occupation by its owner of any dwelling-house on or pertaining to it.

97D Part 3A community bodies

(1) A Part 3A community body is, subject to subsection (4)—

(a) a body falling within subsection (1A), (1B) or (1C), or

(b) a body of such other description as may be prescribed which complies with prescribed requirements.

(1A) A body falls within this subsection if it is a company limited by guarantee the articles of association of which include the following—

(a) a definition of the community to which the company relates,

(b) provision enabling the company to exercise the right to buy land under this Part,

(c) provision that the company must have not fewer than 10 members,

(d) provision that at least three quarters of the members of the company are members of the community,

(e) provision whereby the members of the company who consist of members of the community have control of the company,

(f) provision ensuring proper arrangements for the financial management of the company,

(g) provision that any surplus funds or assets of the company are to be applied for the benefit of the community, and

(h) provision that, on the winding up of the company and after satisfaction of its liabilities, its property (including any land acquired by it under this Part) passes—

(i) to such other community body or crofting community body as may be approved by Ministers, or

(ii) if no other community body or crofting community body is so approved, to Ministers or to such charity as Ministers may direct.

(1B) A body falls within this subsection if it is a Scottish charitable incorporated organisation (a “SCIO”) the constitution of which includes the following—

(a) a definition of the community to which the SCIO relates,

(b) provision enabling the SCIO to exercise the right to buy land under this Part,

(c) provision that the SCIO must have not fewer than 10 members,

(d) provision that at least three quarters of the members of the SCIO are members of the community,
(e) provision under which the members of the SCIO who consist of members of the community have control of the SCIO,

(f) provision ensuring proper arrangements for the financial management of the SCIO,

(g) provision that, on the request of any person for a copy of the minutes of a meeting of the SCIO, the SCIO must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,

(h) provision that, where a request of the type mentioned in paragraph (g) is made, the SCIO—

(i) may withhold information contained in the minutes, and

(ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and

(i) provision that any surplus funds or assets of the SCIO are to be applied for the benefit of the community.

(1C) A body falls within this subsection if it is a community benefit society the registered rules of which include the following—

(a) a definition of the community to which the society relates,

(b) provision enabling the society to exercise the right to buy land under this Part,

(c) provision that the society must have not fewer than 10 members,

(d) provision that at least three quarters of the members of the society are members of the community,

(e) provision under which the members of the society who consist of members of the community have control of the society,

(f) provision ensuring proper arrangements for the financial management of the society,

(g) provision that, on the request of any person for a copy of the minutes of a meeting of the society, the society must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,

(h) provision that, where a request of the type mentioned in paragraph (g) is made, the society—

(i) may withhold information contained in the minutes, and

(ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and

(i) provision that any surplus funds or assets of the society are to be applied for the benefit of the community.

(2) Ministers may, if they think it in the public interest to do so, disapply the requirement specified in subsection (1A)(c), (1B)(c) or (1C)(c) in relation to any body they may specify.

(3) In subsection (1A), “company limited by guarantee” has the meaning given by section 3(3) of the Companies Act 2006.
(4) A body is not a Part 3A community body unless Ministers have given it written confirmation that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development.

(4A) Ministers may by regulations from time to time amend subsections (1A), (1B) and (1C).

(4B) If provision is made under subsection (1)(b), Ministers may by regulations make such amendment of section 97E(1) in consequence of that provision as they consider necessary or expedient.

(5) A community—

(a) is defined for the purposes of subsection (1A)(a), (1B)(a) and (1C)(a) by reference to a postcode unit or postcode units or a prescribed type of area (or both such unit and type of area), and

(b) comprises the persons from time to time—

(i) resident in that postcode unit or in one of those postcode units or in that prescribed type of area, and

(ii) entitled to vote, at a local government election, in a polling district which includes that postcode unit or those postcode units or that prescribed type of area (or part of it or them).

(6) In subsection (5), “postcode unit” means an area in relation to which a single postcode is used to facilitate the identification of postal service delivery points within the area.

(7) The articles of association of a company which is a Part 3A community body may, notwithstanding the generality of paragraph (h) of subsection (1), provide that its property may, in the circumstances mentioned in that paragraph, pass to another person only if that person is a charity.

(8) In this section—

“charity” means a body entered in the Scottish Charity Register,

“community benefit society” means a registered society (within the meaning of section 1 of the Co-operative and Community Benefit Societies Act 2014) registered as a community benefit society under section 2 of that Act,

“registered rules” has the meaning given by section 149 of that Act (as that meaning applies in relation to community benefit societies),

“Scottish charitable incorporated organisation” has the meaning given by section 49 of the Charities and Trustee Investment (Scotland) Act 2005.

97E Provisions supplementary to section 97D

(1) A Part 3A community body which has bought land under this Part may not, for as long as the land or any part of it remains in its ownership, modify its memorandum, articles of association, constitution or registered rules (as defined in section 97D(8)) without Ministers’ consent in writing.

(2) If Ministers are satisfied that a Part 3A community body which has, under this Part, bought land would, had it not so bought that land, no longer be entitled to do so, they may acquire the land compulsorily.
(3) Subsection (2) does not apply if the Part 3A community body would no longer be entitled to buy the land because the land is not eligible for the purposes of this Part.

(4) Where the power conferred by subsection (2) is (or is to be) exercised in relation to land, Ministers may make an order relating to, or to matters connected with, the acquisition of the land.

(5) An order under subsection (4) may—

(a) apply, modify or exclude any enactment which relates to any matter as to which an order could be made under that subsection,

(b) make such modifications of enactments as appear to Ministers to be necessary or expedient in consequence of any provision of the order or otherwise in connection with the order.

97F Register of Community Interests in Abandoned or Neglected Land

(1) The Keeper must set up and keep a register, to be known as the Register of Community Interests in Abandoned or Neglected Land (the “Part 3A Register”).

(2) The Part 3A Register must be set up and kept so as to contain, in a manner and form convenient for public inspection, the following information and documents relating to each application to exercise the right to buy under this Part registered in it—

(a) the name and address of the registered office of the company which constitutes the Part 3A community body which has submitted the application,

(b) a copy of the application to exercise the right to buy under this Part,

(c) a copy of any notification given under section 97K(4)(b),

(d) a copy of the notice given under section 97M(1),

(e) a copy of any notice under section 97P(1),

(f) a copy of any notice under section 97P(2)(a),

(g) a copy of any notice under section 97P(2)(b),

(h) a copy of any acknowledgement sent under section 97P(3),

(i) such other information as Ministers consider appropriate.

(3) If the Part 3A community body registering an application requires that any such information or document relating to that application and falling within subsection (4) as is specified in the requirement be withheld from public inspection, that information or document is to be kept by or on behalf of Ministers separately from and not entered in the Register.

(4) Information or a document falls within this subsection if it relates to arrangements for the raising or expenditure of money to enable the land to which the application relates to be put to a particular use.

(5) Nothing in subsection (3) or (4) obliges an applicant Part 3A community body, or empowers Ministers to require such a body, to submit to Ministers any information or document within subsection (4).
(6) Ministers may by regulations modify—
(a) paragraphs (a) to (h) of subsection (2),
(b) subsection (3),
(c) subsection (4).

(7) The Keeper must ensure—
(a) that the Part 3A Register is, at all reasonable times, available for public inspection free of charge,
(b) that members of the public are given facilities for getting copies of entries in the Part 3A Register on payment of such charges as may be prescribed, and
(c) that any person requesting it is, on payment of such a charge, supplied with an extract entry certified to be a true copy of the original.

(8) An extract so certified is sufficient evidence of the original.

(9) In this Part, “the Keeper” means—
(a) the Keeper of the Registers of Scotland, or
(b) such other person as Ministers may appoint to carry out the Keeper’s functions under this Part.

(10) Different persons may be so appointed for different purposes.

97G Right to buy: application for consent

(1) The right to buy under this Part may be exercised only by a Part 3A community body.

(2) That right may be so exercised only with the consent of Ministers given on the written application of the Part 3A community body.

(3) That right may be exercised in relation to more than one holding of land but in order so to exercise the right an application must be made in respect of each such holding and applications so made may be differently disposed of.

(4) In subsection (3), a “holding” of land is land in the ownership of one person or in common or joint ownership.

(5) An application under this section—
(a) must be made in the prescribed form,
(b) must specify—
(i) the owner of the land, and
(ii) any creditor in a standard security over the land or any part of it, and
(c) must include or be accompanied by information of the prescribed kind including information (provided, where appropriate, by or by reference to maps or drawings) about the matters mentioned in subsection (6).

(6) The matters are—
(a) the reasons the Part 3A community body considers that its proposals for the land are—
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(i) in the public interest, and
(ii) compatible with furthering the achievement of sustainable development in relation to the land,
(b) the reasons the Part 3A community body considers that the land is wholly or mainly abandoned or neglected,
(c) the location and boundaries of the land in respect of which the right to buy is sought to be exercised,
(d) all rights and interests in the land known to the Part 3A community body, and
(e) the proposed use, development and management of the land.

(7) A Part 3A community body applying under this section must, at the same time as it applies—
(a) send a copy of its application and the accompanying information to the owner of the land to which the application relates, and
(b) where there is a standard security in relation to the land or any part of it, send a copy of the application and the accompanying information to the creditor who holds the standard security and invite the creditor—
(i) to notify the Part 3A community body and Ministers, within 60 days of receipt of the invitation, if any of the circumstances set out in subsection (8) has arisen (or arises within 60 days of receipt of the invitation), and
(ii) if such notice is given, to provide Ministers, within that time, with the creditor’s views in writing on the application.

(8) Those circumstances are that—
(a) a calling-up notice has been served by the creditor under section 19 of the Conveyancing and Feudal Reform (Scotland) Act 1970 in relation to the land which the Part 3A community body is seeking to exercise its right to buy or any part of the land and that notice has not been complied with,
(b) a notice of default served by the creditor under section 21 of that Act in relation to the land or any part of the land has not been complied with and the person on whom the notice was served has not, within the period specified in section 22 of that Act, objected to the notice by way of application to the court,
(c) where that person has so objected, the court has upheld or varied the notice of default,
(d) the court has granted the creditor a warrant under section 24 of that Act in relation to the land or any part of the land.

(9) On receipt of an application under this section, Ministers must—
(a) invite—
(i) the owner of the land,
(ii) any creditor in a standard security over the land or any part of it,
(iii) any other person whom Ministers consider to have an interest in the application, to send them, so as to be received not later than 60 days after the sending of the invitation, views in writing on the application,

(b) take reasonable steps to invite the owners of all land contiguous to the land to which the application relates to send them, so as to be received not later than 60 days after the sending of the invitation, views in writing on the application, and

c) send copies of invitations given under paragraphs (a) and (b) to the Part 3A community body.

(10) An invitation given under subsection (9)(a)(i) must also invite the owner to give Ministers information about—

(a) whether the owner considers that it would be in the public interest for Ministers to consent to the application and, if not, the reasons the owner considers that it would not be in the public interest for such consent to be given,

(b) whether the owner’s continuing to own the land would be compatible with furthering the achievement of sustainable development in relation to the land,

(c) whether the owner considers the land to be wholly or mainly neglected or abandoned and the reasons for the owner’s view,

(d) any proposals that the owner has for the land,

(e) any rights or interests in the land of which the owner is aware that are not mentioned in the application, and

(f) any other matter that the owner considers is relevant to the application.

(11) Ministers must, as soon as practicable after receiving an application, give public notice of it and of the date by which, under subsection (9)(a), views are to be received by them and, in that notice, invite persons to send to Ministers, so as to be received by them not later than 60 days after the publication of the notice, views in writing on the application.

(12) That public notice is to be given by advertisement in such manner as may be prescribed.

(13) Ministers must—

(a) send copies of any views they receive under this section to the Part 3A community body, and

(b) invite it to send them, so as to be received by them not later than 60 days after the sending of that invitation, its responses to these views.

(14) Ministers must, when considering whether to consent to an application under this section, have regard to all views on it and responses to the views which they have received in answer to invitations under this section.

(15) Ministers must decline to consider an application which—

(a) does not comply with the requirements of or imposed under this section, or

(b) is otherwise incomplete,
(c) otherwise indicates that it is one which Ministers would be bound to reject; and Ministers are not required to comply with subsections (9) to (14) in relation to such an application.

(16) Ministers must not reach a decision on an application before—

(a) the date which is 60 days after the last date on which the Part 3A community body may provide Ministers with a response to the invitation given under subsection (13), or

(b) if by that date the Lands Tribunal has not advised Ministers of its finding on any question referred to it under section 97X in relation to the application, the date on which the Lands Tribunal provides Ministers with that finding.

(17) A Part 3A community body may require Ministers to treat as confidential any information or document relating to arrangements for the raising or expenditure of money to enable the land to be put to a particular use, being information or a document made available to Ministers for the purposes of this section.

97H Criteria for consent

Ministers must not consent to an application made under section 97G unless they are satisfied—

(a) that the land to which the application relates is eligible land,

(b) that the exercise by the Part 3A community body of the right to buy under this Part is—

(i) in the public interest, and

(ii) compatible with furthering the achievement of sustainable development in relation to the land,

(c) that the achievement of sustainable development in relation to the land would be unlikely to be furthered by the owner of the land continuing to be its owner,

(d) that the owner of the land is accurately identified in the application,

(e) that any creditor in a standard security over the land or any part of it with a right to sell the land or any part of it is accurately identified in the application,

(f) that the owner is not—

(i) prevented from selling the land, or

(ii) subject to any enforceable personal obligation (other than an obligation arising by virtue of any right suspended by regulations under section 97N(3)) to sell the land otherwise than to the Part 3A community body,

(g) that the Part 3A community body complies with the provisions of section 97D,

(h) that—
(i) a significant number of the members of the community defined under section 97D to which the application relates have a connection with the land, or

(ii) the land is sufficiently near to land with which those members of that community have a connection,

(i) that the community so defined have approved the proposal to exercise the right to buy, and

(j) that, otherwise than by virtue of this Part, the Part 3A community body has tried and failed to buy the land.

97J Ballot to indicate approval for purposes of section 97H

(1) The community, defined in pursuance of section 97D in relation to a Part 3A community body which has applied to buy land, are to be taken for the purposes of section 97H(i) as having approved a proposal to buy if—

   (a) a ballot of the members of the community so defined has, during the period of six months which immediately preceded the date on which the application was made, been conducted by the Part 3A community body on the question whether the Part 3A community body should buy the land,

   (b) in the ballot—

   (i) at least half of the members of the community so defined have voted, or

   (ii) fewer than half of the members of the community so defined have voted but the proportion which voted is sufficient to justify the Part 3A community body’s proceeding to buy the land, and

   (c) the majority of those voting have voted in favour of the proposition that the Part 3A community body buy the land.

(2) The ballot is to be conducted as prescribed.

(3) The provisions prescribed must in particular include provision for—

   (a) the ascertainment and publication of the number of persons eligible to vote in the ballot,

   (b) the number who did vote,

   (c) the numbers of valid votes respectively cast for and against the proposition mentioned in subsection (1)(c), and

   (d) the form and manner in which the result of the ballot is to be published.

(4) The Part 3A community body which conducts a ballot must, within 21 days of the ballot (or, if its application under section 97G is made before the expiry of that period, together with the application), and in the prescribed form of return, notify Ministers of—

   (a) the result,

   (b) the number of persons eligible to vote,

   (c) the number of persons who voted, and
(d) the number of persons who voted in favour of the proposition mentioned in subsection (1)(c).

(5) Ministers may require the Part 3A community body—

(a) to provide such information relating to the ballot as they think fit, and

(b) to provide such information relating to any consultation with those eligible to vote in the ballot undertaken during the period in which the ballot was carried out as Ministers think fit.

(6) Subject to subsection (6A), the expense of conducting a ballot under this section is to be met by the Part 3A community body.

(6A) Ministers may by regulations make provision for or in connection with enabling a Part 3A community body, in such circumstances as may be specified in the regulations, to apply to them to seek reimbursement of the expense of conducting a ballot under this section.

(6B) Regulations under subsection (6A) may in particular make provision in relation to—

(a) the circumstances in which a Part 3A community body may make an application by virtue of that subsection,

(b) the method to be applied by Ministers in calculating the expense of conducting the ballot,

(c) the criteria to be applied by Ministers in deciding whether to make a reimbursement to the applicant,

(d) the procedure to be followed in connection with the making of—

(i) an application to Ministers,

(ii) an appeal against a decision made by Ministers in respect of an application,

(e) persons who may consider such an appeal,

(f) the powers of such persons.

(7) If the ballot is not conducted as prescribed, the Part 3A community body’s right to buy the land to which the body’s application relates is, so far as proceeding on that application, extinguished.

97K **Right to buy same land exercisable by only one Part 3A community body**

(1) Only one Part 3A community body may exercise the right under this Part to buy the same land.

(2) Where two or more such bodies have applied to buy the same land, it is for Ministers to decide which application is to proceed.

(3) Ministers may not make such a decision unless they have had regard to all views on each of the applications, and responses to the views, which they have received in answer to invitations under section 97G.

(4) On Ministers so deciding—

(a) the other body’s right to buy the land which is the subject of the body’s application is, so far as proceeding on that application, extinguished, and
97L  Consent conditions

Ministers may make their consent to an application made under section 97G subject to conditions.

97M  Notification of Ministers’ decision on application

(1) Ministers must give written notice, in prescribed form, of their decision on an application made under section 97G, and their reasons for it, to—

(a) the applicant Part 3A community body,
(b) the owner of the land to which the application relates,
(c) every other person who was invited, under section 97G(9)(a), to send them views on the application, and
(d) the Keeper of the Registers of Scotland.

(2) The form of notice is to be prescribed so as to secure that the notice includes a full description of—

(a) the land to which the application relates (provided, where appropriate, by or by reference to maps and drawings), and
(b) where their decision is to consent to the application, any conditions imposed under section 97L.

(3) The notice given under subsection (1) must—

(a) contain information about the consequences of the decision notified and of the rights of appeal against it given by this Part, and
(b) state the date on which consent is given or refused.

97N  Effect of Ministers’ decision on right to buy

(1) Ministers may by regulations make provision for or in connection with prohibiting, during such period as may be specified in the regulations, persons so specified from transferring or otherwise dealing with land in respect of which a Part 3A community body has made an application under section 97G.

(2) Regulations under subsection (1) may in particular include provision—

(a) specifying transfers or dealings which are not prohibited by the regulations,
(b) requiring or enabling such persons as may be specified in the regulations, in such circumstances as may be so specified, to register in the Register of Community Rights in Abandoned or Neglected Land notices as may be so specified,
(c) requiring, in such circumstances as may be specified in the regulations, such information as may be so specified to be incorporated into deeds relating to the land as may be so specified.
(3) Ministers may by regulations make provision for or in connection with suspending, during such period as may be specified in the regulations, such rights in or over land in respect of which a Part 3A community body has made an application under section 97G as may be so specified.

(4) Regulations under subsection (3) may in particular include provision specifying—

(a) rights to which the regulations do not apply,

(b) rights to which the regulations do not apply in such circumstances as may be specified in the regulations.

(5) Nothing in this Part—

(a) affects the operation of an inhibition on the sale of the land,

(b) prevents an action of adjudication from proceeding, or

(c) affects the commencement, execution or operation of any other diligence.

97P Confirmation of intention to proceed with purchase and withdrawal

(1) A Part 3A community body’s right to buy land under this Act is exercisable only if, within 21 days of the date of notification under section 97S(10), it sends notice in writing confirming its intention to proceed to buy the land to—

(a) Ministers, and

(b) the owner of the land.

(2) A Part 3A community body may, at any time after—

(a) making an application under section 97G, withdraw the application, or

(b) confirming its intention to proceed under subsection (1), withdraw that confirmation,

by notice in writing to that effect sent to Ministers.

(3) Ministers must, within 7 days of receipt of notice under subsection (1) or (2), acknowledge receipt and send a copy of that acknowledgement to the owner of the land.

97Q Completion of purchase

(1) It is for the Part 3A community body to secure the expeditious exercise of its right to buy and, in particular—

(a) to prepare the documents necessary to—

(i) effect the transfer to it of the land, and

(ii) impose any conditions (including any real burdens or servitudes) which Ministers, under section 97L, require to be imposed upon the title to land, and

(b) in so doing, to ensure—

(i) that the land in the application to which Ministers have consented is the same as that to be transferred, and
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(ii) that the transfer is to be effected in accordance with any other
conditions imposed by Ministers under section 97L.

(2) Where the Part 3A community body is unable to fulfil the duty imposed by
subsection (1)(b) because the land or part of the land in respect of which
Ministers’ consent was given is not owned by the person named as its owner in
the application made under section 97G, it must refer that matter to Ministers.

(3) On a reference under subsection (2), Ministers must direct that the Part 3A
community body’s right to buy the land is, so far as proceeding on that
application, extinguished.

(4) The owner of the land being bought is obliged—

(a) to make available to the Part 3A community body such deeds and other
documents as are sufficient to enable the body to proceed to complete its
title to the land, and

(b) to transfer title accordingly.

(5) If, within 6 weeks of the date on which Ministers consent to an application to
buy land, the owner of the land refuses or fails to make those deeds and other
documents available, or they cannot be found, the Lands Tribunal may, on the
application of the Part 3A community body, order the owner or any other
person appearing to the Lands Tribunal to have those deeds and documents to
produce them.

(6) If the owner of the land refuses or fails to effect such sufficient transfer as is
mentioned in subsection (4), the Lands Tribunal may, on the application of the
Part 3A community body, authorise its clerk to adjust, execute and deliver such
deeds or other documents as will complete such transfer to the like force and
effect as if done by the owner or person entitled.

97R Completion of transfer

(1) The consideration for the transfer of the land is its value as assessed under
section 97S.

(2) Subject to subsections (3) and (4), that consideration must be paid not later
than the “final settlement date”, being the date on which expires a 6 month
period beginning with the date (the “consent date”) when Ministers consented
to the application made under section 97G to buy the land.

(3) Where—

(a) the Part 3A community body and the owner so agree, the consideration
may be paid on a date later than the final settlement date,

(b) the assessment of the valuation of the land has not been completed by a
date 4 months after the consent date, the consideration must be paid not
later than 2 months after the date when that assessment is completed,

(c) that valuation is the subject of an appeal which has not been determined
within 4 months of the consent date, the consideration must be paid not
later than 2 months after the date of that determination.

(4) If, on the date the consideration is to be paid, the owner is not able to effect the
grant of a good and marketable title to the Part 3A community body—

(a) the consideration, or
(b) if, for any reason, the consideration has not been ascertained, such sum as may be fixed by the valuer appointed under section 97S as a fair estimate of what the consideration might be, must be consigned into the Lands Tribunal until that title is granted or the Part 3A community body gives notice to the Tribunal of its decision not to proceed to complete the transaction.

(5) Except where subsection (4) applies, if the consideration remains unpaid after the date not later than which it is to be paid, the Part 3A community body’s application made under section 97G in relation to the land is to be treated as withdrawn.

(6) Any heritable security which burdened the land immediately before title is granted to the Part 3A community body in pursuance of this section ceases to do so on the recording of that title in the Register of Sasines or registration in the Land Register of Scotland of the body’s interest in the land.

(7) Where such a security also burdens land other than the land in respect of which title is granted to the Part 3A community body, the security does not, by virtue of subsection (6), cease to burden that other land.

(8) Unless the creditors in right of any such security otherwise agree, the Part 3A community body must pay to them according to their respective rights and preferences any sum which would, but for this subsection, be paid to the owner by the Part 3A community body as consideration for the land.

(9) Any sum paid by a Part 3A community body under subsection (8) must be deducted from the sum which the body is to pay to the owner as consideration for the land.

97S Assessment of value of land etc.

(1) Where Ministers consent to an application made under section 97G, they must, subject to subsection (2), within 7 days of doing so appoint a valuer, being a person who appears to Ministers to be suitably qualified, independent and to have knowledge and experience of valuing land of a kind which is similar to the land being bought, to assess the value of the land to which the application relates.

(2) The validity of anything done under this section is not affected by any failure by Ministers to comply with the time limit specified in subsection (1).

(3) In assessing the value of land in pursuance of an appointment under subsection (1), a valuer—

(a) does not act on behalf of the owner of the land or of the Part 3A community body which is exercising its right to buy the land under this Part, and

(b) is to act as an expert and not as an arbiter.

(4) The value to be assessed is the market value of the land as at the date when Ministers consented to the application made under section 97G relating to the land.

(5) The “market value” of land is the aggregate of—
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(a) the value it would have on the open market as between a seller and a buyer both of whom are, as respects the transaction, willing,

(b) any depreciation in the value of other land or interests belonging to the seller which may result from the transfer of land, including depreciation caused by division of the land by the transfer of land to the Part 3A community body, and

(c) the amount attributable to any disturbance to the seller which may arise in connection with the transfer of the land to the Part 3A community body.

(6) In arriving, for the purposes of this section, at the value which land would have on the open market in the circumstances mentioned in subsection (5)(a)—

(a) account may be taken, in so far as a seller and buyer such as are mentioned in subsection (5) would do so, of any factor attributable to the known existence of a person who (not being the Part 3A community body which is exercising its right to buy the land) would be willing to buy the land at a price higher than others would because of a characteristic of the land which relates peculiarly to that person’s interest in buying it,

(b) no account is to be taken of—

(i) any depreciation of the type mentioned in subsection (5)(b),

(ii) any disturbance of the type mentioned in subsection (5)(c),

(iii) the absence of the period of time during which the land would, on the open market, be likely to be advertised and exposed for sale.

(7) The expense of a valuation under this section is to be met by Ministers.

(8) In carrying out a valuation under this section, the valuer must—

(a) invite—

(i) the owner of the land, and

(ii) the Part 3A community body which is exercising its right to buy the land,

(b) consider any representations made accordingly.

(8A) Where written representations under subsection (8) are received—

(a) from the owner of the land, the valuer must invite the Part 3A community body which is exercising its right to buy the land to send its views on the representations in writing,

(b) from the Part 3A community body which is exercising its right to buy the land, the valuer must invite the owner of the land to send the owner’s views on the representations in writing.

(8B) In carrying out a valuation under this section, the valuer must consider any views sent under subsection (8A).

(9) Where the Part 3A community body and the owner of the land have agreed the valuation of the land they must notify the valuer in writing of that valuation.
(10) The valuer must, within the period set out in subsection (11), notify Ministers, the Part 3A community body and the owner of the land of the assessed value of the land.

(11) The period referred to in subsection (10) is the period of 8 weeks beginning with the date of appointment of the valuer or such longer period as Ministers may, on an application by the valuer, fix.

(12) The validity of anything done under this Part is not affected by any failure by a valuer to comply with the time limit specified in subsection (11).

97T Compensation

(1) Any person, including an owner or former owner of land, who has incurred loss or expense—

(a) in complying with the requirements of this Part following the making of an application under section 97G by a Part 3A community body,

(b) as a result of the withdrawal by the Part 3A community body of its confirmation under section 97P or its failure otherwise to complete the purchase after having so confirmed its intention under that section, or

(c) as a result of the failure of the Part 3A community body which made that application to complete the purchase,

is entitled to recover the amount of that loss or expense from the Part 3A community body.

(2) There is no such entitlement where the application made under section 97G is refused.

(3) Where such an application has been refused, the owner of the land who has incurred loss or expense as mentioned in subsection (1)(a) is entitled to recover the amount of that loss or expense from Ministers.

(4) Ministers may, by order, make provision for or in connection with specifying—

(a) amounts payable in respect of loss or expense incurred as mentioned in subsection (1),

(b) amounts payable in respect of loss or expense incurred by virtue of this Part by a person of such other description as may be specified,

(c) the person who is liable to pay those amounts,

(d) the procedure under which claims for compensation under this section are to be made.

(5) Where, at the expiry of such period of time as may be fixed for the purposes of this subsection by an order under subsection (4)(d), any question as to whether compensation is payable or as to the amount of any compensation payable has not been settled as between the parties, either of them may refer the question to the Lands Tribunal.

97U Grants towards Part 3A community bodies’ liabilities to pay compensation

(1) Ministers may, in the circumstances set out in subsection (2), pay a grant to a Part 3A community body.
(2) Those circumstances are—

(a) that after settlement of its other liabilities connected with the exercise of its right to buy land under this Part, the Part 3A community body has insufficient money to pay, or to pay in full, the amount of compensation it has to pay under section 97T,

(b) that the Part 3A community body has taken all reasonable steps to obtain money in order to pay, or to pay in full, that amount (other than applying for a grant under this section) but has been unable to obtain the money, and

(c) that it is in the public interest that Ministers pay the grant.

(3) The fact that all the circumstances set out in subsection (2) are applicable in a particular case does not prevent Ministers from refusing to pay a grant in that case.

(4) A grant under this section may be made subject to conditions which may stipulate repayment in the event of breach.

(5) Ministers may pay a grant under this section only on the application of a Part 3A community body.

(6) An application for such a grant must be made in such form and in accordance with such procedure as may be prescribed.

(7) Ministers must issue their decision on an application under this section in writing accompanied by, in the case of a refusal, a statement of the reasons for it.

(8) Ministers’ decision on an application under this section is final.

97V Appeals

(1) An owner of land may appeal to the sheriff against a decision by Ministers to give consent to the exercise by a Part 3A community body of its right to buy the land.

(2) A Part 3A community body may appeal to the sheriff against a decision by Ministers not to give consent to the exercise by the Part 3A community body of its right to buy.

(3) Subsection (2) does not extend to Ministers’ decision under section 97K on which of two or more applications to buy the same land is to proceed.

(4) A person who is a member of a community as defined for the purposes of section 97D in relation to a Part 3A community body may appeal to the sheriff against a decision by Ministers to consent to the exercise by the Part 3A community body of its right to buy land.

(5) A creditor in a standard security with a right to sell land may appeal to the sheriff against a decision by Ministers to give consent to the exercise by a Part 3A community body of its right to buy the land.

(6) An appeal under subsection (1), (2), (4) or (5) must be lodged within 28 days of the date on which Ministers decided to consent to the exercise of the right to buy land or refuse such consent.
(7) The sheriff in whose sheriffdom the land or any part of it is situated has jurisdiction to hear an appeal under this section.

(8) Where an appeal is made—

(a) under subsection (1) the owner must intimate that fact to—
   
   (i) the Part 3A community body,
   
   (ii) Ministers, and
   
   (iii) any creditor in a standard security with a right to sell the land to which the appeal relates,

(b) under subsection (2) the Part 3A community body must intimate that fact to—
   
   (i) the owner,
   
   (ii) Ministers, and
   
   (iii) any creditor in a standard security with a right to sell the land to which the appeal relates,

(c) under subsection (4) the member of the community must intimate that fact to—
   
   (i) the Part 3A community body,
   
   (ii) the owner,
   
   (iii) Ministers, and
   
   (iv) any creditor in a standard security with a right to sell the land to which the appeal relates, or

(d) under subsection (5), the creditor must intimate that fact to—
   
   (i) the Part 3A community body,
   
   (ii) the owner, and
   
   (iii) Ministers.

(9) The decision of the sheriff in an appeal under this section—

(a) may require rectification of the Register of Community Interests in Abandoned or Neglected Land,

(b) may impose conditions upon the appellant,

(c) is final.

97W Appeals to Lands Tribunal: valuation

(1) The owner of the land and the Part 3A community body which is exercising its right to buy the land may appeal to the Lands Tribunal against the valuation carried out under section 97S.

(2) An appeal under this section must state the grounds on which it is being made and must be lodged within 21 days of the date of notification under section 97S(10).

(3) In an appeal under this section, the Lands Tribunal may reassess the value of the land.
(4) The valuer whose valuation is appealed against may be a witness in the appeal proceedings.

(5) The Lands Tribunal must give reasons for its decision on an appeal under this section and must issue a written statement of these reasons—

(a) within 8 weeks of the hearing of the appeal, or

(b) where subsection (5A) applies, by such later date referred to in paragraph (b)(ii) of that subsection.

(5A) This subsection applies where—

(a) the Lands Tribunal considers that it is not reasonable to issue a written statement mentioned in subsection (5) by the time limit specified in paragraph (a) of that subsection, and

(b) before the expiry of that time limit, the Lands Tribunal has notified the parties to the appeal—

(i) that the Lands Tribunal is unable to issue a written statement by that time limit, and

(ii) of the date by which the Lands Tribunal will issue such a written statement.

(5B) The validity of anything done under this Part is not affected by any failure of the Lands Tribunal—

(a) to comply with the time limit specified in paragraph (a) of subsection (5) above, or

(b) to issue a written statement by the date referred to in paragraph (b) of that subsection.

(6) Ministers are not competent parties to any appeal under this section by reason only that they appointed the valuer whose valuation is the subject of the appeal.

(7) Ministers’ powers under the Lands Tribunal Act 1949 to make rules as respects that Tribunal extend to such rules as may be necessary or expedient to give full effect to this section.

97X Reference to Lands Tribunal of questions on applications

(1) At any time before Ministers reach a decision on an application which has been made under section 97G—

(a) Ministers,

(b) any person who is a member of the community defined in relation to the applicant Part 3A community body in pursuance of section 97D,

(c) the owner of the land which is the subject of the application,

(d) any person who has any interest in the land giving rise to a right which is legally enforceable by that person, or

(e) any person who is invited, under section 97G(9)(a)(iii), to send views to Ministers on the application,

may refer to the Lands Tribunal any question relating to the application.
(2) In considering any question referred to it under subsection (1), the Lands Tribunal may have regard to any representations made to it by—

(a) the applicant Part 3A community body,

(b) the owner of the land which is the subject of the application, or

(c) any other person who, in the opinion of the Lands Tribunal, appears to have an interest.

(3) The Lands Tribunal—

(a) must advise Ministers of its finding on any question so referred, and

(b) may, by order, provide that Ministers may consent to the application only if they impose, under section 97L, such conditions as the Tribunal may specify.

(4) If the Lands Tribunal considers any question referred to it under this section to be irrelevant to Ministers' decision on the application to which it relates, it may decide to give no further consideration to the question and find accordingly.

97Y Agreement as to matters referred or appealed
An appeal under section 97V or 97W does not prevent the parties from settling or otherwise agreeing the matter in respect of which the appeal was made between or among them.

97Z Interpretation of Part 3A

(1) Any reference in this Part to a creditor in a standard security with a right to sell land is a reference to a creditor who has such a right under—

(a) section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970, or

(b) a warrant granted under section 24(1) of that Act.

(2) In calculating for the purposes of this Part any period of time within which an act requires to be or may be done, no account is to be taken of any public or local holidays in the place where the act is to be done.

(3) Subsection (2) does not apply to a period of time specified in section 97R(2), 97V(6), or 97W(2)."

Meaning of “the 2003 Act”

Meaning of “the 2003 Act” in Part 4
In this Part, “the 2003 Act” means the Land Reform (Scotland) Act 2003.
PART 5

ASSET TRANSFER REQUESTS

Key definitions

50 Meaning of “community transfer body”

(1) In this Part, “community transfer body” means—
   (a) a community-controlled body, or
   (b) a body mentioned in subsection (2).

(2) The body is a body (whether corporate or unincorporated)—
   (a) that is designated as a community transfer body by an order made by the Scottish
       Ministers for the purposes of this Part, or
   (b) that falls within a class of bodies designated as community transfer bodies by such
       an order for the purposes of this Part.

(3) Where the power to make an order under subsection (2)(a) is exercised in relation to a
    trust, the community transfer body is to be the trustees of the trust.

51 Meaning of “relevant authority”

(1) In this Part, a “relevant authority” means—
   (a) a person listed, or of a description listed, in schedule 3, or
   (b) a person mentioned in subsection (3).

(2) The Scottish Ministers may by order modify schedule 3 so as to—
   (a) remove an entry listed in it,
   (b) amend an entry listed in it.

(3) The person is a person—
   (a) that is designated as a relevant authority by an order made by the Scottish
       Ministers for the purposes of this Part, or
   (b) that falls within a class of persons designated as relevant authorities by such an
       order for the purposes of this Part.

(4) An order under subsection (3) may designate a person, or a class of persons, only if the
    person or (as the case may be) each of the persons falling within the class is—
   (a) a part of the Scottish Administration,
   (b) a Scottish public authority with mixed functions or no reserved functions (within
       the meaning of the Scotland Act 1998), or
   (c) a publicly-owned company.

(5) In subsection (4)(c), “publicly-owned company” means a company that is wholly owned
    by one or more relevant authorities.

(6) For that purpose, a company is wholly owned by one or more relevant authorities if it
    has no members other than—
   (a) the relevant authority or (as the case may be) authorities,
(b) other companies that are wholly owned by the relevant authority or (as the case may be) authorities, or
(c) persons acting on behalf of—
   (i) the relevant authority or (as the case may be) authorities, or
   (ii) such other companies.

(7) In this section, “company” includes any body corporate.

Requests

52 Asset transfer requests

(1) A community transfer body may make a request in accordance with this section (in this Part, an “asset transfer request”) to a relevant authority.

(2) An asset transfer request is a request—
   (a) in relation to land owned by the relevant authority, for ownership of the land to be transferred to the community transfer body, or
   (b) in relation to land owned or leased by the relevant authority—
      (i) for the land to be leased to the community transfer body, or
      (ii) for the authority to confer rights in respect of the land on the community transfer body (including, for example, rights to manage or occupy the land or use it for a purpose specified in the request).

(3) An asset transfer request of the type mentioned in subsection (2)(a) may be made only by a community transfer body falling within section 53; and references in the remainder of this Part to the making of an asset transfer request by a community transfer body are to be read accordingly.

(4) A community transfer body making an asset transfer request must specify in the request—
   (a) the land to which the request relates,
   (b) whether the request falls within paragraph (a), (b)(i) or (b)(ii) of subsection (2),
   (c) the reasons for making the request,
   (d) the benefits which the community transfer body considers will arise if the authority were to agree to the request,
   (e) where the request falls within subsection (2)(a), the price that the community transfer body would be prepared to pay for the transfer of ownership of the land,
   (f) where the request falls within subsection (2)(b)(i)—
      (i) the amount of rent that the community transfer body would be prepared to pay in respect of any lease resulting from the request,
      (ii) the duration of any such lease, and
      (iii) any other terms and conditions that the community transfer body considers should be included in any such lease,
   (g) where the request falls within subsection (2)(b)(ii), the nature and extent of the rights sought, and
(h) any other terms or conditions applicable to the request.

53 Community transfer bodies that may request transfer of ownership of land

(1) A community transfer body falls within this section if—

(a) it is a company the articles of association of which include provision such as is mentioned in subsection (2),

(b) it is a Scottish charitable incorporated organisation the constitution of which includes provision that the organisation must have not fewer than 20 members,

(ba) it is a community benefit society the registered rules of which include provision that the society must have not fewer than 20 members,

(c) in the case of a body designated by an order under paragraph (a) of subsection (2) of section 50, the order includes provision that the body may make an asset transfer request of the type mentioned in section 52(2)(a), or

(d) in the case of a body falling within a class of bodies designated in an order made under paragraph (b) of that subsection, the order includes provision that bodies falling within the class may make an asset transfer request of that type.

(2) The provision mentioned in subsection (1)(a) is provision that—

(a) the company must have not fewer than 20 members, and

(b) on the winding up of the company and after satisfaction of its liabilities, its property (including any land, and any rights in relation to land, acquired by it as a result of an asset transfer request under this Part) passes—

(i) to another community transfer body,

(ii) to a charity,

(iii) to such community body (within the meaning of section 34 of the Land Reform (Scotland) Act 2003) as may be approved by the Scottish Ministers,

(iv) to such crofting community body (within the meaning of section 71 of that Act) as may be so approved, or

(v) if no such community body or crofting community body is so approved, to the Scottish Ministers or to such charity as the Scottish Ministers may direct.

54 Asset transfer requests: regulations

(1) The Scottish Ministers may by regulations make further provision about asset transfer requests.

(2) Regulations under subsection (1) may in particular make provision for or in connection with—

(a) specifying the manner in which requests are to be made,

(b) specifying the procedure to be followed by a relevant authority in relation to requests,

(c) specifying the information to be included in requests (in addition to that required under section 52(4)),

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(d) requiring publication, by such method as may be prescribed in the regulations, of the fact that a request is being made,
(e) requiring notification of the making of a request to be given to such persons or descriptions of persons, and in such circumstances, as may be prescribed in the regulations.

(3) The Scottish Ministers may make regulations for or in connection with—
(a) enabling a community transfer body to request information from a relevant authority about land in respect of which it proposes to make an asset transfer request,
(b) specifying how the authority is to respond to the request for information,
(c) specifying the circumstances in which the authority must provide information,
(d) specifying the type of information the authority must provide in circumstances specified under paragraph (c),
(e) specifying the circumstances in which the authority need not provide information.

Decisions

Asset transfer requests: decisions

(1) This section applies where an asset transfer request is made by a community transfer body to a relevant authority.
(2) The authority must decide whether to agree to or refuse the request.
(3) In reaching its decision, the authority must take into consideration the following matters—
(a) the reasons for the request,
(b) any other information provided in support of the request (whether such other information is contained in the request or otherwise provided),
(c) whether agreeing to the request would be likely to promote or improve—
   (i) economic development,
   (ii) regeneration,
   (iii) public health,
   (iv) social wellbeing, or
   (v) environmental wellbeing,
   (ca) whether agreeing to the request would be likely to reduce inequalities of outcome which result from socio-economic disadvantage,
(d) any other benefits that might arise if the request were agreed to,
(e) any benefits that might arise if the authority were to agree to or otherwise adopt an alternative proposal in respect of the land to which the request relates,
(f) how such benefits would compare to any benefits such as are mentioned in paragraphs (c) and (d),
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(g) how any benefits such as are mentioned in paragraph (e) relate to other matters the authority considers relevant (including, in particular, the functions and purposes of the authority),

(h) any obligations imposed on the authority, by or under any enactment or otherwise, that may prevent, restrict or otherwise affect its ability to agree to the request, and

(i) such other matters (whether or not included in or arising out of the request) as the authority considers relevant.

(4) The authority must exercise the function under subsection (2) in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.

(5) The authority must agree to the request unless there are reasonable grounds for refusing it.

(6) In subsection (3)(e), an “alternative proposal” includes—

(a) another asset transfer request,

(b) a proposal made by the authority or any other person.

(7) The authority must, within the period mentioned in subsection (8), give notice (in this Part, a “decision notice”) to the community transfer body of—

(a) its decision to agree to or refuse the request, and

(b) the reasons for its decision.

(8) The period is—

(a) a period prescribed in regulations made by the Scottish Ministers, or

(b) such longer period as may be agreed between the authority and the community transfer body.

(9) The Scottish Ministers may by regulations make provision about—

(a) the information (in addition to that required under this Part) that a decision notice is to contain, and

(b) the manner in which a decision notice is to be given.

56 Agreement to asset transfer request

(1) This section applies where a relevant authority decides to agree to an asset transfer request made by a community transfer body.

(2) The decision notice relating to the request must—

(a) specify the terms on which, and any conditions subject to which, the authority would be prepared to transfer ownership of the land, lease the land or (as the case may be) confer rights in respect of the land to which the request relates (whether or not such terms and conditions were specified in the request),

(b) state that, if the community transfer body wishes to proceed, it must submit to the authority an offer to acquire ownership of the land, lease the land or (as the case may be) assume rights in respect of the land, and

(c) specify the period within which such an offer is to be submitted.

(3) The period specified under subsection (2)(c) must be a period of at least 6 months beginning with the date on which the decision notice is given.
(4) An offer such as is mentioned in subsection (2)(b)—
   (a) must reflect any terms and conditions specified in the decision notice,
   (b) may include such other reasonable terms and conditions as are necessary or expedient to secure—
      (i) the transfer of ownership, the lease or (as the case may be) the conferral of rights, and
      (ii) that such a transfer, lease or (as the case may be) conferral of rights takes place within a reasonable time,
   (c) must be made before the end of the period specified in the decision notice under subsection (2)(c).

(5) Subsection (6A) applies where no contract is concluded on the basis of such an offer before the end of the period mentioned in subsection (7).

(6A) A failure to conclude a contract as mentioned in subsection (5) is to be treated as a refusal of the request for the purposes of an appeal under section 58.

(7) The period is—
   (a) the period of 6 months beginning with the date of the offer, or
   (b) such longer period—
       (i) as may be agreed between the authority and the community transfer body, or
       (ii) in the absence of any such agreement, as may be specified in a direction by the Scottish Ministers.

(8) A direction under subsection (7)(b)(ii) may be made only on the application of the community transfer body.

(9) An application under subsection (8) may be made on more than one occasion.

(10) The Scottish Ministers may by regulations make provision about—
   (a) the form of, and procedure for making, an application such as is mentioned in subsection (8),
   (b) the manner in which a direction under subsection (7)(b)(ii) is to be given,
   (c) the information that such a direction is to contain.

57 Prohibition on disposal of land

(1) Subsection (2) applies where a relevant authority decides to agree to an asset transfer request made by a community transfer body.

(2) During the relevant period, the authority must not sell, lease or otherwise dispose of the land to which the request relates to any person other than the community transfer body.

(3) In subsection (2), the “relevant period” is the period beginning on the day on which the decision notice relating to the request is given and ending—
   (a) if no offer such as is mentioned in paragraph (b) of subsection (2) of section 56 is made by the final day of the period specified in the decision notice under paragraph (c) of that subsection, on the day after that final day, or
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(b) if such an offer is made by that final day, on one of the days mentioned in subsection (4).

(4) The days are—

(a) the day on which the authority concludes a contract with the community transfer body on the basis of the offer,

(b) the day on which the period mentioned in paragraph (a) or (where applicable) paragraph (b) of subsection (7) of section 56 expires with no such contract having been concluded.

(5) Where, by virtue of subsection (2), a relevant authority is prevented from selling, leasing or otherwise disposing of any land, any contract by virtue of which the authority is obliged to sell, lease or otherwise dispose of the land to a person other than the community transfer body referred to in that subsection is void.

Appeals and reviews

58 Appeals

(1) Subsection (2) applies where—

(a) an asset transfer request is refused by a relevant authority,

(b) an asset transfer request is agreed to by a relevant authority but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or

(c) a relevant authority does not give a decision notice relating to an asset transfer request to the community transfer body making the request within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 55(8).

(2) The community transfer body making the request may appeal to the Scottish Ministers unless the relevant authority is—

(a) the Scottish Ministers,

(b) a local authority, or

(c) a person, or a person that falls within a class of persons, specified in an order made by the Scottish Ministers for the purposes of this section.

(3) The Scottish Ministers may by regulations prescribe—

(a) the procedure to be followed in connection with appeals under subsection (2),

(b) the manner in which such appeals are to be conducted, and

(c) the time limits within which such appeals must be brought.

(4) The provision that may be made by virtue of subsection (3) includes provision that the manner in which an appeal, or any stage of an appeal, is to be conducted is to be at the discretion of the Scottish Ministers.

(5) On an appeal under subsection (2), the Scottish Ministers—

(a) may allow or dismiss the appeal,

(b) may reverse or vary any part of the decision of the relevant authority (whether the appeal relates to that part of it or not),
must, in the circumstances mentioned in either paragraph (a) or (b) of subsection (6), issue a direction to the authority requiring the authority to take such steps, or achieve such outcomes, as are specified in the direction within such time periods as are so specified,

(d) may, in any other circumstances, issue such a direction, including a direction relating to any aspects of the asset transfer request to which the appeal relates (whether or not the authority’s decision relates to those aspects).

(6) The circumstances are—

(a) that the appeal is allowed,

(b) that any part of the decision of the relevant authority is reversed or varied to the effect that the authority is required to—

(i) transfer ownership of any land, lease any land or confer rights in respect of any land, or

(ii) agree to the asset transfer request subject to such terms and conditions as may be specified in the direction.

(7) The references in subsections (5)(b) and (6)(b) to any part of the decision includes any terms and conditions specified in the decision notice relating to the asset transfer request.

(8) A direction issued under subsection (5)(c) must require the relevant authority to issue a further decision notice—

(a) specifying the terms on which, and any conditions subject to which, the authority would be prepared to transfer ownership of the land, lease the land or (as the case may be) confer rights in respect of the land, including any terms and conditions required to be included by virtue of the direction,

(b) stating that, if the community transfer body wishes to proceed, it must submit to the authority an offer to acquire ownership of the land, lease the land or (as the case may be) assume rights in respect of the land, and

(c) specifying the period within which such an offer is to be submitted (which must be at least 6 months beginning with the date on which the further decision notice was issued).

(9) A further decision notice issued by virtue of a direction mentioned in subsection (8) replaces any decision notice relating to the asset transfer request in respect of which the appeal was made.

(10) Subsections (4) to (10) of section 56 apply in relation to a further decision notice issued by virtue of a direction mentioned in subsection (8) as they apply in relation to a decision notice referred to in that section; but as if in subsection (4) of that section—

(a) the reference to an offer such as is mentioned in subsection (2)(b) of that section were a reference to an offer such as is mentioned in subsection (8)(b) of this section, and

(b) the reference to the period specified in the decision notice under subsection (2)(c) of that section were a reference to the period specified in a further decision notice by virtue of subsection (8)(c) of this section.
59  Review by local authority

(1) Subsection (2) applies in a case where—

(a) an asset transfer request is made to a local authority by a community transfer body, and

(b) the authority—

(i) refuses the request,

(ii) agrees to the request but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or

(iii) does not give a decision notice relating to the request to the community transfer body within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 55(8).

(2) On an application made by the community transfer body, the local authority must carry out a review of the case.

(3) The Scottish Ministers may by regulations prescribe—

(a) the procedure to be followed in connection with reviews under subsection (2),

(b) the manner in which such reviews are to be carried out, and

(c) the time limits within which applications for reviews must be brought.

(4) The provision that may be made by virtue of subsection (3) includes provision that the manner in which a review, or any stage of a review, is to be carried out by a local authority is to be at the discretion of the authority.

(5) A local authority may, in relation to a decision reviewed under subsection (2)—

(a) confirm its decision,

(b) modify its decision, or any part of its decision (including any terms and conditions specified in the decision notice to which the asset transfer request relates), or

(c) substitute a different decision for its decision.

(6) Following a review under subsection (2), the local authority must—

(a) issue a decision notice as respects the asset transfer request to which the review relates, and

(b) provide in the decision notice the reasons for its decision.

(7) A decision notice issued under subsection (6)—

(a) replaces any decision notice relating to the asset transfer request in respect of which the review was carried out, and

(b) must be issued within—

(i) a period prescribed in regulations made by the Scottish Ministers, or

(ii) such longer period as may be agreed between the local authority and the community transfer body that made the asset transfer request.

(8) Subsections (3) to (5) of section 55 apply in relation to a decision relating to an asset transfer request in a review under subsection (2) of this section as they apply in relation to a decision relating to the request under subsection (2) of that section.
(9) Section 56 applies in relation to a decision to agree to an asset transfer request (including a decision to confirm such an agreement) following a review under subsection (2) as it applies in relation to a decision mentioned in subsection (1) of that section.

(10) In section 56 of the Local Government (Scotland) Act 1973 (arrangements for the discharge of functions by local authorities), after subsection (6A) insert—

“(6B) The duty to carry out a review of a case imposed on an authority under section 59(2) of the Community Empowerment (Scotland) Act 2015 (reviews by local authorities of asset transfer requests) must be discharged only by the authority or a committee or sub-committee of the authority; and accordingly no such committee or sub-committee may arrange for the discharge under subsection (2) of the duty by an officer of the authority.”.

59A Review of decisions by the Scottish Ministers

(1) Subsection (2) applies in a case where—

(a) an asset transfer request is made to the Scottish Ministers by a community transfer body, and

(b) the Scottish Ministers—

(i) refuse the request,

(ii) agree to the request but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or

(iii) do not give a decision notice relating to the request to the community transfer body within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 55(8).

(2) On an application made by the community transfer body, the Scottish Ministers must carry out a review of the case.

(3) The Scottish Ministers may by regulations make provision about reviews carried out under subsection (2) including, in particular, provision in relation to—

(a) the procedure to be followed in connection with reviews,

(b) the appointment of such persons, or persons of such description, as may be specified in the regulations for purposes connected with the carrying out of reviews,

(c) the functions of persons mentioned in paragraph (b) in relation to reviews (including a function of reporting to the Scottish Ministers),

(d) the manner in which reviews are to be conducted, and

(e) the time limits within which applications for reviews must be brought.

(4) The provision that may be made by virtue of subsection (3) includes provision that—

(a) the manner in which a person appointed by virtue of paragraph (b) of that subsection carries out the person’s functions in relation to a review, or any stage of a review, is to be at the discretion of the person,

(b) the manner in which a review, or any stage of a review, is to be carried out by the Scottish Ministers is to be at the discretion of the Scottish Ministers.
(5) Having regard to any report they receive by virtue of subsection (3)(c), the Scottish Ministers may, in relation to a decision reviewed under subsection (2)—

(a) confirm the decision,

(b) modify the decision, or any part of the decision (including any terms and conditions specified in the decision notice to which the asset transfer request relates), or

(c) substitute a different decision for the decision.

(6) Following a review under subsection (2), the Scottish Ministers must—

(a) issue a decision notice as respects the asset transfer request to which the review relates, and

(b) provide in the decision notice the reasons for their decision.

(7) A decision notice issued under subsection (6) replaces any decision notice relating to the asset transfer request in respect of which the review was carried out.

(8) Subsections (3) to (5) of section 55 apply in relation to a decision relating to an asset transfer request in a review under subsection (2) of this section as they apply in relation to a decision relating to the request under subsection (2) of that section.

(9) Section 56 applies in relation to a decision to agree to an asset transfer request (including a decision to confirm such an agreement) following a review under subsection (2) as it applies in relation to a decision mentioned in subsection (1) of that section.

59B Appeals from reviews under section 59

(1) Subsection (2) applies in a case where, following a review carried out under section 59(2), a local authority—

(a) refuses the asset transfer request to which the review relates,

(b) agrees to the request but the decision notice issued under section 59(6) specifies material terms or conditions which differ to a significant extent from those specified in the request, or

(c) does not issue the decision notice within the prescribed period mentioned in sub-paragraph (i) or (where applicable) (ii) of paragraph (b) of subsection (7) of section 59.

(2) The community transfer body making the asset transfer request may appeal to the Scottish Ministers.

(3) Subsections (3) to (10) of section 58 apply to an appeal under subsection (2) of this section as they apply to an appeal under subsection (2) of that section, subject to the modification that any references to the relevant authority in the subsections so applied are to be read as references to the local authority mentioned in subsection (1) of this section.

59C Decisions by relevant authority specified under section 58(2)(c): reviews

(1) Subsection (2) applies in a case where—

(a) an asset transfer request is made to a relevant authority specified in an order under section 58(2)(c), and
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(b) the relevant authority—

(i) refuses the request,

(ii) agrees to the request but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or

(iii) does not give a decision notice relating to the request to the community transfer body within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 55(8).

(2) Subsections (2) to (9) of section 59 apply to the case mentioned in subsection (1).

(3) Subsection (2) is subject to subsection (4).

(4) The Scottish Ministers may by order—

(a) make provision for subsections (2) to (9) of section 59 to apply as mentioned in subsection (2) subject to such modifications (if any) as they think appropriate,

(b) specify, in relation to an application for a review under section 59(2) applied as mentioned in subsection (2)—

(i) the local authority to which the application is to be made,

(ii) factors determining the local authority to which the application is to be made.

Disapplication of certain lease restrictions

60 Disapplication of restrictions in lease of land to relevant authority

(1) This section applies where—

(a) land is leased to a relevant authority,

(b) an asset transfer request is made to the authority by a community transfer body for the authority to—

(i) lease the land to the body, or

(ii) confer a right of occupancy on the body in respect of the land,

(c) the land is leased to the relevant authority by another relevant authority or by a company that is wholly owned by another relevant authority, and

(d) no other person is entitled to occupy the land to which the request relates (whether by virtue of a sub-lease by the authority or otherwise).

(2) Any restrictions in the lease of the land to which the request relates such as are mentioned in subsection (3) do not apply as between the relevant authority and the person from whom the authority leases the land.

(3) The restrictions are any restrictions—

(a) on the power of the relevant authority to sub-let the land,

(b) on the power of the authority to share occupancy of the land,

(c) relating to how the land may be used by the authority or any other occupier of the land.
(4) Nothing in this section affects any restrictions in the lease of the land to the relevant authority on the power of the authority to assign or transfer rights and liabilities under the lease.

(5) If the relevant authority leases the land to, or confers a right of occupancy in respect of the land on, a community transfer body, the authority continues to be subject to any obligations under the lease of the land to the authority.

**Power to decline subsequent requests**

61 **Power to decline certain asset transfer requests**

(1) Subsection (2) applies where—

(a) an asset transfer request (a “new request”) relating to land is made to a relevant authority,

(b) the new request relates to matters that are the same, or substantially the same, as matters contained in a previous asset transfer request (a “previous request”) made in relation to the land,

(c) the previous request was made in the period of two years ending with the date on which the new request is made, and

(d) the authority refused the previous request (whether following an appeal or not).

(2) The relevant authority may decline to consider the new request.

(3) Where a new request is declined to be considered under subsection (2), that is not to be treated as a refusal of the new request for the purposes of—

(a) an appeal under section 58, or

(b) a review under section 59.

(4) For the purposes of subsection (1)(b), a new request relates to matters that are the same, or substantially the same, as matters contained in a previous request only if both requests, in relation to the land to which they relate, seek (or sought)—

(a) transfer of ownership of the land,

(b) lease of the land, or

(c) the same or substantially the same rights in respect of the land.

(5) For the purposes of this section, it is irrelevant whether the body making a new request is the same body as, or a different body from, that which made the previous request.

**Registers of relevant authorities’ land**

61A **Duty to publish register of land**

(1) Each relevant authority must establish and maintain a register of land mentioned in subsection (2).

(2) The land is land which, to the best of the authority’s knowledge and belief, is owned or leased by the authority.

(3) Every relevant authority must—
(a) make arrangements to enable members of the public to inspect, free of charge, its
register of land at reasonable times and at such places as the authority may
determine, and

(b) make its register of land available on a website, or by other electronic means, to
members of the public.

(4) The Scottish Ministers may by regulations specify land, or descriptions of land, that a
relevant authority need not include in its register of land.

(5) Relevant authorities must have regard to any guidance issued by the Scottish Ministers
in relation to the duties imposed on the authorities under this section.

(6) Before issuing such guidance, the Scottish Ministers must consult the relevant
authorities.

(7) The omission of any land owned or leased by a relevant authority from the authority’s
register of land does not prevent an asset transfer request being made in respect of the
land.

61B Annual reports

(1) A relevant authority must publish an asset transfer report for each reporting year.

(2) An asset transfer report is a report setting out, in respect of the reporting year—

(a) the number of asset transfer requests the relevant authority received,

(b) the number of such requests which the relevant authority—

(i) agreed to, and

(ii) refused,

(c) the number of such requests made to the relevant authority which resulted in—

(i) a transfer of ownership of land to a community transfer body,

(ii) a lease of land to such a body,

(iii) rights in respect of land being conferred on such a body,

(d) the number of appeals under section 58 relating to such requests made to the
relevant authority that have—

(i) been allowed,

(ii) been dismissed,

(iii) resulted in any part of the decision of the authority being varied or
reversed,

(e) in relation to a decision of the relevant authority reviewed under section 59 or
59A, the number of such decisions that have been—

(i) confirmed,

(ii) modified,

(iii) substituted by a different decision, and

(f) any action taken by the relevant authority during the reporting year—

(i) to promote the use of asset transfer requests,
(ii) to support a community transfer body in the making of an asset transfer request.

(3) In this section, “reporting year” means a period of one year beginning on 1 April.

**Guidance**

**61C Guidance**

(1) A relevant authority must have regard to any guidance issued by the Scottish Ministers about the carrying out of functions by the authority under this Part.

(2) Before issuing such guidance, the Scottish Ministers must consult such persons as they think fit.

**Interpretation of Part 5**

**62 Interpretation of Part 5**

(1) In this Part—

“asset transfer request” has the meaning given by section 52(2),

“community benefit society” means a registered society (within the meaning of section 1 of the Co-operative and Community Benefit Societies Act 2014) registered as a community benefit society under section 2 of that Act; and “registered rules” has the meaning given by section 149 of that Act (as that meaning applies in relation to community benefit societies),

“community-controlled body” has the meaning given by section 14,

“community transfer body” has the meaning given by section 50(1),

“charity” means a body entered in the Scottish Charity Register,

“decision notice” is to be construed in accordance with section 55(7),

“equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 (equal opportunities) of Part 2 of Schedule 5 to the Scotland Act 1998,

“relevant authority” has the meaning given by section 51,

“Scottish charitable incorporated organisation” has the meaning given by section 49 of the Charities and Trustee Investment (Scotland) Act 2005.

(2) References in this Part to land include references to part of the land.

**PART 5A**

**DELEGATION OF FORESTRY COMMISSIONERS’ FUNCTIONS**

**62A Meaning of “community body” in Forestry Act 1967**

(1) Section 7C of the Forestry Act 1967 (delegation of functions under section 7B: community bodies) is amended as follows.

(2) In subsection (1)—

(a) for the words from “company”, where it first occurs, to “include” substitute “body corporate having a written constitution that includes”,
(b) for the word “company”, wherever it appears in paragraphs (a) to (e), substitute “body”,

(c) after paragraph (d) insert—

“(da) provision that membership of the body is open to any member of the community,

(db) a statement of the body’s aims and purposes, including the promotion of a benefit for the community,”, and

(d) in paragraph (e), for “and the auditing of its accounts” substitute “, and

(f) provision that any surplus funds or assets of the body are to be applied for the benefit of the community.”.

(3) In subsection (2), for “(d)” substitute “(db)”.

(4) Subsections (4) to (6) are repealed.

PART 5B

SUPPORTERS’ TRUST’S RIGHT TO BUY SCOTTISH PROFESSIONAL FOOTBALL LEAGUE CLUBS

Key definitions

62B Meaning of “supporters’ trust”

In this Part “supporters’ trust” means a body—

(a) which is a community benefit society registered under the Co-operative and Community Benefit Societies Act 2014 (referred to in this Part as the “2014 Act”), that is—

(i) a society registered under the 2014 Act on or after 1 August 2014, or

(ii) (by virtue of section 150(1) of the 2014 Act) a society that immediately before that date was registered or treated as registered under the Industrial and Provident Societies Act 1965.

(b) related to one Scottish Professional Football League club (referred to in this Part as “football club”).

62C Meaning of “Scottish Professional Football League club”

(1) In this Part, “Scottish Professional Football League club” means a football club which is for the time being a member of the Scottish Professional Football League or any successor body recognised as the senior competitive league by the Scottish Football Association.

(2) The Scottish Ministers may by regulations modify the meaning of football club in subsection (1).

(3) Before making regulations under subsection (2), the Scottish Ministers must consult such persons as they consider appropriate.

62D Supporters trust register

(1) The Keeper of the Registers of Scotland must establish and maintain a public register of supporters’ trusts who have registered an interest in a football club in accordance with section 62F.
(2) The register established under subsection (1) is to be known as the Supporters’ Trust Register.

(3) In this Part—

the “Keeper” means the Keeper of the Registers of Scotland,

the “register” means the Supporters’ Trust Register, and

“registered” means registered in the register; and cognate expressions are to be construed accordingly.

62E Meaning of “ownership”

(1) In this Part “ownership” in relation to a football club means having a controlling interest in the football club whether that controlling interest is held by—

(a) an individual,

(b) a community benefit society within the meaning of the 2014 Act,

(c) a registered company,

(d) a group of registered companies, or

(e) such other body as the Scottish Ministers may prescribe.

(2) In this Part—

“controlling interest” means, in relation to the football club, shares carrying in the aggregate more than half of the voting rights exercisable at general meetings of the club,

“registered company” means a company for the purposes of the Companies Act 2006.

Registration of interests

62F Supporters’ trust registration of interest in buying a football club

(1) A supporters’ trust interest in buying a football club may be registered only upon an application to the Scottish Ministers in the prescribed form and accompanied by information of the prescribed kind.

(2) An application by a supporters’ trust may only be made in relation to one football club.

(3) More than one supporters’ trust may be registered in respect of the same football club.

(4) On receipt of an application, the Scottish Ministers must—

(a) send a copy of the application and the accompanying information to the owner or operator of the football;

(b) invite the owner or operator of the football club to send them, so as to be received not later than 21 days after the sending of the invitation, views in writing on the application;

(c) send a copy of the invitation under paragraph (b) to the supporters’ trust; and
(d) by notice sent to the owner or operator of the football club, prohibit the owner or operator from taking, during the period beginning with the date on which the owner or operator receives the notice and ending on the date on which the Scottish Ministers determine whether an interest is to be registered, any action which, if the interest had been registered, would be prohibited under section 62G.

(5) The Scottish Ministers may not decide that a supporters’ trust interest in a football club is to be entered into the register unless they are satisfied that—

(a) the application pertains to a football club which is for the time being a member of the Scottish Professional Football League,

(b) a significant number of the members of the supporters’ trust have a substantial connection with the club,

(c) membership of the supporters’ trust is open to all fans of the relevant football club at an affordable rate,

(d) there is within the supporters’ trust a level of support sufficient to justify such registration, and

(e) that it is in the public interest that the supporters’ trust interest be so registered.

(6) Where the Scottish Ministers decide that a supporters’ trust interest is to be entered in the Register they must direct the Keeper to so enter the interest with effect from the date on which the Scottish Ministers made the decision.

62G Effect of registration

(1) For so long as a supporters’ trust’s interest in a football club is registered the owner or operator of the football club is prohibited from—

(a) transferring ownership of that football club,

(b) taking any action with a view to the transfer of ownership of that football club, except in accordance with this Part of this Act.

(2) A transfer of ownership in breach of subsection (1)(a) is of no effect.

(3) Action is taken with a view to a transfer of ownership of a football club for the purposes of this section when—

(a) the football club is, by or with the authority of the owner or operator of the football club advertised or otherwise exposed for sale,

(b) the owner or operator of the football club, or a person acting on behalf of the owner or operator, enters into negotiations with another person with a view to the transfer of ownership of the football club, or

(c) the owner or operator of the football club, or a person acting on behalf of the owner or operator, proceeds further with any proposed transfer of the ownership of the football club which was initiated prior to the date on which the interest was registered.

(4) Where—

(a) a supporters’ trust’s interest in a football club is registered, and

(b) an owner or operator of that football club sells shares in the club in such a way as to transfer the controlling interest in the club without exposing the club for sale,
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the owner or operator of the club is not acting in accordance with this section and those shares must be offered for re-sale to the supporters’ trust or trusts with a registered interest in the club.

62H Procedure for late applications

(1) This section applies in relation to an application to register a supporters’ trust interest in a football club—

(a) where the application is received by the Scottish Ministers—

(i) after the date on which the owner or operator of the football club has taken action which, if a supporters’ trust interest had been registered, would be prohibited under section 62G, and

(ii) before the date on which—

(A) transfer of ownership of the football club is concluded, or

(B) an option to buy the football club is conferred, in pursuance of that action, or

(b) where another supporters’ trust has registered an interest in the football club, where the application is received by the Scottish Ministers—

(i) after the date on which the owner or operator of the football club has, under section 62J, notified that supporters’ trust that a transfer is proposed, and

(ii) before the Scottish Ministers have consented, under section 62L, to a transfer to that supporters’ trust.

(2) Where this section applies in relation to an application the owner or operator of the football club must, on receipt of an invitation under section 62F, inform the Scottish Ministers that this section applies.

(3) Where this section applies in relation to an application, the Scottish Ministers may not decide that a supporters’ trust interest is to be entered in the Register unless they are satisfied—

(a) that there were good reasons why the supporters’ trust did not secure the receipt of an application before the owner or operator of the football club took the action, or gave the notice, such as is mentioned in subsection (1),

(b) that the level of support within the supporters’ trust for such registration is significantly greater than that which the Scottish Ministers would, have considered sufficient for the purposes of section 62F(5)(d) had the application been received before that action was taken or, as the case may be, the notice was given, and

(c) that the factors bearing on whether it is or is not in the public interest that the supporters’ trust be registered are strongly indicative that it is.

(4) Where a supporters’ trust interest in a football club is registered in pursuance of an application in relation to which this section applies—

(a) the owner or operator of the football club is, for the purposes of this Part of this Act (other than section 62Q(4)), deemed to have, on the date on which that interest is so registered, given notice under section 62O that a transfer is proposed,

(b) section 62O does not apply in so far as it relates to that interest, and
(c) for the purposes of sections 62O and 62Q, the supporters’ trust is deemed to have sent the confirmation which the Scottish Ministers would, had section 62K applied, have required to seek under subsection (2)(a) of that section on the date on which the interest is registered.

(5) Where, but for the provision made by subsection (1)(a)(ii), this section would apply in relation to an application to register a supporters’ trust interest in a football club the Scottish Ministers must decline to consider the application.

Activation of right to buy

62I Activation of supporters’ trust right to buy

(1) The right to buy a football club in which a supporters’ trust interest has been registered arises and may be exercised when the owner or operator of that club is deemed to have given notice under subsection (2)—

(a) of an intention to transfer ownership of the club, or

(b) that the club has entered into formal insolvency.

(2) Where subsection (1)(a) or (b) apply the owner or operator of the football club in respect of which the supporters trust interest is registered shall notify that fact to—

(a) the supporters’ trust, or trusts, in respect of which the interest is registered, and

(b) the Scottish Ministers.

(3) Notification under subsection (2) must be given in such form and otherwise in accordance with such provisions as are prescribed.

Supporters’ trust right to buy

62J Supporters’ trust right to buy

The right to buy a football club in which a supporters’ trust interest has been registered may be exercised at any time after that interest has been entered into the register by the Keeper.

62K Procedure after activation of right to buy

(1) On receipt of a notification under section 62I, the Scottish Ministers must direct the Keeper to enter particulars of the notification in the Register.

(2) Not later than 7 days after such receipt of the notification the Scottish Ministers must—

(a) send to the supporters’ trust or trusts which has registered the interest in the football club a notice in the prescribed form seeking its confirmation in writing that it will exercise its right to buy the football club, and

(b) send to the owner or operator of the football club a notice in the prescribed form narrating their compliance with paragraph (a).

(3) A notice under subsection (2)(a) must specify the date referred to in and narrate the effect of subsection (4) below.
(4) If, by the date specified in the notice, being a date not later than 30 days after it was sent, the supporters’ trust has not caused its confirmation to be received by the Scottish Ministers, Ministers must be deemed to have received written notice from the supporters’ trust under subsection (1) of section 62M that it will not exercise its right to buy the football club and subsections (2) to (4) of that section must apply accordingly.

(5) The Scottish Ministers must send a copy of—
   (a) the notice sent under subsection (2)(a), and
   (b) any confirmation received by them in pursuance of this section, to the owner of the club and to the Keeper.

(6) Any failure to comply with the time limit specified in subsection (2) above does not affect the validity of anything done under this section.

62L Exercise of right to buy: approval of supporters’ trust and consent of the Scottish Ministers

(1) A supporters’ trust must not proceed to buy the football club under this Part of this Act without—
   (a) the approval of the supporters’ trust, and
   (b) the consent of the Scottish Ministers.

(2) The supporters’ trust are to be taken as having given their approval for the purposes of subsections (1) and (3) if Scottish Ministers are satisfied—
   (a) that—
      (i) at least half of the members of the supporters’ trust, as defined for the purposes of section 62B, have voted in a ballot conducted by the supporters’ trust on the question whether the supporters’ trust should buy the football club, or
      (ii) where less than half of the members of the supporters trust have so voted, the proportion which did vote is, in the circumstances, sufficient to justify the supporters’ trust proceeding to buy the football club,
   (b) that the majority of those voting have voted in favour of the proposition that the supporters’ trust buy the football club, and
   (c) that this vote should have taken place within five months prior to the issue of the notice within section 62I or during the 30 day period specified within section 62K.

(3) The Scottish Ministers may not consent for the purposes of subsection (1) unless the supporters’ trust have given their approval and the Scottish Ministers are satisfied—
   (a) that the football club is a club within the meaning of section 62C,
   (b) that the supporters’ trust continues to comply with the provisions of section 62B,
   (c) that the proposed purchase of the football club is in the public interest, and
   (d) that there has not, since the date on which they decided the supporters’ trust’s interest should be registered, been a change in any matters to the extent that, if the application to register the supporters’ trust interest were made afresh, they would decide that the interest is not to be entered in the Register.
A supporters’ trust may require the Scottish Ministers to treat as confidential any information or document relating to arrangements for the raising or expenditure of money to enable the football club to be purchased.

The Scottish Ministers must, within the time limit specified in subsection (6), send notice of their decision as to consent and their reasons for it in writing to the supporters’ trust and to the owner of the football club and must direct the Keeper to enter a record of that decision in the Register.

That time limit is—

(a) where one supporters’ trust has confirmed that it will exercise its right to buy the football club, the 21 days following receipt of notification, under section 62I, of the result of the ballot conducted by the body, or

(b) where two or more supporters’ trusts have confirmed that they will exercise their right to buy the club, the 21 days following receipt of such notification in respect of the last of the ballots conducted by those bodies.

Any failure to comply with the time limit specified in subsection (6) above does not affect the validity of anything done under this section.

If, at any time, a supporters’ trust which has registered a supporters’ trust interest decides that it will not exercise its right to buy the football club, it must give the Scottish Ministers written notice of its decision.

On receipt of a notice under subsection (1) above, the Scottish Ministers must—

(a) send a copy of it to the Keeper and direct the Keeper to delete the supporters’ trust interest from the Register, and

(b) notify the owner or operator of the football club of that fact.

Where, when that notice is given, that right to buy has arisen, the right is then extinguished.

Nothing in or done under subsections (1) to (3) above prevents a supporters’ trust from registering a supporters’ trust interest in the same football club for a second or subsequent time.

If, at any time after the owner or operator of the club has given notice under section 62I but before the owner has concluded missives with a supporters’ trust for the sale and purchase of the football club in respect of which a right to buy has arisen, the owner or operator of the football club decides not to proceed further with the proposed transfer the owner shall give written notice of that fact to—

(a) the Scottish Ministers, and

(b) each supporters’ trust which has registered an interest in the football club.

The Scottish Ministers must send a copy of the notice given under subsection (5) to the Keeper.

Where a notice is given under subsection (5), the right to buy the football club which arose under section 62I is extinguished.

Nothing in subsection (7) above prevents a right to buy a football club from arising for a second or subsequent time.
62N Right to buy same club exercisable by only one supporters’ trust

(1) Only one supporters’ trust may exercise the right to buy a football club in which two or more supporters’ trust bodies have registered supporters’ trust interests.

(2) Where two or more supporters’ trusts have confirmed that they will exercise their rights to buy such a football club it is for the Scottish Ministers to decide which one is to proceed.

(3) On the Scottish Ministers so deciding—

(a) the other supporters’ trust’s right to buy the football club is extinguished, and

(b) they must—

(i) direct the Keeper to delete its interest from the Register, and

(ii) notify the owner or operator of the football club and the supporters’ trusts of that fact.

Procedure for buying

62O Procedure for buying

(1) It is for the supporters’ trust to make the offer to buy in exercise of the right conferred by this Part of this Act.

(2) The offer shall be at a price—

(a) agreed between the supporters’ trust and the owner or operator of the football club; or

(b) where no such agreement is reached, equal to—

(i) the value assessed by the appointed valuer, or

(ii) if that value is the subject of an appeal under section 62R, the value determined by the appeal, and shall specify the date of transfer of ownership and of payment of the price in accordance with subsection (3).

(3) The date of transfer of ownership and payment of the price shall be—

(a) a date not later than 6 months from the date when the supporters’ trust sent the confirmation sought by the Scottish Ministers under section 62K of its intention to buy,

(b) where the price assessed by the appointed valuer is the subject of an appeal under section 62R which has not, within the period of 4 months after the date when the supporters’ trust sent that confirmation, been—

(i) determined, or

(ii) abandoned following agreement between the supporters’ trust and the owner of the club, a date not later than 2 months after the appeal is so determined or, as the case may be, abandoned, or

(iii) such later date as may be agreed between the supporters’ trust and the owner of the club.

(4) The offer may include such other reasonable conditions as are necessary or expedient to secure the efficient progress and completion of the transfer.
(5) If a supporters’ trust has not, within the period fixed by or agreed under subsection (3) above, done any of the things mentioned in subsection (6) below, the supporters’ trust right to buy the club is extinguished and the Scottish Ministers must—

(a) direct the Keeper to delete its interest in the club from the Register, and

(b) notify the owner of the club of that fact.

(6) The things referred to in subsection (5) above are—

(a) concluding missives with the owner or operator of the football club for its sale to the supporters’ trust,

(b) if the supporters’ trust has not so concluded missives, taking all steps which, in the opinion of the Scottish Ministers, it could reasonably have taken in the time available towards so concluding missives.

(7) The Scottish Ministers may, by regulations, make provision about when ownership is to be treated as transferred for the purposes of this section.

62P Application for funding

(1) Subject to the provisions of this section, the Scottish Ministers may make payments to a supporters’ trust applying to the Scottish Ministers for funding in order to make an offer to buy a football club in exercise of the right conferred by this Part of this Act.

(2) Any supporters’ trust applying for funding must have—

(a) obtained the approval of the supporters’ trust to proceed to buy the football club,

(b) obtained the consent of the Scottish Ministers to proceed to buy the football club,

(c) met any other conditions as the Scottish Ministers may so prescribe.

(3) Any application for funding must be made in such form and manner and by such date as the Scottish Ministers may prescribe, and the applicant in question shall provide such particulars and information relating to the application as the Scottish Ministers may reasonably require.

(4) The applicant shall furnish to the Scottish Ministers such further information and evidence in relation to the application as the Scottish Ministers reasonably may require in order to allow proper consideration of the application.

(5) A person may submit more than one application under this paragraph.

(6) The Scottish Ministers shall inform an applicant in writing whether the application is approved or not and if it is not approved shall give reasons in writing for not approving it.

62Q Assessment of value of football club

(1) The Scottish Ministers must, within 7 days of the receipt of a confirmation, sought by them under section 62K(2)(a), that a supporters’ trust will exercise its right to buy the football club, appoint a valuer, being a person who appears to the Scottish Ministers to be suitably qualified, independent and to have knowledge and experience of valuing a club.

(2) The validity of anything done under this section is not affected by any failure by the Scottish Ministers to comply with the time limit specified in subsection (1) above.
(3) In assessing the value of the football club in pursuance of an appointment under subsection (1) above, a valuer—
   (a) does not act on behalf of the owner or operator of the club or the supporters’ trust which is exercising its right to buy the football club, and
   (b) shall act as an expert and not as an arbiter.

(4) The value to be assessed is the market value of the football club—
   (a) as at the date of notification under section 62I(1) which gave rise to the right to buy the football club; or
   (b) in a case where the supporters’ trust’s interest was registered in pursuance of an application to which section 62H applied, as at the date of the Scottish Ministers’ receipt of that application.

(5) The “market value” of the football club, for the purposes of subsection (4), is the aggregate of the value it would have on the open market as between a seller and a buyer both of whom are, as respects the transaction, willing; and

(6) In assessing, for those purposes, the value which the football would have in the circumstances mentioned in subsection (5) above—
   (a) account may be taken, insofar as a seller and a buyer of the football club such as are mentioned in subsection (5) would do so, of any factor attributable to the known existence of a person who (not being the supporters’ trust which is exercising its right to buy the club) would be willing to buy the football club at a price higher than other persons because of a characteristic of the club which relates peculiarly to that person’s interest in buying it;
   (b) no account shall be taken of—
      (i) the registration of an interest in or the exercise of a right to buy the football club by a supporters’ trust under this Part of this Act,
      (ii) the absence of the period of time during which the football club would, on the open market, be likely to be advertised and exposed for sale,
      (iii) the expenses of the valuation or otherwise related to the sale and purchase of the club.

(7) The expense of a valuation under this section shall be met by the Scottish Ministers.

Appeals

62R Appeals

(1) An owner or operator of a football club may, by summary application, appeal to the sheriff against—
   (a) a decision by the Scottish Ministers that a supporters’ trust interest in the football club is to be entered in the Register,
   (b) a decision by the Scottish Ministers to give consent to the exercise by a supporters’ trust of its right to buy the football club
   (c) a decision by the independent valuer on the valuation of the football club.

(2) A supporters’ trust may, by summary application, appeal to the sheriff against—
(a) a decision by the Scottish Ministers that its supporters’ trust interest is not to be entered in the Register or
(b) a decision by the Scottish Ministers not to give consent to the exercise by the supporters’ trust of its right to buy,
(c) a decision by the independent valuer on the valuation of the football club.

(3) A person who is a member of a supporters’ trust as defined for the purposes of section 62B in relation to a supporters’ trust or who has any interest in the football club giving rise to a right which is legally enforceable by that person may, by summary application, appeal to the sheriff against—
(a) a decision by the Scottish Ministers that a supporters’ trust interest in a football club is to be entered in the Register on the application of the supporters’ trust, or
(b) a decision by the Scottish Ministers to consent to the exercise of the supporters’ trust right to buy a football club.

(4) An appeal under subsection (1), (2) or (3) above shall be lodged within 28 days of the date on which the Scottish Ministers decided whether to enter the supporters’ trust interest or, as the case may be, whether to consent to the exercise of the right to buy the football club.

(5) The sheriff in whose sheriffdom the land or any part of it is situated has jurisdiction to hear an appeal under this section.

(6) Where an appeal is made—
(a) under subsection (1) above the owner or operator shall intimate that fact to—
(i) the supporters’ trust, and
(ii) the Scottish Ministers;
(b) under subsection (2) above the supporters’ trust shall intimate that fact to—
(i) the owner or operator; and
(ii) the Scottish Ministers; or
(c) under subsection (3) above the member of the supporters’ trust shall intimate that fact to—
(i) the supporters’ trust;
(ii) the owner or operator; and
(iii) the Scottish Ministers.

(7) The decision of the sheriff in an appeal under this section—
(a) may require rectification of the Register;
(b) may impose conditions upon the appellant;
(c) is final.

Other rights for supporters’ trusts

62S Supporters trust right to buy shares in a football club

(1) A supporters’ trust with a registered interest in a football club has a right to buy a proportion of the shares in that football club at any point when the right to buy that football club has been activated in accordance with section 62I.
(2) In buying shares under subsection (1), the supporters trust—
   (a) may buy a proportion of shares that would enable the supporters’ trust to have a
       controlling interest in the football club,
   (b) must buy at least 5% of the shares in the club.

(3) This section does not—
   (a) preclude a supporters’ trust with a registered interest in a football club from
       purchasing shares in that football club at any other point at which shares are made
       available for sale,
   (b) require a supporters’ trust with a registered interest in a football club to purchase
       shares in that club where a right to buy that club has been activated in accordance
       with section 62I.

PART 6
COMMON GOOD PROPERTY

Registers

63 Common good registers

(1) Each local authority must establish and maintain a register of property which is held by
    the authority as part of the common good (a “common good register”).

(2) Before establishing a common good register, a local authority must publish a list of
    property that it proposes to include in the register.

(3) The list may be published in such a way as the local authority may determine.

(4) On publishing a list under subsection (2), the local authority must—
    (a) notify the bodies mentioned in subsection (5) of the publication, and
    (b) invite those bodies to make representations in respect of the list.

(5) The bodies are—
    (a) any community council established for the local authority’s area, and
    (b) any community body of which the authority is aware.

(6) In establishing a common good register, a local authority must have regard to—
    (a) any representations made under subsection (4)(b) by a body mentioned in
        subsection (5), and
    (b) any representations made by other persons in respect of the list published under
        subsection (2).

(7) Representations as mentioned in subsection (6) may in particular be made in relation to—
    (a) whether property proposed to be included in the register is part of the common
        good,
    (b) the identification of other property which, in the opinion of the body or person
        making the representation, is part of the common good.

(8) A local authority must—
(a) make arrangements to enable members of the public to inspect, free of charge, its common good register at reasonable times and at such places as the authority may determine, and

(b) make its common good register available on a website, or by other electronic means, to members of the public.

64 Guidance about common good registers

(1) In carrying out any of the duties imposed on it by section 63, a local authority must have regard to any guidance issued by the Scottish Ministers in relation to the duties.

(2) Before issuing any such guidance, the Scottish Ministers must consult—

(a) local authorities,

(b) community councils, and

(c) such community bodies as the Scottish Ministers think fit.

Disposal and use

65 Disposal and use of common good property: consultation

(1) Subsection (2) applies where a local authority is considering—

(a) disposing of any property which is held by the authority as part of the common good, or

(b) changing the use to which any such property is put.

(2) Before taking any decision to dispose of, or change the use of, such property the local authority must publish details about the proposed disposal or, as the case may be, the use to which the authority proposes to put the property.

(3) The details may be published in such a way as the local authority may determine.

(4) On publishing details about its proposals under subsection (2), the local authority must—

(a) notify the bodies mentioned in subsection (5) of the publication, and

(b) invite those bodies to make representations in respect of the proposals.

(5) The bodies are—

(a) where the local authority is Aberdeen City Council, Dundee City Council, the City of Edinburgh Council or Glasgow City Council, any community council established for the local authority’s area,

(aa) where the local authority is any other council, any community council whose area consists of or includes the area, or part of the area, to which the property mentioned in subsection (1) related prior to 16 May 1975, and

(b) any community body that is known by the authority to have an interest in the property.

(6) In deciding whether or not to dispose of any property held by a local authority as part of the common good, or to change the use to which any such property is put, the authority must have regard to—
(a) any representations made under subsection (4)(b) by a body mentioned in subsection (5), and

(b) any representations made by other persons in respect of its proposals published under subsection (2).

66 Disposal etc. of common good property: guidance

(1) In carrying out any of the duties imposed on it by section 65, a local authority must have regard to any guidance issued by the Scottish Ministers in relation to the duties.

(2) A local authority must have regard to any guidance issued by the Scottish Ministers in relation to the management and use of property that forms part of the common good.

(3) Before issuing any guidance as mentioned in subsection (1) or (2), the Scottish Ministers must consult—

(a) local authorities,

(b) community councils, and

(c) such community bodies as the Scottish Ministers think fit.

67 Interpretation of Part 6

In this Part—

“community bodies”, in relation to a local authority, means bodies, whether or not formally constituted, established for purposes which consist of or include that of promoting or improving the interests of any communities (however described) resident or otherwise present in the area of the local authority,

“community council” means a community council established by a local authority under Part 4 of the Local Government (Scotland) Act 1973.

PART 7

ALLOTMENTS

Key definitions

68 Meaning of “allotment”

(1) In this Part, “allotment” means land that—

(a) is owned or leased by a local authority,

(b) is leased or intended for lease by a person from the authority,

(c) is used or intended for use—

(i) wholly or mainly for the cultivation of vegetables, fruit, herbs or flowers, and

(ii) otherwise than with a view to making a profit, and

(d) meets one of the requirements as to size set out in subsections (2) and (3).

(2) The requirement is that the land is of a size of approximately 250 square metres.
The requirement is that the land is of such size (being a size smaller than that set out in subsection (2)) as has been requested by the person leasing or intending to lease the land from the authority.

Meaning of “allotment site”

In this Part, “allotment site”—

(a) means land consisting wholly or partly of allotments, and

(b) includes other land owned or leased by a local authority that may be used by tenants of allotments in connection with their use of allotments.

Regulations as to size of allotments

The Scottish Ministers must by regulations make provision for or in connection with the size or sizes of an allotment (but without affecting section 68(1)(d)).

Before making any regulations under subsection (1), the Scottish Ministers must consult—

(a) each local authority, and

(b) such other persons as they consider appropriate.

Request to lease allotment

Any person may make a request to the local authority in whose area the person resides to lease an allotment from the authority.

A request must be made in writing and include—

(a) the name and address of the person making the request, and

(b) such other information as may be prescribed.

Where the person making the request is a disabled person, the request may include information about the person’s needs on the grounds of disability relating to—

(a) access to an allotment site or an allotment,

(b) possible adjustments to an allotment site or an allotment.

A request may be made to a local authority even if the authority does not own or lease any allotments.

A request may be made jointly by two or more persons if each person resides in the area of the local authority to which the request is made.

The local authority must give written notice to a person who made a request under subsection (1) confirming receipt of the request before the expiry of the period of 14 days beginning with the date on which the request is received by the authority.

Before making regulations under subsection (2)(b), the Scottish Ministers must consult—

(a) each local authority, and
(b) any other person appearing to the Scottish Ministers to have an interest.

Local authority functions

71 Duty to maintain list

(1) Each local authority must establish and maintain a list of persons who make a request to it under section 70(1).

(2) The list may be established and maintained by the local authority in such form as the authority thinks fit.

(3) The duty to maintain a list under subsection (1) includes a duty to remove from the list—

(a) the name of any person—

(i) whose request under section 70(1) is agreed to, or

(ii) who withdraws such a request before it is agreed to, and

(b) any other information relating to any such person.

72 Duty to provide allotments

(1) Where subsection (2) or (3) applies, each local authority must take reasonable steps to ensure—

(a) that the number of persons entered in the list maintained under section 71(1) is no more than one half of the total number of allotments owned and leased by the authority, and

(b) that the number of persons so entered who have been on the list for more than five years is zero.

(2) This subsection applies where—

(a) on the commencement date, a local authority does not own or lease any allotments, and

(b) at any time after that date, the number of persons entered in the list mentioned in subsection (1) is 15 or more.

(3) This subsection applies where—

(a) on the commencement date, a local authority owns or leases allotments, and

(b) at any time after that date, the number of persons entered in the list mentioned in subsection (1) is one or more.

(3A) Where the duty imposed by subsection (1) applies, a local authority must, in taking the reasonable steps mentioned in that subsection, have regard to the need for allotments to be made available in areas that are in reasonable proximity to the areas where persons on the list mentioned in that subsection reside.

(4) The Scottish Ministers may by order amend subsection (1) by substituting for the proportion for the time being specified there such other proportion as they think fit.

(5) The Scottish Ministers may by order amend subsection (2) or (3) by substituting for the number of persons for the time being specified there such other number of persons as they think fit.
(6) Where a request under section 70(1) is made jointly by two or more persons, the persons making the request are to be treated as one person for the purposes of calculating the number of persons referred to in—

(a) subsection (1),

(b) subsection (2) (including that subsection as amended by an order under subsection (5)),

(c) subsection (3) (including that subsection as amended by an order under subsection (5)),

(d) section 79(2)(g) or (l).

(7) In this section, “commencement date” means the date on which this section comes into force.

72A Access to allotment and allotment site

(1) Where a local authority leases an allotment to a tenant, it must provide reasonable access to the allotment and any allotment site on which the allotment is situated.

(2) Where a local authority leases an allotment site to a tenant, it must provide reasonable access to the allotment site and allotments on the site.

73 Allotment site regulations

(1) Each local authority must make regulations about allotment sites in its area.

(2) The first regulations under subsection (1) must be made before the expiry of the period of two years beginning with the date on which this section comes into force.

(3) Regulations under subsection (1) must in particular include provision for or in connection with—

(a) allocation of allotments,

(b) rent, including a method of determining fair rent that takes account of—

(i) services provided by, or on behalf of, the local authority to tenants of allotments,

(ii) the costs of providing those services, and

(iii) circumstances that affect, or may affect, the ability of a person to pay the rent payable under the lease of an allotment,

(c) cultivation of allotments,

(d) maintenance of allotments,

(e) maintenance of allotment sites,

(f) buildings or other structures that may be erected on allotments, the modifications that may be made to such structures and the materials that may or may not be used in connection with such structures,

(g) the keeping of livestock (including poultry), and

(h) landlord inspections.

(4) Regulations under subsection (1) may in particular include provision for or in connection with—
(b) buildings or other structures that may be erected on land mentioned in paragraph (b) of the definition of “allotment site” in section 69, the modifications that may be made to such structures and the materials that may or may not be used in connection with such structures,

(c) access by persons (other than allotment tenants) and domestic animals,

(d) liability for loss of or damage to property,

(e) acceptable use of allotments and allotment sites,

(f) sale of surplus produce.

(5) Regulations under subsection (1) may make different provision for different areas or different allotment sites.

74 Allotment site regulations: further provision

(1) Before making regulations under section 73(1), a local authority must consult persons appearing to the local authority to have an interest.

(2) At least one month before making regulations under section 73(1), a local authority must—

(a) place an advertisement in at least one newspaper circulating in its area giving notice of—

(i) the authority’s intention to make the regulations,

(ii) the general purpose of the proposed regulations,

(iii) the place where a copy of the proposed regulations may be inspected,

(iv) the fact that any person may make written representations in relation to the proposed regulations,

(v) the time within which a person may make representations, and

(vi) the address to which any representations must be sent, and

(b) make copies of the proposed regulations available for inspection by the public without payment—

(i) at its offices, and

(ii) if it considers it practicable, at the allotment site to which the regulations are to apply.

(3) Any person may make a representation in writing in relation to the proposed regulations no later than one month after the last date on which notice under subsection (2)(a) is given.

(4) Before making the regulations, the authority must—

(a) offer any person who makes a representation under subsection (3) the opportunity to make further representations in person, and

(b) take account of any representations received by it by virtue of subsection (3) and paragraph (a).

(5) The regulations are executed by being signed by the proper officer of the authority.

(6) The regulations—
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(a) come into force on the day after the day on which they are executed or such later
date specified in the regulations, and
(b) continue in force unless revoked.

(7) Subsections (1) to (4) apply in relation to—

(a) a proposed amendment,
(b) a proposed revocation,
(c) an amendment, or
(d) a revocation,

of regulations under section 73(1) as they apply in relation to proposed regulations, or
(as the case may be) the making of proposed regulations, under that section.

(8) Subsections (5) and (6) apply in relation to an amendment, or a revocation, of
regulations under section 73(1) as they apply in relation to regulations under that section
(but subsection (6)(b) does not apply in relation to such a revocation).

(9) A copy of the regulations must be displayed at the entrance to an allotment site to which
they apply.

(10) A local authority must provide a copy of the regulations without charge to any person
following a request.

(11) In the case where an allotment site is leased by a local authority, the regulations are
subject to any provision of such a lease which is contrary to, or otherwise inconsistent
with, the regulations.

Disposal etc. of allotments and allotment sites owned by local authority

(1) This section applies where a local authority owns an allotment site.

(2) A local authority may not dispose of the whole or part of the allotment site or change the
use of the whole or part of the allotment site without the consent of the Scottish
Ministers.

(2A) Before deciding whether to grant consent, the Scottish Ministers must—

(a) seek the views of the local authority on the proposed decision, and
(b) consult such other persons appearing to them to have an interest in the proposed
disposal or change of use.

(3) The Scottish Ministers may make the granting of consent subject to such conditions as
they think fit.

(4) The Scottish Ministers may not grant consent unless they are satisfied that—

(a) the tenant of each allotment on the whole or part of the allotment site is to be
offered a lease of another allotment—

(i) on the allotment site, or

(ii) in the area of the local authority within a reasonable distance of the
allotment site, or

(b) the provision of another allotment for the tenant is unnecessary or not reasonably
practicable.
(5) Any transfer of ownership of the whole or part of the allotment site, and any deed purporting to transfer such ownership, without the consent of the Scottish Ministers is of no effect.

**76 Disposal etc. of allotments and allotment sites leased by local authority**

(1) This section applies where a local authority leases an allotment site.

(2) A local authority may not renounce its lease of the whole or part of the allotment site without the consent of the Scottish Ministers.

(3) In the case where a change of use of the whole or part of the allotment site proposed by the local authority is permitted by the lease, the local authority may not change the use of the allotment site without the consent of the Scottish Ministers.

(3A) Before deciding whether to grant consent mentioned in subsection (2) or (3), the Scottish Ministers must—

(a) seek the views of the local authority on the proposed decision, and

(b) consult with such other persons appearing to them to have an interest in the proposed renunciation or change of use.

(4) The Scottish Ministers may make the granting of consent mentioned in subsection (2) or (3) subject to such conditions as they think fit.

(5) The Scottish Ministers may not grant consent mentioned in subsection (2) or (3) unless they are satisfied that—

(a) the tenant of each allotment on the whole or part of the allotment site is to be offered a lease of another allotment—

(i) on the allotment site, or

(ii) in the area of the local authority within a reasonable distance of the allotment site, or

(b) the provision of another allotment for the tenant is unnecessary or not reasonably practicable.

(6) Any renunciation of the local authority’s lease of the whole or part of the allotment site, and any deed purporting to renounce the lease, without the consent of the Scottish Ministers is of no effect.

**77 Duty to prepare food-growing strategy**

(1) Each local authority must prepare a food-growing strategy for its area.

(2) A local authority must publish the food-growing strategy before the expiry of the period of two years beginning with the day on which this section comes into force.

(3) A food-growing strategy is a document—

(a) identifying land in its area that the local authority considers may be used as allotment sites,

(b) identifying other areas of land in its area that could be used by a community for the cultivation of vegetables, fruit, herbs or flowers,

(c) describing how, where the authority is required to take reasonable steps under section 72(1), the authority intends to increase the provision in its area of—
(i) allotments, or
(ii) other areas of land for use by a community for the cultivation of vegetables, fruit, herbs or flowers, and

(d) containing such other information as may be prescribed.

(3A) The description required by subsection (3)(c) must in particular describe whether and how the authority intends to increase the types of provision referred to in paragraphs (a) and (b) of that subsection in communities which experience socio-economic disadvantage.

(4) The authority must publish the food-growing strategy on a website or by other electronic means.

78  Duty to review food-growing strategy

(1) Each local authority must review its food-growing strategy before the end of—

(a) the period of 5 years beginning with the day on which the strategy is first published under section 77(2), and

(b) each subsequent period of 5 years.

(2) If, following a review under subsection (1), the authority decides that changes to its food-growing strategy are necessary or desirable, the authority must publish a revised food-growing strategy on a website or by other electronic means.

79  Annual allotments report

(1) As soon as reasonably practicable after the end of each reporting year, each local authority must prepare and publish an annual allotments report for its area.

(2) An annual allotments report is a report setting out in respect of the reporting year to which it relates—

(a) the location and size of each allotment site,

(b) the number of allotments on each allotment site,

(ba) where the whole of an allotment site is leased from the authority by one person, the proportion of land on the allotment site (excluding any land falling within paragraph (b) of the definition of “allotment” in section 69) that is not subleased from the tenant of the allotment site,

(c) where allotments on an allotment site are leased from the authority by more than one person, the proportion of land on the allotment site (excluding any land falling within paragraph (b) of the definition of “allotment site” in section 69) that is not leased from the authority,

(d) where an allotment site is leased by the local authority—

(i) the period of the lease of each allotment site, and

(ii) the rent payable under the lease by the authority,

(e) the period of any lease between the authority and the tenant of an allotment site,

(f) the rent payable under any lease between the authority and the tenant of an allotment site,
(g) the number of persons entered in the list maintained under section 71(1) on the final day of the reporting year to which the report relates,

(ga) the number of persons mentioned in paragraph (g) who, on the final day of the reporting year to which the report relates, have been entered in the list mentioned in that paragraph for a continuous period of more than 5 years,

(h) the steps taken by the authority to comply with the duty imposed by section 72(1),

(i) reasons for any failure to comply with that duty,

(j) the number of allotments on each allotment site that are accessible by a disabled person,

(k) the number of allotments on each allotment site adjusted by the authority during the reporting year to meet the needs of a tenant who is a disabled person,

(l) the number of persons entered in the list maintained under section 71(1) during the reporting year whose request under subsection (1) of section 70 included information under subsection (3) of that section,

(m) the income received, and expenditure incurred, by the authority in connection with allotment sites, and

(n) such other information as may be prescribed.

(3) The authority must publish the annual allotments report on a website or by other electronic means.

(4) In this section, “reporting year” means—

(a) the period of a year beginning with any day occurring during the period of a year after the day on which this section comes into force, and

(b) each subsequent period of a year.

80 Power to remove unauthorised buildings from allotment sites

(1) This section applies where—

(a) a building or other structure that is not permitted by, or does not comply with, a provision of regulations made under section 73(1) is erected on an allotment site, and

(b) at the time the building or other structure was erected or, as the case may be modified, regulations made under section 73(1) prohibited such erection or modification.

(2) The local authority within whose area the allotment site is situated may—

(a) remove the building or other structure from the allotment site,

(b) dispose of the materials that formed the building or other structure as it thinks fit, and

(c) recover the cost of the removal, and the disposal of the materials, of the building or other structure from a liable tenant.

(3) “Liable tenant” means, where the building or other structure was erected by or on behalf of a tenant—

(a) on the tenant’s allotment, that tenant, or
(b) on other land as mentioned in paragraph (b) of the definition of “allotment site” in section 69, and the building or other structure on that other land was erected—

(i) without the consent of the tenants of other allotments on the allotment site of which that other land forms part, that tenant, or

(ii) with the consent of any tenants of such other allotments, that tenant and any other tenant who consented.

(4) A liable tenant mentioned in subsection (3)(b)(ii) is jointly and severally liable with other liable tenants mentioned in that subsection.

(5) Where a local authority proposes to take any action in exercise of a power conferred by subsection (2), it must—

(a) no later than one month before taking such action, give notice in writing of the authority’s proposed action to each tenant who would be affected by such action,

(b) allow each such tenant the opportunity to make representations to the authority in relation to the proposed action,

(c) take account of any representations received by it by virtue of paragraph (b), and

(d) give notice in writing to each tenant mentioned in paragraph (a) to inform them of the authority’s decision in relation to the proposed action and, if applicable, the date on which the proposed action is to take place.

(6) If the authority decides to take the proposed action, any tenant who was notified under subsection (5)(a) may appeal to the sheriff against the decision of the authority before the expiry of the period of 21 days beginning with the day on which the notice mentioned in subsection (5)(d) is given.

(7) The Scottish Ministers may by regulations make further provision for or in connection with the procedure to be followed in relation to the exercise of the powers conferred by subsection (2).

(8) In the case where an allotment site is leased by a local authority, the authority may not exercise a power conferred by subsection (2) if such exercise would contravene a provision of the lease.

81 Delegation of management of allotment sites

(A1) This section applies where—

(a) a local authority owns or leases an allotment site, and

(b) one or more allotments on the allotment site are leased to tenants.

(1) A person who represents the interests of all or a majority of the tenants may make a request to the local authority that the authority delegate to the person any of the authority’s functions mentioned in subsection (2) in relation to the allotment site.

(2) The functions are—

(a) the functions under—

(i) section 70(6) (request to lease allotment),

(ii) section 71(1) (duty to maintain list),

(iii) section 74(9) and (10) (display and copies of allotment site regulations),

(iv) section 82 (promotion and use of allotments: expenditure),
(b) the giving of notice under—
   (i) section 83(1) (notice of termination of lease of allotment or allotment site),
   (ii) section 84(2)(c) (notice of resumption),
   (iii) section 85(2) (notice of termination: sublease by local authority).

(3) A request under subsection (1) must—
   (a) be made in writing, and
   (b) include—
      (i) the name and address of the person making the request, and
      (ii) such other information as may be prescribed.

(4) The authority may within 14 days of receiving the request, ask—
   (a) the person making the request for such further information as it considers
       necessary in connection with the request, and
   (b) that the information be supplied within 14 days of the authority’s request.

(5) The authority must give notice to the person making the request of its decision to agree
   to or refuse the request—
   (a) where further information is requested by the authority under subsection (4),
       before the expiry of 56 days beginning with the date on which the request is
       received by the authority, or
   (b) in any other case, before the expiry of 28 days beginning with the date on which
       the request is received by the authority.

(6) If the decision is to refuse the request, the notice referred to in subsection (5) must
    include reasons for the authority’s decision.

(7) If the decision is to agree to the request, the authority must decide—
    (a) which of its functions that are mentioned in subsection (2) are to be delegated to
        the person making the request, and
    (b) the timing of any review of the delegation of those functions by the authority.

(8) Before making a decision under subsection (7), the authority must consult the person
    who made the request.

(9) The authority may recall the delegation of any of its functions delegated under this
    section if—
    (a) it considers that the person to whom the functions are delegated is not
        satisfactorily carrying out a function, or
    (b) there is a material disagreement between the authority and the person to whom the
        functions are delegated about the carrying out of the functions.

(10) In the case where an allotment site is leased by a local authority, the authority must not
    delegate any functions under this section to the person making the request where the
    delegation would contravene a provision of the lease.

82 Promotion and use of allotments: expenditure

(1) A local authority may incur expenditure for the purpose of—
(a) the promotion of allotments in its area, and
(b) the provision of training by or on behalf of the authority to tenants, or potential tenants, of allotments about the use of allotments.

(2) In deciding whether to incur, or incurring, any expenditure for the purpose mentioned in paragraphs (a) and (b) of subsection (1), a local authority must have regard to the desirability of incurring such expenditure in relation to communities which experience socio-economic disadvantage.

82A Use of local authority premises for meetings

(1) In relation to an allotment site, the persons mentioned in subsection (2) may make a request to the local authority in whose area the site is situated to use free of charge the premises mentioned in subsection (3) for the purpose of holding a meeting of the tenants of allotments on the site about the site.

(2) The persons are—
(a) a tenant of the allotment site,
(b) a person referred to in section 81(1).

(3) The premises are—
(a) premises in a public school or grant-aided school within the area of the local authority,
(b) other premises within the area of the local authority which are maintained by the authority.

(4) The request must—
(a) be made in writing,
(b) include the name and address of the person making the request,
(c) include information about the proposed date, time, location and purpose of the proposed meeting,
(d) be made at least one month before the date on which the meeting is proposed to take place.

(5) The local authority must, before the end of the period of 14 days beginning with the day on which it receives the request, write to the person who made the request to—
(a) grant the request,
(b) offer the person an alternative date, time or location for the proposed meeting, or
(c) refuse the request.

(6) In this section, “public school” and “grant-aided school” have the meanings given by section 135(1) of the Education (Scotland) Act 1980.
Termination of lease

83 Termination of lease of allotment or allotment site

(1) Despite any provision to the contrary in the lease of an allotment or an allotment site, a local authority may terminate the lease of the whole or part of the allotment or allotment site on a specified date; but may do so only if the authority has given the tenant of the allotment or the allotment site notice of the termination in accordance with subsection (2).

(2) Notice is given in accordance with this subsection if—

(a) it is in writing, and

(b) it is given—

(i) if subsection (3) applies, at least one month before the specified date,

(ii) if subsection (4) applies, at least one year before the specified date.

(3) This subsection applies if, following the expiry of the period of 3 months beginning with the date on which the lease commenced, the tenant has failed to a material extent to comply with any provision of the regulations made under section 73(1).

(4) This subsection applies if the Scottish Ministers have consented to—

(a) the disposal of the allotment site subject to the lease or, as the case may be, the allotment site on which the allotment is situated under section 75,

(b) the change of use of the allotment site subject to the lease or, as the case may be, the allotment site on which the allotment is situated under section 75 or 76,

(c) to the renunciation by the local authority of its lease of the allotment site subject to the lease or, as the case may be, the allotment site on which the allotment is situated under section 76.

(5) Before sending any notice under subsection (1), a local authority must—

(a) no later than one month before giving any notice under that subsection, write to the tenant to inform the tenant that the authority is proposing to give notice of termination under that subsection and give reasons for the authority’s proposal,

(b) allow the tenant the opportunity to make representations to the authority in relation to the authority’s proposal,

(c) take account of any representations received by it by virtue of paragraph (b), and

(d) either—

(i) write to the tenant to inform the tenant that the authority no longer proposes to give notice under subsection (1) for the reasons referred to in paragraph (a), or

(ii) give notice under subsection (1) for those reasons.

(6) A tenant who is aggrieved by a notice given under subsection (1) may appeal to the sheriff within 21 days of the date of the notice.

(7) If subsection (4) applies, an appeal under subsection (6) may be made on a point of law only.

(8) A notice under subsection (1) has no effect until—
(a) the period within which an appeal may be made under subsection (6) has elapsed without an appeal being made, or
(b) where such an appeal is made, the appeal is withdrawn or finally determined.

(9) The decision of the sheriff on appeal under this section is final.

(10) The Scottish Ministers may by regulations make further provisions as to the procedure to be applied in connection with the exercise of the power conferred by subsection (1).

(11) Where, under subsection (2) of section 85, a local authority sends a copy of the notice mentioned in that subsection to a person, the authority need not also send a notice under subsection (1) of this section.

(12) In this section, “specified” means specified in the notice under subsection (1).

84 Resumption of allotment or allotment site by local authority

(1) This section applies where a person leases an allotment or an allotment site from a local authority.

(2) Despite any provision to the contrary in the lease, the authority may resume possession of the whole or part of the allotment or the allotment site; but may do so only if—
   (a) the resumption is required for building, mining or any other industrial purpose or for the construction, maintenance or repair of any roads or sewers necessary in connection with any such purpose,
   (c) the authority has given the tenant notice of the resumption in accordance with subsection (3), and
   (d) the Scottish Ministers have consented to the notice given under paragraph (c).

(3) Notice is given in accordance with this subsection if—
   (a) it is in writing,
   (b) it is given at least three months before the date on which the resumption is to take place, and
   (c) it specifies that date.

(4) The Scottish Ministers may make the granting of consent mentioned in subsection (2)(b) subject to such conditions as they think fit.

(5) The Scottish Ministers may not grant consent unless they are satisfied that—
   (a) the tenant of the allotment, or (as the case may be) the tenant of each allotment on the allotment site, is to be offered a lease of another allotment in the area of the local authority within a reasonable distance of the allotment site or the allotment site on which the allotment is situated, or
   (b) the provision of the same or another allotment for the tenant is unnecessary or not reasonably practicable.

Notice of termination: sublease

85 Notice of termination: sublease

(1) Subsection (2) applies where—
   (a) an allotment site is leased to a local authority,
(b) the authority has granted a sublease of—
   (i) the allotment site, or
   (ii) an allotment on the allotment site,
(c) the authority receives notice of termination of the lease of the whole or part of the allotment site, and
(d) the sublease is of land that is the same as, or forms part of, the land to which the notice relates.

(2) The authority must—
   (a) send a copy of the notice to the subtenant of the sublease, and
   (b) notify the subtenant of the sublease—
      (i) of the date on which the lease of the whole or part of the allotment site is terminated, and
      (ii) that the subtenant’s sublease is terminated on that date.

86 Notice of termination: sublease by allotment association

(1) Subsection (2) applies where—
   (a) the local authority gives notice under section 83(1) or 84(2), or sends a copy of a notice under section 85(2)(a), to the tenant of the whole or part of an allotment site,
   (b) the tenant subleases allotments on the whole or part of the allotment site to one or more subtenants, and
   (c) the tenant represents the interests of the subtenants.

(2) The tenant must—
   (a) send a copy of the notice to each subtenant, and
   (b) notify each subtenant—
      (i) of the date on which the lease of the whole or part of the allotment site is terminated, and
      (ii) that the subtenant’s sublease is terminated on that date.

Tenants’ rights

86A Prohibition against assignation or subletting

(1) The tenant of an allotment must not assign the lease of the whole or part of the allotment without the consent of the local authority which granted the lease.
(2) The tenant of an allotment must not sublet the whole or part of an allotment to any person.
(3) A purported assignation of the lease of the whole or part of an allotment contrary to subsection (1) is of no effect.
(4) A purported sublease of the whole or part of an allotment contrary to subsection (2) is of no effect.
Sale of surplus produce

Subject to any regulations under section 73(1), a tenant of an allotment may sell (other than with a view to making a profit) produce grown by the tenant on the allotment.

Removal of items from allotment by tenant

1. A tenant of an allotment may remove from the allotment any of the items mentioned in subsection (2) before the expiry or termination of the tenant’s lease.

2. The items are—
   - any buildings (or other structures) erected by or on behalf of the tenant,
   - any buildings (or other structures) acquired by the tenant,
   - any produce, trees or bushes—
     - planted by or on behalf of the tenant, or
     - acquired by the tenant.

Compensation

1. Subsection (2) applies where—
   - the lease of the whole or part of an allotment is terminated—
     - by notice under section 83(2)(b)(ii),
     - as a result of a notice of termination of the lease of the allotment site on which the allotment is situated under section 83(2)(b)(ii),
     - as a result of resumption of the allotment, or the allotment site on which the allotment is situated, under section 84(2), or
     - as a result of a notice mentioned in section 85(1)(c), and
   - the tenant of the allotment suffers damage caused by disturbance of the enjoyment of the tenant’s allotment as a result of the termination of the lease.

2. The local authority giving or, as the case may be, receiving a notice mentioned in paragraph (a) of subsection (1) is liable to compensate a person referred to in paragraph (b) of that subsection.

3. The minimum amount of compensation payable under subsection (2) is—
   - where the termination of the lease relates to the whole of an allotment, an amount equal to one year’s rent of the allotment payable immediately before the termination of the lease,
   - where the termination of the lease relates to part of an allotment, a proportion of the amount mentioned in paragraph (a) that is in the same proportion that the part of the allotment bears to the whole of the allotment.

4. The Scottish Ministers must by regulations make further provision for or in connection with compensation payable under subsection (2).

5. Regulations under subsection (4) must include, in particular, provision about the procedure to be followed in—
(a) determining whether the local authority is liable to pay compensation under subsection (2), and
(b) subject to subsection (3), assessing the amount of compensation for which the local authority is liable in cases where the lease does not make such provision.

(6) Before making regulations under subsection (4), the Scottish Ministers must consult—
(a) each local authority, and
(b) any other person appearing to the Scottish Ministers to have an interest.

(7) A person referred to in subsection (1)(b) who is aggrieved about any decision by the local authority in connection with the duty imposed by subsection (2) may appeal to the sheriff within 21 days of receiving notice of the authority’s decision.

90 Compensation for deterioration of allotment

(1) This section applies where—
(a) the lease of a person (“the tenant”) of an allotment has expired or been terminated, and
(b) it appears to the local authority that leased the allotment to the tenant that—
(i) the allotment deteriorated during the tenant’s lease of the allotment, and
(ii) the deterioration was caused by the fault or negligence of the tenant.

(2) The tenant is liable to pay compensation for the deterioration to the local authority.

(3) The amount of compensation payable is the cost of remedying the deterioration.

(4) The Scottish Ministers must by regulations make further provision for or in connection with compensation payable under subsection (2).

(5) Regulations under subsection (4) must include, in particular, provision about the procedure to be followed—
(a) in determining whether the tenant is liable to pay compensation under subsection (2), and
(b) in accordance with subsection (3), in assessing the amount of compensation for which the tenant is liable in cases where the lease does not make such provision.

(6) Before making regulations under subsection (4), the Scottish Ministers must consult—
(a) each local authority, and
(b) any other person appearing to the Scottish Ministers to have an interest.

(7) A tenant who is aggrieved about any decision by the local authority in connection with the duty imposed by subsection (2) may appeal to the sheriff within 21 days of receiving notice of the authority’s decision.

91 Compensation for loss of crops

(1) This section applies where—
(a) the whole or part of an allotment is resumed under section 84(2), and
(b) the tenant of the allotment suffers loss of any crop as a result of the resumption.
(2) The local authority that resumed the allotment under section 84(2) is liable to compensate the tenant.

(3) The Scottish Ministers must by regulations make further provision for or in connection with compensation payable under subsection (2).

(4) Regulations under subsection (3) must include, in particular, provision about the procedure to be followed in—
   (a) determining whether the local authority is liable to pay compensation under subsection (2), and
   (b) assessing the amount of compensation for which the local authority is liable in cases where the lease does not make such provision.

(5) Before making regulations under subsection (3), the Scottish Ministers must consult—
   (a) each local authority, and
   (b) any other person appearing to the Scottish Ministers to have an interest.

(6) A tenant who is aggrieved about any decision by the local authority in connection with the duty imposed by subsection (2) may appeal to the sheriff within 21 days of receiving notice of the authority’s decision.

92 **Set-off of compensation etc.**

(1) Where a local authority is liable to pay compensation to a former tenant under section 89(2) or 91(2), the local authority may deduct from the compensation any sum that the former tenant is liable to pay to the local authority in connection with the lease that was terminated.

(2) Where a tenant is liable to pay any sum to a local authority in connection with a lease of an allotment, the tenant may deduct from the sum any compensation that the local authority is liable to pay to the tenant under section 89(2) or 91(2).

93 **Interpretation of Part 7**

In this Part—

“allotment” has the meaning given by section 68,

“allotment site” has the meaning given by section 69,

“disabled person” means a person who is disabled for the purposes of the Equality Act 2010,

“food-growing strategy” has the meaning given by section 77(3),

“lease” and “leased” include “sublease” and “subleased”,

“prescribed” means prescribed by the Scottish Ministers by regulations,

“tenant” includes “subtenant”. 
PART 7A

PARTICIPATION IN PUBLIC DECISION-MAKING

93A Participation in decisions of certain persons exercising public functions

(1) The Scottish Ministers may by regulations make provision for or in connection with the purpose mentioned in subsection (2).

(2) The purpose is promoting or facilitating participation in relation to decisions of such persons as may be specified (in this section, “relevant persons”) relating to activities carried out, or proposed to be carried out, by or on behalf of those persons.

(3) Regulations under subsection (1) may enable relevant persons to determine—

(a) the persons whose participation in relation to such decisions is to be promoted or facilitated, and

(b) which of those decisions persons so determined may participate in relation to.

(4) Regulations under subsection (1) may provide that activities as mentioned in subsection (2) include the allocation of—

(a) financial resources, and

(b) such other resources as may be specified.

(5) Regulations under subsection (1) may, in particular, include provision—

(a) (without prejudice to subsection (3)), conferring functions on relevant persons,

(b) specifying activities as mentioned in subsection (2) in relation to which the regulations apply, or do not apply,

(c) specifying classes of such activities in relation to which the regulations apply, or do not apply,

(d) specifying criteria for determining such activities in relation to which the regulations apply, or do not apply,

(e) requiring relevant persons to prepare and publish a report, at such intervals as may be specified, describing the steps taken by the persons in connection with the carrying out of functions conferred on them by the regulations.

(6) Relevant persons must have regard to any guidance issued by the Scottish Ministers relating to functions conferred on them by regulations under subsection (1).

(7) Regulations under subsection (1) may specify a person in relation to whose decisions participation is to be promoted or facilitated only if the person is—

(a) a part of the Scottish Administration, or

(b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998).

(8) In this section, “specified” means specified in regulations made under subsection (1).
PART 8  
NON-DOMESTIC RATES

94 Schemes for reduction and remission of non-domestic rates

(1) After section 3 of the Local Government (Financial Provisions etc.) (Scotland) Act 1962, insert—

"3A Schemes for reduction and remission of rates

(1) This section applies in relation to rates leviable for the year 2015-16 and any subsequent year.

(2) A rating authority may, in accordance with a scheme made by it for the purposes of this section, reduce or remit any rate leviable by it in respect of lands and heritages.

(3) Any reduction or remission under subsection (2) ceases to have effect at such time as may be determined by the rating authority.

(4) A scheme under subsection (2) may make provision for the rate to be reduced or remitted by reference to—

(a) such categories of lands and heritages as may be specified in the scheme,
(b) such areas as may be so specified,
(c) such activities as may be so specified,
(d) such other matters as may be so specified.

(5) Any reduction or remission under subsection (2) ceases to have effect on a change in the occupation of the lands and heritages in respect of which it was granted.

(6) Before exercising the power conferred by subsection (2), or amending a scheme made under that subsection, the rating authority must have regard to the authority’s expenditure, income and the interests of persons liable to pay council tax set by the authority.”.

(2) In Schedule 12 to the Local Government Finance Act 1992 (payments to local authorities by the Scottish Ministers), in paragraph 10(3)(a)—

(a) in sub-paragraph (iii), after “Provisions” insert “etc.”, and

(b) after that sub-paragraph insert—

“(iiiia)section 3A (schemes for reduction and remission of rates) of that Act;”.

(3) In paragraph 2 of Schedule 1 (rules for the calculation of non-domestic rating contributions) to the Non-Domestic Rating Contributions (Scotland) Regulations 1996 (S.I. 1996/3070), in sub-paragraph (c), after “section” insert “3A or”.

(4) Paragraph 10(4) of Schedule 12 to the Local Government Finance Act 1992 does not apply in relation to the amendment made by subsection (3).
PART 9

GENERAL

95 Guidance under Parts 2 and 6: publication
The Scottish Ministers must publish, in such manner as they think fit, any guidance issued by them relating to Part 2 or Part 6.

96 Subordinate legislation
(1) Any power of the Scottish Ministers to make an order or regulations under this Act includes a power to make—
   (a) different provision for different purposes,
   (b) incidental, supplementary, consequential, transitional or transitory provision or savings.
(2) An order under—
   (a) section 16(2) or (3), 51(2) or (3), 58(2)(c) or 72(4) or (5), or
   (b) section 97(1) containing provisions which add to, replace or omit any part of the text of an Act,
   is subject to the affirmative procedure.
(3) Regulations under section 4(6), 8(3), 12(1) or 93A are subject to the affirmative procedure.
(4) Any other orders and regulations under this Act are subject to the negative procedure.
(5) This section does not apply to—
   (za) regulations under section 1(1),
   (a) regulations under section 73(1), or
   (b) orders under section 99(2).

97 Ancillary provision
(1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitional or transitory provision or savings as they consider necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
(2) An order under this section may modify any enactment (including this Act), instrument or document.

98 Minor and consequential amendments and repeals
(1) Schedule 4 contains minor amendments and amendments consequential on the provisions of this Act.
(2) The enactments mentioned in the first column of schedule 5 (which include enactments that are spent) are repealed to the extent set out in the second column.
99 Commencement

(1) This section, sections 95 to 97 and section 100 come into force on the day after Royal Assent.

(2) The remaining provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may include transitional or transitory provision or savings.

100 Short title

The short title of this Act is the Community Empowerment (Scotland) Act 2015.
SCHEDULE 1
(introduced by section 4(1))

COMMUNITY PLANNING PARTNERS

The board of management of a regional college designated by order under section 7A of the Further and Higher Education (Scotland) Act 2005 which is situated in the area of the local authority

The chief constable of the Police Service of Scotland

The Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978 whose area includes, or is the same as, the area of the local authority

Highlands and Islands Enterprise where the area within which, or in relation to which, it exercises functions in accordance with section 21(1) of the Enterprise and New Towns (Scotland) Act 1990 includes the whole or part of the area of the local authority

Historic Environment Scotland

Any integration joint board established by virtue of section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014 to which functions of the local authority and the Health Board are delegated

A National Park authority, established by virtue of a designation order under section 6 of the National Parks (Scotland) Act 2000, for a Park whose area includes the whole or part of the area of the local authority

A regional strategic body specified in schedule 2A to the Further and Higher Education (Scotland) Act 2005 which is situated in the area of the local authority

Scottish Enterprise

The Scottish Environment Protection Agency

The Scottish Fire and Rescue Service

Scottish Natural Heritage

The Scottish Sports Council

The Skills Development Scotland Co. Limited

A regional Transport Partnership established by virtue of section 1(1)(b) of the Transport (Scotland) Act 2005 whose region includes, or is the same as, the area of the local authority

VisitScotland

SCHEDULE 2
(introduced by section 16(1))

PUBLIC SERVICE AUTHORITIES

The board of management of a college of further education (those expressions having the same meanings as in section 36(1) of the Further and Higher Education (Scotland) Act 1992)

A Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978
Highlands and Islands Enterprise
A local authority
A National Park authority established by virtue of a designation order under section 6 of the National Parks (Scotland) Act 2000

The Police Service of Scotland

Scottish Enterprise

The Scottish Environment Protection Agency

The Scottish Fire and Rescue Service

Scottish Natural Heritage

A regional Transport Partnership established by virtue of section 1(1)(b) of the Transport (Scotland) Act 2005

SCHEDULE 3
(introduced by section 51(1))

RELEVANT AUTHORITIES

The board of management of a college of further education (those expressions having the same meanings as in section 36(1) of the Further and Higher Education (Scotland) Act 1992)

The British Waterways Board

The Crofting Commission

A Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978

Highlands and Islands Enterprise
A local authority

A National Park authority established by virtue of a designation order under section 6 of the National Parks (Scotland) Act 2000

The Scottish Court Service

Scottish Enterprise

The Scottish Environment Protection Agency

The Scottish Fire and Rescue Service

The Scottish Ministers

Scottish Natural Heritage

The Scottish Police Authority

Scottish Water

A Special Health Board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978

A regional Transport Partnership established by virtue of section 1(1)(b) of the Transport (Scotland) Act 2005
MINOR AND CONSEQUENTIAL AMENDMENTS

Small Landholders (Scotland) Act 1911

A1 In section 26 of the Small Landholders (Scotland) Act 1911 (supplementary provisions and restrictions), in subsection (3)(e), for “the Allotments (Scotland) Act, 1892, or the Local Government (Scotland) Act, 1894” substitute “Part 7 of the Community Empowerment (Scotland) Act 2015”.

Compensation (Defence) Act 1939

A2 In section 18 of the Compensation (Defence) Act 1939 (application to Scotland and Northern Ireland), in subsection (1), for “the Allotments Act, 1922 shall be construed as a reference to the Allotments (Scotland) Act, 1922” substitute “allotment gardens within the meaning of the Allotments Act, 1922 is omitted”.

Agriculture (Scotland) Act 1948

A3(1) Section 86 of the Agriculture (Scotland) Act 1948 is amended as follows.

(2) In the proviso to subsection (1), in paragraph (a), for “allotment gardens” substitute “allotments”.

(3) In subsection (3), for the definition of “allotment garden” substitute—

““allotment” has the meaning given by section 68 of the Community Empowerment (Scotland) Act 2015;”.

Opencast Coal Act 1958

A4(1) The Opencast Coal Act 1958 is amended as follows.

(2) In section 41 (provisions as to allotment gardens and other allotments), in subsection (3), for the words from “the”, where it third occurs, to the end substitute “section 68 of the Community Empowerment (Scotland) Act 2015”.

(3) In the Eighth Schedule (tenancies of allotment gardens and other allotments), in paragraph 10—

(a) for sub-paragraph (a) substitute—

“(a) paragraph 1 applies as if sub-paragraph (2) were omitted;”,

(b) for sub-paragraph (b) substitute—

“(b) sub-paragraph (1) of paragraph 3 applies as if for “the Act of 1908 or the Act of 1922 or the Allotments Act, 1950, or by virtue of any other enactment relating to allotments” there were substituted “Part 7 of the Community Empowerment (Scotland) Act 2015”;”,

(c) for sub-paragraph (c) substitute—

“(c) sub-paragraph (2) of paragraph 3 applies as if—
(i) for “any of the enactments mentioned in the next following sub-
paragraph” there were substituted “Part 7 of the Community
Empowerment (Scotland) Act 2015 (but excluding any
compensation for disturbance),”,

(ii) “garden” were omitted, and

(iii) for “subsection (2) of section two of the Act of 1922” there were
substituted “section 84(2) of the Community Empowerment
(Scotland) Act 2015;”,

(d) in sub-paragraph (e), for the words from “for” to the end substitute “any reference
to the Allotments Act, 1950 is to be read as a reference to Part 7 of the
Community Empowerment (Scotland) Act 2015”, and

(e) for sub-paragraph (f) substitute—

“(f) sub-paragraph (1) of paragraph 5 applies as if for “section four or section
five of the Act of 1922, or of subsection (4) of section forty-seven of the
Act of 1908” there were substituted “section 88 of the Community
Empowerment (Scotland) Act 2015”;”.

**Local Government (Scotland) Act 1973**

A5 In the Local Government (Scotland) Act 1973—

(a) in section 99 (general duties of auditors), in subsection (1)(c), for “sections 15 to
17 (community planning) of the Local Government in Scotland Act 2003 (asp 1)” substitute “Part 2 of the Community Empowerment (Scotland) Act 2015 (community planning)”, and

(b) in section 102 (reports to Commission by Controller of Audit), in subsection
(1)(c)—

(i) the words “and Part 2 (community planning)” are repealed, and

(ii) at the end insert “and Part 2 of the Community Empowerment (Scotland)
Act 2015 (community planning)”.

**Local Government Act 1992**

1 In section 1 of the Local Government Act 1992 (publication of information as to
standards of performance), in subsection (1)(b), for the words “Part 2 (community
planning) of the Local Government in Scotland Act 2003 (asp 1)” substitute “Part 2 (community planning) of the Community Empowerment (Scotland) Act 2015”.

**Local Government in Scotland Act 2003**

1A In section 57 of the Local Government in Scotland Act 2003 (power to modify
enactments), in subsection (2)(a), for “, 13(1) or 15(1)” substitute “or 13(1)”.

**Land Reform (Scotland) Act 2003**

2 (1) The Land Reform (Scotland) Act 2003 is amended as follows.

(2) In section 37 (registration of interest in land)—

(za) in subsection (4)(a), after “sought” insert “to be registered”,

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Schedule 4—Minor and consequential amendments
(a) after subsection (7)(b) insert “and
   (c) any notice sent under section 44A,”,
(b) in subsection (11)(c), for the words “not registrable land” substitute “excluded land as defined in section 33(2) above”,
(c) in subsection (18), after paragraph (a), insert—
   “(aa) where the decision is that such an interest is to be entered in the Register, contain information about the duties imposed under section 44A,”,
(d) in subsection (19), after “above” insert “, including that subsection as modified by section 39(2)(b) below,”.

(3) In section 51 (exercise of right to buy: approval of community and consent of Ministers)—
   (a) in subsection (2)(a)(i), the words “conducted by the community body” are repealed, and
   (b) in subsection (6)—
      (i) in paragraph (a), after “receipt” insert “by Ministers”,
      (ii) in that paragraph, the words “conducted by the body” are repealed, and
      (iii) in paragraph (b), the words “conducted by those bodies” are repealed.

(4) In section 52 (ballot procedure)
   (a) in subsection (3)—
      (i) for the words “community body which conducts a ballot” substitute “ballotter appointed under section 51A”,
      (ii) after “notify” insert “Ministers, the community body, the owner of the land to which the ballot relates and any creditor in a standard security with a right to sell the land of”,
      (iii) the word “and” immediately following paragraph (c) is repealed,
      (iv) after paragraph (d) insert—
         “(e) the wording of that proposition, and
         (f) any information provided by the ballotter to persons eligible to vote in the ballot.”,
   (b) after subsection (4) insert—
      “(5) Within 7 days of receiving notification under subsection (3) above, Ministers may—
         (a) require the ballotter to provide such information relating to the ballot as they think fit,
         (b) require the community body to provide such information relating to any consultation with those eligible to vote in the ballot undertaken during the period in which the ballot was carried out as Ministers think fit.
   (6) The validity of anything done under this Part of this Act is not affected by any failure by a ballotter to comply with the time limit specified in subsection (4).”.
(5) In section 98 (general and supplementary provisions)—

(a) in subsection (5)—

(i) for “78 or 94” substitute “72(4), 78, 94 or 97E(4)”, and

(ii) after “above” insert “or regulations made under section 34(A1)(b), (4A) or (4B), 38(2B), 71(A1)(b), (4A) or (4B), 97C(2), (3) or (4), 97D(4A) or (4B), 97F(6) or 97N(1) or (3) above”,

(aa) after subsection (5) insert—

“(5A) In making any decision under Part 2, 3 or 3A, Ministers are to have regards to the International Covenant on Economic, Social and Cultural Rights (adopted and opened to signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966).”,

(ab) after subsection (5) insert—

“(5B) Where a community body is seeking to acquire land under Part 2, 3 or 3A, Ministers may, on being requested to do so by the owner of the land or by the community body, take such steps as Ministers consider appropriate for the purpose of arranging, or facilitating the arrangement of, mediation with regard to the proposed acquisition.”, and

(b) in subsection (8), for “and 52(3)” substitute “, 52(3), 97G(7) and (9) and 97J(4)”.

(6) After section 98 insert—

“98A Special application of certain provisions of Parts 2 and 3A

(1) This section applies to any provision of Part 2 or 3A of this Act which includes the words “before the end of the period of 7 days”, “within 7 days” or “within the period of 7 days”.

(2) Ministers may determine, where they are satisfied that there is a good and sufficient reason for doing so, that in the application of the provision to a particular case, the 7 days in question are to be extended to 14 days.

(3) Where Ministers make a determination under subsection (2), they must issue their determination in writing accompanied by a statement of their reasons for being satisfied that there are good and sufficient reasons to extend the period.”.

3 In the Fire (Scotland) Act 2005—

(a) in section 41E (local fire and rescue plans), in subsection (6), for “Local Government in Scotland Act 2003 (asp 1)” substitute “Community Empowerment (Scotland) Act 2015”, and

(b) in section 41J (Local Senior Officers), in subsection (2)(c), for “section 16(1)(d) of the Local Government in Scotland 2003 (asp 1) (duty to participate in community planning)” substitute “Part 2 of the Community Empowerment (Scotland) Act 2015 (community planning)”.

4 In the Police and Fire Reform (Scotland) Act 2012—
(a) in section 46 (duty to participate in community planning), in subsection (2), for “section 16(1)(e) of the Local Government in Scotland Act 2003” substitute “Part 2 of the Community Empowerment (Scotland) Act 2015”, and

(b) in section 47 (local police plans), in subsection (11), for “Local Government in Scotland Act 2003 (asp 1)” substitute “Community Empowerment (Scotland) Act 2015”.

SCHEDULE 5
(introduced by section 98(2))

REPEALS

<table>
<thead>
<tr>
<th>Enactment</th>
<th>Extent of repeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allotments (Scotland) Act 1892</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Land Settlement (Scotland) Act 1919</td>
<td>Part 3 and paragraph 6 of the First Schedule.</td>
</tr>
<tr>
<td>Allotments (Scotland) Act 1922</td>
<td>The whole Act.</td>
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<tr>
<td>Agricultural Land (Utilisation) Act 1931</td>
<td>Section 24(j).</td>
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<td>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947</td>
<td>Section 1(4)(b).</td>
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<tr>
<td>Allotments (Scotland) Act 1950</td>
<td>The whole Act.</td>
</tr>
<tr>
<td>Opencast Coal Act 1958</td>
<td>In the Eighth Schedule, in paragraph 10(h), the words from “but” to the end.</td>
</tr>
<tr>
<td>Town and Country Planning (Scotland) Act 1959</td>
<td>Section 26.</td>
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<tr>
<td>Local Government (Scotland) Act 1973</td>
<td>Section 73(2) and (3).</td>
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<tr>
<td>Local Government etc. (Scotland) Act 1994</td>
<td>In Schedule 27, paragraphs 16 to 20, 54 and 58 to 60.</td>
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<tr>
<td>Local Government in Scotland Act 2003</td>
<td>In Schedule 13, paragraphs 6, 12 and 35.</td>
</tr>
<tr>
<td>Land Reform (Scotland) Act 2003</td>
<td>Part 2.</td>
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<td></td>
<td>Section 57(2)(b).</td>
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<td></td>
<td>In section 38(1), paragraph (a) and, in paragraph (b), the word “substantial” where it appears in each of sub-paragraphs (i) and</td>
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<tr>
<td>Enactment</td>
<td>Extent of repeal</td>
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<td>(ii).</td>
<td>Section 40(4)(g)(iv).</td>
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<td></td>
<td>In section 50, subsection (2)(b).</td>
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<td>5</td>
<td>In section 51, subsection (3)(a).</td>
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<td></td>
<td>In section 52, subsection (2).</td>
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<td></td>
<td>In section 61(3), the words from “or” to “person”.</td>
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<tr>
<td>10</td>
<td>In section 62, subsections (5) and (6) and, in subsection (7), the words “within 4 weeks of the hearing of the appeal”.</td>
</tr>
<tr>
<td></td>
<td>In section 98(5), the word “33”.</td>
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</tbody>
</table>
Community Empowerment (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about national outcomes; to confer functions on certain persons in relation to services provided by, and assets of, certain public bodies; to amend Parts 2 and 3 of the Land Reform (Scotland) Act 2003; to enable certain bodies to buy abandoned or neglected land; to make provision for registers of common good property and about disposal and use of such property; to restate and amend the law on allotments; to enable local authorities to reduce or remit non-domestic rates; and for connected purposes.

Introduced by: John Swinney
Supported by: Derek Mackay, Paul Wheelhouse
On: 11 June 2014
Bill type: Government Bill
COMMUNITY EMPOWERMENT (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these Revised Explanatory Notes are published to accompany the Community Empowerment (Scotland) Bill (which was introduced in the Scottish Parliament on 11 June 2014) as amended at Stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

OVERVIEW

4. The Bill reflects the policy principles of subsidiarity, community empowerment and improving outcomes and provides a framework which will:

- empower community bodies through the ownership of land and buildings and strengthening their voices in the decisions that matter to them; and
- support an increase in the pace and scale of public service reform by cementing the focus on achieving outcomes and improving the process of community planning.

5. The Bill comprises 12 Parts with 5 schedules:

- **Part 1** places a duty on the Scottish Ministers to prescribe a set of national outcomes for Scotland, which builds on the “Scotland Performs” framework.
- **Part 2** places community planning partnerships on a statutory footing and imposes duties on them around the planning and delivery of local outcomes. Schedule 1 lists
the bodies which are to be community planning partners. This Part replaces provision in Part 2 of the Local Government in Scotland Act 2003, which is repealed by schedule 5.

- **Part 3** provides a mechanism for communities to have a more proactive role in having their voices heard in how services are planned and delivered. Schedule 2 lists “public service authorities” to whom participation requests can be made.

- **Part 4** amends Part 2 of the Land Reform (Scotland) Act 2003, extending the community right to buy to all of Scotland, and introduces a new Part 3A to that Act to make provision for community bodies to purchase neglected and abandoned land where the owner is not willing to sell that land. It also makes changes to the procedures set out in Part 3 of that Act, relating to the crofting community right to buy.

- **Part 5** provides community bodies a right to request to purchase, lease, manage or use land and buildings belonging to local authorities, certain Scottish public bodies or the Scottish Ministers. The list of “relevant authorities” affected is given in schedule 3.

- **Part 5A** amends the meaning of “community body” in the Forestry Act 1967, in relation to the delegation of the Forestry Commissioners’ functions.

- **Part 5B** introduces a mechanism for supporters’ trusts to have a right to buy football clubs within the Scottish Professional Football League. The provisions are modelled on those of Part 2 of the Land Reform (Scotland) Act 2003, but they allow for a supporters’ trust to exercise the right to buy at any time after it has registered an interest.

- **Part 6** places a statutory duty on local authorities to establish and maintain a register of all property held by them for the common good. It also requires local authorities to publish their proposals and consult community bodies before disposing of or changing the use of common good assets.

- **Part 7** updates and simplifies legislation on allotments. It requires local authorities to take reasonable steps to provide more allotments if waiting lists exceed certain trigger points and ensures appropriate protection for local authorities and plot holders. This replaces the provisions of the Allotments (Scotland) Acts 1892, 1922 and 1950, which are repealed in their entirety by schedule 5, and some provisions of the Land Settlement (Scotland) Act 1919.

- **Part 7A** provides a power for the Scottish Ministers to make regulations to promote or facilitate participation in public decision-making, including in decisions on the allocation of resources.

- **Part 8** provides for a new power which will allow councils to create and fund their own localised business rate relief schemes to better reflect local needs and support communities. It does this by inserting a new section into the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

- **Part 9** makes general provisions in relation to the Bill, including provision about subordinate legislation, ancillary provision and commencement. Schedule 4 makes minor and consequential amendments to other legislation, and schedule 5 provides for repeals.
COMMENTARY ON SECTIONS

Part 1: National outcomes

6. The Bill places a duty on the Scottish Ministers to prescribe a set of national outcomes for Scotland. They must also consult on and then lay a report before the Scottish Parliament every two years outlining progress towards those outcomes. These duties do not require governments to use a particular model of purpose, targets, outcomes and indicators. They require national outcomes to be determined, but there is flexibility as to how these may be presented and measured.

7. The Bill now contains two separate processes for setting and reviewing the national outcomes. In particular, two public consultations and two parliamentary procedures are required when the national outcomes are first set and every time they are changed.

National outcomes

8. Subsection (1) of section 1 provides that the Scottish Ministers must prescribe national outcomes by way of regulations. National outcomes are outcomes for Scotland that result from or are contributed to by the devolved functions set out in subsection (1B) carried out by the persons set out in subsection (1A). The provisions are wide to allow the inclusion of all organisations that could be considered as “public bodies”, and other organisations that carry out public functions, such as private or third sector bodies who are contracted to deliver public services. The persons included in the category “Scottish public authority” include the Scottish Ministers and local authorities. Subsection (1C) makes it clear that the Scottish Parliament and the Scottish Parliamentary Corporate Body are not subject to the duty to have regard to national outcomes in carrying out their functions.

9. Subsections (1D) to (3A) set out the first of the two procedures which must be followed in relation to setting the national outcomes. The first procedure is based on the national outcomes being determined by the Scottish Ministers. The second procedure is based on the national outcomes being prescribed by regulations.

10. Subsection (1D) requires that when determining the national outcomes, the Scottish Ministers must have regard to the reduction of inequalities of outcomes which result from socio-economic disadvantage.

11. Subsection (2)(a) requires the Scottish Ministers to consult “such persons as they consider appropriate” before determining the national outcomes. No list is specified, but since the national outcomes will have an impact on the devolved functions of all public bodies, it is expected that Ministers will want to consult widely. Having consulted such persons as they consider appropriate, subsection (2)(b) requires the Scottish Ministers to prepare draft national outcomes. Subsection (2)(c) requires the Scottish Ministers to then consult the Scottish Parliament on the draft national outcomes for a period of 40 days (as set out in subsection (3A)). Rule 17.5 of the Scottish Parliament’s Standing Orders will apply to the consultation. Subsection (3) provides that the national outcomes cannot be published until the 40 day period for consulting the Scottish Parliament has elapsed.
Subsection (4) imposes a duty on those persons set out in subsection (1A) to “have regard to” the national outcomes in carrying out the devolved functions mentioned in subsection (1B). “Have regard to” means that all of these bodies should be consistent with the national outcomes in what they are trying to achieve in carrying out their devolved functions. The duty in subsection (4), however, does not apply to the bodies mentioned in subsection (1C).

**Regulations under section 1(1): procedure**

Subsection (1) provides that a draft statutory instrument containing the draft national outcomes must be laid before, and approved by, the Scottish Parliament before the regulations are made by the Scottish Ministers. This is equivalent to the affirmative Parliamentary procedure for Scottish statutory instruments.

Subsections (2) to (4) impose an additional stage upon the process normally required by affirmative procedure, so that an enhanced or “super-affirmative” procedure applies. Subsection (2) provides a list of individuals and groups who must be consulted for a period of 60 days before the draft regulations are laid before the Scottish Parliament for approval. For the purposes of this consultation, the Scottish Ministers are required to publish and lay a copy of the proposed draft regulations in the Scottish Parliament. Provision in relation to the 60 day consultation period, including on how it is to be calculated, is contained in subsections (3)(c) and (4).

Subsection (5) requires the Scottish Ministers to provide the Scottish Parliament with a document giving details of the consultation process when laying the draft regulations before the Parliament.

**Review of national outcomes**

Subsection (1) of section 2 provides that the Scottish Ministers may review the national outcomes at any time. This is subject to subsection (2) which requires that, once the Scottish Ministers have published national outcomes, they must begin to review them before the expiry of 5 years from publication at a minimum. It will be for the Scottish Ministers to decide how frequently within that 5 year period they wish to review the national outcomes.

Subsection (1) is also subject to subsection (3) which provides that the Scottish Ministers must begin further reviews of the national outcomes every 5 years at a minimum from the date of publication of revised national outcomes or republished national outcomes. It is also subject to subsection (3A) which provides that in any review of the national outcomes the Scottish Ministers must consult such persons as they consider appropriate.

Subsection (4) provides that the Scottish Ministers may revise the national outcomes following a review. Subsection (4)(zb) provides that if after a review revisions are made to the national outcomes, the Scottish Ministers must then consult the Scottish Parliament for a period of 40 days on these proposed revisions. It also provides that if after a review has taken place no
revisions are proposed, the Scottish Parliament will still be consulted for the 40 day period on the existing national outcomes. Rule 17.5 of the Scottish Parliament’s Standing Orders will apply to the consultation, and subsection (8) provides detail on how the 40 day period is to be calculated.

20. After the consultation period, the national outcomes must then either be published as revised or, where no changes are made, they must be republished. In either case, this will mark the beginning of the 5 year period under subsection (3).

21. The effect of sections 1(1) and 1A is that a further procedure is required, in addition to that set out in section 2, before the national outcomes could in fact be revised. Any changes to the national outcomes prescribed by regulations under section 1(1) would need to be made by regulations subject to the enhanced affirmative procedure set out at section 1A. Consequently, two public consultations and two parliamentary processes must be carried out in order to revise the national outcomes.

Reports

22. Subsection (1) of section 3 requires that the Scottish Ministers must lay before the Scottish Parliament a report on progress towards achieving the national outcomes, whether that is positive or negative progress, at the end of each 2 year period (defined in subsection (6) as beginning with the day on which section 3 comes into force). The report must include information on progress since the previous report (subsection (2)).

23. Subsection (4) provides that in preparing the report, the Scottish Ministers must consult with a list of individuals and groups.

24. Subsection (5) provides that as soon as practicable after laying the report before the Scottish Parliament, the Scottish Ministers must publish the report in such manner as they consider appropriate.

Interpretation of Part 1

25. Section 3A contains definitions for “community”, “postcode unit”, “third sector bodies” and “third sector interface” for the purposes of Part 1 of the Bill. These terms are used in relation to people who must be consulted. “Community” is defined by reference to persons who are resident or entitled to vote in a particular area.

Part 2: Community planning

26. This Part replaces provisions on community planning in Part 2 of the Local Government in Scotland Act 2003. It provides a statutory basis for community planning partnerships, and places duties on them around the planning and achievement of local outcomes. It also focuses responsibilities on community planning partners to support each partnership to fulfil its duties.

Community planning

27. Section 4 defines “community planning”, “community planning partners” and “community planning partnerships”. Community planning is planning that is carried out for the
This document relates to the Community Empowerment (Scotland) Bill as amended at Stage 2
(SP Bill 52A)

purpose of improving the achievement of outcomes resulting from, or contributed to by, the
provision of services delivered by or on behalf of the community planning partners. Subsection
(3) states that these local outcomes must be consistent with national outcomes which the Scottish
Ministers determine under section 1(1), or as revised under section 2(4)(a). The persons listed in
schedule 1, together with local authorities, are the community planning partners. The
community planning partnership comprises these partners when they participate together in
community planning.

28. Subsection (5) requires a community planning partnership to consider which community
bodies are likely to be able to contribute to community planning, having regard in particular to
which of those bodies represent the interests of persons who experience inequalities of outcome
which result from socio-economic disadvantage. The community planning partnership must
make all reasonable efforts to secure the participation of appropriate community bodies in
community planning, and to take steps to enable them to participate to the extent they wish to.

29. Subsection (6) enables the Scottish Ministers to amend the list of community planning
partners in schedule 1 by regulations. Subsection (7) states that the regulations may provide that
a community planning partner may participate in community planning for a specific purpose,
where participation is required in relation to some of that partner’s functions but not others.

Socio-economic inequalities

30. Section 4A requires that community planning partnerships when carrying out their
functions do so with a view to reducing inequalities of outcome which result from socio-
économic disadvantage, unless the partnership consider it inappropriate to do so. Whilst
community planning partnerships must act with a view to reducing inequalities this should not
preclude them taking actions which improve outcomes without of themselves reducing
inequalities.

Local outcomes improvement plan

31. Under section 5 each community planning partnership must prepare a local outcomes
improvement plan. To that end the community planning partnership must identify the local
outcomes to which it is to give priority with a view to improving the achievement of the
outcomes. The plan will provide a description of the improvement in local outcomes that is
sought and the timeframe for achieving the improvement (subsection (2)). Subsection (3)
requires the partnership to consult such community bodies and other persons as it considers
appropriate when it prepares its plan. Subsection (4) sets out what a partnership must take
account of before it publishes its final plan. This includes representations it receives as a result
of the consultations with community bodies and other persons carried out in accordance with
subsection (3). The partnership must also take account of the needs and circumstances of people
and communities in the area.

Local outcomes improvement plan: review

32. Section 6 requires that the community planning partnership must monitor progress in
improving the achievement of local outcomes referred to in its local outcome improvement plan.
This document relates to the Community Empowerment (Scotland) Bill as amended at Stage 2
(SP Bill 52A)

It must keep the plan under review to determine whether the plan itself is still appropriate and must publish any revised plan which results from such a review.

**Local outcomes improvement plan: progress report**

33. Under section 7, each partnership must prepare and publish an annual report of progress, setting out its assessment of whether there has been any improvement in the achievement of local outcomes referred to in its local outcome improvement plan, the extent to which the community planning partnership has participated with community bodies, and the extent to which that participation has been effective in contributing to community planning. The period which these reports must cover is the year beginning on 1 April, unless Ministers specify another date for the year to start in a direction to the partnership.

**Governance**

34. Section 8 places governance responsibilities on specified community planning partners for the purpose of effective community planning. Under subsection (1)(a) the specified partners must facilitate community planning and under subsection (1)(b) the specified partners must take reasonable steps to ensure that the partnership operates efficiently and effectively. Subsection (2) lists the persons to whom these governance duties apply. Subsection (3) enables Ministers to modify this list by regulations.

**Duties on community planning partners**

35. Subsections (2) to (5) of section 9 describe how the community planning partners, listed in schedule 1, must participate in community planning. These responsibilities include cooperating with other community planning partners in carrying out community planning (subsection (2)) and taking account of the published local outcomes improvement plan as part of its work (subsection (5)). They also include committing appropriate resources to the achievement of local outcomes set out in that plan and for the purpose of securing the participation of relevant community bodies in community planning (subsection (3)). Each community planning partner must provide the partnership with such information about the local outcomes in the plan which the partnership may request (subsection (4)). Section 9(1) enables a partnership to agree with a partner a reduction in the extent to which that partner is expected to comply with its duties to that partnership.

**Guidance by Scottish Ministers**

36. Section 10 provides that each community planning partnership and community planning partner must have regard to any guidance issued by the Scottish Ministers about the carrying out of their community planning functions. The Scottish Ministers must consult such persons as they think fit before they issue any such guidance.

**Duty to promote community planning**

37. Section 11 requires the Scottish Ministers to promote community planning when discharging any function which might affect community planning, or a community planning partner. It reproduces a provision previously in section 16(8) of the Local Government in Scotland Act 2003.
Establishment of corporate bodies

38. Section 19 of the Local Government in Scotland Act 2003 gives the Scottish Ministers a power to establish corporate bodies to co-ordinate community planning. As a body corporate, a community planning partnership could, for example, hold its own budgets and assets and employ its own staff.

39. Section 12 of the Bill retains the option of incorporation in appropriate cases, by replacing the provisions of section 19 of the 2003 Act. Subsection (1) allows the Scottish Ministers to establish a body corporate by regulations, following an application made jointly by each person mentioned in section 8(2). Any application must include information about the matters which are listed in subsection (2). Subsection (3) lists matters about the body corporate which the Scottish Ministers can specify in any regulations they make. Subsection (4) allows the regulations to provide that the corporate body may discharge a function, even where another enactment specifies that as the function of another body or prevents the carrying out of that function by the corporate body.

Part 3: Participation requests

40. This Part sets out how a “community participation body” can make a request to a “public service authority” to participate in a process with a view to improving an outcome of a public service, and how public service authorities are to deal with such requests. The Bill provides the main structure of the approach, and there are powers for the Scottish Ministers to make regulations adding more detail about procedures to be followed, timescales, and information to be provided or published. There is also a requirement (in section 25B) for public service authorities to have regard to guidance in carrying out their functions under this Part.

Community controlled body

41. Section 14 defines a “community-controlled body”. This can be a corporate body or unincorporated, but it must have a written constitution which:

- defines the community to which the body relates;
- provides membership rules which ensure the body is open to and controlled by members of that community, and that the majority of the members of the body are members of that community;
- sets out aims and purposes which include the promotion of a benefit for that community; and
- provides that any surplus funds or assets are to be used for the benefit of that community.

There are no restrictions on how a community may be defined for this purpose: it may be based, for example, on geographical boundaries, common interests, or shared characteristics of its members (such as ethnic background, disability, religion, etc.).
Community participation body

42. Section 15 defines a “community participation body”, which is the type of body which can make a participation request under section 17. A community participation body may be a community-controlled body, a community council, or a body designated by the Scottish Ministers. The Scottish Ministers may designate individual bodies as community participation bodies, or may designate a whole class of bodies, so that any body of that type will qualify as a community participation body. Subsection (3) states that where a trust is designated, the designated body will be the trustees, since a trust is not incorporated.

Public service authority

43. Schedule 2, introduced by section 16, lists the bodies to which a participation request can be made, to be known as “public service authorities”. This includes local authorities, Health Boards, and certain other Scottish public bodies. The public bodies selected are involved in providing or supporting local services. The list does not include, for example, boards which advise Ministers or which regulate certain professions.

44. The remainder of section 16 gives the Scottish Ministers a power to remove or amend any entry on the list, or to make an order designating other bodies or classes of bodies as public service authorities. Subsection (4) provides that persons may only be designated if they fall into the following categories:

- part of the Scottish Administration (which has the meaning given in sections 126(6) to (8) of the Scotland Act 1998);
- “Scottish public authorities with mixed functions or no reserved functions under the Scotland Act 1998” – this means that UK Government Departments and public bodies that deal with matters reserved to the UK Government cannot be included;
- companies wholly-owned by public service authorities.

Under subsection (9), when adding a person to the list, the Scottish Ministers may exclude some of the services they provide from being subject to participation requests.

Participation requests and the outcome improvement process

45. Section 17 provides that a community participation body, or two or more bodies jointly, may make a participation request to a public service authority. This is a request to take part in a process established by the authority with a view to improving an outcome of a public service. Subsection (2) says that the request must focus on an outcome relating to a service provided by that authority, and the community participation body must explain why it considers it should be involved, what it can bring to the process (for example, members’ experience as users of the service), and what improvement it expects might be achieved as a result. Subsection (3A) provides that the request may also ask that one or more other public service authorities should participate in the outcome improvement process, in addition to the authority to which the request is made.

46. Section 18 gives the Scottish Ministers powers to make regulations setting out further detail on participation requests. Regulations can, in particular, cover how requests are to be made, how public service authorities should deal with them, additional information to be
provided in connection with requests, and ways in which public service authorities are to promote the use of participation requests and support communities to make them and participate in outcome improvement processes.

47. Section 19 requires a public service authority to agree to or refuse any participation request it receives, and sets out in subsections (3) to (5) how the authority must make that decision. In addition to the reasons provided in the request, the authority must consider whether agreeing to the request would be likely to promote or improve economic development, regeneration, public health, social or environmental wellbeing, to reduce inequalities that arise from socio-economic disadvantage or increase participation of people experiencing such disadvantage, and any other benefits or matters the authority considers relevant. The authority must also take into account its responsibilities in relation to equal opportunities. It must agree to the request unless there are reasonable grounds for refusal. Subsection (6) requires the authority to give notice of its decision to the community participation body within a prescribed period, and if it refuses the request, it must give reasons for that refusal.

48. When a public service authority agrees to a participation request, the decision notice sent to the community participation body must, under section 20, describe how the outcome improvement process will work, how the body is expected to take part in the process, and whether and how any other person (including another body or another authority) will be involved. The authority may already have established a process with which the community participation body can join in, in which case the authority must say what stage the process has reached. If a new process is to be established as a result of the request, the community participation body has 28 days to comment on that new process, under section 21(2) and (3). The public service authority has a further 28 days to provide final details of that process, taking those representations into account, and must then (under section 23) establish the outcome improvement process within 90 days, and maintain it. The authority must publish information about the process if required to do so by regulations made under section 21(6). Section 24 provides that the public service authority may modify the process, following consultation with the community participation body. If it does so, it must publish information about the modification, if required to do so by regulations.

49. Section 22 allows a public service authority to decline to consider a participation request, if a new request is made within 2 years about the same outcome relating to the same service. The new request may be declined whether it is made by the same community participation body as the previous request or by a different body.

50. Section 24A provides that a community participation body may appeal to the Scottish Ministers if a participation request is refused, or if the body has significant concerns about the outcome improvement process described in the decision notice, whether this is a pre-existing process or the proposed process after the community participation body has made representations under section 21. The Scottish Ministers may make regulations about the procedures and time limits for such appeals. The Scottish Ministers may dismiss the appeal, may direct the public service authority to agree the request, or may direct the authority to make specified alterations to the decision notice.
51. When an outcome improvement process has been completed, section 25 requires the public service authority to publish a report on the process. The report must summarise the outcome of the process, including whether the outcome to which it related has been improved, and describe how the community participation body that made the request influenced the process and the outcomes. It must also explain how the authority will keep the community participation body and others informed about changes in the outcomes of the process and any other matters relating to the outcomes. In preparing the report, the public service authority must seek the views of the community participation body which made the request, and any others that participated in the outcome improvement process. Subsection (4) gives the Scottish Ministers power to make regulations setting out further detail about these reports and the information they are to contain.

52. Section 25A requires a public service authority to publish an annual report on the number of participation request received and their outcomes, and any action taken by the authority to promote the use of participation requests and support community bodies to make them.

Part 4: Community right to buy land (sections 27 to 47 – modifications of Part 2 of Land Reform (Scotland) Act 2003)

Introduction


54. Part 2 of the 2003 Act provides bodies representing rural communities with rights to register an interest in land with which the community has a connection. These bodies have a right to purchase that land if the owner is willing to sell it. Part 2 of the 2003 Act sets out the land in respect of which an interest can be registered, and the procedure for registering an interest. It also sets out the circumstances in which the right to buy the land in respect of which an interest is registered arises and the procedures for exercising it (including procedures for valuation of the land, for appeals and for compensation).

Nature of land in which community interest may be registered

55. Section 27 of the Bill amends section 33 of the 2003 Act. Section 33 of the 2003 Act sets out the land in which a community body may register an interest. It provides that an interest can be registered in “registrable land”, which is anything other than “excluded land”. “Excluded land” is designated in the Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2009 as land comprising the settlements listed in the order (which are all settlements of over 10,000 people). In this way, the community right to buy under the 2003 Act applies to community bodies representing rural communities.

56. Section 27(1)(a) of the Bill removes references to “registrable land” in section 33(1) of the 2003 Act which means that an interest can be registered in any land other than “excluded land”. As a result, community bodies will be able to register an interest in respect of land across Scotland, irrespective of the size of settlement.

57. Section 27(1)(b) of the Bill removes the power of the Scottish Ministers to define
“excluded land” by order. It amends the definition of “excluded land” in section 33(2) of the 2003 Act to make reference to land consisting of a separate tenement in which an interest cannot be registered if these rights are owned independently of the land.

58. Section 27(1)(d) of the Bill repeals subsections (3) to (7) of section 33 of the 2003 Act. Section 27(1)(c) inserts new subsection (2A) into section 33 of the 2003 Act which reflects the terms of the repealed subsection (6) to provide that a community interest may be registered in salmon fishings and mineral rights (other than rights to oil, coal, gas, gold or silver) which are owned separately from the land to which those interests relate.

**Meaning of “community”**

59. Section 28 of the Bill modifies section 34 of the 2003 Act which defines a community body eligible to register an interest in land. Section 34 of the 2003 Act provides that a community body is a company limited by guarantee that meets certain criteria.

60. Section 28(2) of the Bill inserts subsection (A1) into section 34 of the 2003 Act. This extends the types of body which may be community bodies under Part 2 of the 2003 Act to include Scottish charitable incorporated organisations (“SCIOs”), community benefit societies (“BenComs”) and any other type of body which Ministers specify in regulations. Section 28(2) also confers a power on Ministers to specify in regulations, and subsequently modify, any requirements which must be met by any such type of body.

61. Section 28(3)(c) of the Bill provides an additional requirement that must be satisfied for a company limited by guarantee to be a community body. The company’s articles of association must make provision for the minutes of meetings to be given to a person on request within 28 days of the request being made if that request is reasonable. The articles of association must also allow the community body to withhold information, provided that reasons are given for doing so.

62. Section 28(3)(d) of the Bill amends section 34(1)(h) of the 2003 Act to include reference to “Part 3A community bodies” which are provided for in the new Part 3A of the 2003 Act (inserted by section 48 of the Bill). This means that community bodies eligible to apply to purchase land under the new Part 3A of the 2003 Act are among the alternative bodies to which community bodies under Part 2 of the 2003 Act may pass their assets upon winding up in terms of their articles of association.

63. Section 28(4) of the Bill inserts new subsections (1A) and (1B) into section 34 of the 2003 Act, which set out the provisions that a SCIO or BenCom must include in its constitution or registered rules for it to be a community body and so eligible to apply to register an interest in land under Part 2 of the 2003 Act.

64. Section 28(5) of the Bill amends section 34(2) of the 2003 Act to allow Ministers to disapply the requirement that the articles of association, constitution or registered rules must state that a community body must have a minimum of 10 members.

65. Section 28(6) of the Bill inserts subsection (4A) into section 34 of the 2003 Act. This subsection gives Ministers the power to modify, by way of regulations, the criteria which must...
be met by companies limited by guarantee, SCIOs and BenComs in order to be community bodies under Part 2 of the 2003 Act.

66. Section 28(6) of the Bill also inserts subsection (4B) into section 34 of the 2003 Act. This subsection gives Ministers the power to amend, by way of regulations, subsection (1) and the new subsection (A1) of section 35 of the 2003 Act (inserted by section 29 of the Bill) where Ministers have exercised the power contained in the new subsection (A1)(b) of section 34 of the 2003 Act to extend, by way of regulation, the types of bodies which may be eligible to be community bodies under Part 2 of the 2003 Act. The power contained in subsection (4B) means that the prohibition on a community body modifying its articles of association, memorandum or constitution without the written consent of the Scottish Ministers can be amended to extend to any other kind of constitutive document which may apply to new types of body which may be community bodies as a result of the regulations made by Ministers under the new subsection (A1)(b) of section 34 of the 2003 Act.

67. Section 28(7) of the Bill amends subsection (5) of section 34 of the 2003 Act which provides for the use of postcode units in order to define the community that the community body represents. Section 28(7) of the Bill confers a power on Ministers to make regulations which prescribe other types of area with which a community may define itself.

68. Section 28(8) of the Bill inserts definitions of “community benefit society”, “registered rules” and “Scottish charitable incorporated organisation” into the 2003 Act.

Modification of memorandum, articles of association or constitution

69. Section 29 of the Bill amends section 35 of the 2003 Act which provides that a community body may not modify its memorandum or articles of association without Ministers’ consent whilst they hold a registered interest or own land purchased under Part 2 of the 2003 Act.

70. Section 29(2) of the Bill inserts subsection (A1) into section 35 of the 2003 Act which prohibits a community body from modifying its memorandum, articles of association, constitution or registered rules without the consent of Ministers during a specified period prior to registration of an interest. Section 29(2) of the Bill also inserts subsection (A2) into section 35 of the 2003 Act which provides that the specified period starts with the day a community body submits an application for a registered interest in land and ends with the registration of interest in land, rejection of the application to register land, Ministers declining to consider the application under section 39(5) of the 2003 Act or withdrawal of the application by the community body. This means that the existing prohibition which applies whilst the interest is registered and throughout the time they own land purchased under Part 2 of the 2003 Act (in terms of subsection (1) of section 35 of the 2003 Act) is extended to the period prior to registration.

71. Section 29(3) of the Bill amends subsection (1) of section 35 of the 2003 Act to make reference to the “constitution” or “registered rules” of a community body. This amendment takes account of the inclusion of SCIOs and BenComs as bodies which may be community bodies.
Public notice of certain applications

72. Section 29A of the Bill amends section 37(4) of the 2003 Act and inserts subsections (4A) and (4B). The new provisions set out that, where the owner of the land is unknown or cannot be found and the type of proposed application is one to register an interest in land consisting of salmon fishings or mineral rights which are owned separately from the land in respect of which they are eligible, Ministers have the power to set out in regulations the manner in which the public notice of the application must be made.

Period for indicating approval under section 38 of the 2003 Act

73. Section 30 of the Bill amends section 38 of the 2003 Act which sets out the criteria which must be met before an application to register a community interest in land is approved by Ministers. Subsection (1)(d) of section 38 of the 2003 Act provides that there must be sufficient community support to justify the registration.

74. The word “substantial” is repealed in section 38(1) of the 2003 Act and so the requirement concerning community members having a substantial connection with the land that the community body is seeking to register an interest in will be amended to just refer to a connection with that land.

75. Section 30 of the Bill inserts new subsections (2A) and (2B) into section 38 of the 2003 Act. Subsection (2A) precludes Ministers considering any community support that is dated earlier than 6 months before the date an application to register a community interest in land is received by Ministers. Subsection (2B) gives Ministers the power to amend the time limit in which the approval of a member of the community supporting a community body’s application must be dated.

Procedure for late applications

76. Section 31 of the Bill amends section 39 of the 2003 Act relating to the procedure for late applications. An application is deemed to be “late” when it is received by Ministers after the owner of the land to which an application relates has taken action to transfer the land but before missives are concluded, or an option to acquire is granted, in pursuance of that action.

77. Section 31(2) of the Bill rewords subsection (1) of section 39 of the 2003 Act which sets out the conditions which must be met in order for section 39 to apply.

78. Section 31(3) of the Bill inserts a new paragraph (aa) into section 39(2) of the 2003 Act. The new paragraph allows Ministers to request further information from the owner of the land or a creditor in a standard security with the right to sell the land before the end of the 7-day period following the landowner or the creditor giving their views on the application under section 37(5) of the 2003 Act. The owner of the land or the creditor must provide the information within 7 days of receipt of the request. This information is requested to ensure that Ministers have the necessary evidence on which to decide whether the application is “late”.

79. Section 31(3)(b) of the Bill modifies subsection (2)(b)(ii) of section 39 of the 2003 Act to extend the time in which Ministers have to make a decision on whether the interest should be
registered in the case of a “late” application where further information is requested. Where Ministers request further information, this period will be 44 days instead of 30 days.

80. Section 31(4) of the Bill amends subsection (3) of section 39 of the 2003 Act which sets out matters on which Ministers must be satisfied, in addition to the matters set out in section 38, before approving a “late” application. Section 31(4) of the Bill removes the requirement to show “good reasons” why an application was not submitted prior to the land coming on the market and replaces it with a requirement that such relevant work as Ministers consider reasonable was carried out by a person or such relevant steps as Ministers consider reasonable were taken by a person. Section 31(9) of the Bill inserts a new subsection (6) into section 39 of the 2003 Act to define “relevant work” and “relevant steps”.

81. Section 31(4) of the Bill also inserts paragraph (aa) into section 39(3). This sets out the timescales in which the relevant work or steps must have been taken. It is for Ministers to determine whether the relevant work or steps were carried out sufficiently in advance of the landowner taking action with a view to selling the land or giving notice that a transfer was proposed under section 48(1). The new paragraph (aa) also provides that the relevant work or steps undertaken must be in relation to the land to which the application relates or other land being used for the same purposes as the land to which the application relates. The relevant work or steps are to have been carried out by the community body or by another person with a view to the application being made by the community body. The definitions of “relevant work” and “relevant steps” are inserted as new subsection (6) of section 39 of the 2003 Act by section 31(9) of the Bill. Section 31(5) inserts subsection (3ZA) into section 39 which sets out that, in cases where there are good reasons that relevant work or steps have not been undertaken prior to the land being marketed for sale, and that there are good reasons to allow the late application despite the lack of relevant work or steps prior to the land being marketed for sale, Ministers may accept the application.

82. Section 31(5) of the Bill also inserts a new subsection (3A) into section 39 of the 2003 Act. The new subsection (3A) allows Ministers to request further information about an application from any relevant party they deem necessary in connection with the criteria on which Ministers must be satisfied under section 39(3) of the 2003 Act. Ministers can request such information until the end of the 7-day period following receipt of the landowner’s views (or the views of a creditor in a standard security with a right to sell the land) under section 37(5) of the 2003 Act.

83. Section 31(6) of the Bill amends section 39(4)(c) which sets out the impact of an application being “late” on the community right to buy process. For the purposes of the provisions listed, the community body is deemed to have confirmed their intention to proceed with the purchase on the date on which the interest is registered. The amendment inserts a reference to the new section 60A(1) of the 2003 Act.

84. Section 31(7) of the Bill inserts a new subsection (4A) into section 39 of the 2003 Act and section 31(8) amends subsection (5) of the same. These provisions provide that where missives have been concluded in respect of the sale of land or an option conferred in respect of that land, Ministers must decline to consider the application. These amendments simplify the wording in the 2003 Act.
85. Section 31(9) of the Bill provides for a new subsection (7) of section 39 of the 2003 Act which makes it clear that the land in respect of which the relevant work or steps have been carried out does not need to be the same land as that to which the application relates.

Evidence and notification of concluded missives or option agreements

86. Section 32 of the Bill inserts a new section 39A into the 2003 Act in relation to evidence and notification of concluded missives or option agreements. The new subsection (4A) and amended subsection (5) of section 39 of the 2003 Act (under section 31(7) and (8) of the Bill) provide that where an application is received after missives have been concluded in respect of the land or an option conferred, Ministers must decline to consider the application. If the application did not disclose that missives have been concluded or an option conferred then the owner of the land (or a creditor in a standard security with a right to sell) must provide evidence of concluded missives or an option agreement to Ministers within 21 days of receiving a copy of the application under section 37(5)(a). Additional information on option agreements must also be provided, namely, the date of the option agreement and whether or not and how it may be extended. If the application does disclose that missives have been concluded or an option conferred and by virtue of section 39(4A) and (5) of the 2003 Act Ministers are not required to send a copy of the application to the land owner or a creditor in a standard security with a right to sell, then section 39A(4) will apply. This requires Ministers to send a copy of the application to the land owner and any such creditor and require them to provide evidence of the concluded missives or option conferred. The land owner and creditor will also be required to provide further information about the option conferred.

Notification of transfer

87. Section 33 of the Bill amends section 41 of the 2003 Act which is supplementary to and explanatory of section 40 of the 2003 Act. Section 40 of the 2003 Act prohibits owners and certain creditors from transferring land or taking action with a view to transferring land that is subject to a registered interest for so long as the interest is registered, other than in accordance with section 40(4) of the 2003 Act, which provides for “exempt” transfers.

88. Section 33 of the Bill inserts subsection (3) into section 41 of the 2003 Act. It requires that where an owner or a creditor in a standard security with a right to sell land makes a transfer in terms of section 40(4) of the 2003 Act, they must inform Ministers within 28 days of this taking place. The new subsection (3) of section 41 of the 2003 Act also sets out the information which the owner or creditor must provide.

Changes to information relating to registered interests

89. Section 34 of the Bill inserts a new section 44A into the 2003 Act, which applies where a community interest in land is registered.

90. Subsection (2) of the new section 44A of the 2003 Act requires that where any change has been made in the contact information of a community body provided in its application to register an interest, that community body must inform Ministers of that change as soon as is reasonably practicable.
91. Subsection (3) of the new section 44A of the 2003 Act requires that where any change has been made in the contact information of an owner provided in an application by a community body, the owner must inform Ministers of any changes to their contact information as soon as is reasonably practicable.

92. Subsection (4) of the new section 44A of the 2003 Act requires that the owner of the land must in certain circumstances notify Ministers of any changes to the information in an application relating to a creditor in a standard security as soon as is reasonably practicable.

93. Subsections (5) and (6) of the new section 44A of the 2003 Act require that where there is a creditor in a standard security over an interest in land to which an application relates and the application does not disclose the existence of such a creditor (either because the existence of the creditor was omitted or because it did not exist at the time the application was made), the owner must notify Ministers of the existence of the creditor and its contact details as soon as is practicable after the registration of the interest.

94. Subsections (7) and (8) of the new section 44A of the 2003 Act require that a community body or owner of land must, as soon as is reasonably practicable, make Ministers aware of any subsequent changes to any information submitted under subsections (2), (3), (4) or (6) of the new section 44A of the 2003 Act.

Notification under section 50 of the 2003 Act

95. Section 35 of the Bill amends section 50 of the 2003 Act. Section 50(1) sets out the circumstances in which the Lands Tribunal must notify Ministers that a landowner or creditor in a standard security with a right to sell the land has acted in breach of a prohibition notice under section 37(5)(e) or section 40(1) of the 2003 Act.

96. Section 35(a) of the Bill amends subsection (3)(b) of section 50 of the 2003 Act. It inserts reference to any creditor with a right to sell the land. This requires Ministers to send a copy of the notice from the Lands Tribunal under section 50(1) to such a creditor as well as to the owner of the land.

97. Section 35(b) of the Bill provides for a new subsection (6) to be inserted in section 50 of the 2003 Act. This sets out that a community interest in land remains in effect for the purposes of section 50(2)(c) where a community body has applied to re-register an interest under section 44(2) of the 2003 Act and the Keeper has re-entered the interest on the Register accordingly. Where a registered interest in land under consideration by the Lands Tribunal is due to expire, the relevant community body should ensure that it re-registers their interest in terms of section 44(2) of the 2003 Act. Section 50(2)(b) of the 2003 Act is repealed.

Approval of members of community to buy land

98. Section 36 of the Bill amends section 51(2)(a) of the 2003 Act which relates to the community’s approval of the exercise of the right to buy. Section 51(2)(a) provides that at least half of the members of the community must have voted or, if half of the members have not
voted, the proportion which voted is sufficient in the circumstances to justify the community body buying the land.

99. Section 36 of the Bill removes the reference to at least half of the members of the community voting and provides that the requirement in section 51(2)(a) of the 2003 Act is met if the proportion of the members of the community who voted is sufficient to justify the community body proceeding to buy the land. Section 51(3)(a) of the 2003 Act is repealed.

**Appointment of person to conduct ballot on proposal to buy land**

100. Section 37 of the Bill inserts a new section 51A into the 2003 Act. It provides for an independent ballotter to undertake the community ballot as required under section 51(1)(a) of the 2003 Act.

101. Sections 51 and 52 of the 2003 Act provide for a ballot to be carried out by the community body. Section 37 of the Bill amends the procedure of the ballot and provides that it is to be carried out by an independent ballotter. The responsibility for appointing a ballotter and the expense of conducting the ballot are with Ministers.

102. Subsections (2) to (6) of the new section 51A of the 2003 Act set out the procedure for the conduct of the ballot. So that the ballotter has all the necessary information in order to undertake the ballot, Ministers are obliged under subsection (2) to provide the ballotter with a copy of the application under section 37 of the 2003 Act and such other information as Ministers may prescribe in regulations. Subsection (3) provides that Ministers must do this within 28 days of the valuer being appointed under section 59 of the 2003 Act. Ministers must also provide the community body with the contact details of the ballotter under subsection (4).

103. Subsections (5) and (6) of the new section 51A of the 2003 Act require that the community body must, within 7 days of receiving notification of the value of the land under section 60(2) of the 2003 Act, provide the ballotter with wording for the proposition that the community body buy the land, together with other information as set out in regulations. The other information to be set out in regulations may relate to the community body, its proposals, the valuation and other matters. The form of the notification of the other information referred to may also be set out in regulations. Section 52(2) of the 2003 Act is repealed.

**Consent under section 51 of the 2003 Act: prescribed information**

104. Section 38 of the Bill inserts a new section 51B into the 2003 Act. This section sets out the information which Ministers must take account of when deciding whether to approve a community body’s exercise of the right to buy.

105. The new section 51B of the 2003 Act confers a power on Ministers to specify the type of information which a community body must provide in regulations, including, in particular, information relating to the matters referred to in subsection (3) of section 51 of the 2003 Act. Subsection (3) of the new section 51B of the 2003 Act requires that the information must be provided in a form set out by Ministers in regulations. Ministers can also take account of any
information which they consider to be relevant, regardless of whether it is of the type specified in regulations.

106. Subsection (5) of the new section 51B of the 2003 Act provides that Ministers have 7 days from receipt of information to request further information. Furthermore, in terms of subsection (6) of the new section 51B of the 2003 Act, the community body has 7 days from the receipt of such a request to provide Ministers with the information.

Representations etc. regarding circumstances affecting ballot results

107. Section 39 of the Bill inserts a new section 51C into the 2003 Act which sets out a process for where a community body considers that circumstances have affected the ballot result.

108. Subsection (1) of the new section 51C allows the community body, within 7 days of receiving notification of the result of the ballot, to make representations to Ministers on circumstances that the community body considers impacted the ballot result.

109. Subsection (2) requires the community body to provide Ministers with such evidence as is reasonably necessary to establish the existence and effect of the circumstances that affected the ballot result. A copy of the evidence and representations must be sent to the owner of the land by the community body. Subsection (3) allows Ministers to request further information if required and the community body must respond within 7 days under subsection (4).

110. Subsection (5) provides that the owner of the land may provide comments in connection with the representations and evidence provided by the community body within 7 days of receiving copies of such representations and evidence. The owner of the land must send copies of any comments to the community body (subsection (6)). The community body may give their views to Ministers on the owner of the land’s comments (subsection (7)).

111. Subsection (8) provides that Ministers may request further information from the community body and, in terms of subsection (9), the community body must respond within 7 days.

112. Subsection (10) provides that Ministers must take account of any of the representations, evidence, information, comments or views which have been provided in this process when considering whether the ballot turnout requirement under section 51(2)(a) of the 2003 Act has been met.

113. Due to the administrative steps which have been provided for, section 39(2) of the Bill amends section 51 of the 2003 Act to extend the length of the period in which Ministers must decide whether to consent to the exercise of the right to buy from 21 days to 35 days in cases where representations have been made under section 51C(1).
Ballot not conducted as prescribed

114. Section 40 of the Bill amends section 52 of the 2003 Act. Section 52(1) of the 2003 Act provides that a ballot should be conducted as prescribed in regulations. Furthermore, in terms of section 52(2), if a ballot is deemed to be flawed, the community’s right to buy is extinguished.

115. Section 40 of the Bill provides that section 52 of the 2003 Act is amended to include a new subsection (7). The new subsection (7) provides Ministers with the powers to make regulations in connection with reviewing whether a ballot has been properly conducted and other matters relating to ballots not conducted as prescribed.

Period in which ballot results and valuations are to be notified

116. Section 41 of the Bill amends section 52(4) of the 2003 Act which provides the timescale for the conduct of the ballot and section 60 which provides the timescale for notification of the valuation figure.

117. Section 52(4) of the 2003 Act provides that the ballot is to take place within 28 days of the notification of the value of the land under section 60(2) and the ballot date is determined by the date of that notification. Section 41(1) of the Bill amends section 52(4) of the 2003 Act to provide that the ballot takes place within the 12 week period beginning on the date the valuer is appointed under section 59(1) of the 2003 Act. Alternatively, in cases where the valuation period has been extended by the valuer under section 60(3) of the 2003 Act and the date to which the valuation period has been extended to is after the 12-week period following the appointment of the valuer, the 12-week period begins on the day following the notification of the date under section 60(3C) of the 2003 Act. This means that the ballotter will in all cases have a minimum of 12 weeks to conduct the ballot and notify Ministers of the results.

118. Section 41(2) of the Bill provides that section 60 of the 2003 Act is amended to insert new subsections (3A) to (3D). These provisions detail the procedure of when and how the valuer is able to seek an extension to the timings for reporting the value of the land to parties set out in section 60(2). The community body, the landowner and the ballotter must be informed of the existence of any extension, the length of any extension and the end period for the extension.

Exercise of right to buy: date of entry and payment of price

119. Section 42 of the Bill amends section 56 of the 2003 Act which sets out the time limits which apply to a community body in respect of payment of the price for the land.

120. Subsection (3) of section 56 of the 2003 Act provides that where the valuation figure is not being appealed under section 62 of the 2003 Act and where the time limit has not been extended by agreement, the price must be paid within 6 months of the date on which the community body confirmed its intention to proceed with the community right to buy in response to a notice under section 49(2)(a) of the 2003 Act or, in the case of a late application, within 6 months of the date of Ministers decision to register that interest in land. Section 42(a) of the Bill extends this time period from 6 months to 8 months.
121. Section 42(b) of the Bill provides for a new subsection (7) in section 56 of the 2003 Act. Where an extension to the 8-month period provided for in the amended section 56(3)(a) of the 2003 Act is required (such extension being permitted by section 56(3)(c) of the 2003 Act), the extension must be agreed, by both parties (landowner and community body), before the 8-month period ends. The community body must notify Ministers of any extension within 7 days of that agreement being made, including when that agreement was made and what that later extended date is. Evidence of such an agreement will be required by Ministers.

**Views on representations under section 60 of the 2003 Act**

122. Section 43 of the Bill amends section 60 of the 2003 Act, subsection (1) of which requires the valuer to invite the landowner and the community body to comment on issues that may have an impact on the valuation.

123. Section 43 of the Bill inserts a new subsection (1A) into section 60 of the 2003 Act which imposes an obligation on the valuer to pass on any written representations about the value of the land, whether by the landowner or the community body, to the other party and invite counter-representations from that party. The valuer must consider any views made by both or either party while undertaking the valuation under section 59 of the 2003 Act.

**Circumstances where expenses of valuation to be met by owner of the land**

124. Section 44 of the Bill inserts a new section 60A into the 2003 Act. The new section 60A provides that, in certain circumstances, Ministers may require the landowner to pay the expenses of Ministers in connection with the valuation.

125. Subsection (1) of the new section 60A sets out the circumstances in which Ministers may exercise their discretion and require the landowner to pay the expenses incurred by Ministers in connection with the valuation.

126. Subsection (2) sets out that Ministers have a discretion to require the landowner to meet the costs associated with the valuation where the circumstances in subsection (1) are met. Where Ministers exercise their discretion, a demand for payment will be sent to the landowner.

127. Subsection (3) allows Ministers to request information from the landowner before deciding whether to exercise their discretion.

128. Subsection (4) provides that the landowner may appeal Ministers’ decision to exercise their discretion to the sheriff within 21 days of the Ministers’ decision. In terms of subsection (5), the sheriff’s decision is final.

129. Subsection (6) provides that, where the landowner has not appealed the Ministers’ decision, the landowner must pay the amount specified within 28 days of receiving the demand. Where the landowner appeals the Ministers’ decision and the appeal is not successful, the landowner must pay the amount within 28 days of the determination of the appeal.
Creditors in standard security with right to sell land: appeals

130. Section 45 of the Bill amends section 61 of the 2003 Act. Section 61 provides a right of appeal to the sheriff for the landowner, the community body and other interested parties in respect of certain decisions by Ministers. In terms of section 48(4) of the 2003 Act, where there is a creditor with a right to sell the land and that creditor gives notice of a proposal to sell the land under section 48(1), the creditor would also have a right of appeal.

131. Section 45(a) of the Bill expands the interested parties to include a “creditor in a standard security with a right to sell land” in all cases (including where the creditor has not given notice of a proposal to sell the land under section 48(1) of the 2003 Act). Section 45(b) and (c) of the Bill amend the remaining sections of section 61 of the 2003 Act to take account of the creditor’s right of appeal. The words “or” to “person” in section 61(3) of the 2003 Act are repealed.

Appeals to Lands Tribunal: valuation

132. Section 45A of the Bill amends section 62 of the 2003 Act, and provides that the Lands Tribunal is required, within 8 weeks of the hearing of the appeal, to issue a written statement of reasons. Where the Land Tribunal considers that it is not reasonable to issue a written statement within 8 weeks, it must notify the parties to the appeal of the date by which it will issue its written statement.

Calculation of time periods in Part 2 of 2003 Act

133. Section 46(1) of the Bill inserts a new section 67A into the 2003 Act which provides that public or local holidays are not to be taken into account when calculating time periods in Part 2 of the 2003 Act.

134. New section 67A(2) of the 2003 Act provides a number of exceptions to the rule provided in new section 67A(1) – statutory periods for the date of entry, the valuation process and any appeals are not to be extended if a public or local holiday falls during the time when these steps are active.

Duty to provide information about community right to buy

135. Section 47 of the Bill inserts a new section 67B into the 2003 Act concerning the monitoring of community right to buy.

136. Inserted section 67B(1) and (2) of the 2003 Act provide that a community body, owner or former owner of land in respect of which an application to register an interest was made may be requested by Ministers to provide information, for the purposes of monitoring or evaluating any impacts that the right to buy land conferred by Part 2 of the 2003 Act has had or may have.

137. Inserted section 67B(3) of the 2003 Act sets out the type of information that may be requested by Ministers. It provides that it is any information which Ministers may reasonably require for the purpose of monitoring or evaluating the impact of the right to buy under Part 2 of the 2003 Act. Where a request has been made by Ministers, the recipient must comply to the extent that they are able to do so (inserted section 67B(4)).
Part 4: Crofting community right to buy land (sections 47A to 47K – modifications of Part 3 of Land Reform (Scotland) Act 2003)

Introduction

138. Sections 47A to 47K of the Bill amend provisions of Part 3 of the Land Reform (Scotland) Act 2003, the crofting community right to buy.

139. Part 3 of the 2003 Act provides a properly constituted crofting community body representing an identified crofting community with a right to acquire eligible croft land (including salmon fishings, certain mineral rights, sporting rights and the interest of the tenant in tenanted land, where the tenant’s interests in the land relate to the land being acquired). Part 3 sets out the eligible land which may be acquired by the crofting community body, and the process for acquiring that land, including procedures for a ballot to prove community support for the acquisition, for valuation of the land, for appeals and for compensation.

Crofting community bodies

140. Section 47A(2) of the Bill inserts subsection (A1) into section 71 of the 2003 Act. This subsection extends the types of body which may be crofting community bodies under Part 3 of the 2003 Act to include Scottish charitable incorporated organisations (“SCIOs”) and community benefit societies (“BenComs”) and any other type of body which Ministers specify in regulations.

141. Section 47A(4) of the Bill inserts new subsections (1A) and (1B) into section 71 of the 2003 Act which sets out the provisions that a SCIO or BenCom must include in its constitution or registered rules for it to be a crofting community body and so eligible to make an application under Part 3 of the 2003 Act.

142. Section 47A(5) of the Bill amends section 71(2) of the 2003 Act which allows Ministers to disapply the requirement that the articles of association, constitution or registered rules of an community body must require that the body have a minimum of 10 members.

143. Section 47A(6) of the Bill inserts subsection (4A) into section 71 of the 2003 Act. This subsection gives Ministers the power to modify, by way of regulations, the criteria which must be met by companies limited by guarantee, SCIOs and BenComs in order to be crofting community bodies under Part 3 of the 2003 Act.

144. Section 47A(7) of the Bill amends section 71(5) of the 2003 Act and amends the definition of a “crofting community”. The definition of a crofting community will include tenants of crofts whose names are entered in the Crofting Register, or the Register of Crofts, as tenants of those crofts; owner-occupier crofters of crofts in the crofting township whose names are entered in the Crofting Register; and such other persons or classes of persons as may be set out by Ministers in regulations.

145. Section 47A(8) of the Bill inserts definitions of “owner-occupied croft” and “owner-occupier crofter” into section 71(6) of the 2003 Act.
146. Section 47A(9) of the Bill inserts definitions of “community benefit society”, “registered rules” and “Scottish charitable incorporated organisation” into section 71(8) of the 2003 Act.

147. Paragraph (a) of section 47B of the Bill amends section 72(1) of the 2003 Act which provides that a crofting community body which bought land under Part 3 of the 2003 Act shall not, for as long as the land remains in its ownership, modify its memorandum or articles of association without the consent of Ministers. The amendment provides for the same restriction in relation to a constitution (in the case of Scottish charitable incorporated organisations) or registered rules (in the case of community benefit societies).

148. Paragraph (b) of section 47B of the Bill inserts subsections (3), (4) and (5) into section 72. Subsection (2) provides that Ministers may compulsorily acquire croft land if they are satisfied that the crofting community body which has bought the croft land, if it had not done so, would no longer be entitled to do so. Section 72(3) provides that the provision in section 72(2) will not apply when the land is no longer eligible croft land. Section 72(4) provides Ministers with the power to make an order relating to the compulsory acquisition of the croft land. Section 72(5) provides that the order made under section 72(4) may apply, modify or exclude any matter as to which an order could be made relating to the compulsory acquisition of the land by Ministers.

Application by crofting community body for consent to buy croft land

149. Section 47C(2) of the Bill removes the provision in section 73(5)(b)(ii) which requires a crofting community body to provide information about sewers, pipes, lines, watercourses or other conduits and fences, dykes, ditches or other boundaries in or on the land.

150. Section 47C(3) of the Bill inserts new subsection (5ZA) after section 73(5) of the 2003 Act. Section 73(5) requires all persons listed in new subsection (5ZA) to be correctly identified in the application. Those persons who must be correctly identified are the owner of the land; any creditor in a standard security over the land with a right to sell the land; any tenant of a tenancy of the land in respect of which the right to buy is to be exercised and any person entitled to any sporting interests on the land in respect of which the right to buy is to be exercised.

151. Section 47C(4) of the Bill amends section 73(11) of the 2003 Act. Ministers are required to give public notice, by advertisement, of an application by a crofting community body. The form of the advertisement is now to be set out in regulations made by Ministers.

Criteria for consent by Ministers

152. Section 47D of the Bill amends the criteria which must be satisfied in section 74(1) of the 2003 Act in order for Ministers to consent to a Part 3 application. The additional criteria in section 74(1) are that Ministers may only consent to an application if the persons listed in section 73(5ZA) are correctly identified in the application.

Ballot to indicate community approval of the application

153. Section 47E(2) of the Bill inserts additional subsections (4A) and (4B) after section 75(4) of the 2003 Act. Subsection (4A) allows Ministers to request additional information from the
crofting community body in connection with the ballot, including any consultation with those eligible to vote in the ballot. Subsection (4B) confirms that the expense of conducting the ballot is to be met by the crofting community body.

154. Section 47E(3) of the Bill inserts additional subsections (6) and (7) into section 75 of the 2003 Act. Subsection (6) gives Ministers the power to make regulations to enable a crofting community body to seek to recover the expense of conducting the ballot from Ministers. Subsection (7) sets out the matters in relation to which such regulations can make provision, including the circumstances in which a crofting community body may make an application and the criteria to be applied by Ministers in deciding whether to reimburse the applicant.

Right to buy same croft land exercisable by only one crofting community body

155. Section 47F of the Bill amends section 76(4)(b)(i) of the 2003 Act to ensure that, when more than one crofting community body applies to purchase the same land, all parties who were invited to comment on the applications are notified when Ministers decide which application is to proceed and which application(s) are extinguished.

Reference to Land Court of questions on applications

156. Section 47G of the Bill amends section 81(1) of the 2003 Act to expand the list of persons who have a right to refer a question to the Land Court before Ministers reach a decision on an application. The list of persons now includes the owner of the land which is the subject of the application, the person entitled to any sporting interests which are the subject of the application and any tenant whose interest is the subject of the application.

Assessment of value of croft land

157. Section 47H of the Bill inserts new subsections (9A) and (9B) after section 88(9) of the 2003 Act. Subsection (9A) provides that, where representations on the value of the land are received from the owner of the land, the tenant or the person entitled to sporting interests, the valuer must invite the crofting community body to make counter-representations, and similarly the owner, tenant or person entitled to sporting interests must be invited to make counter-representations in response to representations made by the crofting community body.

158. Subsection (9B) requires the valuer to take account of any representations made under subsection (9A) when making a valuation of the land.

Compensation

159. Section 47I of the Bill amends section 89(4) of the 2003 Act which gives Ministers the power to set out the procedure under which claims for compensation payable in relation to an application to purchase land may be made. The amended section 89(4) gives Ministers the power to make an order to specify amounts payable in respect of loss or expense incurred by a landowner, person entitled to sporting interests or tenant as the case may be, amounts payable in respect of loss or expense incurred by other persons, who may be liable to pay those amounts and the procedure under which these claims for compensation are to be made.
This document relates to the Community Empowerment (Scotland) Bill as amended at Stage 2
(SP Bill 52A)

**Appeals to Land Court : valuation**

160. Section 47J of the Bill amends section 92(5) of the 2003 Act to provide that the Land Court is required to issue a written statement of reasons within 8 weeks of the hearing of the appeal. It also introduces a new subsection (5A) which provides that where the Land Court considers that it is not reasonable to issue a written statement within 8 weeks, it must notify the parties to the appeal of the date by which it will issue its written statement.

**Meaning of creditor in standard security with right to sell**

161. Section 47K of the Bill introduces a new subsection 97B to the 2003 Act, which provides a definition, for the purposes of Part 3 of the 2003 Act, of a creditor in a standard security with a right to sell land.

**Part 4: Community right to buy land (section 48 – abandoned and neglected land)**

**Introduction**

162. Section 48 of the Bill inserts a new Part 3A into the 2003 Act to give communities a right to buy land that is wholly or mainly abandoned or neglected, for the purposes of the sustainable development of that land, where there is no willing seller.

**Meaning of land**

163. The new section 97B of the 2003 Act provides that land for the purposes of Part 3A of the 2003 Act includes bridges and other structures built on or over land, inland waters, canals, and the foreshore (which is the land between the high and low water marks of ordinary spring tides).

**Eligible land**

164. The new section 97C of the 2003 Act defines land which is to be classed as eligible for the purposes of Part 3A of the 2003 Act. Subsection (1) provides that eligible land is land which is wholly or mainly abandoned or neglected in the opinion of Ministers.

165. Subsection (2) requires Ministers to make regulations setting out what factors they must have regard to when deciding whether land is, in their opinion, wholly or mainly neglected or abandoned.

166. Subsection (3) provides that eligible land does not include certain land. Land which is not eligible includes land on which there is an individual’s home; land pertaining to an individual’s home as may be set out in regulations, eligible croft land (as defined in section 68 of the 2003 Act) or croft land which is occupied or worked by its owner or members of their family; land which is owned by the Crown by virtue of it having vested as bona vacantia (because no owner exists or can be identified) or it having fallen to the Crown as ultimus haeres (because no heir to the previous owner exists or can be identified); and land of such other descriptions that Ministers may set out in regulations. Subsection (4) gives Ministers the power to set out in regulations what is, or is to be treated as, an individual’s home for the purposes of subsection (3).
**Part 3A community bodies**

167. The new section 97D of the 2003 Act outlines the requirements which must be met by a body so that it is eligible to purchase land under Part 3A of the 2003 Act.

168. Subsection (1) specifies that a Part 3A community body must be a company limited by guarantee, Scottish charitable incorporated organisation (SCIO) or community benefit society (BenCom), or any other type of body which Ministers specify in regulations. It also lists the requirements which must be included in the body’s articles of association, constitution or registered rules. If a body does not meet the conditions imposed by subsection (1), it will not be a Part 3A community body and so will not be eligible to purchase land under Part 3A of the 2003 Act.

169. Subsection (2) allows Ministers to disapply the requirement that the articles of association, constitution or registered rules of a Part 3A community body must require that the body must have a minimum of 10 members.

170. Subsection (3) defines a “company limited by guarantee” by reference to section 3(3) of the Companies Act 2006 as being a company having the liability of its members limited to such amount as the members undertake to contribute to the assets of the company in the event of it being wound up.

171. Subsection (4) provides that a Part 3A community body is not defined as such until Ministers give their written consent that they are satisfied that the body’s main purpose is consistent with furthering the achievement of sustainable development. Subsection (4A) gives Ministers a power to amend the criteria which a company limited by guarantee, SCIO or BenCom must meet in order to be a Part 3A community body.

172. Subsection (5)(a) sets out that the articles of association, constitution or registered rules of a Part 3A community body must define the community to which it relates by reference to a postcode unit (or units) or a type of area which Ministers set out in regulation. A community may also be defined with reference to both of these things. Subsection (5)(b) provides that the community includes people who are resident in that postcode unit or in one of the postcode units or other areas set out by Ministers in regulations. In addition to being resident, members of the community must also be entitled to vote at local government elections in a polling district that encompasses that postcode unit or postcode units or the alternative areas set out by Ministers in regulations.

173. Subsection (7) specifies that the articles of association of a Part 3A community body may provide that its property may, in circumstances outlined in subsection (1)(h), pass to another person only if that person is a charity. Subsection (8) defines a charity for the purposes of this section as a body which is entered in the Scottish Charity Register.

174. Subsection (8) provides definitions of a “charity”, “community benefit society”, “registered rules”, and “Scottish charitable incorporated organisation” for the purposes of this section.
Provisions supplementary to section 97D

175. The new section 97D of the 2003 Act sets out the constraints which apply to a Part 3A community body after it has acquired land under Part 3A of the 2003 Act.

176. Subsection (1) provides that a Part 3A community body cannot change its memorandum or articles of association without prior consent from Ministers in writing, while the land bought under Part 3A of the 2003 Act remains in its ownership.

177. Subsection (2) allows Ministers to acquire the land compulsorily if a Part 3A community body, which has bought land under Part 3A of the 2003 Act, would no longer be entitled to buy the land.

178. Subsection (3) provides that Ministers cannot exercise their powers under subsection (2) to acquire the land compulsorily if the land is no longer considered to be eligible. This means that Ministers will not be able to exercise their powers on the basis that a Part 3A community body has purchased the land and the land is no longer considered by Ministers to be wholly or mainly abandoned or neglected.

179. Subsection (4) provides that where Ministers exercise the power conferred by subsection (2), they may make an order in relation to acquiring the land. Subsection (4) sets out the scope of any such order.

Register of Community Interests in Abandoned or Neglected Land

180. The new section 97F of the 2003 Act provides for the creation of a Register of Community Interests in Abandoned or Neglected Land.

181. Subsection (1) requires the Keeper of the Registers of Scotland (“the Keeper”) to set up and maintain a Register of Community Interests in Abandoned or Neglected Land (“the Register”).

182. Subsection (2) specifies information and documents which must be kept in the Register and provides that these must be kept in a form convenient for public inspection.

183. Subsections (3) and (4) allow a Part 3A community body to require that information or documentation which relates to the raising or expenditure of money to allow land to which the application relates to be used should be withheld from public inspection. Such information or documentation will not be entered in the Register. However, in terms of subsection (5), Ministers cannot require a Part 3A community body to provide such information or documentation.

184. Subsection (6) confers powers on Ministers to make regulations to amend the information that is to be made publicly available in the Register, to amend the provision about the Part 3A community body requesting that certain information can be withheld from the Register and amending the type of information that may be withheld.
185. Subsection (7) sets out the duties which are imposed on the Keeper. The Keeper must make the Register available at all reasonable times for inspection free of charge, ensure that members of the public are able to request copies of the entries on payment of a charge as may be set out by Ministers in regulations, and that if anyone requests a true copy of the original document this will be supplied on payment of such a charge.

186. Subsection (9) provides that the Keeper means the Keeper of the Registers of Scotland or such person as Ministers appoint to carry out the Keeper’s functions under Part 3A of the 2003 Act (and under subsection (10) different persons may be appointed in place of the Keeper for different purposes under Part 3A of the 2003 Act).

Right to buy: application for consent

187. The new section 97G of the 2003 Act deals with the process of applying to exercise the right to buy land under Part 3A of the 2003 Act.

188. Subsection (1) provides that the right to buy abandoned or neglected land can only be exercised by a Part 3A community body. Subsection (2) specifies that the right can only be exercised with Ministers’ consent on the written application of the Part 3A community body.

189. Subsection (3) provides that a right to buy land can be exercised on multiple holdings, but separate applications must have been made for each holding of land. A holding of land is defined in subsection (4) as being a plot of land owned by one person or in common or joint ownership. Ministers may consider and make a decision on these applications separately from one another.

190. Subsection (5) specifies that an application must set out who the owner of the land is and any creditor in a standard security with a right to sell the land or any part of it. Ministers must set out the required form of the application in regulations. The application must also include or be accompanied by information of the kind specified by Ministers in regulations.

191. Subsection (6) lists the matters which the Part 3A community body must include in the application or which must accompany the application. These include why a Part 3A community body’s proposed purchase is in the public interest, how it is compatible with furthering the achievement of sustainable development, and the reasons why it considers the land to be wholly or mainly abandoned or neglected.

192. Subsection (7) specifies that at the same time as the Part 3A community body applies to Ministers, it must send a copy of its application form (including the associated material) to the owner of the land. It also requires the Part 3A community body to send a copy of the application to any known creditor in a standard security over the land with a right to sell and invite them to give notice, within 60 days, to the Part 3A community body and Ministers if the creditor has taken the steps mentioned in subsection (8) to enforce the security. If such notice is given, creditors must provide any views or comments they may have about the application to Ministers in writing within the 60-day period.
193. Subsection (9) provides that upon receiving the application under section 97G, Ministers must invite the owner of the land, any creditor in a standard security and any other person that may have an interest in the application to send back written comments on the application within 60 days of the Ministers’ invitation. Ministers must also take reasonable steps to invite comments from owners of land adjacent to the land to which the application relates. The community body must be sent copies of such invitations.

194. Subsection (10) specifies the additional matters which the invitation must invite the landowner to provide comment on.

195. Subsection (11) provides that Ministers must give public notice of receipt of the application as soon as practicably possible and invite views within 60 days of the publication of the notice. Subsection (12) confers a power on Ministers to make regulations to specify the form of the advertisement giving public notice of the application.

196. Subsection (13) provides that Ministers must pass all views received on to the Part 3A community body for further comment. The community body’s comments must be received within 60 days of Ministers sending the invitation to comment.

197. Subsection (14) provides that when considering whether or not to give consent to the application, Ministers must have regard to all views received with regard to the application.

198. Subsection (15) provides that Ministers must decline to consider an application that does not comply with the requirements of the new section 97G, is incomplete or where Ministers are otherwise bound to reject it. If such is the case, then Ministers are not bound to follow the steps laid out in subsection (9) to (14).

199. Subsection (16) sets constraints on the timing of the Ministers’ decision on an application. It provides that Ministers must not make any decision on the application before the end of the 60-day period within which a community may respond to a landowner’s comments, under subsection (13). Alternatively, if by the date of 60 days after the date on which the Part 3A community body may provide Ministers with a response to an invitation sent under subsection (13), the Lands Tribunal has not notified Ministers of any finding under new section 97X of the 2003 Act, Ministers must not make a decision until the date on which the Lands Tribunal provides Ministers with that finding.

Criteria for consent

200. The new section 97H of the 2003 Act sets out that Ministers must not consent to a Part 3A community right to buy unless they are satisfied about the matters listed in the section.

201. Paragraph (a) requires Ministers to be satisfied that the land a Part 3A community body is proposing to buy is land which is eligible under the new section 97C of the 2003 Act.
202. Paragraph (b) requires Ministers to be satisfied that the exercise of the right to buy by a Part 3A community body is in the public interest and its plans for the land are compatible with furthering the achievement of sustainable development.

203. Paragraph (c) requires Ministers to be satisfied that the achievement of sustainable development in relation to the land would be unlikely to be furthered by the owner of the land continuing to be its owner.

204. Paragraph (f) requires Ministers to be satisfied that the owner of the land is not prevented from selling the land or is not under an obligation to sell the land to someone other than the Part 3A community body (other than an obligation which is suspended by the regulations which are to be made by Ministers under the new section 97N(3)).

205. Paragraph (g) requires Ministers to be satisfied that a Part 3A community body meets the requirements in section 97D.

206. Paragraph (h) requires Ministers to be satisfied that a significant number of the members of the community which the Part 3A community body represents have a connection with the land or the land is sufficiently near to land to which those members of the community have a connection.

207. Paragraph (i) requires Ministers to be satisfied that the community which the Part 3A community body represents has approved the proposal to exercise the right to buy under Part 3A. The new section 97J of the 2003 Act provides that the community is taken as having approved the proposal if a ballot is conducted as set out in that section.

208. Paragraph (j) requires Ministers to be satisfied that the Part 3A community body has tried and failed to buy the land, other than by making an application under Part 3A.

**Ballot to indicate approval for purposes of section 97H**

209. The new section 97J of the 2003 Act sets out the requirements for a ballot to establish that a right to buy application by a Part 3A community body has the support of its community.

210. Subsection (1) provides that a proposal by a Part 3A community body to exercise a community right to buy will be deemed to have been approved by the relevant community, if, firstly, the ballot takes place within the six-month period immediately preceding the date of the right to buy application; secondly, that at least half of the community voted in the ballot or where fewer than half of the members of the community voted, the proportion that voted is sufficient to justify the community body proceeding to purchase the land; and finally, that the majority of the votes cast were in favour of making the application.

211. Subsection (2) provides that the ballot must be conducted as prescribed by Ministers in regulations. Subsection (3) sets out the matters which must be prescribed in those regulations.
212. Subsection (4) specifies that the Part 3A community body must notify Ministers of the result within 21 days of the ballot or, where the application is made before the expiry of that 21-day period, at the same time as the application is submitted. This subsection also sets out what information about the ballot the community body must provide to Ministers.

213. Subsection (5) provides that Ministers may require a Part 3A community body to provide further information about the ballot or any consultation that the community body may have held with the wider community about their application.

214. Subsection (6) provides that the Part 3A community body is responsible for the expense of conducting the ballot. Subsections (6A) and (6B) give Ministers regulation making powers which can be used to allow a Part 3A community body, in particular prescribed circumstances, to apply to Ministers to seek reimbursement of the cost of conducting the ballot.

215. Subsection (7) provides that where a ballot is not conducted in accordance with the regulations made by Ministers, the Part 3A community body’s right to buy will be extinguished.

**Right to buy same land exercisable by only one Part 3A community body**

216. The new section 97K of the 2003 Act deals with the situation where there is more than one Part 3A community body interested in buying the same land.

217. Subsection (1) provides that only one Part 3A community body may exercise the right to buy that land.

218. Subsection (2) provides where more than one Part 3A community body submits an application seeking to buy the same land, Ministers will decide which application should be allowed to proceed.

219. Subsection (3) provides that Ministers must not take any decision on any of the applications before they have considered all views and responses related to each application.

220. Subsection (4) provides that once Ministers have decided which Part 3A community body’s right to buy application shall be allowed to proceed, the other community body’s right to buy shall be extinguished. It also specifies who must be notified of Ministers’ decision.

**Consent conditions**

221. The new section 97L of the 2003 Act provides that Ministers may impose conditions to their consent to an application to exercise the Part 3A community right to buy. These conditions may, for example, require that certain actions or steps must be taken by the Part 3A community body.

**Notification of Ministers’ decision on application**

222. The new section 97M of the 2003 Act sets out how Ministers must notify the relevant parties of their decision to consent to or refuse an application.
223. Subsection (1) provides that Ministers must give notice in writing of their decision to consent to or refuse an application under section 97G to exercise the Part 3A community right to buy, and identifies the persons to whom such notice must be given. The form of the notice is to be set out in regulations.

224. Subsection (2) provides that regulations made by Ministers must require that the notice includes a full description of the land covered by the Ministers’ decision and, where consent is given, any conditions imposed by Ministers.

225. Subsection (3) specifies that the notice must contain information about the consequences of the decision and the rights of appeal against it and state the date on which the consent is given.

**Effect of Ministers’ decision on right to buy**

226. The new section 97N(1) of the 2003 Act gives Ministers powers to make regulations prohibiting certain persons from transferring or otherwise dealing with the land in respect of which an application under section 97G has been made.

227. Subsection (2) sets out matters that the regulations under subsection (1) may include.

228. Subsection (3) provides that Ministers may make regulations to suspend rights over land in respect of which a Part 3A application has been made. Subsection (4) sets out that these regulations may provide for rights which will not be suspended, as well as rights which will not be suspended in certain circumstances.

229. Subsection (5) provides that nothing in Part 3A of the 2003 Act prejudices the position of creditors seeking to prevent the disposal of heritable property by a debtor by means of inhibition, action of adjudication or any other diligence.

**Confirmation of intention to proceed with purchase and withdrawal**

230. The new section 97P of the 2003 Act sets out the procedure which follows Ministers consenting to the exercise of a right to buy by a Part 3A community body, depending on whether or not the community body wishes to proceed with the purchase.

231. Subsection (1) provides that a Part 3A community body may exercise its right to buy only if, within 21 days of the valuer notifying Ministers, the Part 3A community body and the owner of the assessed value of the land under 97S(10), the Part 3A community body sends written notice to Ministers and the owner confirming its intention to proceed to buy the land.

232. Subsection (2) provides that, by notice in writing to Ministers, the Part 3A community body may withdraw its right to buy application or its confirmation of its intention to proceed with the purchase at any time.

233. Subsection (3) specifies the action to be taken by Ministers on receipt of such notices.
Completion of purchase

234. The new section 97Q of the 2003 Act deals with conveyancing practicalities relevant to the transfer of land following Ministers giving consent to a Part 3A community right to buy application.

235. Subsection (1) provides that the Part 3A community body will be responsible for preparing the documents necessary to effect the conveyance of the land and for ensuring that the subjects to be conveyed are the same as those specified in the consent given by Ministers. It places an obligation on the Part 3A community body to ensure that in preparing the documents it takes account of all conditions imposed by Ministers.

236. Subsection (2) provides that where the Part 3A community body cannot comply with its duty regarding the property to be conveyed, due to the fact that all or part of the land covered by the consent to the Part 3A community right to buy is not owned by the person named as owner in the application, then it must refer this matter to Ministers.

237. Subsection (3) provides that where such a reference is made to Ministers under subsection (2) then Ministers must direct that the right to buy is extinguished.

238. Subsection (4) requires the owner of the land subject to the Part 3A right to buy to make title deeds and other documents available to and transfer title to the Part 3A community body.

239. Subsection (5) provides that if, within 6 weeks of Ministers consenting to the application to buy the land, the owner refuses or fails to make these deeds available, or if they cannot be found, the Part 3A community body can apply to the Lands Tribunal for an order requiring the production of those documents.

240. Subsection (6) provides that the Part 3A community body may apply to the Lands Tribunal to authorise its clerk to effect the transfer of title where the owner refuses, or for other reasons fails, to do so. Where the clerk to the Tribunal does so the effect will be the same as if it were done by the owner.

Completion of transfer

241. The new section 97R of the 2003 Act sets out the process for completing the transfer.

242. Subsection (1) provides that the consideration payable for the land in respect of which the Part 3A community right to buy is exercised shall be the value of that land as assessed under section 97S by the valuer appointed by Ministers.

243. Subsection (2) provides that, subject to subsections (3) and (4), the consideration should be paid not later than 6 months after the date on which Ministers consented to the right to buy application.
244. Subsection (3) specifies circumstances where either this payment deadline will not apply or where an alternative deadline will apply. In particular, it allows the landowner and the Part 3A community body to agree an alternative payment date and provides for deferral of payment when the valuation has not been completed or has been subject to an appeal.

245. Subsection (4) specifies that where the owner is unable to grant a good and marketable title to the Part 3A community body by the date of payment, then payment shall be made to and held by the Lands Tribunal pending either completion of the conveyance or notification to the Lands Tribunal by the Part 3A community body that it has decided not to complete the transaction.

246. Subsection (5) specifies that if the consideration is not paid by the Part 3A community body by the due date, the right to buy application will be deemed to have been withdrawn by the Part 3A community body (this subsection does not apply where subsection (4) applies).

247. Subsection (6) provides that when the Part 3A community body records or registers its title, the land acquired is disburdened of any heritable security.

248. Subsection (7) provides that a security that related to the land acquired through the Part 3A community right to buy and to other land continues to apply to that other land.

249. Subsection (8) provides that where land is disburdened of a heritable security on purchase, unless the creditors otherwise agree, the Part 3A community body must pay the creditors under that heritable security whatever sums are due to them.

250. Subsection (9) provides that the Part 3A community body must deduct any sums paid to a heritable creditor under the provisions of subsection (8) from the amount that the body is due to pay the owner for the land. In effect, the landowner will receive a sum for the land which will take account of the sum required to clear any securities.

Assessment of value of land etc.

251. The new section 97S of the 2003 Act sets out the procedure for valuation of the land in respect of which a Part 3A community body is exercising its right to buy.

252. Subsection (1) requires that Ministers, where they have consented to a Part 3A community right to buy application, must appoint a valuer to assess the value of that land within 7 days of that consent.

253. Subsection (2) provides that the validity of anything done under the new section 97S will not be affected by Ministers’ failure to comply with the time limit specified in subsection (1).

254. Subsection (3) sets out the role of the valuer.

255. Subsection (4) specifies that the value to be ascertained is the market value at the date Ministers consented to the application to exercise the right to buy.
256. Subsection (5) defines market value as the sum of the open market value if the sale were between a willing seller and willing buyer, compensation for any depreciation in the value of other land and interests belonging to the seller as a result of the forced sale, and compensation for any disturbance to the seller resulting from the forced sale.

257. Subsection (6) specifies that in arriving at the open market value for the purposes of subsection (5)(a), account may be taken of the known existence of a potential purchaser with a special interest in the property (other than the Part 3A community body). It also specifies that no account shall be taken of the fact that no time was allowed for marketing the property or of the depreciation of other land or disturbance (since compensation for these latter two items will be added to the open market value by virtue of subsection (5)(b) and (c)).

258. Subsection (7) states that Ministers shall pay for the valuation under this section.

259. Subsections (8), (8A) and (8B) require the valuer to ask both the owner and the Part 3A community body for their views in writing on the value of the land, and invite written counter-representations from each party on the other’s views, and to take these representations and counter-representations into account in arriving at the valuation.

260. Subsection (9) specifies that where the Part 3A community body and the owner have agreed the valuation, they must notify the valuer in writing of that valuation.

261. Subsections (10) and (11) require the appointed valuer to notify Ministers, the landowner and the Part 3A community body of the valuation. This must be done within 8 weeks of being appointed or within a longer period set by Ministers, as requested by the valuer.

262. Subsection (12) sets out that the validity of the transfer is not affected by a failure by the valuer to comply with the time limit.

Compensation

263. The new section 97T of the 2003 Act provides for payment of compensation in connection with an application to exercise the Part 3A community right to buy. It provides that the compensation will be payable by the Part 3A community body except where Ministers have refused the application, in which case the compensation due to the owner of the land will be paid by Ministers.

264. Subsection (1) specifies the circumstances in which eligibility for compensation will arise.

265. Subsection (2) provides that the Part 3A community body will not be liable to pay compensation when a Part 3A community right to buy application is made but is not approved by Ministers.

266. Subsection (3) specifies that, in the circumstances covered by subsection (2), compensation for certain losses and expenses can be recovered from Ministers.
267. Subsection (4) provides that Ministers may make an order specifying the amounts payable in respect of loss or expense, who is liable to pay those amounts, and how any compensation is to be claimed under the new section 97T.

268. Subsection (5) provides that if the parties cannot agree whether compensation is payable or the amount of such compensation within the timescale specified in the order, then either party may refer the matter to the Lands Tribunal.

Grants towards Part 3A community bodies’ liabilities to pay compensation

269. The new section 97U provides that Ministers may, in certain limited circumstances, pay a grant to a Part 3A community body to assist it in meeting the compensation it has to pay in connection with its exercise of a right to buy.

270. Subsection (2) specifies the circumstances in which payment of such a grant would be permitted and subsection (3) makes it clear that Ministers are not bound to pay a grant even when all the circumstances specified arise.

271. Subsection (4) provides that payment of a grant may be subject to conditions including conditions relating to repayment in the event of a breach.

272. Subsection (5) provides that a grant may be paid only if the Part 3A community body applies for it, and subsection (6) provides that the form of the application and the application procedure shall be as Ministers specify in regulations.

273. Subsection (7) provides that Ministers must issue their decision on an application for a grant in writing and, where that decision is to refuse to pay a grant, include the reasons for that refusal. Subsection (8) provides that Ministers’ decision on whether to pay a grant or not is final.

Appeals


275. Subsections (1), (4) and (5) provide that the landowner, a person who is a member of the community to which a Part 3A community body relates and a creditor in a standard security with a right to sell land to which an application relates may appeal against the Ministers’ decision to consent to the application, while subsection (2) allows the Part 3A community body to appeal against a decision to refuse an application. Where there is more than one Part 3A community body wishing to purchase the land, subsection (3) provides that Ministers’ decision on which community body’s application will proceed is final and cannot be appealed to the sheriff.

276. Subsection (6) specifies the timeframe within which an appeal may be made.

277. Subsection (7) specifies that the sheriff court with the jurisdiction to hear an appeal is the sheriff court where the land subject to an appeal is located.
278. Subsection (8) specifies who each appellant must inform when an appeal is made.

279. Subsection (9) provides that the sheriff’s decision is final and may require rectification of the Register of Community Interests in Abandoned or Neglected Land and may impose conditions on the appellant.

**Appeals to Lands Tribunal: valuation**

280. The new section 97W of the 2003 Act sets out the rights of appeal to the Lands Tribunal in connection with the valuation which is carried out under the new section 97S.

281. Subsection (1) provides that the owner of the land and the Part 3A community body exercising its right to buy may appeal the valuation to the Lands Tribunal.

282. Subsection (2) requires such an appeal to state the grounds of the appeal and that it be lodged within 21 days of valuation being notified under section 97S(10).

283. Subsection (3) provides that the Lands Tribunal may reassess the valuation of the land.

284. Subsection (4) provides that the valuer may be a witness in the appeal proceedings.

285. Subsection (5) requires the Lands Tribunal to give reasons in writing for its decision on an appeal within 8 weeks of the hearing of that appeal. Subsection (5A) provides that, where the Lands Tribunal considers that it is not reasonable to issue a written statement within 8 weeks, it must notify the parties to the appeal of the date by which it will issue its written statement.

286. Subsection (6) provides that Ministers are not competent parties to any appeal by reason only that they appointed the valuer.

287. Subsection (7) provides that Ministers’ powers under the Lands Tribunal Act 1949 to make rules are extended so that Ministers can make any rules necessary or expedient in connection with Part 3A.

**Reference to Lands Tribunal of questions on applications**

288. The new section 97X sets out rights of appeal to the Lands Tribunal on a question relating to the Part 3A application.

289. Subsection (1) provides that at any time before Ministers make a decision on an application, any question relating to the application may be referred to the Lands Tribunal by Ministers, the landowner, a person who is a member of the community to which the Part 3A community body relates, any person with an interest in the land giving rise to a legally enforceable right (e.g. a creditor in a standard security with the right to sell land) or any other such person invited to send views on a Part 3A application (under section 97G(9)(a)(iii)).
290. Subsection (2) provides that the Lands Tribunal may consider the views of the Part 3A community body, the owner of the land subject to the Part 3A application and any other person that the Lands Tribunal determines have an interest in the case.

291. Subsection (3) provides that the Lands Tribunal must inform Ministers of its findings on any of the questions referred to it and may, by order, provide for Ministers to consent to an application under the new section 97L only if they impose certain conditions, as directed by the Lands Tribunal.

292. Subsection (4) provides that if the Lands Tribunal finds that the question on the application is not relevant to the Ministers’ decision, the Lands Tribunal may decide not to consider the question further and find accordingly.

Agreement as to matters referred or appealed

293. The new section 97Y of the 2003 Act provides that parties to the Part 3A application are not prevented from settling or agreeing on the matter which is subject to an appeal under sections 97V or 97W between them.

Interpretation of Part 3A

294. The new section 97Z sets out some matters of interpretation.

295. Subsection (1) provides that any reference to a creditor in a standard security with a right to sell land is a reference to a creditor who has such rights under section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970, or a warrant granted under section 24(1) of that Act.

296. Subsections (2) and (3) provide that public or local holidays should not be taken into account when calculating time periods in Part 3A, except for the 6 month period of completion for the right to buy, the 28-day period for a right of appeal to the sheriff and the 21-day period for a right of appeal to the Lands Tribunal on the valuation.

Part 5: Asset transfer requests

297. This Part sets out how a “community transfer body” can request to buy, lease, manage, occupy or use land or buildings belonging to a “relevant authority”, how the authority is to decide whether to agree to or refuse the request, and the procedures to be followed if the request is agreed.

298. Throughout this Bill (except where it amends other legislation) “land” has the meaning set out in the Interpretation and Legislative Reform (Scotland) Act 2010, which is that “‘land’ includes buildings and other structures, land covered with water, and any right or interest in or over land”.

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Community transfer body

299. Section 50 defines a “community transfer body”. This is either a community-controlled body, as defined in section 14, or a body designated as a community transfer body by the Scottish Ministers. The Scottish Ministers may designate individual bodies to be community transfer bodies or may designate a whole class of bodies, so that any body of that type will qualify as a community transfer body. Subsection (3) states that where a trust is designated, the designated body will be the trustees, since a trust is not incorporated.

Relevant authority

300. A “relevant authority” is defined by section 51. This may be a person (or organisation) listed in schedule 3, or one designated as a relevant authority by the Scottish Ministers. Schedule 3 includes local authorities, the Scottish Ministers, Health Boards, and certain other Scottish public bodies, which have been selected because they own significant amounts of land and buildings.

301. The remainder of section 51 gives the Scottish Ministers a power to remove or amend any entry on the list, or to make an order designating other bodies or classes of bodies as public service authorities. Subsection (4) provides that persons may only be designated if they fall into the following categories:

- part of the Scottish Administration, which has the meaning given in section 126(6) to (8) of the Scotland Act 1998;
- “Scottish public authorities with mixed functions or no reserved functions under the Scotland Act 1998” – this means that UK Government Departments and public bodies that deal with matters reserved to the UK Government cannot be included;
- companies wholly-owned by relevant authorities.

Asset transfer requests

302. Section 52 sets out how an asset transfer request can be made. It must relate to land (which includes buildings) owned or leased by a relevant authority. The community transfer body may ask to have ownership of the land transferred to it, if the land is owned by the relevant authority; it may ask to lease the land from the relevant authority; or to obtain other rights in respect of the land, for example to manage or use it for a specified purpose.

303. Subsection (4) sets out the information which must be included in the request. In addition to specifying the land (or building) to which the request relates, and whether the request is for ownership, lease or other rights, the community transfer body must describe the reasons for making the request and the benefits which it considers will arise if the request is agreed to. It must also state how much the body would be prepared to pay, either to buy the land or in rent, and any other terms and conditions that would apply to the request.

304. Section 52(3) provides that a request for transfer of ownership of land may only be made by a community transfer body which meets the criteria set out in section 53, in addition to being covered by section 50. This means it must be a company, a Scottish charitable incorporated organisation (SCIO), a community benefit society, or a body designated as a community transfer
body under section 50, where the designation states that the body may make a request for transfer of ownership. Classes of bodies may also be designated as eligible to make a request for transfer of ownership.

305. If a company is to meet the criteria to request transfer of ownership, section 53(2) requires that it must have at least 20 members, and provision in its articles of association to ensure that, on winding up, any remaining property remains within either the community sector or the charitable sector. If the company has registered an interest in or has acquired land under the Land Reform (Scotland) Act 2003, its winding up provisions will need to satisfy the requirements of that Act. Subsection (2)(b)(iii), (iv) and (v) replicate those requirements, so that a company can be both a community transfer body and a community body under Part 2 of the Land Reform (Scotland) Act 2003 or a crofting community body under Part 3 of that Act. If the company is registered as a Scottish charity, the requirements for registration mean that any surplus property must be applied for charitable purposes, as in subsection (2)(b)(ii), so a charitable company can also be a community transfer body. If the company does not need to meet either of those requirements, it may choose to use any of the options in paragraph (b).

306. In order to be registered as a SCIO, a body is required to have appropriate provision in its constitution for surplus property to be distributed for charitable purposes. Similarly, there are restrictions on how community benefit societies can use or deal with their assets, and assets can only be transferred to other community or charitable organisations. Therefore, the only additional requirement for a SCIO or a community benefit company to be able to make an asset transfer request for ownership of land is that it has at least 20 members, which is provided for in subsection (1)(b) and (ba) of section 53.

**Regulations**

307. A community transfer body may need more information about the property before determining the purchase price, level of rent or other terms and conditions to be proposed. The Scottish Ministers may make regulations under section 54 about asset transfer requests. These may include, under subsection (3), details of how a community transfer body can request such information and how a relevant authority is to respond. Regulations under subsection (2) may also specify how asset transfer requests are to be made, additional information to be included in them, and the procedure to be followed by a relevant authority in relation to requests. They may also include requirements to publish the fact that a request is being made, and to notify specified people about them.

**Decisions**

308. A relevant authority must decide whether to agree to or refuse an asset transfer request in accordance with section 55. It must compare the benefits that might arise if the request is agreed to with those that might arise from any other proposal for the land, whether made through another asset transfer request, by the authority, or by any other person (subsection (3)(e) and (6)). In doing so it must consider whether the proposals will promote or improve economic development, regeneration, public health, social wellbeing or environmental wellbeing or reduce inequalities of outcome which result from socio-economic disadvantage, and any other benefits that might arise, and the decision must be reached in a manner which encourages equal opportunities and the observance of the equal opportunity requirements. The relevant authority
must also consider other matters it considers relevant, including the functions and purposes of the authority, and any obligations that may affect its ability to agree to the request. Subsection (5) requires that the authority must agree to the request unless there are reasonable grounds for refusing it.

309. Subsection (7) requires the relevant authority to give notice to the community transfer body of its decision, and the reasons for that decision, within a specified period, as described in subsection (8). Subsection (9) gives the Scottish Ministers power to make regulations about the information to be included in this decision notice and how it is to be given.

310. Section 56 sets out the procedure to be followed when an asset transfer request is agreed to. The decision notice given by the relevant authority must specify the terms and conditions on which the authority is prepared to carry out the transfer. These terms and conditions may or may not reflect those included in the asset transfer request. The community transfer body must in turn submit an offer, within a period specified in the decision notice, reflecting the terms and conditions set out in the decision notice, and any other terms and conditions needed to make sure the transfer can take place, and that it takes place within a reasonable time. After this the community transfer body and the relevant authority will make arrangements to conclude a contract, as would happen with any sale or lease of property. Subsections (5) to (9) set out a timescale for this.

311. The period for concluding a contract is normally a minimum of 6 months from the date of the offer. A longer period can be agreed between the relevant authority and the community transfer body. If the relevant authority does not agree to extend the period, the community transfer body may apply to the Scottish Ministers seeking a direction under subsection (7)(b)(ii) that the period should be extended. This can be done more than once. The Scottish Ministers may make regulations under subsection (10) about these directions and how to apply for them. Under subsection (6A), if the contract is not concluded within the required period, this is treated as a refusal of the request, and an appeal can be made under section 58.

312. When a relevant authority has agreed to transfer land in response to an asset transfer request, section 57 prevents the authority from disposing of that land to anyone other than the body that made the request. This applies from the day the decision notice is given to the day when the transfer process ends. The process ends when a contract is concluded (subsection (4)(a)), or when no offer has been made within the specified period (subsection (3)(a)), or when no contract has been concluded within the specified period (subsection (4)(b)). If the relevant authority enters into a contract with another person, during this period, to sell or lease the land to them, subsection (5) makes that contract unenforceable.

**Appeals and reviews**

313. Sections 58 to 59C set out arrangements for appeals and reviews in relation to asset transfer requests. A community transfer body can appeal or apply for a review if:

- the request has been refused;
- the request has been agreed but the relevant authority has required terms and conditions which are significantly different to those proposed in the request; or
no decision has been made within the required period.

314. The arrangements depend on the relevant authority to which the asset transfer request was made, and therefore by which the original decision was made.

- Decisions made by a local authority are subject to review by the local authority, under section 59.
- Decisions made by a relevant authority specified by the Scottish Ministers in an order under section 58(2)(c) are subject to review by a local authority.
- Decisions made by the Scottish Ministers are subject to review by the Scottish Ministers under section 59A.
- Decisions made by any other relevant authority are subject to appeal to the Scottish Ministers under section 58.
- Decisions made by local authorities following a review under section 59 (or provided for by section 59C) are subject to appeal to the Scottish Ministers under section 59B, following the procedures set out in section 58.

315. For each type of appeal or review, the Scottish Ministers may make regulations about how they are to be carried out and the time limits for making the application. These regulations may allow the authority undertaking the process to determine how certain stages are carried out.

316. In the case of an appeal to the Scottish Ministers under section 58 or section 59B, the Scottish Ministers may allow the appeal or may dismiss it and may reverse or vary (change) any part of the decision of the relevant authority, including changing any terms and conditions that were imposed. The Scottish Ministers may reverse or vary part of the decision of the relevant authority even if the appeal does not relate to that part. If the Scottish Ministers decide the relevant authority must transfer ownership, lease or confer rights in relation to land, or agree to certain terms and conditions, they must issue a direction requiring the relevant authority to issue a new decision notice in line with the appeal decision. That notice will replace the original decision notice.

317. In a review carried out by a local authority, under section 59, subsection (8) means that the local authority must consider the same issues when reviewing a decision as it would in making an initial decision on an asset transfer request, and must agree to the request unless there are reasonable grounds for refusal. Subsection (10) displaces the general rule set out in section 56 of the Local Government (Scotland) Act 1973 (that a local authority may delegate any of its functions to any of its committees, sub-committees or officers or another local authority) to require that the review must be carried out by the authority or a committee or sub-committee of the authority, and may not be delegated to officers. Subsection (5) provides that, having carried out a review, the local authority may confirm or change its decision, including altering any terms and conditions set out in the original decision notice. It must then provide a new decision notice, providing the reasons for the decision made on review. This notice replaces the original decision notice, and must be issued within a period prescribed in regulations, or a longer period agreed between the local authority and the community transfer body.
318. A review of a decision made by the Scottish Ministers under section 59A follows much the same procedures as a local authority review. However, it allows for the Scottish Ministers to appoint persons in connection with carrying out the review. This might, for example, allow for an independent reporter or panel to scrutinise the original decision and make a report to Ministers. There is no time limit for the Scottish Ministers to issue their decision notice following the review.

319. Section 59C provides that decisions made by a relevant authority specified by the Scottish Ministers in an order under section 58(2)(c) are subject to review by a local authority. The local authority to which an application for review is to be made may be specified or determined by factors set out in an order under section 59C(4)(b). This allows for cases where it is more appropriate for the decision to be reviewed by a local authority than by the Scottish Ministers, for example where the relevant authority is a company wholly owned by one or more local authorities. The review procedures set out in section 59 will apply, subject to such modifications as the Scottish Ministers think appropriate.

320. When an appeal or review results in an asset transfer request being agreed (with or without amended terms or conditions), the process then continues under the provisions of section 56, with the community transfer body making an offer and the two parties proceeding to conclude a contract.

**Land leased to a relevant authority**

321. Section 60 applies where all the criteria set out in paragraphs (a) to (d) of subsection (1) are met. It deals with the situation where an asset transfer request is made to lease or otherwise occupy land (including a building) which is leased to a relevant authority by another relevant authority, or by a company wholly owned by another relevant authority. Subsections (2) and (3) mean that any conditions in that lease which restrict the relevant authority’s ability to sub-let or share occupancy of the land, or restrict how the land may be used, do not prevent the relevant authority agreeing to lease the land to the community transfer body or to allow the body to occupy the land.

322. This does not apply if any other person is entitled to occupy the land (subsection (1)(d)). Subsections (4) and (5) also provide that it does not affect any restrictions on the power of the relevant authority to assign or transfer rights and liabilities under the lease, and the relevant authority continues to be subject to any obligations under the lease, even if it leases the land to the community transfer body or allows the body to occupy it. For example, the relevant authority would still be responsible to the landlord for any maintenance requirements included in the lease between them.

**Repeated requests**

323. Section 61 is intended to help relevant authorities deal with repeated, vexatious requests. It means that if a second request relating to the same land or building is made within two years of a previous request, which was refused, the relevant authority may choose not to consider that second request. Subsections (4) and (5) provide that this only applies if the new request seeks the same type of transfer, but it does not matter whether the new request is made by the same body or a different one. For example, if one community transfer body requests to lease a
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particular building, and is refused, and another body requests to lease the same building within two years, the relevant authority may decline to consider that second request. On the other hand, if the second request was for transfer of ownership instead of a lease, the relevant authority would have to consider it. Declining to consider a request under these circumstances does not count as a refusal of the request and therefore is not eligible for appeal or review.

**Registers of relevant authorities’ land**

324. Section 61A requires each relevant authority to establish, maintain and make available to the public a register of land which they own or lease (to the best of the authority’s knowledge and belief). There is a power for the Scottish Ministers to specify land that need not be included in the register, and relevant authorities must have regard to any guidance issued by the Scottish Ministers in relation to these duties.

325. This provision is intended to assist community bodies in identifying property that may be available for asset transfer. However, the fact that a property is not on the register will not prevent an asset transfer request being made for it. It is expected that regulations will be used to exclude types of “land”, such as retaining walls and mineral rights, which are unlikely to be targets for asset transfer in themselves. Guidance will set out what information about the land is to be included, as well as issues such as how the register should be published and how often it must be updated.

**Annual reports**

326. Section 61B requires each relevant authority to publish an annual report on the number of asset transfer requests received and their outcomes, including the outcome of any appeal or review, and any action taken by the authority to promote the use of asset transfer requests and support community bodies to make them.

**Part 5A: Delegation of Forestry Commissioners’ functions**

327. Section 7B of the Forestry Act 1967 (“the 1967 Act”), inserted by the Public Services Reform (Scotland) Act 2010, allows the Forestry Commissioners to delegate their functions (to such extent and subject to such conditions as they think appropriate) to community bodies, in relation to land in Scotland which is let to the community body.

328. Section 7C of the 1967 Act sets out the requirements that a body must meet to be a community body under section 7B of the 1967 Act. It must be a company limited by guarantee, the articles of association of which include a definition of the community to which the company relates. The community must be defined by reference to postcode units. The company must also have no fewer than 20 members; the majority of the members of the company must consist of members of the community, and those members must have control of the company; and there must be provision for proper financial management of the company and the auditing of its accounts.

329. The Forestry Commissioners manage land which is owned by the Scottish Ministers and placed at their disposal for the exercise of their functions, under section 3 of the 1967 Act. Since the Scottish Ministers are listed in schedule 3 to the Bill as a relevant authority, a community
transfer body may make an asset transfer request under Part 5 to lease such land, and may seek to
have forestry functions delegated to it in relation to that land. Part 5A of the Bill amends section
7C of the 1967 Act, to make the requirements for a community body in that section closer, but
not identical, to the requirements for a community controlled body under section 14 of the Bill,
which may be a community transfer body under section 50.

330. Subsection (2)(a) of section 62A of the Bill removes the requirement for a community
body to be a company limited by guarantee and allows it instead to be any form of body
corporate, with a requirement that certain provisions are set out in a written constitution rather
than having to be in articles of association. Subsection (2)(c) adds a requirement that
membership of the body must be open to any member of its defined community, and that its aims
and purposes must include the promotion of a benefit for that community. Subsection (2)(d)
removes the requirement in relation to auditing of the accounts (although the requirement for
ensuring proper arrangements of the financial management of the body remains), but adds a
provision that any surplus funds or assets of the body must be applied for the benefit of the
community. Subsection (4) removes the requirement for the community to be defined by
postcode units, allowing for communities of interest to be included as well as those defined by
geographical boundaries.

Part 5B: Supporters’ Trust’s Rights to Buy Scottish Professional Football League club

331. This Part sets out a mechanism for supporters’ trusts to have a right to buy Scottish
Professional Football League clubs.

Meaning of “supporters’ trust”

332. Section 62B defines the meaning of “supporters’ trust”. Only a community benefit
society can be a supporters’ trust, and it must relate to one club which is a member of the
Scottish Professional Football League. In these notes and in the Bill provisions, the club in
question is referred to as the “football club”.

Meaning of “Scottish Professional Football League club”

333. Subsection (1) of section 62C defines “Scottish Professional Football League club” as a
football club which is a member of the Scottish Professional Football League (SPFL) or any
successor body as recognised by the Scottish Football Association. Therefore this excludes other
football clubs playing in other leagues (such as lowland league, highland league, junior football)
or any club that has been relegated from the SPFL. Subsection (2) provides that the Scottish
Ministers can modify the meaning of “football club” by regulations. Subsection (3) states that
the Scottish Ministers must consult before making any regulations to modify the definition.

Supporters’ trust register

334. Section 62D requires the Keeper of the Registers of Scotland to create and maintain a
public register of supporters’ trusts who have registered an interest in buying a football club.
This will be known as the “Supporters’ Trust Register”.

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**Meaning of “ownership”**

335. Section 62E defines “ownership”, in relation to a football club, as having a controlling interest in the football club, which means shares carrying more than half of the voting rights. The controlling interest may be held by individuals, companies or a community benefit society, or any other body prescribed by the Scottish Ministers.

**Supporters’ trust registration of interest in buying a football club**

336. Section 62F sets out how an interest in buying a football club may be registered. An application must be made to the Scottish Ministers in a form and accompanied by information that may be prescribed. Each application may only relate to one football club, but more than one supporters’ trust may be registered in respect of a single football club.

337. Subsection (4) provides that, on receiving an application, the Scottish Ministers must inform the owner or operator of the club and invite them to respond. They must also send a notice prohibiting the owner or operator from transferring ownership of the football club, or taking any steps to transfer ownership, until the application is determined.

338. Under subsection (5), Ministers must be satisfied that a number of criteria are met to enable a football club to be registered, including:

- a significant number of the members of the trust have a substantial connection with the club.
- membership of the trust is open to all supporters of the club at an affordable rate.
- there is a level of support within the trust to justify a registration of interest
- it is in the public interest to register the interest.

339. If the Scottish Ministers decide that the interest is to be registered they must, under subsection (6), direct the Keeper to enter the interest into the Register.

**Effect of registration**

340. Section 62G sets out the effect of the registration of the supporters’ trust’s interest on the owner of the club. In effect they are prohibited from transferring ownership or taking other action such as putting it up for sale or entering into negotiations for transfer of ownership, including any such negotiations which started before the supporters’ trust interest was registered. If the owner sells sufficient shares to transfers the controlling interest in the club they must be offered for re-sale to the supporters’ trust. This section does not prevent the owner from winding the club up (filing for insolvency).

**Procedure for late applications**

341. Section 62H provides for late applications, i.e. an application received by the Scottish Ministers after the owner or operator of the football club has advertised the club for sale or started negotiations to transfer ownership, or has notified another supporters’ trust which has a registered interest that they intend to transfer the club to that trust. In order to allow a late
application to be registered the Scottish Ministers must be satisfied that there were good reasons why the application was not submitted before the owner decided to transfer ownership, that the support within the trust is “significantly greater” than under normal registration procedures, and there are factors strongly indicative that it is the public interest.

342. Subsection (4) provides that section 62O, procedure for buying, does not apply where an interest has been registered following a late application and that notice under section 62O and the confirmation which the Scottish Ministers would have required to seek under section 62K(2)(a) is deemed to have been given (although section 62O does not refer to a notice as mentioned in this subsection).

343. Subsection (5) provides that where an application for registration is received after transfer of ownership of the football club has been concluded or an option to buy has been conferred, the Scottish Ministers must decline to consider it.

Activation of supporters’ trust right to buy and Supporters’ trust right to buy

344. Sections 62I and 62J provide for situations where the supporters’ trusts’ interest may be activated and exercised.

345. Section 62I sets out that the supporters’ trust’s interest may be exercised when the owner or operator has given notice of their intention to transfer ownership or that the club has entered into formal insolvency. The owner or operator must give such notice to the supporters’ trust or trusts which have a registered interest, and to the Scottish Ministers, in such form as may be prescribed.

346. Section 62J provides that the supporters’ trust right to buy may be exercised at any time after that interest has been entered into the register by the Keeper.

Procedure after activation of right to buy

347. Section 62K sets out the initial procedure after the activation of the supporters’ trust right to buy under section 62I. This includes the Scottish Ministers seeking confirmation that the trust will exercise its right to buy. The trust has 30 days to respond and if they do not the right to buy is extinguished. The Scottish Ministers must direct the Keeper to enter details of the notification given under section 62I into the register, and must send copies of the notice sent by them to the supporters’ trust and any response to the Keeper and the owner of the club.

Exercise of right to buy: approval of supporters’ trust and consent of the Scottish Ministers

348. Section 62L provides that the exercise of the right to buy can only proceed with the approval of the supporters’ trust and the consent of the Scottish Ministers.

349. Under subsection (2), the supporters’ trust has given its approval if at least half the members have voted in a ballot or, where less than half have voted, the proportion is still sufficient to justify buying the club. The majority of those voting must have voted in favour of the proposition. The vote must have taken place within the last 6 months.
350. The Scottish Ministers may not consent to the purchase unless the criteria set out in subsection (3) are met, including that the proposed purchase of the club is in the public interest and that nothing has changed since the interest was registered that would cause the application to be refused if it was made at this time.

351. The Scottish Ministers must send notice of their decision and their reasons to the supporters’ trust and the owner of the club within 21 days after receiving notification of the result of the supporters’ trust’s ballot (or the last of the ballots, if two or more trusts are involved), and must direct the Keeper to record the decision in the Register.

**Declinature or extinction of right to buy**

352. Section 62M provides that the supporters’ trust right to buy is extinguished if, after the right to buy has arisen, the supporters’ trust gives notice that it will not exercise its right to buy, or the owner or operator gives notice that they have decided not to proceed with the proposed transfer. These actions do not prevent the supporter’s trust from registering an interest in the club again, or the right to buy from arising again.

**Right to buy same club exercisable by only one supporters’ trust**

353. Section 62N provides that, where there is more than one supporters’ trust with a registered interest in the same club, only one may exercise the right to buy. It will be for the Scottish Ministers to decide which one is to proceed, and the other trust’s right to buy will be extinguished.

**Procedure for buying**

354. Section 62O sets out the procedure for buying the club. The supporter’s trust is to make an offer at a price agreed between the trust and the owner or, if no agreement is reached, at a value assessed by an appointed valuer or determined after an appeal of the assessed value. The price is to be paid and ownership transferred not later than 6 months from the date that the supporters’ trust confirmed its intention to exercise the right to buy. Later dates are provided for if an appeal over the assessed value has not been concluded within 4 months of the confirmation. If missives have not been concluded within the required period then the right to buy is extinguished, unless the Scottish Ministers are satisfied that the supporters’ trust has taken all reasonable steps to conclude the missives.

**Application for funding**

355. Section 62P allows the Scottish Ministers to make payments to fund the trust in order that the trust can make an offer to buy the club. Before they can apply for funding the trust must have obtained the approval of the trust and consent of the Scottish Ministers to proceed to buy the club.

**Assessment of value of football club**

356. Section 62Q provides that the Scottish Ministers must appoint a valuer within 7 days of receiving confirmation that a supporters’ trust will exercise its right to buy. The valuer must be...
suitably qualified, independent and have knowledge and experience of valuing a club. The value to be assessed is the market value of the club at the date when the owner or operator notified their intention to transfer ownership, or the insolvency of the club, or in the case of a late application, at the date the application was received. The cost of the valuation is to be met by the Scottish Ministers.

**Appeals**

357. Section 62R provides for a range of circumstances in which an appeal may be made to the sheriff.

358. Subsection (1) provides for an owner or operator of a football club to appeal against:
- a decision by the Scottish Ministers that a trust interest is entered into the register
- a decision by the Scottish Ministers to give consent to the exercise by a trust of its right to buy
- a decision by the valuer on the valuation of the club.

359. Subsection (2) provides for a supporters’ trust to appeal against:
- a decision by the Scottish Ministers that a trust interest is not to be entered into the register
- a decision by the Scottish Ministers not to give consent to the exercise by a trust of its right to buy
- a decision by the valuer on the valuation of the club.

360. Subsection (3) provides for a person who is a member of a trust or who has any interest in the football club giving right to a legally enforceable right, to appeal against:
- a decision by the Scottish Ministers that a trust interest is to be entered into the register
- a decision by the Scottish Ministers to give a consent to the exercise by a trust of its right to buy.

**Supporters’ trust right to buy shares in a football club**

361. Section 62S gives a trust with a registered interest the right to buy a proportion of the shares in the club at any point when the right to buy has been activated. In exercising this right the trust may buy a controlling interest and must, if it chooses to buy shares, buy at least 5% of the shares in the club.

**Part 6: Common good property**

362. Common good property is property owned by local authorities for the common good of the inhabitants in their areas which has been passed down, through local government reorganisation, from the former burghs. Those burghs would have received it as a gift or purchased it. It includes land and buildings, moveable items such as furniture and art, and cash
funds. It is sometimes difficult to know whether property is part of the common good, and there may be restrictions on how certain items of common good property are allowed to be used and whether the local authority can dispose of them. In some cases this has to be decided by the courts.

363. This Part of the Bill increases transparency about common good assets and community involvement in decisions taken about their identification, use and disposal. It does not define or redefine common good or remove or alter any restrictions on the use or disposal of common good property.

Common good registers

364. Section 63 requires each local authority to establish and maintain a register of its common good property. Before establishing this register it must publish a list of what it proposes to include, and notify any community councils and other community bodies in its area. In this Part, “community bodies” are defined as any group set up to promote or improve the interests of any communities which exist in the area. Community councils and community bodies must be invited to comment on the proposed register, and the local authority must take account of any comments made by those bodies or anyone else. This gives everyone the opportunity to say whether they think the local authority has missed any common good property from the list, or included anything which is not part of the common good.

365. Subsection (8) requires the local authority to make its completed common good register available for the public to inspect in person, and to make it available on a website or by other electronic means.

366. Section 64 requires local authorities to have regard to any guidance issued by the Scottish Ministers about common good registers. Before issuing any guidance, the Scottish Ministers must consult local authorities, community councils, and appropriate community bodies.

Disposal and use of common good property

367. Section 65 ensures that communities are consulted before a local authority disposes of any common good property or changes its use. As with establishing the common good register, the local authority must publish its proposals, notify community councils and community bodies, and take account of any comments made by them or anyone else. In this case the local authority only needs to consult community bodies which it knows have an interest in that particular property. They must also, where the local authority is Aberdeen, Dundee, Edinburgh or Glasgow City Council, consult any community council in the local authority area. Apart from Aberdeen, Dundee, Edinburgh and Glasgow City Councils, many local authorities have one or more common good funds that are used for the benefit of different former burgh areas, and they are required to administer these funds with regard to the interests of the inhabitants of the relevant area. It would not be appropriate to consult community councils from other parts of the local authority area. Therefore section 65(5)(aa) provides that the local authority must notify and invite representations from community councils whose area covers or overlaps with the area to which the common good property related prior to the abolition of burgh councils in 1975.
368. Section 66 requires local authorities to have regard to any guidance issued by the Scottish Ministers about disposal or change of use of common good property and about the management and use of common good property.

**Part 7: Allotments**

**Meaning of “allotment”**

369. Earlier legislation on allotments does not provide a clear definition of “allotment”. Section 68 of the Bill defines “allotment” for the purpose of this Part. Paragraph (a) provides that an allotment is land that is either owned or leased by a local authority. Privately leased or owned allotments are not covered by the Bill. Additional requirements for land being an allotment under Part 7 of the Bill are that the land is leased, or intended to be leased, by a person from the local authority and that the land is used wholly or mainly for the non-commercial cultivation of vegetables, fruit, herbs or flowers (subsection (1)). Additionally, an allotment is defined as a size of approximately 250 square metres or such size as has been requested by the person leasing or intending to lease it (subsection (2)) if the size is smaller than 250 square metres.

**Meaning of “allotment site”**

370. No specific definition of “allotment site” has been included in earlier allotment legislation. Section 69 defines “allotment site” for the purpose of Part 7 as an area of land consisting wholly or partly of “allotments”, as defined in section 68. An “allotment site” also includes other local authority land that allotment tenants use in connection with their allotments, such as communal buildings, and environmental areas.

**Regulations as to size of allotments**

371. Section 69A confers a duty on the Scottish Ministers to make further provision about the size of allotments in regulations. This section also requires the Scottish Ministers to consult with each local authority and any other persons that may be appropriate before bringing forward such regulations.

**Request to lease allotment**

372. Section 70 provides for requests to lease allotments from a local authority. Subsection (1) provides that any resident in a local authority area may request to lease an allotment from that local authority.

373. Subsection (2) provides that this request must be in writing and include the name and address of the applicant. Regulations may also set out further information that must be included in the request.

374. Subsection (3) makes provision for requests for allotments by disabled persons and allows details of any additional requirements regarding access to and adaptation of the allotment or site to be provided in the request. For example a need for adaptations such as raised beds and wider paths should be specified.
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375. Subsection (4) provides that a request for an allotment may be made even if the local authority does not currently provide allotments in their area. A joint request for an allotment may also be made by two or more persons, so long as the applicants are all resident in the relevant local authority area (subsection (5)).

376. Once a request is received, the local authority is under a duty to acknowledge the request in writing within 14 days (subsection (6)).

**Duty to maintain list**

377. Section 71 imposes an obligation on local authorities to establish and maintain a waiting list of residents who have requested an allotment.

378. Subsection (2) clarifies that there is no set format for such lists and local authorities may manage them as they see fit. They may, for example, wish to split the list into applicants’ preferred geographical areas. Subsection (3) provides that a person’s details must be removed from the list when they are offered an allotment or withdraw their request.

**Duty to provide allotments**

379. Section 72(1) imposes a duty on local authorities to take reasonable steps to provide sufficient allotments to keep the list referred to in section 71 at no more than half the authority’s current number of allotments, and to ensure that the number of persons who have been entered on the list for more than five years is zero.

380. Where a local authority does not on the date that section 72 comes into force own or lease allotments, subsection (2) sets out that this duty is triggered when there are 15 people on the local authority waiting list maintained under section 71(1). However, where a local authority already owns or leases allotments, subsection (3) sets out that the duty arises after only one person is on the waiting list.

381. Subsection (3A) requires local authorities, when taking reasonable steps to meet the duty in subsection (1), to take into account the need to provide allotments in reasonable proximity to the areas where people on the waiting list reside.

382. The Scottish Ministers may by order amend the number of people on the waiting list that triggers the requirement on the local authority to take reasonable steps to provide more allotments, or the proportion of current allotments below which the waiting list is to be kept (subsections (4) and (5)).

**Access to allotment and allotment sites**

383. Under section 72A where a local authority leases an allotment to a tenant the authority must provide reasonable access to the allotment and any allotment site. Where an authority leases an allotment site to a tenant the authority must provide reasonable access to the site and to allotments on it.
Allotment site regulations

384. An obligation is placed on each local authority under section 73(1) to make allotment site regulations for their area within two years of this section coming into force.

385. The matters set out in subsection (3) must be included in the regulations.

386. In addition to the mandatory requirements under subsection (3), subsection (4) sets out other matters local authorities may include in the regulations.

387. Local authorities are permitted to vary the regulations for different areas or different allotment sites in order to take account of local circumstances (subsection (5)).

Allotment site regulations: further provision

388. Section 74 sets out the process that local authorities must undertake to make allotment site regulations, or to vary or revoke them. Subsection (2) provides that local authorities must at least one month before making regulations advertise their intention to do so, the purpose of the regulations, where they may be inspected and details about making representations. They must also make copies of the proposed regulations available. A person who objects to the regulations may make representations to the local authority and must be allowed an opportunity to be heard and his or her representations taken account of before the local authority makes its final decision (subsections (3) and (4)). Where regulations contravene the local authority’s lease of the site, the provision in the lease is to prevail (subsection (11)).

Disposal etc. of allotments and allotment sites owned by local authority

389. Section 75 applies where an allotment site is owned by a local authority.

390. If a local authority wishes to change the use of or dispose of the whole or part of an allotment site it owns, before doing so it must obtain the consent of the Scottish Ministers (subsection (2)). Subsection (2A) requires the Scottish Ministers to consult both the local authority and other persons with an interest before granting consent. The Scottish Ministers may consent subject to conditions (subsection (3)), and in particular may only grant consent if they are satisfied that each of the allotment tenants from the site or the part of the site being disposed of is to be offered an alternative allotment within a reasonable distance, or that the provision of an alternative allotment is not necessary or reasonably practical in the circumstances (subsection (4)). Subsection (5) sets out that a purported transfer of ownership without the Scottish Ministers’ consent is of no effect.

Disposal etc. of allotments and allotment sites leased by local authority

391. Section 76 applies where a local authority leases the whole or part of an allotment site and sub-leases either the site (e.g. to an allotment association), or allotments within the site, to tenants.

392. Subsection (2) sets out that the local authority may not renounce (terminate voluntarily) the lease of an allotment site without the consent of the Scottish Ministers. In addition, even
where a change of use is permitted by the head lease, the local authority may not change the use of the allotment site unless the Scottish Ministers consent (subsection (3)). Subsection (3A) requires the Scottish Ministers to consult both the local authority and other persons with an interest before granting consent.

393. As with section 75 above, the consent of the Scottish Ministers may be subject to conditions (subsection (4)), and the Scottish Ministers may not grant consent unless they are satisfied that the allotment tenants of the site or part of the site which is closing are to be offered a suitable alternative allotment within a reasonable distance of the allotment site which is closing, or that the provision of an alternative is unnecessary or not reasonably practical in the circumstances (subsection (5)). Subsection (6) sets out that a purported renunciation of a lease without the Scottish Ministers’ consent is of no effect.

Duty to prepare food-growing strategy

394. Section 77 places a duty on every local authority to prepare a food-growing strategy which must be published within two years of this section coming into force. Subsection (3) provides that the food-growing strategy must identify land in the local authority area which could be used by a community to grow vegetables, fruit, herbs or flowers, as well as land that could be used for allotments, and must describe how the authority intends to increase the provision of allotments or other land for community growing, should there be an identified need. Subsection (3A) requires a local authority, when detailing how it intends to increase the provision of allotment sites and community growing areas of land in its area, to describe whether and how this will apply to communities which experience socio-economic disadvantage. The Scottish Ministers may also prescribe other information to be included in a food growing strategy.

395. Once complete, the local authority must publish the food growing strategy on a website or by other electronic means (subsection (4)).

Duty to review food-growing strategy

396. Each local authority is under a duty to review its food-growing strategy, under section 78. This must be done 5 years after the date of initial publication and every 5 years thereafter (subsection (1)). Where the local authority makes changes to its food growing strategy following a review, the revised strategy must be published on a website or by other electronic means (subsection (2)).

Annual allotments report

397. Under section 79, every local authority is under a duty to prepare and publish an annual allotments report. This requires to be done as soon as is reasonably practicable after the end of each reporting year (as defined in subsection (4)). Publication must be on a website or by other electronic means (subsection (3)).

398. Subsection (2) sets out the matters which require to be detailed in the annual allotments report and allows other information to be required in the report by regulations made by the Scottish Ministers.
Power to remove unauthorised buildings from allotment sites

399. The regulations regarding allotment sites to be made under section 73 must include provision for buildings and structures that are permitted on allotments, including modifications that may be made and the materials that may or may not be used in connection with such structures. The regulations may also include provision for buildings or structures that are permitted on land mentioned in paragraph (b) of the definition of “allotment site”, being communal areas within the site, including permitted modifications and materials. If a building or structure is not permitted under regulations made under section 73(1), and at the time it was erected or modified, that erection or modification was prohibited by such regulations, section 80 gives a local authority the power to remove the building or other structure.

400. Subsection (2) provides that a local authority may:

- remove the building or other structure from the site;
- dispose of the materials that formed the building or other structure; and
- recover the cost of the removal and/or disposal of the materials from a “liable tenant”, being the tenant from whose allotment it is removed or, if on a part of the site that is not an allotment, from the tenant or tenants responsible for its erection (subsection (3)).

401. In cases where more than one tenant has consented to the erection of an unauthorised building or structure, each such tenant shall be jointly and severally liable for the recoverable costs (subsection (4)).

402. Prior to exercising this power to remove unauthorised buildings, a local authority must follow the procedure set down in subsection (5). Firstly, notice must be given to every tenant who may be affected by the removal of the building or structure. Secondly, the tenant(s) must be given the opportunity to make representations about the proposed action and there is a duty placed on the local authority to give appropriate consideration to these representations. Once a decision is reached, the local authority must notify this decision to the affected tenant(s) in writing, specifying the date on which the action is to take place, if applicable. Upon receipt of a notice under subsection (5)(d) a tenant has 21 days to appeal to a sheriff against the decision of the local authority.

403. A limitation placed on this power is that where a local authority leases an allotment site, it cannot remove buildings or other structures if this removal is in breach of a provision of the lease (subsection (8)).

404. Subsection (7) allows the Scottish Ministers to make regulations regarding the procedure to be followed in relation to the exercise of the power to remove buildings or structures, dispose of the materials and recover the costs of removal and disposal.

Delegation of management of allotment sites

405. Part 7 of the Bill imposes certain management functions on local authorities in relation to allotment sites. Section 81 allows a local authority to delegate certain functions to a person who
represents the interests of all or the majority of the tenants of the allotments on a particular site. Usually, this “person” will be an allotment association.

406. Only the functions set out in subsection (2) may be delegated by the local authority.

407. In order for functions to be delegated, a written application must be made by the person wishing to take over the functions of the local authority. The application must include the name and address of the applicant, in addition to such information as the Scottish Ministers set out in regulations (subsection (3)).

408. Upon receipt of an application the local authority has 14 days in which to request from the applicant such further information as it requires in order to make a decision as to whether to agree or refuse the request. The applicant must provide this information within 14 days of it being requested (subsection (4)).

409. There are time limits by which the local authority must make and notify a decision on an application and these are set out in subsection (5). Where no further information has been requested from the applicant, the decision must be notified to the applicant within 28 days of receipt of the application. Where further information has been requested, this time limit is increased to 56 days.

410. If the request is refused, the local authority must send the applicant a decision notice which sets out the reasons for the refusal of the application (subsection (6)).

411. If the request is agreed, the local authority must decide which of its functions it is delegating to the applicant and when the delegation will be reviewed. Prior to the decision on which functions to delegate, the local authority is under an obligation to consult with the person who has made the request (subsection (8)).

412. In cases where the local authority considers that the person to whom they have delegated functions is not carrying out these functions satisfactorily, or where there is a disagreement between this person and the local authority, the local authority has the power to recall any of the functions it has delegated under this section (subsection (9)).

413. It is also set out in subsection (10) that where the local authority is leasing an allotment site from another person, any delegation of its functions must not contravene the head-lease.

**Promotion and use of allotments: expenditure**

414. Section 82(1) permits a local authority to incur expenditure for the purpose of promoting allotments in its area and providing training by or on behalf of the local authority to tenants and potential tenants about the use of allotments. Local authorities must take into account the desirability of exercising this power in relation to communities which experience socio-economic disadvantage (subsection (2)).
Use of local authority premises for meetings

415. Under section 82A a tenant of an allotment site or a person who represents the interest of all or the majority of tenants on an allotment site may make a request to the local authority to use, free of charge, a public or grant-aided school or other premises maintained by the authority in its area for holding a meeting about allotment site related business. This request must be made in writing at least one month before the date of the proposed meeting and include the name and address of the person making the request as well as information about the particulars of the meeting. The local authority must respond to the request within 14 days either granting or refusing the request or offering alternative arrangements for the meeting.

Termination of lease of allotment or allotment site

416. Section 83 confers a power on a local authority to terminate the lease of whole or part of an allotment or allotment site.

417. Where a tenant has been complying with allotment site regulations made under section 73, the minimum notice of termination the local authority is required to give is one year (subsection (2)). This applies where the Scottish Ministers have consented to disposal of the site, change of its use, or renunciation of the lease of the site under section 75 or 76. Where there has been a breach of allotment site regulations by a tenant, the notice period is reduced to 1 month (subsection (2)).

418. A local authority must write to any tenant to inform them of its intention to give notice to terminate a lease no later than one month in advance of serving such a notice (subsection (5)). The local authority is also required to allow the tenant any opportunity to make representations to the authority in relation to the proposed termination and must take account of such representations. After considering these representations the local authority must write to the tenant to inform them of their intention to no longer proceed or to give notice (subsection (5)(d)). A tenant who is aggrieved by a notice may appeal to the sheriff within 21 days of the date of the notice (subsection (6)). A notice served under this section does not take effect until the appeal period has expired or, where there is an appeal, the appeal has been withdrawn or finally determined (subsection (8)).

419. The written notice must specify the termination date of the lease (subsection (1)) If, however, the local authority has given notice under section 85 where its lease of the site has been terminated by its landlord, it does not require to also give notice under this section (subsection (11)).

Resumption of land by local authority

420. If allotment land is required by the local authority for building, mining or other industrial purpose (or for the construction, maintenance or repair of roads or sewers necessary in connection with these purposes), the local authority can, in certain circumstances, resume the whole or part of an allotment or allotment site, under section 84. This power can only be exercised with the consent of the Scottish Ministers and where the tenant has been given notice in accordance with subsection (3). The Scottish Ministers may grant consent subject to such conditions as they think fit (subsection (4)) and may only grant consent if they are satisfied that
each of the allotment tenants from the site has been offered an alternative allotment within a reasonable distance, or that the provision of an alternative allotment is not necessary or reasonably practical in the circumstances (subsection (5)).

421. Subsection (3) provides that written notice of the resumption must be given to allotment tenants and this notice must specify the date on which the resumption is to take place. The minimum notice period is 3 months and the notice must therefore be served in accordance with this prescribed time limit.

**Notice of termination: sublease**

422. Where an allotment site is leased to a local authority and then the authority sub-leases either the site or particular allotments to tenants, it is possible that the local authority’s landlord may terminate the head-lease to the local authority, in whole or in part. Section 85 provides that the effect of this is that the sub-lease(s) granted by the local authority in relation to that site or part of site will come to an end on the date that the head-lease between the landlord and the local authority comes to an end.

423. Section 85(2) places an obligation on the local authority to send a copy of the notice of termination of the head-lease to each subtenant and inform them that the effect of the termination of the head-lease will be the termination of the sub-leases.

**Notice of termination: sublease by allotment association**

424. Where a person, such as an allotment association, leases an allotment site from a local authority and is given notice by the local authority in relation to the whole or part of that site, section 86 provides that that person must give notice to each subtenant of that whole or part site informing them that the effect of termination of the head-lease will be termination of the subleases on the same date.

**Prohibition against assignation or subletting**

425. Section 86A requires that a tenant of an allotment must not assign the lease of whole or part of the allotment without the consent of the local authority and must not sublet the whole or part of the lease. Should the tenant undertake either of these actions, the action is of no effect.

**Sale of surplus produce**

426. Section 87 sets out that, subject to any regulations made by local authorities under section 73(1), allotment tenants may sell produce grown on their allotments provided this is not with a view to making a profit (e.g. it may be sold for charity).

**Removal of items from allotment by tenant**

427. Section 88 provides that before the expiry or termination of a tenant’s allotment lease a tenant may remove certain items from their allotment. These items are any buildings or other structures erected by or on behalf of or acquired by the tenant, or any produce, trees or bushes acquired by the tenant or planted by or on behalf of the tenant.
Compensation for disturbance

428. Where an allotment lease is terminated, in whole or part, by way of one year’s notice, termination of the head lease of the site by the local authority’s landlord, or resumption, section 89 provides tenants with a right to be compensated by the local authority for damage caused by the disturbance of the enjoyment of the allotment (subsections (1) and (2)). A formula sets out how the minimum amount of compensation is to be calculated (subsection (3)). Subsections (4) and (5) require the Scottish Ministers to make further provision in regulations about the process involved in determining liability for, and the amount of, compensation. There is a right of appeal to the Sheriff against a local authority’s decision in respect of compensation (subsection (7)).

Compensation for deterioration of allotment

429. Under section 90, where a lease of an allotment from a local authority has ended and the allotment has deteriorated during the tenant’s tenancy due to the tenant’s fault or negligence, the sum required to remedy the deterioration is due in compensation from the tenant to the local authority. Subsections (4) and (5) require the Scottish Ministers to make further provision in regulations about the process involved in determining liability for, and the amount of, compensation. A tenant has a right of appeal to the sheriff against a decision of a local authority under this section (subsection (7)).

Compensation for loss of crops

430. Section 91 provides that where an allotment lease is terminated by way of resumption and the tenant loses crops due to the resumption, the local authority is liable to compensate the tenant for the loss of crops (subsections (1) and (2)). This compensation is only due to the tenant of an allotment; not to a tenant of an allotment site, such as an allotment association. The Scottish Ministers are required to make regulations about determining liability for, and the amount of, compensation (subsection (3) and (4)). A tenant has a right of appeal to the sheriff against a local authority decision under this section (subsection (6)).

Set-off compensation etc.

431. Where a lease is terminated, section 92(1) allows local authorities who are liable to compensate a tenant or subtenant for disturbance or loss of crops to deduct from the sum due any sum due by the tenant in connection with the lease.

432. Subsection (2) provides that where a tenant is liable to pay a sum to the local authority in connection with the lease, the tenant can deduct any sum due to them by the local authority by way of compensation for disturbance or loss of crops.

Part 7A: Participation in public decision making

Participation in decisions of certain persons exercising public functions

433. Section 93A provides a regulation-making power enabling the Scottish Ministers to require Scottish public authorities to promote and facilitate the participation of members of the public in the decisions and activities of the authority, including in the allocation of resources. Subsection (5) makes it clear that the regulations can confer functions on authorities, specify the
activities to which the regulations can apply, and require the authorities to prepare and publish a report. The authorities must also have regard to any guidance issued by the Scottish Ministers.

Part 8: Non-domestic rates

Schemes for reduction and remission of rates

434. The Bill provides for reduction or remission of rates for non-domestic properties (usually referred to as “land and heritages”) in Scotland. It creates a power to allow rating authorities (which are the local authorities) to reduce or remit non-domestic rates (often referred to as business rates) within their areas, in any financial year from 2015-16 onwards. This power will allow any rating authority to create, if it wishes, local relief schemes for any lands and heritages from which it collects rates.

435. The power is created by an amendment to the Local Government (Financial Provisions etc.) (Scotland) Act 1962. Section 94(1) of the Bill inserts section 3A into that Act to provide the power. Section 3A(4) allows reliefs to apply in schemes defined by categories of property, areas, activities, or any other matter. Any relief awarded ceases to apply when there is a change in the occupation of the premises, under subsection (5) of section 3A. Subsection (6) requires the rating authority to have regard to the authority’s expenditure and income and the interests of people who pay council tax set by the authority before creating or amending a relief scheme. This is because any loss of income from non-domestic rates incurred by the scheme must be offset from other income raised by the local authority.

436. Section 94(2) amends Schedule 12 to the Local Government Finance Act 1992 (payments to local authorities) to ensure that the arrangements for pooling of income from non-domestic rates and funding of rating authorities will accommodate and remain unaffected by the power to create relief schemes. Subsections (3) and (4) make consequential amendments to allow these changes to take effect.

Part 9: General

437. Part 9 provides general information which relates to all Parts of the Bill.

438. Section 95 requires the Scottish Ministers to publish any guidance they issue under Part 2 or Part 6 of the Bill. (These are the only Parts that require people to have regard to guidance issued by the Scottish Ministers.)

439. Section 96 regulates how the Scottish Ministers can make orders or regulations under the Bill, including the procedure (“affirmative” or “negative”) by which they are to be scrutinised by the Scottish Parliament.

440. Section 97 gives Ministers powers to make additional provision that is necessary or expedient to make sure the provisions of the Bill work properly. Section 96(2) provides that any order under section 97 which amends the text of an Act must be scrutinised in the Scottish Parliament by the stronger “affirmative” procedure.
441. Section 99 sets out when the provisions of the Bill come into force. Part 9 comes into force the day after the Bill receives Royal Assent. The rest of the Bill will come into force on dates decided by the Scottish Ministers, which will be set out in commencement orders. Different parts of the Bill may be brought into force at different times.
COMMUNITY EMPOWERMENT (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

SUPPLEMENTARY FINANCIAL MEMORANDUM

INTRODUCTION

1. As required under Rule 9.7.8B of the Parliament’s Standing Orders, this Supplementary Financial Memorandum is published to accompany the Community Empowerment (Scotland) Bill (introduced in the Scottish Parliament on 11 June 2014) as amended at Stage 2.

2. The Memorandum has been prepared by the Scottish Government. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the original Financial Memorandum published to accompany the Bill as introduced.

3. The purpose of this Supplementary Financial Memorandum is to set out the expected costs associated with the new and amended provisions included in the Bill following Stage 2 amendments. The majority of amendments do not significantly affect the assumptions in the original Financial Memorandum. This document addresses those amendments where additional costs are likely to be significant or where the future additional costs are uncertain as they are dependent on the level of demand but there is a potential for significant costs to be incurred.

PART 3: PARTICIPATION REQUESTS

4. Section 24A of the Bill was added by amendment at Stage 2. The amendment introduces a right of appeal to the Scottish Ministers in relation to participation requests. An appeal may be made when a public service authority refuses a participation request or when a community participation body has “significant concerns” about the provisions within a decision notice.

Costs on the Scottish Administration and public bodies (other than local authorities)

5. These provisions will apply in relation to public services provided by the listed public bodies. As indicated in the Financial Memorandum submitted with the Bill on introduction there are likely to be costs associated in responding to participation requests. However, it was noted that the total costs for each public body will depend on how often community participation bodies use the provisions in Part 3 and at this stage it is difficult to forecast use across Scotland.

6. Further information was provided to the Finance Committee on 3 October 2015 which provided an estimate of potential costs associated with an individual participation request:
http://www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/Correspondence_from_the_Scottish_Government_to_the_Public_Audit_Committee_dated_03_October_2014.pdf

7. The estimated cost of the majority of individual participation requests was between £1,000 and £7,500.

8. The proposals set out in section 24A would have resource implications for the Scottish Government. There would be a need for staff and administrative resources to be deployed in order to be able to exercise the additional function foreseen for the Government by the new section 24A. The impact cannot be estimated with any accuracy at this stage as it will be predicated on actions by community participation bodies that are not within the Government’s control and will be based on process and procedure to be set out in regulations. It may be that the additional function can be amalgamated within current structures. However to provide an indication of the average staff cost, a typical team of four comprising a member of staff at each of C1, B2, B1 and A3 grades would cost £157,962 per year.

9. The proposals set out in section 24A would also have resource implications for the listed public bodies (other than local authorities – see paragraph 10 below). There would be a need for additional staff, administrative and legal resources to respond to any appeal made by a community participation body in relation to a participation request that involves the public authority. As above these costs cannot be estimated with any accuracy at this stage as they will be predicated on actions by community participation bodies and will be based on process and procedure to be set out in regulations.

Costs on local authorities

10. The proposals set out in section 24A would have resource implications for local authorities. As for other public bodies above, there would be a need for additional administrative and legal resources to respond to any appeal made by a community participation body in relation to a participation request that involves the local authority. These costs cannot be estimated with any accuracy at this stage as they will be predicated on actions by community participation bodies and will be based on process and procedure to be set out in regulations.

PART 4: COMMUNITY RIGHT TO BUY LAND

11. Sections 47E (which amends section 75 of the Land Reform (Scotland) Act 2003) and section 48 (which inserts section 97J into the 2003 Act) of the Bill were amended at Stage 2. The purpose of these amendments is to allow community bodies, who are applying through either the crofting community right to buy (Part 3 of the 2003 Act) or the right to buy abandoned or neglected land (the new Part 3A of the 2003 Act as inserted by the Bill), to apply to the Scottish Ministers for the reimbursement of ballot costs.

Costs on the Scottish Administration

12. The amendments agreed in Committee at Stage 2 will have resource implications for the Scottish Government. Section 37 of the Bill as introduced, stated that a ballotter would be
appointed by the Scottish Ministers, and the expenses of the ballot would be met, for any applications under Part 2 of the Land Reform (Scotland) Act 2003, by the Scottish Ministers.

13. There was no such provision in Part 3 or the new Part 3A of the 2003 Act. The processes for applications under Part 3 and Part 3A of the 2003 Act are different from those under Part 2. In the case of application under Part 3 or 3A of the 2003 Act, the ballot is held before the Scottish Ministers receive the application to buy land, and therefore is the first indication of community support for the application. For applications to register an interest in land under Part 2, community support is demonstrated via the likes of a petition and the ballot is only held once the community has confirmed that it wishes to proceed with the actual purchase.

14. For this reason, it was considered that a ballot under Part 3 or 3A of the 2003 Act should not be run, or the expenses met by, the Scottish Ministers with no information or indication of the level of community support. Stakeholder submissions to the Rural Affairs, Climate Change and Environment Committee indicated that this was an omission. During discussions with the Committee the Government recognised that there was an imbalance between applications under Part 2 on the one hand and under Parts 3 and 3A on the other hand in this respect. It was agreed that there would be circumstances under which the Scottish Ministers would be prepared to meet the expense of a ballot under Part 3 and 3A of the 2003 Act.

15. These circumstances will be set out in regulations. For example, it could be relevant that the ballot has shown significant community support for the application. This would be to prevent a ballot being used by a minority of a community, and the Scottish Ministers then having to meet the costs of each and every ballot. In the Financial Memorandum submitted with the Bill on introduction, it was estimated that the average cost of a ballot under Part 2 of the 2003 Act was between £1,040 and £5,353.

16. The additional costs of this provision in relation to Part 3 and Part 3A of the 2003 Act on the Scottish Ministers will depend on the number of applications made, the size of the community to be balloted in each case, and the approach adopted to the ballot. As the community right to buy is driven by the demand from communities any estimation of the number of ballots required will be difficult and subject to wide variation.

17. To date, there have only been two community bodies which have used the crofting community right to buy under Part 3 of the 2003 Act. We might expect that following the improvements made to the 2003 Act through the Bill there will be an increase in demand and a potential for ballots to be necessary. This demand is also likely to increase with the amendments to Part 3A. Should there be an additional 5-10 cases this would result in an additional cost to the Scottish Ministers of between £26,765 and £53,530 per annum (using the higher figure for the average estimated cost).

PART 5: ASSET TRANSFER REQUESTS

18. A series of amendments were agreed by the Local Government and Regeneration Committee which made a number of changes to the asset transfer request provisions. This included a change to the local authority review procedures (section 59B) and a new duty on the listed public authorities to establish and maintain a register of land (section 61A).
Local authority review procedures

19. Section 59B creates the right for a community transfer body to appeal to the Scottish Ministers in relation to decisions made by local authorities on asset transfer requests. They can do so if, following a review by the local authority, a local authority refuses the asset transfer request, or agrees it but sets out material terms and conditions which are significantly different from those included in the original request, or if no decision is reached within a prescribed period.

Register of land

20. Section 61A requires the listed public authorities to establish and maintain a register of land which to the best of their knowledge they own or lease and to make it available to the public to inspect in person and online. The new section will assist community bodies in identifying property that may be available for asset transfer.

21. The section gives powers to the Scottish Ministers to specify land that need not be included in the register and requires the relevant public authorities to have regard to any guidance issued by the Scottish Ministers in relation to the section.

Costs on the Scottish Administration and public bodies (other than local authorities)

Local authority review procedures

22. The proposals set out in section 59B would have resource implications for the Scottish Government. There would be a need for staff and administrative resources to be deployed in order to be able to exercise the additional function foreseen for the Government by the new section 59A. The impact cannot be estimated with any accuracy at this stage as it will be predicated on actions by community transfer bodies and local authorities that are not within the Government’s control. It may be that the additional function can be amalgamated within current structures but as provided under paragraph 8 above additional staff resources may be required. As an indication, the average staff cost of a team of four comprising a C1, B2, B1 and an A3 would be £157,962 per year should the need for a new team arise.

Register of land

23. The proposals set out in section 61A could have resource implications for the relevant public authorities (other than local authorities – see paragraph 25 below). It is not anticipated that the requirement will have significant additional cost implications as all public bodies are required to maintain proper accounts, and in order to do so they must know the value of the property they own or lease. To support this they should already have in place an effective property management system and register. However, the Bill will require the public body to ensure the register is available to the public and they may require to put some additional resource to establish and maintain an accessible register. The costs for each public authority will vary but in line with the creation and maintenance of the register of applications for community right to buy, as referenced in the Financial Memorandum submitted with the Bill on introduction (paragraph 56), we might expect that the creation of an accessible register could cost up to £10,000 in staff time and administrative resource. Thereafter, there will be on-going site maintenance and update costs anticipated to be up to £10,000 per year.
Costs on local authorities

Local authority review procedures

24. The proposals set out in section 59B would have resource implications for local authorities. There would be a need for additional administrative and legal resources to respond to any appeal made to the Scottish Ministers by a community transfer body in relation to an asset transfer request that involves the local authority. It is anticipated that the appeal process would only be used in a limited number of cases and any additional costs are unlikely to be significant however the costs cannot be estimated with any accuracy at this stage as they will be predicated on actions by community transfer bodies.

Register of land

25. As above for public bodies the proposals set out in section 61A could have resource implications for the listed local authorities. It is not anticipated that the requirement will have significant additional cost implications as all local authorities are required to maintain proper accounts, and in order to do so they must know the value of the property they own or lease. To support this they should already have in place an effective property management system and register. However, the Bill will require the public body to ensure the new register of land is available to the public and they may require to put some additional resource to establish and maintain the register. As for other public bodies outlined in paragraph 23 above and in line with the creation and maintenance of the register of applications for community right to buy we might expect that the creation of an accessible register could cost up to £10,000 in staff time and administrative resource. Thereafter, there will be on-going site maintenance and update costs are anticipated to be up to £10,000 per year.

PART 5B: SUPPORTERS’ TRUST’S RIGHT TO BUY SCOTTISH PROFESSIONAL FOOTBALL LEAGUE CLUBS

26. Part 5B of the Bill was added by amendment at Stage 2 and aims to provide a legal framework for supporters’ trusts to have a right to buy their football club.

Costs on the Scottish Administration

27. The proposals as set out would have resource implications for the Scottish Government. There would be a need for staff and administrative resources to be deployed in order to be able to exercise the additional functions foreseen for Government. The impact cannot be estimated with any accuracy at this stage as they will be predicated on actions by community bodies outwith Government’s control. In order to provide an average staff cost, however, an estimated figure of £140,888 per year can be provided based on the structure of the Government’s “Community Right to Buy Branch” – i.e. a team of four, comprising a member of staff at each of B3, B2, B1 and A3 grades. It should be noted, however, that with 42 clubs in Scotland, the rights put forward by the proposed amendments are likely to be exercised less often that in relation to the Community Right to Buy, potentially resulting in a lower staff cost. Again, it is difficult to quantify the exact difference at this stage.
Valuation

28. Section 62Q requires the Scottish Ministers to pay for an independently conducted valuation once the right to buy is triggered. Unlike Community Right to Buy, which is focused on the valuation of a specific piece of land, the value of a football club will be dependent on a range of factors including ownership structures, shares, land, moveable property, liabilities and intellectual property rights. It may also be necessary to consider the rights of employees (particularly players), creditors, minority shareholders and other interested persons depending on the situation. Supporters Direct Scotland provide a service including financial assessment and due diligence which will contribute to any assessment of valuation and this can cost in the region of £20,000 per case. The costs of valuation will vary according to the complexity of each case.

Supporters trust register

29. Section 62D requires the Keeper of the Registers of Scotland to create and maintain a public register of supporters’ trusts who have registered an interest in buying a football club. As referenced in the Financial Memorandum submitted with the Bill on introduction on community right to buy (paragraph 56), it is expected that an accessible register will cost £10,000 to set up, similar to costs associated with setting up the Register of Community Interests of Land for Part 2 of the 2003 Act. Thereafter, there will be on-going site maintenance and update costs, anticipated to be up to £10,000 per year. This figure is based on current Registers of Scotland invoicing to the Scottish Ministers.

Costs arising from appeals

30. Section 62R provides that an owner or operator of a football club or a supporters’ trust may in a number of situations appeal to a sheriff against decisions of the Scottish Ministers or the valuation of the football club.

31. At this stage it is difficult to estimate how many appeals may be made against the decisions of the Scottish Ministers or the valuation of the football club. It may be worth noting that, as indicated in the Financial Memorandum submitted with the Bill on introduction on community right to buy, there have been six cases since 2004 brought against decisions by the Scottish Ministers pertaining to various things in the application process (paragraph 42). This would suggest that there is not likely to be a large number of appeals. The costs of the appeal were entirely dependent on level of legal representation required and a cases complexity and have varied between £3,000 and £20,000.

Costs on other bodies, individuals and businesses

32. The provisions on a supporters’ trust’s right to buy Scottish Professional League Football clubs will lead to an increase in costs on other bodies, individuals and businesses. However, there is a large degree of uncertainty on the level of costs that may be incurred as it will be up to the individual supporters’ trusts and club owners in how to use and respond to the provisions, including the need for appropriate legal advice.

33. For example, club owners could incur costs in relation to seeking professional advice during any sale period, i.e. solicitors’ and estate agents’ fees, as well as court fees. When
activating their right to buy, communities may also incur the cost of hiring expert advice, purchase costs and any appeal and court fees that will arise due to the process.

34. Supporters Direct Scotland (SDS) provide services to clubs and fan groups during periods of uncertainty as to a club’s on-going viability, facilitating structural changes which could lead to full or part-owned community clubs. Whilst costs vary considerably from case-to-case, depending on the size and complexity of the club concerned, SDS can incur costs in the region of £20,000 throughout the conversion process to community-ownership. This includes services relating to consultation, financial assessment, negotiation, due diligence, taxation, governance, community share offers, football authority membership and constitutional arrangements. As the size and complexity increases, SDS would incur additional costs brought about by the need to procure additional specialist services.

35. A club at the point of insolvency and awaiting mobilisation of a supporters group may experience loss of players, with 3rd parties unable to become involved in bidding. This may result in more clubs going into liquidation than at present.

PART 7: ALLOTMENTS

36. Section 72 of the Bill was amended at Stage 2 and brings forward provisions that require local authorities to take reasonable steps to ensure that residents do not wait for more than 5 years for an allotment.

Costs on local authorities

37. There is no legal requirement to keep a list at present and it is difficult to forecast future demand. However, the majority of the 15 local authorities that provided financial information already directly maintained lists. More than half of these authorities would be required to take reasonable steps to provide allotments on commencement of the Act to meet the new duty. We estimate that this would require reasonable steps to be taken to create 1,010 new allotments (based on currently available information on waiting lists and number of allotments) on commencement (based on the estimated costs per plot). This means that, if in every individual case creating a new allotment was deemed to be a reasonable step, the maximum total cost for these local authorities would range from £1,919,000 to £6,312,500; with the greatest demand being in areas of high population density. There is a lack however, of information to confirm the length of time that individuals have been waiting for an allotment on current lists and as such the costs may differ.

38. Additionally, depending on the reasonable steps an authority takes to ensure that the duty relating to the time on the list is met they may purchase additional land. The price of land varies between different areas and over time resulting in the costs being difficult to estimate.

39. The Bill, as amended, also defines an allotment in terms of: it being owned or leased by a local authority; its intended use; and its size with the latter requiring that an allotment is approximately 250 square metres or of such as size as requested should this area be less than 250 square metres (section 68).
40. A number of local authorities may need to buy land to meet the duty to take reasonable steps to provide allotments. Additionally, should residents on the list all require allotments of 250 square metres there is a strong likelihood that more allotments will be needed to meet demand (this is dependent on an authorities approach to taking reasonable steps). Given that it is difficult to estimate demand for different sized allotments and that land prices vary between different areas and over time it is difficult to estimate the capital costs associated with the purchase of any new land to meet the duty to provide allotments.
COMMUNITY EMPOWERMENT (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

INTRODUCTION
1. This Memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee in its consideration of the Community Empowerment (Scotland) Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were amended or inserted at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION AMENDED AT STAGE 2
2. The amended or new delegated powers provisions in the Bill are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

DELEGATED POWERS

PART 1: NATIONAL OUTCOMES

Section 1(1) – Power to prescribe national outcomes

Power conferred on:  the Scottish Ministers
Power exercisable by:  Regulations
Revised or new power:  New
Parliamentary procedure:  A form of “super-affirmative” procedure

Provision
3. Section 1(1) provides that the Scottish Ministers must by regulations prescribe outcomes (“national outcomes”) for Scotland. Amendments at Stage 2 altered section 1 to provide that the outcomes must be prescribed by regulations rather than determined by the Scottish Ministers.

Reason for taking power
4. The power to set national outcomes requires to be exercised from time to time to update the outcomes for Scotland. During discussions on the amendment in the Local Government and Regeneration Committee it was suggested that there should be a parliamentary mechanism for scrutiny regarding the national outcomes. The Bill also provides for consultation with the Scottish Parliament under Rule 17.5 of the Standing orders.
Choice of procedure

5. The Local Government and Regeneration Committee agreed both Government and non-Government amendments in relation to the procedure to be used. Consequently, the Bill now contains two separate procedures for setting and reviewing the national outcomes.

6. Section 1(2)(c) provides for the Scottish Parliament to be consulted (in accordance with rule 17.5 of the Standing Orders of the Parliament) on draft national outcomes for a 40 day period. New section 1A and section 96(5)(za) as inserted at Stage 2 provide additional procedure by applying a form of enhanced or “super-affirmative” procedure to the regulations which prescribe the national outcomes. The Scottish Government considers such duplication may be impractical. The Scottish Government’s preferred approach is to propose amendments to the procedure set out in Part 1 of the Bill at Stage 3 to provide for the national outcomes to be determined by the Scottish Ministers following consultation with appropriate persons including those representing the interests of communities and the Scottish Parliament.

PART 2 - COMMUNITY PLANNING

Section 4(6) power to modify schedule 1 community planning partners

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Provision

7. Section 4 defines “community planning”, “community planning partners” and “community planning partnerships”. Community planning is planning that is carried out in the area of a local authority so that public services improve the achievement of local outcomes. Schedule 1 lists the bodies who are community planning partners.

8. Subsection (6) enables the Scottish Ministers to amend the list of community planning partners in Schedule 1 by regulation. Subsection (7) further states that the regulations may provide that a community planning partner may participate in community planning for a specific purpose, where participation is required in relation to some of that partner’s responsibilities but not others.

Reason for taking power

9. Schedule 1 contains a list of bodies who are partners in the community planning partnership and includes a wide range of public bodies that may have a role in influencing local outcomes. The power in subsection (6) is to provide flexibility in future should changes be required to the list of bodies in Schedule 1. As the bodies listed in Schedule 1 have a range of functions and duties it may be necessary to be more specific about the purpose for which a community planning partner is to be involved in community planning so as to provide any necessary clarity as to their role, which is the reason for subsection (7).
Reason for choice of procedure

10. In the Bill as introduced, section 96 provided that regulations under section 4(6) were subject to negative procedure. Following recommendations from the Delegated Powers and Law Reform Committee, section 96 was amended at Stage 2 to provide that they should be subject to affirmative procedure. The Scottish Government recognises that changes to the list of bodies in Schedule 1 could have a significant impact on the application of the provisions of the Bill, and therefore affirmative procedure is more appropriate in this case.

Section 8(3) – Power to modify list of Community Planning Partners with a governance role

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: Revised
Parliamentary procedure: Affirmative procedure

Provision

11. Section 8 places governance responsibilities on specified community planning partners for the purpose of achieving effective community planning. The partners specified in subsection (2) must facilitate community planning and take reasonable steps to ensure that the partnership operates efficiently and effectively.

12. Subsection (3) enables the Scottish Ministers to modify by regulations the list of community planning partners set out in subsection (2) to whom the governance duties apply, either by adding a new partner, removing a partner or amending an entry.

Reason for taking power

13. The community planning partners set out in subsection (2) are those most directly involved in community planning, and who therefore have a critical role to play in ensuring that the process runs as efficiently and effectively as possible. The power in subsection (3) is to provide flexibility in future should changes be required to the list of bodies in subsection (2).

Reason for choice of procedure

14. In the Bill as introduced, section 96 provided that regulations under section 8(3) were subject to negative procedure. Following recommendations from the Delegated Powers and Law Reform Committee, section 96 was amended at Stage 2 to provide that they should be subject to affirmative procedure. The Scottish Government recognises that changes to the list of bodies in section 8(2) could have a significant impact on the application of the provisions of the Bill, and therefore affirmative procedure is more appropriate in this case.
PART 3 – PARTICIPATION REQUESTS

Section 16(2) – Power to modify schedule 2 public service authorities
Section 16(3)(a) – Power to designate a public service authority
Section 16(3)(b) – Power to designate a class of public service authorities

Power conferred on: the Scottish Ministers
Power exercisable by: Order
Revised or new power: Revised
Parliamentary procedure: Affirmative procedure

Provisions

15. Schedule 2, introduced by section 16, lists public service authorities to which a participation request can be made. This includes local authorities, Health Boards, and other Scottish public bodies. The public bodies selected are involved in providing or supporting local services.

16. Subsection (2) of section 16 enables the Scottish Ministers to remove or amend an entry on the list of public service authorities in schedule 2 by order.

17. In addition to the bodies listed in schedule 2, participation requests can also be made to a person that is designated as a public service authority or that falls within a class of persons designated as public service authorities.

18. Subsection (3)(a) of section 16 allows the Scottish Ministers to designate a public service authority by order. Subsection (3)(b) provides that the Scottish Ministers may by order designate a class of persons so that any person of that class will qualify as a public service authority. Subsections (4) to (9) provide more detail on who may be designated as a public service authority and also provide that in making an order the Scottish Ministers may exclude some services from being subject to participation requests.

Reason for taking power

19. Schedule 2 provides a list of public bodies to which a participation request can be made. The bodies listed in schedule 2 may change over time and the power in subsection (2) is to provide flexibility in future should changes be required, either by removing the body from the list or making any necessary amendments to an entry.

20. Once participation requests are in operation and their use and impact have been determined, it may also be appropriate to designate other public bodies that provide or support local services as public service authorities. Further, should new public bodies that provide or support local services be created in future, it may be considered appropriate to designate the public body as a public service authority. In addition, it may be that a person of a class of body should be treated as a public service authority, and section 16(3)(b) will allow the Scottish Ministers to designate that class of persons for this purpose.
Choice of procedure

21. In the Bill as introduced, these powers were subject to negative procedure. Following recommendations from the Delegated Powers and Law Reform Committee, section 96(2)(a) was amended at Stage 2 to provide that they should be subject to affirmative procedure. The Scottish Government recognises that changes to bodies included on the list in Schedule 2 could have a significant impact on the application of the provisions of the Bill, and therefore affirmative procedure is more appropriate in this case.

Section 18(1) – Power to make further provision regarding participation requests

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: Revised
Parliamentary procedure: Negative procedure

Provision

22. Section 18(1) gives the Scottish Ministers a power to make regulations with provision about participation requests in addition to that contained in section 17. Subsection (2) provides that the regulations can, in particular, cover how requests are to be made, how public service authorities should deal with them, and which information is to be provided in connection with requests (in addition to the information required under section 17(2)).

23. Subsection (2) was amended at Stage 2 to add further examples of matters that the regulations may make provision for. These are ways in which public service authorities are to promote the use of participation requests, support that they are to make available to enable community participation bodies to make participation requests and participate in outcome improvement processes, and types of communities that may need additional support. In addition, provision was added to section 17 to allow a community participation body to request that one or more public service authorities other than the one to which the request is made should also participate in the outcome improvement process. Subsection (2)(ba) of section 18 was inserted to ensure that regulations may make provision for the procedure to be followed in such cases.

Reason for taking power

24. Under section 17(1) participation requests allow a community participation body to make a request to a public service authority to permit the body to participate in an outcome improvement process, which is a process established by the authority with a view to improving an outcome that results from, or is contributed to by virtue of, the provision of a public service. Section 17(2) describes the information which must accompany the request.

25. The reason for taking the power, as introduced, was to enable further information to be required in a request, and to make provision on the procedure for making requests and for handling them. Section 18(2), as amended at Stage 2, ensures that those provisions may include procedures for requests made under section 17(3A), and will allow the regulations also to require public service authorities to promote participation requests and to provide support to community participation bodies in making requests and participating in the outcome improvement process, including identifying types of communities that may particularly need support. This links with
the concerns expressed during Stage 1 that communities may need support to be able to take advantage of the provisions of the Bill.

Reason for choice of procedure

26. The choice of procedure is unchanged. The regulations will be subject to negative procedure, for the reasons given in the original Delegated Powers Memorandum.

Section 24A(3) – Power to prescribe participation request appeal procedure, time limits and the manner in which appeals are to be conducted

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Provision

27. Section 24A was inserted at Stage 2 and sets out the circumstances when a community participation body can appeal to the Scottish Ministers in relation to a participation request.

28. Subsection (3) enables the Scottish Ministers by regulations to prescribe the appeal procedure, the manner in which appeals are to be conducted and the time limits within which appeals must be brought.

Reason for taking power

29. The power is parallel to that relating to asset transfer requests in section 58. It allows for transparent, effective and efficient appeals procedures to be developed and set out in detail, and to be amended from time to time in the light of practical experience.

Reason for choice of procedure

30. The power is subject to negative procedure. The appeal process and procedure are administrative matters, and may change from time to time. It is therefore considered appropriate that the negative procedure is used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.
PART 4 – COMMUNITY RIGHT TO BUY LAND

TYPES OF PUBLIC NOTICE FOR APPLICATIONS TO REGISTER AN INTEREST IN SALMON FISHINGS AND CERTAIN MINERAL RIGHTS

Section 29A(b) – inserted section 37(4A) of the 2003 Act - Public Notice of Certain Applications

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary procedure: Negative procedure

Provision

31. Section 29A inserts new subsection (4A) into section 37 of the Land Reform (Scotland) Act 2003. Subsection (4A) confers a power on the Scottish Ministers to make regulations setting out how an application to register an interest under Part 2 of that Act is to be given by public notice where that interest is in salmon fishings or mineral rights which are owned separately from the land in respect of which they are eligible.

Reason for taking power

32. Currently, section 37(3) of the Land Reform (Scotland) Act 2003 requires that in cases where the owner or creditor is unknown or cannot be found, the Scottish Ministers are relieved of their duties under subsections (5) to (10), and paragraphs (b) and (c) of subsection (17), of section 37. However, section 37(4) provides that they cannot be satisfied that the owner or creditor is unknown or cannot found unless the community body has placed an advertisement in a local newspaper in two consecutive weeks and affixed a conspicuous notice, in a form as prescribed by the Scottish Ministers, to a part of the land.

33. The Rural Affairs, Climate Change and Environment Committee questioned in their Stage 1 Report (paragraph 188 of Annexe A, page 132) whether this requirement should be relaxed for cases where the right to buy was being exercised in relation to separate tenements. The relevant separate tenements in this case are salmon fishings and mineral rights (except rights to oil, coal, gas, gold or silver). In practical terms, it is simply not possible to affix a physical notice to a salmon fishing or mineral right.

34. However, it is still desirable that the owner or creditor, who is unknown at this point in time, should have an opportunity to see some sort of notice of the community right to buy application, and make themselves known to that community body.

35. It was considered that the best way to address this was to widen the options for such a notice to be placed in a manner which would give the best opportunity for it to be seen, which would vary depending on the separate tenement in question.
Choice of procedure

36. The setting out of how a public notice is to be given is an administrative matter. It is considered that the negative procedure will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations on the other.

COMMUNITY APPROVAL OF APPLICATION TO REGISTER AN INTEREST IN LAND

Section 30(b) – inserted section 38(2B) of the 2003 Act – Period for Indicating Approval under section 38 of the Land Reform (Scotland) Act 2003

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary procedure: Affirmative procedure

Provision

37. The Bill as introduced included a requirement that a community body must indicate that it has the approval of the community when making an application to register an interest in land under Part 2 of the Land Reform (Scotland) Act 2003, and that such approval must be within 6 months of the application being made. This requirement is set out in section 38(2A) of the Act.

38. Section 30(b) of the Bill inserts subsection (2B) into section 38 of the Land Reform (Scotland) Act 2003. This subsection gives the Scottish Ministers a power to make regulations to substitute the time limit in section 38(2A) with a different period of time. This would apply for all cases and not on a case by case basis.

Reason for taking power

39. In its Stage 1 report the Rural Affairs, Climate Change and Environment Committee commented at paragraph 140 of Annexe A that there may be “practical issues for communities in considering an interest in land and agrees that the Scottish Ministers should not be artificially restricted by a six-month time limit in considering any relevant material”.

40. Whilst the Scottish Government were not aware of any situations where a community body has been unable to demonstrate support within the previous 6 months of an application, that did not mean that there would not be an issue in the future, given that the right to buy is being extended into urban areas, which could have more complex and fluid communities.

41. As a result, it was believed that giving the Scottish Ministers the option to review and amend this time limit as the body of new casework develops, would be prudent.

Choice of procedure

42. Section 98(5) of the Land Reform (Scotland) Act 2003 is amended by paragraph 2(5) of schedule 4 to the Bill so as to make the regulations under section 38(2B) subject to the
affirmative procedure. It is appropriate that this power is subject to the affirmative procedure because it amends primary legislation.

**BODIES THAT MAY COM普RISE A “CROFTING COMMUNITY BODY” FOR THE PURPOSES OF THE CROFTING COMMUNITY RIGHT TO BUY**

Section 47A(2) – inserted section 71(A1)(b) of the 2003 Act – power to prescribe bodies that are “crofting community bodies” and prescribed requirements

Power conferred on: the Scottish Ministers  
Power exercisable by: Regulations  
Revised or new power: New  
Parliamentary procedure: Affirmative procedure

**Provision**

43. Section 47A includes a number of provisions relating to the type of body that can be a crofting community body for the purposes of the crofting community right to buy in Part 3 of the Land Reform (Scotland) Act 2003. The existing provisions of section 71 of the Act state that a crofting community body must be a company limited by guarantee. Section 47A(4) of the Bill inserts subsections (1A) and (1B) into section 71 of the Act, extending the types of body that can be crofting community bodies (provided they fulfil the criteria set out in those subsections) to Scottish Charitable Incorporate Organisations (SCIOs) and Community Benefit Societies (BenComs).

44. Section 47A(2) inserts subsection (A1)(b) into section 71 of the Act which gives the Scottish Ministers the power to make regulations which add to the types of body that can be a crofting community body for the purposes of exercising the crofting community right to buy. It also gives the Scottish Ministers the power to make regulations setting out the requirements that such a body must satisfy in order to be a crofting community body.

**Reason for taking power**

45. At Stage 2 of the Bill amendments were made to Part 3 of the Land Reform (Scotland) Act 2003, which provides for the Crofting Community Right to Buy. The amendments made by section 47A reflect similar changes in relation to Part 2 of the 2003 Act, and the powers inserted by section 47A(2) ensure consistency with the community right to buy for neglected and abandoned land.

46. Since the 2003 Act came into operation, new legal structures have been developed which enable communities to undertake a range of activities for their community, including owning land. The Scottish Government anticipates that further legal bodies could emerge that would be suitable crofting community bodies for the purpose of Part 3 of the 2003 Act. Being able to make regulations providing for such bodies to be crofting community bodies would allow Ministers to be able to respond quickly to such developments.
Choice of procedure

47. It is considered appropriate to allow the Scottish Parliament to give a high level of scrutiny to such provision. Only specific types of legal entities are able to be crofting community bodies for the purposes of the 2003 Act. Any extension to the types of bodies that be a crofting community body may have a significant impact on who can make use of the crofting community right to buy in Part 3 of the 2003 Act. Use of this power could have a significant impact on the scope of the legislation and so the affirmative procedure is appropriate.

REQUIREMENTS OF A CROFTING COMMUNITY BODY

Section 47A(6) – inserted sections 71(4A) and (4B) of the 2003 Act – power to make regulations to amend the requirements for a body to be a crofting community body.

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Provision

48. Section 47A(6) of the Bill inserts subsection (4A) into section 71 of the Land Reform (Scotland) Act 2003 (“2003 Act”) which gives the Scottish Ministers the power to make regulations modifying the criteria which must be met by companies limited by guarantee, SCIOs and BenComs to be crofting community bodies under Part 3 of the Act.

49. Section 47A(6) also inserts subsection (4B) into section 71 of the 2003 Act which provides that if the Scottish Ministers make regulations under section 71(A1)(b) they can also make regulations to amend section 72(1). Section 72(1) is the provision which (as amended by the Bill at Stage 2) prohibits crofting community bodies that have bought land under Part 3 from making changes to their memorandum, articles of association, constitution or registered rules without the Scottish Ministers’ consent in writing.

Reason for taking power

50. At Stage 2, amendments were made to Part 3 of 2003 Act, including new legal structures which a community body may use when forming a crofting community body. The power will allow the Scottish Ministers to amend what kind of legal entity can be used to form a crofting community body. This will enable the Scottish Ministers to respond quickly if it should become apparent that other types of bodies are suitable for use by communities for the purposes of Part 3 of the 2003 Act. The power will also allow the Scottish Ministers to amend section 72(1) of the 2003 Act so that it refers to all relevant types of constitutional documents of any legal entity that is added to the list of entities that a crofting community body can be composed of.

Choice of procedure

51. It is considered appropriate to allow the Scottish Parliament a high level of scrutiny to the detail of any changes to primary legislation. Regulations made under sections 71(4A) and (4B)
of the 2003 Act will amend primary legislation and therefore the affirmative procedure is appropriate.

**DEFINITION OF “CROFTING COMMUNITY”**

Section 47A(7)(b)(ii) – inserted section 71(5)(a)(iv) of the 2003 Act – definition of crofting community

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**Provision**

52. Section 47A(7)(b)(ii) of the Bill inserts section 71(5)(a)(iv) into the Land Reform (Scotland) Act 2003 which gives the Scottish Ministers the power to specify what other persons or classes of persons will be included within the definition of a crofting community.

**Reason for taking power**

53. At Stage 2 amendments were made to the Bill to amend the definition of a crofting community. The additional power will enable the Scottish Ministers to extend the definition of a crofting community at a later date. This power could be used to include owner-occupiers who are registered in the Register of Crofts, but this could not be done until legislative changes are made to the requirements of the Crofting Commission in relation to including owner-occupiers on that Register.

**Choice of procedure**

54. It is considered that use of this power can be left to the level of Parliamentary scrutiny attached to the negative procedure. The power does not define what amounts to a community in any particular case, and has been included as a means to allow Ministers to broaden the definition of community and make it more inclusive following any future amendments of other, related legislation.
POWERS OF COMPULSORY PURCHASE WHERE CROFTING COMMUNITY BODY HAS MODIFIED CONSTITUTIONAL DOCUMENTS

Section 47B – inserted section 72(4) of the 2003 Act- Modification of Memorandum, Articles of Association, Constitution or Registered Rules

Power conferred on: the Scottish Ministers
Power exercisable by: Order
Revised or new power: New
Parliamentary procedure: Affirmative procedure

Provision

55. Section 72(2) allows the Scottish Ministers to acquire land owned by a crofting community body compulsorily if they are satisfied that the crofting community body which has bought the land, if it had not done so, would no longer be entitled to do so. Section 72(4) as inserted by the Bill at Stage 2 gives the Scottish Ministers the power to make an order relating to, or to matters connected with, the purchase of land under section 72(2). Section 72(5) states that such an order may (a) apply, modify or exclude any enactment which relates to any matter as to which an order could be made and (b) make such modifications or enactments as appear necessary or expedient in consequence of any provision of such an order or otherwise in connection with the order.

Reason for taking power

56. There may be cases where the Scottish Ministers consider it appropriate to exercise their power to compulsorily acquire land under section 72(4) and further provision would be of assistance in setting out how this is to operate, by way of an order. This order making power is similar to the power in section 97E(4) of the 2003 Act (relating to the right to buy abandoned and neglected land) which was inserted into the 2003 Act by the Bill at introduction.

Choice of procedure

57. Orders made under section 72(4) of the Land Reform (Scotland) Act 2003 will be able to modify primary legislation. Such orders will therefore be subject to the affirmative procedure to allow the Scottish Parliament to give them a high level of scrutiny.
APPLICATION FORM – RIGHTS AND INTERESTS IN LAND

Section 47C(2) – amended section 73(5) of the 2003 Act - change to powers of Ministers to prescribe application form

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: Revised
Parliamentary procedure: Negative procedure

Provision

58. Section 73(5) of the 2003 Act gives the Scottish Ministers the power to set out in regulations the form of the application and what kind of information must be contained within applications to exercise the crofting community right to buy. Section 47C of the Bill amends section 73 of the 2003 Act by inserting new subsection (5ZA) which specifies the persons who must be identified in the crofting community body’s application. Those persons are the owner of the land, any creditor in a standard security with a right to sell the land, the tenant of the land, and the person entitled to any sporting interests.

59. Section 47C also amends section 73(5)(b) so that crofting community bodies, as a minimum, must include information in the application form of all rights and interests in the land known to them.

Reason for taking power

60. The amendment to the minimum type of information that must be included in the application form as set out in regulations by the Scottish Ministers will ensure that Ministers have all available information with which to make a decision on the application.

Choice of procedure

61. Regulations made under section 47C(2) are subject to the negative procedure as this will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations, which is to simplify and clarify the application process, and will be mostly administrative and subject to amendment from time to time, on the other.
PUBLIC NOTICE OF APPLICATIONS MADE UNDER THE CROFTING COMMUNITY RIGHT TO BUY

Section 47C(4) – amended section 73(11) of the 2003 Act – Application: Information about Rights and Interest in Land

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary procedure: Negative procedure

Provision

62. At Stage 2, an amendment was made to the Bill which removes the requirement that the Scottish Ministers should give public notice of an application under Part 3 of the 2003 Act by either a newspaper circulating in the area where the subjects of the application are situated as Ministers think appropriate or in the Edinburgh Gazette and replaces it with a power for the Scottish Ministers to make regulations setting out the manner of giving public notice.

Reason for taking power

63. During stakeholder evidence sessions, it became clear that, particularly in more rural areas, which most of the crofting areas are, the Edinburgh Gazette is largely unheard of. In addition, the circulation of newspapers is not a reliable method of ensuring that notices of this type are widely available.

64. It was believed that additional methods of ensuring that as many people as possible are able to read these public notices, would be the best way to deal with these issues, and that those methods may vary quite widely according to area.

65. As such, giving the Scottish Ministers the ability to amend these more readily was considered to be an appropriate solution. The power will allow the Scottish Ministers to ensure that the procedure under Part 3 of the 2003 Act can be quickly updated to allow crofting community bodies to use the most effective and up-to-date methods of advertising their application to the public, and to ensure that the most effective communication methods are available to crofting communities.

Choice of procedure

66. Using the negative procedure will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations, as these will be mostly administrative, on the other.
RECOVERY OF BALLOT EXPENSES BY A CROFTING COMMUNITY BODY

Section 47E – inserted section 75(6) of the 2003 Act - Ballot: Information and Expenses

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary procedure: Negative procedure

Provision

67. Section 47E(3) inserts sections 75(6) and (7) into the 2003 Act. Section 75(6) gives the Scottish Ministers the power to make regulations which make provision for or in connection with enabling a crofting community body, in such circumstances as may be specified in the regulations, to apply to the Scottish Ministers to seek reimbursement of the expense of conducting a ballot under section 75. Section 75(7) sets out particular things which the regulations can cover, being (a) the circumstances under which a community body may apply, (b) the method used to calculate any such expenses, (c) the criteria used to determine whether an application for expenses is successful, (d) the procedure for both an application and an appeal to the Scottish Ministers in relation to the ballot costs, (e) the persons who would consider such an appeal and (f) the powers of such persons.

Reason for taking power

68. Section 37 of the Bill provides that a ballotter would be appointed by the Scottish Ministers, and the expenses of the ballot would be met, for any applications under Part 2 of the Land Reform (Scotland) Act 2003.

69. There was no such element for Part 3 of the 2003 Act and stakeholder submissions to the RACCE committee considered that this was an omission.

70. The process for applications for the crofting community right to buy under Part 3 of the 2003 Act is different from the process for applications under Part 2. In a Part 3 application, the ballot is held before the Scottish Ministers receive the application, and therefore, is the first indication of community support for the application. In an application to register an interest under Part 2, on the other hand, community support is demonstrated via the likes of a petition, and the ballot is only held once the community had confirmed that it wishes to proceed with the actual purchase.

71. For this reason, it was believed a ballot under Part 3 of the 2003 Act should not be run, or the expenses met, by the Scottish Ministers with no information about or indication of community support.

72. However, it was recognised that there was an imbalance between applications in Parts 2 and 3 in this respect and it was agreed that there would be circumstances under which the Scottish Ministers would be prepared to meet the expense of a ballot under Part 3 of the 2003 Act.
73. These powers are added to allow the Scottish Ministers to make regulations setting out those circumstances and the process which crofting community bodies will use to apply for those expenses. As this is a new area of policy we have not yet consulted with stakeholders on what would be the appropriate circumstances in which a community body might seek reimbursement of ballot expenses so it sits best in regulations rather than on the face of the Bill.

**Choice of procedure**

74. Regulations made under the new section 75(6) are likely to be administrative in nature and may require to be amended periodically so it is thought that the negative procedure will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations on the other.

**COMPENSATION PROCEDURE UNDER CROFTING COMMUNITY RIGHT TO BUY**

**Section 47I – inserted section 89(4) of the 2003 Act - Compensation**

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**Provision**

75. Section 47I inserts section 89(4) into the Land Reform (Scotland) 2003 Act, giving the Scottish Ministers the power to, by order, make provision for or in connection with specifying the amounts payable in respect of loss or expense incurred as mentioned in section 89(1) of the 2003 Act.

76. It also gives the Scottish Ministers the power to, by order, make provision for or in connection with specifying the amounts payable in respect of loss or expense incurred by virtue of Part 3 by a person of such other description as may be specified.

77. It will allow the Scottish Ministers to make provision for specifying the person liable to pay those amounts and the procedure under which claims for compensation under this section can be made.

78. These powers are in line with those in section 97T(4) of the 2003 as inserted by section 48 of the Bill.

**Reason for taking power**

79. These powers bring Part 3 of the Land Reform (Scotland) Act 2003 into line with the new Part 3A of the 2003 Act (inserted by section 48 of the Bill), which was added through section 48 of the Bill as introduced, and will ensure that the procedure and circumstances of any claims for compensation are transparent and fair to all parties.
Choice of procedure

80. Matters relating to the entitlement of compensation are likely to be detailed and administrative in nature and may require to be amended periodically. It is therefore considered appropriate that the negative procedure is used so as to achieve the best balance of parliamentary time on the one hand and the nature of the content of the order on the other.

ELIGIBLE LAND - HOMES

Section 48 – amended section 97C(4) of the 2003 Act – Eligible Land and a person’s home

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<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
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<tr>
<td>Power exercisable by:</td>
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<td>Revised or new power:</td>
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<tr>
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Provision

81. Section 97C(3)(a) of the Bill as introduced, gave the Scottish Ministers the power to prescribe classes of buildings or structures which were to be excluded from those that were an individual’s home under section 97C(3)(a).

82. Section 97C(4) allowed the Scottish Ministers the power to prescribe classes of building or structure that are to be treated as an individual’s home for the purposes of section 97C(3)(a).

83. The Bill as amended at Stage 2 now no longer includes the power to prescribe the classes of buildings or structures which were to be excluded from those that were an individual’s home under section 97C(3)(a).

84. Instead, there is an amendment to section 97C(4) which allows the Scottish Ministers to make regulations setting out what description or classes of building or structure are to be an individual’s home for the purposes of section 97C(3)(a), as well as those that are to be treated as an individual’s home even if they are not.

Reason for taking power

85. The Delegated Powers and Law Reform Committee, in their evidence session last September, and also in paragraph 66 of their report, queried the requirement for the power to exclude classes of buildings from the exclusion from the definition “eligible land” of an individual’s home. It is considered more appropriate for the Scottish Ministers to set out in regulations what types of buildings or structures are an individual’s home for the purposes of the exclusion in section 97C(3)(a). This will provide clarity about which land is excluded from the right to buy under Part 3A.

Choice of procedure

86. Regulations made under section 97C(4) are subject to the affirmative procedure as they will directly affect the land which is excluded from eligible land under the new Part 3A of the
2003 Act which gives communities a right to buy neglected or abandoned land. As such, they should be subject to the affirmative procedure.

**BODIES THAT MAY COMPRISEx A “PART 3A COMMUNITY BODY” FOR THE PURPOSES OF THE RIGHT TO BUY LAND WHICH IS WHOLLY OR MAINLY ABANDONED OR NEGLECTED**

Section 48 – inserted section 97D(1)(b) of the 2003 Act – Part 3A Community Bodies

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<tr>
<td>87. Section 48 includes a number of provisions relating to the type of body that can be a Part 3A community body for the purposes of exercising the right to buy abandoned or neglected land under the new Part 3A of the Land Reform (Scotland) Act 2003, as inserted by the Bill. The provisions of section 97D as introduced stated that a Part 3A community body must be a company limited by guarantee. The Bill as amended at Stage 2 now inserts Scottish Charitable Incorporate Organisations (SCIOs) and Community Benefit Societies (BenComs) as types of bodies that communities may use to form a Part 3A community body (provided they meet certain criteria)</td>
</tr>
<tr>
<td>88. The new section 97D(1)(b) gives the Scottish Ministers the power to make regulations which add to the types of body that a Part 3A community body can be for the purposes of exercising the right to buy abandoned or neglected land. It also gives the Scottish Ministers the power to make regulations setting out the requirements that such a body must satisfy in order to be a Part 3A community body.</td>
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<tr>
<td><strong>Reason for taking power</strong></td>
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<tr>
<td>89. The Bill introduced a new Part 3A of the Land Reform (Scotland) Act 2003, the community right to buy neglected or abandoned land. The changes in section 97D reflect similar changes which were made during Stage 2 in relation to Part 2 of the 2003 Act, and were added to ensure consistency across the various Parts of the 2003 Act.</td>
</tr>
<tr>
<td>90. Since the 2003 Act came into operation, new legal structures have been developed which enable communities to undertake a range of activities for their community, including owning land. The Scottish Government anticipates that further legal bodies could emerge that would be suitable part 3A community bodies for the purposes of Part 3A of the 2003 Act. Being able to make regulations providing for such bodies to be crofting community bodies would allow Ministers to be able to respond quickly to such developments.</td>
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<tr>
<td><strong>Choice of procedure</strong></td>
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| 91. Currently, this power is subject to the negative procedure. However, equivalent provisions in Parts 2 and 3 of the 2003 Act are subject to the affirmative procedure. The
particular provisions are sections 34(A1)(b) and 71(A1)(b) of the 2003 Act, inserted respectively by sections 28(2) and 47A(2) of the Bill. There will, therefore, be consideration given to amending the Bill at Stage 3 to make this power subject to the affirmative procedure in alignment with Parts 2 and 3.

REQUIREMENTS FOR A PART 3A COMMUNITY BODY

Section 48 – inserted sections 97D(4A) and (4B) of the 2003 Act – power to make regulations to amend the requirements for a body to be a Part 3A community body.

- **Power conferred on:** the Scottish Ministers
- **Power exercisable by:** Regulations
- **Revised or new power:** New
- **Parliamentary procedure:** Affirmative procedure

**Provision**

92. Section 48 of the Bill inserts section 97D of the Land Reform (Scotland) Act 2003. Subsection (4A) of section 97D gives the Scottish Ministers the power to make regulations modifying the criteria which must be met by companies limited by guarantee, SCIOs and BenComs to be Part 3A community bodies under Part 3A of the Act.

93. Subsection (4B) of section 97D provides that if the Scottish Ministers make regulations under section 97D(1)(b) they can also make regulations to amend section 97E(1) as they consider necessary or expedient. Section 97E(1) is the provision which prohibits Part 3A community bodies that have bought land under Part 3A from making changes to their memorandum, articles of association, constitution or registered rules without the Scottish Ministers’ consent in writing.

**Reason for taking power**

94. The power will allow the Scottish Ministers to amend what kind of legal entity can be used to form a Part 3A community body, and will enable Ministers to respond quickly if it should become apparent that other types of bodies are suitable for use by communities for the purposes of part 3A of the 2003 Act. For example, Community Benefit Companies (BenComs), have only recently been introduced in the Co-operative and Community Benefit Societies Act 2014. It could well be the case that others will follow. The power will also allow the Scottish Ministers to amend the provision to refer to the constitutional documents of any legal entity that is added to the list of entities that a Part 3A community body can be.

**Choice of procedure**

95. It is considered appropriate to allow the Scottish Parliament a high level of scrutiny to the detail of any changes to primary legislation. Regulations made under sections 97D(4A) and (4B) of the 2003 Act will amend primary legislation and therefore the affirmative procedure is appropriate.
APPLICATION FORM – RIGHTS AND INTERESTS KNOWN TO THE PART 3A COMMUNITY BODY

Section 48 – amended section 97G(5) of the 2003 Act – application form to include rights and interests known to the Part 3A community body

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: Revised
Parliamentary procedure: Negative procedure

Provision

96. Section 97G(5) of the 2003 Act, as inserted by the Bill, gives the Scottish Ministers the power to set out in regulations the form that an application must take and what kind or information must be contained within the application to exercise the community right to buy. Section 97G(6) sets out the types of information which must be included in that application form. Section 97G(6) of the 2003 Act, as inserted by the Bill as introduced, provided that the information on application forms must include all rights and interests in the land, and sewers, pipes, lines, watercourses or other conduits and fences, dykes, ditches or other boundaries in or on the land known to the community body or the existence of which it is, on reasonably diligent inquiry, capable of ascertaining. This has been amended at Stage 2 of the Bill, so that the application form as prescribed by the Scottish Ministers must include as a minimum all rights and interests in the land known to the community body.

Reason for taking power

97. Over the previous 10 years of the Act, there had been numerous stakeholder comments to the effect that the mapping requirements were far too complex and excessive. The amendment to the minimum types of information that must be included in the application form as set out in regulations by the Scottish Ministers will ensure that Ministers have all available information with which to make a decision on the application while balancing the need to ensure that community bodies are not subject to overly onerous requirements.

Choice of procedure

98. Regulations made under section 97G(5) are subject to the negative procedure as they are seen as largely administrative and could be subject to periodic changes which reflect stakeholder experiences, this will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations on the other.
RECOVERY OF BALLOT EXPENSES BY A PART 3A COMMUNITY BODY

Section 48 – inserted section 97J of the 2003 Act – Ballot to indicate approval for the purposes of section 97H

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary procedure: Negative procedure

Provision

99. Section 48 inserts section 97J(6A) which gives the Scottish Ministers the power to make regulations which make provision for or in connection with enabling a Part 3A community body, in such circumstances as may be specified in the regulations, to apply to the Scottish Ministers to seek reimbursement of the expense of conducting a ballot under section 97J.

100. Inserted section 97J(6B) sets out particular things which the regulations can cover, being (a) the circumstances under which a Part 3A community body may apply, (b) the method used to calculate any such expenses, (c) the criteria used to determine whether an application for expenses is successful, (d) the procedure for both an application and an appeal to the Scottish Ministers in relation to the ballot costs, (e) the persons who would consider such an appeal and (f) the powers of such persons.

Reason for taking power

101. Section 37 of the Bill as introduced states that a ballotter would be appointed by the Scottish Ministers, and the expenses of the ballot would be met, for any applications under Part 2 of the Land Reform (Scotland) Act 2003.

102. There was no such element for Part 3A of the 2003 Act and stakeholder submissions to the RACCE committee considered that this was an omission.

103. The process for applications under Part 3A of the 2003 Act are different from those under Part 2. In a Part 3A application, the ballot is held before the Scottish Ministers receive the application and therefore it is the first indication of community support for the application. In an application to register an interest under Part 2, however, this support is demonstrated via the likes of a petition and the ballot is only held once the community had confirmed that it wishes to proceed with the actual purchase.

104. For this reason, it was believed that a ballot under Part 3A of the 2003 Act should not be run, or the expenses met, by the Scottish Ministers with no information or indication of community support.

105. However, it was recognised that there was an imbalance between applications in Parts 2 and 3A in this respect and it was agreed that there would be circumstances under which the Scottish Ministers would be prepared to meet the expense of a ballot under Part 3A of the 2003 Act.
106. These powers are added to allow the Scottish Ministers to lay out those circumstances and the process which community bodies may apply for those expenses.

**Choice of procedure**

107. Regulations made under section 97J(6A) are subject to the negative procedure as they are seen as largely administrative and subject to amendments as new circumstances arise through an increased use of the provisions, and it is considered that this will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations on the other.

**EFFECT OF AN APPLICATION TO EXERCISE THE RIGHT TO BUY ON TRANSFERS OR DEALINGS OVER LAND**

Section 48 – amended section 97N(1) of the 2003 Act – effect of the Ministers’ decision on rights to buy land

- **Power conferred on:** the Scottish Ministers
- **Power exercisable by:** Regulations
- **Revised or new power:** New
- **Parliamentary procedure:** Affirmative procedure

**Provision**

108. Section 97N enables the Scottish Ministers to make regulations setting out persons who are prohibited from undertaking certain transfers or dealings in respect of land which a Part 3A community body has made an application to buy under Part 3A.

109. The regulations may include provisions as to the types of transfers or dealings which are not permitted, the persons who are not permitted to undertake these transfers or dealings and the period for which these transfers or dealings may not be undertaken.

110. Section 48 of the Bill was amended at Stage 2 to amend the wording of the regulation-making powers in section 97N(1), which gives the Scottish Ministers a power to specify the persons, and specify the period of time for which those persons would be prohibited from transferring or otherwise dealing with land which is the subject of a Part 3A application.

111. The amendments made to section 97N(1) address the Delegated Powers and Law Reform Committee’s concerns regarding the wording of the provisions in section 97N, and the over-use of “prescribed” and its meaning, and seek to clarify the nature of the regulation-making powers set out in that section.

**Choice of procedure**

112. It is considered appropriate to allow the Scottish Parliament to give a high level of scrutiny to the detail of such a prohibition given that this will impact on how a land owner can deal with their land.
EFFECT OF AN APPLICATION EXERCISING THE RIGHT TO BUY ON RIGHTS IN OR OVER LAND

Section 48 – amended section 97N(3) of the 2003 Act – Effect of Ministers’ decision on right to buy land

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary procedure: Affirmative procedure

Provision

113. Section 97N(3) allows the Scottish Ministers to make regulations suspending rights over land where a Part 3A community body has applied to exercise the right buy in respect of that land. The regulations may set out the rights which are to be suspended and the period for which the rights are to be suspended.

114. Section 48 of the Bill was amended at Stage 2 to amend the wording of the regulation-making powers in section 97N(3), which gives the Scottish Ministers a power to specify in regulations the period of time for which a person’s rights in or over land which is the subject of a Part 3A application are suspended.

Reason for taking power

115. The reason for this amendment to section 97N(3) is to address the Delegated Powers and Law Reform Committee’s concerns regarding the wording of the provisions in section 97N, and the over-use of “prescribed” and its meaning, and seeks to clarify the nature of the regulation-making powers set out in that section.

Choice of procedure

116. It is considered appropriate to allow the Scottish Parliament to give a high level of scrutiny to the detail of such a prohibition given that this will impact on how a land owner can deal with their land.

Schedule 4 – amended section 98(5) - section 34(4B) subject to the affirmative procedure

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: Revised
Parliamentary procedure: Affirmative procedure

Provision

117. Section 34(A1)(b) of the 2003 Act gives the Scottish Ministers the power to prescribe by regulations other types of bodies which a community may use when forming a community body. Sections 35(A1) and (1) provide that a community body will not be permitted to modify its memorandum, articles of association, constitution or registered rules without the Scottish
Ministers’ consent in writing for as long as its interest remains registered or land which it has bought under Part 2 remains in its ownership.

118. Section 34(4B) of the 2003 Act gives the Scottish Ministers the power by regulations to amend section 35(A1) and (1) to specify the constitutional documents that must not be amended by a community body without Ministers’ consent in writing, should the Scottish Ministers use the power in section 34(A1)(b) to prescribe other types of bodies that communities can use for the purposes of Part 2 of the 2003 Act.

119. The Bill as introduced did not include reference to section 34(4B) in the amendments to section 98(5) of the 2003 Act, which is the section that sets out which instruments made under Ministerial powers are to be subject to the affirmative procedure. The Bill was amended at Stage 2 to change this, and now the power in section 34(4B) is to be subject to the affirmative procedure.

Reason for taking power

120. This power will ensure that the legislation prohibits the amendment of constitutional documents of community bodies without the consent of the Scottish Ministers for as long as the interest remains registered or, as the case may be, land which it has purchased under Part 2 remains in its ownership. This power is subject to the affirmative procedure to allow the Scottish Parliament to give the power a high level of scrutiny.

Choice of procedure

121. Regulations made under section 34(4B) of the Land Reform (Scotland) Act 2003 will be modifying primary legislation. Such regulations will therefore be subject to the affirmative procedure to allow the Scottish Parliament to give them a high level of scrutiny.

PART 5 – ASSET TRANSFER REQUESTS

Section 51(2) – Power to modify schedule 3 - relevant authorities
Section 51(3)(a) – Power to designate a relevant authority
Section 51(3)(b) – Power to designate a class of relevant authorities

Power conferred on: the Scottish Ministers
Power exercisable by: Order
Revised or new power: Revised
Parliamentary procedure: Affirmative procedure

Provisions

122. Schedule 3, introduced by section 51, lists relevant authorities to which an asset transfer request can be made. Schedule 3 includes local authorities, the Scottish Ministers, Health Boards and other Scottish public bodies, which have been selected because they own significant amounts of land and buildings.
123. Subsection (2) of section 51 enables the Scottish Ministers to remove or amend an entry on the list of relevant authorities in schedule 3 by order.

124. In addition to the bodies listed in schedule 3, asset transfer requests can also be made to a person that is designated as a relevant authority or that falls within a class of persons designated as relevant authorities.

125. Subsection (3)(a) allows the Scottish Ministers to designate a relevant authority by order. Subsection (3)(b) provides that the Scottish Ministers may by order designate a class of persons so that any person of that class will qualify as a relevant authority. Subsections (4) to (7) provide more detail on who may be designated as a relevant authority.

### Reason for taking power

126. Schedule 3 provides a list of public bodies to which an asset transfer request can be made. The bodies listed in schedule 3 may change over time and the power in subsection (2) is to provide flexibility in future should changes be required, either by removing the body from the list or making any necessary amendments to an entry.

127. As stated above, the public bodies listed in schedule 3 have been selected because they own significant amounts of land and buildings. It may be appropriate to designate other public bodies that own land and buildings in future. Further, should new public bodies be created in future that own significant amounts of land and buildings, it may be considered appropriate to designate the public body as a relevant authority. In addition, it may be that a person of a class of body should be treated as a relevant authority, and section 51(3)(b) will allow the Scottish Ministers to designate that class of persons for this purpose.

### Choice of procedure

128. In the Bill as introduced, these powers were subject to negative procedure. Following recommendations from the Delegated Powers and Law Reform Committee, section 96(2)(a) was amended at Stage 2 to provide that they should be subject to affirmative procedure. The Scottish Government recognises that changes to the list of bodies included on the list in Schedule 3 to which the provisions apply could have a significant impact on the application of the provisions of the Bill.

### Section 58(2)(c) – Power to specify a person or a class of persons for the purposes of appeals

- **Power conferred on:** the Scottish Ministers
- **Power exercisable by:** Order
- **Revised or new power:** New
- **Parliamentary procedure:** Affirmative procedure

### Provision

129. Section 58 sets out the circumstances when a community transfer body can appeal in relation to an asset transfer request. Under subsection (2) as introduced, the community transfer
This document relates to the Community Empowerment (Scotland) Bill as amended at Stage 2
(SP Bill 52A - Revised)

body can appeal to the Scottish Ministers, unless the relevant authority is the Scottish Ministers or a local authority.

130. Paragraph (c) of subsection (2) was inserted at Stage 2. It provides that the Scottish Ministers may in addition specify persons, or persons falling within specified classes, as relevant authorities, with the effect that their decisions are excluded from appeal to the Scottish Ministers.

Reason for taking power

131. The default position in the Bill is that decisions on asset transfer requests are subject to an appeal to the Scottish Ministers. This would mean that decisions made by any relevant authority designated by an order under section 51(3) would be subject to Ministerial appeal. There may be cases in which it is more appropriate for decisions to be subject to review by a local authority under section 59; for example, where the relevant authority is a company wholly owned by one or more local authorities. This power allows for the Scottish Ministers to specify relevant authorities to which this will apply, either individually or as a class.

Reason for choice of procedure

132. The availability of routes of appeal or review has been raised as a matter of concern to many community bodies. Since this provision allows the Scottish Ministers to remove the option of a direct appeal to them, it is appropriate that it should be subject to affirmative procedure.

Section 59(7)(b) – Power to prescribe a time for a decision notice to be given following a review

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary procedure: Negative procedure

Provision

133. Section 59 provides for circumstances in which a local authority must carry out a review of an asset transfer request, on an application made by the community transfer body, and for the procedures to be followed. Subsection (6) requires that, following a review, the local authority must issue a decision notice in respect of the asset transfer request to which the review relates. Paragraph (b) of subsection (7) was inserted at Stage 2, and provides that the decision notice must be issued within a period prescribed in regulations made by the Scottish Ministers, or such longer period as may be agreed between the local authority and the community transfer body.

Reason for taking power

134. This amendment is related to the insertion of section 59B, which allows a community transfer body to appeal to the Scottish Ministers following a review by a local authority. By providing for a period to be prescribed within which a decision notice must be issued, it allows for an appeal to be brought if no decision notice is issued within that time, and will help to ensure that reviews are carried out promptly.
Reason for choice of procedure

135. The period of time for a relevant authority to issue a decision notice is an administrative matter and will be informed by a short and focussed consultation. The negative procedure is therefore considered appropriate, in line with similar powers elsewhere in Part 5.

Section 59A(3) – Power to prescribe procedure, time limits and the manner in which Ministerial reviews of asset transfer requests are to be conducted

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary procedure: Negative procedure

Provision

136. Under section 59A(2), if a community transfer body has made an asset transfer request to the Scottish Ministers and they have refused the request, agreed to it but attached material terms and conditions different to those in the request or have not given a decision notice timeously, the Scottish Ministers must carry out a review of the case if the community transfer body applies to them to do so.

137. Subsection (3) enables the Scottish Ministers by regulations to prescribe the procedure to be followed in connection with reviews, the manner in which such reviews are to be carried out and the time limits within which applications for review must be made. They may also make provision in relation to the appointment of persons for purposes connected with carrying out reviews, and the functions of those persons. Under subsection (4) the regulations may also provide that the manner in which a person appointed in connection with reviews carries out their functions is at their discretion, and that the manner in which a review, or any stage of a review, is to be carried out is at the discretion of the Scottish Ministers.

Reason for taking power

138. The power is to enable the development of the process and procedure for Scottish Ministers’ reviews of asset transfer requests. It will be important that the process and procedure for reviews is transparent, effective and efficient. Further, from time to time and in the light of practical experience, the Scottish Ministers may wish to make changes to the procedure for reviews. The provision for the appointment of persons in connection with reviews is to allow for a degree of external scrutiny; for example, an independent panel may be appointed to make recommendations to the Scottish Ministers about reviews. The arrangements for the appointment of persons may in particular change over time, as the land reform agenda develops, and a regulation-making power allows for this flexibility.

Reason for choice of procedure

139. The process and procedure for asset transfer reviews by the Scottish Ministers are administrative matters, and may change from time to time. It is therefore considered appropriate that the negative procedure be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.
Section 59C(4)(a) – Power to make provision for section 59 (review of asset transfer decisions by local authorities) to apply subject to modifications.

Power conferred on: the Scottish Ministers
Power exercisable by: Order
Revised or new power: New
Parliamentary procedure: Negative procedure

Provision

140. Section 59C applies to asset transfer requests made to a relevant authority specified in an order under section 58(2)(c). It provides that where the relevant authority refuses the request, agrees to it but specifies terms and conditions which differ significantly from those specified in the request, or does not give a decision notice within the required period, subsections (2) to (9) of section 59 apply. This means that the community transfer body can apply to a local authority for a review of the case. The power in subsection (4)(a) allows the Scottish Ministers to make provision for the arrangements for local authority review of their own decisions to apply with modifications to review of decisions by another relevant authority.

Reason for taking power

141. Subsections (2) to (9) of section 59 set out arrangements and requirements for local authorities’ review of asset transfer requests made to them. Similar arrangements will apply where a local authority carries out a review of a request made to another relevant authority, but some adjustments are likely to be needed in light of the fact that separate organisations are involved. The power will allow the Scottish Ministers to make those adjustments as necessary.

Reason for choice of procedure

142. The process and procedure for asset transfer reviews by local authorities are administrative matters, and the adjustments required to make them appropriate to review of other relevant authorities’ decisions are likely to be minor. It is therefore appropriate that this power is subject to negative procedure.

Section 59C(4)(b) – Power to specify the local authority, or factors determining the local authority, to which an application for review is to be made.

Power conferred on: the Scottish Ministers
Power exercisable by: Order
Revised or new power: New
Parliamentary procedure: Negative procedure

Provision

143. Section 58(2)(c) allows for the Scottish Ministers to specify a relevant authority, or a class of relevant authorities, whose decisions are excluded from appeal to the Scottish Ministers. Section 59C provides that, where an asset transfer request is made to such a relevant authority, the community transfer body can, in appropriate circumstances, apply to a local authority to review the case. Subsection (4)(b) provides the Scottish Ministers with a power to specify the
local authority to which the application is to be made in such cases, or factors determining the local authority to which the application is to be made.

Reason for taking power

144. The arrangements set out by section 58(2)(c) and 59C are intended to apply where it is more appropriate for a local authority to undertake the initial review of a decision, rather than the Scottish Ministers. Since the relevant authorities to which this will apply are to be specified by order, it is not possible to determine in advance which local authority should carry out reviews for each relevant authority, and a power is therefore needed to do this by order. Local authorities may be specified individually; for example, the local authority which wholly owns the relevant authority dealing with the request, or they may be identified by factors such as the local authority area in which the land to which the request relates is located.

Reason for choice of procedure

145. The power is to ensure that provisions equivalent to that in section 59 will work in a different context, so the local authority which may carry out a review is readily identifiable. This is an administrative and technical issue, and it is therefore appropriate that this power is subject to negative procedure.

Section 61A(4) – Power to specify land, or descriptions of land, that a relevant authority need not include in its register of land.

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Provision

146. Section 61A places a duty on each relevant authority to establish and maintain a register of land which, to the best of the authority’s knowledge and belief, is owned or leased by the authority, and to make this register available for inspection by the public. Subsection (4) provides that the Scottish Ministers may by regulations specify land, or descriptions of land, that need not be included in this register.

Reason for taking power

147. The requirement to publish a register of land will help community bodies to be aware of property that may be available for asset transfer, so that they can identify which is most suitable for their needs. However, the legal definition of “land” is very wide and includes rights and interests in land, such as ground rents and access rights, which are unlikely to be targets for asset transfer in themselves. The ability to exclude such categories will help to focus the register on properties that are likely to be of interest. This is a detailed and technical area which is more appropriate to address through secondary legislation. It may also be the case that the exclusions will need to be adjusted over time, as new ideas are developed by community bodies.
Reason for choice of procedure

148. The details of land that need not be included in the register is considered sufficiently significant that it will be set out in secondary legislation, rather than guidance. However, the exclusions will be of a detailed technical nature, and therefore negative procedure is considered to be most appropriate.

PART 5B – SUPPORTERS’ TRUST’S RIGHT TO BUY SCOTTISH PROFESSIONAL FOOTBALL LEAGUE CLUBS.

Section 62C – Power to change the meaning of a football club

Power Conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary Procedure: Negative procedure

Provision

149. Section 62C was inserted at Stage 2 and provides for a definition of a “Scottish Professional Football League club” as a football club which is a member of the Scottish Professional Football League or any successor body as recognised by the Scottish Football Association. Subsection (2) provides that the Scottish Ministers can change the meaning of “football club” by regulation. Subsection (3) states that the Scottish Ministers must consult before making any regulations to modify the definition.

Reason for taking the power

150. This provision will allow the Scottish Ministers flexibility in the future to modify the meaning of football club should changes be required.

Reason for choice of procedure

151. Regulations made under section 62C are subject to the negative procedure and will be informed by consultation as set out in subsection (3). This will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations on the other.
Section 62F(1) – Power to prescribe information to be provided to the Scottish Ministers by a supporters’ trust

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary Procedure: Negative procedure

Provision

152. Section 62F sets out how an interest in buying a football club may be registered on an application by a supporters’ trust to the Scottish Ministers and the procedure to be followed. The Scottish Ministers are to make regulations setting out the specific information required in the application and the form in which this information should be provided.

Reason for taking the power

153. It is important that the Scottish Ministers are provided with the appropriate information by the supporters’ trust. This level of procedural detail is usually left to regulations.

Reason for choice of procedure

154. The matters to be detailed in regulations are details of procedure and accordingly it is appropriate that this power is subject to the negative procedure.

Section 62I(3) – Power to prescribe information to the Scottish Ministers on activation of supporters’ trust right to buy

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary Procedure: Negative procedure

Provision

155. Section 62I sets out that the supporters’ trust’s interest may be exercised when the owner or operator is deemed to have given notice of their intention to transfer ownership or that the club has entered into formal insolvency. The owner or operator must give such notice to the supporters’ trust or trusts which have a registered interest, and to the Scottish Ministers, in such form and in accordance with such provisions as may be prescribed.

Reason for taking power

156. It is important that the Scottish Ministers and the supporters’ trust, or trusts, are provided with the appropriate information by the owner or operator. This level of procedural detail is usually left to regulations.
Reason for choice of procedure

157. The matters to be detailed in regulations are details of procedure. This is an administrative issue and accordingly it is appropriate that this power is subject to the negative procedure.

Section 62K(2)(a) and (b) – Power to prescribe the form notifying supporters’ trusts and the owner or operator of a football club following the activation of right to buy

<table>
<thead>
<tr>
<th>Power conferred to:</th>
<th>the Scottish Ministers</th>
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<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Regulations</td>
</tr>
<tr>
<td>Revised or new power:</td>
<td>New</td>
</tr>
<tr>
<td>Parliamentary Procedure:</td>
<td>Negative procedure</td>
</tr>
</tbody>
</table>

Provision

158. Section 62K sets out the initial procedure after the activation of the supporters’ trust right to buy. This includes the Scottish Ministers seeking confirmation that the trust will exercise its right to buy. The trust has 30 days to respond and if they do not the right to buy is extinguished. The Scottish Ministers must direct the Keeper to enter details of the notification given under section 62I into the register, and must send copies of the notice sent by them to the supporters’ trust and any response to the Keeper and the owner of the club.

159. Under subsections (2)(a) and (2)(b) the Scottish Ministers must send a notice to the supporters’ trust or trusts in the prescribed form seeking their confirmation that the trust(s) will exercise its right to buy and must also send a notice to the owner or operator of the football club in a prescribed form that they have sought the confirmation of the trust(s).

Reason for taking these powers

160. It is important that the supporters’ trust, or trusts, and the owner or operator of the football club are provided with the appropriate notification by the Scottish Ministers. This level of procedural detail is usually left to regulations.

Reason for choice of procedure

161. The matters to be detailed in regulations are details of procedure. This is an administrative issue and accordingly it is appropriate that this power is subject to the negative procedure.
Section 62O(7) – Power to make provision about when ownership is to be treated as transferred

Power conferred to:  the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary Procedure: Negative procedure

Provision

162. Section 62O sets out the procedure for buying the football club. The supporter’s trust is to make an offer at a price agreed between the trust and the owner or, if no agreement is reached, at a value assessed by an appointed valuer or determined after an appeal of the assessed value. The price is to be paid and ownership transferred not later than 6 months from the date that the supporters’ trust confirmed its intention to exercise the right to buy. Later dates are provided for if an appeal over the assessed value has not been concluded within 4 months of the confirmation. If missives have not been concluded within the required period then the right to buy is extinguished, unless the Scottish Ministers are satisfied that the supporters’ trust has taken all reasonable steps to conclude the missives.

Reason for taking these powers

163. The provision provides the Scottish Ministers the ability to set out in more detail when ownership is to be treated as transferred.

Reason for choice of procedure

164. Matters relating to the transfer of ownership are likely to be detailed and administrative in nature and may require to be amended periodically. It is therefore considered appropriate that the negative procedure is used so as to achieve the best balance of parliamentary time on the one hand and the nature of the content of the order on the other.

PART 7 – ALLOTMENTS

Section 69A – Regulations as to size of allotments

Power conferred on:  the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: Revised
Parliamentary procedure: Negative procedure

Provision

165. Section 68 defines, “allotment” for the purpose of Part 7 of the Bill. The definition was amended at Stage 2 to remove the delegated power in section 68(d), (paragraphs 202-204 of the Delegated Powers Memorandum on the Bill as introduced) that allowed the Scottish Ministers to make regulations setting out the size of land that was to constitute an allotment. The amended definition of allotment at section 68(1)(d) includes a requirement for the size of an allotment to be “approximately 250 square metres”. The revised definition also allows an allotment to be
smaller than this size should it be requested by the person leasing or intending to lease it (section 68(3)).

166. Section 69A relates to the delegated power that was included in the Bill as introduced (in section 68(d)) and requires the Scottish Ministers to make provision on size or sizes of allotments, but without affecting the revised requirements in section 68(1)(d) (section 68(d) on introduction). Before any regulations are brought forward under this provision the Scottish Ministers must consult each local authority and any other appropriate person.

**Reason for taking power**

167. This power was taken to require the Scottish Ministers to make provision on the specific size or sizes of allotments for the purposes of Part 7. The Scottish Government, however, considers that the requirement may be impracticable in light of the amendments to section 68(1)(d) made at Stage 2, as described above. The Scottish Government’s preferred approach would be to bring forward further amendments at Stage 3.

**Reason for choice of procedure**

168. It is not considered that detailed Parliamentary scrutiny is required for this provision since it will further define the size of an allotment. It is therefore considered appropriate that these regulations should be subject to negative procedure. This will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations on the other hand.

**Section 73 – Allotment site regulations**

- **Power conferred on:** Local Authorities
- **Power exercisable by:** Regulations
- **Revised or new power:** Revised
- **Parliamentary procedure:** None

**Provision**

169. Local authorities must make regulations about allotment sites in their area and these must be made before the expiry of the period of two years beginning with the date on which section 73 comes into force.

170. Section 73(3) sets out the matters on which regulations must in particular be made. These include rent (section 73(3)(b)). This was expanded upon at stage 2 to include a requirement for regulations to provide a method of determining fair rent, taking into account the factors at section 73(3)(b)(i),(ii) and (iii). Section 73(4) sets out matters on which regulations may in particular be made. These matters were amended at stage 2. Section 73(4)(a) as introduced was removed to avoid duplication with section 73(4)(b). Section 73(4)(f) as introduced provided that regulations may be made for and in connection with the sale of surplus produce (in addition to the provisions of any regulations made under section 87(1)). The words in parenthesis were removed at Stage 2 as a consequence of removal of the delegated power in section 87(1). The power at section 73(1) in the Bill as introduced allowed for different provisions for different
areas or types of allotment sites (section 73(5)). The power was amended at Stage 2 to allow for different provision for different areas or different allotment sites.

**Reason for taking power**

171. It is considered to be appropriate for local authorities to have the power to make regulations for the allotment sites in their areas. This will give local authorities flexibility to manage allotment sites as they consider fit. The Stage 2 amendment to the requirement on rent (section 73(3)(b)) was made to ensure that within this flexibility, local authorities must nonetheless have a method to ensure that the rent they charge for allotments is fair. Section 87(1) as introduced permitted the sale of surplus produce only if it fell within a prescribed description. The delegated power was removed at Stage 2 as it was considered unnecessary to restrict the types of produce that may be sold. Consequently, the reference in section 73(4)(f) to provisions of regulations made under section 87(1) was no longer required. There is a wide variety of allotment site-types with respect to their layout and management. This power enables local authorities to make regulations that are tailor-made to each individual allotment site should this be necessary.

**Reason for choice of procedure**

172. Since this provision is delegating powers to local authorities to regulate allotment sites in their local area it was viewed that Parliamentary scrutiny was inappropriate. Before making regulations a local authority must consult those people who appear to the local authority to have an interest and follow the procedure set out in section 74.

**PART 7A – PARTICIPATION IN PUBLIC DECISION-MAKING**

**Section 93A – Participation in decisions of certain persons exercising public functions**

<table>
<thead>
<tr>
<th>Power conferred on:</th>
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<tbody>
<tr>
<td>Power exercisable by:</td>
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<tr>
<td>Revised or new power:</td>
<td>New</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Affirmative procedure</td>
</tr>
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</table>

**Provision**

173. Section 93A provides a regulation-making power enabling the Scottish Ministers to require Scottish public authorities to promote and facilitate the participation of members of the public in the decisions and activities of the authority, including in the allocation of resources. Subsection (5) makes it clear that the regulations can confer functions on persons, specify the activities to which the regulations can apply, and require the persons to prepare and publish a report. The persons must also have regard to any guidance issued by the Scottish Ministers.

**Reason for taking power**

174. Involving people and communities in making decisions helps to build community capacity and can also help the public sector identify local needs and priorities and target budgets more effectively. As the Minister for Local Government and Community Empowerment outlined during discussions on the amendment with the Local Government and Regeneration Committee:
“The intention is that the new power will ensure that participatory activity takes place and that the associated guidance will drive the quality and depth of that participatory activity over time. I wanted any legislative solution to have the flexibility to build up, change and develop over time. Given the different functions, budgets and structures of public authorities, I knew that having a single approach would not work.”

**Reason for choice of procedure**

175. The details to be included in the regulations is considered sufficiently significant that the affirmative procedure is considered to be most appropriate.
Delegated Powers and Law Reform Committee

Community Empowerment (Scotland) Bill as amended at Stage 2
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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on—

a. any—
   i. subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   ii. [deleted]
   iii. pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

b. proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

c. general questions relating to powers to make subordinate legislation;

d. whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

e. any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and

f. proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

g. any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

h. any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

www.scottish.parliament.uk/delegated-powers
DPLR.Committee@scottish.parliament.uk
0131 348 5175

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Committee Membership

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<tr>
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<td>John Mason</td>
</tr>
<tr>
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<td>Scottish National Party</td>
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| Margaret McCulloch        | John Scott                    |
| Scottish Labour           | Scottish Conservative         |
|                           | and Unionist Party            |

| Stewart Stevenson         |
| Scottish National Party   |
Introduction

1. At its meeting on 9 June 2015, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Community Empowerment (Scotland) Bill as amended at Stage 2 (“the Bill”)\(^1\). The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. The Bill was introduced by the Cabinet Secretary for Finance and Deputy First Minister on 11 June 2014. The Bill makes wide-ranging provision in relation to various types of community body and their rights.

3. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill, in advance of Stage 3 of the Bill (“the SDPM”)\(^2\).

4. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its 63\(^{rd}\) report of 2014.

\(^{1}\) Community Empowerment (Scotland) Bill as amended at Stage 2 available here: http://www.scottish.parliament.uk/S4_Bills/Community%20Empowerment%20(Scotland)%20Bill/b52as4-stage2-rev.pdf

\(^{2}\) Community Empowerment (Scotland) Bill as amended at Stage 2 Supplementary Delegated Powers Memorandum available here: http://www.scottish.parliament.uk/S4_Bills/Community%20Empowerment%20(Scotland)%20Bill/Supplementary_Delegated_Powers_Memorandum_-_5_June.pdf
Delegated Powers and Law Reform Committee
Community Empowerment (Scotland) Bill as amended at Stage 2, 36th Report, 2015 (Session 4)

Delegated Powers Provisions

5. The Committee considered each of the new, removed or substantially amended delegated powers provisions in the Bill after Stage 2.

6. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the substantially amended or new delegated powers provisions listed below, and that it is content with the Parliamentary procedure to which they are subject:

- Section 1(1) – National outcomes
- Section 4(6) – Community planning
- Section 8(3) – Governance
- Section 10 – Guidance
- Section 16(2) – Meaning of “public service authority”
- Section 16(3) – Meaning of “public service authority”
- Section 18(1) – Regulations
- Section 18(2) – Regulations
- Section 24A (3) – Appeals
- Section 25B – Guidance
- Section 29A – inserting new section 37(4A) into the Land Reform (Scotland) 2003 Act – Public notice of certain applications
- Section 30 (2B) – inserting new sections 38(2A) and 38(2B) into the Land Reform (Scotland) Act 2003 – Period for indicating approval under section 38 of 2003 Act
- Section 47A(2) – inserting new section 71(A) of the Land Reform (Scotland) Act 2003 – Crofting community bodies
- Section 47A(6) – inserting new section 71(4A) and 71(4B) into the Land Reform (Scotland) Act 2003 – Crofting community bodies
- Section 47A(7)(b)(ii) – inserting new section 71(5)(a)(iv) subsections 5 1A(a) into the Land Reform (Scotland) Act 2003 – Crofting community bodies
- Section 47B(2) – amending section 72 of the Land Reform (Scotland) Act 2003 – Crofting community bodies
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Community Empowerment (Scotland) Bill as amended at Stage 2, 36th Report, 2015 (Session 4)

- Section 47C(2) – amending section 73 of the Land Reform (Scotland) 2003 Act – Application: information about rights and interest in land
- Section 47C(4) – amending section 73 of the Land Reform (Scotland) 2003 Act – application: information about rights and interest in land
- Section 47E(3) – inserting new section 75(6) into the Land Reform (Scotland) 2003 Act – Ballot: information and expenses
- Section 47I – inserting new section 89(4) into the Land Reform (Scotland) 2003 Act – Compensation
- Section 48 – inserting new section 97C into the Land Reform (Scotland) 2003 Act – Eligible land
- Section 48 – inserting new section 97D into the Land Reform (Scotland) 2003 Act – Part 3A Community bodies
- Section 48 – inserting new section 97G into the Land Reform (Scotland) 2003 Act – Right to buy: application for consent
- Section 48 – inserting new section 97J into the Land Reform (Scotland) 2003 Act – Ballot to indicate approval for purposes of section 97H
- Section 48 – inserting new section 97N into the Land Reform (Scotland) 2003 Act – Effect of Ministers’ decision on right to buy
- Section 51(2) – Meaning of “relevant authority”
- Section 51(3) – Meaning of “relevant authority”
- Section 58 (2) – Appeals
- Section 59(7) – Review by local authority
- Section 59A(3) – review of decisions by the Scottish Ministers
- Section 59C(4) – Decisions by relevant authority specified under section 58(2)(c): reviews
- Section 61A (4) – Duty to publish register of land
- Section 61A (5) – Duty to publish register of land
- Section 61C – Guidance
- Section 62O(7) – Procedure for buying
- Section 73 – Allotment site regulations
- Section 93A(1) – Participation in decisions of certain persons exercising public functions
- Schedule 4 2(5) – amending section 98(5) of the Land Reform (Scotland) 2003 Act – Minor and consequential amendments
Recommendations

7. The Committee’s comments and, where appropriate, recommendations on the remaining substantially altered delegated powers in the Bill as amended are detailed below.

Section 48 inserting new section 97D(1)(b) into the Land Reform (Scotland) Act 2003 – Part 3A Community bodies (Part 4)

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative

Provision
8. New section 97D of the 2003 Act, as inserted by section 48 of the Bill, sets out the types of legal entity that may be a “Part 3A community body” and therefore eligible to make an application to buy abandoned or neglected land under the new Part 3A of the 2003 Act. This section has been amended at Stage 2, and a power conferred upon the Scottish Ministers to specify additional types of entity which may be a Part 3A community body in regulations.

9. When the Bill was introduced, a Part 3A community body was required to be constituted as a company limited by guarantee. As amended, such a body may also be a Scottish Charitable Incorporated Organisation (“SCIO”), a Community Benefit Society or such other body as may be prescribed in regulations and which meets prescribed requirements.

Comment
10. The SDPM explains that the changes to section 97D of the 2003 Act are intended to reflect changes made to the other rights to buy contained in Parts 2 and 3 of the 2003 Act so as to achieve consistency across the three different parts and the three different rights to buy. SCIOs and Community Benefit Societies are considered by Ministers to be bodies suitable to exercise the right to buy abandoned or neglected land, and Ministers also consider it prudent to take a power to add new types of entity which may be created in the future, should those entities also be considered suitable to exercise the right.

11. Parts 2 and 3 of the 2003 Act contain similar powers to the power inserted in the new section 97D(1)(b). Those powers are subject to the affirmative procedure. This power is, however, subject to the negative procedure. The SDPM states that the Scottish Government will give consideration to amending the Bill at Stage 3 to make this power subject to the affirmative procedure for the purposes of consistency. The Committee wishes to encourage the Scottish Government to amend the power at Stage 3 so that it is subject to the affirmative procedure.

12. The Committee calls on the Scottish Government to amend the Bill at Stage 3 so that the power in the new section 97D(1)(b) of the 2003 Act is subject to the affirmative procedure.
Section 62C(2) – Meaning of “Scottish Professional Football League Club” (Part 5B)

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative

Provision
13. New section 62C of the Bill provides that for the purposes of the new Part 5B, and the right to buy conferred on supporters’ trusts, a “Scottish Professional Football League Club” means a football club which is for the time being a member of the Scottish Professional Football League or any successor body recognised as the senior competitive league by the Scottish Football Association. Section 62C(2) provides that the Scottish Ministers may by regulations modify the meaning of a football club in subsection (1). Before making such regulations, the Scottish Ministers are required to consult such persons as they consider appropriate.

Comment
14. This power is subject to the negative procedure. The SDPM states that this will achieve the best balance between use of Parliamentary time and resource on one hand and the purpose of the regulations on the other.

15. In the Committee’s view, the power to modify the meaning of Scottish Professional Football League Club is a significant power which, on its face, appears to merit the higher level of Parliamentary scrutiny afforded by the affirmative procedure. The power appears to be capable of having a significant effect on the scope and application of the new Part 5B of the Bill. The fact that the Bill specifies on its face that the power may not be exercised without prior consultation provides, in our view, an indication of its significance.

16. The Committee considers that the SDPM does not provide sufficient justification for the choice of negative procedure for this power, other than to say that in the Scottish Government’s view, the negative procedure represents the best balance between use of Parliamentary time and resource on one hand, and the purpose of the regulations on the other. In the absence of more substantive explanation as to why a power of this nature is properly subject to the negative procedure, and given the apparent significance of the power, the Committee calls on the Scottish Government to amend the Bill at Stage 3 so as to make the power in section 62C(2) of the Bill subject to the affirmative procedure.

17. The Committee calls on the Scottish Government to amend the power in section 62C(2) of the Bill at Stage 3 so that it is subject to the affirmative procedure.
Sections 62E, 62F, 62I, 62K, 62P – provisions regarding a supporters’ trust’s right to buy a Scottish Professional Football League Club (Part 5B)

Provisions
18. New section 62E permits the Scottish Ministers to prescribe additional bodies that may hold a controlling interest in a football club for the purposes of the definition of ‘ownership’. Section 62F provides that a supporters’ trust’s interest in buying a football club may be registered only upon an application being made to the Scottish Ministers in the prescribed form and accompanied by information of the prescribed kind.

19. Section 62I provides that a notification of an intention to transfer ownership of a football club or that the club has entered insolvency, for the purposes of activating a supporters’ trust’s right to buy, is to be given in such form and otherwise in accordance with such provisions as are prescribed. Section 62K provides that Scottish Ministers must send a notice in the prescribed form to a supporter’s trust, seeking confirmation that the trust will exercise its right to buy, and to the owner of the football club concerned, indicating Ministers’ compliance with that requirement. Section 62P provides that the Scottish Ministers may prescribe additional conditions to be met by a supporter’s trust which applies to them for funding to enable it to make an offer to buy a football club.

Comment
20. The word ‘prescribed’ is commonly used in legislation in order to confer a delegated power however it is usually accompanied by an interpretative provision defining the word in such manner so as to specify who is to prescribe the matters referred to and how they are to do so. For example, ‘prescribed’ can be defined to mean “prescribed in regulations made by the Scottish Ministers”. Such a definition appears in section 98 of the Land Reform (Scotland) Act 2003, and has been relied upon for many of the powers in this Bill that insert new provision into that Act.

21. Use of the words ‘prescribe’ or ‘prescribed’ alone is insufficient to confer a delegated power, as they do not specify who the power is to be conferred upon, or how it is to be exercised (e.g. by regulations, order etc.). It appears that the intention in respect of these provisions of the new Part 5B of the Bill is to confer a number of delegated powers. It appears therefore that a definition of the term ‘prescribed’ is required in order to provide clarity as to whom the powers in these sections are conferred upon (e.g. the Scottish Ministers) and how they are intended to be exercised (e.g. by regulations). While sections 62E and 62P refer to the Scottish Ministers prescribing the matters specified therein, they do not indicate the form of exercise of the powers. Sections 62F, 62I and 62K make no reference to the Scottish Ministers as the body upon which the powers are conferred or to the manner in which they are to be exercised. The Committee considers that the SDPM, which addresses only sections 62F, 62I and 62K, does not clarify the point.

22. The Committee is content in principle with the substance of the powers in sections 62E, F, I, K and P. Further, given that the powers deal with largely administrative matters such as the specification of forms of notice, the Committee considers that it would be appropriate for each of the powers to be subject to the negative procedure. The Committee, however, calls on the Scottish Government to clarify the Bill at Stage 3 and, if it is intended that sections 62E, F, I, K and P confer
delegated powers to make regulations upon the Scottish Ministers, to insert an appropriate definition of the terms ‘prescribe’ and ‘prescribed’ so that those powers are properly constituted on the face of the legislation.

23. The Committee calls on the Scottish Government to amend the Bill at Stage 3 in order that the powers in sections 62E, F, I, K and P are fully cast as powers to make subordinate legislation subject to the negative procedure and to clarify – through defining the terms ‘prescribe’ and ‘prescribed’, or by such other means as they consider appropriate - whom the powers are conferred upon, and what form the subordinate legislation made in their exercise is intended to take. In the event that the Government’s Stage 3 amendments do not cover this recommendation, the Committee authorises the Convener and Deputy Convener to table suitable amendments.

Section 69A – Regulations as to the size of allotments (Part 7)

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
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<tbody>
<tr>
<td>Power exercisable by:</td>
<td>regulations</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>negative</td>
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</tbody>
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Provision

24. New section 69A of the Bill requires the Scottish Ministers to make regulations for or in connection with the size or sizes of an allotment, but without affecting section 68(1)(d). Section 68(1)(d) defines “allotment” for the purposes of Part 7 as, among other things, land that meets one of the requirements as to size set out in sections 68(2) and (3). The power to make regulations as to the size of allotments in section 69A cannot be exercised unless Ministers have consulted with each local authority and such other persons as they consider appropriate.

Comment

25. The SDPM states that this power was taken to require the Scottish Ministers to make provision about the size or sizes of allotments for the purposes of Part 7. It further provides, however, that the Scottish Government considers that the requirement may be impractical in the light of amendments made to section 68(1)(d) at Stage 2.

26. Section 68(1)(d) provides that an “allotment” means, among other things, land that meets one of the requirements as to size set out in sections 68(2) and (3). Section 68(2) sets a requirement to the effect that the land is of a size approximately 250 square metres. Section 68(3) provides that the land is of such size (being a size smaller than that set out in section 68(2)) as has been requested by the person leasing or intending to lease the land from the authority.

27. Section 69A confers power on the Scottish Ministers to make regulations for or in connection with the size of an allotment, without affecting section 68(1)(d). In our view, it is not clear what provision those regulations are intended to make or how any such regulations could make provision about the size of allotments without affecting the requirements as to size of an allotment that are specifically set out on the face of the Bill. Given the Scottish Government’s stated intention to bring forward further amendments at Stage 3, the Committee wishes to encourage the Scottish Government to do so in order to clarify how the provisions on allotment size are intended to operate.
28. The Committee calls on the Scottish Government to amend the Bill at Stage 3 so as to clarify the manner in which the power in section 69A regarding allotment size is intended to operate.
Community Empowerment (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 100
Schedules 1 to 5
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Marco Biagi
27 In section 1, page 1, line 10, leave out <by regulations prescribe> and insert <determine>

Marco Biagi
28 In section 1, page 1, line 26, leave out subsection (1C)

Alex Rowley
147 In section 1, page 2, leave out lines 3 to 14

Marco Biagi
29 In section 1, page 2, line 4, leave out <such persons> and insert <—

(i) such persons who appear to them to represent the interests of communities in Scotland, and

(ii) such other persons>

Marco Biagi
30 In section 1, page 2, line 8, at end insert—

<( ) In consulting the Scottish Parliament under paragraph (c) of subsection (2), the Scottish Ministers must also lay before the Parliament a document describing—

(a) the consultation carried out under paragraph (a) of that subsection,

(b) any representations received in response to that consultation, and

(c) whether and if so how those representations have been taken account of in preparing the draft national outcomes.>

Marco Biagi
31 In section 1, page 2, line 15, leave out from second <in> to <applies> in line 16
Marco Biagi

32 In section 1, page 2, line 17, at end insert—

<  Nothing in subsection (4) requires the Scottish Parliament or the Scottish Parliamentary Corporate Body to have regard to the national outcomes in carrying out any of their functions.>

Marco Biagi

33 In section 1, page 2, line 18, at end insert—

<“community” includes any community based on common interest, identity or geography.>

Section 1A

Alex Rowley

148 In section 1A, page 2, line 28, leave out from <eligible> to end of line and insert <normally resident in a local authority area.>

Marco Biagi

34 Leave out section 1A

Section 2

Marco Biagi

35 In section 2, page 3, line 23, leave out <such persons> and insert <—

(a) such persons who appear to them to represent the interests of communities in Scotland, and

(b) such other persons>

Marco Biagi

36 In section 2, page 3, line 38, at end insert—

<  In consulting the Scottish Parliament under subsection (4)(zb), the Scottish Ministers must also lay before the Parliament a document describing—

(a) the consultation carried out under subsection (3A),

(b) any representations received in response to that consultation, and

(c) where they propose to make revisions to the national outcomes, whether and if so how those representations have been taken account of in preparing the proposed revisions.>

Marco Biagi

37 In section 2, page 4, line 4, at end insert—

<  In subsection (3A), “community” includes any community based on common interest, identity or geography.>
Section 3

Marco Biagi

38 In section 3, page 4, line 10, leave out from <, as> to <report> in line 11 and insert <prepare and publish reports>

Marco Biagi

39 In section 3, page 4, line 15, at end insert—

<( ) Reports must be prepared and published at such times as the Scottish Ministers consider appropriate.>

Marco Biagi

40 In section 3, page 4, line 16, leave out subsections (4) to (6)

Alex Rowley

149 In section 3, page 4, line 17, leave out from <eligible> to end of line and insert <normally resident in a local authority area,>

Section 3A

Alex Rowley

150 In section 3A, page 4, line 36, leave out from <from> to end of line 39 and insert <normally resident in that postcode unit or in one of the postcode units,>

Marco Biagi

41 Leave out section 3A

After section 3A

Tavish Scott

151 After section 3A, insert—

<PART>

EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT

Duty of Scottish Ministers in relation to European Charter of Local Self-Government

(1) The Scottish Ministers must, in exercising their functions, observe and promote the principles and provisions of the European Charter of Local Self-Government.

(2) In this section, the European Charter of Local Self-Government means the Charter of the Congress of the Council of Europe of that name signed at Strasbourg on 15 October 1985.>
Section 5

Marco Biagi

1 In section 5, page 6, line 24, at end insert <, and

   ( ) a description of the needs and circumstances of persons residing in the area of the local authority to which the plan relates.>

Section 7

Marco Biagi

2 In section 7, page 7, line 18, after <a> insert <local outcomes improvement plan>

Marco Biagi

3 In section 7, page 7, line 20, after <A> insert <local outcomes improvement plan>

After section 7

Marco Biagi

4 After section 7, insert—

<Localities: comparison of outcomes

(1) Each community planning partnership must, for the purposes of this Part, divide the area of the local authority into smaller areas.

(2) The smaller areas mentioned in subsection (1) (“localities”) must be of such type or description as may be specified by the Scottish Ministers by regulations.

(3) Having carried out the duty under subsection (1), the community planning partnership must identify each locality in which persons residing there experience significantly poorer outcomes which result from socio-economic disadvantage than—

   (a) those experienced by persons residing in other localities within the area of the local authority, or

   (b) those experienced generally by persons residing in Scotland.

(4) In carrying out the duty under subsection (3), a community planning partnership must take account of the needs and circumstances of persons residing in the area of the local authority.

(5) Regulations under subsection (2) may specify areas of a type or description subject to any conditions specified in the regulations.

(6) The Scottish Ministers may by regulations specify that localities within the area of a local authority must each be of the same type or description as may be specified in regulations under subsection (2).

(7) In this section, references to the area of a local authority mean, in relation to a community planning partnership, the area of the local authority for which the partnership is carrying out community planning.>
After section 7, insert—

**<Locality plan**

(1) Each community planning partnership must prepare and publish a locality plan for each locality identified by it by virtue of section (Localities: comparison of outcomes)(3).

(2) A community planning partnership may prepare and publish a locality plan for any other locality within the area of the local authority for which it is carrying out community planning.

(3) A locality plan is a plan setting out for the purposes of the locality to which the plan relates—

(a) local outcomes to which priority is to be given by the community planning partnership with a view to improving the achievement of the outcomes in the locality,

(b) a description of the proposed improvement in the achievement of the outcomes, and

(c) the period within which the proposed improvement is to be achieved.

(4) In preparing a locality plan, a community planning partnership must consult—

(a) such community bodies as it considers appropriate, and

(b) such other persons as it considers appropriate.

(5) Before publishing a locality plan, the community planning partnership must take account of—

(a) any representations received by it by virtue of subsection (4), and

(b) the needs and circumstances of persons residing in the locality to which the plan relates.

**<Locality plan: review**

(1) Each community planning partnership must keep under review the question of whether it is making progress in improving the achievement of each local outcome referred to in subsection (3)(a) of section (Locality plan) in relation to each locality for which it has published a locality plan under subsection (1) or (2) of that section.

(2) Each community planning partnership—

(a) must from time to time review each locality plan published by it under section (Locality plan),

(b) may, following such a review, revise such a plan.

(3) Subsections (4) and (5) of section (Locality plan) apply in relation to a locality plan revised under subsection (2)(b) as they apply in relation to a locality plan prepared and published under subsection (1) or (2) of that section (but subject to the modification in subsection (4)).
(4) The modification is that the reference in subsection (5)(a) of section (Locality plan) to representations received by virtue of subsection (4) of that section is to be read as if it were a reference to representations received by virtue of that subsection as applied by subsection (3) of this section.

(5) Where a community planning partnership revises a locality plan under subsection (2)(b), it must publish a revised plan.

(6) Subsection (2) applies in relation to a revised locality plan published under subsection (5) as it applies in relation to a locality plan published under section (Locality plan); and the duty in subsection (5) applies accordingly.

Marco Biagi

7 After section 7, insert—

 Locality plan: progress report

(1) Each community planning partnership must prepare and publish a locality plan progress report in relation to each locality plan published by it under section (Locality plan) for each reporting year.

(2) A locality plan progress report is a report setting out the community planning partnership’s assessment of whether there has been any improvement in the achievement of each local outcome referred to in section (Locality plan)(3)(a) during the reporting year.

(3) In this section, “reporting year” means—

(a) a period of one year beginning on 1 April, or

(b) in relation to a particular community planning partnership, a period of one year beginning on such other date as may be specified in a direction given by the Scottish Ministers to the community planning partnership.

Section 13

Marco Biagi

8 In section 13, page 10, line 7, at end insert—

<“locality” has the meaning given by section (Localities: comparison of outcomes)(2).>

Section 15

Marco Biagi

9 In section 15, page 10, line 29, at end insert <, or

( ) a group mentioned in subsection (4).

Marco Biagi

10 In section 15, page 10, line 36, at end insert—

<(4) The group is a group—

(a) that comprises a number of individuals who are members of the group,
(b) that has no written constitution,
(c) that relates to a particular community,
(d) membership of which is open to any member of that community,
(e) whose decisions are made or otherwise controlled by members of the group who are members of that community, and
(f) any surplus funds and assets of which are to be applied for the benefit of that community.

Section 17

Marco Biagi

11 In section 17, page 12, line 10, at end insert—

<2A) Subsection (2B) applies where a community participation body which is a group as mentioned in section 15(4) makes a participation request to a public service authority.

(2B) The group must, in addition to complying with subsection (2), provide such information to the authority as the authority may require in order for it to be satisfied that the body meets the requirements to be such a group.

After section 24

Marco Biagi

42 After section 24, insert—

<Regulations: appeals and reviews

(1) The Scottish Ministers may by regulations make provision for or in connection with—

(a) appeals against decision notices,
(b) reviews of decisions of public service authorities relating to participation requests.

(2) Regulations under subsection (1) may, in particular, make provision for or in connection with—

(a) the procedure to be followed in connection with appeals and reviews,
(b) the manner in which appeals and reviews are to be conducted,
(c) the time limits within which—

(i) appeals are to be brought,
(ii) applications for reviews are to be made,
(d) the circumstances under which—

(i) appeals may or may not be brought,
(ii) applications for reviews may or may not be made,
(e) the persons to whom—

(i) appeals may be made,
(ii) applications for reviews may be made,
(f) the powers of persons determining appeals and the disposals available to such persons,

(g) the steps that may be taken by a public service authority following a review,

(h) the effect of any decision taken in relation to an appeal or review on a decision notice to which the appeal or review relates.

Section 24A

Marco Biagi

43 Leave out section 24A

Section 25A

Marco Biagi

12 In section 25A, page 17, line 36, at end insert—

<(  ) A participation request report is to be published under subsection (1) no later than 30 June following the end of the reporting year to which it relates.>

After section 25A

Marco Biagi

44 After section 25A, insert—

<Ministerial report

(1) The Scottish Ministers must prepare, and lay before the Scottish Parliament, a report on the operation of participation requests.

(2) The report is to be prepared before the expiry of the period of three years beginning with the day on which section 17 comes into force.>

Section 28

Aileen McLeod

45 In section 28, page 21, line 10, after <(a)> insert <—

( ) for “subsection (1)(a)” substitute “subsections (1)(a), (1A)(a) and (1B)(a)”, and>

Section 29

Aileen McLeod

46 In section 29, page 22, line 5, at end insert—

<(  ) After subsection (3), insert—
“(4) Where the power conferred by subsection (3) is (or is to be) exercised in relation to land, Ministers may make an order relating to, or to matters connected with, the acquisition of the land.

(5) An order under subsection (4) may—
   (a) apply, modify or exclude any enactment which relates to any matter as to which an order could be made under that subsection,
   (b) make such modifications of enactments as appear to Ministers to be necessary or expedient in consequence of any provision of the order or otherwise in connection with the order.”.

After section 29

Aileen McLeod

47 After section 29, insert—

<Register of Community Interests in Land

(1) Section 36 of the 2003 Act (Register of Community Interests in Land) is amended as follows.

(2) In subsection (2)—
   (a) in paragraph (a)—
      (i) at the beginning, insert “where the community body which has registered the interest is constituted by a company limited by guarantee,”, and
      (ii) the words from “which” to the end of the paragraph are repealed,
   (b) after paragraph (a) insert—
      “(aa) where the community body which has registered the interest is constituted by a Scottish charitable incorporated organisation within the meaning given in section 34(8) (a “SCIO”), the name and address of the principal office of the SCIO,
      (ab) where the community body which has registered the interest is constituted by a community benefit society as defined in section 34(8), the name and address of the registered office of the society,”.

(3) After subsection (5), insert—

“(5A) Subsection (5B) applies where—
   (a) a community body changes its name,
   (b) a community body which is constituted by a company limited by guarantee or by a community benefit society changes the address of its registered office, or
   (c) a community body which is constituted by a SCIO changes the address of its principal office.

(5B) The community body must, as soon as reasonably practicable after the change is made, notify the Keeper of the change.”>
Section 30

Aileen McLeod

48 In section 30, page 22, line 19, at end insert—

<(  ) in subsection (1)(b)—

(i) after “that”, where it first occurs, insert “the acquisition of the land by the community body to which the application relates is compatible with furthering the achievement of sustainable development, and that”,

(ii) in sub-paragraph (i), the words “defined under section 34(1)(a) above” are repealed,

(iii) the word “or” immediately following sub-paragraph (i) is repealed,

(iv) in sub-paragraph (ii), for “that”, where it first occurs, substitute “the”,

(v) in that sub-paragraph, the words from “and” to the end of the sub-paragraph are repealed, and

(vi) after that sub-paragraph insert—

“(iii) where the community body is a body mentioned in section 34(A1)(a), the land is in or sufficiently near to the area of the community by reference to which the community is defined as mentioned in section 34(5)(a), or

(iv) where the community body is a body mentioned in section 34(A1)(b), the land is in or sufficiently near to the area of the community to which the body relates,”>.

Claudia Beamish

154 In section 30, page 22, line 24, leave out <6> and insert <12>

Claudia Beamish

155 In section 30, page 22, line 27, at end insert <(not being less than 6 months).”>

Aileen McLeod

49 In section 30, page 22, line 27, at end insert—

<(  ) in subsection (3), for “above” substitute “, (1A)(a) or (1B)(a), or where that body is a body mentioned in section 34(A1)(b), the community to which that body relates”>

Section 31

Aileen McLeod

50 In section 31, page 23, line 28, leave out <7> and insert <14>

Aileen McLeod

51 In section 31, page 24, line 6, after <body,> insert—
<(ab) that—

(i) in the period of 12 months before the application is received by Ministers, the owner of the land or, as the case may be, the creditor taking the action such as is mentioned in subsection (1A) did not make an offer to sell the land to the community body or a similar community body, or

(ii) in that 12 month period, the owner of the land or, as the case may be, the creditor did make an offer to sell the land to the community body or a similar community body and, in the opinion of Ministers, there are good reasons why the body did not purchase the land,>

Aileen McLeod

52 In section 31, page 24, line 20, leave out <7> and insert <14>

Aileen McLeod

53 In section 31, page 24, line 39, at end insert—

<(6A) In subsection (3)(ab)—

(a) references to “the land” include land that is, in the opinion of Ministers, mainly the same as the land to which the application mentioned in that subsection relates,

(b) references to “an offer” are references to an offer in writing (or that is confirmed in writing),

(c) a community body is, for the purposes of that subsection, similar to another community body if, in the opinion of Ministers, it is similar to the other body to a significant degree having regard to such matters as may be prescribed.>

Section 32

Aileen McLeod

54 In section 32, page 25, line 11, leave out <has been conferred> and insert <exists>

Aileen McLeod

55 In section 32, page 25, line 29, leave out <has been conferred> and insert <exists>

After section 33

Aileen McLeod

56 After section 33, insert—

<Notice of expiry of registration

In section 44 of the 2003 Act (duration and renewal of registration), after subsection (5) insert—
“(5A) The Scottish Ministers must send written notice to a community body which has a registered community interest of the date on which that interest will cease to have effect unless it is re-registered (“the expiry date”).

(5B) A notice under subsection (5A) must be sent in the period beginning on the day which falls 12 months before the expiry date and ending 28 days after that day.”.

Claudia Beamish
156 After section 33, insert—

<Duration of registration>

In section 44 of the 2003 Act (duration and renewal of registration), in each of subsections (1) and (4), for the word “five” substitute “seven”.

Section 38

Aileen McLeod
57 In section 38, page 29, line 20, leave out <7> and insert <14>

Section 39

Aileen McLeod
58 In section 39, page 29, line 25, leave out <7> and insert <14>

After section 42

Aileen McLeod
59 After section 42, insert—

<Notification of application under section 57 of the 2003 Act>

In section 57 of the 2003 Act (powers of Lands Tribunal in event of failure or delay), after subsection (5), insert—

“(6) Where an application under subsection (1) is made by the owner of the land or the community body, the owner or, as the case may be, the community body must, within 7 days of the date on which the application is made, notify Ministers in writing of—

(a) the making of the application, and
(b) the date of making the application.

(7) Failure to comply with the requirement in subsection (2) to send a copy of the order made under that subsection, or with subsection (6), has no effect on—

(a) the community body’s right to buy the land, or
(b) the validity of the application under subsection (1).”.
Section 45A

Aileen McLeod

60 In section 45A, page 34, line 24, at end insert—

<( ) After subsection (8) insert—

“(8A) Where the owner of the land or the community body appeals under this section, the owner or, as the case may be, the community body must, within 7 days of the date on which the appeal is made, notify Ministers in writing of—

(a) the making of the appeal, and
(b) the date of the making of the appeal.

(8B) The Lands Tribunal must send a copy of the written statement of reasons issued under subsection (7) to Ministers.

(8C) Failure to comply with subsection (8A) or (8B) has no effect on—

(a) the community body’s right to buy the land, or
(b) the validity of the appeal.”.>

Section 47C

Sarah Boyack

157 In section 47C, page 38, line 39, at end insert—

<( ) After subsection (5A) insert—

“(5AA) Ministers may by regulations—

(a) modify any of paragraphs (a) to (g) of subsection (5),
(b) provide for any of those paragraphs not to apply in such cases or circumstances as may be specified in the regulations.”.>

Section 47J

Aileen McLeod

61 In section 47J, page 41, line 35, at end insert—

<( ) after subsection (6), insert—

“(6A) Where the owner of land, the tenant, the person entitled to the sporting interests or the crofting community body appeals under this section, the owner, tenant, person so entitled or, as the case may be, crofting community body must, within 7 days of the date on which the appeal is made, notify Ministers in writing of—

(a) the making of the appeal, and
(b) the date of the making of the appeal.

(6B) The Land Court must send a copy of the written statement of reasons issued under subsection (5) to Ministers.

(6C) Failure to comply with subsection (6A) or (6B) has no effect on—
(a) the crofting community body’s right to buy the land, the tenant’s interest or the sporting interests, or
(b) the validity of the appeal under this section.”>

After section 47J

Aileen McLeod

After section 47J, insert—

<Register of Crofting Community Rights to Buy

(1) Section 94 of the 2003 Act (Register of Crofting Community Rights to Buy) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (a)—

(i) at the beginning, insert “where the crofting community body which has submitted the application is constituted by a company limited by guarantee,”, and

(ii) the words from “which” to the end of the paragraph are repealed,

(b) after paragraph (a) insert—

“(aa) where the crofting community body which has submitted the application is constituted by a Scottish charitable incorporated organisation within the meaning given in section 71(8) (a “SCIO”), the name and address of the principal office of the SCIO,

(ab) where the crofting community body which has submitted the application is constituted by a community benefit society as defined in section 71(8), the name and address of the registered office of the society,”.

(3) After subsection (2), insert—

“(2A) Subsection (2B) applies where—

(a) a crofting community body changes its name,

(b) a crofting community body which is constituted by a company limited by guarantee or by a community benefit society changes the address of its registered office, or

(c) a crofting community body which is constituted by a SCIO changes the address of its principal office.

(2B) The crofting community body must, as soon as reasonably practicable after the change is made, notify the Crofting Commission of the change.”.

(4) After subsection (3), insert—

“(3A) If the crofting community body registering an application requires that any such information or document relating to that application and falling within subsection (3B) as is specified in the requirement be withheld from public inspection, that information or document is to be kept by or on behalf of Ministers separately from and not entered in the crofting register.
(3B) Information or a document falls within this subsection if it relates to arrangements for the raising or expenditure of money to enable the land to which the application relates to be put to a particular use.

(3C) Nothing in subsection (3A) or (3B) obliges an applicant crofting community body, or empowers Ministers to require such a body, to submit to Ministers any information or document within subsection (3B).”.

Section 47K

Aileen McLeod
63 In section 47K, page 41, line 37, leave out <97A> and insert <97>

Aileen McLeod
64 In section 47K, page 42, line 1, leave out <97B> and insert <97ZA>

Section 48

Aileen McLeod
65 In section 48, page 42, line 15, at end insert <(within the meaning of section 69(1) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003)>

Aileen McLeod
66 In section 48, page 42, line 22, after <Ministers> insert—

(a)

Aileen McLeod
67 In section 48, page 42, line 23, at end insert <, or

(b) the use or management of the land is such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of a relevant community.

(1A) In subsection (1)(b)—

(a) “harm”—

(i) includes harm the environmental effects of which have an adverse effect on the lives of persons comprising the relevant community mentioned in that subsection,

(ii) does not include harm which, in the opinion of Ministers, is negligible,

(b) “relevant community”, in relation to a Part 3A community body making an application under section 97G in relation to the land, means—

(i) the community defined as mentioned in subsection (5) of section 97D to which the Part 3A community body relates (reading that subsection as if paragraph (b)(ii) were omitted), or
(ii) where the Part 3A community body is a body mentioned in section 97D(1)(b), the community to which the body relates.

Sarah Boyack

67A As an amendment to amendment 67, line 3, after <environmental> insert <and social>

Sarah Boyack

67B As an amendment to amendment 67, line 7, after <environmental> insert <and social>

Sarah Boyack

158 In section 48, page 42, line 25, at end insert—

<( )> A draft of a statutory instrument containing the first regulations under subsection (2) must be laid before the Scottish Parliament within 18 months of the day on which the Community Empowerment (Scotland) Act 2015 received Royal Assent.>

Aileen McLeod

68 In section 48, page 42, line 28, at end insert <other than a building or other structure which is occupied by an individual under a tenancy>

Claudia Beamish

159 In section 48, page 42, leave out lines 34 to 36

Aileen McLeod

69 In section 48, page 43, line 2, leave out <subsection (3)(a)> and insert <paragraph (a) of subsection (3),

( ) descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy for the purposes of that paragraph>

Aileen McLeod

70 In section 48, page 44, leave out lines 40 and 41

Aileen McLeod

71 In section 48, page 45, line 23, leave out <(1)> and insert <(1A)>

Aileen McLeod

72 In section 48, page 45, line 31, at end insert—

<“company limited by guarantee” has the meaning given by section 3(3) of the Companies Act 2006,>

Aileen McLeod

73 In section 48, page 46, line 15, leave out <or Neglected> and insert <, Neglected or Detrimental>
Aileen McLeod
74  In section 48, page 46, line 21, at beginning insert <where the Part 3A community body which has submitted the application is constituted by a company limited by guarantee,>

Aileen McLeod
75  In section 48, page 46, line 21, leave out from <which> to end of line 23

Aileen McLeod
76  In section 48, page 46, line 23, at end insert —

< (aa) where the Part 3A community body which has submitted the application is constituted by a Scottish charitable incorporated organisation within the meaning given in section 97D(8) (a “SCIO”), the name and address of the principal office of the SCIO,

(ab) where the Part 3A community body which has submitted the application is constituted by a community benefit society as defined in section 97D(8), the name and address of the registered office of the society.>

Aileen McLeod
77  In section 48, page 46, line 31, at end insert —

<( ) Subject to subsection (3), any person who, under this Part, provides a document or other information, or makes a decision, which or a copy of which is to be registered in the Part 3A Register must, as soon as reasonably practicable after providing the document or other information or, as the case may be, making the decision, give it or a copy of it to the Keeper for the purpose of allowing it to be so registered.>

Aileen McLeod
78  In section 48, page 46, line 42, at end insert —

<(5A) Subsection (5B) applies where—

(a) a Part 3A community body changes its name,

(b) a Part 3A community body which is constituted by a company limited by guarantee or by a community benefit society changes the address of its registered office, or

(c) a Part 3A community body which is constituted by a SCIO changes the address of its principal office.

(5B) The Part 3A community body must, as soon as reasonably practicable after the change is made, notify the Keeper of the change.>

Sarah Boyack
160  In section 48, page 47, line 31, leave out from <specify> to end of line 32 and insert —

(i) either—

(A) specify the owner of the land, or
(B) where the Part 3A community body has, despite making all reasonable efforts to do so, been unable to identify the owner of the land, provide details of those efforts and request that Ministers identify the owner of the land, and

(ii) specify>

Alex Fergusson

161 In section 48, page 47, line 32, at end insert—

<(  ) any tenant of the land, and>

Aileen McLeod

79 In section 48, page 48, line 5, at end insert <or

(  ) being used or managed in such a way as to result in or cause harm as mentioned in section 97C(1)(b)>}

Aileen McLeod

80 In section 48, page 48, line 10, at end insert <, and

(  ) where the Part 3A community body has made a request to a relevant regulator as mentioned in section 97H(5)(b) (“relevant regulator” being construed in accordance with section 97H(6)), information about the request.>

Sarah Boyack

162 In section 48, page 48, line 13, at beginning insert <except where subsection (5)(b)(i)(B) applies,>}

Sarah Boyack

163 In section 48, page 48, line 39, at end insert—

<(za) where subsection (5)(b)(i)(B) applies, before complying with paragraphs (a) to (c), take reasonable steps to identify the owner of the land,>}

Alex Fergusson

164 In section 48, page 48, line 41, at end insert—

<(  ) any tenant of the land,>}

Aileen McLeod

81 In section 48, page 49, line 21, after <abandoned> insert <or, as the case may be, to be used or managed in such a way as to result in or cause harm as mentioned in section 97C(1)(b)>}

Claudia Beamish

165 In section 48, page 49, line 25, at end insert—

<(  ) For the purpose of subsection (10)(d), Ministers may prescribe—>
(a) what constitutes a proposal for land,

(b) what evidence is to be provided to demonstrate that a proposal exists, and

(c) other information that is to be provided in connection with any proposals for the land (for example, information as to whether similar proposals have been made in the past and not carried out).>

Sarah Boyack

166 In section 48, page 50, line 30, at end insert <or, where section 97G(5)(b)(i)(B) applies, that they have, under section 97G(9)(za), accurately identified the owner of the land,>

Aileen McLeod

82 In section 48, page 51, line 1, leave out <defined under section 97D>

Aileen McLeod

83 In section 48, page 51, line 5, leave out <that> and insert <the>

Aileen McLeod

84 In section 48, page 51, line 5, at end insert—

<(  ) where the Part 3A community body is a body mentioned in section 97D(1)(a), the land is in or sufficiently near to the area of the community by reference to which the community is defined as mentioned in section 97D(5)(a), or

(  ) where the Part 3A community body is a body mentioned in section 97D(1)(b), the land is in or sufficiently near to the area of the community to which the body relates,>

Aileen McLeod

85 In section 48, page 51, line 6, leave out <so defined>

Aileen McLeod

86 In section 48, page 51, line 9, at end insert—

<2) Subsection (1) is subject to subsections (3) to (7).

(3) Subsections (4) to (7) apply in relation to an application made under section 97G that relates to land the use or management of which is such that it results in or causes harm to the environmental wellbeing of a relevant community (as defined in section 97C(1A)).

(4) In deciding whether to consent to the application, Ministers are not required to be satisfied as to the matter mentioned in subsection (1)(c) in relation to the land.

(5) Ministers must not consent to the application unless they are satisfied (in addition to the matters specified in subsection (1) as read with subsection (4))—
(a) that the exercise by the Part 3A community body of the right to buy under this Part is compatible with removing, or substantially removing, the harm to the environmental wellbeing of the relevant community,

(b) that the Part 3A community body has, before the application is submitted, made a request to—
   (i) a relevant regulator (if any), or
   (ii) where there is more than one relevant regulator, to all such regulators,
       to take action in relation to the land in exercise of its (or their) relevant regulatory functions that could, or might reasonably be expected to, remedy or mitigate the harm, and

(c) (regardless of whether or not a relevant regulator is taking, or has taken, action in exercise of its relevant regulatory functions in relation to the land) that the harm is unlikely to be removed, or substantially removed, by the owner of the land continuing to be its owner.

(6) For the purposes of subsection (5)—

(a) “regulator” means—
   (i) such person, body or office-holder as may be prescribed, or
   (ii) a person, body or office-holder of such description as may be prescribed,

(b) a regulator is “relevant” if, in the opinion of Ministers, the regulator is relevant having regard to the harm to the environmental wellbeing of the relevant community,

(c) action taken by a relevant regulator in exercise of its relevant functions includes action to secure compliance with or enforce a regulatory requirement,

(d) “regulatory functions” has the meaning given by section 1(5) (as read with section 1(6)) of the Regulatory Reform (Scotland) Act 2014, but as if the words “but does not include any such functions exercisable by a planning authority” in section 1(5) were omitted,

(e) a regulatory function is “relevant” if, in the opinion of Ministers, the function is relevant having regard to the harm to the environmental wellbeing of the relevant community.

(7) In subsection (6)(e), “regulatory requirement” has the meaning given by section 1(5) of the Regulatory Reform (Scotland) Act 2014, but as if the references to “regulator” and “regulatory functions” in paragraph (b) of that definition were references respectively to “regulator” and “regulatory functions” within the meaning given by subsection (6) of this section.

Sarah Boyack

86A As an amendment to amendment 86, line 5, after <environmental> insert <and social>

Sarah Boyack

86B As an amendment to amendment 86, line 15, after <environmental> insert <and social>
Sarah Boyack
86C As an amendment to amendment 86, line 34, after <environmental> insert <and social>

Sarah Boyack
86D As an amendment to amendment 86, line 44, leave out <environmental> and insert <and social>

Aileen McLeod
87 In section 48, page 51, line 9, at end insert—

<( ) References in subsection (1) to the community are, in relation to a Part 3A community body, references to—

(a) where the body is a body mentioned in section 97D(1)(a), the community defined in relation to the body under section 97D(1A)(a), (1B)(a) or (1C)(a), or

(b) where the body is a body mentioned in section 97D(1)(b), the community to which the body relates.>

Sarah Boyack
167 In section 48, page 51, line 9, at end insert—

<( ) For the purpose of subsection (1)(j), a Part 3A community body is to be regarded as having tried and failed to buy the land if the body provides Ministers with evidence, in a prescribed form, that the body took prescribed actions in trying to buy the land.>

Aileen McLeod
88 In section 48, page 51, line 29, leave out from second <the> to end of line 31 and insert—

<( ) the number of persons eligible to vote in the ballot,

( ) the number who did vote, and

( )>

Aileen McLeod
89 In section 48, page 53, line 13, leave out <of the Registers of Scotland>

Aileen McLeod
90 In section 48, page 53, line 34, leave out <or Neglected> and insert <, Neglected or Detrimental>

Aileen McLeod
91 In section 48, page 58, line 39, at end insert—

<(6) Where either of the parties refers a question to the Lands Tribunal as mentioned in subsection (5), the party so referring the question must, within 7 days of the date of referring it, notify Ministers in writing of—

(a) the referral of the question, and
(b) the date of referring the question.

(7) The Lands Tribunal must send a copy of its findings on a question referred to it under subsection (5) to Ministers.

(8) Failure to comply with subsection (6) or (7) has no effect on—
   (a) the Part 3A community body’s right to buy the land, or
   (b) the validity of the referral of the question under subsection (5).

(9) The duty in subsection (6) does not apply where the party referring the question mentioned in that subsection is Ministers.

Aileen McLeod
92 In section 48, page 60, line 28, leave out <or Neglected> and insert <, Neglected or Detrimental>

Aileen McLeod
93 In section 48, page 61, line 23, at end insert—

   <(5C) Where the owner of the land or the Part 3A community body appeals under this section, the owner or, as the case may be, Part 3A community body must, within 7 days of the date on which the appeal is made, notify Ministers in writing of—
      (a) the making of the appeal, and
      (b) the date of the making of the appeal.

   (5D) The Lands Tribunal must send a copy of the written statement of reasons issued under subsection (5) to Ministers.

   (5E) Failure to comply with subsection (5C) or (5D) has no effect on—
      (a) the Part 3A community body’s right to buy the land, or
      (b) the validity of the appeal under this section.>

Aileen McLeod
94 In section 48, page 62, line 14, at end insert—

   <(5) Where a person mentioned in any of paragraphs (b) to (e) of subsection (1) refers a question to the Lands Tribunal as mentioned in that subsection, the person so referring the question must, within 7 days of the date of referring it, notify Ministers of—
      (a) the referral of the question, and
      (b) the date of referring the question.

   (6) Failure to comply with subsection (3)(a) or (5) has no effect on—
      (a) the validity of the application under section 97G by the Part 3A community body,
      (b) the Part 3A community body’s right to buy the land, or
      (c) the validity of the referral of the question under subsection (1).>
After section 48

Aileen McLeod

95 After section 48, insert—

<Mediation

Mediation in relation to rights under Parts 2, 3 and 3A

Before section 98 of the 2003 Act, insert—

“97Z1 Mediation

(1) Subsection (2) applies where—

(a) a community body seeks to—

(i) register an interest in land under Part 2, or
(ii) exercise its right to buy land under that Part,

(b) a crofting community body seeks to exercise its right to buy—

(i) land under Part 3,
(ii) the interest of a tenant under section 69A, or
(iii) eligible sporting interests under section 70, or

(c) a Part 3A community body seeks to exercise its right to buy land under Part 3A.

(2) Ministers may, on being requested to do so by a person mentioned in paragraph (a), (b), (c), (d), (e), (f) or (as the case may be) (g) of subsection (3), take such steps as they consider appropriate for the purpose of arranging, or facilitating the arrangement of, mediation in relation to the proposed—

(a) registration of the interest in land under Part 2, or
(b) exercise of the right to buy the land, tenant’s interest, or (as the case may be) eligible sporting interests.

(3) The persons are—

(a) the owner of the land,
(b) any creditor in a standard security over the land or any part of it with a right to sell the land or any part of it,
(c) the community body,
(d) the crofting community body,
(e) the Part 3A community body,
(f) the tenant in relation to whose interest the crofting community body seeks to exercise its right to buy,
(g) the owner of the eligible sporting interests in relation to which the crofting community body seeks to exercise its right to buy.

(4) The steps mentioned in subsection (2) include—

(a) appointing a mediator,
(b) making payments to mediators in respect of services provided,
(c) reimbursing reasonable expenses of mediators.

(5) In subsection (3)(b), the reference to a creditor in a standard security over the land or any part of it with a right to sell the land or any part of it is a reference to a creditor who has such a right under—

(a) section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970, or

(b) a warrant granted under section 24(1) of that Act.”.

Section 56

Marco Biagi

96 In section 56, page 68, line 13, leave out subsection (6A) and insert—

<(6A) The community transfer body may appeal to the Scottish Ministers under section (No concluded contract: appeals) (except in a case where the relevant authority is the Scottish Ministers).>

Section 57

Marco Biagi

97 In section 57, page 68, line 31, leave out from <a> to end of line 32 and insert <an asset transfer request is made by a community transfer body to a relevant authority.>

Marco Biagi

98 In section 57, page 68, line 36, leave out from <decision> to end of line 8 on page 69 and insert <asset transfer request is made and ending on the day on which the request is disposed of.>

(3A) For the purposes of subsection (3), a request is disposed of—

(a) if the request is refused by the relevant authority and no appeal under section 58 or 59B, or application for review under section 59 or 59A, is made by the community transfer body within the time limit applicable to the making of such an appeal or review,

(b) if the request is refused after—

(i) an appeal under section 58 or 59B is determined, or

(ii) a review under section 59A is carried out,

(c) if—

(i) the request is agreed to,

(ii) no offer as mentioned in section 56(2) is made within the time limit applicable to the making of such an offer,

(iii) no appeal under section 58 is made within the time limit applicable to the making of such an appeal, and

(iv) no application for a review under section 59 or 59A is made within the time limit applicable to the making of such an application,
(i) the request is agreed to after an appeal under section 58 or 59B is determined, and
(ii) no offer as mentioned in section 58(8) is made within the time limit applicable to the making of such an offer,

(e) if—
(i) the request is agreed to after a review under section 59 is carried out,
(ii) no offer as mentioned in section 56(2) is made within the time limit applicable to the making of such an offer, and
(iii) no appeal under section 59B is made within the time limit applicable to the making of such an appeal,

(f) if—
(i) the request is agreed to after a review under section 59A is carried out, and
(ii) no offer as mentioned in section 56(2) is made within the time limit applicable to the making of such an offer, or

(g) if—
(i) the request is agreed to (including after an appeal under section 58 or 59B is determined, or a review under section 59 or 59A is carried out),
(ii) an offer as mentioned in section 56(2) or 58(8) is made within the time limit applicable to the making of such an offer, and
(iii) subsection (3B), (3C), (3D) or (3E) applies.

(3B) This subsection applies where, before the expiry of the period mentioned in paragraph (a) or (where applicable) paragraph (b) of subsection (7) of section 56, a contract is concluded on the basis of an offer as mentioned in subsection (2) of that section or in section 58(8).

(3C) This subsection applies where—
(a) the period mentioned in paragraph (a) or (where applicable) paragraph (b) of subsection (7) of section 56 expires,
(b) no contract is concluded on the basis of an offer as mentioned in subsection (2) of that section or in section 58(8), and
(c) an appeal under section 56(6A)—
(i) is not made within the time limit applicable to the making of such an appeal, or
(ii) is timeously made but dismissed.

(3D) This subsection applies where—
(a) the relevant authority to whom the request is made is the Scottish Ministers,
(b) the period mentioned in paragraph (a) or (where applicable) paragraph (b) of subsection (7) of section 56 expires, and
(c) no contract is concluded on the basis of an offer as mentioned in subsection (2) of that section or in section 58(8).

(3E) This subsection applies where—
(a) the period mentioned in paragraph (a) or (where applicable) paragraph (b) of subsection (7) of section 56 expires,
(b) no contract is concluded on the basis of an offer as mentioned in subsection (2) of that section or in section 58(8),
(c) an appeal under section 56(6A) is allowed, and
(d) a condition mentioned in any of paragraphs (a) to (f) of subsection (3F) is satisfied.

(3F) The conditions are—

(a) no offer as mentioned in subsection (4) of section (No concluded contract: appeals) is submitted within the period specified in the appeal decision notice under subsection (3) of that section relating to the appeal,
(b) such an offer is submitted within that period and a contract is concluded on the basis of the offer—
   (i) before the expiry of the period of 28 days beginning on the day on which the offer is submitted, or
   (ii) within such period as is specified in a direction under subsection (5) of that section (including such period as extended under subsection (6) of that section),
(c) no application under subsection (5) of that section is made within the time limit applicable to the making of such applications,
(d) such an application is refused,
(e) following the giving of a direction under subsection (5) of section (No concluded contract: appeals) in relation to an offer as mentioned in subsection (4) of that section—
   (i) the offer is withdrawn, or
   (ii) the community transfer body and the relevant authority conclude a contract on terms and conditions different from those in the offer,
(f) the relevant authority is deemed, under subsection (7) of that section, to have accepted such an offer and have concluded a contract with the community transfer body.

(3G) A reference in this section to—

(a) subsection (2), (6A) or (7) of section 56 includes a reference to those subsections as applied—
   (i) by sections 58(10), 59(9) and 59A(9), and
   (ii) by virtue of section 59C(2),
(b) section 58 includes a reference to that section as applied by section 59B(3),
(c) section 59 includes a reference to that section as applied by subsection (2) of, and modified in such application by virtue of subsection (4) of, section 59C).>
Section 59

Marco Biagi

13 In section 59, page 72, line 12, at end insert—

<\( \text{(6C) In subsection (6B), the reference to section 59(2) of the Community Empowerment (Scotland) Act 2015 includes a reference to that section as applied by subsection (2) of, and modified in such application by virtue of subsection (4) of, section 59C of that Act.} \rangle.

Section 59B

Marco Biagi

14 In section 59B, page 73, line 37, at end insert—

<\( \text{In subsection (1), references to section 59 include references to the provisions of that section as applied by subsection (2) of, and modified in such application by virtue of subsection (4) of, section 59C.} \rangle.

Section 59C

Marco Biagi

15 In section 59C, page 74, line 9, at end insert <\( \text{and, for the purposes of that application, references in that section to any of those subsections are to be read as references to those subsections as so applied and modified in such application by virtue of subsection (4).} \rangle.

After section 59C

Marco Biagi

100 After section 59C, insert—

<\text{No concluded contract: appeals}\>

(1) Subsections (2) to (11) apply where—
(a) no contract is concluded as mentioned in subsection (5) of section 56 between a relevant authority and a community transfer body, and

(b) the community transfer body appeals under subsection (6A) of that section.

(2) The Scottish Ministers may allow or dismiss the appeal.

(3) If the Scottish Ministers allow the appeal, they must issue a notice (an “appeal decision notice”) that specifies—

(a) sufficient and precise details of the terms and conditions of an offer which may be made by the community transfer body to the relevant authority in relation to the asset transfer request made by the body, and

(b) the period within which any such offer is to be submitted.

(4) Subsection (5) applies where—

(a) the community transfer body submits an offer to the relevant authority containing all and only those terms and conditions the details of which are specified in the appeal decision notice,

(b) the offer is submitted within the period so specified,

(c) no contract is concluded on the basis of the offer before the end of the period of 28 days beginning with the day on which the offer is submitted, and

(d) the offer is not withdrawn before the expiry of that 28 day period.

(5) The Scottish Ministers may, on an application made by the community transfer body, give the relevant authority a direction requiring the authority to conclude a contract with the community transfer body on the terms and conditions the details of which are specified in the appeal decision notice within such period as may be specified in the direction.

(6) The Scottish Ministers may, on more than one occasion, extend the period mentioned in subsection (5) (including that period as extended by a direction given under this subsection) by giving a further direction to the relevant authority.

(7) Where a direction under subsection (5) is given to a relevant authority, and the authority does not within the period specified in the direction (or that period as extended under subsection (6)) conclude the contract as mentioned in subsection (5), the authority is deemed to have accepted the offer and accordingly to have concluded a contract with the community transfer body.

(8) Subsection (7) does not apply where—

(a) the community transfer body and the relevant authority have entered into a contract on terms and conditions different from those the details of which are specified in the appeal decision notice, or

(b) the offer is withdrawn before the end of the period specified in the direction (or that period as extended by a direction under subsection (6)).

(9) The asset transfer request in relation to which an appeal mentioned in subsection (1) is made is to be treated, for the purposes of this Part (other than section 61), as if it had not been made if the appeal is allowed but—

(a) the community transfer body does not submit an offer as mentioned in subsection (4)(a),

(b) the community transfer body does not submit such an offer within the period specified in the appeal decision notice,
(c) the community transfer body has not, before the expiry of any time limit for making applications under subsection (5) by virtue of regulations under subsection (14), applied for a direction under subsection (5), or

(d) any application for such a direction is refused.

(10) Where the appeal is dismissed by the Scottish Ministers, the decision to agree to the asset transfer request in relation to which the appeal is made is of no effect (but that is not to be taken to mean that the asset transfer request is to be treated as having been refused for the purposes of any appeal or review under this Part).

(11) In subsection (1), references to any subsections of section 56 include references to those subsections as applied—

(a) by sections 58(10), 59(9) and 59A(9), and

(b) by virtue of section 59B(3).

(12) The Scottish Ministers may by regulations make provision about appeals under section 56(6A) including, in particular, provision in relation to—

(a) the procedure to be followed in connection with appeals,

(b) the appointment of such persons, or persons of such description, as may be specified in the regulations for purposes connected with appeals,

(c) the functions of persons mentioned in paragraph (b) in relation to appeals (including a function of reporting to the Scottish Ministers),

(d) the manner in which appeals are to be conducted, and

(e) the time limits within which appeals must be brought.

(13) The provision that may be made by virtue of subsection (12) includes provision that—

(a) the manner in which a person appointed by virtue of paragraph (b) of that subsection carries out the person’s functions in relation to an appeal, or any stage of an appeal, is to be at the discretion of the person,

(b) the manner in which an appeal, or any stage of an appeal, is to be carried out by the Scottish Ministers is to be at the discretion of the Scottish Ministers.

(14) The Scottish Ministers may by regulations make provision about applications under subsection (5) including, in particular, provision in relation to—

(a) the form of, and procedure for making, such applications,

(b) the time limits within which such applications must be brought.

Marco Biagi

16 After section 59C, insert—

<Effect of offers on appeals and reviews

(1) Subsection (2) applies where—

(a) a community transfer body makes an asset transfer request to a relevant authority,

(b) the relevant authority agrees to the request as mentioned in section 58(1)(b), 59(1)(b)(ii), 59A(1)(b)(ii) or 59B(1)(b),

(c) the community transfer body makes an offer as mentioned in section 56(2), and

(d) the offer has not been withdrawn.
(2) The community transfer body may not—
   (a) make an appeal under section 58 or 59B, or
   (b) apply for a review under section 59 or 59A.

(3) Where an offer as mentioned in section 56(2) is made by a community transfer body after the body has made an appeal, or applied for a review, as mentioned in subsection (2), the appeal or (as the case may be) application for review is to be treated as having been withdrawn by the body.

(4) A reference in this section to—
   (a) section 56(2) includes a reference to that section as applied—
       (i) by section 59(9) and 59A(9), and
       (ii) by virtue of section 59C(2),
   (b) section 58 includes a reference to that section as applied by section 59B(3),
   (c) section 59 includes a reference to that section as applied by subsection (2) of, and modified in such application by virtue of subsection (4) of, section 59C.

Section 61

Cameron Buchanan

172 In section 61, page 75, line 19, leave out <not>

Marco Biagi

17 In section 61, page 75, line 21, after <58> insert <(including the provisions of that section as applied by section 59B(3))>

Marco Biagi

18 In section 61, page 75, line 22, at end insert <(including the provisions of that section as applied by subsection (2) of, and modified in such application by virtue of subsection (4) of, section 59C) or section 59A.>

Section 61B

Marco Biagi

19 In section 61B, page 77, line 2, at end insert—
   <( ) An asset transfer report is to be published under subsection (1) no later than 30 June following the end of the reporting year to which it relates.>

Marco Biagi

20 In section 61B, page 77, line 3, at end insert—
   <( ) A reference in this section to—
       (a) section 58 includes a reference to that section as applied by section 59B(3),
(b) section 59 includes a reference to that section as applied by subsection (2) of, and modified in such application by virtue of subsection (4) of, section 59C.

After section 62A

Jamie Hepburn

174 After section 62A, insert—

PART

FOOTBALL CLUBS

Facilitation of supporter involvement in football clubs

5 (1) The Scottish Ministers may by regulations make provision—

(a) to facilitate the involvement of the supporters of a football club in decisions affecting the management, operation or governance of the club (see section (Supporter involvement in decision-making)),

(b) to facilitate supporter ownership of football clubs (for example by conferring a right to buy, see section (Supporter ownership)).

10 (2) Regulations under this section may provide for the creation of rights or interests, or the imposition of liabilities or conditions, in relation to property (or an interest in property) of any description.

(3) Before making regulations under this section, the Scottish Ministers must consult—

15 (a) such body or bodies as appear to them to be representative of the interests of football clubs, the leagues in which they play, their players and supporters, and

(b) such other persons as they consider appropriate.

Alison Johnstone

174A* As an amendment to amendment 174, line 10, at end insert—

<( ) for the making of grants or loans by the Scottish Ministers to the supporters of a football club to facilitate supporters involvement or ownership of a football club.>

Alison Johnstone

174B* As an amendment to amendment 174, line 10, at end insert—

<( ) To be involved in the decisions of a football club or to have ownership of a football club within the terms of regulations made under subsection (1), a body or association representing the interests of a supporters must—

(a) have an open membership,

(b) be affordable to join, and

(c) operate on the basis of each member of the body or association being allocated one vote and any right to vote on any matter being exercisable by that member.>

Alison Johnstone

174C* As an amendment to amendment 174, line 17, at end insert—
Regulations under subsection (1) must be made and brought into force before the date of the first dissolution of the Parliament following the date of Royal Assent.

Jamie Hepburn

175 After section 62A, insert—

Supporter involvement in decision-making

Regulations made under section (Facilitation of supporter involvement in football clubs) (1)(a) may, in particular, make provision for or in connection with—

(a) the types of football club in relation to which the regulations are to apply,

(b) the steps that a person must take in order to be considered a supporter of a particular football club for the purposes of the regulations,

(c) the provision of information to supporters about the football club, including details about—

(i) how the club makes decisions affecting its management, operation or governance, and

(ii) how, and by whom, the club and any property connected with it is owned or held,

(d) the manner in which the supporters of a football club or a body or association representing the interests of such supporters are to be involved in decisions affecting the management, operation or governance of the club,

(e) the kinds of decisions affecting the management, operation or governance of a football club in respect of which the supporters of the club are to be involved,

(f) the consequences for a football club, or a person responsible for its management, operation or governance, of taking a decision affecting the management, operation or governance of the club (or otherwise acting) without involving the supporters of the club.

Jamie Hepburn

176 After section 62A, insert—

Supporter ownership

Regulations made under section (Facilitation of supporter involvement in football clubs) (1)(b) may, in particular, make provision for or in connection with—

(a) the types of football club in relation to which the regulations are to apply,

(b) the things which the regulations may facilitate ownership of, including, in particular—

(i) any entity which owns, operates or controls a football club,

(ii) a shareholding or other interest in such an entity,

(iii) any asset (including any right or liability) of the football club or such an entity,

(c) the valuation of anything mentioned in paragraph (b),

(d) the circumstances which must exist, or conditions which must be satisfied, before any rights conferred under the regulations may be exercised,
(e) the steps that must be taken by supporters, or a body or association representing the interests of supporters, to exercise any rights conferred by the regulations,

(f) the provision of information to supporters about the football club, including details about how, and by whom, the club and any property connected with it is owned or held,

(g) requiring, restricting or preventing the sale or transfer of anything which is, or may become, subject to the rights conferred by the regulations,

(h) the consequences of selling or transferring anything which is, or may become, subject to the rights conferred by the regulations otherwise than in accordance with the regulations (including, in particular, reducing such a sale or transfer),

(i) the rights of creditors of the football club and other persons with an interest in the club,

(j) the resolution of disputes in connection with any rights conferred under the regulations,

(k) appeals in connection with any rights conferred under the regulations,

(l) the circumstances in which any right conferred under the regulations is or may be extinguished.

Alison Johnstone

176A* As an amendment to amendment 176, line 29, at end insert <(including a right of appeal for the entity which owns, operates or controls a football club).>

Section 62B

Jamie Hepburn

177 Leave out section 62B

Section 62C

Jamie Hepburn

178 Leave out section 62C

Section 62D

Jamie Hepburn

179 Leave out section 62D

Section 62E

Nigel Don (on behalf of the Delegated Powers and Law Reform Committee)

180 In section 62E, page 79, line 15, after <may> insert <by regulations>
Section 62F

Nigel Don (on behalf of the Delegated Powers and Law Reform Committee)

182 In section 62F, page 79, line 25, leave out from <in> to end of line 26 and insert <—

( ) in such a form, and

( ) accompanied by such information,

as the Scottish Ministers may by regulations prescribe.>

Section 62G

Jamie Hepburn

183 Leave out section 62F

Section 62H

Jamie Hepburn

184 Leave out section 62G

Section 62I

Nigel Don (on behalf of the Delegated Powers and Law Reform Committee)

186 In section 62I, page 82, line 20, leave out <are prescribed> and insert <may be prescribed by the Scottish Ministers in regulations>

Jamie Hepburn

187 Leave out section 62I

Section 62J

Jamie Hepburn

188 Leave out section 62J
Section 62K

Nigel Don (on behalf of the Delegated Powers and Law Reform Committee)

189 In section 62K, page 82, line 33, leave out <the prescribed form> and insert <such form as the Scottish Ministers may by regulations prescribe>

Jamie Hepburn

190 Leave out section 62K

Section 62L

Jamie Hepburn

191 Leave out section 62L

Section 62M

Jamie Hepburn

192 Leave out section 62M

Section 62N

Jamie Hepburn

193 Leave out section 62N

Section 62O

Jamie Hepburn

194 Leave out section 62O

Section 62P

Nigel Don (on behalf of the Delegated Powers and Law Reform Committee)

195 In section 62P, page 86, line 23, after <may> insert <by regulations>

Jamie Hepburn

196 Leave out section 62P

Section 62Q

Jamie Hepburn

197 Leave out section 62Q
Section 62R

Jamie Hepburn
198 Leave out section 62R

Section 62S

Jamie Hepburn
199 Leave out section 62S

Section 68

Aileen McLeod
101 In section 68, page 91, line 30, at end insert <and>

Cameron Buchanan
200 In section 68, page 91, line 33, leave out from <and> to <profit> in line 34

Aileen McLeod
102 In section 68, page 91, line 34, leave out from <, and> to end of line 3 on page 92

Cameron Buchanan
202 In section 68, page 92, line 3, at end insert—

<(  ) Land which is an allotment is not to be regarded for the purposes of any enactment as an agricultural holding solely by virtue of the fact that a person makes a profit from selling surplus produce produced on the allotment.>

Section 69A

Aileen McLeod
103 Leave out section 69A

Section 70

Aileen McLeod
104 In section 70, page 92, line 20, at end insert <, or

(  ) to sublease an allotment from a tenant of the authority.>

Aileen McLeod
105 In section 70, page 92, line 23, at end insert—

<(  ) The person making the request must, if the area of the allotment sought is less than 250 square metres, specify the area in the request.>
In section 70, page 92, line 37, leave out <each local authority> and insert <local authorities>

After section 70

After section 70, insert—

<Offer to lease allotment>

(1) Subsections (2) and (3) apply where a person specifies an allotment of an area of less than 250 square metres (a “specified area”) in a request to a local authority under section 70(1).

(2) If the local authority offers to grant a lease of an allotment of the specified area to the person, the request is to be treated as having been agreed to for the purpose of section 71(3)(a)(i).

(3) If the local authority offers to grant a lease of an allotment that is not of the specified area to the person, the request is to be treated as not having been agreed to for that purpose unless the person accepts the offer.

(4) Subsections (5) and (6) apply where a person does not specify an allotment of an area of less than 250 square metres in a request to a local authority under section 70(1).

(5) If the local authority offers to grant a lease of an allotment of an area of approximately 250 square metres to the person, the request is to be treated as having been agreed to for the purpose of section 71(3)(a)(i).

(6) If the local authority offers to grant a lease of an allotment that is not of an area of approximately 250 square metres to the person, the request is to be treated as not having been agreed to for that purpose unless the person accepts the offer.

(7) In subsections (2), (3), (5) and (6), references to the local authority offering to grant a lease include references to a tenant of the local authority offering to grant a sublease.>

Section 72

In section 72, page 93, leave out lines 20 and 21 and insert—

<b>(b) that a person entered in the list does not remain in the list for a continuous period of more than 5 years.>

In section 72, page 93, line 31, leave out subsection (3A) and insert—

<(3A) A local authority must, in taking reasonable steps as mentioned in subsection (1), have regard to the desirability of making available allotments that are reasonably close to the residence of persons in the list mentioned in that subsection.>
After section 72

Aileen McLeod

110 After section 72, insert—

<Duty of tenant of allotment site to grant sublease>

(1) Subsection (2) applies where an allotment site is let by a local authority.

(2) If the local authority requests that the tenant of the allotment site grant a sublease of an unoccupied allotment on the site to a person entered in the list maintained under section 71(1), the tenant must grant such a sublease.>

Section 73

Cameron Buchanan

203 In section 73, page 95, line 8, at end insert—

<( ) Regulations under subsection (1) may not include provision prohibiting the sale (whether for a profit or otherwise) of surplus produce.>

Section 75

Aileen McLeod

111 In section 75, page 96, line 34, at end insert <of an area the same as or similar to that of the tenant’s allotment>

Section 76

Aileen McLeod

112 In section 76, page 97, line 21, at end insert <of an area the same as or similar to that of the tenant’s allotment>

Section 77

Aileen McLeod

113 In section 77, page 98, line 5, leave out <subsection (3)(c)> and insert <paragraph (c) of subsection (3)>

Aileen McLeod

114 In section 77, page 98, line 6, leave out <the types of provision referred to in paragraphs (a) and> and insert <provision of the types of land mentioned in paragraph (a) or>
Section 79

Aileen McLeod

115 In section 79, page 98, line 39, at end insert—

<( ) the rent payable for each allotment in the area of the authority,
( ) how, in the opinion of the authority, such rents are decided by reference to the method of determining fair rent provided for in regulations under section 73(1),>

Section 82

Aileen McLeod

116 In section 82, page 102, line 4, leave out from <incur> to <of> in line 5 and insert <exercise the power conferred by>

Aileen McLeod

117 In section 82, page 102, line 6, leave out <incurring such expenditure> and insert <promoting allotments, or providing training, as mentioned in that subsection>

Section 82A

Aileen McLeod

118 In section 82A, page 102, line 20, at end insert—

<( ) maintained by a person other than the authority and used for or in connection with the delivery of services the provision of which is delegated by the authority to that person, or
( ) maintained, and whose use is managed, by a person other than the authority in accordance with arrangements between the authority and that person.>

Section 84

Aileen McLeod

119 In section 84, page 104, line 27, leave out <(2)(b)> and insert <(2)(d)>

Aileen McLeod

120 In section 84, page 104, line 30, after first <of> insert <the whole or part of>

Aileen McLeod

121 In section 84, page 104, line 30, after <on> insert <the whole or part of>

Aileen McLeod

122 In section 84, page 104, line 31, after second <allotment> insert <which is—

(i) of an area the same as or similar to that of the tenant’s allotment, and
(ii)>

Aileen McLeod  
123 In section 84, page 104, line 34, leave out <the same or>

Section 86A

Aileen McLeod  
124 In section 86A, page 105, line 31, at end insert <of the allotment or, as the case may be, of the allotment site on which the allotment is situated>

Section 87

Cameron Buchanan  
213 In section 87, page 106, line 2, leave out <(other than with a view to making a profit)>

Section 89

Aileen McLeod  
125 In section 89, page 106, line 20, after first <of> insert <a notice of>

Aileen McLeod  
126 In section 89, page 107, line 6, leave out <each local authority> and insert <local authorities>

Section 90

Aileen McLeod  
127 In section 90, page 107, line 15, leave out <that leased the allotment to the tenant> and insert <which granted the lease of the allotment or, as the case may be, of the allotment site on which the allotment is situated>

Aileen McLeod  
128 In section 90, page 107, line 18, leave out <local authority> and insert <tenant’s landlord>

Aileen McLeod  
129 In section 90, page 107, line 29, leave out <each local authority> and insert <local authorities>

Section 91

Aileen McLeod  
130 In section 91, page 108, line 12, leave out <each local authority> and insert <local authorities>
After section 92

Aileen McLeod

131 After section 92, insert—

<Guidance

Guidance

(1) A local authority must have regard to any guidance issued by the Scottish Ministers about the carrying out of functions conferred on the authority by this Part.

(2) Before issuing such guidance, the Scottish Ministers must consult—

(a) local authorities, and

(b) any other person appearing to the Scottish Ministers to have an interest.>

Section 93

Aileen McLeod

132 In section 93, page 108, line 30, leave out second <disabled> and insert <a disabled person>

Section 94

Marco Biagi

21 In section 94, page 110, line 25, leave out <expenditure,> and insert <expenditure and>

Section 95

Marco Biagi

22 In section 95, page 111, line 5, leave out <or Part 6> and insert <, Part 3, Part 5, Part 6, Part 7 or Part 7A>

Section 96

Jamie Hepburn

215 In section 96, page 111, line 17, after <12(1)> insert <, (Facilitation of supporter involvement in football clubs)(1)>

Marco Biagi

133 In section 96, page 111, leave out line 21

Schedule 3

Marco Biagi

23 In schedule 3, page 114, line 26, leave out <Court> and insert <Courts and Tribunals>
Schedule 4

Aileen McLeod

134 In schedule 4, page 116, line 18, at end insert—

<( ) in section 73 (appropriation of land)—

(i) in subsection (2), the word “not” is repealed,

(ii) in that subsection, for “except with the consent of the Secretary of State” substitute “subject to sections 75 and 76 of the Community Empowerment (Scotland) Act 2015”, and

(ii) in subsection (3), after “allotments” insert “(within the meaning of section 68 of that Act)”,>

Aileen McLeod

135 In schedule 4, page 117, line 40, at end insert—

<( ) In section 68 (land which may be bought: eligible croft land), in subsection (5), for “the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (c.26)” substitute “section 69(1) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003”).>

Aileen McLeod

136 In schedule 4, page 118, line 2, at end insert—

<( ) after “33,” insert “35(4),”>

Aileen McLeod

137 In schedule 4, page 118, line 5, leave out <97D(4A)> and insert <97D(1)(b), (4A)>

Aileen McLeod

138 In schedule 4, page 118, line 6, after <97F(6)> insert <, 97H(6)>

Aileen McLeod

139 In schedule 4, page 118, line 8, leave out <any decision under Part 2, 3 or 3A> and insert <a decision under section 38(1), 44(3), 51(1)(b), 73(2) or 97G(2)>

Aileen McLeod

140 In schedule 4, page 118, line 8, leave out <regards> and insert <regard>

Aileen McLeod

141 In schedule 4, page 118, line 10, leave out <to> and insert <for>

Aileen McLeod

142 In schedule 4, page 118, line 11, after <1966)> insert <subject to—
( ) any amendments in force in relation to the United Kingdom for the time being, and
( ) any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.

Aileen McLeod
143 In schedule 4, page 118, line 12, leave out from beginning to <acquisition.”> in line 17

Aileen McLeod
144 In schedule 4, page 118, leave out lines 19 to 29

Marco Biagi
24 In schedule 4, page 118, line 38, at end insert—
<Schools (Consultation) (Scotland) Act 2010

In the Schools (Consultation) (Scotland) Act 2010, in schedule 2 (relevant consultees)—
(a) for sub-paragraph (h) of each of paragraphs 1, 2, 3, 4 and 5 substitute—
“(h) the community planning partnership (within the meaning of section 4(4)
of the Community Empowerment (Scotland) Act 2015) for the area of
the local authority in which any affected school is situated,
(ha) any other community planning partnership that the education authority
considers relevant,”, and
(b) for sub-paragraph (h) of paragraph 10 substitute—
“(h) the community planning partnership (within the meaning of section 4(4)
of the Community Empowerment (Scotland) Act 2015) for the area of
the local authority in which the further education centre is situated,”.

Public Services Reform (Scotland) Act 2010

In section 115 of the Public Services Reform (Scotland) Act 2010 (joint inspections), in
subsection (12), for the words from “means” to the end of the subsection substitute “is
to be construed in accordance with section 7 of the Children and Young People
(Scotland) Act 2014.”.

Schedule 5

Aileen McLeod
145 In schedule 5, page 119, line 25, leave out <Section 73(2) and (3).>

Long Title

Aileen McLeod
146 In the long title, page 1, line 4, leave out <or neglected> and insert <, neglected or detrimental>
Marco Biagi

25 In the long title, page 1, line 4, after <land;> insert <to amend section 7C of the Forestry Act 1967;>

Jamie Hepburn

217 In the long title, page 1, line 4, after <land;> insert <to enable the Scottish Ministers to make provision about supporters’ involvement in and ownership of football clubs;>

Marco Biagi

26 In the long title, page 1, line 5, after <allotments;> insert <to enable participation in decision-making by specified persons having public functions;>
Corretion Slip to the Marshalled List of Amendments selected for Stage 3

The text of amendment 86D is incorrect in the Marshalled List of Amendments selected for Stage 3. The wording of the amendment should be as below. The amendment appears on page 21 of the Marshalled List of Amendments selected for Stage 3. When amendment 86D is called, reference should be made to the version of amendment 86D below.

Sarah Boyack

86D  As an amendment to amendment 86, line 44, after <environmental> insert <and social>
Community Empowerment (Scotland) Bill

Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated during Stage 3 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Note:** The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

**Group 1: Setting of national outcomes – procedure, consultation etc.**
27, 28, 147, 29, 30, 31, 32, 33, 148, 34, 35, 36, 37, 38, 39, 40, 149, 150, 41, 133

*Notes on amendments in this group*
Amendment 147 pre-empts amendments 29 and 30
Amendment 40 pre-empts amendment 149

**Group 2: European Charter of Local Self-Government**
151

Debate to end no later than 30 minutes after proceedings begin

**Group 3: Community planning – locality plans etc.**
1, 2, 3, 4, 5, 6, 7, 8

**Group 4: Types of group entitled to make participation requests**
9, 10, 11

**Group 5: Participation requests – appeals and reviews**
42, 43
Group 6: Participation requests and asset transfer requests – reports
12, 44, 19

Debate to end no later than 55 minutes after proceedings begin

Group 7: Changes related to type of body community body, crofting community body or Part 3A community body is and duties on such bodies
45, 47, 48, 49, 62, 70, 72, 74, 75, 76, 78, 82, 83, 84, 85, 87

Group 8: Minor amendments – Part 4
46, 54, 55, 63, 64, 71, 77, 78, 89, 136, 137, 139, 140, 141, 142

Group 9: Period for indicating approval under Part 2 of 2003 Act
154, 155

Group 10: Time period for representations and provision of information under 2003 Act
50, 52, 57, 58, 144

Debate to end no later than 1 hour 20 minutes after proceedings begin

Group 11: Late applications under Part 2 of 2003 Act
51, 53

Group 12: Expiry of registration under Part 2 of 2003 Act
56, 156

Group 13: Notifications relating to applications, appeals etc. under 2003 Act
59, 60, 61, 91, 93, 94

Group 14: Power to modify information required in application for consent under Part 3 of 2003 Act
157

Debate to end no later than 1 hour 50 minutes after proceedings begin

Group 15: Eligible land under Part 3A of 2003 Act etc. – general
65, 158, 68, 159, 69, 161, 164, 135

Notes on amendments in this group
Amendment 161 is pre-empted by amendment 160 in Group 17

Group 16: Eligible land under Part 3A of 2003 Act – use or management of land causing harm
66, 67, 67A, 67B, 73, 79, 80, 81, 86, 86A, 86B, 86C, 86D, 90, 92, 138, 146

Debate to end no later than 2 hours 35 minutes after proceedings begin
Group 17: Application for consent under Part 3A of 2003 Act – identification of owner of land
160, 162, 163, 166

Notes on amendments in this group
Amendment 160 pre-empts amendment 161 in Group 15

Group 18: Power to prescribe how proposal for land or previous attempts to buy must be demonstrated
165, 167

Group 19: Mediation in relation to rights under Parts 2, 3 and 3A of 2003 Act
95, 143

Group 20: Asset transfer requests – appeals, reviews and prohibition on disposal of land
96, 97, 98, 99, 13, 14, 15, 100, 16, 172, 17, 18, 20

Debate to end no later than 3 hours 10 minutes after proceedings begin

Group 21: Supporter involvement in football clubs

Debate to end no later than 3 hours 40 minutes after proceedings begin

Group 22: Size of, and requests for particular sizes of, allotments etc.
101, 102, 103, 105, 107, 111, 112, 122

Group 23: Sale of allotment produce
200, 202, 203, 213

Group 24: Minor amendments – allotments

Group 25: Guidance
131, 22

Group 26: Schemes for reduction and remission of rates
21

Group 27: Minor amendments – community planning, asset transfer requests and long title
23, 24, 25, 26

Debate to end no later than 4 hours 20 minutes after proceedings begin
Note: (DT) signifies a decision taken at Decision Time.

**Community Empowerment (Scotland) Bill:** The Minister for Local Government and Community Empowerment (Marco Biagi) moved S4M-12220—That the Parliament agrees to the general principles of the Community Empowerment (Scotland) Bill.

**Business Motion:** Joe FitzPatrick, on behalf of the Parliamentary Bureau, moved S4M-13530—That the Parliament agrees that, during stage 3 of the Community Empowerment (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

- Groups 1 and 2: 30 minutes
- Groups 3 to 6: 55 minutes
- Groups 7 to 10: 1 hour 20 minutes
- Groups 11 to 14: 1 hour 50 minutes
- Groups 15 and 16: 2 hours 35 minutes
- Groups 17 to 20: 3 hours 10 minutes
- Groups 21: 3 hours 40 minutes
- Groups 22 to 27: 4 hours 20 minutes.

The motion was agreed to.

**Community Empowerment (Scotland) Bill - Stage 3:** The Bill was considered at Stage 3.

The following amendments were agreed to (without division): 29, 30, 31, 32, 35, 36, 37, 1, 2, 3, 9, 10, 11, 12, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 157, 61, 62, 63, 64, 65, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 161, 79, 80, 164, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 13, 14, 15, 100, 16, 19, 20, 174, 175, 176, 177, 178, 179, 181, 183, 184, 185, 187, 188, 190, 191, 192, 193, 194, 196, 197, 198, 199, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 21, 22, 215, 133, 23, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 24, 145, 146, 25, 217 and 26.
The following amendments were agreed to (by division)—

27 (For 65, Against 54, Abstentions 0)
28 (For 70, Against 36, Abstentions 15)
33 (For 105, Against 2, Abstentions 13)
34 (For 86, Against 34, Abstentions 0) 3
38 (For 65, Against 55, Abstentions 0)
39 (For 101, Against 19, Abstentions 0)
40 (For 65, Against 56, Abstentions 0)
41 (For 85, Against 36, Abstentions 0)
4 (For 104, Against 14, Abstentions 0)
5 (For 103, Against 16, Abstentions 0)
6 (For 104, Against 11, Abstentions 0)
7 (For 103, Against 15, Abstentions 0)
8 (For 104, Against 15, Abstentions 0)
42 (For 81, Against 35, Abstentions 0)
43 (For 86, Against 29, Abstentions 0)
155 (For 103, Against 14, Abstentions 0)
66 (For 102, Against 14, Abstentions 0)
67 (For 101, Against 14, Abstentions 0)
68 (For 103, Against 14, Abstentions 0)
17 (For 101, Against 17, Abstentions 0)
18 (For 103, Against 16, Abstentions 0)
111 (For 104, Against 15, Abstentions 0)
112 (For 103, Against 15, Abstentions 0)

The following amendments were disagreed to (by division)—

147 (For 51, Against 69, Abstentions 1)
148 (For 56, Against 65, Abstentions 0)
150 (For 55, Against 65, Abstentions 0)
151 (For 52, Against 68, Abstentions 0)
154 (For 39, Against 78, Abstentions 0)
156 (For 39, Against 78, Abstentions 0)
158 (For 47, Against 68, Abstentions 0)
159 (For 34, Against 82, Abstentions 0)
160 (For 37, Against 65, Abstentions 0)
162 (For 39, Against 78, Abstentions 0)
165 (For 40, Against 79, Abstentions 0)
166 (For 39, Against 79, Abstentions 0)
167 (For 38, Against 78, Abstentions 0)
172 (For 47, Against 72, Abstentions 0)
174A (For 40, Against 78, Abstentions 0)
174B (For 39, Against 78, Abstentions 0)
174C (For 40, Against 78, Abstentions 0)
176A (For 40, Against 76, Abstentions 0)
200 (For 16, Against 103, Abstentions 0)
202 (For 15, Against 103, Abstentions 0)
213 (For 15, Against 103, Abstentions 0)
The following amendments were not moved: 67A, 67B, 163, 86A, 86B, 86C, 86D, 180, 182, 186, 189, 195 and 203.

Amendment 149 was pre-empted. 4

The Minister for Parliamentary Business moved a motion without notice under Rule 9.8.5A to move the first time limit by 10 minutes. The motion was agreed to. As a consequence, subsequent time limits were also moved by 10 minutes.

The Deputy Presiding Officer extended the first time-limit under Rule 9.8.4A(a).

The Minister for Parliamentary Business moved a motion without notice under Rule 9.8.5A to move the first time limit by a further 10 minutes. The motion was agreed to. As a consequence, subsequent time limits were also moved by a further 10 minutes.

The Deputy Presiding Officer extended the second time-limit under Rule 9.8.4A(a).

The Minister for Parliamentary Business moved a motion without notice under Rule 9.8.5A to move the second time limit by 10 minutes. The motion was agreed to. As a consequence, subsequent time limits were also moved by a further 10 minutes.

The Deputy Presiding Officer further extended the second time-limit under Rule 9.8.4A(a).

The Deputy Presiding Officer altered the time of Decision Time by 15 minutes in consequence of the motions under Rule 9.8.5A being agreed to and notified members accordingly.

**Community Empowerment (Scotland) Bill - Stage 3:** The Minister for Local Government and Community Empowerment (Marco Biagi) moved S4M-13523—That the Parliament agrees that the Community Empowerment (Scotland) Bill be passed.

After debate, the motion was agreed to ((DT) by division: For 101, Against 0, Abstentions 15).
Community Empowerment (Scotland) Bill: Stage 3

14:40

The Deputy Presiding Officer (Elaine Smith): The next item of business is stage 3 proceedings on the Community Empowerment (Scotland) Bill. In dealing with the amendments, members should have the bill as amended at stage 2, that is SP Bill 52A (Revised); the marshalled list, that is SP Bill 52A-ML, and the correction slip to the marshalled list that was issued yesterday; and the groupings, that is SP Bill 52A-G.

The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate. Members who wish to speak in the debate on any group of amendments should press their request-to-speak buttons as soon as possible after I call the group.

Section 1—National outcomes

The Deputy Presiding Officer: Group 1 is on “Setting of national outcomes—procedure, consultation etc”. Amendment 27, in the name of the Minister for Local Government and Community Empowerment, is grouped with amendments 28, 147, 29 to 33, 148, 34 to 40, 149, 150, 41 and 133.

Because of pre-emption, if amendment 147 is agreed to, I cannot call amendments 29 and 30, and if amendment 40 is agreed to, I cannot call amendment 149.

The Minister for Local Government and Community Empowerment (Marco Biagi): I am glad to be starting proceedings this afternoon.

Part 1 of the bill places a duty on the Scottish ministers to prepare a set of national outcomes that describe the kind of Scotland that we all want to live in, and to regularly and publicly measure progress towards them. At stage 2, we agreed on the importance of the Scottish Parliament’s scrutiny role and of strengthening public consultation and they are retained at the heart of my amendments. However, the bill requires two separate processes to be undertaken in the setting and reviewing of national outcomes. That would be convoluted, repetitive and unclear, and would involve a considerable amount of double consultation of communities and Parliament.

My amendments seek to provide for a single process. They also balance the valuable scrutiny role of Parliament against the Government’s
responsibilities for the Scottish public sector, and they strengthen the public consultation process.

In consulting the Scottish Parliament, we must reflect the separation of powers between a Government that is responsible for setting its strategic direction, and a Parliament that is responsible for holding that Government to account for its progress. That is why we consider that the provision in the bill of a 40-day period for the Parliament to be consulted on the draft national outcomes provides an appropriate level of parliamentary scrutiny. It is the same period of time that would be afforded by the affirmative procedure for secondary legislation, for example.

Amendments 27 and 34 will restore provision for the national outcomes to be determined by Scottish ministers, rather than by regulations that are subject to the so-called superaffirmative procedure. I agreed with the point that Alex Rowley made at stage 2 that we must involve all communities across Scotland in setting the national outcomes. Amendments 29 and 35 therefore strengthen the consultation process by requiring Scottish ministers to consult persons who represent communities when determining and reviewing the national outcomes.

14:45

“Community” is defined by amendments 33 and 37 as including communities based on common interest, identity or geography, to ensure an inclusive consultation. Alex Rowley’s amendment 150 seeks to improve the definition of the word “community”. However, linking the definition to postcode could impact negatively on certain communities such as Gypsy Travellers, communities of interest or communities that are based on social or cultural identities. It also excludes those who only work in an area.

Singling out individuals or groups when it comes to the national outcomes, however important they are, or inadvertently excluding others, is at odds with the principle of participatory democracy. Each person or community has as much right as the next to take part in debating and shaping the Scotland that we live in, and my amendments will ensure that is the case.

Amendments 30 and 36 reflect the discussions at stage 2 and require Scottish ministers to lay an explanatory document containing details of the public consultation when determining and reviewing the national outcomes.

Amendments 41 and 133 make minor consequential amendments.

As the bill stands, Scottish ministers must publish a report every two years, and I believe that that is a retrograde step. One of the strengths of the current reporting system is that the Scotland performs website provides an up-to-the-minute picture of progress. The statistics are published there as and when they become available. We have also responded to the needs of this Parliament by publishing the “Scotland Performs Update” as part of the draft budget process. In the future, the Parliament might find that information more useful at times other than those that are specified in the amendments. Amendments 38 and 39 reinstate provision for Scottish ministers to prepare and publish reports at such times as they consider appropriate.

Amendment 40 removes the requirement to consult on the reports, as any report on progress would be a factual statement, based on evidence.

Amendments 28, 31 and 32 respond to a point that Stewart Stevenson made in his own inimitable style at stage 2. They make it clear that, although the Scottish Parliament and its corporate body are excluded from the duty to have regard to the national outcomes when carrying out their functions, the effect of their functions is not excluded from the determination of the national outcomes.

I ask Alex Rowley not to move the amendments in his name. I move amendment 27.

Alex Rowley (Cowdenbeath) (Lab): I acknowledge the role that Marco Biagi has played in the course of the bill since he became minister. He has demonstrated a willingness to work with others across the chamber, which has resulted in a better bill.

My amendments provide for greater scrutiny and consideration of the national outcomes by this Parliament. My proposals require Scottish ministers to publish national outcomes and lay them with the Parliament for 60 days. During that period, Scottish ministers must consult the public, including specified individuals and groups, and the draft national outcomes cannot be laid for approval until Scottish ministers also lay an explanation of that consultation, any representations that are received and changes that are made to the regulations. Parliament must then approve the national outcomes.

I believe that that approach will engage the public much more in the national outcomes. It is important that the Parliament is able to scrutinise national outcomes and the progress in that regard. It is also crucial that national outcomes are linked to the budget, which has not happened in the past. It is important that we are able to see where this Government’s finances are being spent in order to deliver the national outcomes.

With regard to the minister’s concerns about references to individuals who are eligible to vote in elections, I am talking about individuals who are
normal resident in a local authority area. That seeks to address any concerns about the potential exclusion of prisoners, refugees, asylum seekers and the homeless. The minister also expressed concern about children and young people, and organisations that work for them, being singled out. That is deliberate—they are below voting age and are therefore often overlooked—and has not been done for reasons of specific interest. Indeed, the groups that are listed in section 1 are intended to represent as wide as possible a cross-section of people who live and work in Scotland.

I intend to move my amendments, but I acknowledge that the bill has made great progress. That is down to the minister's willingness to work with others in moving the bill forward.

**The Deputy Presiding Officer:** More members than I anticipated wish to contribute to the debate. I am not sure whether I can call everyone, but I ask members to keep their remarks short.

**Cameron Buchanan (Lothian) (Con):** We have concerns about amendments 27, 34 and 133. Allowing Scottish ministers to determine the national outcomes would remove a crucial element of scrutiny, participation and collaboration. A bill that is entitled the Community Empowerment (Scotland) Bill should place more power in communities' hands, rather than allow Scottish ministers to determine independently what the nation's priorities should be. If we are genuinely to empower communities, they should be as involved as possible in determining the national outcomes. However, amendments 27, 34 and 133 would centralise power in ministers' hands by removing the need for the Scottish Parliament's approval as well as a stage of public consultation.

On a similar note, it is apparent that amendments 38 to 40 advance centralisation. To ensure that the Government is held to account for its actions, its progress towards national outcomes should be scrutinised on a regular basis. However, amendments 38 to 40 would allow the Scottish Government to publish reports on its progress only when it saw fit, without the need for any public consultation. Removing the regular involvement of the Parliament and the public in assessing progress towards national outcomes would shield the central Government from public scrutiny, which is fundamentally contradictory to the principle of community empowerment.

Alex Rowley's amendment 147, which would remove the provisions that require consultation before determination of the national outcomes, raises particular concerns about public participation. Community empowerment should allow public participation on a wide scale, and amendment 147 would threaten that.

**Mark McDonald (Aberdeen Donside) (SNP):** I feel that Cameron Buchanan may have misinterpreted the amendments that the Scottish Government has lodged. His remarks imply that ministers will somehow decide what the national outcomes shall be and that that shall be the case.

The amendments that the minister has lodged are entirely about the consultation process that will take place on the national outcomes. A consultation will take place, the results of which will assist ministers in determining what the national outcomes should be. Amendment 30 specifically says "In consulting the Scottish Parliament", so there will be consultation not just with the public but with the Parliament on what the national outcomes shall be. I hope that that gives Cameron Buchanan some pause, and might make him more likely to support those amendments when they come to the vote.

I turn to the thrust of what the minister is putting forward. It is entirely correct that we should avoid creating the impression that certain groups and their views would not be considered in consultations because they do not feature in the text of the bill. I know that Alex Rowley is saying that the list as defined in the bill would provide as wide a scope as possible, but there may still be groups in society that could look at every category in the bill and not see themselves defined there. Removing the opportunity for people to feel that they have not been prioritised within the legislation is a fair way to proceed.

I hope that members will back the minister's amendments, and I hope that Alex Rowley will reconsider his intention to move his.

**Ken Macintosh (Eastwood) (Lab):** I speak in favour of my colleague Alex Rowley's amendments, and urge the Parliament not to remove the amendments that were agreed by the committee at stage 2. I echo my colleague's comment that the bill process has been very consensual and that the bill has been improved as a result. I am sure that members will be relieved to hear that there are only a few areas of disagreement this afternoon, which makes it a bit more disappointing that the Government should use its majority to overturn the work of the committee in this section.

At stage 1, the committee agreed unanimously that engagement and consultation on the national outcomes should be enshrined in legislation. At stage 2, my colleague Alex Rowley's amendments did exactly that, by ensuring that national outcomes would be laid before the Parliament for 60 days.
The minister said that the amendments could—he used the word “could”—exclude Gypsy Travellers and other groups from being involved, but they do not. They might do if the Government allowed them to, but they do not. It is a baseline—a floor rather than a ceiling—and I urge the minister to think again about his approach.

There was potential for one group—“individuals eligible to vote”—to be restrictive and, because of that, Alex Rowley has lodged an amendment to change that to individuals “normally resident in the local authority area”.

That would avoid unintentionally restricting those who would be consulted.

It strikes me that the committee’s intention at stage 1 was captured by Alex Rowley’s amendments at stage 2. The committee agreed to those amendments. I do not think that there is much disagreement with the minister. If we cannot agree on Alex Rowley’s amendments, Labour will support the Government’s amendment 30, which is a watered-down version. However, I urge the minister to think again about removing all the agreement at this stage. I emphasise that that approach was agreed by Oxfam, Barnardo’s, the Poverty Alliance and many others in the voluntary sector. I urge members to support Alex Rowley’s amendments.

The Deputy Presiding Officer: I can call Alex Fergusson and Malcolm Chisholm, as long as both are brief.

Alex Fergusson (Galloway and West Dumfries) (Con): Thank you, Presiding Officer; I will be brief.

In summing up, will the minister allay my fears on two counts? Can he confirm that amendment 28, if it is agreed to, would allow the Scottish Parliament to operate entirely independently of national outcomes? On amendment 33, on what grounds does the minister wish to define community to include common interest, identity or geography in this part of the bill, although that is not the definition that is used in other parts of the bill?

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): The minister gave an explanation for amendment 32, but it still reads rather strangely. I think that it would probably merit further explanation, because anyone outside the Parliament who read it would think that we were setting ourselves above the national outcomes. I am sure that that is not the intention, but I am slightly concerned about what may be read into amendment 32.

Marco Biagi: Let me begin almost at the end and work back. Amendments 32 and 28, which refer to the Scottish Parliament, make it clear that although the Scottish Parliament and its corporate body are excluded from the duty to have regard to the national outcomes, their functions are not excluded from the determination of the national outcomes themselves. I agree that that is a difficult distinction and perhaps not one that immediately jumps out, but the idea was to avoid accidentally bringing the Scottish Parliament—in its scrutiny functions and other functions that should be protected from Government decisions—into the bill unnecessarily.

Alex Fergusson asked about amendment 33. Communities have been defined differently in different parts of the bill. The member sits on the Rural Affairs, Climate Change and Environment Committee, which scrutinised the part of the bill that focuses on land reform, in which community is generally defined in a geographical way. However, other parts of the bill—on asset transfer and participation requests—have had a distinct definition of community within them to capture different things in different contexts, including communities of interest.

In working out the views of people in Scotland—taking the temperature and understanding people’s interests—we feel that it is reasonable to include communities of interest. That is different from the rather legalistic mechanism of compulsory purchase and community takeover that is included in the part of the bill on land reform.

The issue that I have with Ken Macintosh is that I do not have many issues. We are largely on the same page. The committee recommended that a parliamentary process should be enshrined in legislation and that is what we are both trying to do. The Government’s proposal and the proposal from Alex Rowley would both require 40 days of formal consideration by the Parliament; Alex Rowley’s position would require that period of consideration to extend to 60 days.

15:00

However, it is standard for any Scottish Government consultation—well, it would typically be expected—that there would be 90 days for public scrutiny. In that period, there would be nothing to prevent parliamentary committees from considering the issues or to prevent business managers from scheduling debates. Those options are all open. In fact, under the Government’s approach, the longer period of consultation would offer a wider opportunity for the Parliament to consult during that time. It has been highlighted that an explanation is needed, and amendment 36 deals with that issue. Perhaps Cameron Buchanan and I simply differ on the question of whether determining outcomes should be an executive or legislative function.
Reporting happens at present whenever the statistics are available. If there are determined outcomes, statistics are published almost weekly. There were statistics out today—there is day-by-day reporting against the outcomes that have been set. If outcomes have been set in one context and there are statistics coming out, that produces a real-time response, so to restrict reporting purely to timescales that are set out in legislation would be counterproductive to the desire to maintain the report on outcomes as a living document that is continually updated.

In conclusion, I think that I and other members are very close to one another in terms of where we want to be. We want a parliamentary process, and we have one. We also want a participative process out in the country so that everybody can take part in determining the national outcomes. I hope that members in the Parliament will support the amendments in my name.

The Deputy Presiding Officer: We are already way over time and we are only on the first group, so that will have implications for the rest of the afternoon. I ask for brevity from all members for the rest of the day.

The question is, that amendment 27 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. Prior to that, there will be a five-minute suspension because it is the first division at stage 3.

15:02

Meeting suspended.

15:07

On resuming—

The Deputy Presiding Officer: We move to the division on amendment 27.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Allard, Christian (North East Scotland) (SNP)
Alasdair, Christian (North East Scotland) (SNP)
Alasdair, Christian (North East Scotland) (SNP)
Buchanan, Cameron (Lothian) (Con)
Brown, Gavin (Lothian) (Con)
Crawford, Bruce (Dundee) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Angus (Perthshire South and Kinross-shire) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)

Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen Eastern) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Against

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 65, Against 54, Abstentions 0.

Amendment 27 agreed to.

Amendment 28 moved—[Marco Biagi].

The Deputy Presiding Officer: The question is, that amendment 28 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Biaggio, Fabrizio (South Scotland) (SNP)
Browne, Kenneth (Midlothian North and Musselburgh) (SNP)
Constance, Angela (Midlothian) (SNP)
Crawford, Bruce (Dunfermline) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Kerr, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (LD)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Roberson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen South) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Against
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
The Deputy Presiding Officer: The result of the division is: For 70, Against 36, Abstentions 15.

Amendment 28 agreed to.

Amendment 147 moved—[Alex Rowley].

The Deputy Presiding Officer: The question is, that amendment 147 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Alieen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Amendments 29 to 33 agreed to.

Motion agreed to.

Amendments 29 to 33 moved—[Marco Biagi].

The Deputy Presiding Officer: Does any member object to a single question being put on amendments 29 to 33?

Members: Yes.

The Deputy Presiding Officer: Before I ask the questions on amendments 29 to 33, I am minded to accept a motion under rule 9.8.5A, to extend the time limit for groups 1 and 2 by 10 minutes.

Motion moved,

That, under Rule 9.8.5A, the time limit for groups 1 and 2 be extended by 10 minutes.—[Joe FitzPatrick.]

Motion agreed to.

Amendments 29 to 32 agreed to.

The Deputy Presiding Officer: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

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For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Godwin, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Galloway and West Dumfries) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, lain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urguhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)
Abstentions
Fergusson, Alex (Galloway and West Dumfries) (Con)

The Deputy Presiding Officer: The result of the division is: For 51, Against 69, Abstentions 1.

Amendment 147 disagreed to.

Amendments 29 to 33 moved—[Marco Biagi].
Amendment 33 agreed to.

The question is, that amendment 148 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Wilson, John (Central Scotland) (Ind)

Against
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Smith, Liz (Mid Scotland and Fife) (Con)

Abstentions
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milk, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)

The Deputy Presiding Officer: The result of the division is: For 105, Against 2, Abstentions 13.

Amendment 33 agreed to.

Section 1A—Regulations under section 1(1): procedure

Amendment 148 moved—[Alex Rowley].
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
MacKay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (S Cannock and Bearsdon) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 56, Against 65, Abstentions 0.

Amendment 148 disagreed to.

The Deputy Presiding Officer: Does any member object to a single question being put on amendments 34 to 39?

Members: Yes.

The Deputy Presiding Officer: I will put questions on the amendments separately.

Amendment 34 moved—[Marco Biagi].

The Deputy Presiding Officer: The question is, that amendment 34 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hum, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

Against
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lochian) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Kelly, James (Ruther Glen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greensock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Aberdeenshire West) (SNP)

The Deputy Presiding Officer: The result of the division is: For 86, Against 34, Abstentions 0.

Amendment 34 agreed to.

Amendment 35 to 37 moved—[Marco Biagi]—and agreed to.

Section 2—Review of national outcomes

Amendments 35 to 37 moved—[Marco Biagi]—and agreed to.

Section 3—Reports

Amendment 38 moved—[Marco Biagi].

The Deputy Presiding Officer: The question is, that amendment 38 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (Midlothian South, Tweeddale and
shire) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-
shires) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Fitzpatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and
Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
Mackenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (Midlothian South, Tweeddale and
shire) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-
shires) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Fitzpatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and
Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
Mackenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robinson, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Against
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (LD)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Wilson, John (Central Scotland) (Ind)

The Deputy Presiding Officer: The result of the division is: For 65, Against 55, Abstentions 0.

Amendment 38 agreed to.

Amendment 39 moved—[Marco Biagi].

The Deputy Presiding Officer: The question is, that amendment 39 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Bojacak, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Grey, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Johnstone, Alison (Lothian) (Green)
Johnstone, Alex (North East Scotland) (Con)
Harvie, Patrick (Glasgow) (Green)
Goldie, Annabel (West Scotland) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Finnie, John (Highlands and Islands) (Ind)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Davidson, Ruth (Glasgow) (Con)
Carlaw, Jackson (West Scotland) (Con)
Brown, Gavin (Lothian) (Con)

Against

Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Harvie, Patrick (Glasgow) (Green)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Wilson, John (Central Scotland) (Ind)

The Deputy Presiding Officer: The result of the division is: For 101, Against 19, Abstentions 0.

Amendment 39 agreed to.

The Deputy Presiding Officer: I reiterate that if anyone wishes to object to an amendment, they must shout “No” clearly, because if neither I nor the clerks hear we will move on and we will not return to a vote on that amendment.

I call amendment 40, in the name of the minister, which has already been debated with amendment 27. I remind members that if amendment 40 is agreed to, I cannot call amendment 149 because of pre-emption.

Amendment 40 moved—[Marco Biagi].

The Deputy Presiding Officer: The question is, that amendment 40 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clara (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderrick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunningham North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacInnes, Alison (North East Scotland) (LD)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Wilson, John (Central Scotland) (Ind)

The Deputy Presiding Officer: The result of the division is: For 65, Against 56, Abstentions 0.

Amendment 40 agreed to.

The Deputy Presiding Officer: I will therefore move on to amendment 150.

Section 3A—Interpretation of Part 1

Amendment 150 moved—[Alex Rowley].

The Deputy Presiding Officer: The question is, that amendment 150 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
Mr. Mark McDonald (Aberdeen Donside) (SNP)
Ms. Joan McAlpine (South Scotland) (SNP)
Mr. Michael Matheson (Falkirk West) (SNP)
Mr. John Mason (Glasgow Shettleston) (SNP)
Mr. Mike MacKenzie (Highlands and Islands) (SNP)
Mr. Derek Mackay (Renfrewshire North and West) (SNP)
Mr. Gordon MacDonald (Edinburgh Pentlands) (SNP)
Mr. Angus MacDonald (Falkirk East) (SNP)
Mr. Kenny MacAskill (Edinburgh Eastern) (SNP)
Mr. Richard Lyle (Central Scotland) (SNP)
Mr. Richard Lochhead, Richard (Moray) (SNP)
Mr. Bill Kidd (Glasgow Shettleston) (SNP)
Mr. Richard Lochhead, Richard (Moray) (SNP)
Mr. Brian MacAskill (Kilmarnock and Irvine Valley) (SNP)
Mr. Joe MacNeil (Greenock and Inverclyde) (Lab)
Ms. Anne McTaggart, Anne (Glascow) (Lab)
Ms. Nanette Milne (North East Scotland) (Con)
Ms. Margaret Mitchell (Central Scotland) (Con)
Ms. Elaine Murray (Dumfrieshire) (Lab)
Ms. Graeme Dey (Angus South) (SNP)
Ms. Dunne Dornan, James (Glasgow Cathcart) (SNP)
Ms. Bob Doris (Glasgow) (SNP)
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Ms. Bob Doris (Glasgow) (SNP)
Ms. James Dornan, James (Glasgow Cathcart) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeen South) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Against
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)

Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Wilson, John (Central Scotland) (Ind)

The Deputy Presiding Officer: The result of the division is: For 85, Against 36, Abstentions 0.

Amendment 41 agreed to.

After section 3A

The Deputy Presiding Officer: We come to group 2, on the European Charter of Local Self-Government. Amendment 151, in the name of Tavish Scott, is the only amendment in the group.

Tavish Scott (Shetland Islands) (LD): In a stimulating afternoon of voting, I thought that we should debate Europe. Instead of the aspects of Europe that other places have been debating, this debate is on the European Charter of Local Self-Government.

I was very encouraged by the minister’s response on the matter when it was raised in the earlier stages of the bill’s proceedings. In his remarks at, I think, stage 2, he mentioned that the European Charter of Local Self-Government may well be an appropriate focus for debate and for an amendment to the bill. Here we have a chance to give effect to a very sensible ministerial observation.

As the Convention of Scottish Local Authorities briefing to colleagues across the Parliament says, the purpose of the proposal is simply to ensure that the Government recognises in its duties and responsibilities the objectives of local government.

There seem to me to be three strong points that local government is making to the Parliament on this matter. The first is that the charter was specifically drafted to protect communities and citizens from centralisation, which would reduce their rights to local self-government and active subsidiary arrangements. I ask members to forgive the European jargon.
The second point is that amendment 151 places a duty on ministers of this Government—and, indeed, of every Government—to "observe and promote" the EU charter while carrying out their functions. That is not exactly a hardship, I suggest, but it is an important measure of the Government's intent towards local government.

The third point is that, in noting that the proposed duty is a pretty modest step, COSLA observes that it would consolidate the right of local people to a greater influence in the way that our communities manage their own affairs. That is very much in keeping with and in the spirit of the minister's remarks this afternoon and in committee during stage 2 consideration of amendments to the bill.

The other aspect that is worthy of consideration is the money that underpins the effectiveness of local government. It is up to local government to decide how to give effect to the choices of the Parliament and the Government around, for example, the council tax freeze, but it is a fact that, by 2020, the Parliament will be spending £910 million a year on the council tax freeze and will have spent £6.3 billion since the policy was introduced. If the Parliament chooses to do that and supports the policy, so be it, but we should at least have a debate in this country about the alternatives that local government could give effect to were it to have much more flexibility with regard to how it resolves to spend its money and therefore serve local people.

**The Deputy Presiding Officer:** Mr Scott, I am afraid that your time is up. Could you start to conclude?

**Tavish Scott:** Let me finish with the observations that the COSLA spokesman in this area made to the minister. He observed that it is important to—

**The Deputy Presiding Officer:** I am afraid that you really must hurry up.

**Tavish Scott:** I am doing my best, Presiding Officer.

**The Deputy Presiding Officer:** Otherwise, I will have to cut you off. I cannot call anyone else to speak on the group, so—

**Tavish Scott:** Can I finish the sentence?

**The Deputy Presiding Officer:** Please hurry.

**Tavish Scott:** I will just move the amendment and ask the Parliament to support it.

I move amendment 151.

**The Deputy Presiding Officer:** Thank you. I should have said that before I called Tavish Scott. I cannot call anyone else who wishes to speak. I now call the minister.

**Marco Biagi:** Thank you, Presiding Officer.

As a Government, we believe that the people who live and work in Scotland are best placed to make decisions about our future. That is the essence of self-determination, and accordingly we, too, are committed to subsidiarity and local decision making in public life.

The Scottish Government works very much in partnership with local government and we share a vision of strengthened community planning, involvement and empowerment. Indeed, the success of our joint working was highlighted by the Council of Europe last year. Our commitment to local autonomy, self-determination and governance is not only central to our proposals in the bill but fundamental to our wider approach to public service reform and local government.

The European Charter of Local Self-Government is a widely recognised articulation of the principles of local autonomy to which we are bound, as an international treaty obligation, by ratification in 1998 at the Council of Europe. Our actions are therefore already guided by the provisions of the charter. It commits us to applying basic rules guaranteeing the political, administrative and financial independence of local authorities. Crucially, it provides that the principle of local self-government will be recognised in domestic legislation and, where practicable, in the constitution. The explanatory notes to the charter already recognise that states that do not have a written constitution, such as the UK, will be unable to give that constitutional protection.

This Government believes in a written constitution and would wish to see local government covered by it. A mention only in legislation does not carry the same force or have the same effect and could be annulled by future Governments rather more easily.

**15:30**

Legislation enacting the principles of the charter already exists in the form of the local government acts that set out the powers and responsibilities of our councils. We believe that those acts are in accordance with all the provisions that the charter requires. We have repeatedly said to local government partners that if they think that we are not in compliance with any parts of the charter they should show us examples so that we can rectify the situation.

Since the concordat, the Scottish Government and local government have worked constructively in partnership across a range of issues. Of course
there have been disagreements, but the strength of any relationship is in how the parties work through disagreements. That collective working together and decision making has been demonstrated through examples such as the large-scale reduction in budget ring fencing, the work that we are taking forward with the islands areas ministerial working group, our collaborative working with COSLA to strengthen community planning and, of course, the bill itself.

I acknowledge COSLA’s work in bringing the issue to the fore; indeed, I discussed it personally with Councillor McGuigan earlier this week. Although we might disagree on the issue of the charter, we are united in recognising that local councils are an integral and essential element of overall good governance in Scotland. We remain of the view that the only way in which to go beyond legislation on the issue would be to institute a constitutional protection, which would further safeguard the charter’s provisions.

I ask Mr Scott to withdraw amendment 151.

The Deputy Presiding Officer: I ask Tavish Scott to wind up.

Ken Macintosh: On a point of order, Presiding Officer. I appreciate that there is an awful lot of business to get through today, but my understanding is that there are only two or three areas of contention. It would be unfortunate if, for example, Labour colleagues were unable to explain why we support the Liberals on amendment 151 and why we disagree with the minister’s view that what amendment 151 seeks is not necessary. Would it be possible for you to think about the time that is available to discuss the areas of contention? That would allow, for example, Mr Scott to get the chance to fully develop his argument and others to be able to express themselves and to say what we agree on, because there are huge areas of the bill on which we agree.

The Deputy Presiding Officer: I take your point, Mr Macintosh, and I think that it is regrettable that we are so far behind at this stage. That is a problem because of how the timings have been worked out and how time has been allocated this afternoon. Unfortunately, my hands are tied because of the earlier motion. However, I can invite a member to move a motion to extend the time for this debate by 10 minutes.

Motion moved,

That, under Rule 9.8.5A, the debate be extended by 10 minutes.—[Joe FitzPatrick]

Motion agreed to.

The Deputy Presiding Officer: I now call Tavish Scott to wind up and indicate whether—sorry, I call Ken Macintosh for a brief speech.

[Applause.] Order, please, or we will immediately need to further extend the debate.

Ken Macintosh: Presiding Officer, you will be relieved to hear that I have only a brief contribution.

I want simply to say that the European Charter of Local Self-Government guarantees the political, administrative and financial independence of local authorities. I believe that it is the first European law that encapsulates in legislation the principle of subsidiarity. I would have thought—in fact, I would have hoped—that an Administration that is occasionally subject to criticism for its overcentralising tendencies would have embraced the opportunity to prove that its position is otherwise. It is worth noting that before the general election not just COSLA but every local administration across England, Northern Ireland and Wales called for any future Administration to embrace the charter and put it into any constitutional settlement.

I am slightly disappointed by the Government’s view on the charter, but we commend Tavish Scott for lodging his amendment.

The Deputy Presiding Officer: I call Clare Adamson, too, for a brief contribution.

Clare Adamson (Central Scotland) (SNP): Tavish Scott and Ken Macintosh have brought to light the importance of the charter. It is a timely reminder of how important European Union membership is to Scotland’s future. The European Charter of Local Self-Government was signed by the UK Government in 1997, formally binding the UK Government and successive Governments, and their devolved Assemblies and devolved Administrations, to respect its terms and implement its requirements.

Some of the requirements are specific to a written constitution. However, in its explanatory report, the charter recognises the UK’s constitutional arrangement and suggests that no legislation is needed. On article 2, the explanatory report says that the

“article provides that the principle of local self-government should be enshrined in written law.”

It goes on to say:

“It was also recognised that countries not having a written constitution but a constitution to be found in various documents and sources might encounter specific difficulties or even be unable to make that commitment.”

Given Scottish law as it stands, I do not think that amendment 151 would give any of the protections that Tavish Scott seeks. On that basis, we should reject the amendment, as we already have protection in Scottish law.
The Deputy Presiding Officer: Finally, I call Tavish Scott to wind up and indicate whether he wishes to press or withdraw the amendment.

Tavish Scott: I am grateful to Ken Macintosh for the opportunity to thank you, Presiding Officer, for allowing further debate on the matter.

I take the minister’s points about the constitutional aspects. There is a perfectly fair argument about that, but the point is that for many of us—including, privately, the minister, I suspect—and particularly for local government, the amendment represents a step forward and we should take the opportunity to take that step in Parliament and in law, as it strengthens the very arguments that the minister made.

I cannot take the minister’s arguments on centralisation too seriously. After all, the Government has replaced ring fencing with the straitjacket of the council tax freeze—whether members consider that good, bad or indifferent, local government sees it as a straitjacket on what it can do, and it is ridiculous to suggest otherwise.

I am grateful to the minister for mentioning the concordat. We have not heard tell of that for about four years; it used to be mentioned every week at First Minister’s questions, but no longer. The concordat is not just historic, but is a point of history. [Interruption.]

The Deputy Presiding Officer: Order. Mr Scott has little time to make his point and we must hear him.

Tavish Scott: I will stop there, but I wish to press the amendment.

The Deputy Presiding Officer: The question is, that amendment 151 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)

Against
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Ruterglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougan, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Pertshire South and Kinross-shire) (SNP)
Dey, Graeme (Aberdeen South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hepburn, Jamie (Comer and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMullan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen North) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 52, Against 68, Abstentions 0.

Amendment 151 disagreed to.

Section 5—Local outcomes improvement plan

The Deputy Presiding Officer: Group 3 is on “Community planning—locality plans etc.” Amendment 1, in the name of the Minister for Local Government and Community Empowerment, is grouped with amendments 2 to 8.

Marco Biagi: During stage 2 consideration of provisions on community planning, the Local Government and Regeneration Committee and I discussed duties that should be imposed on community planning partnerships to undertake locality planning. Such duties include working with communities to prepare, publish and deliver plans that are aimed at improving outcomes for local communities on a smaller level than a whole CPP area. Although I could not agree to the amendments that Alex Rowley lodged, I undertook to work with Labour members of that committee to introduce community planning at a more neighbourhood level. I have appreciated the constructive involvement of those members and the discussions that I have had with them.

Amendment 1 requires CPPs to include a description of the needs and circumstances of persons in their CPP areas in their local outcomes improvement plans.

Amendments 2 and 3 are minor amendments in consequence of amendments 4 to 7, which introduce locality planning and locality plan improvement reports.

Amendment 4 imposes duties on each CPP to identify each geographic locality in their area where persons experience significantly poorer outcomes than are experienced by persons who reside in other localities in that area or significantly poorer outcomes than are experienced generally by persons who reside in Scotland.

Amendment 5 imposes duties on each CPP to prepare and publish a locality plan for each locality that it has identified as experiencing the significantly poorer outcomes referred to in amendment 4. To further encourage locality planning, the amendment makes it clear that CPPs may also prepare and publish locality plans for other areas. I encourage them all to consider doing that.

Amendment 6 imposes a duty on each CPP to keep under review the question whether it is making progress in improving the achievement of each local outcome that the locality plan refers to. CPPs must also review the locality plan, and they may revise it.

Amendment 7 imposes a duty on each CPP to prepare and publish a locality plan progress report for each locality plan that it publishes for each reporting year.

The provisions in amendments 5 to 7 for locality plans broadly echo the corresponding duties on CPPs around their local outcomes improvement plans under sections 5 to 7. That is part of our wider programme of community empowerment. On that basis, I hope that the amendments will be supported.

Amendment 8 adds a definition of locality to the interpretation section for part 2, in consequence of amendment 4.

I hope that those amendments, which began with the Opposition and have been taken on by the Government, will command wide support around the chamber.

I move amendment 1.

The Deputy Presiding Officer: Four members wish to speak. If they all take a minute, I should be able to fit everyone in.

Ken Macintosh: I do not wish to add anything to the substantive arguments that the minister made. I mention in the interests of transparency that a number of outstanding issues were left hanging from stage 2. I acknowledge that the minister consulted Labour members—Alex
Rowley, Cara Hilton, me and others. I thank him for those efforts and offer our support for the amendments.

**Cameron Buchanan:** We quite agree with amendments 1 to 3, but amendments 4 to 8 raise concerns not because of their practical content but because of the principle that they threaten. A bill about empowering communities should do just that. Communities should be able to set their own priorities and aims for improvement, including where they apply. If a community planning partnership is to be empowered, it should not be told which studies to do and which areas to focus on; community planning partnerships should be able to decide that for themselves. The point is not that improving outcomes for disadvantaged communities is the wrong aim but that communities should be left to set their own priorities and be free to use their resources as they see fit.

**Kevin Stewart (Aberdeen Central) (SNP):** I welcome the constructive discussions that took place to get us to the amendments.

Cameron Buchanan has got the wrong end of the stick entirely. The amendments will ensure that communities at a very low level—at a very local or neighbourhood level—have a say instead of being dictated to completely and utterly by a community planning partnership that many folk will think is distant. I urge him to rethink what he just said and to back the amendments, which will do much to empower communities—particularly those that are disadvantaged.

**Malcolm Chisholm:** I welcome the amendments. It is good that the top-down process of community planning will become far more localised because of the proposals. Credit goes to the minister and Alex Rowley, who pressed those issues strongly in committee.

I have only one question to the minister. We have a detailed process for the integration of health and social care, in which there have to be locality plans. Many people are asking what the relationship will be between the locality plans of the integration authorities and the locality plans in question. If the minister could shed any light on that, that would be helpful.

**The Deputy Presiding Officer:** I said that four members wished to speak, but John Wilson has also made a request to speak.

**John Wilson (Central Scotland) (Ind):** I seek clarification from the minister on amendment 5, which will insert a section on locality plans after section 7. Subsection (4) in amendment 5 says:

“In preparing a locality plan, a community planning partnership must consult—

(a) such community bodies as it considers appropriate”.

Will community planning partnerships be expected to extend the consultation as widely as possible and not to exclude groups that they might feel that they could exclude?

15:45

**Marco Biagi:** I am happy to address all the concerns that have been expressed and to answer the specific questions that have been raised.

On the point made by John Wilson, it is clear that, as a result of the bill, there will be a lot of duties on CPPs to foster participation, particularly by underrepresented socioeconomic groups. That, too, will come under the ambit of locality planning.

I have to disagree with Cameron Buchanan’s take on the matter; indeed, I wonder whether there might be a misunderstanding or a difference of interpretation. CPPs are valuable because they bring to the table not just the council but all the public, third sector and private partners in an area and do so at the level of a local authority area. I hope that we share the aim of replicating some of that work at a more local level, and the amendments in the group will give flexibility in dividing up an area.

The initial proposal was based on community council units, but the amendments in the group will make things flexible by allowing the CPP to base its approach on whatever division of the local authority area it thinks is sensible or worth while. Some might find interaction with health and social care localities to be a sensible approach, while others might choose not to align things in that way—that will be down to local decision making.

Nevertheless, it is important that all CPPs recognise that, as part of our thrust in the bill to target areas of socioeconomic disadvantage, locality plans must at a minimum be delivered to areas that are suffering particular disadvantage relative to the rest of the local authority area in question or relative to Scotland. They must also recognise that work must be undertaken in those areas to recognise their particular problems at neighbourhood level. There is nothing to stop a CPP producing locality plans for its entire area, but the areas that I just referred to must be targeted.

**The Deputy Presiding Officer:** The question is, that amendment 1 be agreed to. Are we agreed?

**Members:** Yes.

**The Deputy Presiding Officer:** Are we agreed?

**Members:** Yes.

**The Deputy Presiding Officer:** Can I ask members not to say yes if they agree and to shout no if they disagree? I will put the question again, because I thought that I heard a no, and I want to be clear. Are we agreed?
Members: Yes.

Amendment 1 agreed to.

The Deputy Presiding Officer: Do members object to a single question being put on amendments 2 to 8?

Members: Yes.

The Deputy Presiding Officer: In that case, I will put the question on each amendment individually.

Section 7—Local outcomes improvement plan: progress report

Amendments 2 and 3 moved—[Marco Biagi]—and agreed to.

After section 7

Amendment 4 moved—[Marco Biagi].

The Deputy Presiding Officer: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing,ergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graeme, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mallik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Wat, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

Against

Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graeme, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Against
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 104, Against 14, Abstentions 0.

Amendment 4 agreed to.

Amendment 5 moved—[Marco Biagi].

The Deputy Presiding Officer: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Donnan, James (Glasgow Cathcart) (SNP)
Earle, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
Macaskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Claydonsald and Mingavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowanhead) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Saldon, Alex (Aberdeenshire East) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swimney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

Against
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)

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Amendment 5 agreed to.

Amendment 6 moved—[Marco Biagi].

The Deputy Presiding Officer: The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malik, Haniza (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfrieshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen East) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stevenson, Stewart (Barnffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

Against

Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
The Deputy Presiding Officer: The result of the division is: For 104, Against 11, Abstentions 0.

Amendment 6 agreed to.

Amendment 7 moved—[Marco Biagi].

The Deputy Presiding Officer: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Clare Central Scotland) (SNP)
Alian, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Aliard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Fergusson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fitpatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Humie, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)

Against
Brown, Alex (Lothian) (Con)
Buchan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGirgor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)

The Deputy Presiding Officer: The result of the division is: For 104, Against 11, Abstentions 0.

Amendment 6 agreed to.

Amendment 7 moved—[Marco Biagi].

The Deputy Presiding Officer: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Clare Central Scotland) (SNP)
Alian, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Aliard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Fergusson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fitpatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Humie, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
The Deputy Presiding Officer: The result of the division is: For 103, Against 15, Abstentions 0.

Amendment 7 agreed to.

Section 13—Interpretation of Part 2

Amendment 8 moved—[Marco Biagi].

The Deputy Presiding Officer: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (Mid Scotland and Fife) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beanie, Claudia (South Scotland) (Lab)
Begg, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-Shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Dorries, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferg growth, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Heppburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)

Against
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)

Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
The Deputy Presiding Officer: The result of the division is: For 104, Against 15, Abstentions 0.

Amendment 8 agreed to.

Section 15—Meaning of “community participation body”

The Deputy Presiding Officer: Group 4 is on types of group entitled to make participation requests. Amendment 9, in the name of the Minister for Local Government and Community Empowerment, is grouped with amendments 10 and 11.

Marco Biagi: These amendments respond to another commitment that I made at stage 2. The Local Government and Regeneration Committee expressed concern about the need for a group to have a written constitution before being able to make a participation request. Although I did not agree with the amendments that were lodged at stage 2, which would have allowed individuals to make such requests, I recognise the need to allow groups that are less formally organised to come together and contribute their ideas for improving their communities. Those could include groups that are so informal that they do not wish to codify, or those in the early stages of establishment that already have ideas to offer.

Section 14 sets out the criteria that a group is required to meet to be a community controlled body. They include requirements for the group to define the community that it represents, to be open to all members of that community and to be controlled by members of it. Each of those is important—it is not about others telling the community what is good for them. Although partnerships may be welcome, organisations such as citizens advice bureaux may be consulted to provide support to participation requests. However, this is about community empowerment.

We must retain those key features of a community body, even if they are not set out in a formal constitution. Therefore, amendments 9 and 10 provide for another type of community participation body, set out in section 15, which does not have a written constitution but which has all the same features of having a community basis, of being open to and representative of that community, and of being not for profit. In the absence of a constitution establishing and codifying that, there must be a test whether a group meets the criteria. Amendment 11 provides that it will be for the public service authority to determine that. The group must provide such information as the authority needs to be satisfied of that. The information need not be produced in formal documents; it might come from leaflets or newsletters, or just through conversations with the group about who they are and how they decide what the group should do.

The amendments will open up participation requests to less formal groups, which, nonetheless, have something to offer their community, while ensuring that they are being used only by groups that are open, not for profit and representative.

I move amendment 9.

Amendment 9 agreed to.

Amendment 10 moved—[Marco Biagi]—and agreed to.

Section 17—Participation requests

Amendment 11 moved—[Marco Biagi]—and agreed to.

The Deputy Presiding Officer: I let Parliament know that, as we are nearing the agreed time limit under rule 9.8.4.A, I consider it necessary to allow the debate on groups 3 to 6 to continue beyond the limit.

After section 24

The Deputy Presiding Officer: Group 5 is on participation requests, appeals and reviews. Amendment 42, in the name of the Minister for Local Government and Community Empowerment, is grouped with amendment 43.

Marco Biagi: Everything in the bill is about empowering communities. The bill does that by conferring new rights and by signalling that the approach across the public sector must be one of welcoming and facilitating communities in decision making.

Participation requests are a way of generating that partnership. They are the embodiment of the new culture that we want to see in the public sector, in which community participation in decision making is the norm, and in which we create positive relationships and make the most of all the knowledge and ideas that communities have to offer. That depends on mutual respect. Indeed, a minister can make provision for many things, but we cannot, by legislation, order or instruction create that respect. Although we could force people to come to any table, it is unlikely that anything positive would come out of dialogue held in such adversarial circumstances.

We believe that community bodies have the right to participate. Through participation requests, the legislation sets out a process to allow them to do so. Helpful stage 2 amendments mean that the bill will ensure that public authorities must be transparent about how they deal with requests, with clear, regular reporting. Ministers will take
note of the performance of bodies reporting to us and I expect that councillors will do so, too, in their local authorities. However, we must be clear that being able to appeal any participation request, as the bill currently allows, would, I expect, see a sweeping range of requests coming to minister centrally for their decision making.

Participation requests can range from an informal group with some suggestions to make as a very junior partner in a community action plan to a community organisation seeking to take over delivery of a service. In the latter case, on consideration, there may be a stronger case for appeals to ministers. There is an important distinction, because there may be significant interaction with other important areas of law, so it would be vital to get the detail right.

We are proposing to make provision for appeals to be introduced on participation requests, if experience shows that they are needed. Amendment 42 gives ministers the power to make regulations about appeals or reviews of decisions relating to participation requests. That also allows for the appeals or reviews to be carried out by persons other than the Scottish ministers. I am sure that appeals or reviews will be needed only in exceptional cases, and we need to make sure that the system is proportionate.

I have also lodged an amendment, which we will come to in the next group, to require ministers to prepare a report on the operation of participation requests across the country. That will ensure that the system is reviewed within three years of coming into effect, although the regulation-making power is independent of that timescale. I hope that members will agree that making provision for appeals in that way is a more appropriate method of dealing with participation requests, and of ensuring that, if appeals are found to be needed, a system can be set up that is tailored to the situation, which can be updated as needed and which, when used, makes things better rather than worse.

I move amendment 42.

16:00

The Deputy Presiding Officer: Once again, under rule 9.8.5A, I am minded to accept a motion without notice, to extend the time limit for group 5 by 10 minutes.

Motion moved,

That, under Rule 9.8.5A, the time limit for group 5 be extended by 10 minutes.—[Joe FitzPatrick.]

Motion agreed to.

The Deputy Presiding Officer: That allows me to call two members who want to contribute to the group, but their contributions should be brief.

Ken Macintosh: I fully agree with the minister that the bill is all about improving the involvement and participation of communities. The minister seems to suggest that it will be rare for communities to seek to participate and to have their participation request turned down by a public body. That is true, but the right to appeal such a decision should be enshrined in our legislation.

In support of that argument, I will quote no less an authority than Michael Russell MSP, who argued at stage 2 on appeals on asset transfers that

"there is no doubt that, in a very few exceptional cases, giving community bodies a route of appeal to Scottish ministers could be beneficial because it would strengthen part of the bill's focus on openness, transparency and consistency. It may well be a proportionate measure."—[Official Report, Local Government and Regeneration Committee, 11 March 2015; c 43.]

I could not have put it better myself. That is why the committee agreed to the amendment at stage 2. Rather than taking that amendment out and replacing it with a Government power to regulate, I ask the minister to rethink his approach. We are talking about shifting the balance of power so that public bodies know that any decisions that they take might be challenged because there is an appeals mechanism. It is important that we give the communities the power, not the public body. I urge the minister to withdraw the amendment.

Stuart McMillan (West Scotland) (SNP): I listened to what Ken Macintosh had to say and I have read the Official Report of stage 2. Although I genuinely appreciate what Alex Rowley was trying to do at stage 2—and I am sure that he will understand my position on community empowerment, because I am a former member of the committee—what the bill says at the moment will prove to be unworkable in many cases. As it stands, the bill could allow a confrontational approach to be taken. I know that that is not what the section intends, but I fear that that is what would happen. If an individual gets to the point of making an appeal on an issue, clearly and understandably their feelings will be running high.

Amendment 42 will assist with such situations by providing for a power to make regulations on appeals and reviews. That will not preclude an appeal and a review system if that is found to be required. Amendment 44, which is to be discussed shortly, calls on ministers to review the operation of participation requests within three years of their coming into operation. I therefore support amendments 42 and 43.

Marco Biagi: As I have said, we have taken on board the case that is being made. There is provision in the bill. The contrast between what Michael Russell said and the section that we are discussing is that, with asset transfers, there is a
tangible, physical asset, and the difference between that and a constructive relationship and dialogue could not be bigger. That is why it might be valid to make a distinction for the takeover of services.

I have one example. If a council tenants association wants to discuss how a concierge area should be decorated, makes a participation request to the council and gets knocked back, under the bill as it stands, without amendments 42 and 43, that decision could be appealed straight to ministers. If people believe that is the right way for things to be decided, they are welcome to vote for that. However, if they do, please let them never again come to the chamber and accuse the Government of centralisation.

The Deputy Presiding Officer: The question is, that amendment 42 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a one-minute division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Rob (Cathness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linthgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Etrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeen West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Barrhead and Buchanan (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

Against
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahan, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)

Amendment 43 moved—[Marco Biagi].

The Deputy Presiding Officer: The question is, that amendment 43 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hystop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kee, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMullan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Wat, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

Against
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

The Deputy Presiding Officer: The result of the division is For 86, Against 29, Abstentions 0.
Amendment 43 agreed to.

Section 25A—Annual reports

The Deputy Presiding Officer: Before I call group 6—after which my colleague John Scott will take the chair—I say to the chamber that the anticipated timings for this stage 3 are very far from the reality. I will now go and look carefully at the timings for the rest of this afternoon and this evening.

Group 6 is on participation request and asset transfer request reports. Amendment 12, in the name of the Minister for Local Government and Community Empowerment, is grouped with amendments 44 and 19.

Marco Biagi: At stage 2, following the committee’s recommendation, I brought forward provisions to require relevant authorities to publish annual reports on asset transfer requests and participation requests. Those reports will set out the number of requests received and their results, as well as how the authority is promoting and supporting the use of the requests.

John Wilson proposed that a deadline should be set for the reports to be produced. We have sought the views of some of our key stakeholders in the public sector and the third sector, including the Development Trusts Association Scotland, the Scottish Community Development Centre, the Scottish Council for Voluntary Organisations, Barnardo’s, Oxfam and the Poverty Alliance, and the majority view is that 30 June would be an appropriate date for the annual reports to be published. That is what amendments 12 and 19 put in place for participation requests and asset transfer requests respectively.

Amendment 44 is the amendment that I spoke about a minute ago in relation to appeals. It requires ministers to prepare a report on the operation of participation requests within three years of them coming into force, and to lay it before Parliament.

I move amendment 12.

The Deputy Presiding Officer (John Scott): Before I call other speakers, I want to let Parliament know that, as we have passed the agreed time limit, under rule 9.8.4.A(a) I consider it necessary to allow the debate to continue beyond the limit in order to allow those with a right to speak on amendments in the group to do so.

I offer the minister the opportunity to wind up.

Marco Biagi: I will waive that opportunity.

Amendment 12 agreed to.

Section 28—Meaning of “community”

The Deputy Presiding Officer: Group 7 is on changes related to the type of body that a community body, cropping community body or part 3A community body is and duties on such bodies. Amendment 45, in the name of the Minister for the Environment, Climate Change and Land Reform, is grouped with amendments 47 to 49, 62, 70, 72, 74 to 76, 78, 82 to 85 and 87.

The Minister for Environment, Climate Change and Land Reform (Aileen McLeod): The purpose of amendment 45 is to extend the ability of a community body to define its community by reference to postcode unit or postcode units to both Scottish charitable incorporated organisations—SCIOs—and community benefit societies—bencoms.

The purpose of amendments 48, 49, 82 to 85 and 87 is to update the provisions in part 2 and the new part 3A of the Land Reform (Scotland) Act 2003, which set out what type of connection a community is required to have with the land that is the subject of an application under part 2 to register an interest in land or under part 3A to apply to exercise the right to buy.

Amendment 48 ensures that the acquisition of the land by the community body has to be compatible with furthering the achievement of sustainable development of the land and is applicable to all subparagraphs of section 38(1)(b) of the 2003 act. It also makes some technical changes to the definition of a community to align with the extension in the types of community bodies that can make an application to include bencoms, SCIOs and other types of bodies as prescribed in regulations by ministers.

Amendment 48 repeals the reference to the definition of community within section 38(1)(b)(i), because it is already being set out in section 38(3). Amendment 48 also amends section 38(1)(b) by inserting two additional options for fulfilling the requirement to demonstrate a connection with the land: where the community body is a company limited by guarantee, a bencom or a SCIO, the land is in or sufficiently near to the area of the community as set out in their articles of association, constitution or registered rules; and, where the community body is a body as prescribed by ministers, the land is in or sufficiently near to the area of the community to which that body relates.
Amendment 49 makes technical changes to section 38(3) of part 2 of the 2003 act to take account of the fact that community bodies can now take the form of SCIOs, bencoms and other forms of body as prescribed in regulations by ministers.

Amendments 70 and 72 move the definition of a company limited by guarantee, so that the definition is grouped within the subsection that defines the other types of body that can constitute a community body.

Amendment 82 repeals the reference to the definition of community in the new section 97H(h), because it is superseded by the new provisions inserted by amendment 87. Amendment 83 is a minor wording change in section 97H(h)(ii). Amendment 83 is consequential to amendment 87.

Amendment 84 amends the new section 97H(h) and the connection between the community and the land, in the same way that amendment 48 does. Amendment 85 repeals the words “so defined” in section 97H(i). This amendment is consequential to the change to the definition of community introduced by amendment 87.

Amendment 87 provides that, for the purposes of section 97H in part 3A of the 2003 act, references to a community are references to the community as defined in the community body’s application.

Amendments 47, 62, 74 to 76 and 78 relate to the details of community bodies, crofting community bodies and part 3A community bodies that have to be included on the various registers that relate to the rights to buy in part 2, part 3 and the new part 3A of the 2003 act, as there is another section 97B of the 2003 act to be inserted by section 48 of the bill. Amendment 84 renumbers that section as section 97ZA of the 2003 act.

Amendment 82 repeals the reference to the definition of community in the new section 97H(h), because it is superseded by the new provisions inserted by amendment 87. Amendment 83 is a minor wording change in section 97H(h)(ii). Amendment 83 is consequential to amendment 87.

Amendment 84 amends the new section 97H(h) and the connection between the community and the land, in the same way that amendment 48 does. Amendment 85 repeals the words “so defined” in section 97H(i). This amendment is consequential to the change to the definition of community introduced by amendment 87.

Amendment 87 provides that, for the purposes of section 97H in part 3A of the 2003 act, references to a community are references to the community as defined in the community body’s application.

Amendments 47, 62, 74 to 76 and 78 relate to the details of community bodies, crofting community bodies and part 3A community bodies that have to be included on the various registers that relate to the rights to buy in part 2, part 3 and the new part 3A of the 2003 act, as there is another section 97B of the 2003 act to be inserted by section 48 of the bill. Amendment 84 renumbers that section as section 97ZA of the 2003 act.

Amendment 71 adjusts a cross-reference in section 97D(7) of the 2003 act that relates to part 3A community bodies.

Amendment 77 provides that the person who provides a document or other information, or makes a decision, a copy of which is to be registered in the part 3A register, must give a copy to the keeper of the registers of Scotland as soon as reasonably practicable.

Amendment 88 alters the paragraphing of section 97J(3) to clarify that regulations made by ministers about how the ballot is to be conducted make provision for the ascertainment and publication of: the number of persons eligible to vote in the ballot; the number who did vote; and the number of valid votes respectively cast for and
against. The regulations must also make provision for the form and manner in which the result of the ballot is to be published.

Amendment 89 leaves out the unnecessary words “of the Registers of Scotland” because a definition of the keeper of the registers of Scotland as “the Keeper” is provided in section 97F(9) of the 2003 act.

The purpose of amendment 137 is that the power inserted by section 97D(1)(b) into the 2003 act is subject to the affirmative procedure. That power allows ministers to make regulations setting out an additional description of a body in addition to a body falling within subsection (1A), (1B) or (1C) of section 97D of the 2003 act that may be part 3A community bodies and to set out any requirements that those bodies must comply with.

Amendments 139 to 142 relate to the International Covenant on Economic, Social and Cultural Rights. They amend the provisions that were inserted by Michael Russell’s stage 2 amendment. The effect of the amendments is that ministers, when making certain decisions on a right-to-buy application made under parts 2, 3 or 3A of the Land Reform (Scotland) Act 2003, must have regard to that international covenant.

Amendments 140 and 141 are minor drafting amendments. Amendment 142 adds two qualifications of the reference to the covenant. The references to the covenant are qualified by:

“any amendments in force in relation to the United Kingdom for the time being, and ... any reservations, objections or interpretative declarations by the United Kingdom for the time being in force”.

I move amendment 46.

Claudia Beamish: I welcome Michael Russell’s stage 2 amendment on human resources issues and the International Covenant on Economic, Social and Cultural Rights, and I acknowledge that the minister’s amendments 139 to 142 complete the tidying process in that respect.

I move amendment 154.

Alex Fergusson: I have no doubt that Claudia Beamish’s amendments are well intentioned, but I find them to be unnecessary, given that the bill will already give ministers the ability to substitute a different period of time if they see a need to do so. I think that six months is an appropriate period—bearing in mind the ability of ministers to alter it—in this instance, in particular. Shorter periods of time keep minds focused and probably keep up momentum. I think that both those abilities would be diminished by extending to 12 months the period for approval.

For those reasons, Conservative members will not support the amendments in group 9.

Aileen McLeod: The bill will insert in the 2003 act proposed new section 38(2A), which states that, in considering an application for registration of an interest in land,
“Ministers may not take into account ... the approval of a member of the community if it was indicated earlier than 6 months before the date”

on which the part 2 application was made.

Amendment 154 would increase the period of time for approval from six months to 12 months to give ministers more flexibility to consider community support. I believe, however, that it is important for such approval to be current. If the approval was given 12 months prior to the date of application, the community’s plans or the community itself may have changed in the intervening time.

The bill will also insert in the 2003 act proposed new section 38(2B), which will give ministers the power to amend the time limit if they consider that to be desirable. I hope that that gives Claudia Beamish some reassurance, so I urge her to seek to withdraw amendment 154.

Amendment 155 would mean that ministers, when using the new power in proposed new section 38(2B) of the 2003 act to amend the six-month time limit, could not change it to a period of less than six months. I support amendment 155.

**The Deputy Presiding Officer:** I call Claudia Beamish to press or to seek to withdraw amendment 154.

**Claudia Beamish:** I press amendment 154.

**The Deputy Presiding Officer:** The question is, that amendment 154 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Wilson, John (Central Scotland) (Ind)

**Against**

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Ferguson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamies (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse)
The Deputy Presiding Officer: The result of the division is: For 39, Against 78, Abstentions 0.

Amendment 154 disagreed to.

Amendment 155 moved—[Claudia Beamish].

The Deputy Presiding Officer: The question is, that amendment 155 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Alian, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgees, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Coyle, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eade, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
L Lockhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malik, Hanzala (Glasgow) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfries and Galloway) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeen West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen East) (SNP)
Scott, Tavish (Shetland) (SNP)
Smith, Drew (Glasgow) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
...
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

Against
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 103, Against 14, Abstentions 0.

Amendment 155 agreed to.

Amendment 49 moved—[Aileen McLeod]—and agreed to.

Section 31—Procedure for late applications

The Deputy Presiding Officer: Group 10 is on the time period for representations and provision of information under 2003 act. Amendment 50, in the name of the minister, is grouped with amendments 52, 57, 58 and 144.

Aileen McLeod: Amendments 50, 52, 57, 58 and 144 were lodged in response to Claudia Beamish’s stage 2 amendment 57, which sought to provide flexibility in the timescales for providing information in connection with an application that is made under part 2 or part 3A of the 2003 act. During stage 2, I committed to lodging amendments on the matter. The best approach is to increase the period at key points in the process. I have identified four areas where an extension from seven days to 14 days in which to provide information would be beneficial to the party concerned.

Amendment 50 will change from seven days to 14 days the time within which the relevant party must provide to ministers additional information in connection with a late application.

Amendment 52 will change from seven days to 14 days the time within which persons must provide ministers with further information in connection with an application.

Amendment 57 will change from seven days to 14 days the time within which the community body must provide to ministers additional information in connection with an application.

Amendment 58 will change from seven days to 14 days the time within which the community body may provide additional information in connection with circumstances that affected the ballot.

Amendment 144 will remove paragraph 2(6) from schedule 4, which is the current provision for extending seven-day time limits.

I move amendment 50.

Claudia Beamish: I support the minister’s amendments, which rationalise my stage 2 amendment to extend waiting periods in late applications.

Aileen McLeod: I thank Claudia Beamish for her amendment at stage 2.

Amendment 50 agreed to.

16:30

The Deputy Presiding Officer: Group 11 is on late applications under part 2 of 2003 act. Amendment 51, in the name of the minister, is grouped with amendment 53.

Aileen McLeod: Amendments 51 and 53 have been lodged as a result of the withdrawal at stage 2 of amendment 49, which was lodged by Alex Fergusson. At stage 2 I committed to lodging a stage 3 amendment because amendment 49 did not take account of such factors as the terms on which the land was offered to the community body and the reasons why the community body rejected or did not complete the purchase.

Amendment 51 relates to the late application process in part 2 of the 2003 act. It will insert new criteria, about which ministers must be satisfied before consenting to a late application. The amendment’s purpose is to prevent a late application from being accepted if the land was offered to the same or a “similar community body” within the previous 12 months, unless, in ministers’ opinion, there are good reasons why the body did not purchase the land. Examples of things that might be considered good reasons include conditions’ being attached to the sale of the land, or the area of land being offered not meeting the community’s needs at the time.

Amendment 51 specifies that it is for ministers to decide whether a community body is a “similar community body” for the purposes of provisions in amendment 51. When considering whether a community body is “similar”, ministers will have to have regard to matters that will be set out in regulations, including how many of the named directors, other officers or named members of the two community bodies are the same.

I move amendment 51.
Alex Fergusson: I am grateful to the minister for lodging amendments 51 and 53. As she acknowledged, they stem from an amendment that I lodged at stage 2 and then withdrew, given the Government’s undertaking to look at the issue that I raised and to lodge its own amendment. The issue was simply that I wished to provide a bit of protection in the circumstances that the minister has described. Amendment 51 provides a better balance in the process and amendment 53 very sensibly allows a bit of flexibility in the definitions of any offer that is made, the land in question and the make-up of the community body. I am very happy to support the amendments.

Amendment 51 agreed to.

Amendments 52 and 53 moved—[Aileen McLeod]—and agreed to.

Section 32—Evidence and notification of concluded missives or option agreements

Amendments 54 and 55 moved—[Aileen McLeod]—and agreed to.

After section 33

The Deputy Presiding Officer: We move to group 12, on expiry of registration under part 2 of 2003 act. Amendment 56, in the name of the minister, is grouped with amendment 156. I call the minister to move amendment 56 and to speak to both amendments in the group.

Aileen McLeod: Amendment 56 relates to part 2 of the 2003 act and has been lodged as a result of the withdrawal at stage 2 of amendment 52, which was lodged by Dave Thompson. Amendment 52 would have required the keeper of the registers of Scotland to notify the community body of the expiry of a registered interest. I believe that it is more appropriate for ministers to notify the community body of the expiry.

Amendment 56 will require ministers to notify a community body that its registered interest in land is due to expire, no earlier than 12 months before the registered interest is due to expire. Ministers will have a period of 28 days from that date in which to send the notification to the community body in order to give the community body sufficient time to prepare its reregistration.

I turn to amendment 156. Under the existing provisions of part 2 of the 2003 act, a community is required to reregister its interest every 5 years. The reregistration period is designed to ensure that community support for the acquisition remains current, and that other vital aspects have not changed. Amendment 156 seeks to extend from five years to seven years the period for which a registration of interest lasts. However, that would no longer provide an indication of the community’s current support for the acquisition, or identify other important changes to the circumstances that justified the original registration of interest.

I intend to introduce, under sections 37(1) and 98(3) of the 2003 act, a more streamlined form to be used by community bodies for reregistration, which will make the five-yearly reregistration process less onerous while ensuring that community support for the acquisition remains current. We therefore propose to retain the current five-year period, so I ask that Claudia Beamish not move amendment 156.

I move amendment 56.

The Deputy Presiding Officer: I invite Claudia Beamish to speak to amendment 156 and other amendments in the group.

Claudia Beamish: Although I have listened carefully to what the minister has said, I would like to reiterate some points relating to amendment 156 for Parliament to consider.

A version of amendment 156 was initially lodged at stage 2 by Dave Thompson, following discussion with Community Land Scotland. We supported that amendment at the time. It sought to extend the period for which a registration of interest lasts, from the current five years under section 44 of the 2003 act, to 10 years, which was a recommendation from the land reform review group. At the time, the minister argued that after 10 years there would no longer be an indication of the community’s support for the acquisition, and she has highlighted that point again today. There would also be a risk that ministers would be unaware of important changes in circumstances.

Stage 2 amendment 44 was withdrawn, but Michael Russell, who spoke to the amendment in Dave Thompson’s absence, asked the minister to "consider ... whether that advice from the land reform review group requires further thought."—[Official Report, Rural Affairs, Climate Change and Environment Committee, 4 March 2015; c 44.]

The minister said that she would happily look again at the amendment, but as I understand it she decided against pursuing the issue through a Government amendment.

As a compromise, and based on the minister’s comments, my amendment 156 seeks to increase the duration of the registration period to seven years. That would simplify the process for community groups. It would be a step in the direction of the land reform review group’s recommendation and it would reduce the burden that community bodies face with reregistration, notwithstanding the fact that the minister has highlighted the streamlining of the reregistration process.

Alex Fergusson: I am afraid that we cannot agree with Claudia Beamish’s amendment 156.
Five-year intervals are generally accepted as a standard period—for instance, in the planning process. It seems to me that five years is the right period before reregistration would be required, especially because the process of reregistration is to be considerably simplified as a result of the bill and the regulations that are to come.

**Aileen McLeod:** On amendment 156, I concur with Alex Ferguson. I consider five years to be a decent period of time within which community support can be demonstrated. Amendment 56 will ensure that community bodies have adequate time to carry out reregistration as smoothly as possible. On that basis, I urge members to support amendment 56.

**Amendment 56 agreed to.**

**Amendment 156 moved—[Claudia Beamish].**

**The Deputy Presiding Officer:** The question is, that amendment 156 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Wilson, John (Central Scotland) (Ind)

**Against**

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Forthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (Con)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carriick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)  
Sturgeon, Nicola (Glasgow Southside) (SNP)  
Swinney, John (Perthshire North) (SNP)  
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)  
Urmquhart, Jean (Highlands and Islands) (Ind)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
Wheelhouse, Paul (South Scotland) (SNP)  
White, Sandra (Glasgow Kelvin) (SNP)  
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 39, Against 78, Abstentions 0.

Amendment 156 disagreed to.

Section 38 — Consent under section 51 of 2003 Act: prescribed information

Amendment 57 moved — [Aileen McLeod] — and agreed to.

Section 39 — Representations etc regarding circumstances affecting ballot result

Amendment 58 moved — [Aileen McLeod] — and agreed to.

After section 42

The Deputy Presiding Officer: Group 13 is on notifications relating to applications, appeals etc cetera under 2003 act. Amendment 59, in the name of the minister, is grouped with amendments 60, 61, 91, 93 and 94.

Aileen McLeod: Amendments 59 to 61 and 91, 93 and 94 will require the party who is lodging an appeal, referring a question or making an application to the Lands Tribunal for Scotland or the Scottish Land Court to notify the Scottish ministers within seven days of the appeal being lodged, question being referred or application being made. The amendments will also require the Lands Tribunal or Land Court to send a copy of its written decision to ministers — where that is not already done — to ensure that ministers are kept up to date with progress on an application and that any errors in processing an application are avoided.

Amendment 59 relates to an application to the Lands Tribunal in connection with the valuation of the land for a part 3A application. Finally, amendment 94 relates to questions to the Lands Tribunal in connection with a part 3A application.

I move amendment 59.

Amendment 59 agreed to.

Section 45A — Appeals to Lands Tribunal as respects valuations of land

Amendment 60 moved — [Aileen McLeod] — and agreed to.

Section 47C — Application: information about rights and interest in land

The Deputy Presiding Officer: Group 14 is on power to modify information required in application for consent under part 3 of 2003 act. Amendment 157, in the name of Sarah Boyack, is the only amendment in the group.

Sarah Boyack (Lothian) (Lab): My amendment 157 follows discussion with Community Land Scotland. Section 73 of the Land Reform (Scotland) Act 2003 deals with the process of applying to exercise the crofting community right to buy. Section 73(5) specifies certain information that should be included in the application, with reference to maps, where appropriate. Community Land Scotland has highlighted that those requirements remain potentially onerous for a crofting community body.

Amendment 157 would insert a new subsection giving ministers the option to modify the paragraphs in section 73(5) of the 2003 act, should the need arise, in order to address such concerns in regulations. Those regulations could also provide for specific paragraphs in section 73(5) not to apply in such circumstances as ministers may specify.

The proposed provisions give ministers flexibility to act where appropriate. I hope that colleagues will support amendment 157, which I believe is a good and proportionate addition to the bill.

I move amendment 157.

Aileen McLeod: Section 73(5) of the Land Reform (Scotland) Act 2003 requires a crofting community body, as part of its crofting community right-to-buy application, to provide certain information about the land that is the subject of its application. Those requirements were amended at stage 2 of the bill to make them less onerous.

Ministers currently have a power to set out in regulations the kind of information that must be included in or accompany an application, but that power is subject to the minimum requirements set out in section 73(5). If agreed to, amendment 157 will add a provision that will give ministers a
regulation-making power, allowing them to amend or repeal the minimum requirements for information that must be included in or accompany the application. That would allow ministers to change or remove the requirements in section 73(5), should it be identified in the future that those requirements are still considered to be too onerous for a crofting community body to comply with.

I support amendment 157.

The Deputy Presiding Officer: Breaking with convention, I will allow Mike Russell to speak.

Michael Russell (Argyll and Bute) (SNP): Not everybody will be grateful for that, Presiding Officer.

I will make two points, to which amendment 157 draws attention. The first one is the need for flexibility, in all arrangements to do with community purchase, in taking down the barriers to community purchase that exist. I commend the minister for her very practical approach throughout our consideration of the bill. The amendment very sensibly removes barriers that would otherwise deter some communities.

The second point is about the important role that Community Land Scotland and other organisations have played in helping the committee that examined this part of the bill and in helping the Government—having worked closely with it—to understand how important it is that community purchase is encouraged and enabled and that any difficulties that exist in legislation are minimised to the maximum degree.

I am grateful to the minister and to Sarah Boyack for their participation in considering the matter, and I am particularly grateful to Community Land Scotland.

Sarah Boyack: I will press amendment 157. I thank the minister for her helpful approach, and I thank Mike Russell for his support. I hope that all colleagues will feel able to support this useful, if minor, amendment.

The Deputy Presiding Officer: We shall see.

Amendment 157 agreed to.

Section 47J—Land Court: reasons for decision under section 92

Amendment 61 moved—[Aileen McLeod]—and agreed to.

After section 47J

Amendment 62 moved—[Aileen McLeod]—and agreed to.

Section 47K—Meaning of creditor in standard security with right to sell

Amendments 63 and 64 moved—[Aileen McLeod]—and agreed to.

Section 48—Abandoned and neglected land

The Deputy Presiding Officer: Group 15 is on “Eligible land under Part 3A of 2003 Act etc.—general”. Amendment 65, in the name of the minister, is grouped with amendments 158, 68, 159, 69, 161, 164 and 135. I draw members’ attention to the fact that, if amendment 160, which is in group 17, is agreed to, we will be unable to call amendment 161 because of pre-emption.

16:45

Aileen McLeod: Amendment 65 provides a definition of “inland waters” for the purposes of part 3A of the 2003 act.

Amendment 158 provides that a draft statutory instrument containing regulations that set out what land will be treated as eligible land for the purposes of part 3A of the 2003 act must be laid before the Scottish Parliament within 18 months of the bill receiving royal assent. I ask Sarah Boyack not to move amendment 158 because it is intended that consultation will begin with stakeholders on the content of such regulations shortly after completion of the bill’s passage through the Scottish Parliament. Stakeholder engagement is an essential part of that process.

Amendment 68 provides that land on which there is a building or other structure that is a home will no longer be excluded from the right to buy when that home is occupied by a person as a tenant.

I turn to amendment 159. Currently, land that is classed as bona vacantia—that is, ownerless property—and land that falls to the Crown as ultimus haeres, which happens when no living relative can be found to inherit land that belonged to a deceased person, is excluded from the definition of “eligible land”. Such land falls to the Crown through the Queen’s and Lord Treasurer’s Remembrancer. Amendment 159 removes bona vacantia land and land that falls to the Crown as ultimus haeres from the list of excluded land and thereby allows it to be subject to part 3A application.

There are good reasons why bona vacantia and ultimus haeres land is excluded from the definition of “eligible land”. The remembrancer does not to seek to retain land, so she may be unwilling to retain land for a sufficient length of time to allow a part 3A acquisition to be completed. The remembrancer’s overall function is to dispose of such land for the benefit of the public purse. It is
not in the remembrancer’s interest to retain land because no disposal income would be generated and she is not resourced to manage such land on an on-going or long-term basis. The remembrancer also seeks to avoid retaining land because of the risks of liabilities arising in relation to it. Given the sources of land that falls to the Crown as bona vacantia, it follows that it can often be in a poor condition and brings with it the risk of future problems, liabilities and expense if the Crown interest in it is not resolved.

In circumstances where land has fallen to the Crown as bona vacantia or ultimus haeres, the community body has the option of contacting the remembrancer with a view to acquiring the land. In such circumstances, there would be no need to rely on the part 3A process. For those reasons, I ask Claudia Beamish not to move amendment 159.

Amendment 69, which is linked to amendment 68, provides ministers with a regulation-making power to set out “descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy” and which will be excluded from the right to buy abandoned, neglected or detrimental land.

Amendment 161 adds any tenant of the land to the list of parties who must be identified in a part 3A application. Tenancies cannot be bought separately from the land under part 3A of the 2003 act. Placing a requirement on the part 3A community body to identify all tenants on the land will ensure that they are fully involved in the community right-to-buy process and gives them the opportunity to contribute to that process, not only as members of the community but as individuals who could be directly impacted by any transfer of ownership. I support amendment 161.

Amendment 164 adds any tenant of the land to the list of parties who must be invited by the Scottish ministers to comment on a part 3A application. That will require the Scottish ministers to invite written comments on the application from tenants on the land, amendment 164 will introduce a specific obligation to do so. I support amendment 164.

Amendment 135 updates the definition of “inland waters” in part 3 of the 2003 act.

I move amendment 65.

**Sarah Boyack:** Under new section 97C of the 2003 act, ministers will be required to make regulations setting out what factors they must have regard to when deciding whether, in their opinion, land is eligible under part 3A of that act. The definition of “eligible land” was a key aspect of the Rural Affairs, Climate Change and Environment Committee’s consideration of the bill, and there are a number of amendments still to come on that subject. However, getting the detail of how the eligibility of land is to be judged will be crucial.

I lodged amendments at stage 2 that would have required ministers to consult on the required regulations within a year of royal assent. At the time, I listened to the minister’s assurances that consultation forms a key part of the regulation-making process, which I welcome. However, I am very keen to ensure that questions around how the eligibility of land is to be judged are settled at the earliest opportunity. I am concerned that, with the proposed land reform bill following so closely on the heels of the Community Empowerment (Scotland) Bill, there is a risk that regulations arising from both bills will be bundled together and delayed further down the line.

My amendment 158 would require a draft statutory instrument containing the regulations to be laid before Parliament within 18 months of royal assent. The minister committed in her opening remarks to consultation immediately after the bill is passed. However, can she clarify when she expects the statutory instruments to come into force? It is important that she clarifies that.

I will comment briefly on Alex Fergusson’s amendments 161 and 164. I think that the principle behind the amendments is reasonable, because it is about ensuring that tenants, as well as owners, have a right to comment. However, I would like the minister to clarify what would happen if a community, despite its best endeavours, cannot identify the tenants. Would that potentially knock out or invalidate the community’s application? I am very keen for the minister to clarify in her closing remarks what would happen in that situation.

**Claudia Beamish:** An amendment similar to amendment 159 was lodged at stage 2 by Sarah Boyack. Amendment 159 concerns the exemption from part 3A of land that is owned or occupied by the Crown by virtue of its having been vested in the Crown as bona vacantia, or of its having fallen to the Crown as ultimus haeres. I do not intend to go into the definitions of those terms, as the minister highlighted them earlier. However, clarification was sought at stage 2 on the need for the exemption when other Crown land is included by virtue of section 100(2) of the 2003 act. There is no similar exemption from the definition of “eligible crofting land” in part 3 of the 2003 act. I hope that the minister will be able to comment on that in her closing remarks.

In her remarks to the committee at stage 2 and again today, the minister provided background on the process for land that is classed as bona vacantia and ultimus haeres. Such land is claimed...
by the Crown through the Queen’s and Lord Treasurer’s Remembrancer, whose purpose is to seek to realise the value of any land through disposal or disclaimer. The minister has already highlighted that the remembrancer does not seek to retain land and is not resourced to manage land on an on-going basis.

The minister said that in circumstances where land is classified as bona vacantia or ultimus haeres, a community body has the option of contacting the remembrancer with a view to acquiring the land. My concern would be that by specifically excluding such land, community bodies might be put off from showing their potential interest in it. At the same time, including the land as eligible would not prevent the remembrancer from disposing of land as usual unless there was community interest, in which case the benefit to the community must surely carry some weight.

Alex Fergusson: I lodged amendments 161 and 164 to try to ensure that any tenant of a building or structure on land that is subject to a community purchase has the opportunity to give their views formally, having been duly identified in the process. I cannot help but believe that tenants are being discriminated against by the Government in amendments 68 and 69, which appear to create two separate types of homemakers: those who own their homes and those who rent them. If someone owns their home they will not be impacted by a community right to buy, but if they rent their home, they will be—and possibly quite heavily.

There seems to be an unwritten principle in the Government’s amendments 68 and 69 that a community will, per se and of necessity, be a more benevolent landlord than any individual or company. I do not accept that that would always be the case. Amendments 161 and 164 seek to redress some of the imbalance in favour of the tenant. I hope that the Parliament will note that it is the Scottish Conservatives who are standing up for the interests of tenants in relation to the bill.

Aileen McLeod: I will try to take on board some of the points that have been raised. Amendments 68 and 69 ensure that communities are able to fully utilise the right to buy without the risk that land is ineligible due to the fact that it contains areas of land that are occupied by tenants as a home. I clarify that the amendments confer the power to set out the classes of occupancy et cetera that are included in part 3A of the Land Reform (Scotland) Act 2003.

On the points raised by Claudia Beamish and Sarah Boyack, if a community body did not identify a tenant, the application would not be compliant. However, we will ensure that guidance is available to limit the risk of that happening.

On amendment 158, we intend to begin consultation with stakeholders on the proposed content of the instrument shortly after the completion of the bill’s passage through the Scottish Parliament. As I said in my opening remarks, stakeholder engagement is an essential part and parcel of the community right-to-buy process. The draft instrument will be laid before the Scottish Parliament as the parliamentary timetable permits.

Amendment 65 agreed to.

The Deputy Presiding Officer: Group 16 is on eligible land under part 3A of the 2003 act—the use or management of land causing harm. Amendment 66, in the name of the Minister for Environment, Climate Change and Land Reform, is grouped with amendments 67, 67A, 67B, 73, 79 to 81, 86, 86A to 86D, 90, 92, 138 and 146.

Aileen McLeod: The bill, if it is passed, will introduce a new part 3A into the Land Reform (Scotland) Act 2003 that will give communities a right to buy land that is, in the Scottish ministers’ opinion, wholly or mainly abandoned or neglected. Mr Russell lodged an amendment at stage 2 that sought to expand that description to include land that is “in substantial need of sustainable development”.

Amendments 66 and 67 add provisions to widen the definition of eligible land to include land whose use or management results in or causes harm, which is not negligible harm, to the environmental wellbeing of a relevant community.

Environmental wellbeing is not being defined in the bill as I want it to have a broad meaning for the purposes of part 3A of the 2003 act and not to be restricted to harm that is caused to just the physical condition of the community. Harm to the community’s environmental wellbeing, for example, may affect the amenity of the community. That may include cases where the use or management of the land causes or results in harm to the community such as the detrimental impact that a group of boarded-up shops, unoccupied housing or algae-filled ponds that are becoming health hazards might have on the community’s environmental wellbeing.

Amendments 73, 90 and 92 change the title of the register that is to be set up by the Keeper of the Registers of Scotland to the “Register of Community Interests in Abandoned, Neglected or Detrimental Land”.

Amendment 79 requires the community body to set out in its application why it considers that the land is being used or managed in such a way as to result in or cause harm to the community’s environmental wellbeing, if that is the basis for the application. Amendment 80 adds a provision to
require a community body to include details of any requests that have been made to regulators to take action that could remedy or mitigate the harm. Amendment 81 provides that, where relevant, landowners are invited to give information about whether they consider that the use or management of their land is causing or resulting in harm to the community’s environmental wellbeing.

Amendment 86 provides that, in order to consent to an application, the Scottish ministers must be satisfied, in addition to the existing criteria in section 97H of the 2003 act, that the harm is unlikely to be removed by the current owner if they continue to be the owner of the land. Ministers must also be satisfied that the community body has made a request to any relevant regulators to take action to remedy or mitigate the harm to the community’s environmental wellbeing and that the body’s ownership of the land will be consistent with reducing the harm. Ministers will have the power to set out who the relevant regulators are.

17:00

Amendments 67A and 67B would give a community the right to apply to purchase land when the use or management of the land was resulting in or causing harm to the community’s environmental and social wellbeing. That would introduce a double test in which both conditions had to be met, so it would be more difficult for community bodies to satisfy the test.

Social wellbeing is a broad concept. Defining it separately from environmental wellbeing makes it a distinct consideration. There was not time between stages 2 and 3 to consult fully on whether there is evidence of harm being caused to the social wellbeing of communities as a result of the use or management of land and, if so, what the extent of that is. It would be important to do that before asking the Parliament to confer powers that authorise the compulsory acquisition of land. Therefore, the bill as it is proposed to be amended by the Scottish Government takes matters as far as I consider appropriate at this time.

Amendment 86A would change the criteria that must be satisfied before ministers can consent to an application that relates to the use or management of land that is resulting in or causing harm to a relevant community’s environmental wellbeing so that those criteria applied if the part 3A community body was making an application on the basis that harm was being caused to the relevant community’s environmental and social wellbeing.

Amendment 86B would require that, in order to consent to an application, ministers would have to be satisfied that the exercise of the right to buy by the part 3A community body was compatible with removing or substantially removing the harm to the relevant community’s environmental and social wellbeing. Amendment 86C would amend the definition of a relevant regulator so that a regulator was relevant if it could be considered to be so after having regard to the harm to the relevant community’s environmental and social wellbeing. Amendment 86D would amend the definition of a regulatory function so that a regulatory function was relevant if it could be considered to be so after having regard to the harm to the relevant community’s environmental and social wellbeing.

I appreciate the helpful intention of Sarah Boyack’s amendments, given how hard everyone has worked on the issue to find the right way forward, I am certain that we are all trying to get to the same place, but the question is how we do that in the most effective way. Adding the social wellbeing dimension to the definition narrows the test for what constitutes eligible land from what it would be if amendment 67 were agreed to unamended, because the harm that is caused has to be not only environmental but social. If the harm that is caused is environmental but not social, land will not meet the test, as it would not meet both elements.

Although I am absolutely sure that the intention was not to introduce an additional test for community bodies and that that was not the proposal’s purpose, I ask Sarah Boyack not to press amendments 67A, 67B, 86A and 86B and the consequential amendments 86C and 86D, to ensure that such a test is not introduced. It is also the Scottish Government’s view that those amendments are outwith the Scottish Parliament’s legislative competence, on the basis that they do not provide sufficient foreseeability for landowners.

I reassure members that the definition of environmental wellbeing has a wide meaning and encompasses some social considerations. As I said earlier, we were not able to consult fully on extending the right to buy beyond what I have proposed in the Government amendments in the group. If Parliament were to widen the circumstances in which communities can acquire ownership of land through compulsory purchase, we would want to be clear about the evidence of the harm that the proposals would address and to consult on that to find a proportionate solution.

I give my firm commitment to work with Sarah Boyack and other members of the Rural Affairs, Climate Change and Environment Committee to look at any evidence that the use or management of land results in harm to the social wellbeing of communities, and I will seek to do so at the earliest opportunity.
Amendment 138 provides that the ministerial power that is introduced via amendment 86 will be subject to the affirmative procedure.

Amendment 146 amends the long title of the bill to include abandoned, neglected or detrimental land because of the widening of the definition of eligible land for the purposes of part 3A of the 2003 act.

I move amendment 66.

Sarah Boyack: At stage 2, the Rural Affairs, Climate Change and Environment Committee spent a considerable amount of time debating the definition of abandoned and neglected land for the purposes of part 3A of the 2003 act. Across the committee, there was concern that the terms “abandoned” and “neglected” might be seen as too narrow and might ignore the social, economic and environmental impact on communities. At stage 2, Michael Russell lodged amendments that sought to embed the concept of sustainable development in part 3A.

I still do not fully accept the Scottish Government’s amendment 67 is helpful, and I am grateful to the minister for engaging in discussions with the Rural Affairs, Climate Change and Environment Committee since stage 2. We have had the opportunity to press the Scottish Government on the matter and to ask questions of the minister and her officials. As a result, I understand that the Scottish Government’s preferred approach is to use the term “environmental wellbeing”.

Given that a key purpose of lodging my amendments was to probe what that term means in practice, I listened carefully to the minister’s comments. The wider definition that she has put on the record this afternoon is helpful in making it clear that the term includes social wellbeing. It is important to have it on record that environmental wellbeing is seen in a broader context, that it is not just about physical conditions, that it is important to urban and rural communities and that it is all about the use and management of the land. Crucially, the minister referred to boarded-up shops—which could, of course, mean other boarded-up buildings that have been left vacant for some time—or ponds that are causing harm. It is useful to have those comments on the record. The fact that the term “environmental wellbeing” is seen as covering impacts on human health and social wellbeing is helpful to us in moving forward.

As I have said, my amendments were intended to be probing and, as far as what can be done at stage 3 is concerned, I think that I have received the exact result that I was after. I welcome the minister’s comments, and I will not move my amendments in the group.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): When I looked on Google for definitions of the word “environment”, I found two related ones:

“the surroundings or conditions in which a person, animal, or plant lives or operates”

and

“the natural world, as a whole or in a particular geographical area, especially as affected by human activity”.

It is therefore entirely possible for the term “environmental” to encapsulate human communities and individuals. As far as I can see, “environmental wellbeing” as proposed by the minister fits that bill; after all, environmental harm can include harm to all of those mentioned in the definitions to which I referred. Given that the social aspect is included in the term “environmental”, there is no need to delineate it, as has been argued.

Landlords across Scotland behave in ways that advantage or disadvantage the environment and communities, and communities deserve the right to access parcels of land in order to give their future a fair chance. The use of the term “environmental” in this sense provides a circular context in which the social aspect includes us and the land, which I find very satisfactory. However, although I am glad to hear that the minister accepts that approach, I wonder whether the courts will accept that definition of “environmental”. We await an answer to that question once the bill, if it is passed, is tested in the courts, as it will be.

Alex Fergusson: Our stated public position on the right to buy has always been that we would not support such a concept in the absence of a willing seller. However, as a result of a combination of constituency experience and evidence to the Rural Affairs, Climate Change and Environment Committee, we accept that there are situations where in extremis such a right would be merited. I hope that that shift in position is recognised for what it is.

However, I also have great sympathy with the Law Society’s view that an urban/rural split would have been welcome in relation to section 48. We would have supported the measure had it applied only to wholly abandoned or neglected land; I believe that such a definition would have been clear in law and would have been seen as a black and white issue in the event of the bill coming into force.
I commend the minister for her efforts to secure agreement from the members of the Rural Affairs, Climate Change and Environment Committee, but I am sorry to say that we cannot support the measure, for the simple reason that we believe that her expanded definition of eligible land does not make things black and white.

Michael Russell: The measure lies at the heart of the community right to buy part of the bill. It is about public benefit, not just private ownership and, as Sarah Boyack knows, I have the greatest sympathy with her approach. That sympathy is almost unanimous across the committee, although clearly not entirely, given what Alex Fergusson said. There was a view that the measure as originally drafted was not adequate to meet the tests that would—and indeed will—be laid on it by the courts.

The issue of abandoned and neglected land goes to the heart of what we are trying to change in Scotland, and it may certainly bridge the rural and the urban. There are many places where abandoned and neglected buildings in cities and towns would be ripe for community ownership and being properly used by communities, just as abandoned and neglected areas of land throughout rural Scotland need to be used productively. How land is used as a common asset should be the issue that drives us forward. That is about opportunity and aspiration.

It has been difficult to find the right way to define the issue. It should be easy to define sustainable development legally. The term has been used in legal judgments, yet there is a reluctance to believe that it has a meaning and a strength that could carry it forward in every court case, particularly in issues of European competence.

Something had to be found, and I commend the minister for the work that she and her officials have done to try to find a proper meaning. The issues of environmental wellbeing and environmental harm at least start us on the road of placing in legislation, as well as in legal and public understanding, the fact that land can be left in a bad condition under private and public ownership—this is not just about private ownership—and dealing with how communities can be empowered to move forward.

I am glad that the minister has shown herself to be flexible, and I am grateful to Sarah Boyack for acknowledging that. Now we must see the provisions tested in the aspirations of communities. If the bill withstands those tests as a result of the amendments, we will have done a good thing for communities. If it does not withstand those tests, we must return to the issue to strengthen the opportunity for Scotland’s communities to use the asset that is all around them but to which they sometimes cannot even get close.

Aileen McLeod: I am very conscious of the time, so I will keep my response as short as I can.

I appreciate the comments from across the chamber. I firmly believe that amendments 67 and 86 are an important step in the right direction for increasing community ownership, and I ask all members to support them.

The Deputy Presiding Officer: Many thanks—that was brief.

The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Robin (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Amendment 66 agreed to.

Amendment 67 moved—[Aileen McLeod].

Amendments 67A and 67B not moved.

The Deputy Presiding Officer: The question is, that amendment 67 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Allan, James (Glasgow Cathcart) (SNP)
Aird, Jim (Edinburgh Southern) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus North) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Fleet, Mary (West Scotland) (Lab)
Fergusson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Amendment 67 agreed to.

Amendment 158 moved—[Sarah Boyack].

The Deputy Presiding Officer: The question is, that amendment 158 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Macleod, Aileen (South Scotland) (SNP)
McLennan, Stuart (Central Scotland) (SNP)
McNicholas, Michelle (Plateau) (SNP)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Patterson, Gillian (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swimney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

Against
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGregor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 101, Against 14, Abstentions 0.

The Deputy Presiding Officer: Amendment 158 moved—[Sarah Boyack].
The Deputy Presiding Officer: The result of the division is: For 47, Against 68, Abstentions 0.

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamsion, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
McAhesh, Michael (Falkirk West) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Edinburgh West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thomson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urguhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 47, Against 68, Abstentions 0.

Amendment 158 not agreed to.

Amendment 68 moved—[Aileen McLeod].
The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marr, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Penitland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeen West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen) (SNP)
Scott, Tavish (Shetland Islands) (SNP)
Smith, Drew (Glasgow) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Waite, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

Against
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dunbartonshire) (Con)
Fraser, Murdoch (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 103, Against 14, Abstentions 0.

Amendment 68 agreed to.

Amendment 159 moved—[Claudia Beamish].

The Deputy Presiding Officer: The question is, that amendment 159 be agreed to. Are we agreed?

Members: No.
Amendments 159 not agreed to.

The Deputy Presiding Officer: The result of the division is: For 34, Against 82, Abstentions 0.

Amendment 159 not agreed to.

Amendments 69 to 78 moved—[Aileen McLeod]—and agreed to.

The Deputy Presiding Officer: Group 17 is on application for consent under part 3A of 2003 act—identification of owner of land. Amendment 160, in the name of Sarah Boyack, is grouped with amendments 162, 163 and 166. If amendment 160 is agreed to, I cannot call amendment 161, which was debated in group 15.

Sarah Boyack: Under the provisions in part 3, ministers must refuse consent unless they are satisfied that the owner of the land is accurately identified in the application. When we discussed the matter with Community Land Scotland, concern was highlighted that that sets a high bar for community bodies, given the complex process of determining ownership.

At stage 2, I lodged amendments that would give ministers flexibility when a community body could demonstrate that it had exercised all reasonable diligence in seeking to identify the owner. I listened carefully to the minister’s concerns that to allow a sale without an identified owner would deny that owner the right to respond to the application. I understand that the Scottish Government would prefer to complete the land register to make it easier for owners to be identified, but I am conscious that that is a long-term ambition, so my amendment 160 seeks to return to the subject.

In light of the minister’s comments at stage 2, amendment 160 focuses on the application stage rather than on ministerial consent. It would allow a community body in applying for consent to either specify the owner or provide details of the steps that it had taken to identify the owner. When an owner cannot be identified, the community body could ask ministers to undertake the task on its behalf.

Amendments 162 and 163 are consequential and reflect the change made by amendment 161 in relation to the requirement for a community body to send a copy of the application to the owner and for ministers to invite comments from the owner.

Amendment 166, which is also consequential, returns to the criteria for consent in relation to the identification of the owner. When the Rural Affairs, Climate Change and Environment Committee was in Orkney at the weekend, a member of the public raised the problem of identifying the owner of land, so it is a real issue for people. Until we have a complete register, there will be cases in which it is difficult to identify the owner. My amendments aim to address that problem, and I hope that they will be supported.

I move amendment 160.

Aileen McLeod: I will keep this short. I firmly believe that amendment 160 should be withdrawn. It is the responsibility of the part 3A community body that wishes to purchase the land to take steps to identify the correct landowner. Community bodies can be reassured that guidance will be provided, suggesting steps that the community bodies should take, if appropriate, when identifying the owner of the land.
Amendment 160 does not provide that there will be prescribed steps that the part 3A community body must take to trace the landowner. Without minimum requirements, it could place a considerable burden on ministers to take action to identify landowners on behalf of part 3A community bodies. I understand and appreciate the need to ensure that there is transparency, and we are committed to improving the transparency of land ownership in Scotland by working towards a target to complete the land register for the whole of Scotland within 10 years, with registration of all public sector land within five years. I therefore urge Sarah Boyack to withdraw amendment 160, and ask her not to move amendments 162, 163 and 166.

Sarah Boyack: Ten years is a long time if we want to get going with opening up opportunities. There are still places in Scotland where ownership is not clear, where it is hidden and where people avoid saying who owns land or property. The issue is important and I press my amendment.

The Deputy Presiding Officer: The question is, that amendment 160 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Pollok) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Wilson, John (Central Scotland) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunningham North) (SNP)
Gibson, Robin (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
MacDonald, Angus (Fairfax) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeen West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
The Deputy Presiding Officer: The result of the division is: For 37, Against 65, Abstentions 0.

Amendment 160 disagreed to.

Amendment 161 moved—[Alex Fergusson]—and agreed to.

Amendments 79 and 80 moved—[Aileen McLeod]—and agreed to.

Amendment 162 moved—[Sarah Boyack].

The Deputy Presiding Officer: The question is, that amendment 162 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeill, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowanbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Wilson, John (Central Scotland) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadin, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Alieen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Mile, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Peterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Abereenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine)
The Deputy Presiding Officer: The result of the division is: For 39, Against 78, Abstentions 0.

Amendment 162 disagreed to.

Amendment 163 not moved.

Amendment 164 moved—[Alex Fergusson]—and agreed to.

Amendment 81 moved—[Aileen McLeod]—and agreed to.

The Deputy Presiding Officer: Group 18 is on power to prescribe how proposal for land or previous attempts to buy must be demonstrated. Amendment 165, in the name of Claudia Beamish, is grouped with amendment 167.

I can advise the Parliament that we have now caught up with our time and would not wish to curtail debate.

Claudia Beamish: Good news for all, no doubt.

Amendment 165 concerns the new section 97G and deals with the process of applying to exercise the right to buy land under part 3A of the 2003 act. Subsection (10)(d) of section 97G requires ministers to invite views from the landowner, creditors and others about any proposals that the owner has for the land. My amendment seeks to relieve concerns that, in order to avoid a community right to buy, an owner could create spurious proposals for the development of land.

Amendment 165 would give ministers the option of prescribing what would constitute a proposal for land, what evidence would need to be provided to demonstrate that a proposal exists and other information that ministers deem appropriate. Such an approach would give guidance to owners and clarity to communities.

I move amendment 165.

Sarah Boyack: Amendment 167 concerns new section 97H, which sets out the matters in relation to which ministers must be satisfied before consenting to a part 3A community right to buy. Subsection 1(j) of that section requires ministers to be satisfied that the community body has tried and failed to buy the land by means other than a right to buy. That is in recognition of the policy intention that was indicated by the minister at stage 2 that the part 3A right to buy should be used only as a last resort.

Amendment 167 seeks to provide clarity to community bodies to help them to understand what would constitute trying and failing to buy the land. They would be considered to have satisfied the requirement if they provided ministers with evidence in a prescribed form to demonstrate that they had taken certain actions to try to buy the land.

Alex Fergusson: Again, I am afraid that we cannot support the amendments on the grounds that we are concerned that they would give even more powers to ministers through conferring on them an ability that is overly prescriptive to decree what constitutes an effort to buy or sell land, or indeed to decree what constitutes a proposal for the land in question. If there are genuine concerns about those issues, it is not Scottish ministers who should determine them but some other organisation.

Aileen McLeod: With regard to amendments 165 and 167, I do not consider it necessary or desirable to provide in regulations what information a landowner should provide in connection with any proposals that he may have for the land, or what steps a community body should take or what evidence it should provide when it tries to buy the land. Prescribed actions may not be relevant and prescribed steps may not be possible in all circumstances. They could cause difficulties to community bodies or landowners if they are unable to comply with certain prescribed requirements.

A community body would be expected to provide all information and evidence that it considers is necessary, appropriate or relevant to attempts that it made to buy the land. It would then be for ministers to be satisfied that the community body had provided sufficient information to demonstrate that it had tried and failed to buy the land. Similarly, a landowner would be expected to provide all information and evidence that they consider is necessary, appropriate or relevant in relation to proposals that they have for the land.

For those reasons, I urge Claudia Beamish to withdraw amendment 165 and Sarah Boyack not to move amendment 167.

Claudia Beamish: I am not convinced by the minister’s arguments in this particular case. I press amendment 165.

The Deputy Presiding Officer (Elaine Smith): The question is, that amendment 165 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Amendment 166 moved—[Sarah Boyack].

The Deputy Presiding Officer: The question is, that amendment 166 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Amendment 166 disagreed to.

Amendments 82 to 85 moved—[Aileen McLeod] and agreed to.

Amendment 86 moved—[Aileen McLeod].

Amendments 86A to 86D not moved.

Amendment 86 agreed to.

Amendment 87 moved—[Aileen McLeod] and agreed to.

The Deputy Presiding Officer: The result is, that amendment 167 be agreed to. Are we agreed?

Members: No.
The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fees, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Henry, Hugh (Edinburgh South) (Lab)
Hitlon, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mali, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McArdle, Tony (South Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Wilson, John (Central Scotland) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Doman, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
Mckelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Barnforth and Buchanan Coast) (SNP)
Stewert, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 38, Against 78, Abstentions 0.

Amendment 167 disagreed to.

Amendments 88 to 94 moved—[Aileen McLeod]—and agreed to.

After section 48

The Deputy Presiding Officer: Group 19 is on mediation in relation to rights under parts 2, 3 and 3A of the Land Reform (Scotland) Act 2003. Amendment 95, in the name of the Minister for Environment, Climate Change and Land Reform, is grouped with amendment 143.
Aileen McLeod: Amendment 95 is introduced following the lodging of an amendment by Graeme Dey at stage 2, which was agreed to. The amendment inserted provisions relating to ministers’ facilitation of mediation in relation to parts 2, 3 and new part 3A of the 2003 act.

Amendment 95 replaces those provisions with new mediation provisions that achieve the same policy intention. The new powers are for ministers, upon a request by certain persons—including owners of land and community bodies—to take such steps as they consider appropriate for the purposes of arranging, or facilitating the arrangement of, mediation in relation to a proposed registration of an interest in land under part 2 or exercise of the right to buy under parts 2, 3 and new 3A.

The new provisions clarify that the power of ministers to facilitate mediation includes the power to appoint a mediator and to make payments to mediators either for payment of services or for reimbursement of expenses.

Amendment 143 removes paragraph 2(5)(aa) of schedule 4 to the bill, which amendment 95 replaces.

I move amendment 95.

Claudia Beamish: I support amendment 95 and stress the importance from my party’s perspective of the mediation and payment arrangements.

The Deputy Presiding Officer: I just want to check whether I saw Graeme Dey indicating that he wished to contribute.

Graeme Dey (Angus South) (SNP): No.

Aileen McLeod: I thank Graeme Dey for lodging amendments on mediation at stage 2. The amendments ensure that mediation can be used by all parties at all relevant steps in the right-to-buy process. I ask that members support the amendments. I also thank Claudia Beamish for the support that she expressed.

Amendment 95 agreed to.

Section 56—Agreement to asset transfer request

The Deputy Presiding Officer: Group 20 is on asset transfer requests—appeals, reviews and prohibition on disposal of land. Amendment 96, in the name of the Minister for Local Government and Community Empowerment, is grouped with amendments 97 to 99, 13 to 15, 100, 16, 172, 17, 18 and 20.

Marco Biagi: It is good to be back.

The Government amendments in group 20 fall into four sets. Amendments 96 and 100 provide for a community transfer body to appeal to the Scottish ministers if it has been unable to conclude a contract with the relevant authority within a specified period after an asset transfer request has been agreed. At stage 2 the committee agreed to an amendment from Cameron Buchanan, which I also supported, to introduce an appeal in such circumstances. These amendments seek to implement that intention more effectively. Rather than relying on the existing appeal process, which would return the process to an earlier stage, they set out a new appeal specifically for that purpose.

Amendments 97 to 99 will ensure that a relevant authority cannot sell or lease a property to someone else while an asset transfer request is in progress.

Amendment 16 will ensure that a community transfer body cannot make an offer in relation to an asset transfer request and at the same time appeal or seek a review in relation to a decision about a request.

Amendments 13 to 15, 17, 18 and 20 are technical amendments that clarify references to certain sections where they are applied and modified by other sections.

Amendment 172, in the name of Cameron Buchanan, would mean that, if a relevant authority declines to consider a repeated request, as it is entitled to do under section 61, that request would become subject to appeal or review. That would make a nonsense of the whole section, which is important in order to give relevant authorities the scope to decline repeated or vexatious requests in limited circumstances without the risk of further appeal. I ask Cameron Buchanan not to move amendment 172.

I move amendment 96.

Cameron Buchanan: I agree with all the other amendments in the group.

Amendment 172 seeks to remove the word “not” from section 61(3) so that a refusal of an asset transfer request due to there having been a similar previous request can be reviewed or appealed. Without a right of appeal or review, community transfer bodies could be excluded from participation unfairly.

I make it clear that I am not making any assumptions—I am interested only in ensuring that communities are protected from unfair exclusion. The ability to instantly refuse participation should therefore not be used unless it is very clear that it is a repeated request; a right of appeal or review will ensure that the relevant authorities adhere to that.

On that basis, we also consider that amendments 17 and 18 raise concerns because they extend the Government’s position that the
refusal of an asset transfer request due to there having been a similar previous request may not be appealed or reviewed. We think that a community transfer body should have a right of appeal under section 58 or a review under section 59 as that would ensure fair participation without allowing repeated challenges to an authority’s decision.

Malcolm Chisholm: I welcome the amendments. As the minister knows, there is great interest in my constituency in the transfer of land. However, I still cannot see any reference to ALEOs in the bill, so perhaps the minister can confirm that all the provisions will apply to ALEOs as well as to local authorities.

Notwithstanding the progress that has been made and the right of appeal, there is concern that amendment 99 suggests that, if the land has been advertised as being for sale before the application has been made, it can still be disposed of. Therefore, I have some concerns about that amendment, although I might not have totally understood it. However, in general, I welcome the amendments in the group.

17:45

Marco Biagi: To respond to Cameron Buchanan’s point, which is the crux of the matter, it is important that there is an appeals process, but any transfer request that has been made in the past two years could have been subject to that process the first time round. The amendments are intended to prevent a body that has made an asset transfer request, been refused, appealed and been refused on appeal from coming back and triggering the appeals process for a second time. If a request has been through the process already, it is important to have a cooling-off period of two years that enables persistent and repeated requests that might already have been through the appeals process to be declined. I hope that Cameron Buchanan will not move his amendment.

Amendment 96 agreed to.

Section 57—Prohibition on disposal of land

Amendments 97 to 99 moved—[Marco Biagi]—and agreed to.

Section 59—Review by local authority

Amendment 13 moved—[Marco Biagi]—and agreed to.

Section 59B—Appeals from reviews under section 59

Amendment 14 moved—[Marco Biagi]—and agreed to.

Section 59C—Decisions by relevant authority specified under section 58(2)(c):

reviews

Amendment 15 moved—[Marco Biagi]—and agreed to.

After section 59C

Amendments 100 and 16 moved—[Marco Biagi]—and agreed to.

Section 61—Power to decline certain asset transfer requests

Amendment 172 moved—[Cameron Buchanan].

The Deputy Presiding Officer: The question is, that amendment 172 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hum, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Penitlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 47, Against 72, Abstentions 0.

Amendment 172 disagreed to.

The Deputy Presiding Officer: Does any member object to a single question being put on amendments 17 to 20?

Members: Yes.

The Deputy Presiding Officer: As some members have objected, I will put the questions on the amendments individually.

Amendment 17 moved—[Marco Biagi].

The Deputy Presiding Officer: The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
The Deputy Presiding Officer: The result of the division is: For 101, Against 17, Abstentions 0.

Amendment 17 agreed to.

Amendment 18 moved—[Marco Biagi].

The Deputy Presiding Officer: The question is, that amendment 18 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)

Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
and, more importantly, their potential for amendments in terms of how they could operate has a number of concerns about those amendments. However, the Scottish Government's support for greater supporter involvement: we are very supportive of the Government's support for greater supporter involvement in football clubs. They should have a greater role in the life of their club.

is why the Scottish Government believes that is at the centre of each club’s decision making, so it is important that long-term sustainability is not the disproportionate impact if a club has to be wound up, so it is important that long-term sustainability is at the centre of each club’s decision making. That in itself is not unusual for a huge part in the lives of thousands of people across every community in Scotland and it is good to have this debate.

Scottish football has experienced more than its fair share of challenges, with many high-profile clubs changing owners and experiencing financial difficulties. That in itself is not unusual for a commercial organisation. However, given that so many clubs are firmly embedded in their local community and given the emotional investment that supporters have in their clubs, there can be a disproportionate impact if a club has to be wound up, so it is important that long-term sustainability is at the centre of each club’s decision making. That is why the Scottish Government believes that supporters should have a greater role in the life of their club.

The amendments made to the bill at stage 2 would see significant changes to how clubs would be required to operate in Scotland. I have set out the Government’s support for greater supporter involvement: we are very supportive of the sentiment behind Alison Johnstone’s stage 2 amendments. However, the Scottish Government has a number of concerns about those amendments in terms of how they could operate and, more importantly, their potential for...
unintended consequences. I am also concerned that there has not been an extensive consultation on the proposals to capture the full range of views on the issue.

Therefore, I have been in active discussions with all Opposition spokespersons on the issue to explain my reservations and concerns but also—and more importantly—to explore how best we can move forward. I place on record my thanks to them, particularly Alison Johnstone, who lodged the amendments at stage 2.

Although I believe that there is broad agreement here that we need to do more, it would be wrong to claim that we have the answer without first consulting fully. That is why I intend to launch a comprehensive consultation on this issue and why I shared a draft of the consultation document with Opposition spokespersons last week, lodged a copy in the Scottish Parliament information centre yesterday, and brought the consultation to the attention of all members through the office of the Minister for Parliamentary Business. I thank Opposition spokespersons for their time in helping me formulate the draft consultation, as well as the supporters organisations that my officials contacted to discuss the matter with.

I trust that the draft consultation demonstrates that the Government is open to the principle of bringing forward regulations that will protect supporters’ rights. I hope that sharing an early draft of the consultation has helped members to understand the context of the Scottish Government amendments, which will provide for a framework for the introduction of the full range of options that are being consulted on—namely, a right to buy, a right to bid, a right to govern or a right to be involved.

Alison Johnstone has lodged a number of amendments to the Government amendments. In summary, although it might be felt that they are reasonable for the specific system that we might create through the power, I believe that they preclude the consultation, which is why we will not support them. However, I can confirm that the specific provisions in Alison Johnstone’s amendments have influenced the draft consultation. As I referred to, we will seek views on those areas to inform our regulations. I genuinely believe that it is important to have the consultation first before determining the specifics of the regulations. On that basis, I urge Alison Johnstone not to move her amendments.

As I hope members will be aware, our approach to developing the amendments and the consultation has been guided by helpful cross-party engagement and our aim not to pre-empt the consultation. The Parliament has my commitment that I intend to continue to work with all members who might be interested in the issue. I look to their support in ensuring that, whatever legislative solution is developed, it protects the rights of fans, is workable and is not detrimental to Scottish football.

I move amendment 174.

The Deputy Presiding Officer: I call Alison Johnstone to move amendment 174A and to speak to all the amendments in the group.

Alison Johnstone (Lothian) (Green): The bill that Parliament is considering is designed to give power to communities across Scotland. It is not the first word on that and nor will it be the final word, but it is an important step on the journey.

As members will know, since the proposals for the bill were published, I have sought to have football fans recognised as important communities and to have football clubs recognised as important community assets. I am therefore pleased to have persuaded the Scottish Government to include in its amendments the powers to bring in a fans’ right to buy their clubs. In a spirit of consensus, I will support those amendments today, even though they will also delete my more detailed right-to-buy proposals that the Local Government and Regeneration Committee approved unanimously at stage 2.

We know that a fans’ right to buy is popular. It was backed by more than 80 per cent of the Scottish fans and members of Scottish organisations who responded to our consultation earlier this year, and more than 75 per cent of the Scottish public backed the idea when we polled last year. Of course, some owners are against it, just as some landowners oppose land reform, but other owners want a flexible and sustainable exit strategy, and the measures give them the reassurance that they need that their clubs will not fall into the hands of irresponsible owners in future.

I support the Scottish ministers’ proposal to conduct a further round of consultation on the issue, although I should say that the draft text of the consultation as circulated by ministers could be paraphrased as, “Here’s a terrible idea, don’t you think?” I urge ministers to produce a more neutral and informative final document.

With regard to the four amendments that I have lodged today, I apologise to Parliament that they had to be lodged in extra time—sorry—but the timing of the Government’s amendments left me no choice. They may seem modest refinements of the ministers’ proposals, but they cover four important issues that the Scottish Government’s approach does not resolve.

My amendments 174B and 176A would provide important protections for fans and owners. Amendment 174B would ensure that any fans
group wishing to exercise a right to buy would have to be open to all supporters, affordable and democratic. Such protections can likely be introduced in regulations, but my amendment would put the protection in the bill. Amendment 176A would explicitly require any fans’ right to buy to be offset by an owners’ right of appeal. That is an important safeguard for owners without which a right to buy would be open to challenge under the European convention on human rights. Again, that protection for current owners can be brought in under regulations, but in my view it is important enough to be in the bill.

Amendment 174A concerns funding for fan buyouts. There is no provision in the Scottish Government’s amendments that would permit grants or loans to support buyouts. We know from trusts across the country, large and small, that that is frequently the hurdle to a fan buyout, just as it has been with land reform. The Foundation of Hearts fan bid would have gone nowhere without a loan from Ann Budge. Amendment 174A would allow ministers to play the same role, if they were satisfied that there was a good business model and a public interest in supporting it. A few tens of thousands of pounds might make the difference between a wee club surviving and folding—with all the economic and social impacts that that has on a community.

Amendment 174C sets a timescale for making regulations. I would be grateful if the minister could say when he will decide whether he plans to use the powers that Parliament is likely to give the Government today. This is not a request to prejudge the consultation. Ministers will be free at the end of the process to retain what is in my view a failing status quo, but those who fill in the consultation over the summer should know when they can expect to hear back from the Government. With a clear commitment of that sort from the minister, I will not move amendment 174C.

I urge members to vote for all the substantive amendments on this issue, both those in my name and those in the name of the minister.

I move amendment 174A.

18:00

The Deputy Presiding Officer: I invite Nigel Don, on behalf of the Delegated Powers and Law Reform Committee, to speak to amendment 180 and other amendments in the group.

Nigel Don (Angus North and Mearns) (SNP): At its meeting of 9 June, the Delegated Powers and Law Reform Committee considered the bill as amended at stage 2. It agreed to call on the Scottish Government to amend the bill at stage 3 in order to ensure that the powers in sections 62E, 62F, 62I, 62K and 62P were fully cast as powers to make subordinate legislation subject to the negative procedure and to clarify, by defining the terms “prescribe” and “prescribed” or by such other means as it considered appropriate, whom the powers were conferred upon and what form the subordinate legislation made in their exercise was intended to take.

In the event that the Government’s stage 3 amendments did not cover that recommendation, the committee authorised the deputy convener and me to lodge suitable amendments. As the Government did not lodge such amendments, I have, on behalf of the committee, lodged amendments 180, 182, 186, 189 and 195 in order to give effect to the committee’s recommendations.

I appreciate that the Scottish Government has lodged amendments that remove the sections to which my amendments relate and that it has provided for a new approach to the issue of supporter ownership and supporter involvement in football clubs. I further appreciate from what we have heard so far that it seems likely that that new approach will prevail and that, therefore, the issue to which the amendments respond will no longer be relevant. With that in mind, I should say that I do not expect to move the amendments when I am invited to do so.

Nonetheless, it is the role of the Delegated Powers and Law Reform Committee to provide a check on the delegated powers in the bill as amended at stage 2, not to pre-suppose what might happen at stage 3. It is with that principle in mind that the committee agreed to lodge the amendments, and it is with that principle in mind that we will continue to apply close scrutiny to delegated powers in bills as amended, ensuring that those powers are appropriately drawn, justified and subject to sufficient levels of scrutiny.

Ken Macintosh: One of the most encouraging developments at stage 2 was the opportunity that Alison Johnstone spotted to introduce her proposals on the right of football supporters to buy their local club. That has been Labour Party policy for many years—

Members: Ah!

Ken Macintosh: Oh, yes. I was absolutely delighted that the committee unanimously supported—[Interruption.]

The Minister for Transport and Islands (Derek Mackay): They are catching up.

The Deputy Presiding Officer: Order.

Ken Macintosh: I think it was also Scottish National Party policy.
I was absolutely delighted that the committee unanimously supported the stage 2 amendments on this matter, despite the minister’s obvious misgivings about them. Since that stage, the Government has made it clear that, although it accepted the principle of the right to buy, it wished to go down a different route and to consult first with the football community before publishing secondary legislation.

It has only been with some reluctance, and solely in the interests of achieving consensual cross-party agreement, that my Labour colleagues and I, along with the Greens and the other parties, have accepted the position, but we will absolutely be supporting the Government’s amendments in this group.

The Government amendments were lodged quite late, however, hence the subsequent amendments from Alison Johnstone. I do not believe that there is anything in the four amendments that Alison Johnstone has lodged that anyone could object to—certainly not insisting on a right of appeal for owners, nor, I suggest, ensuring that supporters organisations should be open and democratic.

On the matter of timing, I think that we are all looking for some indication from the minister as to when the replacement regulations will be made. On funding, the proposed measures are not a request for public money to support professional football. We would not support such a request. They are simply asking for the power for ministers to award grants—in fact, it is so that they may consult on the power to award grants—just as they might often exercise the power to award small grants to any local organisation so as to improve its capacity to make a difference in its community.

We urge ministers and all members to vote for all the amendments in this group.

Liz Smith (Mid Scotland and Fife) (Con): I thank the Minister for Sport, Health Improvement and Mental Health, Jamie Hepburn, and Alison Johnstone for their helpful engagement before today’s stage 3 on what is a complex part of the bill.

I think that the vast majority of people recognise Alison Johnstone’s good intentions and her attempts to provide a community-based approach to football. In particular, her attempt to provide football fans with transparent, democratic and accountable processes to underpin the organisation of football in this country are laudable, as is the attempt to ensure that there is much better communication between football supporters and club management.

Let us be honest: football has not been in a good place in recent years, with many supporters being disillusioned and angry about the complete disconnect in many clubs between supporters, players and management in its various guises. That is not good for the game, so it is absolutely right to address the concerns.

That said, there are considerable complexities in part 5B of the bill, several of them in a legal context, and the Scottish Conservatives’ view is that Alison Johnstone’s amendments 174A, 174B, 174C and 176A could have some unintended consequences that could have a serious effect on the long-term sustainability of some clubs. Specifically, there remain some technical difficulties when it comes to defining “football supporters” and “football clubs”, and the latter clearly has legal implications, mainly because it is difficult to define specific assets and liabilities.

The Scottish Government’s deliberations over the right to influence, to govern and to bid and the right to buy make clear the complexities and the need for further consultation on the likely legal implications. They also make clear the concerns about finance, particularly at a time of considerable volatility within financial markets. The Morrow working group was specific in advising that it is not the Scottish Government’s responsibility to provide financial support, and clubs are rightly questioning where they might turn to for that support in future.

It is fair to say that few supporters want control over the day-to-day running of their club. What supporters want is better communication, greater transparency and more accountability when it comes to decision making, but that has to be in a context where we are 100 per cent sure of the legal implications. That is why we will support the Scottish Government’s amendments in the group and reject those that have been lodged by Alison Johnstone.

Jamie Hepburn: I thank Nigel Don for his amendments and his remarks. I think that he covered this, but he will appreciate why the Government did not lodge the amendments that his committee called for. We have taken a different approach.

I hope that I can provide Alison Johnstone with a degree of reassurance. The Government is committed to bringing forward legislation, using regulations, on this important issue. However, it is important that we consult fully on the issue before we do that. As Liz Smith rightly said, there has been talk about unintended consequences, and we want to make sure that there are none. That is why we want to have a full consultation.

As I said earlier, I have provided the draft consultation document to all members. It was issued to the Opposition spokespersons last week. I encourage all members to feed in their views before it is launched imminently. We want to
undertake the exercise as soon as possible, but there is still time for members to feed into the process.

In that regard, I say to Alison Johnstone that it is certainly not the Government’s intention to suggest that we are against the principles in the consultation or to guide the outcome. If she has specific concerns, I remain happy to speak to her about the issue.

I do not object in any way to the broad thrust of the principles of Alison Johnstone’s amendments. I just genuinely believe that it is important that we have a full consultation first, before we determine the specifics of any mechanism that we might bring forward. In that regard, notwithstanding the concerns that have been expressed about the consultation, there are a number of questions that relate directly to Alison Johnstone’s amendments. Question 5 is about the definition of “assets” in the context of a football club; question 6 is about how to define “football supporters” and “supporter groups”; question 8 is about raising the necessary funds; and question 10 asks for views on rights of appeal. We will therefore take further evidence on the specifics of the amendments before determining the most appropriate way forward.

I appreciate the calls for a timeline for using the amendments’ proposed powers, but it is important that we take the time necessary to ensure that any regulations are effective and do not have unintended consequences. It is important that we do not come up with a substandard mechanism, so the process might take a little time.

I understand the desire for the Scottish Government to be clear on its use of the powers. We have set out our intention to consult and we are serious, as I said at the outset, about our use of the powers, but it is not clear yet how we will use them. The consultation will address that, and options that arise from the consultation might take longer than others to act on. However, depending on the complexity of the option identified through the consultation, we would intend to bring forward the regulations in two or three years’ time—

Alison Johnstone: Will the minister give way?

Jamie Hepburn: Of course.

Alison Johnstone: I whole-heartedly appreciate the minister’s comments, particularly on the need to ensure that the consultation is thorough and appropriate. He said that that may take a little time, but could he be a little more specific?

Jamie Hepburn: I am sorry, but the member intervened at the wrong time because I was literally just saying that our intention is that it will take two to three years, depending on the complexity of the regulations that we bring forward. We want to bring them forward as quickly as possible, but we intend to operate on that broad timescale. On that basis, I hope that members can support our approach, which is one that we think is open and participative, and which will allow us—we hope—the best-informed regulations at the end of the day.

I thank Alison Johnstone for raising the issue and working with me on it. I urge members to support our amendments.

The Deputy Presiding Officer: I ask Alison Johnstone to wind up on amendment 174A and to indicate whether she intends to press or withdraw it.

Alison Johnstone: This has been a useful debate. I thank in particular Ken Macintosh and Tavish Scott for their support throughout the process. I also welcome the minister’s decision to accept that powers to introduce a fans’ right to buy should go into the bill.

There has been wide-ranging support for the principle. Liz Smith might be interested to know that even David Cameron noted, in response to a colleague at Westminster, that football clubs do sometimes find themselves in financial difficulty and that fan ownership would be a very positive move. There is growing support for the principle.

Fan ownership is a landmark proposal for Scottish football, which has seen club after club fall into administration or even disappear altogether. Fan ownership will not be for every club; we are talking about a mixed model, with potential flexibility. [Interruption.]

The Deputy Presiding Officer: Order, please. There are members in the chamber who wish to hear this speech.

Alison Johnstone: However, during our consultation we were told that even those fans who are happy with how their clubs are run now want to know that the right to fan ownership is there for the future, just in case.

The existing culture of football, where a small group of rich men can simply exclude all fans from decisions affecting their clubs, has to end. For too long, fans have stood on the touchline, or perhaps have even been sent to the stands, while their club is sent to the wall. It is also not enough for fans to be brought in just to pick up the pieces after a Romanov or similar. Football is our national game, and football supporters, whether they want to buy their clubs or not, are its best custodians. It is time to put the fans first.

I therefore encourage all members to vote for all amendments in this group—both those in my name and those in the name of the minister—and I am therefore pressing amendment 174A.
The Deputy Presiding Officer: The question is, that amendment 174A be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a one-minute division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McKilloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfrieshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Allard, Patrick (Galloway and West Dumfries) (SNP)
Benn, Justin (Edinburgh Central) (SNP)
Berriman, Matthew (Falkirk) (SNP)
Bhugra, Dinesh (Glasgow) (SNP)
Black, John (East Kilbride) (SNP)
Boyd, John (Burnley and Pendle) (SNP)
Buchanan, Irwin (Banffshire and Buchan Coast) (SNP)
Burke, Spencer (Strathclyde) (SNP)
Cairns, Harry (Glasgow) (SNP)
Campbell, Edward (Midlothian) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Craven, Simon (Eastleigh) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Mhairi (Ayrshire North) (SNP)
Davies, dropsy (Wrexham) (SNP)
Dawson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Golding, Annabel (Wester Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Alieen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Peterson, Gil (Clydebank and Milngavie) (SNP)
Porteous, Dennis (Aberdeen Shettleston) (SNP)
Roseby, John (Glasgow) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen East) (SNP)
Scourie, Alasdair (Highlands and Islands) (SNP)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Inez (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thomson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wilson, John (South Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 40, Against 78, Abstentions 0.

Amendment 174A disagreed to.

18:15
Amendment 174B moved—[Alison Johnstone].
The Deputy Presiding Officer: The question is, that amendment 174B be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollock) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfrieshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland) (LD)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamsen, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Iain (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davison, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Dorais, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graeme, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrock, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskil, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
McDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKevie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 39, Against 78, Abstentions 0.

Amendment 174B disagreed to.

Amendment 174C moved—[Alison Johnstone].

The Deputy Presiding Officer: The question is, that amendment 174C be agreed to. Are we agreed?
**Members:**

The Deputy Presiding Officer: There will be a division.

**For**

- Baker, Claire (Mid Scotland and Fife) (Lab)
- Baker, Richard (North East Scotland) (Lab)
- Beamish, Claudia (South Scotland) (Lab)
- Bibby, Neil (West Scotland) (Lab)
- Boyack, Sarah (Lothian) (Lab)
- Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
- Dugdale, Kezia (Lothian) (Lab)
- Fee, Mary (West Scotland) (Lab)
- Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
- Findlay, Neil (Lothian) (Lab)
- Finnie, John (Highlands and Islands) (Ind)
- Grant, Rhoda (Highlands and Islands) (Lab)
- Gray, Iain (East Lothian) (Lab)
- Harvie, Patrick (Glasgow) (Green)
- Henry, Hugh (Renfrewshire South) (Lab)
- Hilton, Cara (Dunfermline) (Lab)
- Hume, Jim (South Scotland) (LD)
- Johnstone, Alison (Lothian) (Green)
- Kelly, James (Rutherglen) (Lab)
- Lamont, Johann (Glasgow Pollok) (Lab)
- Macdonald, Lewis (North East Scotland) (Lab)
- Macintosh, Ken (Eastwood) (Lab)
- Malik, Hanzala (Glasgow) (Lab)
- Marra, Jenny (North East Scotland) (Lab)
- Martin, Paul (Glasgow Provan) (Lab)
- McCulloch, Margaret (Central Scotland) (Lab)
- McDougall, Margaret (West Scotland) (Lab)
- McInnes, Alison (North East Scotland) (LD)
- McMahon, Siobhan (Central Scotland) (Lab)
- McNeil, Duncan (Greenock and Inverclyde) (Lab)
- McTaggart, Anne (Glasgow) (Lab)
- Murray, Elaine (Dumfries and Galloway) (Lab)
- Pearson, Graeme (South Scotland) (Lab)
- Pentland, John (Motherwell and Wishaw) (Lab)
- Rowley, Alex (Cowdenbeath) (Lab)
- Scott, Tavish (Shetland Islands) (LD)
- Smith, Drew (Glasgow) (Lab)
- Steward, David (Highlands and Islands) (Lab)
- Urquhart, Jean (Highlands and Islands) (Ind)
- Wilson, John (Central Scotland) (Ind)

**Against**

- Adam, George (Paisley) (SNP)
- Adamson, Clare (Central Scotland) (SNP)
- Allard, Christian (North East Scotland) (SNP)
- Beattie, Colin (Midlothian North and Musselburgh) (SNP)
- Biagi, Marco (Edinburgh Central) (SNP)
- Brodie, Chic (South Scotland) (SNP)
- Brown, Gavin (Lothian) (Con)
- Brown, Keith (Clackmannanshire and Dunblane) (SNP)
- Buchanan, Cameron (Lothian) (Con)
- Burgess, Margaret (Cunninghame South) (SNP)
- Campbell, Roderick (North East Fife) (SNP)
- Carlaw, Jackson (West Scotland) (Con)
- Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
- Constance, Angela (Almond Valley) (SNP)
- Crawford, Bruce (Stirling) (SNP)
- Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
- Davidson, Ruth (Glasgow) (Con)
- Dey, Graeme (Angus South) (SNP)
- Don, Nigel (Angus North and Mearns) (SNP)
- Doris, Bob (Glasgow) (SNP)
- Dornan, James (Glasgow Cathcart) (SNP)
- Eadie, Jim (Edinburgh Southern) (SNP)
- Ewing, Annabelle (Mid Scotland and Fife) (SNP)
- Ewing, Fergus (Inverness and Nairn) (SNP)
- Fabiani, Linda (East Kilbride) (SNP)
- Fergusson, Alex (Galloway and West Dumfries) (Con)
- Fitzpatrick, Joe (Dundee City West) (SNP)
- Fraser, Murdo (Mid Scotland and Fife) (Con)
- Gibson, Kenneth (Cunninghame North) (SNP)
- Goldie, Annabel (West Scotland) (Con)
- Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
- Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
- Hyslop, Fiona (Linlithgow) (SNP)
- Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
- Johnstone, Alex (North East Scotland) (Con)
- Keir, Colin (Edinburgh South) (SNP)
- Kidd, Bill (Glasgow Anniesland) (SNP)
- Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
- Lochhead, Richard (Moray) (SNP)
- Lyle, Richard (Central Scotland) (SNP)
- MacAskill, Kenny (Edinburgh Eastern) (SNP)
- MacDonald, Angus (Falkirk East) (SNP)
- MacDonald, Gordon (Edinburgh Pentlands) (SNP)
- Mackay, Derek (Renfrewshire North and West) (SNP)
- MacKenzie, Mike (Highlands and Islands) (SNP)
- Manson, John (Glasgow Shettleston) (SNP)
- Matheson, Michael (Falkirk West) (SNP)
- Maxwell, Stewart (West Scotland) (SNP)
- McAlpine, Joan (South Scotland) (SNP)
- McDonald, Mark (Aberdeen Donside) (SNP)
- McGrigor, Jamie (Highlands and Islands) (Con)
- McIntosh, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
- McLeod, Aileen (South Scotland) (SNP)
- McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
- McMillan, Stuart (West Scotland) (SNP)
- Milne, Nanette (North East Scotland) (Con)
- Mitchell, Margaret (Central Scotland) (Con)
- Neil, Alex (Airdrie and Shotts) (SNP)
- Paterson, Gil (Clydebank and Milngavie) (SNP)
- Robertson, Dennis (Aberdeenshire West) (SNP)
- Robison, Shona (Dundee City East) (SNP)
- Russell, Michael (Argyle and Bute) (SNP)
- Salmond, Alex (Aberdeenshire East) (SNP)
- Scanlon, Mary (Highlands and Islands) (Con)
- Scott, John (Ayr) (Con)
- Smith, Liz (Mid Scotland and Fife) (Con)
- Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
- Stewart, Kevin (Aberdeen Central) (SNP)
- Sturgeon, Nicola (Glasgow Southside) (SNP)
- Swinney, John (Perthshire North) (SNP)
- Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
- Torrance, David (Kirkcaldy) (SNP)
- Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
- Wheelhouse, Paul (South Scotland) (SNP)
- White, Sandra (Glasgow Kelvin) (SNP)
- Yousaf, Humza (Glasgow) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 40, Against 78, Abstentions 0.

**Amendment 174C disagreed to.**

**Amendment 174 agreed to.**

**Amendment 175 moved—[Jamie Hepburn]—and agreed to.**

**Amendment 176 moved—[Jamie Hepburn].**

**Amendment 176A moved—[Alison Johnstone].**
The Deputy Presiding Officer: The question is, that amendment 176A be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Allister, Kenneth (Cunninghame North) (SNP)
Anderson, Kirsten (Glasgow) (SNP)
Anderson, Kenny (North East Scotland) (SNP)
Ardler, Graeme (Angus South) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Wilson, John (Central Scotland) (Ind)

Amendment 176A disagreed to.

Amendment 176 agreed to.

Section 62B—Meaning of “supporters’ trust”

Amendment 177 moved—[Jamie Hepburn]—and agreed to.
Section 62C—Meaning of “Scottish Professional Football League Club”
Amendment 178 moved—[Jamie Hepburn]—and agreed to.

Section 62D—Supporters trust register
Amendment 179 moved—[Jamie Hepburn]—and agreed to.

Section 62E—Meaning of “ownership”
Amendment 180 not moved.
Amendment 181 moved—[Jamie Hepburn]—and agreed to.

Section 62F—Supporters’ trust registration of interest in buying a football club
Amendment 182 not moved.
Amendment 183 moved—[Jamie Hepburn]—and agreed to.

Section 62G—Effect of registration
Amendment 184 moved—[Jamie Hepburn]—and agreed to.

Section 62H—Procedure for late applications
Amendment 185 moved—[Jamie Hepburn]—and agreed to.

Section 62I—Activation of supporters’ trust right to buy
Amendment 186 not moved.
Amendment 187 moved—[Jamie Hepburn]—and agreed to.

Section 62J—Supporters’ trust right to buy
Amendment 188 moved—[Jamie Hepburn]—and agreed to.

Section 62K—Procedure after activation of right to buy
Amendment 189 not moved.
Amendment 190 moved—[Jamie Hepburn]—and agreed to.

Section 62L—Exercise of right to buy: approval of supporters’ trust and consent of the Scottish Ministers
Amendment 191 moved—[Jamie Hepburn]—and agreed to.

Section 62M—Declinature or extinction of right to buy
Amendment 192 moved—[Jamie Hepburn]—and agreed to.

Section 62N—Right to buy same club exercisable by only one supporters’ trust
Amendment 193 moved—[Jamie Hepburn]—and agreed to.

Section 62O—Procedure for buying
Amendment 194 moved—[Jamie Hepburn]—and agreed to.

Section 62P—Application for funding
Amendment 195 not moved.
Amendment 196 moved—[Jamie Hepburn]—and agreed to.

Section 62Q—Assessment of value of football club
Amendment 197 moved—[Jamie Hepburn]—and agreed to.

Section 62R—Appeals
Amendment 198 moved—[Jamie Hepburn]—and agreed to.

Section 62S—Supporters’ trust right to buy shares in a football club
Amendment 199 moved—[Jamie Hepburn]—and agreed to.

Section 68—Meaning of “allotment”

The Deputy Presiding Officer: Group 22 is on size of, and requests for particular sizes of, allotments et cetera. Amendment 101, in the name of the Minister for Environment, Climate Change and Land Reform, is grouped with amendments 102, 103, 105, 107, 111, 112 and 122.

Aileen McLeod: The amendments in group 22 will amend the provisions on the size of an allotment. That is of particular importance to a number of stakeholders and has been debated at length. It might therefore be helpful if, before addressing each amendment in the group, I briefly set the context.

People in Scotland are able to grow their own food in a number of ways, including community growing places and allotments. It is important to distinguish carefully between the two. The most important distinction lies in the scale of operation, with allotments generally being of considerably greater size than community plots. The approach in the bill, as it will be amended, will reflect that
consideration. Although there will be a large variety of sizes for allotments—reflecting, quite properly, the different wishes of allotment holders and different practical considerations in each locality—the bill’s objective is that allotments should be of about 250m² unless another size is agreed, on a case-by-case basis, between local authorities and individuals who are requesting allotments.

Amendment 105 provides that when a person requests to lease an allotment, if the size of the allotment that is being sought is smaller than 250m², they must specify that smaller size in the request. Amendment 107 will entitle a person to wait for an allotment of approximately 250m² until one of that size is offered. It also provides local authorities with the flexibility to provide different sizes of allotments to meet the differing needs and wishes of their residents.

Amendment 102 will delete amendments on the size of allotments that were agreed to at stage 2, and amendment 101 is a drafting change that is consequential on amendment 102.

Amendment 103 will remove the requirement for Scottish ministers to make regulations on the size or sizes of allotments, which is unnecessary given the amendments that are being brought forward on the size of allotments. I am conscious that the provisions may appear to be complex, and for that reason we will pay particular attention to the guidance that is to be developed in that area. We look forward to working closely with stakeholders.

Amendments 111 and 112 will ensure that when ministers decide whether to allow local authorities to dispose of an allotment site or to renounce its lease, they must be satisfied not only that tenants will be offered new allotments, but that they will be of the same or similar size. Amendment 122 will allow Scottish ministers to consent to a local authority’s resuming an allotment site, or part of that site, if the local authority has offered an affected tenant an allotment of the same or similar area.

The debate on allotment size has been long and, at times, difficult, so I am delighted that we have reached consensus with stakeholders on the way forward. I pay tribute to the collaborative work in recent weeks between the Scottish Allotments and Gardens Society, local authorities and the Convention of Scottish Local Authorities to achieve provisions that go as far as we can to meet the needs of all. In the light of the consensus that is now secured on the amendments, I urge members to support them.

I move amendment 101.

Ken Macintosh: It is fair to say that it has taken some time and much effort from the minister, members of the committee, and especially the Scottish Allotments and Gardens Society to reach today’s consensual position, so we will support the Government amendments in group 22.

However, I would welcome clarification on two points. We would have preferred to keep the definition of the plot size of an allotment in the bill—section 70 still contains a reference to 250m². Will the minister confirm that despite the removal of previous amendments, it is still the Scottish Government’s intention that the default size for allotments in the future will be 250m², unless someone wants a smaller plot?

The introduction of the trigger point for waiting lists is to be deferred for three years to give local authorities time to gear up and plan for increasing provision. Will the minister confirm that people who are already on a local authority waiting list will have the length of time that they have already waited taken into account? Will she also confirm that it will not be acceptable for local authorities simply to sit around and do nothing about waiting lists for three years, and that they will be expected to start preparing the ground for increased provision from the day of enactment?

Cameron Buchanan: I agree with amendments 101 to 103, 105 and 107.

Amendments 111, 112 and 122 would instruct that Scottish Ministers may not consent to change of use of an allotment site unless each tenant is offered a nearby allotment of the same or similar size.

I understand the motivation to protect allotment holders, but I am concerned that the amendments would overly restrict local autonomy and be to the detriment of aspiring allotment holders in the long term. If power is truly to be devolved from the centre, local authorities should be able to decide whether changing the use of an allotment site is in the local interest, subject to protections for allotment holders. The existing provision that tenants should be offered another nearby allotment offers protection, while retaining the ability for local authorities to offer replacement allotments where they see fit.

I rather fear that amendments 111, 112 and 122 would push the balance too far against autonomy, so that local authorities would find it very difficult to change the use of an allotment site, even if they considered it to be in the local interest. Furthermore, the amendments may be detrimental to allotment holders in the long term, because local authorities may be more reluctant to create new allotment sites in the knowledge that they might find it very difficult to change their use in the future. That unfortunate consequence would result in fewer allotment sites being created in the first place, and longer waiting lists for aspiring allotment holders.
The Deputy Presiding Officer: I invite the minister to wind up.

Aileen McLeod: I will deal with some of Ken Macintosh’s points. If a person requests a particular size of allotment that is smaller than 250m² and is offered an allotment of that size, then the request will be treated as having been agreed, and the person’s name will be removed from the waiting list. If that person is offered and accepts an alternative size, then the request is agreed, and the person will be taken off the waiting list. However, if that person does not take up the offer of the alternative size of plot, the request is not agreed and the person will be entitled to remain on the waiting list until the particular size that they have requested is offered.

If a person wants an allotment of 250m² and has not requested a smaller size, the request is treated as having been agreed when an allotment of about 250m² is offered, and the person will be removed from the waiting list.

If a person has not requested an allotment smaller than 250m², and the person is offered and accepts an allotment other than one of about 250m², then the request is agreed, and the person will be taken off the waiting list. However, should such a person be offered an allotment that is not about 250m², and does not take up the offer, the request is not agreed to and the person will remain on the waiting list.

I hope that that gives Ken Macintosh the clarification that he was looking for.

Amendment 101 agreed to.

The Deputy Presiding Officer: Group 23 is on sale of allotment produce. Amendment 200, in the name of Cameron Buchanan, is grouped with amendments 202, 203 and 213.

Cameron Buchanan: Amendments 200, 203 and 213 would make it clear that surplus produce from allotments may be sold to make a profit. It is unclear why allotment users should be prevented from doing so. There would be an issue if large retailers were taking up allotments to supply their stores or local supermarkets, but I do not think that that is what we are talking about. Small sales for relatively small amounts of money are not a cog in the corporate supply chain; rather, they are a chance for waste to be avoided and for compensation for hard work to be obtained where it is deserved.

We are talking about members of the public who want to enjoy the use of an allotment space and cultivate vegetables, fruit, herbs or flowers. If they happen to have excess produce and want to sell it, who are we to forbid that?

In any case, how could we define “profit”? Allotment users can take a certain pride in selling the produce that they have worked hard to cultivate. Any “profit” gained from such sales are not intended for a company’s balance sheet; rather, they are a small reward for hours of work put in that have resulted in surplus produce.

Furthermore, a provision that allows sale of surplus produce “other than with a view to making a profit” brings questions of definition and enforceability. How are the police meant to check whether the proceeds of each allotment sale are not for profit?

I lodged amendment 202 to clarify that allotment land is not to be considered agricultural solely because someone makes a profit from selling surplus produce, in order to alleviate potential concerns in that area.

I move amendment 200.

Ken Macintosh: I suggest that Cameron Buchanan might have misunderstood what the committee discussed and agreed at stage 2. As it stands, the bill disqualifies commercial exploitation of allotments but it does not disallow small-scale remuneration if people have an extra bag of potatoes or if they want to cover the costs of their heating. His amendments are entirely unnecessary and miss the point of what the committee has already agreed.

Aileen McLeod: Amendments 200, 202, 203 and 213 would allow surplus produce from allotments to be sold for profit. Additionally, they would remove local authorities’ ability to include provisions prohibiting the sale of surplus produce in regulations about allotments. That could prevent local authorities from taking account of local factors in determining how surplus produce from allotments in their areas may be sold.

The Scottish Allotments and Gardens Society has argued strongly that the purpose of an allotment is to support self-sufficiency in good food rather than being a means of providing allotment tenants with additional income. The society considers that any proceeds from the sale of produce should go back to the allotment association to be reinvested in the community of allotment holders.

I recognise Mr Buchanan’s desire to include allotment produce as part of the wider food economy, but that goes against the whole ethos of allotments, which is to ensure that a family is self-sufficient in good food. As such, I ask Mr Buchanan to withdraw amendment 200 and not move his other amendments in the group.

Cameron Buchanan: I intend to press amendment 200. There must be a definition of profit. I am not really talking about commercial profit but about people being prevented from
selling their produce outside the allotment area, at a car boot sale or somewhere else. That should not be restricted.

Amendment 202 says that allotment land should be not considered as being used for agriculture solely because someone makes a profit from selling surplus produce. The point needs to be clarified.

The Deputy Presiding Officer: The question is, that amendment 200 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fergusson, Joe (Dundee City West) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Fitzpatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahan, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Neill, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Forthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Claire (Mid Scotland and Fife) (SNP)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bemish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dorman, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fitzpatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahan, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Neill, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Forthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
The Deputy Presiding Officer: The result of the division is: For 16, Against 103, Abstentions 0. Amendment 200 disagreed to.

Amendment 102 moved—[Aileen McLeod]—and agreed to.

Amendment 202 moved—[Cameron Buchanan].

The Deputy Presiding Officer: The question is, that amendment 202 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)

The Deputy Presiding Officer: The result of the division is: For 15, Against 103, Abstentions 0.

Amendment 202 disagreed to.

Section 69A—Regulations as to size of allotments
Amendment 103 moved—[Aileen McLeod]—and agreed to.

Section 70—Request to lease allotment
The Deputy Presiding Officer: Group 24 is on minor amendments regarding allotments. Amendment 104, in the name of Minister for Environment, Climate Change and Land Reform, is grouped with amendments 106, 108 to 110, 113 to 121, 123 to 130, 132, 134 and 145.

Aileen McLeod: This is a group of minor amendments. Amendment 104 provides that a person may also make a request to sublease an allotment from a tenant of the authority in circumstances where the authority has leased the allotment site.

Amendments 106, 126, 129 and 130 are intended to ensure that the consultation requirements in relation to local authorities in part 7 are consistent with those applying elsewhere in the bill.

Amendment 108 adjusts the drafting and in particular introduces the words “continuous period” into the provision. That confirms the intention that a local authority is required to take reasonable steps to ensure that a person on the waiting list does not remain on the list for a continuous period of more than five years, rather than a cumulative period of five years, where the individual may come off and then go back on the waiting list for various reasons. We have worked closely with the Scottish Allotments and Gardens Society, local authorities and the Convention of Scottish Local Authorities in reviewing the provision, and it has been collectively agreed that this particular provision will be commenced so that it takes effect three years after the rest of part 7, in order to allow local authorities greater time to prepare for the provision.

Amendment 109 replaces section 72(3A), which currently requires local authorities, when taking reasonable steps to provide allotments, to have regard to the need to make them available reasonably close to the residence of persons on the waiting list. The requirement was introduced by Alex Rowley’s amendment at stage 2. Amendment 109 adjusts the drafting and in particular replaces the reference to “need” with “desirability”. That ensures that the spirit of the provision is maintained while the amendment provides local authorities with some flexibility in meeting the requirement.

Amendment 110 will provide that, if a local authority asks the tenant of an allotment site to grant a sublease of an unoccupied allotment on the allotment site to a person who has requested an allotment, the tenant must grant that sublease.

Subsection (3A) of section 77 was added to the bill at stage 2. It requires a local authority, when detailing how it intends to increase the provision of allotment sites and community growing areas of land in its area, to describe whether and how that will apply to communities that experience socioeconomic disadvantage. Amendments 113 and 114 are minor and technical amendments that are intended to ensure that the provision achieves the intended effect.

Following our commitment at stage 2 to consider requiring local authorities to publish a statement about fair rent in relation to allotments, amendment 115 will require local authorities to include in their annual allotments report details of the rent payable in respect of allotments in their area and details of how those rents are determined by reference to the requirement for local authority regulations to include a method of determining fair rent.

Section 82(1) permits a local authority to incur expenditure for the purpose of promoting allotments in its area and providing training by or on behalf of the local authority to tenants and potential tenants about the use of allotments. Subsection (2) was added to the bill at stage 2 and requires local authorities to take into account the desirability of exercising that power in relation to communities that experience socioeconomic disadvantage. Amendments 116 and 117 are technical amendments to subsection (2) and are designed to ensure that the provision achieves its intended effect.

18:45

During the stage 2 debate, it was mentioned that in some areas the use of school buildings and the operation of other community buildings have been transferred to arm’s-length external organisations or other bodies. We have looked into that situation and amendment 118 expands the provision to include not only premises that are maintained directly by the local authority but premises that are maintained and used in connection with services delegated by the local authority or that are maintained and whose use is managed by another person in accordance with arrangements between that person and the local authority.
I am confident that those descriptions cover the types of arrangements in place for schools and community buildings and that they will ensure that allotment associations can find suitable places to meet.

Amendments 119 to 123 make minor amendments to section 84.

Amendment 124 makes it clear that, where a local authority grants the lease of an allotment site and the tenant of an allotment subleases an allotment from the local authority’s tenant—such as an allotment association—the tenant of the allotment must not assign the lease of the allotment unless the local authority that granted the lease of the allotment site agrees to the assignation.

Amendment 125 is a minor drafting amendment to section 89.

Amendments 127 and 128 make minor amendments to section 90, which makes provision for compensation for deterioration in allotments caused by tenants.

Amendment 132 is a minor drafting change to achieve greater consistency with the language of the Equality Act 2010.

Amendments 134 and 145 are consequential amendments to ensure consistency between the provisions of the Local Government (Scotland) Act 1973 and the provisions of the bill.

I move amendment 104.

Cameron Buchanan: Regarding amendments 106, 126, 129 and 130, could the minister confirm that the intention remains that the Scottish ministers allow each willing local authority to contribute to the relevant consultation?

Aileen McLeod: On the point that Cameron Buchanan raised, amendments 106, 126, 129 and 130 are minor amendments that ensure that the consultation requirements in relation to local authorities in part 7 of the bill are consistent with those that apply elsewhere in the bill.

Amendment 106 relates to the consultation that is carried out before regulations are made about the information that must be included in a request to lease an allotment.

Amendment 126 relates to the consultation requirements before making regulations on compensation for disturbance.

Amendment 129 relates to the consultation requirements before making regulations on compensation for deterioration of allotments.

Amendment 130 relates to the consultation requirements before making regulations in connection with the compensation that is payable to a tenant who suffers the loss of any crop as a result of an allotment being—

Cameron Buchanan: Will the member take an intervention?

Aileen McLeod: Yes.

Cameron Buchanan: My question was whether that applies to each local authority. The amendments do not specify how many local authorities have to be consulted. Does that mean that every local authority has to be consulted before a decision can be made?

Aileen McLeod: Each local authority will be consulted.

Amendment 104 agreed to.

Amendments 105 and 106 moved—[Aileen McLeod]—and agreed to.

After section 70

Amendment 107 moved—[Aileen McLeod]—and agreed to.

Section 72—Duty to provide allotments

Amendments 108 and 109 moved—[Aileen McLeod]—and agreed to.

After section 72

Amendment 110 moved—[Aileen McLeod]—and agreed to.

Section 73—Allotment site regulations

Amendment 203 not moved.

Section 75—Disposal etc of allotments and allotment sites owned by local authority

The Deputy Presiding Officer: Amendments 111 to 124 are all in the name of the Minister for Environment, Climate Change and Land Reform and have all been previously debated. Does any member object to a single question being put on them?

Members: Yes.

The Deputy Presiding Officer: Members object, so I will put the question on each amendment individually. [Interruption.] Order, please.

Amendment 111 moved—[Aileen McLeod].

The Deputy Presiding Officer: The question is, that amendment 111 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.
For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glascow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grasheine, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malik, Hanzala (Glascow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glascow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glascow) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheeltoune, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glascow) (SNP)

Against
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glascow) (Con)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 104, Against 15, Abstentions 0.

Amendment 111 agreed to.

Section 76—Disposal etc of allotments and allotment sites leased by local authority

Amendment 112 moved—[Aileen McLeod].

The Deputy Presiding Officer: The question is, that amendment 112 be agreed to. Are we agreed?

Members: No.
For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, John (Blackwood, Motherwell and Wishaw) (SNP)
Burges, Morgan (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Cunningham, Jim (Glasgow Govan) (SNP)
Cunningham, Aileen (Glasgow) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eade, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Ewan (Inverness East) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hum, Jim (South Scotland) (LD)
Hystolp, Fiona (Linthgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

Against
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: There will be a division.
Amendment 112 agreed to.
Alex Fergusson: On a point of order, Presiding Officer. In an effort to be helpful, we would be very happy for one question to be put in regard to the rest of the amendments.

The Deputy Presiding Officer: Thank you very much.
Section 77—Duty to prepare food-growing strategy
Amendments 113 and 114 moved—[Aileen McLeod]—and agreed to.

Section 79—Annual allotments report
Amendment 115 moved—[Aileen McLeod]—and agreed to.

Section 82—Promotion and use of allotments: expenditure
Amendments 116 and 117 moved—[Aileen McLeod]—and agreed to.

Section 82A—Use of local authority premises for meetings
Amendment 118 moved—[Aileen McLeod]—and agreed to.

Section 84—Resumption of allotment or allotment site by local authority
Amendments 119 to 123 moved—[Aileen McLeod]—and agreed to.

Section 86A—Prohibition against assignation or subletting
Amendment 124 moved—[Aileen McLeod]—and agreed to.

Section 87—Sale of surplus produce
Amendment 213 moved—[Cameron Buchanan].

The Deputy Presiding Officer: The question is, that amendment 213 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beanish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Edie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Finnis, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Finn, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Humie, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Charles (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (Shetland Islands) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 15, Against 103, Abstentions 0.

Amendment 213 disagreed to.

Section 89—Compensation for disturbance
Amendments 125 and 126 moved—[Aileen McLeod]—and agreed to.

Section 90—Compensation for deterioration of allotment
Amendments 127 to 129 moved—[Aileen McLeod]—and agreed to.

Section 91—Compensation for loss of crops
Amendment 130 moved—[Aileen McLeod]—and agreed to.

After section 92

The Deputy Presiding Officer: Group 25 is on guidance. Amendment 131, in the name of the Minister for Environment, Climate Change and Land Reform, is grouped with amendment 22.

Aileen McLeod: Amendment 131 will insert a new section into part 7 of the bill. First, the new section will require local authorities to have regard to any guidance that is issued by the Scottish ministers on the carrying out of functions by local authorities under part 7 of the bill. Secondly, the new section will require the Scottish ministers, before issuing the guidance, to consult local authorities and any other persons who appear to them to have an interest.

Those measures will help to ensure continued good partnership working on allotments between ministers, local authorities and stakeholders. The guidance will aid the implementation of those sections of part 7 that may be technical in nature, which we know will be welcomed by the Scottish Allotments and Gardens Society as well as by local authorities.

Section 95 of the bill currently requires that the Scottish ministers must publish any guidance that they issue in relation to part 2 or part 6 of the bill.

Requirements for public authorities to have regard to guidance that is issued by the Scottish ministers were added to parts 3, 5 and 7A of the bill at stage 2. In addition, amendment 131 will require local authorities to have regard to guidance that is issued by the Scottish ministers on their functions under part 7 of the bill.

Amendment 22 will provide that the Scottish ministers must also publish any guidance that they issue relating to parts 3, 5, 7 and 7A of the bill.

I move amendment 131.

Amendment 131 agreed to.

Section 93—Interpretation of Part 7
Amendment 132 moved—[Aileen McLeod]—and agreed to.

Section 94—Schemes for reduction and remission of non-domestic rates

The Deputy Presiding Officer: Group 26 is on schemes for reduction and remission of rates. Amendment 21, in the name of the Minister for Local Government and Community Empowerment, is the only amendment in the group.

Marco Biagi: The bill provides for a new power to allow councils to offer additional rates relief within their area. Amendment 21 will clarify wording that was agreed following an amendment at stage 2—by a member who shall remain nameless—to replace a potentially dubious comma after “expenditure” with “and” so that it is clear beyond doubt that the “income” referred to is the authority’s income.

I move amendment 21.

Amendment 21 agreed to.

Section 95—Guidance under Parts 2 and 6: publication

Amendment 22 moved—[Marco Biagi]—and agreed to.
Section 96—Subordinate legislation
Amendments 215 and 133 moved—[Marco Biagi]—and agreed to.

Schedule 3—Relevant authorities

The Deputy Presiding Officer: Group 27 is on minor amendments—community planning, asset transfer requests and long title. Amendment 23, in the name of the Minister for Local Government and Community Empowerment, is grouped with amendments 24 to 26.

Marco Biagi: The Scottish Court Service is listed as a relevant authority under the bill. The service has now changed its name to become the Scottish Courts and Tribunals Service, and amendment 23 reflects that change.

Amendment 24 makes two consequential changes in relation to community planning. The first change deals with consultation by an education authority before making certain changes to education provision in its area, and requires it to include the local community planning partnership and any other CPPs that it considers to be relevant.

The second change relates to the joint inspection of children’s services. Those services are currently defined with reference to the Local Government in Scotland Act 2003. In future, they will be defined with reference to the Children and Young People (Scotland) Act 2014.

Amendments 25 and 26 alter the long title of the bill to include reference to provisions that were added at stage 2.

I move amendment 23.

Amendment 23 agreed to.

Schedule 4—Minor and consequential amendments

Amendments 134 to 144 and 24 moved—[Aileen McLeod]—and agreed to.

Schedule 5—Repeals

Amendment 145 moved—[Aileen McLeod]—and agreed to.

Long title

Amendments 146, 25, 217 and 26 moved—[Aileen McLeod]—and agreed to.

The Deputy Presiding Officer: That ends consideration of amendments. I will allow members to move places. I ask members who are leaving the chamber to do so quietly because we are still in session.

Community Empowerment (Scotland) Bill

The Deputy Presiding Officer (Elaine Smith): The next item of business is a debate on motion S4M-13523, in the name of Marco Biagi, on the Community Empowerment (Scotland) Bill. Before I invite the minister to open the debate, I call on the Cabinet Secretary for Social Justice, Communities and Pensioners’ Rights to signify Crown consent to the bill.

The Cabinet Secretary for Social Justice, Communities and Pensioners’ Rights (Alex Neil): For the purposes of rule 9.11 of the standing orders, I advise Parliament that Her Majesty, having been informed of the purport of the Community Empowerment (Scotland) Bill, has consented to place her prerogative and interest, in so far as they are affected by the bill, at the disposal of Parliament for the purposes of the bill.

The Deputy Presiding Officer: Many thanks. We can now begin the debate.

19:02

The Minister for Local Government and Community Empowerment (Marco Biagi): I have not emptied a room this quickly since I got up to do karaoke at the party conference.

I thank the members of all parties who have contributed today and who are still here. I also thank the huge number of people who, throughout the past three years, have contributed to making the bill what it is today. It has been a collective effort between Government, Parliament and the grass roots, as befits a bill that is all about community empowerment. The bill is all the better for their participation and the challenge and input that they provided.

On behalf of my colleagues, I thank Rob Gibson and the members of the Rural Affairs, Climate Change and Environment Committee for their incredibly detailed scrutiny of the community right to buy. I also thank Kevin Stewart and the members of the Local Government and Regeneration Committee for their thorough scrutiny of the bill during stages 1 and 2, including some interesting meetings that I was present at, enjoying the hospitality and debate. Both committees must be applauded for taking evidence from such a wide range of organisations and individuals. That really careful, balanced consideration of the proposals led to an improved bill that will make a significant difference to communities throughout Scotland for years to come.

At stage 2, I accepted amendments from all sides, which shows that, when good ideas are
proposed to the Government, it will listen to them wherever they come from. That has continued today in discussions that have often been more about detail than fundamental disagreements on principle.

From the national outcomes to participation requests, from football to allotments, I am pleased that we have that shared vision and desire for more empowerment of and participation from communities of all types across Scotland. The focus has been on ensuring that we have legislation that will lift up and free the voices of people across Scotland who want to take part. We want to let them set local agendas in line with their wishes and concerns.

If I were to sum up the headings of the bill, there would be a series of them. The first would be participation. In the bill, participation requests provide a mechanism for communities to gain a proactive role in how local services are planned and delivered, so that they can take part. Community bodies will be able to use the bill to discuss with service providers how they could better meet their users’ needs, and they will be able to offer volunteers to support a service or even propose to take over the delivery of the service. Participation requests will be a powerful tool that will enable communities to take action on their terms. I want that to spread and take root, so that there is a go-to point for those communities that wish to realise their ambitions. People will be able to highlight where improvements can be made and suggest solutions as to how things can be taken forward and be delivered together.

Michael Russell (Argyll and Bute) (SNP): I thank the minister for allowing that to happen for one particular community in my constituency: the community of south Cowal. The minister was very helpful in ensuring that the relevant amendments were drafted and accepted by the committee and by Parliament, and they will give new hope to a community that desperately wants to purchase Castle Toward but is being prevented from doing so by Parliament, and they will give new hope to a community of south Cowal. The minister was very happy to put on record my support for communities that wish to take up the opportunities to participate that the bill presents.

Marco Biagi: Michael Russell will be very glad to have put that on the record, and I am certainly happy to put on record my support for communities that wish to take up the opportunities to participate that the bill presents.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Will the minister give way?

Marco Biagi: In a moment.

To help with our move towards participation and empowerment, at stage 2 we put a new power in the bill that will require all public bodies to promote and facilitate the participation of people and communities in their decisions and activities. That is a challenge, but it is one that is worth accepting. We know that already there are people out there who are pioneering techniques such as participatory budgeting, which Malcolm Chisholm will know very well from the Leith decides initiative in his constituency.

Malcolm Chisholm: During consideration of amendments I raised a point about arm’s-length external organisations, which I believe are not mentioned in the bill. Will the minister confirm that they will definitely be included in regulations?

Marco Biagi: Yes. I noticed the omission and I was going to come back to it in my closing remarks. I am happy to answer that question right now. ALEOs are not listed in schedule 3 and are not public authorities, but the Scottish Government has the ability to designate by order additional organisations under certain circumstances, provided they meet certain qualifications. There is a blurred boundary between what is a public body and what is an entirely private body, and we must be aware of competence, but the bill has that provision and—as we did with allotments, following a particular concern about them—we will seek to ensure that ALEOs fall within the spirit of the bill, in so far as they are bodies that deliver on behalf of the public sector.

Alex Salmond (Aberdeenshire East) (SNP): The community right-to-buy process has evolved over the past few years and the bill takes it much further than it has been before. However, there is nothing to stop it evolving further. For example, in the future a community of anglers might have the right to buy out the netting rights of one of Scotland’s great fishing rivers. That sort of thing could be given active consideration as the process moves forward.

Marco Biagi: Yes. That takes me back to the discussion that I had with Alex Fergusson on amendments regarding communities of interest. In this bill we are allowing the transfer of public assets and we very consciously identified communities of interest—people who share an interest, a background or an activity—as groups that could take on ownership of assets. There are many kinds of community—not just localities, although they are important, but people who share characteristics or activities and wish to work together on them.

I strongly argue that when a group of people do not simply share a locality or an idea but can bring that together in the ownership of an asset, that ownership results in more confidence, capacity and cohesion. It gives a flag to rally round and a sense of ownership, because it is based on what in many cases is actual ownership. Whether we
are talking about reviving a local shop, renovating a derelict site or providing a hub for community activities, control of assets can be a key factor in making a community a more attractive place to live and supporting its economic regeneration.

My colleague Dr McLeod has deftly steered the community right to buy through the Parliament—I am not just saying that because she is sitting next to me. We have a comprehensive set of improvements and a fundamental shift in the way in which communities can use the community right to buy. It will now be available in urban and rural contexts, and the new part 3A of the Land Reform (Scotland) Act 2003 will be instrumental in helping communities to deal with problem land.

No single bill or action that any Government takes will change the pattern overnight. As the land reform review group report emphasised, land reform is a long-term process. However, we firmly believe that the measures will help to lay the foundation for future action on land reform and our vital next steps.

Participation and assets are two key aspects of the bill, and another strand is inequalities. We recognise that inequalities might impact on communities’ ability to use the bill. That has been a focus of concern for the Local Government and Regeneration Committee, and we have been working together on the issue to ensure that we empower the disempowered. We have introduced amendments requiring public bodies to consider inequality and we are targeting locality planning so that all community planning partners can bring their resources to bear on the most disadvantaged neighbourhoods.

We should be proud that we are putting a significant amount of investment through the programme directly into communities. We are putting an extra £5.6 million in the people and communities fund, which will be part of the overall empowering communities pot, which now stands at £19.4 million of support.

We have listened to everything that has been said. The collaborative approach has allowed the bill to evolve into what will be an extraordinary piece of legislation that touches on practically all aspects of human activity. It will also ensure that our public services are focused on improving what our communities care about and putting them in the driving seat. The broad consensus in favour reflects our shared commitment to working with everyone. Following the enactment of the bill, we will continue that dialogue as we develop draft guidance and proceed with implementation.

I again thank all those who contributed and who will continue to contribute. It gives me enormous pleasure to move the motion.

I move,
Support from the Scottish Government in terms of advice and finance will be critical if communities are to be able to make best use of the legislation. We need to have detailed implementation, and the regulations need to be put in place as swiftly as possible.

I welcome the extension of the option of the right to buy to urban communities, although there will be challenges. I particularly thank the community members and councillors from the Calton in Glasgow for their ideas on how we make the bill as effective as it can be. I am also conscious of the needs and aspirations of communities in Edinburgh and the Lothians. As the Law Society points out, we need to ensure that the potential higher cost of land does not frustrate the ambitions of the bill. There are lots of implementation issues for us to think about.

One of the key issues that we have discussed throughout consideration of the bill has been the need for clarity surrounding the provisions on neglected and abandoned land. The debate that we had on that at stage 2 was important in understanding how the Scottish Government will approach the detail.

Today we have also debated amendments on sustainable development and on adding environmental wellbeing criteria. I very much welcome the clarification from the minister about how she sees the legislation being implemented. What is said on the record today and the overwhelming support that there has been for these new key principles will be looked at in the future. That will be important for future decisions by ministers and courts—hopefully more by ministers and less by courts. I was very keen that we tease out those issues today.

In my area, the Lothians, I know of a cinema that has been empty for a decade. Marco Biagi will know the place that I am talking about: the former Odeon cinema. It is a classic example of a building that has become an eyesore on a shopping parade—although it has huge potential—and which will have deteriorated over the years. It was really good to hear from the minister today about the idea concerning buildings in a shopping parade—the idea that a community’s social wellbeing is part of its environmental wellbeing. I very much welcome the commitment that was given this afternoon. I hope that, up and down the country, communities and owners will be thinking about that in more depth. I hope that it will concentrate minds; we need buildings and land to be used to the best benefit of the community as a whole.

New options are being provided today by the passage of the bill, and we should all celebrate that. That is part of the reason why people have been keen to work together. I welcome the collegiate approach that has been taken, both in the committees and from the ministers today. I hope that a more constructive and positive set of relationships between landowners and communities will flow from the legislation. Its very existence will be good across the country, and it will raise people’s aspirations. That is a good thing.

I welcome the possibility for mediation, initiated by ministers, between communities and landowners when that is appropriate, rather than having ranks of lawyers sitting in a room debating the fine detail. Let us get the people to come up with good solutions that will benefit local communities and those who are the stewards of our land and buildings.

I started my speech by welcoming the fact that we have been addressing unfinished business from the 2003 act. Today, the bill itself leaves new unfinished business. Important issues were raised by the land reform review group, including those around compulsory purchase orders and compulsory sale orders, which will now be considered by the Scottish Law Commission.

More work will need to be done. Crucially, we need to build capacity and support in our communities to ensure that we deliver the social justice and regeneration of communities that are at the heart of the bill. We have been doing important work over the past few months, and today has been good.

The new provisions on allotments have been supported by the expert lobbying of the Scottish Allotments and Gardens Society, an organisation that does not miss the target when it gets going. The opportunities for sustainable development, community growing and community health and wellbeing that come from gardening and allotments are really important and we need to capture them. New opportunities will also come on the right to buy for football, and we will be able to come back to that.

The bill is about empowerment and opening up new opportunities for our communities, particularly those that are disadvantaged. The bill will create new opportunities, and as MSPs we need to ensure that our local communities will benefit from the changes. Let us pass the bill, move forward together and look forward to the next bit of land reform, which I understand will be coming at us at a rate of knots.

The bill is better than it was when it was introduced. It is stronger for the debate and discussion that we have had. Communities and organisations have helped us to get it together, and I hope that it will be passed at stage 3 tonight.

The Deputy Presiding Officer (John Scott): Before I call Cameron Buchanan, I make the
Parliament aware that the Presiding Officer has determined that decision time will take place at 8.15 tonight. That will allow every member who wishes to speak in the debate the opportunity to do so.

19:21

Cameron Buchanan (Lothian) (Con): The Parliament’s consideration of the Community Empowerment (Scotland) Bill has been a long and detailed process and many important points have been raised. I, too, thank the clerks and everybody else who has been involved with it, and the committees.

I have always agreed with the principle of enabling communities to have a greater say in local matters and I welcome provisions to facilitate that. However, I am concerned that there are a number of areas in which the bill may still allow central decisions to take precedence over local priorities, and those worries cannot be passed over. Members will be more than aware that many amendments have been considered. I will not have time to analyse each of them, but I think that it is worth touching on some of the most prescient points that have been raised.

Our central aim has always been to ensure that the bill will genuinely delegate decision making so that members of the public can benefit from local flexibility and autonomy and will not be subject to the whims of the Scottish Government. The extent to which that aim will be realised will come down to two factors. The first is the breadth and strength of directions that are imposed on communities and local authorities from central Government, and the second is the extent to which the procedures contain the necessary safeguards to ensure that any community that wishes to become involved in local decision making has a reasonable chance of doing so.

As a case in point, the interaction between part 1 of the bill, on national outcomes, and part 2, on community planning, raises concerns that local priorities may be overshadowed by national decisions. That is particularly true as each community planning partnership must have regard to guidance that is issued by Scottish ministers. I agree with efforts to encourage community participation in the development of local outcomes improvement plans, but I still think that the Parliament and public officials across Scotland would do well to ensure that local priorities are the driving force.

On a similar note, I wish to focus on the bill’s provisions on allotments, because they have raised concerns about local autonomy. In particular, the provisions that require the Scottish Government’s consent for a local authority to change the use of an allotment site could, if they are used in a certain way, obstruct local decision making for national reasons. That is plainly contrary to the principle of facilitating local empowerment. If power is truly to be devolved from the centre, local authorities should be able to decide for themselves whether changing the use of an allotment site is in the local interest, subject of course to reasonable protections.

John Wilson (Central Scotland) (Ind): Will the member clarify the position with regard to local authority decision making about the closure of allotment sites and input by the community and allotment holders into that decision? The bill aims to give more power to communities. Surely allotment holders should have the power to influence the council’s decisions rather than the council making decisions on a whim.

Cameron Buchanan: I do not think that it is clear in the bill that that is the case. That is my concern. It has not been specified.

Unfortunately, I think that amendments that were agreed to at stage 3 this evening will restrict local authorities’ freedom to decide which allotments will be offered to tenants. I would be grateful for the minister’s assurance that local agreements are intended to take precedence.

Having said that, I welcome the change in the bill’s provisions regarding the size of allotments. The changes will keep a reference in writing to a standard 250m² size, as many allotment holders desire, but also recognise the need for local flexibility. The provisions therefore recognise allotment holders’ rights but also allow for flexibility when local authorities and allotment holders can agree, which is the kind of move away from central direction towards local decision making that the bill would have done well to have more of.

Of course, a central part of the debate is ensuring that the bill does what it says and empowers local communities to take part in decision making. We agree with the principle that community bodies should be able to request to participate in local outcomes improvement programmes or make asset transfer requests, but that must be reinforced by proper protections. I stress that I am not making any assumptions, but it is important that communities are protected through a right of review or appeal from being shut out of local decision making for inappropriate reasons.

I note that the Scottish Government responded to my points about allowing a review or appeal when an asset transfer request is agreed but contract negotiations have been broken, by setting up an appeals process where no contract is concluded between a relevant authority and a community transfer body. That, again, is a
welcome change in favour of community bodies’ involvement that the Scottish Government would have done well to replicate throughout the bill. However, I expect the Scottish Government to share my commitment to monitor annual reports in the interests of ensuring that all applications are treated appropriately.

The Deputy Presiding Officer: You should draw to a close, please.

Cameron Buchanan: I hope that members across the chamber will join us in committing to uphold the principles of community empowerment.

19:26

Clare Adamson (Central Scotland) (SNP): It has been a very interesting afternoon in the chamber, with lots of topics being raised regarding the Community Empowerment (Scotland) Bill. I absolutely believe that this is about community and the communities in which we live.

I had a poignant experience before coming to the chamber this afternoon when I attended the unveiling of the Scottish steelworkers memorial on the Ravenscraig site in North Lanarkshire. I was struck by the fact that it was a community project that brought together the communities of North Lanarkshire on the industrial heritage side and also brought together local schools and the local council, which supported the fundraising for the memorial.

The unveiling was poignant because of where the memorial sits in our community—at the former site of the Ravenscraig steelworks. When I was a schoolchild in that area of North Lanarkshire, I would never have imagined that an Andy Scott sculpture, which will form part of our heritage in the future, would be on that site—indeed, I do not think that Andy Scott would have envisaged any of his sculptures at that time.

To have the memorial on what was the site of the steelworks and beside the regional sports centre, in the heart of what will be a changing and developing community, brought home to me how important it is to bring all our communities together in looking forward to the future. It also brought together for me some of the themes that have come out this afternoon, such as the view that everything changes and nothing is static. The bill is a framework that should take us forward to the as yet unenvisioned community empowerment projects that may come our way.

I was glad that the minister paid tribute to the work of the committees. I joined the Local Government and Regeneration Committee only in November last year, and I have to admit that the bulk of the work on the bill had already been done by that point and a lot of the evidence had already been taken.

Marco Biagi: I just want to say that I know how the member feels.

Clare Adamson: We had a wide-ranging debate this afternoon that went from the minutiae of allotment sizes to a philosophical conundrum from my colleague Rob Gibson, who asked what the definition of “environment” is. We have to look to the big scale and blue-sky thinking on the issue as well as at the minutiae of the process. The bill will empower communities through the ownership of land and buildings, strengthen their voices on the decisions that matter to them and put them at the heart of the process.

The extension of the community right to buy across Scotland will help to deliver the Government’s ambitious target of 1 million acres of land being in community ownership by 2020, and the bill will improve the outcomes for communities by involving them in the community planning process and by strengthening partnership working in our local authorities and community environments. I am glad that the Scottish Government is supporting that process with an additional £10 million, which will be provided through the new empowering communities fund, to ensure that people can be more involved in the decisions that affect their lives.

There is much to be commended in the bill, a lot of which has already been debated. The ownership of land and buildings and the strengthening of voices in the decisions that matter to communities are at the heart of what we are doing.

It has been a long afternoon, so I will leave it there. I look forward to the bill being passed later.

19:30

Claudia Beamish (South Scotland) (Lab): Land reform is, of course, a continuum. Scottish Labour has contributed robustly to that process and will continue to do so beyond today.

The Community Empowerment (Scotland) Bill—which, together, we hope will be passed—is an essential part of that process. At stage 1, I spoke of the keen interest in community ownership from a South Scotland perspective. Communities need and have a right to the levels of support that have been on offer over the years in the Highlands and Islands. Scottish Enterprise should be tasked with a new remit, and the focus of the proposed bodies in relation to wider land reform issues must offer support evenly throughout Scotland. I seek reassurance on that issue from the minister in his closing remarks.
The human rights aspect of the bill and the amendments are significant. In its stage 3 briefing, Community Land Scotland stated:

“Ministers will need to have regard to the Covenant on Economic, Social and Cultural Rights when making certain decisions about community ownership.”

As a member of the Scottish Co-operative Party parliamentary group, I am delighted that the Scottish Government has taken forward the possibilities of the community benefit society co-operative model. What is the minister able to do through Co-operative Development Scotland to support that option?

It should be recognised that urban and rural regeneration is not all about ownership; it can be about good partnership with private landowners and a range of public bodies. I am relieved that the central thrust of the changes that are needed for allotment holding have been accepted. The frustration that is experienced by many who want to grow food but have no access to any land has built up for far too long. Constituents who have approached me after years on council waiting lists and who have seen unused patches of land literally going to waste will have a sense of comfort and draw some optimism from today.

That will also create an opportunity for young people who have been involved in growing food through eco-schools. I am relieved that allotment societies across Scotland will see the passing of the bill as a fresh opportunity to connect with young people and provide the chance for them to get growing through starter spaces. Some of us saw those at the Inverleith allotments. I wish all allotment holders and those with allotment aspirations well.

Yesterday, I attended a strategic discussion about the development of community responsibility for Carluke high mill in my South Scotland region. After complex discussions with the landowner, the steering group, which includes Carluke Development Trust and other groups, says that it will

“secure the long term future of The High Mill by returning it to a working state.”

The aim is that the mill will become

“a key centre of cultural, economic and educational activity”,

and the group will ensure that

“it is supported by a sustainable business model”.

That creates opportunities for allotments, local food production and a community cafe around the mill hub.

That is about leasing, not ownership. However, opportunities for ownership are fundamental to the way forward in Scotland. At its Orkney meeting, the Rural Affairs, Climate Change and Environment Committee—with the help of Dave Thompson, Sarah Boyack and others—dispelled the myths about the development of land reform. Good landowners have nothing to fear as they develop alongside communities. However, the distribution of land ownership in Scotland is not just and can indisputably hamper community opportunities for job creation and good housing and community vision more broadly.

The passing of the bill will go some way towards correcting some of those distortions. Scottish Labour also eagerly awaits the publication of the land reform bill next week and will make a strong contribution to its progress.

19:34

Rob Gibson (Caithness, Sutherland and Ross) (SNP): It is a pleasure to reach this stage in the passage of the bill, given the huge amount of ground that Kevin Stewart’s committee and my committee have covered. I know that the Rural Affairs, Climate Change and Environment Committee came into the process somewhat later to deal with part 4 and the land reform aspects, but I will also comment on one or two other matters.

A really important point is that when people saw the bill they thought that great difficulties would be put in the way of simplifying, say, the crofting community right to buy. However, we found that by bringing the issues up at stage 2 it was possible to have the debate, take the evidence and reach a consensus on simplifying the process and thereby making things much easier for crofting communities.

The simplification of the registration processes for communities, crofting or otherwise, is one of the things that I am most proud of; after all, it is daunting for people to have thrust on them over a few weeks the necessity of creating a business plan and registering their right to buy. The process of registration—and re-registration within five years—has now been simplified considerably.

Although extending the right to buy across Scotland is a major aim now, we should recognise that that will throw up many problems, and we should never underestimate the obstacles to achieving a step change in development in so many communities across the country. However, we have laid the groundwork.

I am delighted that, as has been pointed out, we have been able to extend the forms of community bodies to Scottish charitable incorporated organisations and bencoms. That is important because it will allow people to choose a form of body that is suitable to their area.
Having listened to the discussions about community planning partnerships having much more local plans, I have to say that I like the idea of locality plans, which the Local Government and Regeneration Committee dealt with. As a result of that measure, small parts of council areas will be able to focus on matters; I know that Cullrain in my constituency would have loved to do that at an earlier stage. Such a move will prepare people for taking action, because they will have thought beforehand about, say, the resources that they will need.

The Rural Affairs, Climate Change and Environment Committee took some time examining the fact that local authorities can act as quite a constraint on the transfer of land to communities, and we found that authorities around the country had varied views about how much they were prepared to do that. Moreover, I note that John Mundell, chief executive of Inverclyde Council, said:

“If we are disposing of assets, we are always required to obtain best value, and that normally means market value, whether we use the district valuer or another mechanism to value assets.” — [Official Report, Rural Affairs, Climate Change and Environment Committee, 3 December 2014; c 50.]

We want to change what best value means for communities, because it cannot always mean market value. That is one of the pieces of work that we need to take forward from the bill, but at least the bill has opened the door.

The thing that has cheered me most about the whole process has been how the arguments about human rights have been developed and, in particular, how the Government has embraced the United Nations International Covenant on Economic, Social and Cultural Rights, which guarantees certain rights, such as those to sanitation, food and housing. Applying that covenant to our circumstances could aid many communities in our urban areas, as well as people abroad. After all, the UK signed up to it in 1976, and it is generally accepted as a gold standard. As we have so often found, the European convention on human rights relates to property, but the covenant relates to people.

I have great pleasure in supporting the way in which the bill has been taken forward. I hope that we can get the secondary legislation passed as a priority.

19:39

Tavish Scott (Shetland Islands) (LD): Let me start with Rob Gibson’s point about best value. The usual question that is asked about any legislation is whether it makes a difference and is seen to do so. There is a redundant school in Shetland that has not been used as a school for a long time. The council in my area sold it to the largest developer—or the one that paid the highest fee—instead of letting a voluntary group use one of the school buildings. It was a canteen, but I will not bore the chamber with what it was all about. If this legislation can enable that community group to buy that asset and use it for their activities, it will have achieved something purposeful and be well worth passing.

I cannot, and neither will I attempt to, go through the legislation in the way the minister did in his opening remarks, but I agree with the tenor of his observations. He described the legislation as “extraordinary”, and the one parliamentary observation that I will make is about when we pass enormously wide catch-all legislation; we used to criticise Westminster Governments of all persuasions for passing the annual “Miscellaneous Scotland Bill”. This bill strikes me not as being miscellaneous, but as being detailed and complex but nonetheless wide-reaching, and I am sure that the Government will want to reflect on the process that allowed it to be that.

My highlight of the day was the allotments debate. It is just as well that Rab McNeil is not still the parliamentary sketch writer for The Scotsman—Alex Fergusson and Sarah Boyack will remember those halcyon days when Rab used to look down on our seats when the Parliament chamber was up the road. I do not think that Cameron Buchanan would have survived his sketch tomorrow morning. Sadly for the minister, the bill would no longer have been the Community Empowerment (Scotland) Bill; it would have been the “Allotments Bill”, the “Swede Bill” or something like that.

The ministers have made a lot of progress—in my day just one minister would have dealt with a bill such as this. One irony was our getting a briefing last night from Peter Peacock, who used to grace the front bench in past Governments. Peter used to handle such bills—the whole bill, with goodness knows how many sections and paragraphs and so on. He used to provide briefings to the rest of us who subsequently took bills through Parliament. He did that because he paid huge attention to detail and could hold the attention of parties across the chamber. If Marco Biagi follows that approach, he will do well as a minister. The effectiveness of Peter Peacock was down to his ability to produce detailed legislation and make it understandable to us all. His briefing was a masterwork of its kind. One Peter Peacock piece commended the support of all parties for the Government’s amendments at stage 3, subject to “the following comments”: then there were two pages of comments. That was very Peter Peacock, I thought.
I recognise that ministers accepted amendments from across the chamber when considering how best to improve the bill. Hitherto, I had thought that the best example of that, going back through Parliament, was the first cut at land reform legislation, which some—dare I say it?—older colleagues will recall. That bill became very different from the original that was proposed to Parliament. Again, that was because of a point that the minister rightly made: so many groups and interested parties made observations to say, “That isn’t good enough” or “That needs to be altered”. That is seen in how ministers have reflected on the observations. To some extent that was also the case with the amendments on fans that Alison Johnstone persuasively supported in committee and this afternoon.

Alex Fergusson made a point about clarity. I did not necessarily agree with the specific arguments that he pursued, but—Michael Russell is no longer with us, but I think Rob Gibson made the same point—when colleagues from the Government seats are saying that some of the provisions may end up in court, we must be careful that we have got it right, because that is not a good sign for any legislation. I appreciate that it is a small part of the bill, and I am sure that the minister will reflect on that with his good legal counsel, the Lord Advocate and all. It is important that we avoid situations in which we must say, “Good gosh! We’re going to end up testing that in the court.” I am sure that that is not the minister’s intention, and that he will do his best to avoid it. That must be a lesson for drafting any such legislation.

19:43

John Wilson (Central Scotland) (Ind): I draw attention to my entry in the register of interests because I have had a particular interest in community empowerment for a number of years. I was reminded by the person sitting behind me that we had debated this issue in 1988 with reference to a particular community on the south side of Glasgow.

I thank all those who gave evidence to the committee, including the community groups, which told us, not only in formal meetings but in the informal meetings that we had throughout Scotland, about their expectations for community empowerment and their roles in their communities.

I challenge Cameron Buchanan’s comments on decision making; it was not always just about what the Scottish Government was doing, but about what local authorities were doing to many communities. Communities felt disempowered in terms of engagement when local authorities were making decisions. I hope that the bill will take forward rights for communities, so that they are properly consulted, engaged and truly empowered in terms of the decisions that are made in their areas.

I also thank the ministers for their willingness to accept comments that members and others made at stage 2, and in the lead up to stage 3, on what we wanted to see in the bill. In particular, I thank them for their willingness to take on board and to progress suggestions that were made.

The test of any legislation that is passed by Parliament is the impact that it has on communities throughout Scotland. There is an expectation that, once enacted, the bill will empower communities that have so far failed in their attempts to engage meaningfully in shaping the delivery of services that they themselves have identified.

One such area is the asset transfer debate—I am directly involved in community asset transfer negotiations with a local authority. When working with local authorities and other public agencies, we must ask them to consider what they mean by community asset transfers. I think that it was Rob Gibson who mentioned best value. I do not look at best value in economic terms; I look at what best value is for communities and what asset transfers can deliver in terms of economic and social impacts. Many communities have good ideas and visions for what they can deliver. Unfortunately, as Rob Gibson highlighted, many public sector agencies and local authorities see asset transfer as having only monetary value. We must shape and change the attitude that best value is about money; rather, it is about what can be delivered, how it is delivered and who is delivering it.

It is clear that many communities throughout Scotland want to engage in the asset transfer process, take forward their own projects and deliver services in those communities. However, at present, many of them are being held back by the view of local authorities that they know what is best for those areas.

The bill is about changing society. I hope that, after almost 40 years of talking about community engagement, with this legislation we will see genuine community empowerment to allow people to take forward their ideas and to engage meaningfully in shaping their future.

19:48

Kevin Stewart (Aberdeen Central) (SNP): When we debated the Community Empowerment (Scotland) Bill at stage 1 on 3 February this year, I pointed out that the unifying theme in legislation is trust: trust that communities all over Scotland know what is best for themselves and have the desire and ability to make their ambitions reality; trust that the bill will give them a range of tools to make their desires reality; and trust that our public
services will rise to meet the opportunities that the bill presents them with to empower the communities that they serve. The levels of input and engagement that we, as parliamentarians, have received from communities across Scotland as we have considered and amended the bill vindicates that view.

The 16th century philosopher and statesman, Sir Francis Bacon, is reputed to have coined that well-known expression, “Knowledge is power.” In this case, knowledge is empowerment. Therefore, a special duty falls on the Scottish Government, local government, and other public bodies to empower communities across Scotland by informing them about the legislation and the powers that it provides. Whether it is about the ability to assume control of local community assets, such as community halls or leisure venues, or about requests from local groups to participate in delivery of public services in order to achieve an outcome, communities across Scotland can only take full advantage of the new powers if they know about them and have the necessary support to use them effectively. I call on all members to promote the value of the legislation to our constituents, and to encourage them to be active in community-based organisations so that they can empower themselves and their communities.

As the convener of the committee that scrutinised the lion’s share of the bill at stage 1, I know well the appetite that exists in communities across Scotland to be empowered with the tools that allow them to help themselves. The Community Empowerment (Scotland) Bill, which we have finalised this evening, will provide the foundations for a new framework of empowerment across Scotland. Crucially, it will be a framework of empowerment that will be designed and delivered by ordinary folk who live and work in their communities. It will help to free their ambitions from the often well-intentioned but stiflingly dead hand of officialdom and bureaucracy.

Since the bill was introduced in Parliament in June 2014, Scotland has undertaken a remarkable journey of civic and community empowerment. The extraordinary level of public engagement and participation in the independence referendum, which carried through to the recent UK general election, provided the perfect platform from which to launch the bill. However, as with so many things in this life, the bill is not the end of a process, nor is it a means to an end. We should rather see it for what it is: a new staging post on the journey of empowerment that so many communities across Scotland are already embarked on.

If used to their fullest, the powers in the bill can provide the confidence and impetus that our communities need to be able to take their future wellbeing into their own hands. That does not necessarily mean that the task will always be easy—most worth-while pursuits in life are not—but I trust that it is a challenge that folk all across Scotland are more than ready to meet.

I thank again the thousands of ordinary people from across the length and breadth of Scotland who engaged with the Local Government and Regeneration Committee on the bill. Their vital contribution has helped to shape the bill in ways that will benefit generations of Scots far into the future.

I truly believe that the Community Empowerment (Scotland) Bill will shift the balance of empowerment away from the agencies of the state towards ordinary people and the communities in which they live. Communities across Scotland need to feel as though they are in a partnership of equals with the agencies that provide them with the services that they need. Too often in the past, that has not been the case. The bill will go far towards redressing the balance. For that reason, I look forward to our voting the bill into law at decision time this evening.

19:52

Alex Rowley (Cowdenbeath) (Lab): First, I congratulate and say well done to the Local Government and Regeneration Committee. I absolutely associate myself with all John Wilson’s comments. I would have liked what he said to have been one bit of my speech.

I want to focus on something a bit different. We need to move forward with the co-operation that we have seen in the passing of the bill. The bill will be no panacea for the unnecessary austerity that is now being imposed on public services across Scotland. We need to address that, but that is for another day.

I want to talk about how we will address local government finance in future. I welcomed it when the minister set up the commission on local tax reform. I sat on the commission for a period of time and I look forward to its conclusions. All political parties, including mine and that of the Government, need to give an absolute commitment that we will put party politics to one side so that we can find a solution to the problem of local government finance. If we try to outbid each other using council tax freezes, we will doom local government to another five-year freeze that will have a negative impact on the ability of local authorities to achieve sustainable long-term finance, especially if one party is frightened to move because the other one will make major political capital out of it or make it into an election issue. We have seen co-operation in the making of
the bill and the parties need to give the same commitment to working together in the chamber to find a long-term and sustainable approach to local government finance.

On community planning, regardless of whether we are able to find a long-term sustainable approach to local government finance, the Christie report has highlighted the fact that we cannot continue to do things the way we did them in the past. We need to find new ways of working and think about a more preventative agenda. I believe that the bill and the moves that have been made within it to ensure that community planning is able to genuinely involve and engage with local communities will move that agenda forward.

We need to look at structures. For example, I absolutely support the health and social care partnerships. Only time will tell whether that is the end of the road or whether we want to bring the organisations together and govern them differently, but I believe that this bill is the next step with regard to community planning partners—the health service, local authorities and the voluntary sector. There must be a greater role for the third sector. I am a believer that community planning is absolutely the correct way to go forward. It is also right that people and communities are able to determine their local priorities and where local resources should be spent. The bill takes us in that direction.

I hope that, across Scotland, political parties and local government will see this bill as an opportunity to begin to work together in the interests of our communities and that parties in this Parliament can come together successfully to work together to tackle the difficult issues such as the future of local government funding.

19:57

Alex Fergusson (Galloway and West Dumfries) (Con): We are almost at the culmination of a long process that, as we heard, has involved several parliamentary committees and a vast array of witnesses, stakeholders, civil servants, parliamentary staff and others. Whatever our overall views on this heavy piece of legislation, they should all be warmly thanked, and I am delighted to do so from these benches.

As the minister said in opening this debate, there are not many differences across the chamber on the overall aspirations of the bill, but there are differences on matters of detail. We cannot pretend that they do not exist, despite the excellent spirit and, sometimes, humour that have marked today’s stage 3 process.

I dearly wish that the Government had differentiated between the right to buy in urban Scotland and in rural Scotland because, although I can see situations in an urban context that would absolutely justify the right to buy without a willing seller, I can also see that that could have significant unintended consequences when translated into a rural context. Several witnesses at the Rural Affairs, Climate Change and Environment Committee echoed the desirability of making that differentiation, as did the Law Society of Scotland, and I think that the bill is poorer for its absence.

Marco Biagi also said during the discussion of amendments that everything in the bill is about empowering communities, and so it should be. However, as members will have picked up from this afternoon’s debate, we on these benches believe that, in seeking to empower communities, ministers are taking too much power to themselves. We do not agree that outcomes should be determined rather than prescribed by regulation; we do not agree that the identifying of local priorities by community planning partnerships should be decreed by ministers; and we do not agree that extending the definition of land that is eligible for a compulsory right to buy by a community in any way helpful in delivering a clear, concise and easily understood way forward. This party is not against community ownership—far from it. However, the land that is eligible for takeover by any community under any circumstances should surely be clearly defined in law and not subject to the opinion of any individual, agency or—dare I say it—politician.

I genuinely believe that the Scottish Government is genuine in its belief that it is going about the business of community empowerment in the right way with this bill, and there is much that is entirely commendable in it. I really—and equally genuinely—wish that we could give it our whole-hearted support. However, Tavish Scott made valid points about the breadth of the bill and its clarity in some aspects, and those two issues are at the very core of the reservations that we hold.

Not for the first time in this Parliament I hope that our reservations may prove to be unfounded, but I fear that they will not be. For the reasons that I have tried to outline in the brief space of time that is available to me, and despite the many positive aspects of the bill, we will abstain tonight at decision time.

20:00

Ken Macintosh (Eastwood) (Lab): It has been a long day and a tiring day but, I hope, a very worthwhile one. For those of us who believe whole-heartedly in devolution and in the principles of subsidiarity and sharing power, the Community Empowerment (Scotland) Bill is a very significant step indeed. I add my voice to those of the many
members this evening who have thanked all the contributors who helped us reach this point.

To my mind, the most important issue that was flagged up in evidence to the Local Government and Regeneration Committee from the outset, and which was unanimously reflected in the committee’s deliberations, was the argument that the bill should not only seek to increase participation from the community in decision making but, perhaps more important, it should redistribute influence on decision making more equally across diverse communities. That argument was put most forcefully by contributors from the voluntary sector, including Oxfam, the Poverty Alliance, Barnardo’s and many more such organisations, and I thank each of them for their persuasive input into this piece of legislation.

The worry was expressed that the passing of the bill would simply cede more power to those who are already accustomed to participating in local decision making. One of the most important amendments agreed to, therefore, was on legislative recognition that, when the national outcomes framework is being laid down, socioeconomic levels within individual communities will be taken into account.

The Coalition for Racial Equality and Rights—CRER—is one of the many aforementioned organisations that welcomed the bill’s ambition to reduce inequalities of outcome arising from socioeconomic disadvantage. However, it felt strongly that there should also be a focus on reducing inequalities of outcome that arise from race discrimination. I did not wish to introduce new material at stage 3, particularly on such a consensual bill—I am sure that everyone is relieved to hear that there was not an extra amendment this afternoon—so I did not lodge that amendment.

However, I would welcome, even at this late stage, any reassurance that the minister can offer in winding up that he recognises that black and minority ethnic communities may not be in the best position to take advantage of the provisions in the bill and that the Scottish Government will take steps to address those barriers to community participation that are created by prejudice and discrimination.

I will pick out just a couple of the many important subjects in the bill that were covered today. Empowering communities means, in essence, that we are giving citizens the opportunity to influence decisions that matter to them. That is why we were happy to back the football supporters’ right-to-buy amendment, proposed by Alison Johnstone. We are all very aware of the parlous state of many Scottish football clubs and of the less than altruistic intentions of some owners. Sports clubs in general play a crucial role in communities all over Scotland. Allowing those who care the most about the clubs to make decisions on the clubs’ future will only further enrich that important aspect of society. We were particularly pleased to see those amendments agreed to without division at stage 2. Having now conceded that the minister would prefer to consult further and bring back those proposals by regulation or subordinate legislation, I hope that the ministers will appreciate our ongoing anxiety that the Government fulfils that commitment in the shortest timescale possible.

I turn to the subject of allotments—Rab McNeil notwithstanding. Despite the minister’s good intentions, there was a danger at one point that, instead of improving prospects for Scotland’s many allotment holders and giving them some sort of statutory protection, we would vote down the entire section. It is to the credit of the minister, of the committee and, in particular, of the members of the Scottish Allotments and Gardens Society that the bill has now been amended to address the real demand for access to small plots of land that clearly exists across Scotland.

As with many aspects of the bill, the real test now lies ahead, when we put the law into practice. Allotments do not just offer an opportunity for those who wish to enjoy the benefits of gardening or working outdoors. They contribute to public policy on food, social justice, health and wellbeing, reducing carbon emissions and enhancing the natural environment. For example, will the bill deliver more allotments, with fewer people waiting and more people with a plot of their own? That is when we will really see the extent to which we have empowered our communities.

I have one final point. This has been a collaborative and consensual process, as many members have remarked in their closing speeches, and I believe that the bill is all the better for that. I thank the ministers for their role in such a co-operative and constructive operation, but I particularly want to thank the members of the Local Government and Regeneration Committee. It is interesting that there is no Government majority on the committee and the result has not been opportunism or oppositional politics from the non-governmental majority, but mature, respectful and rational discussion. All members have sought to reach agreement rather than force their views on others. For those who recollect Parliament before 2011, it was a reminder of how we used to achieve a balance between the power of the Executive and the legislature.

There have been occasional disappointments. We did not pass the European Charter of Local Self-Government, despite the opportunity that it offered to display our commitment to subsidiarity. I think that many of us welcomed the reminder
during the discussion around that that the concordat is now dead and buried. It was slightly worrying that, in a choice between the council tax freeze and subsidiarity, the freeze seems to have won. I echo the point that was raised by my colleague Alex Rowley that, if we are going to take a consensual approach, local government finance offers an opportunity to us all.

The Community Empowerment (Scotland) Bill is a very consensual, well-intentioned and empowering bill. It is now up to all of us to put those powers into action—let us practise the devolution that we preach.

20:06

Marco Biagi: I want to identify a problem with the bill. I know that this is a pretty late stage to do that, given that this is the winding-up speech at stage 3, but the problem is that if somebody comes to us, as people have been doing for some time, and asks us to sum up the bill in a sentence, it is pretty hard to do. This is a bill that has—as has been identified—a common thread of empowering communities through giving them a greater say in decision-making and in forms of direct ownership, but it is very hard to simply summarise the broad range of ways that it seeks to embody that principle.

The bill is really important because communities have different priorities. There is no one solution, there is no catch-all and there is no magic wand. In touring Scotland since I became the minister responsible for local government, I have seen examples of communities doing very different things. In some cases, they identify childcare as the issue and create a nursery—for example, at the Cassiltoun Stables nursery in Castlemilk. There is regeneration in Govanhill and Craigfillier and there are arts facilities in Kilmarnock, Elgin, and Galashiels, where the communities are working through such activities not just for the sake of the arts but because they provide opportunities for young people to gain skills and confidence. There is the community centre in Merkinch and others in Irvine and Alloa that offer everything, including a reptile fanciers club that I had the great pleasure of visiting during my last visit. There is the Comas shop in Dumbiedykes and the Crags community sports centre, and I have high hopes that our neighbourhood here around the Parliament will see some progress for the building that Sarah Boyack mentioned.

In a couple of months, I am going to Campbeltown to see its community-owned cinema and airport. An airport! Is that not proof that if communities have ambition, the sky is literally the limit?

Members: Oh!

Marco Biagi: I could not let Alison Johnstone be the only member to deliver a pun today, could I? I can actually speak now, which is an improvement.

In touring Scotland, I have seen a few groups that have imparted to me the importance of some of the points that have been made here—what Rob Gibson identified as that first step, when people go from being a group of volunteers or a group of people with an interest and an idea and take it to the next level. That really is an important step and one that we have to make sure is properly supported as we implement the legislation.

The bill, as has been highlighted, took no fewer than three ministers to bring home. There are now 11 parts to the bill, and looking at the football team’s-worth of substantive parts—I promise that there will be no more puns after this—in this debate, three of them seemed to stay on the bench.

We had no conversations in great detail about forestry, the common good or local non-domestic rates, which are all areas in which the bill includes important provisions to further community empowerment—[Interruption.]

The Presiding Officer (Tricia Marwick): One moment, minister. I ask members who are coming into the chamber to do so quietly and to stop talking, please, and to let the minister get on with his speech.

Kevin Stewart: Will the minister give way at this point?

The Presiding Officer: Minister, will you give way?

Marco Biagi: To Mr Stewart? Always.

Kevin Stewart: Will the minister agree that a number of the areas that he mentioned have not come up today because we dealt with them at earlier stages? For example, on forestry, concerns from the Scottish Woodlot Association were dealt with very early. Again, that comes back to the consensus that existed across the Local Government and Regeneration Committee and the other committees.

Marco Biagi: Indeed—I was just about to come on to that point in responding to the question that Tavish Scott raised about scrutiny. We have heard from other front-bench members that the bill is a shining example of how the Parliament’s committees looked in great detail at a wide range of issues and produced positive recommendations that the Government was happy to take on board.

There is a wide range of issues running through the bill, and I will respond to some of the areas that have been highlighted. On land reform,
Claudia Beamish raised the issue of support. As with all sections of the bill, the need to ensure that people have the means to come forward and take advantage of the provisions is critical.

Asset transfer and its interaction with best value came up on several occasions in the debate. We must recognise that best value was conceived as something that is about more than just market value, so it is important that everybody takes that on board.

Cameron Buchanan made a point about allotments and ministerial control. The ministerial consent for change of use for allotments has existed since the Local Government (Scotland) Act 1973, so it has a pedigree. Members will pardon me for being a younger member, but I believe that there was a Conservative Government at that time, although I note that Mr Buchanan is perhaps more of a Thatcher man than a Heath man with regard to the past records of those Governments. The provision is a long-established one that we were asked by stakeholders to include.

We have touched on the extent to which we took on board ideas from across Parliament. The bill includes provisions on locality planning; on assistance with participation, which Alex Rowley raised; on allotments, which Ken Macintosh highlighted; and on participation requests for joint authorities, which Tavish Scott raised with us.

From Cameron Buchanan—despite my little disagreement with him on CPPs—we have taken on board issues to do with appeals. From John Wilson we have taken on board issues relating to reporting deadlines and ALEOs, and to unconstituted but still representative groups. From Michael Russell, we have taken suggestions regarding appeals on asset transfer; from Alison Johnstone, suggestions on football; and on land reform, we have taken on board suggestions from Sarah Boyack, Claudia Beamish and Alex Fergusson.

The Community Empowerment (Scotland) Bill is one that every member of the Parliament can feel part of, and that many MSPs can look at it and say, “I made this.”

We also learned during the debate that Alison Johnstone’s football puns are terrible—her scriptwriter should get a red card, as should mine. We have learned that Alex Fergusson can sometimes—believe it or not—stand up for tenants, which he happily portrayed as being the result of a change of heart.

We learned during the passage of the sections on allotments that just about everybody—the Opposition spokespeople, the official in charge and the people coming before the committees—seems to be an allotment holder. Crazes have clearly moved on from Cabbage Patch Kids to cabbage patches for real.

Members: Oh!

Marco Biagi: I am not going to do any more puns. [Applause.] The priority and need of this community here is, first, for me to stop telling bad jokes and, secondly, for me to wind up the debate.

If there is a conclusion to the debate, it is that much of what we are trying to codify in the bill is already happening. There are trailblazers who are making superhuman efforts to achieve stronger and more empowered communities. However, it should not require someone to be superhuman to achieve that, which is why we want to make it just a little bit easier in a wide range of areas for people to be that active community and to step forward, recognising that regeneration is done by communities and not to communities. We want to ensure that we empower the disempowered people across this country and create the healthy and vibrant democracy and society that all of us in Parliament want.

The Presiding Officer: That concludes the debate and the puns on the Community Empowerment (Scotland) Bill.
Decision Time

20:16

The Presiding Officer (Tricia Marwick): There are four questions to be put as a result of today’s business.

The first question is, that motion S4M-13523, in the name of Marco Biagi, on the Community Empowerment (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Lothian) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderrick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hillion, Cara (Dunfermline) (Lab)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
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Yousaf, Humza (Glasgow) (SNP)

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Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

The Presiding Officer: The result of the division is: For 101, Against 0, Abstentions 15.

Motion agreed to,

That the Parliament agrees that the Community Empowerment (Scotland) Bill be passed.
# Community Empowerment (Scotland) Bill

## [AS PASSED]

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PART 1
NATIONAL OUTCOMES

1 National outcomes

(1) The Scottish Ministers must determine outcomes for Scotland (referred to in this Part as “the national outcomes”) that result from, or are contributed to by, the carrying out, by the persons mentioned in subsection (1A), of the functions mentioned in subsection (1B).

(1A) The persons are—
(a) a cross-border public authority,
(b) any other Scottish public authority,
(c) any other person carrying out functions of a public nature.

(1B) The functions are—
(a) in the case of a cross-border public authority, any function that is exercisable in or as regards Scotland and does not relate to reserved matters,
(b) in the case of any other Scottish public authority, any function that does not relate to reserved matters,
(c) in the case of any other person carrying out functions of a public nature, any such function that is exercisable in or as regards Scotland and does not relate to reserved matters.
(1D) In determining the national outcomes, the Scottish Ministers must have regard to the reduction of inequalities of outcome which result from socio-economic disadvantage.

(2) Before determining the national outcomes, the Scottish Ministers must—
   
   (a) consult—
   
   (i) such persons who appear to them to represent the interests of communities in Scotland, and
   
   (ii) such other persons as they consider appropriate,
   
   (b) having consulted the persons mentioned in paragraph (a), prepare draft national outcomes, and
   
   (c) consult the Scottish Parliament on the draft national outcomes during the consultation period.

(2A) In consulting the Scottish Parliament under paragraph (c) of subsection (2), the Scottish Ministers must also lay before the Parliament a document describing—
   
   (a) the consultation carried out under paragraph (a) of that subsection,
   
   (b) any representations received in response to that consultation, and
   
   (c) whether and if so how those representations have been taken account of in preparing the draft national outcomes.

(3) The Scottish Ministers must, no earlier than the expiry of the consultation period, publish the national outcomes.

(3A) In subsections (2) and (3), “consultation period” means the period of 40 days beginning with the day on which the consultation mentioned in subsection (2)(c) commences; and in calculating the period of 40 days, no account is to be taken of any time during which the Scottish Parliament is dissolved or in recess for more than 4 days.

(4) The persons mentioned in subsection (1A) must have regard to the national outcomes in carrying out the functions mentioned in subsection (1B).

(4A) Nothing in subsection (4) requires the Scottish Parliament or the Scottish Parliamentary Corporate Body to have regard to the national outcomes in carrying out any of their functions.

(7) In this section—
   
   “community” includes any community based on common interest, identity or geography,
   
   “cross-border public authority” has the meaning given by section 88(5) of the Scotland Act 1998,
   
   “reserved matters” is to be construed in accordance with that Act.

2 Review of national outcomes

(1) The Scottish Ministers may review the national outcomes at any time (but subject to subsections (2) and (3)).

(2) The Scottish Ministers must begin a review of the national outcomes before the expiry of the period of 5 years beginning with the date on which the national outcomes were published under section 1(3).
(3) The Scottish Ministers must begin further reviews of the national outcomes before the expiry of each 5 year period.

(3A) In carrying out a review of the national outcomes under subsection (1), (2) or (3), the Scottish Ministers must consult—
	(a) such persons who appear to them to represent the interests of communities in Scotland, and
	(b) such other persons as they consider appropriate.

(4) Following a review, the Scottish Ministers—
	(za) may propose revisions to the national outcomes,
	(zb) must—
	(i) where they propose to make revisions to the national outcomes, consult the Scottish Parliament on the proposed revisions during the consultation period,
	(ii) where they do not propose to make revisions to the national outcomes, consult the Scottish Parliament during the consultation period on the national outcomes as most recently published under section 1(3) or paragraph (b)(i) or republished under paragraph (b)(ii),

(a) may revise the national outcomes after the expiry of the consultation period, and
(b) must—
	(i) where the national outcomes are revised, publish the outcomes as revised,
	(ii) where the national outcomes are not revised, republish the outcomes after the expiry of the consultation period.

(4A) In consulting the Scottish Parliament under subsection (4)(zb), the Scottish Ministers must also lay before the Parliament a document describing—
	(a) the consultation carried out under subsection (3A),
	(b) any representations received in response to that consultation, and
	(c) where they propose to make revisions to the national outcomes, whether and if so how those representations have been taken account of in preparing the proposed revisions.

(6) References to the national outcomes in section 1(4) and in section 3 include references to the national outcomes revised under subsection (4)(a) of this section.

(7) In subsection (3), “5 year period” means the period of 5 years beginning with the date on which the national outcomes were published under sub-paragraph (i) of paragraph (b) of subsection (4) or, as the case may be, republished under sub-paragraph (ii) of that paragraph.

(7A) In subsection (3A), “community” includes any community based on common interest, identity or geography.

(8) In subsection (4), “consultation period” means the period of 40 days beginning with the day on which the consultation mentioned in subsection (4)(zb)(i) or (ii) commences; and in calculating the period of 40 days, no account is to be taken of any time during which the Scottish Parliament is dissolved or in recess for more than 4 days.
3 Reports

(1) The Scottish Ministers must prepare and publish reports about the extent to which the national outcomes have been achieved.

(2) The Scottish Ministers must include in reports published under subsection (1) information about any change in the extent to which the national outcomes have been achieved since the publication of the previous report under that subsection.

(3) Reports must be prepared and published at such times as the Scottish Ministers consider appropriate.

PART 2

COMMUNITY PLANNING

4 Community planning

(1) Each local authority and the persons listed in schedule 1 must carry out planning for the area of the local authority for the purpose mentioned in subsection (2) (“community planning”).

(2) The purpose is improvement in the achievement of outcomes resulting from, or contributed to by, the provision of services delivered by or on behalf of the local authority or the persons listed in schedule 1.

(2A) In carrying out community planning, the local authority and the persons listed in schedule 1 must—

(a) participate with each other, and

(b) participate with any community body (as mentioned in paragraph (c) of subsection (5)) in such a way as to enable that body to participate in community planning to the extent mentioned in that paragraph.

(3) Outcomes of the type mentioned in subsection (2) (“local outcomes”) must be consistent with the national outcomes determined under section 1(1) or revised under section 2(4)(a).

(4) In carrying out the functions conferred on them by this Part in relation to the area of a local authority—

(a) the local authority for the area and the persons listed in schedule 1 are collectively referred to in this Part as a “community planning partnership”, and

(b) the authority and each such person is referred to in this Part as a “community planning partner”.

(5) Each community planning partnership must—

(a) consider which community bodies are likely to be able to contribute to community planning having regard in particular to which of those bodies represent the interests of persons who experience inequalities of outcome which result from socio-economic disadvantage,

(b) make all reasonable efforts to secure the participation of those community bodies in community planning, and
(c) to the extent (if any) that those community bodies wish to participate in community planning, take such steps as are reasonable to enable the community bodies to participate in community planning to that extent.

(6) The Scottish Ministers may by regulations modify schedule 1 so as to—

(a) add a person or a description of person,
(b) remove an entry listed in it,
(c) amend an entry listed in it.

(7) Regulations under subsection (6) may provide that a person or a description of person listed in schedule 1 is to participate in community planning for a specific purpose.

(8) In this section, “community bodies”, in relation to a community planning partnership, means bodies, whether or not formally constituted, established for purposes which consist of or include that of promoting or improving the interests of any communities (however described) resident or otherwise present in the area of the local authority for which the community planning partnership is carrying out community planning.

4A Socio-economic inequalities

In carrying out functions conferred by this Part, a community planning partnership must act with a view to reducing inequalities of outcome which result from socio-economic disadvantage unless the partnership considers that it would be inappropriate to do so.

5 Local outcomes improvement plan

(1) Each community planning partnership must prepare and publish a local outcomes improvement plan.

(2) A local outcomes improvement plan is a plan setting out—

(a) local outcomes to which priority is to be given by the community planning partnership with a view to improving the achievement of the outcomes,
(b) a description of the proposed improvement in the achievement of the outcomes,
(c) the period within which the proposed improvement is to be achieved, and
(d) a description of the needs and circumstances of persons residing in the area of the local authority to which the plan relates.

(3) In preparing a local outcomes improvement plan, a community planning partnership must consult—

(a) such community bodies as it considers appropriate, and
(b) such other persons as it considers appropriate.

(4) Before publishing a local outcomes improvement plan, the community planning partnership must take account of —

(a) any representations received by it by virtue of subsection (3), and
(b) the needs and circumstances of persons residing in the area of the local authority to which the plan relates.
6 Local outcomes improvement plan: review

(1) Each community planning partnership must keep under review the question of whether it is making progress in improving the achievement of each local outcome referred to in section 5(2)(a).

(2) Each community planning partnership—

(a) must from time to time review the local outcomes improvement plan published by it under section 5, and

(b) may, following such a review, revise the plan.

(3) Subsections (3) and (4) of section 5 apply in relation to a local outcomes improvement plan revised under subsection (2)(b) as they apply in relation to a local outcomes improvement plan prepared and published under subsection (1) of that section (but subject to the modification in subsection (4)).

(4) The modification is that the reference in subsection (4)(a) of section 5 to representations received by virtue of subsection (3) of that section is to be read as if it were a reference to representations received by virtue of that subsection as applied by subsection (3) of this section.

(5) Where a community planning partnership revises a local outcomes improvement plan under subsection (2)(b), it must publish a revised plan.

(6) Subsection (2) applies in relation to a revised local outcomes improvement plan published under subsection (5) as it applies in relation to a local outcomes improvement plan published under section 5; and the duty in subsection (5) applies accordingly.

7 Local outcomes improvement plan: progress report

(1) Each community planning partnership must prepare and publish a local outcomes improvement plan progress report for each reporting year.

(2) A local outcomes improvement plan progress report is a report setting out—

(a) the community planning partnership’s assessment of whether there has been any improvement in the achievement of each local outcome referred to in section 5(2)(a) during the reporting year, and

(b) the extent to which—

(i) the community planning partnership has participated with community bodies in carrying out its functions under this Part during the reporting year, and

(ii) that participation has been effective in enabling community bodies to contribute to community planning.

(3) In this section, “reporting year” means—

(a) a period of one year beginning on 1 April, or

(b) in relation to a particular community planning partnership, a period of one year beginning on such other date as may be specified in a direction given by the Scottish Ministers to the community planning partnership.
7A Localities: comparison of outcomes

(1) Each community planning partnership must, for the purposes of this Part, divide the area of the local authority into smaller areas.

(2) The smaller areas mentioned in subsection (1) (“localities”) must be of such type or description as may be specified by the Scottish Ministers by regulations.

(3) Having carried out the duty under subsection (1), the community planning partnership must identify each locality in which persons residing there experience significantly poorer outcomes which result from socio-economic disadvantage than—
   (a) those experienced by persons residing in other localities within the area of the local authority, or
   (b) those experienced generally by persons residing in Scotland.

(4) In carrying out the duty under subsection (3), a community planning partnership must take account of the needs and circumstances of persons residing in the area of the local authority.

(5) Regulations under subsection (2) may specify areas of a type or description subject to any conditions specified in the regulations.

(6) The Scottish Ministers may by regulations specify that localities within the area of a local authority must each be of the same type or description as may be specified in regulations under subsection (2).

(7) In this section, references to the area of a local authority mean, in relation to a community planning partnership, the area of the local authority for which the partnership is carrying out community planning.

7B Locality plan

(1) Each community planning partnership must prepare and publish a locality plan for each locality identified by it by virtue of section 7A(3).

(2) A community planning partnership may prepare and publish a locality plan for any other locality within the area of the local authority for which it is carrying out community planning.

(3) A locality plan is a plan setting out for the purposes of the locality to which the plan relates—
   (a) local outcomes to which priority is to be given by the community planning partnership with a view to improving the achievement of the outcomes in the locality,
   (b) a description of the proposed improvement in the achievement of the outcomes, and
   (c) the period within which the proposed improvement is to be achieved.

(4) In preparing a locality plan, a community planning partnership must consult—
   (a) such community bodies as it considers appropriate, and
   (b) such other persons as it considers appropriate.

(5) Before publishing a locality plan, the community planning partnership must take account of—
Part 2—Community planning

7C Locality plan: review

(1) Each community planning partnership must keep under review the question of whether it is making progress in improving the achievement of each local outcome referred to in subsection (3)(a) of section 7B in relation to each locality for which it has published a locality plan under subsection (1) or (2) of that section.

(2) Each community planning partnership—

(a) must from time to time review each locality plan published by it under section 7B,

(b) may, following such a review, revise such a plan.

(3) Subsections (4) and (5) of section 7B apply in relation to a locality plan revised under subsection (2)(b) as they apply in relation to a locality plan prepared and published under subsection (1) or (2) of that section (but subject to the modification in subsection (4)).

(4) The modification is that the reference in subsection (5)(a) of section 7B to representations received by virtue of subsection (4) of that section is to be read as if it were a reference to representations received by virtue of that subsection as applied by subsection (3) of this section.

(5) Where a community planning partnership revises a locality plan under subsection (2)(b), it must publish a revised plan.

(6) Subsection (2) applies in relation to a revised locality plan published under subsection (5) as it applies in relation to a locality plan published under section 7B; and the duty in subsection (5) applies accordingly.

7D Locality plan: progress report

(1) Each community planning partnership must prepare and publish a locality plan progress report in relation to each locality plan published by it under section 7B for each reporting year.

(2) A locality plan progress report is a report setting out the community planning partnership’s assessment of whether there has been any improvement in the achievement of each local outcome referred to in section 7B(3)(a) during the reporting year.

(3) In this section, “reporting year” means—

(a) a period of one year beginning on 1 April, or

(b) in relation to a particular community planning partnership, a period of one year beginning on such other date as may be specified in a direction given by the Scottish Ministers to the community planning partnership.

8 Governance

(1) For the area of each local authority, each person mentioned in subsection (2) must—

(a) facilitate community planning,
(b) take reasonable steps to ensure that the community planning partnership carries out its functions under this Part efficiently and effectively.

(2) The persons are—

(a) the local authority,

(b) the Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978 whose area includes, or is the same as, the area of the local authority,

(c) Highlands and Islands Enterprise where the area within which, or in relation to which, it exercises functions in accordance with section 21(1) of the Enterprise and New Towns (Scotland) Act 1990 includes the whole or part of the area of the local authority,

(d) the chief constable of the Police Service of Scotland,

(e) the Scottish Fire and Rescue Service,

(f) Scottish Enterprise.

(3) The Scottish Ministers may by regulations modify subsection (2) so as to—

(a) add a person or a description of person,

(b) remove an entry listed in it,

(c) amend an entry listed in it.

9 Community planning partners: duties

(1) Despite the duties imposed on community planning partners by this Part, a community planning partnership may agree—

(a) that a particular community planning partner need not comply with a duty in relation to a particular local outcome, or

(b) that a particular community planning partner need comply with a duty in relation to a particular local outcome only to such extent as may be so agreed.

(2) Each community planning partner must co-operate with the other community planning partners in carrying out community planning.

(3) Each community planning partner must, in relation to a community planning partnership, contribute such funds, staff and other resources as the community planning partnership considers appropriate—

(a) with a view to improving, or contributing to an improvement in, the achievement of each local outcome referred to in section 5(2)(a), and

(b) for the purpose of securing the participation of the community bodies mentioned in section 4(5) in community planning.

(4) Each community planning partner must provide such information to the community planning partnership about the local outcomes referred to in section 5(2)(a) as the community planning partnership may request.

(5) Each community planning partner must, in carrying out its functions, take account of the local outcomes improvement plan published under section 5 or, as the case may be, section 6(5).
10  **Guidance**

(1) Each community planning partnership must have regard to any guidance issued by the Scottish Ministers about the carrying out of functions conferred on the partnership by this Part.

(2) Each community planning partner must have regard to any guidance issued by the Scottish Ministers about the carrying out of functions conferred on the partner by this Part.

(3) Before issuing guidance of the type mentioned in subsection (1) or (2), the Scottish Ministers must consult such persons as they think fit.

11  **Duty to promote community planning**

The Scottish Ministers must promote community planning when carrying out any of their functions which might affect—

(a) community planning,

(b) a community planning partner.

12  **Establishment of corporate bodies**

(1) Following an application made jointly by each person mentioned in section 8(2), the Scottish Ministers may by regulations establish a body corporate with such constitution and functions about community planning as may be specified in the regulations.

(2) The application referred to in subsection (1) must include information about the following matters—

(a) any consultation about the question of whether to make the application,

(b) representations received in response to any such consultation,

(c) the functions to be specified in regulations made under subsection (1),

(d) such other matters as may be prescribed by the Scottish Ministers by regulations.

(3) Regulations under subsection (1) may include provision about—

(a) the membership of the body established by the regulations,

(b) the proceedings of the body,

(c) the transfer of property and other rights and liabilities to and from the body,

(d) the appointment and employment of staff by the body,

(e) the supply by other persons of services to the body,

(f) the audit of accounts by the body,

(g) the dissolution of the body, and

(h) such other matters as the Scottish Ministers think fit.

(4) A function may be specified in regulations under subsection (1) even if another enactment or rule of law—

(a) provides that the function is to be carried out by a person other than the body established by virtue of subsection (1), or

(b) prevents the carrying out of the function by that body.
13 **Interpretation of Part 2**

In this Part—

“community bodies” has the meaning given by section 4(8),
“community planning” has the meaning given by section 4(1),
“community planning partner” has the meaning given by section 4(4),
“community planning partnership” has the meaning given by section 4(4),
“local outcomes” has the meaning given by section 4(3),
“locality” has the meaning given by section 7A(2).

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14 **Meaning of “community-controlled body”**

In this Part, a “community-controlled body” means a body (whether corporate or unincorporated) having a written constitution that includes the following—

(a) a definition of the community to which the body relates,
(b) provision that the majority of the members of the body is to consist of members of that community,
(c) provision that the members of the body who consist of members of that community have control of the body,
(d) provision that membership of the body is open to any member of that community,
(e) a statement of the body’s aims and purposes, including the promotion of a benefit for that community, and
(f) provision that any surplus funds or assets of the body are to be applied for the benefit of that community.

15 **Meaning of “community participation body”**

(1) In this Part, “community participation body” means—

(a) a community-controlled body,
(b) a community council established in accordance with Part 4 of the Local Government (Scotland) Act 1973,
(c) a body mentioned in subsection (2), or
(d) a group mentioned in subsection (4).

(2) The body is a body (whether corporate or unincorporated)—

(a) that is designated as a community participation body by an order made by the Scottish Ministers for the purposes of this Part, or
(b) that falls within a class of bodies designated as community participation bodies by such an order for the purposes of this Part.
(3) Where the power to make an order under subsection (2)(a) is exercised in relation to a trust, the community participation body is to be the trustees of the trust.

(4) The group is a group—
   (a) that comprises a number of individuals who are members of the group,
   (b) that has no written constitution,
   (c) that relates to a particular community,
   (d) membership of which is open to any member of that community,
   (e) whose decisions are made or otherwise controlled by members of the group who are members of that community, and
   (f) any surplus funds and assets of which are to be applied for the benefit of that community.

16 Meaning of “public service authority”

(1) In this Part, “public service authority” means—
   (a) a person listed, or of a description listed, in schedule 2, or
   (b) a person mentioned in subsection (3).

(2) The Scottish Ministers may by order modify schedule 2 so as to—
   (a) remove an entry listed in it,
   (b) amend an entry listed in it.

(3) The person is a person—
   (a) that is designated as a public service authority by an order made by the Scottish Ministers for the purposes of this Part, or
   (b) that falls within a class of persons designated as public service authorities by such an order for the purposes of this Part.

(4) An order under subsection (3) may designate a person, or class of persons, only if the person, or (as the case may be) each of the persons falling within the class, is—
   (a) a part of the Scottish Administration,
   (b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998), or
   (c) a publicly-owned company.

(5) In subsection (4)(c), “publicly-owned company” means a company that is wholly owned by one or more public service authorities.

(6) For that purpose, a company is wholly owned by one or more public service authorities if it has no members other than—
   (a) the public service authority or (as the case may be) authorities,
   (b) other companies that are wholly owned by the public service authority or (as the case may be) authorities, or
   (c) persons acting on behalf of—
      (i) the public service authority or (as the case may be) authorities, or
(ii) such other companies.

(7) In this section, “company” includes any body corporate.

(8) Subsection (9) applies where the Scottish Ministers make an order under subsection (3).

(9) The Scottish Ministers may specify in the order a public service that is or may be provided by or on behalf of the person designated, or (as the case may be) a person falling within the class designated, in respect of which a specified outcome may not be specified in a participation request.

**Participation requests**

17

(1) A community participation body may make a request to a public service authority to permit the body to participate in an outcome improvement process.

(2) In making such a request, the community participation body must—

   (a) specify an outcome that results from, or is contributed to by virtue of, the provision of a service provided to the public by or on behalf of the authority,

   (b) set out the reasons why the community participation body considers it should participate in the outcome improvement process,

   (c) provide details of any knowledge, expertise and experience the community participation body has in relation to the specified outcome, and

   (d) provide an explanation of the improvement in the specified outcome which the community participation body anticipates may arise as a result of its participation in the process.

(2A) Subsection (2B) applies where a community participation body which is a group as mentioned in section 15(4) makes a participation request to a public service authority.

(2B) The group must, in addition to complying with subsection (2), provide such information to the authority as the authority may require in order for it to be satisfied that the body meets the requirements to be such a group.

(3) A participation request may be made jointly by two or more community participation bodies.

(3A) A participation request may include a request that one or more public service authorities other than the authority to which the request is made participate in the outcome improvement process along with the authority to which the request is made.

(4) In this Part—

   “outcome improvement process”, in relation to a public service authority, means a process established or to be established by the authority with a view to improving an outcome that results from, or is contributed to by virtue of, the provision of a public service,

   “participation request” means a request made under subsection (1),

   “public service” means a service provided to the public by or on behalf of a public service authority,

   “specified outcome” means an outcome of the type mentioned in subsection (2)(a).
18 Regulations

(1) The Scottish Ministers may by regulations make further provision about participation requests.

(2) Regulations under subsection (1) may in particular make provision for or in connection with specifying—

(a) the manner in which requests are to be made,
(b) the procedure to be followed by public service authorities in relation to requests,
(ba) the procedure to be followed by public authorities in relation to requests that include a request of the type mentioned in section 17(3A),
(c) the information to be provided in connection with requests (in addition to that required under section 17(2)),
(d) ways in which public service authorities are to promote the use of participation requests,
(e) support that public service authorities are to make available to community participation bodies to enable such bodies to make a participation request and participate in any outcome improvement process resulting from such a request,
(f) types of communities that may need additional support in order to form community participation bodies, make participation requests and participate in outcome improvement processes.

19 Decisions about participation requests

(1) This section applies where a participation request is made by a community participation body to a public service authority.

(2) The authority must decide whether to agree to or refuse the participation request.

(3) In reaching its decision under subsection (2), the authority must take into consideration the following matters—

(a) the reasons set out in the request under section 17(2)(b),
(b) any other information provided in support of the request (whether such other information is contained in the request or otherwise provided),
(c) whether agreeing to the request mentioned in subsection (2) would be likely to promote or improve—

(i) economic development,
(ii) regeneration,
(iii) public health,
(iv) social wellbeing, or
(v) environmental wellbeing,

(ca) whether agreeing to the request would be likely—

(i) to reduce inequalities of outcome which result from socio-economic disadvantage,
(ii) to lead to an increase in participation in the outcome improvement process to which the request relates by persons who experience socio-economic disadvantage,

(iii) otherwise to lead to an increase in participation by such persons in the design or delivery of a public service the provision of which results in, or contributes to, the specified outcome mentioned in the request,

(d) any other benefits that might arise if the request were agreed to, and

(e) any other matter (whether or not included in or arising out of the request) that the authority considers relevant.

(4) The authority must exercise the function under subsection (2) in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.

(5) The authority must agree to the request unless there are reasonable grounds for refusing it.

(6) The authority must, before the end of the period mentioned in subsection (7), give notice (in this Part, a “decision notice”) to the community participation body of—

(a) its decision to agree to or refuse the request, and

(b) if its decision is to refuse the request, the reasons for the decision.

(7) The period is—

(a) a period prescribed in regulations made by the Scottish Ministers, or

(b) such longer period as may be agreed between the authority and the community participation body.

(8) The Scottish Ministers may by regulations make provision about—

(a) the information (in addition to that required under this Part) that a decision notice is to contain, and

(b) the manner in which a decision notice is to be given.

**Decision notice: information about outcome improvement process**

(1) This section applies where a public service authority gives a decision notice agreeing to a participation request by a community participation body.

(2) Where the authority at the time of giving the notice has established an outcome improvement process, the decision notice must—

(a) describe the operation of the outcome improvement process,

(b) specify what stage in the process has been reached,

(c) explain how and to what extent the community participation body is expected to participate in the process, and

(d) if any other person participates in the process, describe how the person participates.

(3) Where the authority at the time of giving the notice has not established an outcome improvement process, the decision notice must—

(a) describe how the proposed process is intended to operate,
(b) explain how and to what extent the community participation body which made the participation request is expected to participate in the proposed process, and

(c) if any other person is expected to participate in the proposed process, describe how the person is expected to participate.

### Proposed outcome improvement process

1. This section applies where a public service authority gives a community participation body a decision notice as mentioned in section 20(3).

2. The community participation body may make written representations in relation to the proposed outcome improvement process.

3. Any representations under subsection (2) must be made before the end of the period of 28 days beginning with the day on which the notice is given.

4. Before giving notice under subsection (5), the authority must take into consideration any representations made under subsection (2).

5. The authority must, before the end of the period of 28 days beginning with the day after the expiry of the period mentioned in subsection (3), give a notice to the community participation body containing details of the outcome improvement process that is to be established.

6. The authority must publish such information about the process as may be specified in regulations made by the Scottish Ministers.

7. The authority must publish the information mentioned in subsection (6) on a website or by other electronic means.

### Power to decline certain participation requests

1. Subsection (2) applies where—

   (a) a participation request (a “new request”) is made to a public service authority,

   (b) the new request relates to matters that are the same, or substantially the same, as matters contained in a previous participation request (a “previous request”), and

   (c) the previous request was made in the period of two years ending with the date on which the new request is made.

2. The public service authority may decline to consider the new request.

3. For the purposes of subsection (1)(b), a new request relates to matters that are the same, or substantially the same, as matters contained in a previous request only if both requests relate to—

   (a) the same public service, and

   (b) the same, or substantially the same, outcome that results from, or is contributed to by virtue of, the provision of the public service.

4. For the purposes of this section, it is irrelevant whether the body making a new request is the same body as, or a different body from, that which made the previous request.
Outcome improvement processes

23 Duty to establish and maintain outcome improvement process

A public service authority that gives notice under section 21(5) must—

(a) before the end of the period of 90 days beginning with the day on which the notice is given, establish the outcome improvement process in respect of which the notice is given by taking whatever steps are necessary to initiate the process, and

(b) maintain that process.

24 Modification of outcome improvement process

(1) This section applies where a public service authority establishes an outcome improvement process under section 23(a) following a participation request by a community participation body.

(2) Following consultation with the community participation body, the authority may modify the outcome improvement process.

(3) Where the outcome improvement process is modified under subsection (2), the authority must publish such information about the modification as may be specified in regulations made by the Scottish Ministers.

24ZA Regulations: appeals and reviews

(1) The Scottish Ministers may by regulations make provision for or in connection with—

(a) appeals against decision notices,

(b) reviews of decisions of public service authorities relating to participation requests.

(2) Regulations under subsection (1) may, in particular, make provision for or in connection with—

(a) the procedure to be followed in connection with appeals and reviews,

(b) the manner in which appeals and reviews are to be conducted,

(c) the time limits within which—

(i) appeals are to be brought,

(ii) applications for reviews are to be made,

(d) the circumstances under which—

(i) appeals may or may not be brought,

(ii) applications for reviews may or may not be made,

(e) the persons to whom—

(i) appeals may be made,

(ii) applications for reviews may be made,

(f) the powers of persons determining appeals and the disposals available to such persons,

(g) the steps that may be taken by a public service authority following a review,

(h) the effect of any decision taken in relation to an appeal or review on a decision notice to which the appeal or review relates.
Reporting

25 Reporting

(1) This section applies where—
   (a) a participation request has been made, and
   (b) the outcome improvement process relating to that request is complete.

(2) The public service authority that established the process must publish a report—
   (a) summarising the outcomes of the process, including whether (and, if so, how and to what extent) the specified outcome to which the process related has been improved,
   (b) describing how and to what extent the participation of the community participation body that made the participation request to which the process related influenced the process and the outcomes, and
   (c) explaining how the authority intends to keep the community participation body and any other persons informed about—
      (i) changes in the outcomes of the process, and
      (ii) any other matters relating to the outcomes.

(2A) In preparing the report mentioned in subsection (2), the public service authority must seek the views of the bodies mentioned in subsection (2B) in relation to—
   (a) the way in which the outcome improvement process was conducted, and
   (b) the outcomes of the process, including whether (and, if so, how and to what extent) the specified outcome to which the process related has been improved.

(2B) The bodies referred to in subsection (2A) are—
   (a) the community participation body which made the participation request to which the outcome improvement process related, and
   (b) any other community participation bodies which participated in that process.

(3) The authority must publish the report mentioned in subsection (2) on a website or by other electronic means.

(4) The Scottish Ministers may by regulations make provision about reports published under subsection (2), including the information (in addition to that required under that subsection) that reports are to contain.

25A Annual reports

(1) A public service authority must publish a participation request report for each reporting year.

(2) A participation request report is a report setting out, in respect of the reporting year to which it relates—
   (a) the number of participation requests the authority received,
   (b) the number of such requests which the authority—
      (i) agreed to, and
      (ii) refused,
(c) the number of such requests which resulted in changes to a public service provided by or on behalf of the authority, and

(d) any action taken by the authority—

(i) to promote the use of participation requests,

(ii) to support a community participation body in the making of a participation request.

(2A) A participation request report is to be published under subsection (1) no later than 30 June following the end of the reporting year to which it relates.

(3) In this section, “reporting year” means a period of one year beginning on 1 April.

25AA Ministerial report

(1) The Scottish Ministers must prepare, and lay before the Scottish Parliament, a report on the operation of participation requests.

(2) The report is to be prepared before the expiry of the period of three years beginning with the day on which section 17 comes into force.

Guidance

25B Guidance

(1) A public service authority must have regard to any guidance issued by the Scottish Ministers about the carrying out of functions by the authority under this Part.

(2) Before issuing such guidance, the Scottish Ministers must consult such persons as they think fit.

Interpretation of Part 3

26 Interpretation of Part 3

In this Part—

“community-controlled body” has the meaning given by section 14,

“community participation body” has the meaning given by section 15(1),

“constitution”, in relation to a company, means the memorandum and articles of association of the company,

“decision notice” is to be construed in accordance with section 19(6),

“equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 (equal opportunities) of Part 2 of Schedule 5 to the Scotland Act 1998,

“outcome improvement process” has the meaning given by section 17(4),

“participation request” has the meaning given by section 17(4),

“public service” has the meaning given by section 17(4),

“public service authority” has the meaning given by section 16,

“specified outcome” has the meaning given by section 17(4).
PART 4

COMMUNITY RIGHT TO BUY LAND

Modifications of Part 2 of Land Reform (Scotland) Act 2003

27 Nature of land in which community interest may be registered

(1) In section 33 of the 2003 Act (registrable land)—

(a) in subsection (1)—

(i) the words “The land in which” are repealed,

(ii) for the words “(registrable land) is” substitute “in”,

(b) in subsection (2), for the words “described as such in an order made by Ministers” substitute “consisting of a separate tenement which is owned separately from the land in respect of which it is exigible (subject to subsection (2A))”,

(c) after subsection (2), insert—

“(2A) Land consisting of—

(a) salmon fishings, or

(b) mineral rights (other than rights to oil, coal, gas, gold or silver),

which are owned separately from the land in respect of which they are exigible is not “excluded land” (and so is land in which a community interest may be registered under this Part).”, and

(d) subsections (3) to (7) are repealed.

(2) The title to section 33 of the 2003 Act becomes “Land in respect of which community interest may be registered”.

28 Meaning of “community”

(1) Section 34 of the 2003 Act (definition of “community”) is amended as follows.

(2) Before subsection (1), insert—

“(A1) A community body is, subject to subsection (4)—

(a) a body falling within subsection (1), (1A) or (1B), or

(b) a body of such other description as may be prescribed which complies with prescribed requirements.”.

(3) In subsection (1)—

(a) for the words “community body is, subject to subsection (4) below” substitute “body falls within this subsection if it is”,

(aa) in paragraph (c), for “20” substitute “10”,

(ab) for paragraph (d) substitute—

“(d) provision that at least three quarters of the members of the company are members of the community.”,

(b) in paragraph (f), the words “and the auditing of its accounts” are repealed,

(c) after paragraph (f) insert—
“(fa) provision that, on the request of any person for a copy of the minutes of a meeting of the company, the company must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,

(fb) provision that, where a request of the type mentioned in paragraph (fa) is made, the company—

(i) may withhold information contained in the minutes, and

(ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so,”; and

(d) in paragraph (h)—

(i) in sub-paragraph (i), for “or crofting community body” substitute “, crofting community body or Part 3A community body (as defined in section 97D)”, and

(ii) in sub-paragraph (ii), for “or crofting community body” substitute “, crofting community body or Part 3A community body (as so defined)”.

(4) After subsection (1), insert—

“(1A) A body falls within this subsection if it is a Scottish charitable incorporated organisation (a “SCIO”) the constitution of which includes the following—

(a) a definition of the community to which the SCIO relates,

(b) provision enabling the SCIO to exercise the right to buy land under this Part,

(c) provision that the SCIO must have not fewer than 10 members,

(d) provision that at least three quarters of the members of the SCIO are members of the community,

(e) provision under which the members of the SCIO who consist of members of the community have control of the SCIO,

(f) provision ensuring proper arrangements for the financial management of the SCIO,

(g) provision that, on the request of any person for a copy of the minutes of a meeting of the SCIO, the SCIO must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,

(h) provision that, where a request of the type mentioned in paragraph (g) is made, the SCIO—

(i) may withhold information contained in the minutes, and

(ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and

(i) provision that any surplus funds or assets of the SCIO are to be applied for the benefit of the community.

(1B) A body falls within this subsection if it is a community benefit society the registered rules of which include the following—

(a) a definition of the community to which the society relates,

(b) provision enabling the society to exercise the right to buy land under this Part,
(c) provision that the society must have not fewer than 10 members,
(d) provision that at least three quarters of the members of the society are members of the community,
(e) provision under which the members of the society who consist of members of the community have control of the society,
(f) provision ensuring proper arrangements for the financial management of the society,
(g) provision that, on the request of any person for a copy of the minutes of a meeting of the society, the society must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,
(h) provision that, where a request of the type mentioned in paragraph (g) is made, the society—
   (i) may withhold information contained in the minutes, and
   (ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and
(i) provision that any surplus funds or assets of the society are to be applied for the benefit of the community.”.

(5) In subsection (2), after “(1)(c)” insert “, (1A)(c) or (1B)(c)”.

(6) After subsection (4), insert—

“(4A) Ministers may by regulations from time to time amend subsections (1), (1A) and (1B).

(4B) If provision is made under subsection (A1)(b), Ministers may by regulations make such amendment of section 35(A1) and (1) in consequence of that provision as they consider necessary or expedient.”.

(7) In subsection (5)—

(a) the words “Unless Ministers otherwise direct” are repealed,
(b) in paragraph (a)—
   (i) for “subsection (1)(a)” substitute “subsections (1)(a), (1A)(a) and (1B)(a)”, and
   (ii) at the end, insert “or a prescribed type of area (or both such unit and type of area)”,
(c) in paragraph (b)(i), at the end, insert “or in that prescribed type of area”, and
(d) in paragraph (b)(ii), after “units” insert “or that prescribed type of area”.

(8) In subsection (8)—

(a) after “section” insert “—”, and
(b) at the end insert—

““community benefit society” means a registered society (within the meaning of section 1 of the Co-operative and Community Benefit Societies Act 2014) registered as a community benefit society under section 2 of that Act,
“registered rules” has the meaning given by section 149 of that Act (as that meaning applies in relation to community benefit societies),

“Scottish charitable incorporated organisation” has the meaning given by section 49 of the Charities and Trustee Investment (Scotland) Act 2005.”.

29 Modification of memorandum, articles of association or constitution

(1) Section 35 of the 2003 Act (provisions supplementary to section 34) is amended as follows.

(2) Before subsection (1) insert—

(A1) During the relevant period, a community body may not modify its memorandum, articles of association, constitution or registered rules (as defined in section 34(8)) without Ministers’ consent in writing.

(A2) In subsection (A1), “relevant period” means the period—

(a) beginning on the day on which the community body submits an application under section 37(1) for registration of a community interest in land, and

(b) ending with—

(i) registration of the community interest in land,

(ii) a decision by Ministers that the community interest in land should not be registered,

(iii) Ministers declining, by virtue of section 39(5), to consider the application, or

(iv) withdrawal of the application.”.

(3) In subsection (1), for “or articles of association” substitute “, articles of association, constitution or registered rules (as defined in section 34(8))”.

(4) After subsection (3), insert—

“(4) Where the power conferred by subsection (3) is (or is to be) exercised in relation to land, Ministers may make an order relating to, or to matters connected with, the acquisition of the land.

(5) An order under subsection (4) may—

(a) apply, modify or exclude any enactment which relates to any matter as to which an order could be made under that subsection,

(b) make such modifications of enactments as appear to Ministers to be necessary or expedient in consequence of any provision of the order or otherwise in connection with the order.”.

29ZA Register of Community Interests in Land

(1) Section 36 of the 2003 Act (Register of Community Interests in Land) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (a)—
(i) at the beginning, insert “where the community body which has registered
the interest is constituted by a company limited by guarantee,”, and
(ii) the words from “which” to the end of the paragraph are repealed,
(b) after paragraph (a) insert—

“(aa) where the community body which has registered the interest is
constituted by a Scottish charitable incorporated organisation within the
meaning given in section 34(8) (a “SCIO”), the name and address of the
principal office of the SCIO,

(ab) where the community body which has registered the interest is
constituted by a community benefit society as defined in section 34(8),
the name and address of the registered office of the society.”.

(3) After subsection (5), insert—

“(5A) Subsection (5B) applies where—

(a) a community body changes its name,
(b) a community body which is constituted by a company limited by
guarantee or by a community benefit society changes the address of its
registered office, or
(c) a community body which is constituted by a SCIO changes the address
of its principal office.

(5B) The community body must, as soon as reasonably practicable after the change
is made, notify the Keeper of the change.”

29A Public notice of certain applications

In section 37 of the 2003 Act (registration of interest in land)—

(a) in subsection (4)(b), at the beginning, insert “(except in the case of a proposed
application of the type mentioned in subsection (4B))”, and
(b) after subsection (4) insert—

“(4A) Ministers are not to be satisfied under subsection (3) in relation to a proposed
application of the type mentioned in subsection (4B) unless the applicant
community body has given public notice of the proposed application by
advertising it in such manner as may be prescribed.

(4B) The type of proposed application is one to register a community interest in land
consisting of salmon fishings, or mineral rights, which are owned separately
from the land in respect of which they are exigible.”.

30 Period for indicating approval under section 38 of 2003 Act

In section 38 of the 2003 Act (criteria for registration)—

(za) in subsection (1)(b)—

(i) after “that”, where it first occurs, insert “the acquisition of the land by the
community body to which the application relates is compatible with
furthering the achievement of sustainable development, and that”,
(ii) in sub-paragraph (i), the words “defined under section 34(1)(a) above” are repealed,

(iii) the word “or” immediately following sub-paragraph (i) is repealed,

(iv) in sub-paragraph (ii), for “that”, where it first occurs, substitute “the”,

(v) in that sub-paragraph, the words from “and” to the end of the sub-paragraph are repealed, and

(vi) after that sub-paragraph insert—

“(iii) where the community body is a body mentioned in section 34(A1)(a), the land is in or sufficiently near to the area of the community by reference to which the community is defined as mentioned in section 34(5)(a), or

(iv) where the community body is a body mentioned in section 34(A1)(b), the land is in or sufficiently near to the area of the community to which the body relates,”,

(a) in subsection (2), at the beginning insert “Subject to subsection (2A) below, “,

(b) after that subsection, insert—

“(2A) Ministers may not take into account, for the purposes of subsection (2), the approval of a member of the community if the approval was indicated earlier than 6 months before the date on which the application to register the community interest in land to which the approval relates was made.

(2B) Ministers may by regulations amend subsection (2A) so as to substitute for the period of time for the time being specified there a different period of time (not being less than 6 months).”,

(c) in subsection (3), for “above” substitute “, (1A)(a) or (1B)(a), or where that body is a body mentioned in section 34(A1)(b), the community to which that body relates”.

31 Procedure for late applications

(1) Section 39 of the 2003 Act (procedure for late applications) is amended as follows.

(2) For subsection (1), substitute—

“(1) This section (other than subsections (4A) and (5)) applies in relation to an application to register a community interest in land which satisfies—

(a) the conditions mentioned in subsection (1A), or

(b) the condition mentioned in subsection (1B).

(1A) The conditions are that—

(a) before the date on which the application is received by Ministers, the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land has taken action which, if a community interest had been registered, would be prohibited under section 40(1), and

(b) on the date on which the application is received by Ministers—
(i) missives for the sale and purchase of the land in pursuance of that action have not been concluded, or

(ii) an option to acquire the land in pursuance of that action has not been conferred.

(1B) The condition is that, where another community body has registered an interest in the land, the application is received by Ministers—

(a) after the date on which the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land has, under section 48(1), notified that community body that a transfer is proposed, and

(b) before Ministers have consented, under section 51(1), to a transfer to that community body.”.

(3) In subsection (2)—

(a) after paragraph (a), insert—

“(aa) Ministers may, before the end of the period of 7 days following receipt of the views of the owner of the land or, as the case may be, such a creditor under that section, request—

(i) the owner, such a creditor or the community body making the application to provide such further information as they consider necessary in connection with their being informed as mentioned in paragraph (a), and

(ii) that the further information be supplied within 14 days of the request,”, and

(b) in paragraph (b)(ii), after “‘30’” insert “or (in a case where further information is requested under paragraph (aa)) ‘44’”.

(4) In subsection (3), for paragraph (a) substitute—

“(a) that—

(i) such relevant work as Ministers consider reasonable was carried out by a person, or

(ii) such relevant steps as Ministers consider reasonable were taken by a person,

(aa) that the relevant work was carried out or the relevant steps were taken—

(i) at a time which, in the opinion of Ministers, was sufficiently in advance of the owner of the land or, as the case may be, the creditor taking the action such as is mentioned in subsection (1A), or giving notice such as is mentioned in subsection (1B),

(ii) in respect of land with a view to the land being used for purposes that are the same as those proposed for the land in relation to which the application relates, and

(iii) by the community body making the application or by another person with a view to the application being made by the community body,

(ab) that—
Community Empowerment (Scotland) Bill

Part 4—Community right to buy land

(i) in the period of 12 months before the application is received by Ministers, the owner of the land or, as the case may be, the creditor taking the action such as is mentioned in subsection (1A) did not make an offer to sell the land to the community body or a similar community body, or

(ii) in that 12 month period, the owner of the land or, as the case may be, the creditor did make an offer to sell the land to the community body or a similar community body and, in the opinion of Ministers, there are good reasons why the body did not purchase the land,”.

(5) After subsection (3), insert—

“(3ZA) Despite subsection (3), Ministers may decide that a community interest is to be entered in the Register even though the conditions in paragraphs (a) and (aa) of that subsection are not satisfied in relation to the interest, if Ministers are satisfied that there are good reasons—

(a) why the conditions are not satisfied, and

(b) for allowing the interest to be entered in the Register.

(3A) Ministers may, before the end of the period of 7 days following receipt under section 37(5) of the views of the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land, request—

(a) any person they believe may be able to provide them with such further information as they consider necessary in connection with the matters mentioned in subsection (3) to provide the information, and

(b) that the information be supplied within 14 days of the request.”.

(6) In subsection (4)(c), after “59(1)” insert “, 60A(1)”.

(7) After subsection (4), insert—

“(4A) Subsection (5) applies in relation to an application to register a community interest in land where the application is received by Ministers after the following have occurred—

(a) the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land has taken action which, if a community interest in land had been registered, would be prohibited under section 40(1), and

(b) either—

(i) missives for the sale and purchase of the land are concluded, or

(ii) an option to acquire the land is conferred.”.

(8) In subsection (5), the words from “Where” to “land” are repealed.

(9) After subsection (5), insert—

“(6) In subsection (3)—

“relevant work” means anything done by way of preparation of an application to register a community interest in land,

“relevant steps” means any steps towards securing ownership of land by a community body.
(6A) In subsection (3)(ab)—

(a) references to “the land” include land that is, in the opinion of Ministers, mainly the same as the land to which the application mentioned in that subsection relates,

(b) references to “an offer” are references to an offer in writing (or that is confirmed in writing),

(c) a community body is, for the purposes of that subsection, similar to another community body if, in the opinion of Ministers, it is similar to the other body to a significant degree having regard to such matters as may be prescribed.

(7) In subsection (6), “land” means any land whether or not it is land in respect of which an application in relation to which this section applies is made.”.

32 Evidence and notification of concluded missives or option agreements

After section 39 of the 2003 Act, insert—

“39A Evidence and notification of concluded missives or option agreements

(1) Subsection (2) applies where—

(a) an application to register a community interest in land is made,

(b) on the date on which the application is received by Ministers—

(i) missives for the sale and purchase of the land have been concluded, or

(ii) an agreement conferring an option to acquire the land exists, and

(c) the application does not disclose that such missives have been concluded or such an agreement exists.

(2) The owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land must, within 21 days of receiving a copy of the application under section 37(5)(a)—

(a) provide Ministers with evidence of the concluded missives or (as the case may be) the agreement,

(b) where there is an agreement such as is mentioned in subsection (1)(b)(ii) which contains a date on which it will expire—

(i) notify Ministers of that date, and

(ii) provide Ministers with information about whether, and if so how, the agreement is capable of being extended.

(3) Subsection (4) applies where—

(a) an application to register a community interest in land is made,

(b) on the date on which the application is received by Ministers—

(i) missives for the sale and purchase of the land have been concluded, or

(ii) an agreement conferring an option to acquire the land exists,
(c) the application discloses that such missives have been concluded or such an agreement exists, and
(d) accordingly, by virtue of section 39(4A) and (5), no copy of the application is sent to the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land.

(4) Ministers must—
(a) send a copy of the application and the accompanying information to the owner of the land or, as the case may be, the creditor,
(b) notify the owner of the land or, as the case may be, the creditor that Ministers must decline to consider the application by virtue of section 39(5), and
(c) require the owner of the land or, as the case may be, the creditor to provide Ministers with the information mentioned in subsection (5) within 21 days of receipt of the copy of the application sent under paragraph (a).

(5) The information is—
(a) evidence of the concluded missives or, as the case may be, the agreement, and
(b) where there is an agreement such as is mentioned in subsection (3)(b)(ii) which contains a date on which it will expire—
   (i) that date, and
   (ii) information about whether, and if so how, the agreement is capable of being extended.”.

33 Notification of transfer
In section 41 of the 2003 Act (provisions supplementary to and explanatory of section 40), after subsection (2), insert—
“(3) Where an owner of land or a creditor in a standard security having a right to sell land makes a transfer of land as mentioned in any of paragraphs (a) to (h) of subsection (4) of section 40, the owner of the land or, as the case may be, the creditor must within 28 days of the transfer—
(a) notify Ministers of—
   (i) the transfer,
   (ii) the name and address of the person to whom the land was transferred, and
   (iii) the date of the transfer, and
(b) provide Ministers with a description of the land transferred, including maps, plans or other drawings prepared to such specifications as may be prescribed.”.

33A Notice of expiry of registration
In section 44 of the 2003 Act (duration and renewal of registration), after subsection (5) insert—
“(5A) The Scottish Ministers must send written notice to a community body which has a registered community interest of the date on which that interest will cease to have effect unless it is re-registered (“the expiry date”).

(5B) A notice under subsection (5A) must be sent in the period beginning on the day which falls 12 months before the expiry date and ending 28 days after that day.”.

34 Changes to information relating to registered interests

After section 44 of the 2003 Act, insert—

“44A Duty to notify changes to information relating to registered interest

(1) This section applies where a community interest in land is registered in pursuance of an application under section 37.

(2) Where—

(a) the application contains information enabling Ministers to contact the community body which made the application, and

(b) there is a change in that information,

the community body must, as soon as reasonably practicable after the change, notify Ministers of the change.

(3) Where—

(a) the application contains information enabling Ministers to contact the owner of the land to which the application relates, and

(b) there is a change in that information,

the owner must, as soon as reasonably practicable after the change, notify Ministers of the change.

(4) Where—

(a) the application contains information relating to a creditor in a standard security over an interest in the land, and

(b) there is a change in that information,

the owner of the land to which the application relates must, as soon as reasonably practicable after the change, notify Ministers of the change.

(5) Subsection (6) applies where—

(a) there is a creditor in a standard security over an interest in the land to which the application relates, but

(b) the application does not disclose the existence of the creditor (whether because the standard security did not exist at the time the application was made or otherwise).

(6) The owner of the land to which the application relates must, as soon as reasonably practicable after the interest in land is registered—

(a) notify Ministers of the existence of the creditor, and

(b) provide Ministers with such information relating to the creditor as would enable Ministers to contact the creditor.
(7) Subsection (8) applies where there is a change in information provided by a community body or an owner of land in pursuance of the duty under subsection (2), (3), (4) or (6).

(8) The community body or, as the case may be, the owner of the land must as soon as reasonably practicable after the change notify Ministers of the change.

35 Notification under section 50 of 2003 Act

In section 50 of the 2003 Act (power to activate right to buy land where breach of Part 2)—

(a) in subsection (3)(b), after “land”, insert “, to any creditor in a standard security with a right to sell the land”, and

(b) after subsection (5), insert—

“(6) For the purposes of subsection (2)(c), the circumstances in which a community interest in land remains in effect include that—

(a) the community body that applied under subsection (1) has, in accordance with subsection (2) of section 44, applied to re-register the interest, and

(b) the Keeper has, by virtue of a direction under subsection (3) of that section, re-entered the interest in the Register.”.

36 Approval of members of community to buy land

In section 51 of the 2003 Act (exercise of right to buy: approval of community and consent of Ministers), in subsection (2)(a)—

(a) in sub-paragraph (i)—

(i) for the words “at least half” substitute “the proportion”,

(ii) after “above,” insert “who”, and

(iii) after “land” insert “is, in the circumstances, sufficient to justify the community body’s proceeding to buy the land;”;

(b) the word “; or” immediately following sub-paragraph (i) is repealed, and

(c) sub-paragraph (ii) is repealed.

37 Appointment of person to conduct ballot on proposal to buy land

After section 51 of the 2003 Act, insert—

“51A Ballots under section 51: appointment of ballotter, etc.

(1) The ballot is to be conducted by a person (the “ballotter”) appointed by Ministers who appears to them to be independent and to have knowledge and experience of conducting ballots.

(2) Ministers must, within the period mentioned in subsection (3), provide the ballotter with—

(a) a copy of the application made by the community body under section 37 to register an interest in the land in relation to which the body has confirmed it will exercise the right to buy, and
(b) such other information as may be prescribed.

(3) The period is the period of 28 days beginning with the date on which a valuer is appointed under section 59(1) in respect of the land in relation to which the community body has confirmed it will exercise the right to buy.

(4) Ministers must provide the community body with such details of the ballotter as will enable the community body to contact the ballotter.

(5) The community body must, before the end of the period of 7 days following receipt of notification under section 60(2) of the valuation of the land, provide the ballotter with wording for the proposition mentioned in section 51(2)(b); and the ballotter must conduct the ballot on the basis of such wording.

(6) At the same time as providing that wording, the community body must also provide the ballotter, in such form as may be prescribed, with such information as may be prescribed relating to—

(a) the community body,

(b) its proposals for use of the land in relation to which it has confirmed it will exercise its right to buy,

(c) the valuation, and

(d) any other matters.

(7) The expense of conducting the ballot is to be met by Ministers.”.

Consent under section 51 of 2003 Act: prescribed information

After section 51A of the 2003 Act (inserted by section 37), insert—

“51B Consent under section 51: duty to provide information

(1) For the purposes of deciding whether they are satisfied as mentioned in section 51(3) in relation to a community body, Ministers must take into account—

(a) the information mentioned in subsection (2), and

(b) any other information they consider relevant.

(2) The information referred to in subsection (1)(a) is information—

(a) provided by the community body, and

(b) that is of such a kind as may be prescribed.

(3) Information mentioned in subsection (2) must be provided in the prescribed form.

(4) Information that may be prescribed under subsection (2)(b) includes, in particular—

(a) information relating to the matters mentioned in section 51(3), and

(b) additional information relating to such information.

(5) Ministers may, no later than 7 days after receiving the information mentioned in subsection (2), request the community body to provide such further information as they consider necessary.

(6) The community body must, no later than 14 days after receiving any such request, provide Ministers with the further information requested.”.
Representations etc. regarding circumstances affecting ballot result

(1) After section 51B of the 2003 Act (inserted by section 38), insert—

“51C  Circumstances affecting result of ballot

(1) Within 14 days of receipt by the community body of notification under section 52(3) of the result of the ballot, the body may make representations to Ministers in writing about any circumstances that the body considers have affected the result of the ballot.

(2) Where the community body makes such representations it must, when making them—

(a) provide Ministers with such evidence as is reasonably necessary to establish the existence and effect of the circumstances to which the representations relate, and

(b) send a copy of the representations and the evidence to the owner of the land to which the ballot relates.

(3) Within 7 days of receipt of any representations under subsection (1), Ministers may request the community body to provide such further information relating to the representations or related evidence as they think fit.

(4) Within 7 days of receiving such a request, the community body must respond to it.

(5) Within 7 days of receipt of a copy of the representations and evidence under subsection (2)(b), the owner of the land may provide Ministers with comments on the representations and evidence.

(6) Where the owner of the land provides comments under subsection (5) the owner must, when providing them, send a copy of the comments to the community body.

(7) Within 7 days of receipt of a copy of comments under subsection (6), the community body may give Ministers views on the comments.

(8) Within 7 days of receipt of any views under subsection (7), Ministers may request the community body to provide such further information relating to the views as they think fit.

(9) Within 7 days of receiving such a request, the community body must respond to it.

(10) In deciding whether they are satisfied as mentioned in section 51(2)(a), Ministers must take account of any—

(a) representations made under subsection (1),

(b) evidence provided under subsection (2)(a),

(c) further information provided under subsection (4) or (9),

(d) comments under subsection (5), and

(e) views under subsection (7).”.

(2) In section 51 of the 2003 Act (exercise of right to buy: approval of community and consent of Ministers), after subsection (6), insert—
“(6A) Where a community body makes representations under section 51C(1), the references to 21 days in paragraphs (a) and (b) of subsection (6) are to be read as references to 35 days.”.

40 Ballot not conducted as prescribed

In section 52 of the 2003 Act (ballot procedure), after subsection (6) (inserted by schedule 4), insert—

“(7) Provision may be prescribed for or in connection with—

(a) reviewing whether a ballot was conducted in accordance with provision prescribed under subsection (1),

(b) providing notification to such persons, or description of persons, as may be prescribed that a ballot has not been so conducted,

(c) in a case where a ballot has not been so conducted, requiring a further ballot to be conducted on such a basis, and by such persons or description of persons, as may be prescribed,

(d) requiring any such further ballot to be conducted—

(i) in compliance with such conditions as may be prescribed (including conditions that the ballot be conducted in accordance with provision prescribed under subsection (1)),

(ii) within such timescales as may be prescribed,

(e) specifying persons, or descriptions of persons, who are to meet the expenses of conducting any such further ballot,

(f) specifying that any review mentioned in paragraph (a) be carried out by—

(i) such persons,

(ii) such description of persons, or

(iii) such a court or tribunal,

as may be prescribed,

(g) specifying the action that may be taken by such persons, persons of such description or such a court or tribunal following such a review.”.

41 Period in which ballot results and valuations are to be notified

(1) In section 52 of the 2003 Act (ballot procedure), in subsection (4), for the words from “28 days” to the end of the subsection, substitute “12 weeks beginning with—

(a) the date on which a valuer is appointed under section 59(1) in respect of the land in relation to which the community body has confirmed it will exercise its right to buy, or

(b) where—

(i) the ballotter receives notification under subsection (3C) of section 60, and
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(ii) the date notified under paragraph (c) of that subsection is after the end of the 12 week period beginning with the date on which a valuer is appointed as mentioned in paragraph (a) above, the day following the date notified to the ballotter under paragraph (c) of that subsection.”.

(2) In section 60 of the 2003 Act (procedure for valuation), after subsection (3) insert—

“(3A) An application under subsection (3) must be made within the period of 21 days beginning with the date of appointment of the valuer.

(3B) Any longer period as mentioned in that subsection must be fixed under that subsection within the period of 7 days beginning with the day on which the application was received.

(3C) Where such a longer period is fixed, Ministers must notify the persons mentioned in subsection (3D) of—

(a) the fact that a longer period has been so fixed,

(b) the length of the period, and

(c) the date on which the period ends.

(3D) The persons are—

(a) the community body which is exercising its right to buy the land,

(b) the person appointed to conduct the ballot in relation to the land, and

(c) the owner of the land.”.

42 Exercise of right to buy: date of entry and payment of price

In section 56 of the 2003 Act (procedure for buying)—

(a) in subsection (3)(a), for the word “6” substitute “8”, and

(b) after subsection (6), insert—

“(7) Where a later date is agreed as mentioned in subsection (3)(c), the community body must, within 7 days of the agreement—

(a) notify Ministers in writing of the agreement,

(b) inform Ministers—

(i) of the date on which the agreement was made, and

(ii) what the later date is, and

(c) provide evidence to Ministers of the matters mentioned in paragraph (b).”.

42A Notification of application under section 57 of the 2003 Act

In section 57 of the 2003 Act (powers of Lands Tribunal in event of failure or delay), after subsection (5), insert—

“(6) Where an application under subsection (1) is made by the owner of the land or the community body, the owner or, as the case may be, the community body must, within 7 days of the date on which the application is made, notify Ministers in writing of—
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(a) the making of the application, and
(b) the date of making the application.

(7) Failure to comply with the requirement in subsection (2) to send a copy of the order made under that subsection, or with subsection (6), has no effect on—

(a) the community body’s right to buy the land, or
(b) the validity of the application under subsection (1).”.

43 Views on representations under section 60 of 2003 Act

In section 60 of the 2003 Act (procedure for valuation)—

(a) after subsection (1), insert—

“(1A) Where written representations under subsection (1) are received—

(a) from the owner of the land, the valuer must invite the community body which is exercising its right to buy the land to send its views on the representations in writing,

(b) from the community body which is exercising its right to buy the land, the valuer must invite the owner of the land to send the owner’s views on the representations in writing.

(1B) In carrying out a valuation under section 59, the valuer must consider any views sent under subsection (1A).”, and

(b) in subsection (3), for the word “6” substitute “8”.

44 Expenses of valuation of land

After section 60 of the 2003 Act, insert—

“60A Liability of owner of land for valuation expenses

(1) Subsection (2) applies where—

(a) Ministers have received a confirmation sought by them under section 49(2)(a) that a community body will exercise its right to buy land in which it has a registered interest, and

(b) after Ministers have appointed a valuer under section 59(1) to assess the value of the land, the owner of the land gives notice under section 54(5) of the owner’s decision not to proceed further with the proposed transfer.

(2) Ministers may require the owner of the land to pay any expense incurred by them in connection with the valuation of the land under section 59 by sending the owner a demand for payment of the expense.

(3) Where Ministers are considering sending a demand under subsection (2), they may request the owner of the land to provide such information as they consider necessary for the purposes of enabling Ministers to determine whether or not to send the demand.

(4) The owner of the land may, within 21 days of the receipt of a demand under subsection (2), appeal to the sheriff against the demand.

(5) The decision of the sheriff in an appeal under subsection (4) is final.
(6) The owner of the land must pay the amount specified in a demand under subsection (2)—

(a) within 28 days of receipt, or

(b) where an appeal against the demand is made under subsection (4) and not upheld, within 28 days of the determination of the appeal.

45 Creditors in standard security with right to sell land: appeals

In section 61 of the 2003 Act (appeals)—

(a) after subsection (3), insert—

“(3A) A creditor in a standard security with a right to sell land may appeal to the sheriff against—

(a) a decision by Ministers that a community interest in the land is to be entered in the Register, or

(b) a decision by Ministers to give consent to the exercise by a community body of its right to buy the land.”,

(b) in subsection (4), for the words “or (3)” substitute “, (3) or (3A)”, and

(c) in subsection (6)—

(i) the word “and” immediately following paragraph (a)(i) is repealed,

(ii) in paragraph (a), after sub-paragraph (ii), insert “and

(iii) any creditor in a standard security with a right to sell the land to which the appeal relates;”,

(iii) the word “and” immediately following paragraph (b)(i) is repealed,

(iv) for the word “or” immediately following paragraph (b)(ii) substitute “and

(iii) any creditor in a standard security with a right to sell the land to which the appeal relates;”,

(v) the word “and” immediately following paragraph (c)(ii) is repealed,

(vi) in paragraph (c), after sub-paragraph (iii), insert “and

(iv) any creditor in a standard security with a right to sell the land to which the appeal relates;”, and

(vii) after paragraph (c), insert “or

(d) under subsection (3A) above, the creditor must intimate that fact to—

(i) the community body,

(ii) the owner, and

(iii) Ministers.”.

45A Appeals to Lands Tribunal as respects valuations of land

(1) Section 62 of the 2003 Act (appeals to Lands Tribunal: valuations) is amended as follows.

(2) In subsection (7), after “reasons”, where it second occurs, insert “—
(a) within 8 weeks of hearing the appeal, or

(b) where subsection (7A) applies, by such later date referred to in paragraph (b)(ii) of that subsection.”.

(3) After section (7) insert—

“(7A) This section applies where—

(a) the Lands Tribunal considers that it is not reasonable to issue a written statement mentioned in subsection (7) by the time limit specified in paragraph (a) of that subsection, and

(b) before the expiry of that time limit, the Lands Tribunal has notified the parties to the appeal—

(i) that the Tribunal is unable to issue a written statement by that time limit, and

(ii) of the date by which the Tribunal will issue such a written statement.”.

(4) In subsection (8), for the words from “to” to the end of the subsection substitute “—

(a) to comply with the time limit specified in paragraph (a) of subsection (7) above, or

(b) to issue a written statement by the date referred to in paragraph (b) of that subsection.”.

(5) After subsection (8) insert—

“(8A) Where the owner of the land or the community body appeals under this section, the owner or, as the case may be, the community body must, within 7 days of the date on which the appeal is made, notify Ministers in writing of—

(a) the making of the appeal, and

(b) the date of the making of the appeal.

(8B) The Lands Tribunal must send a copy of the written statement of reasons issued under subsection (7) to Ministers.

(8C) Failure to comply with subsection (8A) or (8B) has no effect on—

(a) the community body’s right to buy the land, or

(b) the validity of the appeal.”.

46 Calculation of time periods in Part 2 of 2003 Act

After section 67 of the 2003 Act, insert—

“67A Calculation of time periods

(1) In calculating for the purposes of this Part any period of time within which an act requires to be or may be done, no account is to be taken of any public or local holidays in the place where the act is to be done.

(2) Subsection (1) does not apply to a period of time specified in—

(a) section 56(3)(a) or (b),

(b) section 60(3), or
(c) Chapter 6 of this Part.”.

47 **Duty to provide information about community right to buy**

After section 67A of the 2003 Act (inserted by section 46), insert—

“67B **Duty to provide information about community right to buy**

(1) Ministers may, for the purpose of monitoring or evaluating any impact that the right to buy land conferred by this Part has had or may have, request a person mentioned in subsection (2) to provide them with the information mentioned in subsection (3).

(2) The persons are—

(a) a community body,

(b) the owner or former owner of land in respect of which an application to register a community interest under section 37 was made.

(3) The information is such information as Ministers may reasonably require for the purpose mentioned in subsection (1) relating to the effects that the operation of the provisions of this Part have had, or may be expected to have, on such matters as may be specified in the request.

(4) A person to whom a request under subsection (1) is made must, to the extent that the person is able to do so, provide Ministers with the information requested.”.

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**Modifications of Part 3 of the Land Reform (Scotland) Act 2003**

47A **Crofting community bodies**

(1) Section 71 of the 2003 Act (crofting community bodies) is amended as follows.

(2) Before subsection (1), insert—

“A1 A crofting community body is, subject to subsection (4)—

(a) a body falling within subsection (1), (1A) or (1B), or

(b) a body of such other description as may be prescribed which complies with prescribed requirements.”.

(3) In subsection (1)—

(a) for the words “crofting community body is, subject to subsection (4) below,” substitute “body falls within this subsection if it is”,

(b) in paragraph (b), after “land” insert “, the interest mentioned in section 69A(3)”,

(c) in paragraph (c), for “20” substitute “10”,

(d) for paragraph (d) substitute—

“(d) provision that at least three quarters of the members of the company are members of the crofting community,”,

(e) in paragraph (f), the words “and the auditing of its accounts” are repealed, and

(f) in paragraph (h)—

(i) after “land” insert “, interest in land”, and
(ii) in sub-paragraph (i), for the words “or community body” substitute “, community body or Part 3A community body (as defined in section 97D)”.

(4) After subsection (1), insert—

“(1A) A body falls within this subsection if it is a Scottish charitable incorporated organisation (a “SCIO”) the constitution of which includes the following—

(a) a definition of the crofting community to which the SCIO relates,

(b) provision enabling the SCIO to exercise the right to buy land, the interest mentioned in section 69A(3) and sporting interests under this Part,

(c) provision that the SCIO must have not fewer than 10 members,

(d) provision that at least three quarters of the members of the SCIO are members of the crofting community,

(e) provision under which the members of the SCIO who consist of members of the crofting community have control of the SCIO,

(f) provision ensuring proper arrangements for the financial management of the SCIO,

(g) provision that, on the request of any person for a copy of the minutes of a meeting of the SCIO, the SCIO must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,

(h) provision that, where a request of the type mentioned in paragraph (g) is made, the SCIO—

(i) may withhold information contained in the minutes, and

(ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and

(i) provision that any surplus funds or assets of the SCIO are to be applied for the benefit of the crofting community.

(1B) A body falls within this subsection if it is a community benefit society the registered rules of which include the following—

(a) a definition of the crofting community to which the society relates,

(b) provision enabling the society to exercise the right to buy land, the interest mentioned in section 69A(3) and sporting interests under this Part,

(c) provision that the society must have not fewer than 10 members,

(d) provision that at least three quarters of the members of the society are members of the crofting community,

(e) provision under which the members of the society who consist of members of the crofting community have control of the society,

(f) provision ensuring proper arrangements for the financial management of the society,

(g) provision that, on the request of any person for a copy of the minutes of a meeting of the society, the society must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,
(h) provision that, where a request of the type mentioned in paragraph (g) is made, the society—
   (i) may withhold information contained in the minutes, and
   (ii) if it does so, must inform the person requesting a copy of the
        minutes of its reasons for doing so, and

(5) In subsection (2), after “(1)(c)” insert “, (1A)(c) or (1B)(c)”.

(6) After subsection (4), insert—

“(4A) Ministers may by regulations from time to time amend subsections (1), (1A)
and (1B).

(4B) If provision is made under subsection (A1)(b), Ministers may by regulations
make such amendment of section 72(1) in consequence of that provision as
they consider necessary or expedient.”.

(7) In subsection (5)—

(a) after “(1)(a)” insert “, (1A)(a) or (1B)(a)”, and
(b) in paragraph (a)—
   (i) in sub-paragraph (i), after “Act” insert “and who are entitled to vote in
local government elections in the polling district or districts in which that
township is situated”,
   (ii) the word “or” immediately following sub-paragraph (i) is repealed,
   (iii) in sub-paragraph (ii), for the words from “being” to the end of the
paragraph substitute—

“(ii) are tenants of crofts in the crofting township whose names are
entered in the Crofting Register, or the Register of Crofts, as the
tenants of such crofts;

(iii) are owner-occupier crofters of owner-occupied crofts in the
crofting township whose names are entered in the Crofting
Register as the owner-occupier crofters of such crofts; or

(iv) are such other persons, or are persons falling within a class of such
other persons, as may be prescribed;”.

(8) In subsection (6)—

(a) for “(5)(a)(i)” substitute “(5)(a)”,
(b) after “above” insert “—”, and
(c) at the end insert—

“‘owner-occupied croft’ has the meaning given by section 19B(5) of the
Crofters (Scotland) Act 1993,

“owner-occupier crofter” is to be construed in accordance with section
19B of that Act.”.

(9) In subsection (8)—

(a) after “section” insert “—”, and
(b) at the end insert—

“‘community benefit society’ means a registered society (within the meaning of section 1 of the Co-operative and Community Benefit Societies Act 2014) registered as a community benefit society under section 2 of that Act,

“registered rules” has the meaning given by section 149 of that Act (as that meaning applies in relation to community benefit societies),

“Scottish charitable incorporated organisation” has the meaning given by section 49 of the Charities and Trustee Investment (Scotland) Act 2005.”.

47B Modification of memorandum or articles of association or constitution

In section 72 of the 2003 Act (provisions supplementary to section 71)—

(a) in subsection (1), for “or articles of association” substitute “, articles of association, constitution or registered rules (as defined in section 71(8))”, and

(b) after subsection (2) insert—

“(3) Subsection (2) does not apply if the crofting community body would no longer be entitled to buy the land because the land is not eligible croft land.

(4) Where the power conferred by subsection (2) is (or is to be) exercised in relation to land, Ministers may make an order relating to, or to matters connected with, the acquisition of the land.

(5) An order under subsection (4) may—

(a) apply, modify or exclude any enactment which relates to any matter as to which an order could be made under that subsection,

(b) make such modifications of enactments as appear to Ministers to be necessary or expedient in consequence of any provision of the order or otherwise in connection with the order.”.

47C Application: information about rights and interest in land

(1) Section 73 of the 2003 Act (application by crofting community body for consent to buy croft land etc.) is amended as follows.

(2) In subsection (5)—

(a) after “form” insert “, shall specify the persons mentioned in subsection (5ZA)”,

(b) in paragraph (b)—

(i) in sub-paragraph (i), after “application” insert “known to the crofting community body”, and

(ii) the words from “(ii)” to the end of the paragraph are repealed, and

(c) paragraph (f) is repealed.

(3) After subsection (5) insert—

“(5ZA)The persons are—

(a) the owner of the land,
(b) any creditor in a standard security over the land or any part of it with a right to sell the land or any part of it,
(c) the tenant of any tenancy of land over which the tenant has an interest,
(d) the person entitled to any sporting interests,
in respect of which the right to buy is sought to be exercised.”.

(3A) After subsection (5A) insert—
“(5AA) Ministers may by regulations—
(a) modify any of paragraphs (a) to (g) of subsection (5),
(b) provide for any of those paragraphs not to apply in such cases or circumstances as may be specified in the regulations.”.

(4) In subsection (11), for paragraphs (a) and (b) substitute “in such manner as may be prescribed”.

47D Criteria for consent by Ministers
In section 74 of the 2003 Act (criteria for consent by Ministers), in subsection (1)—
(a) the word “and” immediately following paragraph (m) is repealed, and
(b) after paragraph (n) insert—
“(o) that the owner of the land to which the application relates is accurately identified in the application,
(p) that any creditor in a standard security over the land to which the application relates or any part of it with a right to sell the land or any part of it is accurately identified in the application,
(q) in the case of an application made by virtue of section 69A(2), that the tenant whose interest is the subject of the application is accurately identified in the application, and
(r) that the person entitled to any sporting interests to which the application relates is accurately identified in the application.”.

47E Ballot: information and expenses
(1) Section 75 of the 2003 Act (ballot to indicate approval for the purposes of section 74(1)(m)) is amended as follows.
(2) After subsection (4) insert—
“(4A) Ministers may require the crofting community body—
(a) to provide such information relating to the ballot as they think fit, and
(b) to provide such information relating to any consultation with those eligible to vote in the ballot undertaken during the period in which the ballot was carried out as Ministers think fit.

(4B) Subject to subsection (6), the expense of conducting a ballot under this section is to be met by the crofting community body.”.
(3) After subsection (5) insert—
“(6) Ministers may by regulations make provision for or in connection with enabling a crofting community body, in such circumstances as may be specified in the regulations, to apply to them to seek reimbursement of the expense of conducting a ballot under this section.

(7) Regulations under subsection (6) may in particular make provision in relation to—

(a) the circumstances in which a crofting community body may make an application by virtue of that subsection,

(b) the method to be applied by Ministers in calculating the expense of conducting the ballot,

(c) the criteria to be applied by Ministers in deciding whether to make a reimbursement to the applicant,

(d) the procedure to be followed in connection with the making of—

(i) an application to Ministers,

(ii) an appeal against a decision made by Ministers in respect of an application,

(e) persons who may consider such an appeal,

(f) the powers of such persons.”.

47F Application by more than one crofting community body

In section 76 of the 2003 Act (right to buy same croft land exercisable by only one crofting community body), for subsection (4)(b)(i) substitute—

“(i) each person invited, under section 73(8)(a), to send them views on the application,”.

47G Reference to Land Court of questions on applications

In section 81 of the 2003 Act (reference to Land Court of questions on applications), in subsection (1)—

(a) after paragraph (b) insert—

“(ba) the owner of the land which is the subject of the application,

(bb) the person entitled to any sporting interests which are the subject of the application,”; and

(b) in paragraph (ca), after “interest”, where it first occurs, insert “—

(i) the tenant; and

(ii)”.

47H Valuation: views on representations and time limit

In section 88 of the 2003 Act (assessment of value of croft land etc.)—

(a) after subsection (9), insert—

“(9A) Where written representations under subsection (9) are received—
(a) from the owner of the land, the tenant or the person entitled to the
sporting interests, the valuer must invite the crofting community body
which is exercising its right to buy the land, tenant’s interest or sporting
interests to send its views on the representations in writing,

(b) from the crofting community body which is exercising its right to buy
the land, tenant’s interest or sporting interests, the valuer must invite
the owner of the land, the tenant or the person entitled to the sporting
interests to send the views of the owner, tenant or (as the case may be)
person on the representations in writing.

(9B) In carrying out a valuation under this section, the valuer must consider any
views sent under subsection (9A),” and

(b) in subsection (13), for the word “6” substitute “8”.

47I Compensation

In section 89 of the 2003 Act (compensation), for subsection (4) substitute—

“(4) Ministers may, by order, make provision for or in connection with
specifying—

(a) amounts payable in respect of loss or expense incurred as mentioned in
subsection (1),

(b) amounts payable in respect of loss or expense incurred by virtue of this
Part by a person of such other description as may be specified,

(c) the person who is liable to pay those amounts,

(d) the procedure under which claims for compensation under this section
are to be made.”.

47J Land Court: reasons for decision under section 92

In section 92 of the 2003 Act (appeals to Land Court: valuation)—

(a) in subsection (5), for the words “within 4 weeks of the hearing of the appeal”
substitute “—

(a) within 8 weeks of the hearing of the appeal, or

(b) where subsection (5A) applies, by such later date referred to in paragraph
(b)(ii) of that subsection.”,

(b) after subsection (5) insert—

“(5A) This subsection applies where—

(a) the Land Court considers that it is not reasonable to issue a written
statement mentioned in subsection (5) by the time limit specified in
paragraph (a) of that subsection, and

(b) before the expiry of that time limit, the Land Court has notified the
parties to the appeal—

(i) that the Land Court is unable to issue a written statement by that
time limit, and
of the date by which the Land Court will issue such a written statement.”; and

(c) in subsection (6), for the words from “to” to the end of the subsection substitute “—

5 (a) to comply with the time limit specified in paragraph (a) of subsection (5) above, or

(b) to issue a written statement by the date referred to in paragraph (b) of that subsection.”;

(d) after subsection (6), insert—

“(6A) Where the owner of land, the tenant, the person entitled to the sporting interests or the crofting community body appeals under this section, the owner, tenant, person so entitled or, as the case may be, crofting community body must, within 7 days of the date on which the appeal is made, notify Ministers in writing of—

(a) the making of the appeal, and

(b) the date of the making of the appeal.

(6B) The Land Court must send a copy of the written statement of reasons issued under subsection (5) to Ministers.

(6C) Failure to comply with subsection (6A) or (6B) has no effect on—

(a) the crofting community body’s right to buy the land, the tenant’s interest or the sporting interests, or

(b) the validity of the appeal under this section.”.

47JA Register of Crofting Community Rights to Buy

(1) Section 94 of the 2003 Act (Register of Crofting Community Rights to Buy) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (a)—

(i) at the beginning, insert “where the crofting community body which has submitted the application is constituted by a company limited by guarantee,”; and

(ii) the words from “which” to the end of the paragraph are repealed,

(b) after paragraph (a) insert—

“(aa) where the crofting community body which has submitted the application is constituted by a Scottish charitable incorporated organisation within the meaning given in section 71(8) (a “SCIO”), the name and address of the principal office of the SCIO,

(ab) where the crofting community body which has submitted the application is constituted by a community benefit society as defined in section 71(8), the name and address of the registered office of the society.”.

(3) After subsection (2), insert—

“(2A) Subsection (2B) applies where—
(a) a crofting community body changes its name,
(b) a crofting community body which is constituted by a company limited by
guarantee or by a community benefit society changes the address of its
registered office, or
(c) a crofting community body which is constituted by a SCIO changes the
address of its principal office.

(2B) The crofting community body must, as soon as reasonably practicable after the
change is made, notify the Crofting Commission of the change.”.

(4) After subsection (3), insert—

“(3A) If the crofting community body registering an application requires that any
such information or document relating to that application and falling within
subsection (3B) as is specified in the requirement be withheld from public
inspection, that information or document is to be kept by or on behalf of
Ministers separately from and not entered in the crofting register.

(3B) Information or a document falls within this subsection if it relates to
arrangements for the raising or expenditure of money to enable the land to
which the application relates to be put to a particular use.

(3C) Nothing in subsection (3A) or (3B) obliges an applicant crofting community
body, or empowers Ministers to require such a body, to submit to Ministers any
information or document within subsection (3B).”.

47K Meaning of creditor in standard security with right to sell

After section 97 of the 2003 Act insert—

“97ZA Meaning of creditor in standard security with right to sell

Any reference in this Part to a creditor in a standard security with a right to sell
land is a reference to a creditor who has such a right under—

(a) section 20(2) or 23(2) of the Conveyancing and Feudal Reform
(Scotland) Act 1970, or
(b) a warrant granted under section 24(1) of that Act.”.

Abandoned and neglected land

48 Abandoned and neglected land

After section 97A of the 2003 Act, insert—

“PART 3A
COMMUNITY RIGHT TO BUY ABANDONED OR NEGLECTED LAND

97B Meaning of “land”

In this Part, “land” includes—

(a) bridges and other structures built on or over land,
(b) inland waters (within the meaning of section 69(1) of the Salmon and
Freshwater Fisheries (Consolidation) (Scotland) Act 2003),
(c) canals, and
(d) the foreshore, that is to say, the land between the high and low water marks of ordinary spring tides.

97C Eligible land

(A1) The land which may be bought by a Part 3A community body under this Part is eligible land.

(1) Land is eligible for the purposes of this Part if in the opinion of Ministers—

(a) it is wholly or mainly abandoned or neglected, or

(b) the use or management of the land is such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of a relevant community.

(1A) In subsection (1)(b)—

(a) “harm”—

(i) includes harm the environmental effects of which have an adverse effect on the lives of persons comprising the relevant community mentioned in that subsection,

(ii) does not include harm which, in the opinion of Ministers, is negligible,

(b) “relevant community”, in relation to a Part 3A community body making an application under section 97G in relation to the land, means—

(i) the community defined as mentioned in subsection (5) of section 97D to which the Part 3A community body relates (reading that subsection as if paragraph (b)(ii) were omitted), or

(ii) where the Part 3A community body is a body mentioned in section 97D(1)(b), the community to which the body relates.

(2) In determining whether land is eligible for the purposes of this Part, Ministers must have regard to prescribed matters.

(3) Eligible land does not include—

(a) land on which there is a building or other structure which is an individual’s home other than a building or other structure which is occupied by an individual under a tenancy,

(b) such land pertaining to land of the type mentioned in paragraph (a) as may be prescribed,

(c) eligible croft land (as defined in section 68(2)),

(d) any croft occupied or worked by its owner or a member of its owner’s family,

(e) land which is owned or occupied by the Crown by virtue of its having vested as bona vacantia in the Crown, or its having fallen to the Crown as ultimus haeres,

(f) land of such other descriptions or classes as may be prescribed.

(4) Ministers may prescribe—
(a) descriptions or classes of building or structure which are, or are to be treated as, a home for the purposes of paragraph (a) of subsection (3),

(b) descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy for the purposes of that paragraph.

(5) In subsection (3)(d), the reference to a croft being occupied includes—

(a) a reference to its being occupied otherwise than permanently, and

(b) a reference to its being occupied by way of the occupation by its owner of any dwelling-house on or pertaining to it.

97D Part 3A community bodies

(1) A Part 3A community body is, subject to subsection (4)—

(a) a body falling within subsection (1A), (1B) or (1C), or

(b) a body of such other description as may be prescribed which complies with prescribed requirements.

(1A) A body falls within this subsection if it is a company limited by guarantee the articles of association of which include the following—

(a) a definition of the community to which the company relates,

(b) provision enabling the company to exercise the right to buy land under this Part,

(c) provision that the company must have not fewer than 10 members,

(d) provision that at least three quarters of the members of the company are members of the community,

(e) provision whereby the members of the company who consist of members of the community have control of the company,

(f) provision ensuring proper arrangements for the financial management of the company,

(g) provision that any surplus funds or assets of the company are to be applied for the benefit of the community, and

(h) provision that, on the winding up of the company and after satisfaction of its liabilities, its property (including any land acquired by it under this Part) passes—

(i) to such other community body or crofting community body as may be approved by Ministers, or

(ii) if no other community body or crofting community body is so approved, to Ministers or to such charity as Ministers may direct.

(1B) A body falls within this subsection if it is a Scottish charitable incorporated organisation (a “SCIO”) the constitution of which includes the following—

(a) a definition of the community to which the SCIO relates,

(b) provision enabling the SCIO to exercise the right to buy land under this Part,

(c) provision that the SCIO must have not fewer than 10 members,
(d) provision that at least three quarters of the members of the SCIO are members of the community,
(e) provision under which the members of the SCIO who consist of members of the community have control of the SCIO,
(f) provision ensuring proper arrangements for the financial management of the SCIO,
(g) provision that, on the request of any person for a copy of the minutes of a meeting of the SCIO, the SCIO must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,
(h) provision that, where a request of the type mentioned in paragraph (g) is made, the SCIO—
   (i) may withhold information contained in the minutes, and
   (ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and
(i) provision that any surplus funds or assets of the SCIO are to be applied for the benefit of the community.

(1C) A body falls within this subsection if it is a community benefit society the registered rules of which include the following—
(a) a definition of the community to which the society relates,
(b) provision enabling the society to exercise the right to buy land under this Part,
(c) provision that the society must have not fewer than 10 members,
(d) provision that at least three quarters of the members of the society are members of the community,
(e) provision under which the members of the society who consist of members of the community have control of the society,
(f) provision ensuring proper arrangements for the financial management of the society,
(g) provision that, on the request of any person for a copy of the minutes of a meeting of the society, the society must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,
(h) provision that, where a request of the type mentioned in paragraph (g) is made, the society—
   (i) may withhold information contained in the minutes, and
   (ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and
(i) provision that any surplus funds or assets of the society are to be applied for the benefit of the community.

(2) Ministers may, if they think it in the public interest to do so, disapply the requirement specified in subsection (1A)(c), (1B)(c) or (1C)(c) in relation to any body they may specify.
(4) A body is not a Part 3A community body unless Ministers have given it written confirmation that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development.

(4A) Ministers may by regulations from time to time amend subsections (1A), (1B) and (1C).

(4B) If provision is made under subsection (1)(b), Ministers may by regulations make such amendment of section 97E(1) in consequence of that provision as they consider necessary or expedient.

(5) A community—

(a) is defined for the purposes of subsection (1A)(a), (1B)(a) and (1C)(a) by reference to a postcode unit or postcode units or a prescribed type of area (or both such unit and type of area), and

(b) comprises the persons from time to time—

(i) resident in that postcode unit or in one of those postcode units or in that prescribed type of area, and

(ii) entitled to vote, at a local government election, in a polling district which includes that postcode unit or those postcode units or that prescribed type of area (or part of it or them).

(6) In subsection (5), “postcode unit” means an area in relation to which a single postcode is used to facilitate the identification of postal service delivery points within the area.

(7) The articles of association of a company which is a Part 3A community body may, notwithstanding the generality of paragraph (h) of subsection (1A), provide that its property may, in the circumstances mentioned in that paragraph, pass to another person only if that person is a charity.

(8) In this section—

“charity” means a body entered in the Scottish Charity Register,

“community benefit society” means a registered society (within the meaning of section 1 of the Co-operative and Community Benefit Societies Act 2014) registered as a community benefit society under section 2 of that Act,

“company limited by guarantee” has the meaning given by section 3(3) of the Companies Act 2006,

“registered rules” has the meaning given by section 149 of that Act (as that meaning applies in relation to community benefit societies),

“Scottish charitable incorporated organisation” has the meaning given by section 49 of the Charities and Trustee Investment (Scotland) Act 2005.

97E Provisions supplementary to section 97D

(1) A Part 3A community body which has bought land under this Part may not, for as long as the land or any part of it remains in its ownership, modify its memorandum, articles of association, constitution or registered rules (as defined in section 97D(8)) without Ministers’ consent in writing.
(2) If Ministers are satisfied that a Part 3A community body which has, under this Part, bought land would, had it not so bought that land, no longer be entitled to do so, they may acquire the land compulsorily.

(3) Subsection (2) does not apply if the Part 3A community body would no longer be entitled to buy the land because the land is not eligible for the purposes of this Part.

(4) Where the power conferred by subsection (2) is (or is to be) exercised in relation to land, Ministers may make an order relating to, or to matters connected with, the acquisition of the land.

(5) An order under subsection (4) may—

(a) apply, modify or exclude any enactment which relates to any matter as to which an order could be made under that subsection,

(b) make such modifications of enactments as appear to Ministers to be necessary or expedient in consequence of any provision of the order or otherwise in connection with the order.

97F Register of Community Interests in Abandoned or Neglected Land

(1) The Keeper must set up and keep a register, to be known as the Register of Community Interests in Abandoned, Neglected or Detrimental Land (the “Part 3A Register”).

(2) The Part 3A Register must be set up and kept so as to contain, in a manner and form convenient for public inspection, the following information and documents relating to each application to exercise the right to buy under this Part registered in it—

(a) where the Part 3A community body which has submitted the application is constituted by a company limited by guarantee, the name and address of the registered office of the company,

(aa) where the Part 3A community body which has submitted the application is constituted by a Scottish charitable incorporated organisation within the meaning given in section 97D(8) (a “SCIO”), the name and address of the principal office of the SCIO,

(ab) where the Part 3A community body which has submitted the application is constituted by a community benefit society as defined in section 97D(8), the name and address of the registered office of the society,

(b) a copy of the application to exercise the right to buy under this Part,

(c) a copy of any notification given under section 97K(4)(b),

(d) a copy of the notice given under section 97M(1),

(e) a copy of any notice under section 97P(1),

(f) a copy of any notice under section 97P(2)(a),

(g) a copy of any notice under section 97P(2)(b),

(h) a copy of any acknowledgement sent under section 97P(3),

(i) such other information as Ministers consider appropriate.
(2A) Subject to subsection (3), any person who, under this Part, provides a document or other information, or makes a decision, which or a copy of which is to be registered in the Part 3A Register must, as soon as reasonably practicable after providing the document or other information or, as the case may be, making the decision, give it or a copy of it to the Keeper for the purpose of allowing it to be so registered.

(3) If the Part 3A community body registering an application requires that any such information or document relating to that application and falling within subsection (4) as is specified in the requirement be withheld from public inspection, that information or document is to be kept by or on behalf of Ministers separately from and not entered in the Register.

(4) Information or a document falls within this subsection if it relates to arrangements for the raising or expenditure of money to enable the land to which the application relates to be put to a particular use.

(5) Nothing in subsection (3) or (4) obliges an applicant Part 3A community body, or empowers Ministers to require such a body, to submit to Ministers any information or document within subsection (4).

(5A) Subsection (5B) applies where—

(a) a Part 3A community body changes its name,

(b) a Part 3A community body which is constituted by a company limited by guarantee or by a community benefit society changes the address of its registered office, or

(c) a Part 3A community body which is constituted by a SCIO changes the address of its principal office.

(5B) The Part 3A community body must, as soon as reasonably practicable after the change is made, notify the Keeper of the change.

(6) Ministers may by regulations modify—

(a) paragraphs (a) to (h) of subsection (2),

(b) subsection (3),

(c) subsection (4).

(7) The Keeper must ensure—

(a) that the Part 3A Register is, at all reasonable times, available for public inspection free of charge,

(b) that members of the public are given facilities for getting copies of entries in the Part 3A Register on payment of such charges as may be prescribed, and

(c) that any person requesting it is, on payment of such a charge, supplied with an extract entry certified to be a true copy of the original.

(8) An extract so certified is sufficient evidence of the original.

(9) In this Part, “the Keeper” means—

(a) the Keeper of the Registers of Scotland, or

(b) such other person as Ministers may appoint to carry out the Keeper’s functions under this Part.
(10) Different persons may be so appointed for different purposes.

97G Right to buy: application for consent

(1) The right to buy under this Part may be exercised only by a Part 3A community body.

(2) That right may be so exercised only with the consent of Ministers given on the written application of the Part 3A community body.

(3) That right may be exercised in relation to more than one holding of land but in order so to exercise the right an application must be made in respect of each such holding and applications so made may be differently disposed of.

(4) In subsection (3), a “holding” of land is land in the ownership of one person or in common or joint ownership.

(5) An application under this section—

(a) must be made in the prescribed form,

(b) must specify—

(i) the owner of the land,

(ii) any tenant of the land, and

(iii) any creditor in a standard security over the land or any part of it, and

(c) must include or be accompanied by information of the prescribed kind including information (provided, where appropriate, by or by reference to maps or drawings) about the matters mentioned in subsection (6).

(6) The matters are—

(a) the reasons the Part 3A community body considers that its proposals for the land are—

(i) in the public interest, and

(ii) compatible with furthering the achievement of sustainable development in relation to the land,

(b) the reasons the Part 3A community body considers that the land is—

(i) wholly or mainly abandoned or neglected, or

(ii) being used or managed in such a way as to result in or cause harm as mentioned in section 97C(1)(b),

(c) the location and boundaries of the land in respect of which the right to buy is sought to be exercised,

(d) all rights and interests in the land known to the Part 3A community body,

(e) the proposed use, development and management of the land, and

(f) where the Part 3A community body has made a request to a relevant regulator as mentioned in section 97H(5)(b) (“relevant regulator” being construed in accordance with section 97H(6)), information about the request.
(7) A Part 3A community body applying under this section must, at the same time as it applies—

(a) send a copy of its application and the accompanying information to the owner of the land to which the application relates, and

(b) where there is a standard security in relation to the land or any part of it, send a copy of the application and the accompanying information to the creditor who holds the standard security and invite the creditor—

(i) to notify the Part 3A community body and Ministers, within 60 days of receipt of the invitation, if any of the circumstances set out in subsection (8) has arisen (or arises within 60 days of receipt of the invitation), and

(ii) if such notice is given, to provide Ministers, within that time, with the creditor’s views in writing on the application.

(8) Those circumstances are that—

(a) a calling-up notice has been served by the creditor under section 19 of the Conveyancing and Feudal Reform (Scotland) Act 1970 in relation to the land which the Part 3A community body is seeking to exercise its right to buy or any part of the land and that notice has not been complied with,

(b) a notice of default served by the creditor under section 21 of that Act in relation to the land or any part of the land has not been complied with and the person on whom the notice was served has not, within the period specified in section 22 of that Act, objected to the notice by way of application to the court,

(c) where that person has so objected, the court has upheld or varied the notice of default,

(d) the court has granted the creditor a warrant under section 24 of that Act in relation to the land or any part of the land.

(9) On receipt of an application under this section, Ministers must—

(a) invite—

(i) the owner of the land,

(ia) any tenant of the land,

(ii) any creditor in a standard security over the land or any part of it, and

(iii) any other person whom Ministers consider to have an interest in the application,

to send them, so as to be received not later than 60 days after the sending of the invitation, views in writing on the application,

(b) take reasonable steps to invite the owners of all land contiguous to the land to which the application relates to send them, so as to be received not later than 60 days after the sending of the invitation, views in writing on the application, and

(c) send copies of invitations given under paragraphs (a) and (b) to the Part 3A community body.
(10) An invitation given under subsection (9)(a)(i) must also invite the owner to give Ministers information about—

(a) whether the owner considers that it would be in the public interest for Ministers to consent to the application and, if not, the reasons the owner considers that it would not be in the public interest for such consent to be given,

(b) whether the owner’s continuing to own the land would be compatible with furthering the achievement of sustainable development in relation to the land,

(c) whether the owner considers the land to be wholly or mainly neglected or abandoned or, as the case may be, to be used or managed in such a way as to result in or cause harm as mentioned in section 97C(1)(b) and the reasons for the owner’s view,

(d) any proposals that the owner has for the land,

(e) any rights or interests in the land of which the owner is aware that are not mentioned in the application, and

(f) any other matter that the owner considers is relevant to the application.

(11) Ministers must, as soon as practicable after receiving an application, give public notice of it and of the date by which, under subsection (9)(a), views are to be received by them and, in that notice, invite persons to send to Ministers, so as to be received by them not later than 60 days after the publication of the notice, views in writing on the application.

(12) That public notice is to be given by advertisement in such manner as may be prescribed.

(13) Ministers must—

(a) send copies of any views they receive under this section to the Part 3A community body, and

(b) invite it to send them, so as to be received by them not later than 60 days after the sending of that invitation, its responses to these views.

(14) Ministers must, when considering whether to consent to an application under this section, have regard to all views on it and responses to the views which they have received in answer to invitations under this section.

(15) Ministers must decline to consider an application which—

(a) does not comply with the requirements of or imposed under this section,

(b) is otherwise incomplete, or

(c) otherwise indicates that it is one which Ministers would be bound to reject;

and Ministers are not required to comply with subsections (9) to (14) in relation to such an application.

(16) Ministers must not reach a decision on an application before—

(a) the date which is 60 days after the last date on which the Part 3A community body may provide Ministers with a response to the invitation given under subsection (13), or
(b) if by that date the Lands Tribunal has not advised Ministers of its finding on any question referred to it under section 97X in relation to the application, the date on which the Lands Tribunal provides Ministers with that finding.

(17) A Part 3A community body may require Ministers to treat as confidential any information or document relating to arrangements for the raising or expenditure of money to enable the land to be put to a particular use, being information or a document made available to Ministers for the purposes of this section.

97H Criteria for consent

(1) Ministers must not consent to an application made under section 97G unless they are satisfied—

(a) that the land to which the application relates is eligible land,

(b) that the exercise by the Part 3A community body of the right to buy under this Part is—

(i) in the public interest, and

(ii) compatible with furthering the achievement of sustainable development in relation to the land,

(c) that the achievement of sustainable development in relation to the land would be unlikely to be furthered by the owner of the land continuing to be its owner,

(d) that the owner of the land is accurately identified in the application,

(e) that any creditor in a standard security over the land or any part of it with a right to sell the land or any part of it is accurately identified in the application,

(f) that the owner is not—

(i) prevented from selling the land, or

(ii) subject to any enforceable personal obligation (other than an obligation arising by virtue of any right suspended by regulations under section 97N(3)) to sell the land otherwise than to the Part 3A community body,

(g) that the Part 3A community body complies with the provisions of section 97D,

(h) that—

(i) a significant number of the members of the community to which the application relates have a connection with the land,

(ii) the land is sufficiently near to land with which those members of the community have a connection,

(iii) where the Part 3A community body is a body mentioned in section 97D(1)(a), the land is in or sufficiently near to the area of the community by reference to which the community is defined as mentioned in section 97D(5)(a), or
(iv) where the Part 3A community body is a body mentioned in section 97D(1)(b), the land is in or sufficiently near to the area of the community to which the body relates,

(i) that the community have approved the proposal to exercise the right to buy, and

(j) that, otherwise than by virtue of this Part, the Part 3A community body has tried and failed to buy the land.

(2) Subsection (1) is subject to subsections (3) to (7).

(3) Subsections (4) to (7) apply in relation to an application made under section 97G that relates to land the use or management of which is such that it results in or causes harm to the environmental wellbeing of a relevant community (as defined in section 97C(1A)).

(4) In deciding whether to consent to the application, Ministers are not required to be satisfied as to the matter mentioned in subsection (1)(c) in relation to the land.

(5) Ministers must not consent to the application unless they are satisfied (in addition to the matters specified in subsection (1) as read with subsection (4))—

(a) that the exercise by the Part 3A community body of the right to buy under this Part is compatible with removing, or substantially removing, the harm to the environmental wellbeing of the relevant community,

(b) that the Part 3A community body has, before the application is submitted, made a request to—

(i) a relevant regulator (if any), or

(ii) where there is more than one relevant regulator, to all such regulators,

(c) (regardless of whether or not a relevant regulator is taking, or has taken, action in exercise of its relevant regulatory functions in relation to the land) that the harm is unlikely to be removed, or substantially removed, by the owner of the land continuing to be its owner.

(6) For the purposes of subsection (5)—

(a) “regulator” means—

(i) such person, body or office-holder as may be prescribed, or

(ii) a person, body or office-holder of such description as may be prescribed,

(b) a regulator is “relevant” if, in the opinion of Ministers, the regulator is relevant having regard to the harm to the environmental wellbeing of the relevant community,

(c) action taken by a relevant regulator in exercise of its relevant functions includes action to secure compliance with or enforce a regulatory requirement,
(d) “regulatory functions” has the meaning given by section 1(5) (as read with section 1(6)) of the Regulatory Reform (Scotland) Act 2014, but as if the words “but does not include any such functions exercisable by a planning authority” in section 1(5) were omitted,

(e) a regulatory function is “relevant” if, in the opinion of Ministers, the function is relevant having regard to the harm to the environmental wellbeing of the relevant community.

(7) In subsection (6)(c), “regulatory requirement” has the meaning given by section 1(5) of the Regulatory Reform (Scotland) Act 2014, but as if the references to “regulator” and “regulatory functions” in paragraph (b) of that definition were references respectively to “regulator” and “regulatory functions” within the meaning given by subsection (6) of this section.

(8) References in subsection (1) to the community are, in relation to a Part 3A community body, references to—

(a) where the body is a body mentioned in section 97D(1)(a), the community defined in relation to the body under section 97D(1A)(a), (1B)(a) or (1C)(a), or

(b) where the body is a body mentioned in section 97D(1)(b), the community to which the body relates.

97J Ballot to indicate approval for purposes of section 97H

(1) The community, defined in pursuance of section 97D in relation to a Part 3A community body which has applied to buy land, are to be taken for the purposes of section 97H(1)(i) as having approved a proposal to buy if—

(a) a ballot of the members of the community so defined has, during the period of six months which immediately preceded the date on which the application was made, been conducted by the Part 3A community body on the question whether the Part 3A community body should buy the land,

(b) in the ballot—

(i) at least half of the members of the community so defined have voted, or

(ii) fewer than half of the members of the community so defined have voted but the proportion which voted is sufficient to justify the Part 3A community body’s proceeding to buy the land, and

(c) the majority of those voting have voted in favour of the proposition that the Part 3A community body buy the land.

(2) The ballot is to be conducted as prescribed.

(3) The provisions prescribed must in particular include provision for—

(a) the ascertainment and publication of—

(i) the number of persons eligible to vote in the ballot,

(ii) the number who did vote, and

(iii) the numbers of valid votes respectively cast for and against the proposition mentioned in subsection (1)(c), and
(d) the form and manner in which the result of the ballot is to be published.

(4) The Part 3A community body which conducts a ballot must, within 21 days of the ballot (or, if its application under section 97G is made before the expiry of that period, together with the application), and in the prescribed form of return, notify Ministers of—

(a) the result,

(b) the number of persons eligible to vote,

(c) the number of persons who voted, and

(d) the number of persons who voted in favour of the proposition mentioned in subsection (1)(c).

(5) Ministers may require the Part 3A community body—

(a) to provide such information relating to the ballot as they think fit, and

(b) to provide such information relating to any consultation with those eligible to vote in the ballot undertaken during the period in which the ballot was carried out as Ministers think fit.

(6) Subject to subsection (6A), the expense of conducting a ballot under this section is to be met by the Part 3A community body.

(6A) Ministers may by regulations make provision for or in connection with enabling a Part 3A community body, in such circumstances as may be specified in the regulations, to apply to them to seek reimbursement of the expense of conducting a ballot under this section.

(6B) Regulations under subsection (6A) may in particular make provision in relation to—

(a) the circumstances in which a Part 3A community body may make an application by virtue of that subsection,

(b) the method to be applied by Ministers in calculating the expense of conducting the ballot,

(c) the criteria to be applied by Ministers in deciding whether to make a reimbursement to the applicant,

(d) the procedure to be followed in connection with the making of—

(i) an application to Ministers,

(ii) an appeal against a decision made by Ministers in respect of an application,

(e) persons who may consider such an appeal,

(f) the powers of such persons.

(7) If the ballot is not conducted as prescribed, the Part 3A community body’s right to buy the land to which the body’s application relates is, so far as proceeding on that application, extinguished.

97K **Right to buy same land exercisable by only one Part 3A community body**

(1) Only one Part 3A community body may exercise the right under this Part to buy the same land.
(2) Where two or more such bodies have applied to buy the same land, it is for Ministers to decide which application is to proceed.

(3) Ministers may not make such a decision unless they have had regard to all views on each of the applications, and responses to the views, which they have received in answer to invitations under section 97G.

(4) On Ministers so deciding—

   (a) the other body’s right to buy the land which is the subject of the body’s application is, so far as proceeding on that application, extinguished, and

   (b) they must notify the bodies and each person invited, under section 97G(9)(a), to send them views on the application of that fact.

97L  Consent conditions

Ministers may make their consent to an application made under section 97G subject to conditions.

97M  Notification of Ministers’ decision on application

(1) Ministers must give written notice, in prescribed form, of their decision on an application made under section 97G, and their reasons for it, to—

   (a) the applicant Part 3A community body,

   (b) the owner of the land to which the application relates,

   (c) every other person who was invited, under section 97G(9)(a), to send them views on the application, and

   (d) the Keeper.

(2) The form of notice is to be prescribed so as to secure that the notice includes a full description of—

   (a) the land to which the application relates (provided, where appropriate, by or by reference to maps and drawings), and

   (b) where their decision is to consent to the application, any conditions imposed under section 97L.

(3) The notice given under subsection (1) must—

   (a) contain information about the consequences of the decision notified and of the rights of appeal against it given by this Part, and

   (b) state the date on which consent is given or refused.

97N  Effect of Ministers’ decision on right to buy

(1) Ministers may by regulations make provision for or in connection with prohibiting, during such period as may be specified in the regulations, persons so specified from transferring or otherwise dealing with land in respect of which a Part 3A community body has made an application under section 97G.

(2) Regulations under subsection (1) may in particular include provision—

   (a) specifying transfers or dealings which are not prohibited by the regulations,
(b) requiring or enabling such persons as may be specified in the regulations, in such circumstances as may be so specified, to register in the Register of Community Rights in Abandoned, Neglected or Detrimental Land notices as may be so specified,

(c) requiring, in such circumstances as may be specified in the regulations, such information as may be so specified to be incorporated into deeds relating to the land as may be so specified.

(3) Ministers may by regulations make provision for or in connection with suspending, during such period as may be specified in the regulations, such rights in or over land in respect of which a Part 3A community body has made an application under section 97G as may be so specified.

(4) Regulations under subsection (3) may in particular include provision specifying—

(a) rights to which the regulations do not apply,

(b) rights to which the regulations do not apply in such circumstances as may be specified in the regulations.

(5) Nothing in this Part—

(a) affects the operation of an inhibition on the sale of the land,

(b) prevents an action of adjudication from proceeding, or

(c) affects the commencement, execution or operation of any other diligence.

97P Confirmation of intention to proceed with purchase and withdrawal

(1) A Part 3A community body’s right to buy land under this Act is exercisable only if, within 21 days of the date of notification under section 97S(10), it sends notice in writing confirming its intention to proceed to buy the land to—

(a) Ministers, and

(b) the owner of the land.

(2) A Part 3A community body may, at any time after—

(a) making an application under section 97G, withdraw the application, or

(b) confirming its intention to proceed under subsection (1), withdraw that confirmation,

by notice in writing to that effect sent to Ministers.

(3) Ministers must, within 7 days of receipt of notice under subsection (1) or (2), acknowledge receipt and send a copy of that acknowledgement to the owner of the land.

97Q Completion of purchase

(1) It is for the Part 3A community body to secure the expeditious exercise of its right to buy and, in particular—

(a) to prepare the documents necessary to—

(i) effect the transfer to it of the land, and
(ii) impose any conditions (including any real burdens or servitudes) which Ministers, under section 97L, require to be imposed upon the title to land, and

(b) in so doing, to ensure—

(i) that the land in the application to which Ministers have consented is the same as that to be transferred, and

(ii) that the transfer is to be effected in accordance with any other conditions imposed by Ministers under section 97L.

(2) Where the Part 3A community body is unable to fulfil the duty imposed by subsection (1)(b) because the land or part of the land in respect of which Ministers’ consent was given is not owned by the person named as its owner in the application made under section 97G, it must refer that matter to Ministers.

(3) On a reference under subsection (2), Ministers must direct that the Part 3A community body’s right to buy the land is, so far as proceeding on that application, extinguished.

(4) The owner of the land being bought is obliged—

(a) to make available to the Part 3A community body such deeds and other documents as are sufficient to enable the body to proceed to complete its title to the land, and

(b) to transfer title accordingly.

(5) If, within 6 weeks of the date on which Ministers consent to an application to buy land, the owner of the land refuses or fails to make those deeds and other documents available, or they cannot be found, the Lands Tribunal may, on the application of the Part 3A community body, order the owner or any other person appearing to the Lands Tribunal to have those deeds and documents to produce them.

(6) If the owner of the land refuses or fails to effect such sufficient transfer as is mentioned in subsection (4), the Lands Tribunal may, on the application of the Part 3A community body, authorise its clerk to adjust, execute and deliver such deeds or other documents as will complete such transfer to the like force and effect as if done by the owner or person entitled.

97R Completion of transfer

(1) The consideration for the transfer of the land is its value as assessed under section 97S.

(2) Subject to subsections (3) and (4), that consideration must be paid not later than the “final settlement date”, being the date on which expires a 6 month period beginning with the date (the “consent date”) when Ministers consented to the application made under section 97G to buy the land.

(3) Where—

(a) the Part 3A community body and the owner so agree, the consideration may be paid on a date later than the final settlement date,

(b) the assessment of the valuation of the land has not been completed by a date 4 months after the consent date, the consideration must be paid not later than 2 months after the date when that assessment is completed,
(c) that valuation is the subject of an appeal which has not been determined within 4 months of the consent date, the consideration must be paid not later than 2 months after the date of that determination.

(4) If, on the date the consideration is to be paid, the owner is not able to effect the grant of a good and marketable title to the Part 3A community body—

(a) the consideration, or

(b) if, for any reason, the consideration has not been ascertained, such sum as may be fixed by the valuer appointed under section 97S as a fair estimate of what the consideration might be,

must be consigned into the Lands Tribunal until that title is granted or the Part 3A community body gives notice to the Tribunal of its decision not to proceed to complete the transaction.

(5) Except where subsection (4) applies, if the consideration remains unpaid after the date not later than which it is to be paid, the Part 3A community body’s application made under section 97G in relation to the land is to be treated as withdrawn.

(6) Any heritable security which burdened the land immediately before title is granted to the Part 3A community body in pursuance of this section ceases to do so on the recording of that title in the Register of Sasines or registration in the Land Register of Scotland of the body’s interest in the land.

(7) Where such a security also burdens land other than the land in respect of which title is granted to the Part 3A community body, the security does not, by virtue of subsection (6), cease to burden that other land.

(8) Unless the creditors in right of any such security otherwise agree, the Part 3A community body must pay to them according to their respective rights and preferences any sum which would, but for this subsection, be paid to the owner by the Part 3A community body as consideration for the land.

(9) Any sum paid by a Part 3A community body under subsection (8) must be deducted from the sum which the body is to pay to the owner as consideration for the land.

97S Assessment of value of land etc.

(1) Where Ministers consent to an application made under section 97G, they must, subject to subsection (2), within 7 days of doing so appoint a valuer, being a person who appears to Ministers to be suitably qualified, independent and to have knowledge and experience of valuing land of a kind which is similar to the land being bought, to assess the value of the land to which the application relates.

(2) The validity of anything done under this section is not affected by any failure by Ministers to comply with the time limit specified in subsection (1).

(3) In assessing the value of land in pursuance of an appointment under subsection (1), a valuer—

(a) does not act on behalf of the owner of the land or of the Part 3A community body which is exercising its right to buy the land under this Part, and
(b) is to act as an expert and not as an arbiter.

(4) The value to be assessed is the market value of the land as at the date when Ministers consented to the application made under section 97G relating to the land.

(5) The “market value” of land is the aggregate of—

(a) the value it would have on the open market as between a seller and a buyer both of whom are, as respects the transaction, willing,

(b) any depreciation in the value of other land or interests belonging to the seller which may result from the transfer of land, including depreciation caused by division of the land by the transfer of land to the Part 3A community body, and

(c) the amount attributable to any disturbance to the seller which may arise in connection with the transfer of the land to the Part 3A community body.

(6) In arriving, for the purposes of this section, at the value which land would have on the open market in the circumstances mentioned in subsection (5)(a)—

(a) account may be taken, in so far as a seller and buyer such as are mentioned in subsection (5) would do so, of any factor attributable to the known existence of a person who (not being the Part 3A community body which is exercising its right to buy the land) would be willing to buy the land at a price higher than others would because of a characteristic of the land which relates peculiarly to that person’s interest in buying it,

(b) no account is to be taken of—

(i) any depreciation of the type mentioned in subsection (5)(b),

(ii) any disturbance of the type mentioned in subsection (5)(c),

(iii) the absence of the period of time during which the land would, on the open market, be likely to be advertised and exposed for sale.

(7) The expense of a valuation under this section is to be met by Ministers.

(8) In carrying out a valuation under this section, the valuer must—

(a) invite—

(i) the owner of the land, and

(ii) the Part 3A community body which is exercising its right to buy the land,

(b) consider any representations made accordingly.

(8A) Where written representations under subsection (8) are received—

(a) from the owner of the land, the valuer must invite the Part 3A community body which is exercising its right to buy the land to send its views on the representations in writing,
(b) from the Part 3A community body which is exercising its right to buy the land, the valuer must invite the owner of the land to send the owner’s views on the representations in writing.

(8B) In carrying out a valuation under this section, the valuer must consider any views sent under subsection (8A).

(9) Where the Part 3A community body and the owner of the land have agreed the valuation of the land they must notify the valuer in writing of that valuation.

(10) The valuer must, within the period set out in subsection (11), notify Ministers, the Part 3A community body and the owner of the land of the assessed value of the land.

(11) The period referred to in subsection (10) is the period of 8 weeks beginning with the date of appointment of the valuer or such longer period as Ministers may, on an application by the valuer, fix.

(12) The validity of anything done under this Part is not affected by any failure by a valuer to comply with the time limit specified in subsection (11).

97T Compensation

(1) Any person, including an owner or former owner of land, who has incurred loss or expense—

(a) in complying with the requirements of this Part following the making of an application under section 97G by a Part 3A community body,

(b) as a result of the withdrawal by the Part 3A community body of its confirmation under section 97P or its failure otherwise to complete the purchase after having so confirmed its intention under that section, or

(c) as a result of the failure of the Part 3A community body which made that application to complete the purchase,

is entitled to recover the amount of that loss or expense from the Part 3A community body.

(2) There is no such entitlement where the application made under section 97G is refused.

(3) Where such an application has been refused, the owner of the land who has incurred loss or expense as mentioned in subsection (1)(a) is entitled to recover the amount of that loss or expense from Ministers.

(4) Ministers may, by order, make provision for or in connection with specifying—

(a) amounts payable in respect of loss or expense incurred as mentioned in subsection (1),

(b) amounts payable in respect of loss or expense incurred by virtue of this Part by a person of such other description as may be specified,

(c) the person who is liable to pay those amounts,

(d) the procedure under which claims for compensation under this section are to be made.
(5) Where, at the expiry of such period of time as may be fixed for the purposes of this subsection by an order under subsection (4)(d), any question as to whether compensation is payable or as to the amount of any compensation payable has not been settled as between the parties, either of them may refer the question to the Lands Tribunal.

(6) Where either of the parties refers a question to the Lands Tribunal as mentioned in subsection (5), the party so referring the question must, within 7 days of the date of referring it, notify Ministers in writing of—

(a) the referral of the question, and

(b) the date of referring the question.

(7) The Lands Tribunal must send a copy of its findings on a question referred to it under subsection (5) to Ministers.

(8) Failure to comply with subsection (6) or (7) has no effect on—

(a) the Part 3A community body’s right to buy the land, or

(b) the validity of the referral of the question under subsection (5).

(9) The duty in subsection (6) does not apply where the party referring the question mentioned in that subsection is Ministers.

97U Grants towards Part 3A community bodies’ liabilities to pay compensation

(1) Ministers may, in the circumstances set out in subsection (2), pay a grant to a Part 3A community body.

(2) Those circumstances are—

(a) that after settlement of its other liabilities connected with the exercise of its right to buy land under this Part, the Part 3A community body has insufficient money to pay, or to pay in full, the amount of compensation it has to pay under section 97T,

(b) that the Part 3A community body has taken all reasonable steps to obtain money in order to pay, or to pay in full, that amount (other than applying for a grant under this section) but has been unable to obtain the money, and

(c) that it is in the public interest that Ministers pay the grant.

(3) The fact that all the circumstances set out in subsection (2) are applicable in a particular case does not prevent Ministers from refusing to pay a grant in that case.

(4) A grant under this section may be made subject to conditions which may stipulate repayment in the event of breach.

(5) Ministers may pay a grant under this section only on the application of a Part 3A community body.

(6) An application for such a grant must be made in such form and in accordance with such procedure as may be prescribed.

(7) Ministers must issue their decision on an application under this section in writing accompanied by, in the case of a refusal, a statement of the reasons for it.
(8) Ministers’ decision on an application under this section is final.

97V Appeals

(1) An owner of land may appeal to the sheriff against a decision by Ministers to give consent to the exercise by a Part 3A community body of its right to buy the land.

(2) A Part 3A community body may appeal to the sheriff against a decision by Ministers not to give consent to the exercise by the Part 3A community body of its right to buy.

(3) Subsection (2) does not extend to Ministers’ decision under section 97K on which of two or more applications to buy the same land is to proceed.

(4) A person who is a member of a community as defined for the purposes of section 97D in relation to a Part 3A community body may appeal to the sheriff against a decision by Ministers to consent to the exercise by the Part 3A community body of its right to buy land.

(5) A creditor in a standard security with a right to sell land may appeal to the sheriff against a decision by Ministers to give consent to the exercise by a Part 3A community body of its right to buy the land.

(6) An appeal under subsection (1), (2), (4) or (5) must be lodged within 28 days of the date on which Ministers decided to consent to the exercise of the right to buy land or refuse such consent.

(7) The sheriff in whose sheriffdom the land or any part of it is situated has jurisdiction to hear an appeal under this section.

(8) Where an appeal is made—

(a) under subsection (1) the owner must intimate that fact to—

(i) the Part 3A community body,

(ii) Ministers, and

(iii) any creditor in a standard security with a right to sell the land to which the appeal relates,

(b) under subsection (2) the Part 3A community body must intimate that fact to—

(i) the owner,

(ii) Ministers, and

(iii) any creditor in a standard security with a right to sell the land to which the appeal relates,

(c) under subsection (4) the member of the community must intimate that fact to—

(i) the Part 3A community body,

(ii) the owner,

(iii) Ministers, and

(iv) any creditor in a standard security with a right to sell the land to which the appeal relates, or
(d) under subsection (5), the creditor must intimate that fact to—
   (i) the Part 3A community body,
   (ii) the owner, and
   (iii) Ministers.

(9) The decision of the sheriff in an appeal under this section—
   (a) may require rectification of the Register of Community Interests in
       Abandoned, Neglected or Detrimental Land,
   (b) may impose conditions upon the appellant,
   (c) is final.

97W Appeals to Lands Tribunal: valuation

(1) The owner of the land and the Part 3A community body which is exercising its
    right to buy the land may appeal to the Lands Tribunal against the valuation
carried out under section 97S.

(2) An appeal under this section must state the grounds on which it is being made
    and must be lodged within 21 days of the date of notification under section
    97S(10).

(3) In an appeal under this section, the Lands Tribunal may reassess the value of
    the land.

(4) The valuer whose valuation is appealed against may be a witness in the appeal
    proceedings.

(5) The Lands Tribunal must give reasons for its decision on an appeal under this
    section and must issue a written statement of these reasons—
    (a) within 8 weeks of the hearing of the appeal, or
    (b) where subsection (5A) applies, by such later date referred to in paragraph
        (b)(ii) of that subsection.

(5A) This subsection applies where—
    (a) the Lands Tribunal considers that it is not reasonable to issue a written
        statement mentioned in subsection (5) by the time limit specified in
        paragraph (a) of that subsection, and
    (b) before the expiry of that time limit, the Lands Tribunal has notified the
        parties to the appeal—
        (i) that the Lands Tribunal is unable to issue a written statement by
            that time limit, and
        (ii) of the date by which the Lands Tribunal will issue such a written
            statement.

(5B) The validity of anything done under this Part is not affected by any failure of
    the Lands Tribunal—
    (a) to comply with the time limit specified in paragraph (a) of subsection (5)
        above, or
    (b) to issue a written statement by the date referred to in paragraph (b) of
        that subsection.
(5C) Where the owner of the land or the Part 3A community body appeals under this section, the owner or, as the case may be, Part 3A community body must, within 7 days of the date on which the appeal is made, notify Ministers in writing of—

(a) the making of the appeal, and
(b) the date of the making of the appeal.

(5D) The Lands Tribunal must send a copy of the written statement of reasons issued under subsection (5) to Ministers.

(5E) Failure to comply with subsection (5C) or (5D) has no effect on—

(a) the Part 3A community body’s right to buy the land, or
(b) the validity of the appeal under this section.

(6) Ministers are not competent parties to any appeal under this section by reason only that they appointed the valuer whose valuation is the subject of the appeal.

(7) Ministers’ powers under the Lands Tribunal Act 1949 to make rules as respects that Tribunal extend to such rules as may be necessary or expedient to give full effect to this section.

97X Reference to Lands Tribunal of questions on applications

(1) At any time before Ministers reach a decision on an application which has been made under section 97G—

(a) Ministers,
(b) any person who is a member of the community defined in relation to the applicant Part 3A community body in pursuance of section 97D,
(c) the owner of the land which is the subject of the application,
(d) any person who has any interest in the land giving rise to a right which is legally enforceable by that person, or
(e) any person who is invited, under section 97G(9)(a)(iii), to send views to Ministers on the application,

may refer to the Lands Tribunal any question relating to the application.

(2) In considering any question referred to it under subsection (1), the Lands Tribunal may have regard to any representations made to it by—

(a) the applicant Part 3A community body,
(b) the owner of the land which is the subject of the application, or
(c) any other person who, in the opinion of the Lands Tribunal, appears to have an interest.

(3) The Lands Tribunal—

(a) must advise Ministers of its finding on any question so referred, and
(b) may, by order, provide that Ministers may consent to the application only if they impose, under section 97L, such conditions as the Tribunal may specify.
(4) If the Lands Tribunal considers any question referred to it under this section to be irrelevant to Ministers’ decision on the application to which it relates, it may decide to give no further consideration to the question and find accordingly.

(5) Where a person mentioned in any of paragraphs (b) to (e) of subsection (1) refers a question to the Lands Tribunal as mentioned in that subsection, the person so referring the question must, within 7 days of the date of referring it, notify Ministers of—

(a) the referral of the question, and
(b) the date of referring the question.

(6) Failure to comply with subsection (3)(a) or (5) has no effect on—

(a) the validity of the application under section 97G by the Part 3A community body,
(b) the Part 3A community body’s right to buy the land, or
(c) the validity of the referral of the question under subsection (1).

97Y Agreement as to matters referred or appealed
An appeal under section 97V or 97W does not prevent the parties from settling or otherwise agreeing the matter in respect of which the appeal was made between or among them.

97Z Interpretation of Part 3A

(1) Any reference in this Part to a creditor in a standard security with a right to sell land is a reference to a creditor who has such a right under—

(a) section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970, or
(b) a warrant granted under section 24(1) of that Act.

(2) In calculating for the purposes of this Part any period of time within which an act requires to be or may be done, no account is to be taken of any public or local holidays in the place where the act is to be done.

(3) Subsection (2) does not apply to a period of time specified in section 97R(2), 97V(6), or 97W(2).”.

Mediation

48A Mediation in relation to rights under Parts 2, 3 and 3A
Before section 98 of the 2003 Act, insert—

“97Z1 Mediation

(1) Subsection (2) applies where—

(a) a community body seeks to—
   (i) register an interest in land under Part 2, or
   (ii) exercise its right to buy land under that Part,
(b) a crofting community body seeks to exercise its right to buy—
(i) land under Part 3,
(ii) the interest of a tenant under section 69A, or
(iii) eligible sporting interests under section 70, or
(c) a Part 3A community body seeks to exercise its right to buy land under Part 3A.

(2) Ministers may, on being requested to do so by a person mentioned in paragraph (a), (b), (c), (d), (e), (f) or (as the case may be) (g) of subsection (3), take such steps as they consider appropriate for the purpose of arranging, or facilitating the arrangement of, mediation in relation to the proposed—

(a) registration of the interest in land under Part 2, or
(b) exercise of the right to buy the land, tenant’s interest, or (as the case may be) eligible sporting interests.

(3) The persons are—

(a) the owner of the land,
(b) any creditor in a standard security over the land or any part of it with a right to sell the land or any part of it,
(c) the community body,
(d) the crofting community body,
(e) the Part 3A community body,
(f) the tenant in relation to whose interest the crofting community body seeks to exercise its right to buy,
(g) the owner of the eligible sporting interests in relation to which the crofting community body seeks to exercise its right to buy.

(4) The steps mentioned in subsection (2) include—

(a) appointing a mediator,
(b) making payments to mediators in respect of services provided,
(c) reimbursing reasonable expenses of mediators.

(5) In subsection (3)(b), the reference to a creditor in a standard security over the land or any part of it with a right to sell the land or any part of it is a reference to a creditor who has such a right under—

(a) section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970, or
(b) a warrant granted under section 24(1) of that Act.”.

**Meaning of “the 2003 Act”**

**Meaning of “the 2003 Act” in Part 4**

In this Part, “the 2003 Act” means the Land Reform (Scotland) Act 2003.
**PART 5**  
**ASSET TRANSFER REQUESTS**

**Key definitions**

### 50 Meaning of “community transfer body”

1. In this Part, “community transfer body” means—
   - (a) a community-controlled body, or
   - (b) a body mentioned in subsection (2).

2. The body is a body (whether corporate or unincorporated)—
   - (a) that is designated as a community transfer body by an order made by the Scottish Ministers for the purposes of this Part, or
   - (b) that falls within a class of bodies designated as community transfer bodies by such an order for the purposes of this Part.

3. Where the power to make an order under subsection (2)(a) is exercised in relation to a trust, the community transfer body is to be the trustees of the trust.

### 51 Meaning of “relevant authority”

1. In this Part, a “relevant authority” means—
   - (a) a person listed, or of a description listed, in schedule 3, or
   - (b) a person mentioned in subsection (3).

2. The Scottish Ministers may by order modify schedule 3 so as to—
   - (a) remove an entry listed in it,
   - (b) amend an entry listed in it.

3. The person is a person—
   - (a) that is designated as a relevant authority by an order made by the Scottish Ministers for the purposes of this Part, or
   - (b) that falls within a class of persons designated as relevant authorities by such an order for the purposes of this Part.

4. An order under subsection (3) may designate a person, or a class of persons, only if the person or (as the case may be) each of the persons falling within the class is—
   - (a) a part of the Scottish Administration,
   - (b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998), or
   - (c) a publicly-owned company.

5. In subsection (4)(c), “publicly-owned company” means a company that is wholly owned by one or more relevant authorities.

6. For that purpose, a company is wholly owned by one or more relevant authorities if it has no members other than—
   - (a) the relevant authority or (as the case may be) authorities,
(b) other companies that are wholly owned by the relevant authority or (as the case
may be) authorities, or
(c) persons acting on behalf of—
   (i) the relevant authority or (as the case may be) authorities, or
   (ii) such other companies.

(7) In this section, “company” includes any body corporate.

Requests

52 Asset transfer requests

(1) A community transfer body may make a request in accordance with this section (in this
Part, an “asset transfer request”) to a relevant authority.

(2) An asset transfer request is a request—
   (a) in relation to land owned by the relevant authority, for ownership of the land to be
      transferred to the community transfer body, or
   (b) in relation to land owned or leased by the relevant authority—
      (i) for the land to be leased to the community transfer body, or
      (ii) for the authority to confer rights in respect of the land on the community
      transfer body (including, for example, rights to manage or occupy the land
      or use it for a purpose specified in the request).

(3) An asset transfer request of the type mentioned in subsection (2)(a) may be made only
by a community transfer body falling within section 53; and references in the remainder
of this Part to the making of an asset transfer request by a community transfer body are
to be read accordingly.

(4) A community transfer body making an asset transfer request must specify in the
request—
   (a) the land to which the request relates,
   (b) whether the request falls within paragraph (a), (b)(i) or (b)(ii) of subsection (2),
   (c) the reasons for making the request,
   (d) the benefits which the community transfer body considers will arise if the
authority were to agree to the request,
   (e) where the request falls within subsection (2)(a), the price that the community
transfer body would be prepared to pay for the transfer of ownership of the land,
   (f) where the request falls within subsection (2)(b)(i)—
      (i) the amount of rent that the community transfer body would be prepared to
pay in respect of any lease resulting from the request,
      (ii) the duration of any such lease, and
      (iii) any other terms and conditions that the community transfer body considers
should be included in any such lease,
   (g) where the request falls within subsection (2)(b)(ii), the nature and extent of the
rights sought, and
(h) any other terms or conditions applicable to the request.

53 Community transfer bodies that may request transfer of ownership of land

(1) A community transfer body falls within this section if—

(a) it is a company the articles of association of which include provision such as is mentioned in subsection (2),

(b) it is a Scottish charitable incorporated organisation the constitution of which includes provision that the organisation must have not fewer than 20 members,

(ba) it is a community benefit society the registered rules of which include provision that the society must have not fewer than 20 members,

(c) in the case of a body designated by an order under paragraph (a) of subsection (2) of section 50, the order includes provision that the body may make an asset transfer request of the type mentioned in section 52(2)(a), or

(d) in the case of a body falling within a class of bodies designated in an order made under paragraph (b) of that subsection, the order includes provision that bodies falling within the class may make an asset transfer request of that type.

(2) The provision mentioned in subsection (1)(a) is provision that—

(a) the company must have not fewer than 20 members, and

(b) on the winding up of the company and after satisfaction of its liabilities, its property (including any land, and any rights in relation to land, acquired by it as a result of an asset transfer request under this Part) passes—

(i) to another community transfer body,

(ii) to a charity,

(iii) to such community body (within the meaning of section 34 of the Land Reform (Scotland) Act 2003) as may be approved by the Scottish Ministers,

(iv) to such crofting community body (within the meaning of section 71 of that Act) as may be so approved, or

(v) if no such community body or crofting community body is so approved, to the Scottish Ministers or to such charity as the Scottish Ministers may direct.

54 Asset transfer requests: regulations

(1) The Scottish Ministers may by regulations make further provision about asset transfer requests.

(2) Regulations under subsection (1) may in particular make provision for or in connection with—

(a) specifying the manner in which requests are to be made,

(b) specifying the procedure to be followed by a relevant authority in relation to requests,

(c) specifying the information to be included in requests (in addition to that required under section 52(4)),

(d) allowing (or prohibiting) local community transfer bodies to make an asset transfer request of a type mentioned in section 52(2),

(e) specifying the manner in which an order is to be made under subsection (7),

(f) specifying the manner in which a body designated by an order under subsection (7) is to be treated as a community body on the death of a person.

(g) specifying the manner in which an asset transfer request is to be made.

(h) specifying the manner in which a community transfer body may be deemed to be a community body on the death of a person.

(i) allowing the Scottish Ministers to make regulations for the purpose of securing the proper performance of their functions under this Part.

(j) other provision.
(d) requiring publication, by such method as may be prescribed in the regulations, of the fact that a request is being made,

(e) requiring notification of the making of a request to be given to such persons or descriptions of persons, and in such circumstances, as may be prescribed in the regulations.

(3) The Scottish Ministers may make regulations for or in connection with—

(a) enabling a community transfer body to request information from a relevant authority about land in respect of which it proposes to make an asset transfer request,

(b) specifying how the authority is to respond to the request for information,

(c) specifying the circumstances in which the authority must provide information,

(d) specifying the type of information the authority must provide in circumstances specified under paragraph (c),

(e) specifying the circumstances in which the authority need not provide information.

Decisions

Asset transfer requests: decisions

(1) This section applies where an asset transfer request is made by a community transfer body to a relevant authority.

(2) The authority must decide whether to agree to or refuse the request.

(3) In reaching its decision, the authority must take into consideration the following matters—

(a) the reasons for the request,

(b) any other information provided in support of the request (whether such other information is contained in the request or otherwise provided),

(c) whether agreeing to the request would be likely to promote or improve—

(i) economic development,

(ii) regeneration,

(iii) public health,

(iv) social wellbeing, or

(v) environmental wellbeing,

(ca) whether agreeing to the request would be likely to reduce inequalities of outcome which result from socio-economic disadvantage,

(d) any other benefits that might arise if the request were agreed to,

(e) any benefits that might arise if the authority were to agree to or otherwise adopt an alternative proposal in respect of the land to which the request relates,

(f) how such benefits would compare to any benefits such as are mentioned in paragraphs (c) and (d),
how any benefits such as are mentioned in paragraph (e) relate to other matters the
authority considers relevant (including, in particular, the functions and purposes
of the authority),

(h) any obligations imposed on the authority, by or under any enactment or otherwise,
that may prevent, restrict or otherwise affect its ability to agree to the request, and

(i) such other matters (whether or not included in or arising out of the request) as the
authority considers relevant.

(4) The authority must exercise the function under subsection (2) in a manner which
courages equal opportunities and in particular the observance of the equal opportunity
requirements.

(5) The authority must agree to the request unless there are reasonable grounds for refusing
it.

(6) In subsection (3)(e), an “alternative proposal” includes—

(a) another asset transfer request,

(b) a proposal made by the authority or any other person.

(7) The authority must, within the period mentioned in subsection (8), give notice (in this
Part, a “decision notice”) to the community transfer body of—

(a) its decision to agree to or refuse the request, and

(b) the reasons for its decision.

(8) The period is—

(a) a period prescribed in regulations made by the Scottish Ministers, or

(b) such longer period as may be agreed between the authority and the community
transfer body.

(9) The Scottish Ministers may by regulations make provision about—

(a) the information (in addition to that required under this Part) that a decision notice
is to contain, and

(b) the manner in which a decision notice is to be given.

56 Agreement to asset transfer request

(1) This section applies where a relevant authority decides to agree to an asset transfer
request made by a community transfer body.

(2) The decision notice relating to the request must—

(a) specify the terms on which, and any conditions subject to which, the authority
would be prepared to transfer ownership of the land, lease the land or (as the case
may be) confer rights in respect of the land to which the request relates (whether
or not such terms and conditions were specified in the request),

(b) state that, if the community transfer body wishes to proceed, it must submit to the
authority an offer to acquire ownership of the land, lease the land or (as the case
may be) assume rights in respect of the land, and

(c) specify the period within which such an offer is to be submitted.

(3) The period specified under subsection (2)(c) must be a period of at least 6 months
beginning with the date on which the decision notice is given.
(4) An offer such as is mentioned in subsection (2)(b)—
(a) must reflect any terms and conditions specified in the decision notice,
(b) may include such other reasonable terms and conditions as are necessary or expedient to secure—
(i) the transfer of ownership, the lease or (as the case may be) the conferral of rights, and
(ii) that such a transfer, lease or (as the case may be) conferral of rights takes place within a reasonable time,
(c) must be made before the end of the period specified in the decision notice under subsection (2)(c).

(5) Subsection (6A) applies where no contract is concluded on the basis of such an offer before the end of the period mentioned in subsection (7).

(6A) The community transfer body may appeal to the Scottish Ministers under section 59D (except in a case where the relevant authority is the Scottish Ministers).

(7) The period is—
(a) the period of 6 months beginning with the date of the offer, or
(b) such longer period—
(i) as may be agreed between the authority and the community transfer body, or
(ii) in the absence of any such agreement, as may be specified in a direction by the Scottish Ministers.

(8) A direction under subsection (7)(b)(ii) may be made only on the application of the community transfer body.

(9) An application under subsection (8) may be made on more than one occasion.

(10) The Scottish Ministers may by regulations make provision about—
(a) the form of, and procedure for making, an application such as is mentioned in subsection (8),
(b) the manner in which a direction under subsection (7)(b)(ii) is to be given,
(c) the information that such a direction is to contain.

57  **Prohibition on disposal of land**

(1) Subsection (2) applies where an asset transfer request is made by a community transfer body to a relevant authority.

(2) During the relevant period, the authority must not sell, lease or otherwise dispose of the land to which the request relates to any person other than the community transfer body.

(3) In subsection (2), the “relevant period” is the period beginning on the day on which the asset transfer request is made and ending on the day on which the request is disposed of.

(3A) For the purposes of subsection (3), a request is disposed of—
(a) if the request is refused by the relevant authority and no appeal under section 58 or 59B, or application for review under section 59 or 59A, is made by the community transfer body within the time limit applicable to the making of such an appeal or review,

(b) if the request is refused after—

(i) an appeal under section 58 or 59B is determined, or

(ii) a review under section 59A is carried out,

(c) if—

(i) the request is agreed to,

(ii) no offer as mentioned in section 56(2) is made within the time limit applicable to the making of such an offer,

(iii) no appeal under section 58 is made within the time limit applicable to the making of such an appeal, and

(iv) no application for a review under section 59 or 59A is made within the time limit applicable to the making of such an application,

(d) if—

(i) the request is agreed to after an appeal under section 58 or 59B is determined, and

(ii) no offer as mentioned in section 58(8) is made within the time limit applicable to the making of such an offer,

(e) if—

(i) the request is agreed to after a review under section 59 is carried out,

(ii) no offer as mentioned in section 56(2) is made within the time limit applicable to the making of such an offer, and

(iii) no appeal under section 59B is made within the time limit applicable to the making of such an appeal,

(f) if—

(i) the request is agreed to after a review under section 59A is carried out, and

(ii) no offer as mentioned in section 56(2) is made within the time limit applicable to the making of such an offer, or

(g) if—

(i) the request is agreed to (including after an appeal under section 58 or 59B is determined, or a review under section 59 or 59A is carried out),

(ii) an offer as mentioned in section 56(2) or 58(8) is made within the time limit applicable to the making of such an offer, and

(iii) subsection (3B), (3C), (3D) or (3E) applies.

(3B) This subsection applies where, before the expiry of the period mentioned in paragraph (a) or (where applicable) paragraph (b) of subsection (7) of section 56, a contract is concluded on the basis of an offer as mentioned in subsection (2) of that section or in section 58(8).

(3C) This subsection applies where—
(a) the period mentioned in paragraph (a) or (where applicable) paragraph (b) of subsection (7) of section 56 expires,

(b) no contract is concluded on the basis of an offer as mentioned in subsection (2) of that section or in section 58(8), and

(c) an appeal under section 56(6A)—

(i) is not made within the time limit applicable to the making of such an appeal, or

(ii) is timeously made but dismissed.

(3D) This subsection applies where—

(a) the relevant authority to whom the request is made is the Scottish Ministers,

(b) the period mentioned in paragraph (a) or (where applicable) paragraph (b) of subsection (7) of section 56 expires, and

(c) no contract is concluded on the basis of an offer as mentioned in subsection (2) of that section or in section 58(8).

(3E) This subsection applies where—

(a) the period mentioned in paragraph (a) or (where applicable) paragraph (b) of subsection (7) of section 56 expires,

(b) no contract is concluded on the basis of an offer as mentioned in subsection (2) of that section or in section 58(8),

(c) an appeal under section 56(6A) is allowed, and

(d) a condition mentioned in any of paragraphs (a) to (f) of subsection (3F) is satisfied.

(3F) The conditions are—

(a) no offer as mentioned in subsection (4) of section 59D is submitted within the period specified in the appeal decision notice under subsection (3) of that section relating to the appeal,

(b) such an offer is submitted within that period and a contract is concluded on the basis of the offer—

(i) before the expiry of the period of 28 days beginning on the day on which the offer is submitted, or

(ii) within such period as is specified in a direction under subsection (5) of that section (including such period as extended under subsection (6) of that section),

(c) no application under subsection (5) of that section is made within the time limit applicable to the making of such applications,

(d) such an application is refused,

(e) following the giving of a direction under subsection (5) of section 59D in relation to an offer as mentioned in subsection (4) of that section—

(i) the offer is withdrawn, or

(ii) the community transfer body and the relevant authority conclude a contract on terms and conditions different from those in the offer,
(f) the relevant authority is deemed, under subsection (7) of that section, to have accepted such an offer and have concluded a contract with the community transfer body.

(3G) A reference in this section to—

(a) subsection (2), (6A) or (7) of section 56 includes a reference to those subsections as applied—

(i) by sections 58(10), 59(9) and 59A(9), and

(ii) by virtue of section 59C(2),

(b) section 58 includes a reference to that section as applied by section 59B(3),

(c) section 59 includes a reference to that section as applied by subsection (2) of, and modified in such application by virtue of subsection (4) of, section 59C).

(5) Where, by virtue of subsection (2), a relevant authority is prevented from selling, leasing or otherwise disposing of any land, any contract by virtue of which the authority is obliged to sell, lease or otherwise dispose of the land to a person other than the community transfer body referred to in that subsection is void.

(6) Subsection (2) does not apply where, before the date on which the asset transfer request referred to in that subsection is made, the relevant authority or a person acting on behalf of the authority—

(a) has, in relation to the land to which the request relates, advertised or otherwise exposed the land for sale or lease,

(b) has, in relation to the land, entered into negotiations with another person with a view to transferring or leasing the land, or

(c) proceeds further with a proposed transfer or lease of the land which was initiated before the date on which the asset transfer request is made.

(7) The Scottish Ministers may direct that subsection (2) does not apply to such land to which an asset transfer request relates as may be specified in the direction.

Appeals and reviews

58 Appeals

(1) Subsection (2) applies where—

(a) an asset transfer request is refused by a relevant authority,

(b) an asset transfer request is agreed to by a relevant authority but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or

(c) a relevant authority does not give a decision notice relating to an asset transfer request to the community transfer body making the request within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 55(8).

(2) The community transfer body making the request may appeal to the Scottish Ministers unless the relevant authority is—

(a) the Scottish Ministers,

(b) a local authority, or
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(c) a person, or a person that falls within a class of persons, specified in an order made by the Scottish Ministers for the purposes of this section.

(3) The Scottish Ministers may by regulations prescribe—

(a) the procedure to be followed in connection with appeals under subsection (2),

(b) the manner in which such appeals are to be conducted, and

(c) the time limits within which such appeals must be brought.

(4) The provision that may be made by virtue of subsection (3) includes provision that the manner in which an appeal, or any stage of an appeal, is to be conducted is to be at the discretion of the Scottish Ministers.

(5) On an appeal under subsection (2), the Scottish Ministers—

(a) may allow or dismiss the appeal,

(b) may reverse or vary any part of the decision of the relevant authority (whether the appeal relates to that part of it or not),

(c) must, in the circumstances mentioned in either paragraph (a) or (b) of subsection (6), issue a direction to the authority requiring the authority to take such steps, or achieve such outcomes, as are specified in the direction within such time periods as are so specified,

(d) may, in any other circumstances, issue such a direction, including a direction relating to any aspects of the asset transfer request to which the appeal relates (whether or not the authority’s decision relates to those aspects).

(6) The circumstances are—

(a) that the appeal is allowed,

(b) that any part of the decision of the relevant authority is reversed or varied to the effect that the authority is required to—

(i) transfer ownership of any land, lease any land or confer rights in respect of any land, or

(ii) agree to the asset transfer request subject to such terms and conditions as may be specified in the direction.

(7) The references in subsections (5)(b) and (6)(b) to any part of the decision includes any terms and conditions specified in the decision notice relating to the asset transfer request.

(8) A direction issued under subsection (5)(c) must require the relevant authority to issue a further decision notice—

(a) specifying the terms on which, and any conditions subject to which, the authority would be prepared to transfer ownership of the land, lease the land or (as the case may be) confer rights in respect of the land, including any terms and conditions required to be included by virtue of the direction,

(b) stating that, if the community transfer body wishes to proceed, it must submit to the authority an offer to acquire ownership of the land, lease the land or (as the case may be) assume rights in respect of the land, and

(c) specifying the period within which such an offer is to be submitted (which must be at least 6 months beginning with the date on which the further decision notice was issued).
(9) A further decision notice issued by virtue of a direction mentioned in subsection (8) replaces any decision notice relating to the asset transfer request in respect of which the appeal was made.

(10) Subsections (4) to (10) of section 56 apply in relation to a further decision notice issued by virtue of a direction mentioned in subsection (8) as they apply in relation to a decision notice referred to in that section; but as if in subsection (4) of that section—

(a) the reference to an offer such as is mentioned in subsection (2)(b) of that section were a reference to an offer such as is mentioned in subsection (8)(b) of this section, and

(b) the reference to the period specified in the decision notice under subsection (2)(c) of that section were a reference to the period specified in a further decision notice by virtue of subsection (8)(c) of this section.

59 Review by local authority

(1) Subsection (2) applies in a case where—

(a) an asset transfer request is made to a local authority by a community transfer body, and

(b) the authority—

(i) refuses the request,

(ii) agrees to the request but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or

(iii) does not give a decision notice relating to the request to the community transfer body within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 55(8).

(2) On an application made by the community transfer body, the local authority must carry out a review of the case.

(3) The Scottish Ministers may by regulations prescribe—

(a) the procedure to be followed in connection with reviews under subsection (2),

(b) the manner in which such reviews are to be carried out, and

(c) the time limits within which applications for reviews must be brought.

(4) The provision that may be made by virtue of subsection (3) includes provision that the manner in which a review, or any stage of a review, is to be carried out by a local authority is to be at the discretion of the authority.

(5) A local authority may, in relation to a decision reviewed under subsection (2)—

(a) confirm its decision,

(b) modify its decision, or any part of its decision (including any terms and conditions specified in the decision notice to which the asset transfer request relates), or

(c) substitute a different decision for its decision.

(6) Following a review under subsection (2), the local authority must—

(a) issue a decision notice as respects the asset transfer request to which the review relates, and
(b) provide in the decision notice the reasons for its decision.

(7) A decision notice issued under subsection (6)—
(a) replaces any decision notice relating to the asset transfer request in respect of which the review was carried out, and
(b) must be issued within—
(i) a period prescribed in regulations made by the Scottish Ministers, or
(ii) such longer period as may be agreed between the local authority and the community transfer body that made the asset transfer request.

(8) Subsections (3) to (5) of section 55 apply in relation to a decision relating to an asset transfer request in a review under subsection (2) of this section as they apply in relation to a decision relating to the request under subsection (2) of that section.

(9) Section 56 applies in relation to a decision to agree to an asset transfer request (including a decision to confirm such an agreement) following a review under subsection (2) as it applies in relation to a decision mentioned in subsection (1) of that section.

(10) In section 56 of the Local Government (Scotland) Act 1973 (arrangements for the discharge of functions by local authorities), after subsection (6A) insert—

“(6B) The duty to carry out a review of a case imposed on an authority under section 59(2) of the Community Empowerment (Scotland) Act 2015 (reviews by local authorities of asset transfer requests) must be discharged only by the authority or a committee or sub-committee of the authority; and accordingly no such committee or sub-committee may arrange for the discharge under subsection (2) of the duty by an officer of the authority.

(6C) In subsection (6B), the reference to section 59(2) of the Community Empowerment (Scotland) Act 2015 includes a reference to that section as applied by subsection (2) of, and modified in such application by virtue of subsection (4) of, section 59C of that Act.”.

59A Review of decisions by the Scottish Ministers

(1) Subsection (2) applies in a case where—
(a) an asset transfer request is made to the Scottish Ministers by a community transfer body, and
(b) the Scottish Ministers—
(i) refuse the request,
(ii) agree to the request but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or
(iii) do not give a decision notice relating to the request to the community transfer body within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 55(8).

(2) On an application made by the community transfer body, the Scottish Ministers must carry out a review of the case.
(3) The Scottish Ministers may by regulations make provision about reviews carried out under subsection (2) including, in particular, provision in relation to—

(a) the procedure to be followed in connection with reviews,

(b) the appointment of such persons, or persons of such description, as may be specified in the regulations for purposes connected with the carrying out of reviews,

(c) the functions of persons mentioned in paragraph (b) in relation to reviews (including a function of reporting to the Scottish Ministers),

(d) the manner in which reviews are to be conducted, and

(e) the time limits within which applications for reviews must be brought.

(4) The provision that may be made by virtue of subsection (3) includes provision that—

(a) the manner in which a person appointed by virtue of paragraph (b) of that subsection carries out the person’s functions in relation to a review, or any stage of a review, is to be at the discretion of the person,

(b) the manner in which a review, or any stage of a review, is to be carried out by the Scottish Ministers is to be at the discretion of the Scottish Ministers.

(5) Having regard to any report they receive by virtue of subsection (3)(c), the Scottish Ministers may, in relation to a decision reviewed under subsection (2)—

(a) confirm the decision,

(b) modify the decision, or any part of the decision (including any terms and conditions specified in the decision notice to which the asset transfer request relates), or

(c) substitute a different decision for the decision.

(6) Following a review under subsection (2), the Scottish Ministers must—

(a) issue a decision notice as respects the asset transfer request to which the review relates, and

(b) provide in the decision notice the reasons for their decision.

(7) A decision notice issued under subsection (6) replaces any decision notice relating to the asset transfer request in respect of which the review was carried out.

(8) Subsections (3) to (5) of section 55 apply in relation to a decision relating to an asset transfer request in a review under subsection (2) of this section as they apply in relation to a decision relating to the request under subsection (2) of that section.

(9) Section 56 applies in relation to a decision to agree to an asset transfer request (including a decision to confirm such an agreement) following a review under subsection (2) as it applies in relation to a decision mentioned in subsection (1) of that section.

59B Appeals from reviews under section 59

(1) Subsection (2) applies in a case where, following a review carried out under section 59(2), a local authority—

(a) refuses the asset transfer request to which the review relates,
(b) agrees to the request but the decision notice issued under section 59(6) specifies material terms or conditions which differ to a significant extent from those specified in the request, or

(c) does not issue the decision notice within the prescribed period mentioned in sub-paragraph (i) or (where applicable) (ii) of paragraph (b) of subsection (7) of section 59.

(2) The community transfer body making the asset transfer request may appeal to the Scottish Ministers.

(3) Subsections (3) to (10) of section 58 apply to an appeal under subsection (2) of this section as they apply to an appeal under subsection (2) of that section, subject to the modification that any references to the relevant authority in the subsections so applied are to be read as references to the local authority mentioned in subsection (1) of this section.

(4) In subsection (1), references to section 59 include references to the provisions of that section as applied by subsection (2) of, and modified in such application by virtue of subsection (4) of, section 59C.

59C Decisions by relevant authority specified under section 58(2)(c): reviews

(1) Subsection (2) applies in a case where—

(a) an asset transfer request is made to a relevant authority specified in an order under section 58(2)(c), and

(b) the relevant authority—

(i) refuses the request,

(ii) agrees to the request but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or

(iii) does not give a decision notice relating to the request to the community transfer body within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 55(8).

(2) Subsections (2) to (9) of section 59 apply to the case mentioned in subsection (1) (and, for the purposes of that application, references in that section to any of those subsections are to be read as references to those subsections as so applied and modified in such application by virtue of subsection (4)).

(3) Subsection (2) is subject to subsection (4).

(4) The Scottish Ministers may by order—

(a) make provision for subsections (2) to (9) of section 59 to apply as mentioned in subsection (2) subject to such modifications (if any) as they think appropriate,

(b) specify, in relation to an application for a review under section 59(2) applied as mentioned in subsection (2)—

(i) the local authority to which the application is to be made,

(ii) factors determining the local authority to which the application is to be made.
59D No concluded contract: appeals

(1) Subsections (2) to (11) apply where—

(a) no contract is concluded as mentioned in subsection (5) of section 56 between a relevant authority and a community transfer body, and

(b) the community transfer body appeals under subsection (6A) of that section.

(2) The Scottish Ministers may allow or dismiss the appeal.

(3) If the Scottish Ministers allow the appeal, they must issue a notice (an “appeal decision notice”) that specifies—

(a) sufficient and precise details of the terms and conditions of an offer which may be made by the community transfer body to the relevant authority in relation to the asset transfer request made by the body, and

(b) the period within which any such offer is to be submitted.

(4) Subsection (5) applies where—

(a) the community transfer body submits an offer to the relevant authority containing all and only those terms and conditions the details of which are specified in the appeal decision notice,

(b) the offer is submitted within the period so specified,

(c) no contract is concluded on the basis of the offer before the end of the period of 28 days beginning with the day on which the offer is submitted, and

(d) the offer is not withdrawn before the expiry of that 28 day period.

(5) The Scottish Ministers may, on an application made by the community transfer body, give the relevant authority a direction requiring the authority to conclude a contract with the community transfer body on the terms and conditions the details of which are specified in the appeal decision notice within such period as may be specified in the direction.

(6) The Scottish Ministers may, on more than one occasion, extend the period mentioned in subsection (5) (including that period as extended by a direction given under this subsection) by giving a further direction to the relevant authority.

(7) Where a direction under subsection (5) is given to a relevant authority, and the authority does not within the period specified in the direction (or that period as extended under subsection (6)) conclude the contract as mentioned in subsection (5), the authority is deemed to have accepted the offer and accordingly to have concluded a contract with the community transfer body.

(8) Subsection (7) does not apply where—

(a) the community transfer body and the relevant authority have entered into a contract on terms and conditions different from those the details of which are specified in the appeal decision notice, or

(b) the offer is withdrawn before the end of the period specified in the direction (or that period as extended by a direction under subsection (6)).

(9) The asset transfer request in relation to which an appeal mentioned in subsection (1) is made is to be treated, for the purposes of this Part (other than section 61), as if it had not been made if the appeal is allowed but—
(a) the community transfer body does not submit an offer as mentioned in subsection (4)(a),
(b) the community transfer body does not submit such an offer within the period specified in the appeal decision notice,
(c) the community transfer body has not, before the expiry of any time limit for making applications under subsection (5) by virtue of regulations under subsection (14), applied for a direction under subsection (5), or
(d) any application for such a direction is refused.

(10) Where the appeal is dismissed by the Scottish Ministers, the decision to agree to the asset transfer request in relation to which the appeal is made is of no effect (but that is not to be taken to mean that the asset transfer request is to be treated as having been refused for the purposes of any appeal or review under this Part).

(11) In subsection (1), references to any subsections of section 56 include references to those subsections as applied—
(a) by sections 58(10), 59(9) and 59A(9), and
(b) by virtue of section 59B(3).

(12) The Scottish Ministers may by regulations make provision about appeals under section 56(6A) including, in particular, provision in relation to—
(a) the procedure to be followed in connection with appeals,
(b) the appointment of such persons, or persons of such description, as may be specified in the regulations for purposes connected with appeals,
(c) the functions of persons mentioned in paragraph (b) in relation to appeals (including a function of reporting to the Scottish Ministers),
(d) the manner in which appeals are to be conducted, and
(e) the time limits within which appeals must be brought.

(13) The provision that may be made by virtue of subsection (12) includes provision that—
(a) the manner in which a person appointed by virtue of paragraph (b) of that subsection carries out the person’s functions in relation to an appeal, or any stage of an appeal, is to be at the discretion of the person,
(b) the manner in which an appeal, or any stage of an appeal, is to be carried out by the Scottish Ministers is to be at the discretion of the Scottish Ministers.

(14) The Scottish Ministers may by regulations make provision about applications under subsection (5) including, in particular, provision in relation to—
(a) the form of, and procedure for making, such applications,
(b) the time limits within which such applications must be brought.

59E Effect of offers on appeals and reviews

(1) Subsection (2) applies where—
(a) a community transfer body makes an asset transfer request to a relevant authority,
(b) the relevant authority agrees to the request as mentioned in section 58(1)(b), 59(1)(b)(ii), 59A(1)(b)(ii) or 59B(1)(b),
(c) the community transfer body makes an offer as mentioned in section 56(2), and
(d) the offer has not been withdrawn.

(2) The community transfer body may not—

(a) make an appeal under section 58 or 59B, or
(b) apply for a review under section 59 or 59A.

(3) Where an offer as mentioned in section 56(2) is made by a community transfer body
after the body has made an appeal, or applied for a review, as mentioned in subsection
(2), the appeal or (as the case may be) application for review is to be treated as having
been withdrawn by the body.

(4) A reference in this section to—

(a) section 56(2) includes a reference to that section as applied—
(i) by section 59(9) and 59A(9), and
(ii) by virtue of section 59C(2),
(b) section 58 includes a reference to that section as applied by section 59B(3),
(c) section 59 includes a reference to that section as applied by subsection (2) of, and
modified in such application by virtue of subsection (4) of, section 59C.

Disapplication of certain lease restrictions

60 Disapplication of restrictions in lease of land to relevant authority

(1) This section applies where—

(a) land is leased to a relevant authority,
(b) an asset transfer request is made to the authority by a community transfer body for
the authority to—
(i) lease the land to the body, or
(ii) confer a right of occupancy on the body in respect of the land,
(c) the land is leased to the relevant authority by another relevant authority or by a
company that is wholly owned by another relevant authority, and
(d) no other person is entitled to occupy the land to which the request relates (whether
by virtue of a sub-lease by the authority or otherwise).

(2) Any restrictions in the lease of the land to which the request relates such as are
mentioned in subsection (3) do not apply as between the relevant authority and the
person from whom the authority leases the land.

(3) The restrictions are any restrictions—

(a) on the power of the relevant authority to sub-let the land,
(b) on the power of the authority to share occupancy of the land,
(c) relating to how the land may be used by the authority or any other occupier of the
land.

(4) Nothing in this section affects any restrictions in the lease of the land to the relevant
authority on the power of the authority to assign or transfer rights and liabilities under
the lease.
(5) If the relevant authority leases the land to, or confers a right of occupancy in respect of the land on, a community transfer body, the authority continues to be subject to any obligations under the lease of the land to the authority.

**Power to decline subsequent requests**

61 **Power to decline certain asset transfer requests**

(1) Subsection (2) applies where—

(a) an asset transfer request (a “new request”) relating to land is made to a relevant authority,

(b) the new request relates to matters that are the same, or substantially the same, as matters contained in a previous asset transfer request (a “previous request”) made in relation to the land,

(c) the previous request was made in the period of two years ending with the date on which the new request is made, and

(d) the authority refused the previous request (whether following an appeal or not).

(2) The relevant authority may decline to consider the new request.

(3) Where a new request is declined to be considered under subsection (2), that is not to be treated as a refusal of the new request for the purposes of—

(a) an appeal under section 58 (including the provisions of that section as applied by section 59B(3)), or

(b) a review under section 59 (including the provisions of that section as applied by subsection (2) of, and modified in such application by virtue of subsection (4) of, section 59C) or section 59A.

(4) For the purposes of subsection (1)(b), a new request relates to matters that are the same, or substantially the same, as matters contained in a previous request only if both requests, in relation to the land to which they relate, seek (or sought)—

(a) transfer of ownership of the land,

(b) lease of the land, or

(c) the same or substantially the same rights in respect of the land.

(5) For the purposes of this section, it is irrelevant whether the body making a new request is the same body as, or a different body from, that which made the previous request.

** Registers of relevant authorities’ land**

61A **Duty to publish register of land**

(1) Each relevant authority must establish and maintain a register of land mentioned in subsection (2).

(2) The land is land which, to the best of the authority’s knowledge and belief, is owned or leased by the authority.

(3) Every relevant authority must—

(a) make arrangements to enable members of the public to inspect, free of charge, its register of land at reasonable times and at such places as the authority may determine, and
(b) make its register of land available on a website, or by other electronic means, to members of the public.

(4) The Scottish Ministers may by regulations specify land, or descriptions of land, that a relevant authority need not include in its register of land.

(5) Relevant authorities must have regard to any guidance issued by the Scottish Ministers in relation to the duties imposed on the authorities under this section.

(6) Before issuing such guidance, the Scottish Ministers must consult the relevant authorities.

(7) The omission of any land owned or leased by a relevant authority from the authority’s register of land does not prevent an asset transfer request being made in respect of the land.

61B Annual reports

(1) A relevant authority must publish an asset transfer report for each reporting year.

(2) An asset transfer report is a report setting out, in respect of the reporting year—

(a) the number of asset transfer requests the relevant authority received,

(b) the number of such requests which the relevant authority—

(i) agreed to, and

(ii) refused,

(c) the number of such requests made to the relevant authority which resulted in—

(i) a transfer of ownership of land to a community transfer body,

(ii) a lease of land to such a body,

(iii) rights in respect of land being conferred on such a body,

(d) the number of appeals under section 58 relating to such requests made to the relevant authority that have—

(i) been allowed,

(ii) been dismissed,

(iii) resulted in any part of the decision of the authority being varied or reversed,

(e) in relation to a decision of the relevant authority reviewed under section 59 or 59A, the number of such decisions that have been—

(i) confirmed,

(ii) modified,

(iii) substituted by a different decision, and

(f) any action taken by the relevant authority during the reporting year—

(i) to promote the use of asset transfer requests,

(ii) to support a community transfer body in the making of an asset transfer request.
(2A) An asset transfer report is to be published under subsection (1) no later than 30 June following the end of the reporting year to which it relates.

(3) In this section, “reporting year” means a period of one year beginning on 1 April.

(4) A reference in this section to—
   (a) section 58 includes a reference to that section as applied by section 59B(3),
   (b) section 59 includes a reference to that section as applied by subsection (2) of, and modified in such application by virtue of subsection (4) of, section 59C.

Guidance

61C Guidance

10 (1) A relevant authority must have regard to any guidance issued by the Scottish Ministers about the carrying out of functions by the authority under this Part.

(2) Before issuing such guidance, the Scottish Ministers must consult such persons as they think fit.

Interpretation of Part 5

62 Interpretation of Part 5

(1) In this Part—

   “asset transfer request” has the meaning given by section 52(2),
   “community benefit society” means a registered society (within the meaning of section 1 of the Co-operative and Community Benefit Societies Act 2014) registered as a community benefit society under section 2 of that Act; and
   “registered rules” has the meaning given by section 149 of that Act (as that meaning applies in relation to community benefit societies),
   “community-controlled body” has the meaning given by section 14,
   “community transfer body” has the meaning given by section 50(1),
   “charity” means a body entered in the Scottish Charity Register,
   “decision notice” is to be construed in accordance with section 55(7),
   “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 (equal opportunities) of Part 2 of Schedule 5 to the Scotland Act 1998,
   “relevant authority” has the meaning given by section 51,
   “Scottish charitable incorporated organisation” has the meaning given by section 49 of the Charities and Trustee Investment (Scotland) Act 2005.

(2) References in this Part to land include references to part of the land.
PART 5A

DELEGATION OF FORESTRY COMMISSIONERS’ FUNCTIONS

62A Meaning of “community body” in Forestry Act 1967

(1) Section 7C of the Forestry Act 1967 (delegation of functions under section 7B: community bodies) is amended as follows.

(2) In subsection (1)—
(a) for the words from “company”, where it first occurs, to “include” substitute “body corporate having a written constitution that includes”;
(b) for the word “company”, wherever it appears in paragraphs (a) to (e), substitute “body”;
(c) after paragraph (d) insert—
“(da) provision that membership of the body is open to any member of the community,
(db) a statement of the body’s aims and purposes, including the promotion of a benefit for the community,”, and
(d) in paragraph (e), for “and the auditing of its accounts” substitute “, and
(f) provision that any surplus funds or assets of the body are to be applied for the benefit of the community.”.

(3) In subsection (2), for “(d)” substitute “(db)”.

(4) Subsections (4) to (6) are repealed.

PART 5AB

FOOTBALL CLUBS

62AA Facilitation of supporter involvement in football clubs

(1) The Scottish Ministers may by regulations make provision—
(a) to facilitate the involvement of the supporters of a football club in decisions affecting the management, operation or governance of the club (see section 62AB),
(b) to facilitate supporter ownership of football clubs (for example by conferring a right to buy, see section 62AC).

(2) Regulations under this section may provide for the creation of rights or interests, or the imposition of liabilities or conditions, in relation to property (or an interest in property) of any description.

(3) Before making regulations under this section, the Scottish Ministers must consult—
(a) such body or bodies as appear to them to be representative of the interests of football clubs, the leagues in which they play, their players and supporters, and
(b) such other persons as they consider appropriate.

62AB Supporter involvement in decision-making

Regulations made under section 62AA(1)(a) may, in particular, make provision for or in connection with—
(a) the types of football club in relation to which the regulations are to apply,
(b) the steps that a person must take in order to be considered a supporter of a particular football club for the purposes of the regulations,
(c) the provision of information to supporters about the football club, including
details about—
   (i) how the club makes decisions affecting its management, operation or governance, and
   (ii) how, and by whom, the club and any property connected with it is owned or held,
(d) the manner in which the supporters of a football club or a body or association representing the interests of such supporters are to be involved in decisions affecting the management, operation or governance of the club,
(e) the kinds of decisions affecting the management, operation or governance of a football club in respect of which the supporters of the club are to be involved,
(f) the consequences for a football club, or a person responsible for its management, operation or governance, of taking a decision affecting the management, operation or governance of the club (or otherwise acting) without involving the supporters of the club.

62AC Supporter ownership
Regulations made under section 62AA(1)(b) may, in particular, make provision for or in connection with—
(a) the types of football club in relation to which the regulations are to apply,
(b) the things which the regulations may facilitate ownership of, including, in particular—
   (i) any entity which owns, operates or controls a football club,
   (ii) a shareholding or other interest in such an entity,
   (iii) any asset (including any right or liability) of the football club or such an entity,
(c) the valuation of anything mentioned in paragraph (b),
(d) the circumstances which must exist, or conditions which must be satisfied, before any rights conferred under the regulations may be exercised,
(e) the steps that must be taken by supporters, or a body or association representing the interests of supporters, to exercise any rights conferred by the regulations,
(f) the provision of information to supporters about the football club, including details about how, and by whom, the club and any property connected with it is owned or held,
(g) requiring, restricting or preventing the sale or transfer of anything which is, or may become, subject to the rights conferred by the regulations,
(h) the consequences of selling or transferring anything which is, or may become, subject to the rights conferred by the regulations otherwise than in accordance with the regulations (including, in particular, reducing such a sale or transfer),
(i) the rights of creditors of the football club and other persons with an interest in the club,

(j) the resolution of disputes in connection with any rights conferred under the regulations,

(k) appeals in connection with any rights conferred under the regulations,

(l) the circumstances in which any right conferred under the regulations is or may be extinguished.

**PART 6**

**COMMON GOOD PROPERTY**

**Registers**

63  **Common good registers**

(1) Each local authority must establish and maintain a register of property which is held by the authority as part of the common good (a “common good register”).

(2) Before establishing a common good register, a local authority must publish a list of property that it proposes to include in the register.

(3) The list may be published in such a way as the local authority may determine.

(4) On publishing a list under subsection (2), the local authority must—

(a) notify the bodies mentioned in subsection (5) of the publication, and

(b) invite those bodies to make representations in respect of the list.

(5) The bodies are—

(a) any community council established for the local authority’s area, and

(b) any community body of which the authority is aware.

(6) In establishing a common good register, a local authority must have regard to—

(a) any representations made under subsection (4)(b) by a body mentioned in subsection (5), and

(b) any representations made by other persons in respect of the list published under subsection (2).

(7) Representations as mentioned in subsection (6) may in particular be made in relation to—

(a) whether property proposed to be included in the register is part of the common good,

(b) the identification of other property which, in the opinion of the body or person making the representation, is part of the common good.

(8) A local authority must—

(a) make arrangements to enable members of the public to inspect, free of charge, its common good register at reasonable times and at such places as the authority may determine, and

(b) make its common good register available on a website, or by other electronic means, to members of the public.
Guidance about common good registers

(1) In carrying out any of the duties imposed on it by section 63, a local authority must have regard to any guidance issued by the Scottish Ministers in relation to the duties.

(2) Before issuing any such guidance, the Scottish Ministers must consult—

   (a) local authorities,

   (b) community councils, and

   (c) such community bodies as the Scottish Ministers think fit.

Disposal and use

Disposal and use of common good property: consultation

(1) Subsection (2) applies where a local authority is considering—

   (a) disposing of any property which is held by the authority as part of the common good, or

   (b) changing the use to which any such property is put.

(2) Before taking any decision to dispose of, or change the use of, such property the local authority must publish details about the proposed disposal or, as the case may be, the use to which the authority proposes to put the property.

(3) The details may be published in such a way as the local authority may determine.

(4) On publishing details about its proposals under subsection (2), the local authority must—

   (a) notify the bodies mentioned in subsection (5) of the publication, and

   (b) invite those bodies to make representations in respect of the proposals.

(5) The bodies are—

   (a) where the local authority is Aberdeen City Council, Dundee City Council, the City of Edinburgh Council or Glasgow City Council, any community council established for the local authority’s area,

   (aa) where the local authority is any other council, any community council whose area consists of or includes the area, or part of the area, to which the property mentioned in subsection (1) related prior to 16 May 1975, and

   (b) any community body that is known by the authority to have an interest in the property.

(6) In deciding whether or not to dispose of any property held by a local authority as part of the common good, or to change the use to which any such property is put, the authority must have regard to—

   (a) any representations made under subsection (4)(b) by a body mentioned in subsection (5), and

   (b) any representations made by other persons in respect of its proposals published under subsection (2).
66 Disposal etc. of common good property: guidance

(1) In carrying out any of the duties imposed on it by section 65, a local authority must have regard to any guidance issued by the Scottish Ministers in relation to the duties.

(2) A local authority must have regard to any guidance issued by the Scottish Ministers in relation to the management and use of property that forms part of the common good.

(3) Before issuing any guidance as mentioned in subsection (1) or (2), the Scottish Ministers must consult—
   (a) local authorities,
   (b) community councils, and
   (c) such community bodies as the Scottish Ministers think fit.

Interpretation of Part 6

67 Interpretation of Part 6

In this Part—

“community bodies”, in relation to a local authority, means bodies, whether or not formally constituted, established for purposes which consist of or include that of promoting or improving the interests of any communities (however described) resident or otherwise present in the area of the local authority,

“community council” means a community council established by a local authority under Part 4 of the Local Government (Scotland) Act 1973.

PART 7

ALLOTMENTS

Key definitions

68 Meaning of “allotment”

In this Part, “allotment” means land that—

(a) is owned or leased by a local authority,

(b) is leased or intended for lease by a person from the authority, and

(c) is used or intended for use—
   (i) wholly or mainly for the cultivation of vegetables, fruit, herbs or flowers, and
   (ii) otherwise than with a view to making a profit.

69 Meaning of “allotment site”

In this Part, “allotment site”—

(a) means land consisting wholly or partly of allotments, and

(b) includes other land owned or leased by a local authority that may be used by tenants of allotments in connection with their use of allotments.
Request to lease allotment

70 Request to lease allotment

(1) Any person may make a request to the local authority in whose area the person resides—
   (a) to lease an allotment from the authority, or
   (b) to sublease an allotment from a tenant of the authority.

(2) A request must be made in writing and include—
   (a) the name and address of the person making the request, and
   (b) such other information as may be prescribed.

(2A) The person making the request must, if the area of the allotment sought is less than 250 square metres, specify the area in the request.

(3) Where the person making the request is a disabled person, the request may include information about the person’s needs on the grounds of disability relating to—
   (a) access to an allotment site or an allotment,
   (b) possible adjustments to an allotment site or an allotment.

(4) A request may be made to a local authority even if the authority does not own or lease any allotments.

(5) A request may be made jointly by two or more persons if each person resides in the area of the local authority to which the request is made.

(6) The local authority must give written notice to a person who made a request under subsection (1) confirming receipt of the request before the expiry of the period of 14 days beginning with the date on which the request is received by the authority.

(7) Before making regulations under subsection (2)(b), the Scottish Ministers must consult—
   (a) local authorities, and
   (b) any other person appearing to the Scottish Ministers to have an interest.

70A Offer to lease allotment

(1) Subsections (2) and (3) apply where a person specifies an allotment of an area of less than 250 square metres (a “specified area”) in a request to a local authority under section 70(1).

(2) If the local authority offers to grant a lease of an allotment of the specified area to the person, the request is to be treated as having been agreed to for the purpose of section 71(3)(a)(i).

(3) If the local authority offers to grant a lease of an allotment that is not of the specified area to the person, the request is to be treated as not having been agreed to for that purpose unless the person accepts the offer.

(4) Subsections (5) and (6) apply where a person does not specify an allotment of an area of less than 250 square metres in a request to a local authority under section 70(1).
(5) If the local authority offers to grant a lease of an allotment of an area of approximately 250 square metres to the person, the request is to be treated as having been agreed to for the purpose of section 71(3)(a)(i).

(6) If the local authority offers to grant a lease of an allotment that is not of an area of approximately 250 square metres to the person, the request is to be treated as not having been agreed to for that purpose unless the person accepts the offer.

(7) In subsections (2), (3), (5) and (6), references to the local authority offering to grant a lease include references to a tenant of the local authority offering to grant a sublease.

Local authority functions

71 Duty to maintain list

(1) Each local authority must establish and maintain a list of persons who make a request to it under section 70(1).

(2) The list may be established and maintained by the local authority in such form as the authority thinks fit.

(3) The duty to maintain a list under subsection (1) includes a duty to remove from the list—

(a) the name of any person—

(i) whose request under section 70(1) is agreed to, or

(ii) who withdraws such a request before it is agreed to, and

(b) any other information relating to any such person.

72 Duty to provide allotments

(1) Where subsection (2) or (3) applies, each local authority must take reasonable steps to ensure—

(a) that the number of persons entered in the list maintained under section 71(1) is no more than one half of the total number of allotments owned and leased by the authority, and

(b) that a person entered in the list does not remain in the list for a continuous period of more than 5 years.

(2) This subsection applies where—

(a) on the commencement date, a local authority does not own or lease any allotments, and

(b) at any time after that date, the number of persons entered in the list mentioned in subsection (1) is 15 or more.

(3) This subsection applies where—

(a) on the commencement date, a local authority owns or leases allotments, and

(b) at any time after that date, the number of persons entered in the list mentioned in subsection (1) is one or more.

(3A) A local authority must, in taking reasonable steps as mentioned in subsection (1), have regard to the desirability of making available allotments that are reasonably close to the residence of persons in the list mentioned in that subsection.
(4) The Scottish Ministers may by order amend subsection (1) by substituting for the proportion for the time being specified there such other proportion as they think fit.

(5) The Scottish Ministers may by order amend subsection (2) or (3) by substituting for the number of persons for the time being specified there such other number of persons as they think fit.

(6) Where a request under section 70(1) is made jointly by two or more persons, the persons making the request are to be treated as one person for the purposes of calculating the number of persons referred to in—

(a) subsection (1),

(b) subsection (2) (including that subsection as amended by an order under subsection (5)),

(c) subsection (3) (including that subsection as amended by an order under subsection (5)),

(d) section 79(2)(g) or (l).

(7) In this section, “commencement date” means the date on which this section comes into force.

72ZA Duty of tenant of allotment site to grant sublease

(1) Subsection (2) applies where an allotment site is let by a local authority.

(2) If the local authority requests that the tenant of the allotment site grant a sublease of an unoccupied allotment on the site to a person entered in the list maintained under section 71(1), the tenant must grant such a sublease.

72A Access to allotment and allotment site

(1) Where a local authority leases an allotment to a tenant, it must provide reasonable access to the allotment and any allotment site on which the allotment is situated.

(2) Where a local authority leases an allotment site to a tenant, it must provide reasonable access to the allotment site and allotments on the site.

73 Allotment site regulations

(1) Each local authority must make regulations about allotment sites in its area.

(2) The first regulations under subsection (1) must be made before the expiry of the period of two years beginning with the date on which this section comes into force.

(3) Regulations under subsection (1) must in particular include provision for or in connection with—

(a) allocation of allotments,

(b) rent, including a method of determining fair rent that takes account of—

(i) services provided by, or on behalf of, the local authority to tenants of allotments,

(ii) the costs of providing those services, and

(iii) circumstances that affect, or may affect, the ability of a person to pay the rent payable under the lease of an allotment,
(c) cultivation of allotments,
(d) maintenance of allotments,
(e) maintenance of allotment sites,
(f) buildings or other structures that may be erected on allotments, the modifications
that may be made to such structures and the materials that may or may not be used
in connection with such structures,
(g) the keeping of livestock (including poultry), and
(h) landlord inspections.

(4) Regulations under subsection (1) may in particular include provision for or in
connection with—

(b) buildings or other structures that may be erected on land mentioned in paragraph
(b) of the definition of “allotment site” in section 69, the modifications that may
be made to such structures and the materials that may or may not be used in
connection with such structures,

(c) access by persons (other than allotment tenants) and domestic animals,

(d) liability for loss of or damage to property,

(e) acceptable use of allotments and allotment sites,

(f) sale of surplus produce.

(5) Regulations under subsection (1) may make different provision for different areas or
different allotment sites.

74 Allotment site regulations: further provision

(1) Before making regulations under section 73(1), a local authority must consult persons
appearing to the local authority to have an interest.

(2) At least one month before making regulations under section 73(1), a local authority
must—

(a) place an advertisement in at least one newspaper circulating in its area giving
notice of—

(i) the authority’s intention to make the regulations,

(ii) the general purpose of the proposed regulations,

(iii) the place where a copy of the proposed regulations may be inspected,

(iv) the fact that any person may make written representations in relation to the
proposed regulations,

(v) the time within which a person may make representations, and

(vi) the address to which any representations must be sent, and

(b) make copies of the proposed regulations available for inspection by the public
without payment—

(i) at its offices, and

(ii) if it considers it practicable, at the allotment site to which the regulations
are to apply.
Community Empowerment (Scotland) Bill
Part 7—Allotments

(3) Any person may make a representation in writing in relation to the proposed regulations no later than one month after the last date on which notice under subsection (2)(a) is given.

(4) Before making the regulations, the authority must—
   (a) offer any person who makes a representation under subsection (3) the opportunity to make further representations in person, and
   (b) take account of any representations received by it by virtue of subsection (3) and paragraph (a).

(5) The regulations are executed by being signed by the proper officer of the authority.

(6) The regulations—
   (a) come into force on the day after the day on which they are executed or such later date specified in the regulations, and
   (b) continue in force unless revoked.

(7) Subsections (1) to (4) apply in relation to—
   (a) a proposed amendment,
   (b) a proposed revocation,
   (c) an amendment, or
   (d) a revocation,
   of regulations under section 73(1) as they apply in relation to proposed regulations, or (as the case may be) the making of proposed regulations, under that section.

(8) Subsections (5) and (6) apply in relation to an amendment, or a revocation, of regulations under section 73(1) as they apply in relation to regulations under that section (but subsection (6)(b) does not apply in relation to such a revocation).

(9) A copy of the regulations must be displayed at the entrance to an allotment site to which they apply.

(10) A local authority must provide a copy of the regulations without charge to any person following a request.

(11) In the case where an allotment site is leased by a local authority, the regulations are subject to any provision of such a lease which is contrary to, or otherwise inconsistent with, the regulations.

Disposal etc. of allotments and allotment sites owned by local authority

(1) This section applies where a local authority owns an allotment site.

(2) A local authority may not dispose of the whole or part of the allotment site or change the use of the whole or part of the allotment site without the consent of the Scottish Ministers.

(2A) Before deciding whether to grant consent, the Scottish Ministers must—
   (a) seek the views of the local authority on the proposed decision, and
   (b) consult such other persons appearing to them to have an interest in the proposed disposal or change of use.
(3) The Scottish Ministers may make the granting of consent subject to such conditions as they think fit.

(4) The Scottish Ministers may not grant consent unless they are satisfied that—

(a) the tenant of each allotment on the whole or part of the allotment site is to be offered a lease of another allotment of an area the same as or similar to that of the tenant’s allotment—

(i) on the allotment site, or

(ii) in the area of the local authority within a reasonable distance of the allotment site, or

(b) the provision of another allotment for the tenant is unnecessary or not reasonably practicable.

(5) Any transfer of ownership of the whole or part of the allotment site, and any deed purporting to transfer such ownership, without the consent of the Scottish Ministers is of no effect.

76 Disposal etc. of allotments and allotment sites leased by local authority

(1) This section applies where a local authority leases an allotment site.

(2) A local authority may not renounce its lease of the whole or part of the allotment site without the consent of the Scottish Ministers.

(3) In the case where a change of use of the whole or part of the allotment site proposed by the local authority is permitted by the lease, the local authority may not change the use of the allotment site without the consent of the Scottish Ministers.

(3A) Before deciding whether to grant consent mentioned in subsection (2) or (3), the Scottish Ministers must—

(a) seek the views of the local authority on the proposed decision, and

(b) consult with such other persons appearing to them to have an interest in the proposed renunciation or change of use.

(4) The Scottish Ministers may make the granting of consent mentioned in subsection (2) or (3) subject to such conditions as they think fit.

(5) The Scottish Ministers may not grant consent mentioned in subsection (2) or (3) unless they are satisfied that—

(a) the tenant of each allotment on the whole or part of the allotment site is to be offered a lease of another allotment of an area the same as or similar to that of the tenant’s allotment—

(i) on the allotment site, or

(ii) in the area of the local authority within a reasonable distance of the allotment site, or

(b) the provision of another allotment for the tenant is unnecessary or not reasonably practicable.

(6) Any renunciation of the local authority’s lease of the whole or part of the allotment site, and any deed purporting to renounce the lease, without the consent of the Scottish Ministers is of no effect.
77 Duty to prepare food-growing strategy

(1) Each local authority must prepare a food-growing strategy for its area.

(2) A local authority must publish the food-growing strategy before the expiry of the period of two years beginning with the day on which this section comes into force.

(3) A food-growing strategy is a document—
   
   (a) identifying land in its area that the local authority considers may be used as allotment sites,

   (b) identifying other areas of land in its area that could be used by a community for the cultivation of vegetables, fruit, herbs or flowers,

   (c) describing how, where the authority is required to take reasonable steps under section 72(1), the authority intends to increase the provision in its area of—

      (i) allotments, or

      (ii) other areas of land for use by a community for the cultivation of vegetables, fruit, herbs or flowers, and

   (d) containing such other information as may be prescribed.

(3A) The description required by paragraph (c) of subsection (3) must in particular describe whether and how the authority intends to increase provision of the types of land mentioned in paragraph (a) or (b) of that subsection in communities which experience socio-economic disadvantage.

(4) The authority must publish the food-growing strategy on a website or by other electronic means.

78 Duty to review food-growing strategy

(1) Each local authority must review its food-growing strategy before the end of—

   (a) the period of 5 years beginning with the day on which the strategy is first published under section 77(2), and

   (b) each subsequent period of 5 years.

(2) If, following a review under subsection (1), the authority decides that changes to its food-growing strategy are necessary or desirable, the authority must publish a revised food-growing strategy on a website or by other electronic means.

79 Annual allotments report

(1) As soon as reasonably practicable after the end of each reporting year, each local authority must prepare and publish an annual allotments report for its area.

(2) An annual allotments report is a report setting out in respect of the reporting year to which it relates—

   (a) the location and size of each allotment site,

   (b) the number of allotments on each allotment site,
(ba) where the whole of an allotment site is leased from the authority by one person, the proportion of land on the allotment site (excluding any land falling within paragraph (b) of the definition of “allotment” in section 69) that is not subleased from the tenant of the allotment site,

(c) where allotments on an allotment site are leased from the authority by more than one person, the proportion of land on the allotment site (excluding any land falling within paragraph (b) of the definition of “allotment site” in section 69) that is not leased from the authority,

(d) where an allotment site is leased by the local authority—
   (i) the period of the lease of each allotment site, and
   (ii) the rent payable under the lease by the authority,

(e) the period of any lease between the authority and the tenant of an allotment site,

(f) the rent payable under any lease between the authority and the tenant of an allotment site,

(fa) the rent payable for each allotment in the area of the authority,

(fb) how, in the opinion of the authority, such rents are decided by reference to the method of determining fair rent provided for in regulations under section 73(1),

(g) the number of persons entered in the list maintained under section 71(1) on the final day of the reporting year to which the report relates,

(ga) the number of persons mentioned in paragraph (g) who, on the final day of the reporting year to which the report relates, have been entered in the list mentioned in that paragraph for a continuous period of more than 5 years,

(h) the steps taken by the authority to comply with the duty imposed by section 72(1),

(i) reasons for any failure to comply with that duty,

(j) the number of allotments on each allotment site that are accessible by a disabled person,

(k) the number of allotments on each allotment site adjusted by the authority during the reporting year to meet the needs of a tenant who is a disabled person,

(l) the number of persons entered in the list maintained under section 71(1) during the reporting year whose request under subsection (1) of section 70 included information under subsection (3) of that section,

(m) the income received, and expenditure incurred, by the authority in connection with allotment sites, and

(n) such other information as may be prescribed.

(3) The authority must publish the annual allotments report on a website or by other electronic means.

(4) In this section, “reporting year” means—
   (a) the period of a year beginning with any day occurring during the period of a year after the day on which this section comes into force, and
   (b) each subsequent period of a year.
80 Power to remove unauthorised buildings from allotment sites

(1) This section applies where—

(a) a building or other structure that is not permitted by, or does not comply with, a provision of regulations made under section 73(1) is erected on an allotment site, and

(b) at the time the building or other structure was erected or, as the case may be modified, regulations made under section 73(1) prohibited such erection or modification.

(2) The local authority within whose area the allotment site is situated may—

(a) remove the building or other structure from the allotment site,

(b) dispose of the materials that formed the building or other structure as it thinks fit, and

(c) recover the cost of the removal, and the disposal of the materials, of the building or other structure from a liable tenant.

(3) “Liable tenant” means, where the building or other structure was erected by or on behalf of a tenant—

(a) on the tenant’s allotment, that tenant, or

(b) on other land as mentioned in paragraph (b) of the definition of “allotment site” in section 69, and the building or other structure on that other land was erected—

(i) without the consent of the tenants of other allotments on the allotment site of which that other land forms part, that tenant, or

(ii) with the consent of any tenants of such other allotments, that tenant and any other tenant who consented.

(4) A liable tenant mentioned in subsection (3)(b)(ii) is jointly and severally liable with other liable tenants mentioned in that subsection.

(5) Where a local authority proposes to take any action in exercise of a power conferred by subsection (2), it must—

(a) no later than one month before taking such action, give notice in writing of the authority’s proposed action to each tenant who would be affected by such action,

(b) allow each such tenant the opportunity to make representations to the authority in relation to the proposed action,

(c) take account of any representations received by it by virtue of paragraph (b), and

(d) give notice in writing to each tenant mentioned in paragraph (a) to inform them of the authority’s decision in relation to the proposed action and, if applicable, the date on which the proposed action is to take place.

(6) If the authority decides to take the proposed action, any tenant who was notified under subsection (5)(a) may appeal to the sheriff against the decision of the authority before the expiry of the period of 21 days beginning with the day on which the notice mentioned in subsection (5)(d) is given.

(7) The Scottish Ministers may by regulations make further provision for or in connection with the procedure to be followed in relation to the exercise of the powers conferred by subsection (2).
(8) In the case where an allotment site is leased by a local authority, the authority may not exercise a power conferred by subsection (2) if such exercise would contravene a provision of the lease.

81 Delegation of management of allotment sites

(A1) This section applies where—

(a) a local authority owns or leases an allotment site, and
(b) one or more allotments on the allotment site are leased to tenants.

(1) A person who represents the interests of all or a majority of the tenants may make a request to the local authority that the authority delegate to the person any of the authority’s functions mentioned in subsection (2) in relation to the allotment site.

(2) The functions are—

(a) the functions under—

(i) section 70(6) (request to lease allotment),
(ii) section 71(1) (duty to maintain list),
(iii) section 74(9) and (10) (display and copies of allotment site regulations),
(iv) section 82 (promotion and use of allotments: expenditure),

(b) the giving of notice under—

(i) section 83(1) (notice of termination of lease of allotment or allotment site),
(ii) section 84(2)(c) (notice of resumption),
(iii) section 85(2) (notice of termination: sublease by local authority).

(3) A request under subsection (1) must—

(a) be made in writing, and
(b) include—

(i) the name and address of the person making the request, and
(ii) such other information as may be prescribed.

(4) The authority may within 14 days of receiving the request, ask—

(a) the person making the request for such further information as it considers necessary in connection with the request, and
(b) that the information be supplied within 14 days of the authority’s request.

(5) The authority must give notice to the person making the request of its decision to agree to or refuse the request—

(a) where further information is requested by the authority under subsection (4), before the expiry of 56 days beginning with the date on which the request is received by the authority, or
(b) in any other case, before the expiry of 28 days beginning with the date on which the request is received by the authority.

(6) If the decision is to refuse the request, the notice referred to in subsection (5) must include reasons for the authority’s decision.
(7) If the decision is to agree to the request, the authority must decide—
   (a) which of its functions that are mentioned in subsection (2) are to be delegated to
       the person making the request, and
   (b) the timing of any review of the delegation of those functions by the authority.

(8) Before making a decision under subsection (7), the authority must consult the person
    who made the request.

(9) The authority may recall the delegation of any of its functions delegated under this
    section if—
    (a) it considers that the person to whom the functions are delegated is not
        satisfactorily carrying out a function, or
    (b) there is a material disagreement between the authority and the person to whom the
        functions are delegated about the carrying out of the functions.

(10) In the case where an allotment site is leased by a local authority, the authority must not
     delegate any functions under this section to the person making the request where the
     delegation would contravene a provision of the lease.

82 Promotion and use of allotments: expenditure

(1) A local authority may incur expenditure for the purpose of—
   (a) the promotion of allotments in its area, and
   (b) the provision of training by or on behalf of the authority to tenants, or potential
       tenants, of allotments about the use of allotments.

(2) In deciding whether to exercise the power conferred by subsection (1), a local authority
    must have regard to the desirability of promoting allotments, or providing training, as
    mentioned in that subsection in relation to communities which experience socio-
    economic disadvantage.

82A Use of local authority premises for meetings

(1) In relation to an allotment site, the persons mentioned in subsection (2) may make a
    request to the local authority in whose area the site is situated to use free of charge the
    premises mentioned in subsection (3) for the purpose of holding a meeting of the tenants
    of allotments on the site about the site.

(2) The persons are—
    (a) a tenant of the allotment site,
    (b) a person referred to in section 81(1).

(3) The premises are—
    (a) premises in a public school or grant-aided school within the area of the local
        authority,
    (b) other premises within the area of the local authority which are—
        (i) maintained by the authority,
        (ii) maintained by a person other than the authority and used for or in
             connection with the delivery of services the provision of which is delegated
             by the authority to that person, or
(iii) maintained, and whose use is managed, by a person other than the authority in accordance with arrangements between the authority and that person.

(4) The request must—
(a) be made in writing,
(b) include the name and address of the person making the request,
(c) include information about the proposed date, time, location and purpose of the proposed meeting,
(d) be made at least one month before the date on which the meeting is proposed to take place.

(5) The local authority must, before the end of the period of 14 days beginning with the day on which it receives the request, write to the person who made the request to—
(a) grant the request,
(b) offer the person an alternative date, time or location for the proposed meeting, or
(c) refuse the request.

(6) In this section, “public school” and “grant-aided school” have the meanings given by section 135(1) of the Education (Scotland) Act 1980.

Termination of lease

83 Termination of lease of allotment or allotment site

(1) Despite any provision to the contrary in the lease of an allotment or an allotment site, a local authority may terminate the lease of the whole or part of the allotment or allotment site on a specified date; but may do so only if the authority has given the tenant of the allotment or the allotment site notice of the termination in accordance with subsection (2).

(2) Notice is given in accordance with this subsection if—
(a) it is in writing, and
(b) it is given—
(i) if subsection (3) applies, at least one month before the specified date,
(ii) if subsection (4) applies, at least one year before the specified date.

(3) This subsection applies if, following the expiry of the period of 3 months beginning with the date on which the lease commenced, the tenant has failed to a material extent to comply with any provision of the regulations made under section 73(1).

(4) This subsection applies if the Scottish Ministers have consented to—
(a) the disposal of the allotment site subject to the lease or, as the case may be, the allotment site on which the allotment is situated under section 75,
(b) the change of use of the allotment site subject to the lease or, as the case may be, the allotment site on which the allotment is situated under section 75 or 76,
(c) to the renunciation by the local authority of its lease of the allotment site subject to the lease or, as the case may be, the allotment site on which the allotment is situated under section 76.

(5) Before sending any notice under subsection (1), a local authority must—
(a) no later than one month before giving any notice under that subsection, write to the tenant to inform the tenant that the authority is proposing to give notice of termination under that subsection and give reasons for the authority’s proposal,

(b) allow the tenant the opportunity to make representations to the authority in relation to the authority’s proposal,

(c) take account of any representations received by it by virtue of paragraph (b), and

(d) either—

(i) write to the tenant to inform the tenant that the authority no longer proposes to give notice under subsection (1) for the reasons referred to in paragraph (a), or

(ii) give notice under subsection (1) for those reasons.

(6) A tenant who is aggrieved by a notice given under subsection (1) may appeal to the sheriff within 21 days of the date of the notice.

(7) If subsection (4) applies, an appeal under subsection (6) may be made on a point of law only.

(8) A notice under subsection (1) has no effect until—

(a) the period within which an appeal may be made under subsection (6) has elapsed without an appeal being made, or

(b) where such an appeal is made, the appeal is withdrawn or finally determined.

(9) The decision of the sheriff on appeal under this section is final.

(10) The Scottish Ministers may by regulations make further provisions as to the procedure to be applied in connection with the exercise of the power conferred by subsection (1).

(11) Where, under subsection (2) of section 85, a local authority sends a copy of the notice mentioned in that subsection to a person, the authority need not also send a notice under subsection (1) of this section.

(12) In this section, “specified” means specified in the notice under subsection (1).

84  Resumption of allotment or allotment site by local authority

(1) This section applies where a person leases an allotment or an allotment site from a local authority.

(2) Despite any provision to the contrary in the lease, the authority may resume possession of the whole or part of the allotment or the allotment site; but may do so only if—

(a) the resumption is required for building, mining or any other industrial purpose or for the construction, maintenance or repair of any roads or sewers necessary in connection with any such purpose,

(c) the authority has given the tenant notice of the resumption in accordance with subsection (3), and

(d) the Scottish Ministers have consented to the notice given under paragraph (c).

(3) Notice is given in accordance with this subsection if—

(a) it is in writing,

(b) it is given at least three months before the date on which the resumption is to take place, and
(c) it specifies that date.

(4) The Scottish Ministers may make the granting of consent mentioned in subsection (2)(d) subject to such conditions as they think fit.

(5) The Scottish Ministers may not grant consent unless they are satisfied that—

(a) the tenant of the whole or part of the allotment, or (as the case may be) the tenant of each allotment on the whole or part of the allotment site, is to be offered a lease of another allotment which is—

(i) of an area the same as or similar to that of the tenant’s allotment, and

(ii) in the area of the local authority within a reasonable distance of the allotment site or the allotment site on which the allotment is situated, or

(b) the provision of another allotment for the tenant is unnecessary or not reasonably practicable.

**Notice of termination: sublease**

**85** **Notice of termination: sublease**

(1) Subsection (2) applies where—

(a) an allotment site is leased to a local authority,

(b) the authority has granted a sublease of—

(i) the allotment site, or

(ii) an allotment on the allotment site,

(c) the authority receives notice of termination of the lease of the whole or part of the allotment site, and

(d) the sublease is of land that is the same as, or forms part of, the land to which the notice relates.

(2) The authority must—

(a) send a copy of the notice to the subtenant of the sublease, and

(b) notify the subtenant of the sublease—

(i) of the date on which the lease of the whole or part of the allotment site is terminated, and

(ii) that the subtenant’s sublease is terminated on that date.

**86** **Notice of termination: sublease by allotment association**

(1) Subsection (2) applies where—

(a) the local authority gives notice under section 83(1) or 84(2), or sends a copy of a notice under section 85(2)(a), to the tenant of the whole or part of an allotment site,

(b) the tenant subleases allotments on the whole or part of the allotment site to one or more subtenants, and

(c) the tenant represents the interests of the subtenants.

(2) The tenant must—
send a copy of the notice to each subtenant, and
(b) notify each subtenant—
   (i) of the date on which the lease of the whole or part of the allotment site is
       terminated, and
   (ii) that the subtenant’s sublease is terminated on that date.

Tenants’ rights

86A Prohibition against assignation or subletting
(1) The tenant of an allotment must not assign the lease of the whole or part of the allotment
    without the consent of the local authority which granted the lease of the allotment or, as
    the case may be, of the allotment site on which the allotment is situated.
(2) The tenant of an allotment must not sublet the whole or part of an allotment to any
    person.
(3) A purported assignation of the lease of the whole or part of an allotment contrary to
    subsection (1) is of no effect.
(4) A purported sublease of the whole or part of an allotment contrary to subsection (2) is of
    no effect.

87 Sale of surplus produce
Subject to any regulations under section 73(1), a tenant of an allotment may sell (other
than with a view to making a profit) produce grown by the tenant on the allotment.

88 Removal of items from allotment by tenant
(1) A tenant of an allotment may remove from the allotment any of the items mentioned in
    subsection (2) before the expiry or termination of the tenant’s lease.
(2) The items are—
    (a) any buildings (or other structures) erected by or on behalf of the tenant,
    (aa) any buildings (or other structures) acquired by the tenant,
    (b) any produce, trees or bushes—
        (i) planted by or on behalf of the tenant, or
        (ii) acquired by the tenant.

Compensation

89 Compensation for disturbance
(1) Subsection (2) applies where—
    (a) the lease of the whole or part of an allotment is terminated—
        (i) by notice under section 83(2)(b)(ii),
        (ii) as a result of a notice of termination of the lease of the allotment site on
            which the allotment is situated under section 83(2)(b)(ii),
(iii) as a result of a notice of resumption of the allotment, or the allotment site on which the allotment is situated, under section 84(2), or

(iv) as a result of a notice mentioned in section 85(1)(c), and

(b) the tenant of the allotment suffers damage caused by disturbance of the enjoyment of the tenant’s allotment as a result of the termination of the lease.

(2) The local authority giving or, as the case may be, receiving a notice mentioned in paragraph (a) of subsection (1) is liable to compensate a person referred to in paragraph (b) of that subsection.

(3) The minimum amount of compensation payable under subsection (2) is—

(a) where the termination of the lease relates to the whole of an allotment, an amount equal to one year’s rent of the allotment payable immediately before the termination of the lease,

(b) where the termination of the lease relates to part of an allotment, a proportion of the amount mentioned in paragraph (a) that is in the same proportion that the part of the allotment bears to the whole of the allotment.

(4) The Scottish Ministers must by regulations make further provision for or in connection with compensation payable under subsection (2).

(5) Regulations under subsection (4) must include, in particular, provision about the procedure to be followed in—

(a) determining whether the local authority is liable to pay compensation under subsection (2), and

(b) subject to subsection (3), assessing the amount of compensation for which the local authority is liable in cases where the lease does not make such provision.

(6) Before making regulations under subsection (4), the Scottish Ministers must consult—

(a) local authorities, and

(b) any other person appearing to the Scottish Ministers to have an interest.

(7) A person referred to in subsection (1)(b) who is aggrieved about any decision by the local authority in connection with the duty imposed by subsection (2) may appeal to the sheriff within 21 days of receiving notice of the authority’s decision.

90 Compensation for deterioration of allotment

(1) This section applies where—

(a) the lease of a person (“the tenant”) of an allotment has expired or been terminated, and

(b) it appears to the local authority which granted the lease of the allotment or, as the case may be, of the allotment site on which the allotment is situated that—

(i) the allotment deteriorated during the tenant’s lease of the allotment, and

(ii) the deterioration was caused by the fault or negligence of the tenant.

(2) The tenant is liable to pay compensation for the deterioration to the tenant’s landlord.

(3) The amount of compensation payable is the cost of remedying the deterioration.

(4) The Scottish Ministers must by regulations make further provision for or in connection with compensation payable under subsection (2).
Regulations under subsection (4) must include, in particular, provision about the procedure to be followed—

(a) in determining whether the tenant is liable to pay compensation under subsection (2), and

(b) in accordance with subsection (3), in assessing the amount of compensation for which the tenant is liable in cases where the lease does not make such provision.

Before making regulations under subsection (4), the Scottish Ministers must consult—

(a) local authorities, and

(b) any other person appearing to the Scottish Ministers to have an interest.

A tenant who is aggrieved about any decision by the local authority in connection with the duty imposed by subsection (2) may appeal to the sheriff within 21 days of receiving notice of the authority’s decision.

**Compensation for loss of crops**

This section applies where—

(a) the whole or part of an allotment is resumed under section 84(2), and

(b) the tenant of the allotment suffers loss of any crop as a result of the resumption.

The local authority that resumed the allotment under section 84(2) is liable to compensate the tenant.

The Scottish Ministers must by regulations make further provision for or in connection with compensation payable under subsection (2).

Regulations under subsection (3) must include, in particular, provision about the procedure to be followed in—

(a) determining whether the local authority is liable to pay compensation under subsection (2), and

(b) assessing the amount of compensation for which the local authority is liable in cases where the lease does not make such provision.

Before making regulations under subsection (3), the Scottish Ministers must consult—

(a) local authorities, and

(b) any other person appearing to the Scottish Ministers to have an interest.

A tenant who is aggrieved about any decision by the local authority in connection with the duty imposed by subsection (2) may appeal to the sheriff within 21 days of receiving notice of the authority’s decision.

**Set-off of compensation etc.**

Where a local authority is liable to pay compensation to a former tenant under section 89(2) or 91(2), the local authority may deduct from the compensation any sum that the former tenant is liable to pay to the local authority in connection with the lease that was terminated.

Where a tenant is liable to pay any sum to a local authority in connection with a lease of an allotment, the tenant may deduct from the sum any compensation that the local authority is liable to pay to the tenant under section 89(2) or 91(2).
Guidance

92A Guidance

(1) A local authority must have regard to any guidance issued by the Scottish Ministers about the carrying out of functions conferred on the authority by this Part.

(2) Before issuing such guidance, the Scottish Ministers must consult—

(a) local authorities, and

(b) any other person appearing to the Scottish Ministers to have an interest.

Interpretation of Part 7

93 Interpretation of Part 7

In this Part—

“allotment” has the meaning given by section 68,

“allotment site” has the meaning given by section 69,

“disabled person” means a person who is a disabled person for the purposes of the Equality Act 2010,

“food-growing strategy” has the meaning given by section 77(3),

“lease” and “leased” include “sublease” and “subleased”,

“prescribed” means prescribed by the Scottish Ministers by regulations,

“tenant” includes “subtenant”.

PART 7A

PARTICIPATION IN PUBLIC DECISION-MAKING

93A Participation in decisions of certain persons exercising public functions

(1) The Scottish Ministers may by regulations make provision for or in connection with the purpose mentioned in subsection (2).

(2) The purpose is promoting or facilitating participation in relation to decisions of such persons as may be specified (in this section, “relevant persons”) relating to activities carried out, or proposed to be carried out, by or on behalf of those persons.

(3) Regulations under subsection (1) may enable relevant persons to determine—

(a) the persons whose participation in relation to such decisions is to be promoted or facilitated, and

(b) which of those decisions persons so determined may participate in relation to.

(4) Regulations under subsection (1) may provide that activities as mentioned in subsection (2) include the allocation of—

(a) financial resources, and

(b) such other resources as may be specified.

(5) Regulations under subsection (1) may, in particular, include provision—

(a) (without prejudice to subsection (3)), conferring functions on relevant persons,
(b) specifying activities as mentioned in subsection (2) in relation to which the regulations apply, or do not apply,

c) specifying classes of such activities in relation to which the regulations apply, or do not apply,

d) specifying criteria for determining such activities in relation to which the regulations apply, or do not apply,

e) requiring relevant persons to prepare and publish a report, at such intervals as may be specified, describing the steps taken by the persons in connection with the carrying out of functions conferred on them by the regulations.

(6) Relevant persons must have regard to any guidance issued by the Scottish Ministers relating to functions conferred on them by regulations under subsection (1).

(7) Regulations under subsection (1) may specify a person in relation to whose decisions participation is to be promoted or facilitated only if the person is—

(a) a part of the Scottish Administration, or

(b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998).

(8) In this section, “specified” means specified in regulations made under subsection (1).

**PART 8**

NON-DOMESTIC RATES

94 Schemes for reduction and remission of non-domestic rates

(1) After section 3 of the Local Government (Financial Provisions etc.) (Scotland) Act 1962, insert—

“3A Schemes for reduction and remission of rates

(1) This section applies in relation to rates leviable for the year 2015-16 and any subsequent year.

(2) A rating authority may, in accordance with a scheme made by it for the purposes of this section, reduce or remit any rate leviable by it in respect of lands and heritages.

(3) Any reduction or remission under subsection (2) ceases to have effect at such time as may be determined by the rating authority.

(4) A scheme under subsection (2) may make provision for the rate to be reduced or remitted by reference to—

(a) such categories of lands and heritages as may be specified in the scheme,

(b) such areas as may be so specified,

(c) such activities as may be so specified,

(d) such other matters as may be so specified.

(5) Any reduction or remission under subsection (2) ceases to have effect on a change in the occupation of the lands and heritages in respect of which it was granted.
(6) Before exercising the power conferred by subsection (2), or amending a scheme made under that subsection, the rating authority must have regard to the authority’s expenditure and income and the interests of persons liable to pay council tax set by the authority.”.

(2) In Schedule 12 to the Local Government Finance Act 1992 (payments to local authorities by the Scottish Ministers), in paragraph 10(3)(a)—

(a) in sub-paragraph (iii), after “Provisions” insert “etc.”, and

(b) after that sub-paragraph insert—

“(iii) section 3A (schemes for reduction and remission of rates) of that Act;”.

(3) In paragraph 2 of Schedule 1 (rules for the calculation of non-domestic rating contributions) to the Non-Domestic Rating Contributions (Scotland) Regulations 1996 (S.I. 1996/3070), in sub-paragraph (c), after “section” insert “3A or”.

(4) Paragraph 10(4) of Schedule 12 to the Local Government Finance Act 1992 does not apply in relation to the amendment made by subsection (3).

**PART 9**

**GENERAL**

95 **Guidance under Parts 2 and 6: publication**

The Scottish Ministers must publish, in such manner as they think fit, any guidance issued by them relating to Part 2, Part 3, Part 5, Part 6, Part 7 or Part 7A.

96 **Subordinate legislation**

(1) Any power of the Scottish Ministers to make an order or regulations under this Act includes a power to make—

(a) different provision for different purposes,

(b) incidental, supplementary, consequential, transitional or transitory provision or savings.

(2) An order under—

(a) section 16(2) or (3), 51(2) or (3), 58(2)(c) or 72(4) or (5), or

(b) section 97(1) containing provisions which add to, replace or omit any part of the text of an Act,

is subject to the affirmative procedure.

(3) Regulations under section 4(6), 8(3), 12(1), 62AA(1) or 93A are subject to the affirmative procedure.

(4) Any other orders and regulations under this Act are subject to the negative procedure.

(5) This section does not apply to—

(a) regulations under section 73(1), or

(b) orders under section 99(2).
Ancillary provision

(1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitional or transitory provision or savings as they consider necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) An order under this section may modify any enactment (including this Act), instrument or document.

Minor and consequential amendments and repeals

(1) Schedule 4 contains minor amendments and amendments consequential on the provisions of this Act.

(2) The enactments mentioned in the first column of schedule 5 (which include enactments that are spent) are repealed to the extent set out in the second column.

Commencement

(1) This section, sections 95 to 97 and section 100 come into force on the day after Royal Assent.

(2) The remaining provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may include transitional or transitory provision or savings.

Short title

The short title of this Act is the Community Empowerment (Scotland) Act 2015.
SCHEDULE 1
(introduced by section 4(1))

COMMUNITY PLANNING PARTNERS

The board of management of a regional college designated by order under section 7A of the Further and Higher Education (Scotland) Act 2005 which is situated in the area of the local authority

The chief constable of the Police Service of Scotland

The Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978 whose area includes, or is the same as, the area of the local authority

Highlands and Islands Enterprise where the area within which, or in relation to which, it exercises functions in accordance with section 21(1) of the Enterprise and New Towns (Scotland) Act 1990 includes the whole or part of the area of the local authority

Historic Environment Scotland

Any integration joint board established by virtue of section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014 to which functions of the local authority and the Health Board are delegated

A National Park authority, established by virtue of a designation order under section 6 of the National Parks (Scotland) Act 2000, for a Park whose area includes the whole or part of the area of the local authority

A regional strategic body specified in schedule 2A to the Further and Higher Education (Scotland) Act 2005 which is situated in the area of the local authority

Scottish Enterprise

The Scottish Environment Protection Agency

The Scottish Fire and Rescue Service

Scottish Natural Heritage

The Scottish Sports Council

The Skills Development Scotland Co. Limited

A regional Transport Partnership established by virtue of section 1(1)(b) of the Transport (Scotland) Act 2005 whose region includes, or is the same as, the area of the local authority

VisitScotland

SCHEDULE 2
(introduced by section 16(1))

PUBLIC SERVICE AUTHORITIES

The board of management of a college of further education (those expressions having the same meanings as in section 36(1) of the Further and Higher Education (Scotland) Act 1992)

A Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978
Highlands and Islands Enterprise

A local authority

A National Park authority established by virtue of a designation order under section 6 of the National Parks (Scotland) Act 2000

5

The Police Service of Scotland

Scottish Enterprise

The Scottish Environment Protection Agency

The Scottish Fire and Rescue Service

Scottish Natural Heritage

A regional Transport Partnership established by virtue of section 1(1)(b) of the Transport (Scotland) Act 2005

SCHEDULE 3
(introduced by section 51(1))

RELEVANT AUTHORITIES

15

The board of management of a college of further education (those expressions having the same meanings as in section 36(1) of the Further and Higher Education (Scotland) Act 1992)

The British Waterways Board

The Crofting Commission

20

A Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978

Highlands and Islands Enterprise

A local authority

A National Park authority established by virtue of a designation order under section 6 of the National Parks (Scotland) Act 2000

25

The Scottish Courts and Tribunals Service

Scottish Enterprise

The Scottish Environment Protection Agency

The Scottish Fire and Rescue Service

30

The Scottish Ministers

Scottish Natural Heritage

The Scottish Police Authority

Scottish Water

A Special Health Board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978

35

A regional Transport Partnership established by virtue of section 1(1)(b) of the Transport (Scotland) Act 2005
SCHEDULE 4
(introduced by section 98(1))

MINOR AND CONSEQUENTIAL AMENDMENTS

Small Landholders (Scotland) Act 1911

A1 In section 26 of the Small Landholders (Scotland) Act 1911 (supplementary provisions and restrictions), in subsection (3)(e), for “the Allotments (Scotland) Act, 1892, or the Local Government (Scotland) Act, 1894” substitute “Part 7 of the Community Empowerment (Scotland) Act 2015”.

Compensation (Defence) Act 1939

A2 In section 18 of the Compensation (Defence) Act 1939 (application to Scotland and Northern Ireland), in subsection (1), for “the Allotments Act, 1922 shall be construed as a reference to the Allotments (Scotland) Act, 1922” substitute “allotment gardens within the meaning of the Allotments Act, 1922 is omitted”.

Agriculture (Scotland) Act 1948

A3(1) Section 86 of the Agriculture (Scotland) Act 1948 is amended as follows.

(2) In the proviso to subsection (1), in paragraph (a), for “allotment gardens” substitute “allotments”.

(3) In subsection (3), for the definition of “allotment garden” substitute—

“allotment” has the meaning given by section 68 of the Community Empowerment (Scotland) Act 2015;”.

Opencast Coal Act 1958

A4(1) The Opencast Coal Act 1958 is amended as follows.

(2) In section 41 (provisions as to allotment gardens and other allotments), in subsection (3), for the words from “the”, where it third occurs, to the end substitute “section 68 of the Community Empowerment (Scotland) Act 2015”.

(3) In the Eighth Schedule (tenancies of allotment gardens and other allotments), in paragraph 10—

(a) for sub-paragraph (a) substitute—

“(a) paragraph 1 applies as if sub-paragraph (2) were omitted;”,

(b) for sub-paragraph (b) substitute—

“(b) sub-paragraph (1) of paragraph 3 applies as if for “the Act of 1908 or the Act of 1922 or the Allotments Act, 1950, or by virtue of any other enactment relating to allotments” there were substituted “Part 7 of the Community Empowerment (Scotland) Act 2015”;”,

(c) for sub-paragraph (c) substitute—

“(c) sub-paragraph (2) of paragraph 3 applies as if—
(i) for “any of the enactments mentioned in the next following sub-paragraph” there were substituted “Part 7 of the Community Empowerment (Scotland) Act 2015 (but excluding any compensation for disturbance)

(ii) “garden” were omitted, and

(iii) for “subsection (2) of section two of the Act of 1922” there were substituted “section 84(2) of the Community Empowerment (Scotland) Act 2015;”

(d) in sub-paragraph (e), for the words from “for” to the end substitute “any reference to the Allotments Act, 1950 is to be read as a reference to Part 7 of the Community Empowerment (Scotland) Act 2015”, and

(e) for sub-paragraph (f) substitute—

“(f) sub-paragraph (1) of paragraph 5 applies as if for “section four or section five of the Act of 1922, or of subsection (4) of section forty-seven of the Act of 1908” there were substituted “section 88 of the Community Empowerment (Scotland) Act 2015”;”.

Local Government (Scotland) Act 1973

A5 In the Local Government (Scotland) Act 1973—

(za) in section 73 (appropriation of land)—

(i) in subsection (2), the word “not” is repealed,

(ii) in that subsection, for “except with the consent of the Secretary of State” substitute “subject to sections 75 and 76 of the Community Empowerment (Scotland) Act 2015”, and

(ii) in subsection (3), after “allotments” insert “(within the meaning of section 68 of that Act)”,

(a) in section 99 (general duties of auditors), in subsection (1)(c), for “sections 15 to 17 (community planning) of the Local Government in Scotland Act 2003 (asp 1)” substitute “Part 2 of the Community Empowerment (Scotland) Act 2015 (community planning)”, and

(b) in section 102 (reports to Commission by Controller of Audit), in subsection (1)(c)—

(i) the words “and Part 2 (community planning)” are repealed, and

(ii) at the end insert “and Part 2 of the Community Empowerment (Scotland) Act 2015 (community planning)”.

Local Government Act 1992

1 In section 1 of the Local Government Act 1992 (publication of information as to standards of performance), in subsection (1)(b), for the words “Part 2 (community planning) of the Local Government in Scotland Act 2003 (asp 1)” substitute “Part 2 (community planning) of the Community Empowerment (Scotland) Act 2015”. 
Local Government in Scotland Act 2003

1A In section 57 of the Local Government in Scotland Act 2003 (power to modify enactments), in subsection (2)(a), for “13(1) or 15(1)” substitute “or 13(1)”.

Land Reform (Scotland) Act 2003

2 (1) The Land Reform (Scotland) Act 2003 is amended as follows.

(2) In section 37 (registration of interest in land)—

(a) after subsection (7)(b) insert “and

(b) in subsection (11)(c), for the words “not registrable land” substitute “excluded land as defined in section 33(2) above”;

(c) in subsection (18), after paragraph (a), insert—

“(aa) where the decision is that such an interest is to be entered in the Register, contain information about the duties imposed under section 44A,”;

(d) in subsection (19), after “above” insert “, including that subsection as modified by section 39(2)(b) below,.”.

(3) In section 51 (exercise of right to buy: approval of community and consent of Ministers)—

(a) in subsection (2)(a)(i), the words “conducted by the community body” are repealed, and

(b) in subsection (6)—

(i) in paragraph (a), after “receipt” insert “by Ministers”,

(ii) in that paragraph, the words “conducted by the body” are repealed, and

(iii) in paragraph (b), the words “conducted by those bodies” are repealed.

(4) In section 52 (ballot procedure)—

(a) in subsection (3)—

(i) for the words “community body which conducts a ballot” substitute “ballotter appointed under section 51A”,

(ii) after “notify” insert “Ministers, the community body, the owner of the land to which the ballot relates and any creditor in a standard security with a right to sell the land of”,

(iii) the word “and” immediately following paragraph (c) is repealed,

(iv) after paragraph (d) insert—

“(e) the wording of that proposition, and

(f) any information provided by the ballotter to persons eligible to vote in the ballot.”,

(v) the words “to Ministers” are repealed, and

(b) after subsection (4) insert—
“(5) Within 7 days of receiving notification under subsection (3) above, Ministers may—

(a) require the ballotter to provide such information relating to the ballot as they think fit,

(b) require the community body to provide such information relating to any consultation with those eligible to vote in the ballot undertaken during the period in which the ballot was carried out as Ministers think fit.

(6) The validity of anything done under this Part of this Act is not affected by any failure by a ballotter to comply with the time limit specified in subsection (4).”.

(4A) In section 68 (land which may be bought: eligible croft land), in subsection (5), for “the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (c.26)” substitute “section 69(1) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003”.

(5) In section 98 (general and supplementary provisions)—

(a) in subsection (5)—

(zi) after “33,” insert “35(4),”

(i) for “78 or 94” substitute “72(4), 78, 94 or 97E(4),” and

(ii) after “above” insert “or regulations made under section 34(A1)(b), (4A) or (4B), 38(2B), 71(A1)(b), (4A) or (4B), 97C(2), (3) or (4), 97D(1)(b), (4A) or (4B), 97F(6), 97H(6) or 97N(1) or (3) above”,

(aa) after subsection (5) insert—

“(5A) In making a decision under section 38(1), 44(3), 51(1)(b), 73(2) or 97G(2), Ministers are to have regard to the International Covenant on Economic, Social and Cultural Rights (adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966) subject to—

(a) any amendments in force in relation to the United Kingdom for the time being, and

(b) any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.”, and

(b) in subsection (8), for “and 52(3)” substitute “, 52(3), 97G(7) and (9) and 97J(4)”.

Fire (Scotland) Act 2005

3 In the Fire (Scotland) Act 2005—

(a) in section 41E (local fire and rescue plans), in subsection (6), for “Local Government in Scotland Act 2003 (asp 1)” substitute “Community Empowerment (Scotland) Act 2015”, and

(b) in section 41J (Local Senior Officers), in subsection (2)(c), for “section 16(1)(d) of the Local Government in Scotland 2003 (asp 1) (duty to participate in community planning)” substitute “Part 2 of the Community Empowerment (Scotland) Act 2015 (community planning)”.
Community Empowerment (Scotland) Bill
Schedule 5—Repeals

Schools (Consultation) (Scotland) Act 2010

3A In the Schools (Consultation) (Scotland) Act 2010, in schedule 2 (relevant consultees)—

(a) for sub-paragraph (h) of each of paragraphs 1, 2, 3, 4 and 5 substitute—

“(h) the community planning partnership (within the meaning of section 4(4) of the Community Empowerment (Scotland) Act 2015) for the area of the local authority in which any affected school is situated,

(ha) any other community planning partnership that the education authority considers relevant,”, and

(b) for sub-paragraph (h) of paragraph 10 substitute—

“(h) the community planning partnership (within the meaning of section 4(4) of the Community Empowerment (Scotland) Act 2015) for the area of the local authority in which the further education centre is situated,“.

Public Services Reform (Scotland) Act 2010

3B In section 115 of the Public Services Reform (Scotland) Act 2010 (joint inspections), in subsection (12), for the words from “means” to the end of the subsection substitute “is to be construed in accordance with section 7 of the Children and Young People (Scotland) Act 2014.”.

Police and Fire Reform (Scotland) Act 2012

4 In the Police and Fire Reform (Scotland) Act 2012—

(a) in section 46 (duty to participate in community planning), in subsection (2), for “section 16(1)(e) of the Local Government in Scotland Act 2003” substitute “Part 2 of the Community Empowerment (Scotland) Act 2015”, and

(b) in section 47 (local police plans), in subsection (11), for “Local Government in Scotland Act 2003 (asp 1)” substitute “Community Empowerment (Scotland) Act 2015”.

SCHEDULE 5
(introduced by section 98(2))

REPEALS

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<tr>
<td>Land Settlement (Scotland) Act 1919</td>
<td>Part 3 and paragraph 6 of the First Schedule.</td>
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<td>Allotments (Scotland) Act 1922</td>
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<td>Agricultural Land (Utilisation) Act 1931</td>
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<td>Allotments (Scotland) Act 1950</td>
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<tr>
<td>Opencast Coal Act 1958</td>
<td>In the Eighth Schedule, in paragraph 10(h), the words from “but” to the end.</td>
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<td>Local Government etc. (Scotland) Act 1994</td>
<td>In Schedule 13, paragraphs 6, 12 and 35.</td>
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<td>Land Reform (Scotland) Act 2003</td>
<td>Section 57(2)(b).</td>
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<tr>
<td>In section 38(1), paragraph (a) and, in paragraph (b), the word “substantial” where it appears in each of sub-paragraphs (i) and (ii).</td>
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<td>Section 40(4)(g)(iv).</td>
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<td>In section 52, subsection (2).</td>
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<td>In section 61(3), the words from “or” to “person”.</td>
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<td>In section 62, subsections (5) and (6) and, in subsection (7), the words “within 4 weeks of the hearing of the appeal”.</td>
<td></td>
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<tr>
<td>In section 98(5), the word “33”.</td>
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</table>
Community Empowerment (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make provision about national outcomes; to confer functions on certain persons in relation to services provided by, and assets of, certain public bodies; to amend Parts 2 and 3 of the Land Reform (Scotland) Act 2003; to enable certain bodies to buy abandoned, neglected or detrimental land; to amend section 7C of the Forestry Act 1967; to enable the Scottish Ministers to make provision about supporters’ involvement in and ownership of football clubs; to make provision for registers of common good property and about disposal and use of such property; to restate and amend the law on allotments; to enable participation in decision-making by specified persons having public functions; to enable local authorities to reduce or remit non-domestic rates; and for connected purposes.

Introduced by: John Swinney
Supported by: Derek Mackay, Paul Wheelhouse
On: 11 June 2014
Bill type: Government Bill