



The Scottish Parliament
Pàrlamaid na h-Alba

Local Government and Regeneration Committee

2nd Report, 2015 (Session 4)

Stage 1 Report on the Community Empowerment (Scotland) Bill

Published by the Scottish Parliament on 26 January 2015

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website -
www.scottish.parliament.uk

Any links to external websites in this report were working correctly at the time of publication.
However, the Scottish Parliament cannot accept responsibility for content on external websites.



The Scottish Parliament
Pàrlamaid na h-Alba

Local Government and Regeneration Committee

2nd Report, 2015 (Session 4)

CONTENTS

Remit and membership

| | |
|---|----|
| Report | 1 |
| Introduction | 2 |
| Introductory Chapter | 2 |
| Policy underpinning the Bill | 3 |
| Christie Commission principles and Committee scrutiny of the Bill | 4 |
| Engagement | 6 |
| Empowering only the empowered | 8 |
| Supporting communities | 9 |
| Petitions referred to us | 10 |
| Equality Impact Assessment | 10 |
| Accompanying Documents | 11 |
| General Principles of the Bill and Accompanying Documents | 14 |
| Part 1: National Outcomes | 15 |
| Background | 15 |
| Bill proposals | 15 |
| Committee submissions | 16 |
| Committee recommendations on Part 1 | 18 |
| Part 2: Community Planning | 20 |
| Background | 20 |
| Bill proposals | 21 |
| Committee submissions | 22 |
| Committee Recommendations on Part 2 | 33 |
| Part 3: Participation Requests | 36 |
| Background | 36 |
| Committee submissions | 38 |
| Recommendations on Part 3 | 49 |
| Part 4: Community Right to buy | 52 |
| Part 5: Asset transfer requests | 52 |
| Background | 52 |
| Committee submissions | 54 |
| Committee Recommendations on Part 5 | 65 |
| Part 6: Common Good | 67 |

| | |
|---|-----|
| Background | 67 |
| Committee submissions | 68 |
| Committee Recommendations on Part 6 | 76 |
| Part 7: Allotments | 77 |
| Background | 77 |
| Committee submissions | 77 |
| Committee Recommendations on Part 7 | 87 |
| Part 8: Non-Domestic Rates | 89 |
| Background | 89 |
| Committee submissions | 91 |
| Committee Recommendations on Part 8 | 94 |
| | |
| Annexe A: Rural Affairs, Climate Change And Environment Committee Report on Part 4 of the Community Empowerment (Scotland) Bill | 95 |
| Executive summary | 95 |
| Introduction | 100 |
| Parliamentary scrutiny | 100 |
| Rural Affairs, Climate Change and Environment Committee's approach and call for views | 101 |
| Background TO and purpose of the Bill | 102 |
| Legislative background | 102 |
| Part 4 Community Right to Buy | 103 |
| Scottish Government consultation | 103 |
| General issues considered by the committee | 104 |
| Is a Bill required, and/or was there a better way of achieving the policy aims? | 104 |
| Will the Bill solve the problem? | 106 |
| Supporting documentation | 108 |
| Policy Memorandum | 108 |
| Financial Memorandum | 112 |
| Specific issues considered in Part 4 | 115 |
| Nature of land in which community interest may be registered (section 27) | 115 |
| Meaning of community (section 28) | 117 |
| Section 97E(1) of the 2003 Act | 148 |
| Ballot to indicate approval for the purposes of section 97H (section 97J) | 155 |
| Other issues considered by the Committee | 161 |
| Issues not included in the Bill | 165 |
| Crofting Community Right to Buy (Part 3) | 165 |
| | |
| Annexe B: Finance Committee Report to the Local Government And Regeneration Committee on the Community Empowerment (Scotland) Bill | 167 |
| Introduction | 167 |
| The bill | 167 |
| Evidence | 168 |

| | |
|--|-----|
| Annexe C: Delegated Powers and Law Reform Committee Report On the Community Empowerment (Scotland) Bill | 187 |
| Annexe D: Evidence Received Via Social Media and Online Videos | 217 |



The Scottish Parliament
Pàrlamaid na h-Alba

Local Government and Regeneration Committee

Remit and membership

Remit:

To consider and report on a) the financing and delivery of local government and local services, and b) planning, and c) matters relating to regeneration falling within the responsibility of the Cabinet Secretary for Infrastructure and Capital Investment.

Membership:

Clare Adamson (from 3rd December 2014)
Cameron Buchanan
Willie Coffey (from 3rd December 2014)
Cara Hilton (from 14th January 2015)
Mark McDonald (until 27th November 2014)
Stuart McMillan (until 27th November 2014)
Anne McTaggart (until 8th January 2015)
Alex Rowley
Kevin Stewart (Convener)
John Wilson (Deputy Convener)

Committee Clerking Team:

Clerk to the Committee

David Cullum

Senior Assistant Clerk

Claire Menzies Smith

Assistant Clerk

Seán Wixted

Committee Assistant

Ross Fairbarin



The Scottish Parliament
Pàrlamaid na h-Alba

Local Government and Regeneration Committee

2nd Report, 2015 (Session 4)

Stage 1 Report on the Community Empowerment (Scotland) Bill

The Committee reports to the Parliament as follows—

INTRODUCTION

Introductory Chapter

1. This report covers the scrutiny of the Community Empowerment (Scotland) Bill by the Local Government and Regeneration Committee (LGR) Committee.
2. Prior to introduction to the Parliament on 11 June 2014 of the Community Empowerment (Scotland) Bill the Scottish Government undertook two separate consultations on aspects of the Bill. The first commenced in June 2012. The second began in November 2013 and was accompanied by draft legislation covering asset transfer, (what has become) participation requests and Common Good proposals.¹ In addition the latter consultation sought views on community right to buy land, measures to strengthen community planning and on allotments. Finally views were sought on including a provision that places a duty on Scottish Ministers to develop, consult on and publish a set of outcomes that describe their long term, strategic objectives for Scotland, and include a complementary duty to report regularly and publicly on progress towards these outcomes (what has become Part 1 of the bill).
3. In between the consultations a Parliamentary debate was held on 12 September 2013 giving members the opportunity to “help to inform the future debate and work”².
4. Following each consultation we took evidence from a wide variety of interested parties, including community groups, third sector organisations, local authorities, Community Planning Partnerships (CPPs), public sector organisations,

¹ In addition the draft contained proposals on Defective and Dangerous Buildings which have since been covered by separate legislation: <http://www.legislation.gov.uk/asp/2014/13/contents/enacted>

² Scottish Parliament, Meeting of the Parliament, Official Report 12 September 2013: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9020#.VL0I19JSj3c>

Audit Scotland and the former Minister.³ This allowed us to follow closely the evolution of proposals and hear the aims of those affected and aspirations of Government as the legislation developed.

5. Other work we undertook during this period is closely linked to aspects of what is now the Bill in particular our three part inquiry into Public Services Reform⁴, our inquiry into Regeneration in Scotland⁵ and the work we undertook in considering the National Planning Framework and review of Scottish Planning Policy. All had a close community focus and assisted in our consideration of this Bill. We also understand from the Scottish Government this work was taken account of and assisted in relation to the eventual formulation of the Bill.⁶

6. Once the Bill was introduced we were designated as lead committee for stage 1 consideration. On introduction the Bill had 8 substantive Parts as follows:

- Part 1 National Outcomes
- Part 2 Community Planning
- Part 3 Participation Requests
- Part 4 Community Right to Buy Land
- Part 5 Asset Transfer Requests
- Part 6 Common Good Property
- Part 7 Allotments and
- Part 8 Non-Domestic Rates.

7. Each part could have been a Bill in its own right and accordingly we resolved to look at each part individually whilst also being mindful of the overlaps that did exist and common themes underpinning the Bill. As a consequence this report is divided into Parts corresponding to each part of the Bill with an introductory chapter pulling together some of the common themes as well as our overall conclusion on the general principles of the Bill. Each part of the report looking at the individual Bill parts (with the exception of Part 4) follows a similar format,

- setting out the background to and an overview of that Part of the Bill,
- summarising key aspects of the submissions received by the committee (from whatever source and timeframe), and

³ Scottish Parliament Local Government and Regeneration Committee. *Official Report, 5 March 2014*: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9474&mode=pdf>

Scottish Parliament Local Government and Regeneration Committee. *Official Report, 12 March 2014*: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9479&mode=pdf>

⁴ Local Government and Regeneration Committee, Public Services Reform:

Strand 1 - Partnerships and Outcomes:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/45488.aspx>

Strand 2 - Benchmarking and Performance Measurement:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/42316.aspx>

Strand 3, developing new ways of delivering services:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/56442.aspx>

⁵ Local Government and Regeneration Committee, 1st Report, 2014 (Session 4): Delivery of Regeneration in Scotland. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/73168.aspx>

⁶ Scottish Parliament Local Government and Regeneration Committee, Minister MacKay in evidence, *Official Report 5 March 2014, column 3181*.

- concluding with our recommendations.

8. We are indebted to the Rural Affairs and Climate Change Committee (RACCE) who, given their earlier experiences and interest in land reform, agreed to consider Part 4 of the Bill. We have included their report and findings at Annexe A of our Report. We anticipate RACCE will continue to be involved at stage 2 at which time the Government have indicated an intention to bring forward amendments to make changes to Part 3 of the Land Reform (Scotland) Act 2003 on crofting right to buy.⁷

9. We also received reports from the Finance and Delegated Powers and Law Reform Committees. Both are annexed (Annexes B and C respectively) to this report. We questioned the Minister on the reports and our views, conclusions and recommendations are contained later in this introductory chapter.

Policy underpinning the Bill

10. The various debates and hearings gave us an expectation of what the Bill and the underlying policy were intended to deliver. For example in the debate on 12 September 2013 the Minister stated he was talking about more than legislation or regulation “We are talking about culture, leadership, and the practical support that can be provided to deliver community empowerment” and that he wanted to “set the people free.” Noting the proposed Bill represented “the biggest potential transfer of powers to local communities since devolution.”⁸

11. In evidence to us on 5 March the Minister suggested:-

“The driving force behind the bill is the view that we can unlock much of Scotland’s potential through community empowerment, and we believe that the various components of the bill can make a difference in doing that. Specifically, the bill will make it easier for communities to take on public sector assets and make better use of them; give communities a right to be listened to when they have proposals to improve services in their area”

12. He added: “Legislation will not fix everything, but it can help with the creation of a culture in which community empowerment is the right thing to do.”⁹

13. Following the Government reshuffle the new Minister Marco Biagi stated empowering communities is at the heart of everything we do.¹⁰

14. The Scottish Government’s states on its website the benefits of community empowerment,

⁷ Letter from Minister Mackay preceding his appearance before the Committee in November 2014: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Kevin_Stewart_MSP_Letter_-_6_November_2014.pdf

⁸ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 September 2013, closing speech

⁹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 March 2014, column 3167

¹⁰ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, Chamber 11 December, column 44

“Where communities are empowered we would expect to see a range of benefits: local democratic participation boosted; increased confidence and skills among local people; higher numbers of people volunteering in their communities; and more satisfaction with quality of life in a local neighbourhood. Better community engagement and participation leads to the delivery of better, more responsive services and better outcomes for communities.”¹¹

15. The Bill will, according to the Policy Memorandum, help to ensure people can meaningfully participate in decisions that affect their lives. It reflects policy principles of subsidiarity, community empowerment and improving outcomes and provides a strategic framework which will:

- Empower community bodies through the ownership of land and buildings and strengthening their voices in the decisions that matter to them; and
- Support an increase in the pace and scale of Public Service Reform by cementing the focus on achieving outcomes and improving the process of community planning.

16. As well as considering the policy detail underpinning the Bill, throughout our consideration we have given consideration to looking closely at the extent to which it will alter the balance between the state in all its manifestations and the people. In particular the extent to which the Bill succeeds in its intentions of empowering communities.

17. The recent substantial turnout in the referendum on Scottish independence showed us people are motivated to become involved in the decision making process when the decision directly affects their lives.

Christie Commission principles and Committee scrutiny of the Bill

18. From all of our work this session it is clear to us much of the Bill, particularly those parts giving rights to communities and groups, has become necessary as a consequence of the failure of public authorities and agencies to listen and to act on communities' priorities and to embrace the principles espoused by the Christie Commission. Some of the key relevant ones being:

- Recognising that effective services must be designed with and for people and communities - not delivered 'top down' for administrative convenience
- Maximising scarce resources by utilising all available resources from the public, private and third sectors, individuals, groups and communities
- Working closely with individuals and communities to understand their needs, maximise talents and resources, support self reliance, and build resilience

¹¹ The Scottish Government, Community Empowerment. Available at: <http://www.scotland.gov.uk/Topics/People/engage>

- Making provision in the proposed Community Empowerment and Renewal Bill to embed community participation in the design and delivery of services
- Implementing new inter-agency training to reduce silo mentalities, drive forward service integration and build a common public service ethos¹²

19. The Minister on 5 March 2014 noted—

“The committee’s work has assisted [in the development of the Bill]. The four pillars of the Christie commission’s report around prevention, integration, people and the workforce, and improvement are absolutely what this work is about. The bill is principally about prevention and people. For example, if people have the tools to do the job, they will be able to help to set their own destiny by creating community projects that deliver for them. That is very empowering and very much fits in with the preventative and the people agendas, so the bill will be absolutely in tune with the Christie commission recommendations on empowerment. The bill will also be about decentralisation because it is about taking away bureaucracy in order to support that agenda.”¹³

20. The Accounts Commission for Scotland and Auditor General have noted a need for fundamentally different ways of working to be adopted in the redesign and delivery of public services including a need to address ways of working.¹⁴ Kay Gilmour (East Ayrshire Council) told us public bodies need to go on a journey of cultural improvement and only then will they avoid getting anxious if they receive suggestions about doing things differently and better or other innovations are suggested.¹⁵

21. To succeed, the Bill must be a catalyst for change including significant cultural change across our public services. We return to this aspect at various parts of this report.

22. In the words of the Minister—

“We are removing barriers, creating consistency and giving people access to resources that are, in essence, already theirs through public ownership.”¹⁶

23. To commence our scrutiny we wrote to the Scottish Government seeking clarification of a number of issues relating to the information supplied in the Policy Memorandum. In total we posed 147 questions, answers to which we considered would assist our scrutiny and assist those responding to our call for evidence. We

¹² The Scottish Government, Commission on the Future Delivery of Public Services
<http://www.scotland.gov.uk/Publications/2011/06/27154527/2>

¹³ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 March 2014, column 3181

¹⁴ Accounts Commission for Scotland & Auditor General for Scotland. Written submission.

¹⁵ Scottish Parliament Local Government and Regeneration Committee, *Official Report* 27, October 2014, column 40

¹⁶ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 13

are extremely grateful to the Scottish Government for responding timeously to this request which we were told assisted those responding to us, and may well have restricted the need for other comment.¹⁷ References to the additional information supplied is made throughout our report, which highlights the value attached to its production.

24. We heard from a wide range of witnesses at six meetings including meeting in Dumfries¹⁸ and Fort William¹⁹. At both of these external meetings we also heard informally from a range of people mainly from the local communities. In addition members visited a number of allotment sites in Glasgow. We are grateful to all those who wrote to us or gave their time to speak to us directly. All the information received has been considered by us and it is only through the input of such a range of people that we are able to complete this task and report as required. Official Reports from each meeting and notes taken at the informal meetings are all available on-line.²⁰

25. In a change to the usual order of events we heard from the Minister on the Bill prior to taking evidence in Fort William and we are grateful to the Minister and his officials for their flexibility in this matter.

26. While we took discrete evidence at our sessions directed at individual parts of the Bill, some common themes apply across the entire bill and these are covered in the following paragraphs.

Engagement

27. The Bill in a number of places requires public bodies and others including the Scottish Government to undertake consultation and engagement with communities before actions are taken. Some issues were raised around a lack of specification as to how this should be conducted.

28. Councillor McGuigan made the point that engagement can happen in all sorts of ways, sometimes hollow sometimes fruitful. He further noted a need to get into

¹⁷Letter from the Convener, Local Government and Regeneration Committee on the Policy Memorandum, paragraph 138, 25 June 2014. Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/20140109-KS_to_Minister_LGP_on_Comm_Emp_Bill_Policy_Memo_20140625.pdf and Scottish Government's response to the Committee's Letter on the Policy Memorandum, para 138. Available at:

http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Responses_to_LGR_Committee_Questions_-_1st_August_2014.pdf Henceforth referred to as Q&A (hereafter referred to as "Q&A")

¹⁸Local Government and Regeneration Committee. Note of roundtable discussion held in Dumfries on 27 October 2014. Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Dumfries_roundtable_notes.pdf

¹⁹Note of roundtable discussion held in Fort William on 24 October 2014. Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Fort_William_roundtable_notes.pdf

²⁰<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/78599.aspx>

communities and connect with people.²¹ Elma Murray, representing the Society of Local Authority Chief Executives and Senior Managers (SOLACE) said:

“The communities that we work with tell us what they want and we listen to that. We work with them to make decisions about what we prioritise.”²²

29. However Ms Murray later admitted some communities are disempowered by the structures and processes determined largely by authorities. Adding that communities tend to be organised by the authorities to suit the convenience of the authority.²³ Councillor O’Neill President of COSLA added that a poll undertaken for the Commission on Strengthening Local Democracy found “government is remote from communities”.²⁴

30. A number of respondents called for the National Standards for Community Engagement to be included in the Bill to act as a code of conduct for engagement, albeit an updated list of standards that has co-production embedded within them.

31. Children in Scotland made the point—

32. “there are groups and individuals who are detached and disengaged from effective engagement with community structures and that they are likely also to be those who experience marginalisation in other aspects of their lives. It should not be a case of ‘training’ such people to fit in with structures largely devised and driven by large bureaucratic bodies, but ensuring that systems are accessible, enabling and, critically, can show that community participation is not a tokenistic compliance with a statutory duty but can bring about positive change.”

33. During our meeting on 24 September we were reminded by Councillor McGuigan about what happens when only “experts” are consulted—

“although we had consulted all the experts and some of the influential community groups that operated in the area, we had not consulted the real experts, who were the people who lived in the community and who were experiencing what life was really like there. There were people who had skills, understanding, knowledge and a desire to make a change in their community, but we had forgotten—I had forgotten—to include that important voice. That is what the empowerment bill should be about.”²⁵

34. We were pleased to hear the Minister go some way to meeting these concerns when he indicated he will lodge an amendment at stage 2 to strengthen accountability in community planning partnerships by making reference to the

²¹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 24 September, column 14

²² Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 24 September, column 20

²³ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 24 September, column 11

²⁴ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 24 September, column 12

²⁵ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 24 September, column 9

national standards of engagement. **We will expect that amendment to apply widely and cover all instances of engagement under the Bill.**

Empowering only the empowered

35. At the Committee meeting on 5 March the Minister noted a concern that if the (draft) Bill was applied equally it would make inequality worse. He indicated it required to be framed to give support in such a way as to present a level playing field. He added “the bill must swing the pendulum of power from the state to communities”²⁶ In the earlier debate on 12 September 2013 concerns were noted about the bill “inadvertently widening the inequalities gap by favouring those who already have the capacity to take action to be successful”²⁷

36. The Scottish Community Alliance summed up the view of many third sector respondents, stating—

“this Bill contains new opportunities that communities can take advantage of and, if they do, these communities are likely to become more empowered than they otherwise would be. It has often been said during the course of the consultations for this Bill, that legislation cannot empower communities - only local people can empower themselves.”²⁸

37. A note of caution was also expressed by The Poverty Alliance who stated: “the most important aspect of this Bill is around empowering Scotland’s most disadvantaged communities, and narrowing inequalities between those communities which are already empowered and those which will require more support.” They added—

38. “There is a danger that the Bill, in its current form, will most benefit those communities which are already empowered and able to take advantage of the provisions in the Bill.”²⁹

39. Oxfam for example noted that participation requests “risk becoming the privilege of already empowered communities with greater capacity to access, navigate and resource such a process.”³⁰

40. A number of other submissions and witnesses also referred to the prospect of the Bill only strengthening the reach and influence of articulate and organised groups and individuals. As a consequence it was suggested empowerment would be for the few with the many left further disempowered. Those communities with ‘sharp elbows’ would end up with the lion’s share of what is available, with perhaps outcomes being improved for one community at the expense of another.

²⁶ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 March 2014 column 3171

²⁷ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 September 2013 [Sarah Boyack opening]

²⁸ Scottish Community Alliance. Written submission.

²⁹ Poverty Alliance. Written submission.

³⁰ Oxfam Scotland. Written submission.

41. During questioning on 1 October a number of witnesses agreed with the idea of moving towards “postcode priorities” focussing on the areas of greatest need and the areas where the greatest inequalities are in communities.

Supporting communities

42. Submissions to us highlighted a mixed picture across the country in terms of support currently available to community groups generally and also specifically for those who wished to take control of existing public sector assets. We heard some excellent examples of how local authorities support communities particularly in Dundee in relation to their regeneration forums which are supported by community officers who are designated specific areas as well as being themselves empowered—

“All the officers meet—monthly, I think—and they meet the chief executive regularly, too. They meet regularly together and with the chief executive and take forward the needs and wants of the volunteers whom they speak to in the area.”³¹

43. While other local authorities, including East Ayrshire and Dumfries and Galloway told us about similar types of officers in place to assist with asset transfer requests the picture was far from universal even across local authorities, let alone the other bodies subject to the provisions of the Bill.

44. Many respondents were concerned about resourcing issues, while most were looking inward at requirements for their own organisations. Aberdeenshire CPP noted it is important there is sufficient support in place for communities to get what they need out of the bill. The support required relates to specific applications, such as participation requests and asset transfer applications but more generally across communities to assist in building capacity to take full advantage of the bill.

45. There was general agreement more needs to be done “to support individuals and communities to participate and tackle inactivity.”³² This issue was raised with us during our evidence on 5 March when witnesses agreed on the need for community capacity building.

46. Another concern raised by several witnesses from the public sector was around conflicts of interest in assisting applicants and a fear of being blamed if applications were ultimately refused. We were therefore pleased when the Minister stated—

“it sounds like an excuse to me if a local authority thinks that it cannot support a community group in compiling a solid and robust business plan for the benefit of a community that leads to an asset transfer. Conflicts of interests arise when a local authority could be compromised, but I see no reason why a local authority cannot support local groups to produce such a case. Local authorities and other public sector authorities might frustrate community groups by not providing the information that is required, which

³¹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 8 October 2014 column 52

³² Volunteer Scotland. Written submission.

is why there will be a requirement in legislation to produce the information that is needed to understand the nature of the assets and buildings.”³³

47. We consider the same position should apply to all parts of the Bill and to all the public bodies subject to provisions. We recommend the Bill, or regulations or guidance should set out requirements in this regard on such bodies to provide up-front support with the necessary expertise to support applicants.

48. We acknowledge the strengthening communities programme as well as the work of the Development Trusts Association (“DTA”) and other third sector bodies. Strengthening communities is however a fundamental area, unless measures are in place and adequately resourced the aims of the bill in relation to empowering communities are bound to fail. We look forward to the views of the Government in relation to the funding of capacity building, recognising the long term aim must be to build capacity directly into communities. We expect the Government to state the current amount spent on community capacity building and the extent to which that will increase as the bill is implemented.

49. The Minister acknowledged concerns when indicating the Government was “tooling up groups that will support the agenda nationally.”³⁴ We agree with the submission of South Lanarkshire Council who suggested there should be a specific duty on CPP partners to reduce inequality and focus on early intervention and prevention. We look forward to the Scottish Government stating how this will be taken forward.

Petitions referred to us

50. During our scrutiny at stage 1 we have considered petitions PE1433 and PE1497, both of which were referred to us as being relevant to this work. We have used these petitions throughout our scrutiny including taking additional oral evidence from the petitioner Mr Hancox.

51. There are references later in the report to each petition and we are grateful to both petitioners for the information supplied throughout the whole process. Having now concluded our stage 1 consideration of the Bill there is no further action we would wish to take on either petition and accordingly we close them both.

Equality Impact Assessment

52. The Scottish Government’s Equality Impact Assessment (EQIA), contains information central to the general principles of the Bill. The importance of such an exercise is particularly high for this bill given its aims. We have heard concerns throughout stage 1 about the risk to “marginalised communities, such as disabled people if recognition of community groups is granted to professional or already

³³ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November, column 15

³⁴ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 11

well-resourced groups at the expense of groups representing disadvantaged or equalities groups.”³⁵

53. A number of written submissions observed concerns around particular areas, these covered children, the islands, disabled interests and others. We agree the EQIA should be “a fundamental part of the policy development process not an add-on once the main work has been done”.³⁶

54. A sizable proportion of respondents to our call for evidence raised concerns about the Bill’s (EQIA) not being available in advance of our call for evidence to help inform their submissions. We asked, in our letter to the Scottish Government Officials on 25 June 2014, when the EQIA would be available and were advised on 1 August it “will be published very shortly. We will inform the Committee and stakeholders when it is available”.³⁷ The EQIA was finally published on the Government’s website on 4 November, without any reason for the delay being provided.

55. It is unacceptable that equality information was not available until a very late stage in the Committee’s Stage 1 scrutiny, particularly given it clearly indicates that those communities who stand to benefit most from the Bill, might be unable to take advantage of it. This delay in publication had a direct impact on our ability to scrutinise the participation requests provisions in the Bill. **We will ask the Scottish Parliament’s Standards, Procedures and Public Appointments Committee to look at this aspect with a view to considering whether lodging of an EQIA document should be mandatory with a bill at introduction.**

Accompanying Documents

Financial Memorandum

56. Standing Orders Rule 9.6, require us, as the lead committee at Stage 1, to consider and report on the Bill’s Financial Memorandum (“FM”). In doing so, we are required to consider any views submitted to us by the Finance Committee. That Committee reported to us on 31 October 2014. A copy of their report is at Annexe B.

57. The FM states that it sets out the costs associated with each part of the Bill and on pages 52 to 60 includes a table summarising the additional costs expected to arise as a result of the Bill’s provisions.

58. The Finance Committee came to a number of conclusions throughout their report, and invited us to seek responses, clarification, elaboration and detail from the Minister on various aspects of the FM and costs arising therefrom. In respect of the comments directly referring to Part 4 of the Bill we requested the RACCE Committee consider these as part of their scrutiny of that Part of the Bill.

59. Paragraphs 38 and 54 of the Finance Committee report both specified concerns held by them in relation to the FM. We note from their report these concerns persisted after hearing from officials and receiving supplementary written

³⁵ Inclusion Scotland. Written submission.

³⁶ Unison Scotland Written submission.

³⁷ Q&A paragraph 138

submission dated 24 October from the Minister. In each case the Finance Committee comments suggest difficulties, if not resolved, in reaching the levels of information the Scottish Parliament requires under Standing Orders³⁸. These paragraphs are in the following terms:

“38. The Committee acknowledges the difficulties faced in quantifying potential future costs arising from services that will be demand driven. However, the Committee remains concerned that, despite the requirements of Standing Orders, best estimates have not been fully provided.

“54. The Committee acknowledges the difficulty in providing concrete estimates of services that will be demand driven but emphasises that Standing Orders require FMs to provide best estimates of costs, their timescales and margins of uncertainty.”

60. We asked the Minister for further information on the costs provided at our evidence session with him on 12 November.

61. In response the Minister, while recognising the requirements of Standing Orders and “understanding the rules of the Parliament”, made clear he was not going to “make up a figure” for activities he could not quantify as that would be misleading. He added that if the bill was successful, empowering, and well used the Scottish Government would have to consider the financial consequences on public bodies.

62. The Minister further indicated he had provided best estimates by suggesting the costs of the bureaucracy arising from the bill could be absorbed. Adding it was not possible to provide a range of figures because he could not predict demand for the measures in the Bill although he would continue to monitor the situation.

63. Finally the Minister added he would produce a figure if so recommended but “it would be utterly false”.³⁹

64. The difficulty here is the requirements set out by Standing Orders. These require the provision of best estimates of all costs coupled with a margin of uncertainty. This information is required to allow Parliament to consider the costs of legislation put before it and to enable a reasoned judgment to be made on whether these costs should be approved.

65. Approval of any such additional costs is provided by way of a **financial resolution** which must, when the Presiding Officer has, as she has done here, determined costs are relevant. The financial resolution must be approved by Parliament before any bill can proceed past stage 1. Such a decision is separate to the decision on the general principles of a bill at stage 1 and without approval of a financial resolution a bill will fall.

³⁸ Standing Orders rule 9.3.2

³⁹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, columns 2-6

66. While we have a degree of sympathy with the reasons expressed by the Minister we do not consider the circumstances of this Bill to be so different from other pieces of legislation, which in the face of similar difficulties in estimating demand, take up and costs, satisfied the requirements of Standing Orders. The Finance Committee, who scrutinise all Financial Memoranda, have not sought to make an exception for this Bill and their report makes their position clear.⁴⁰

67. We therefore draw to Parliament's attention when considering the financial resolution on this Bill the concerns of the Finance Committee that, despite the requirements of Standing Orders, best estimates have not been provided.⁴¹

Delegated Powers Memorandum

68. The remit of the Delegated Powers and Law Reform Committee (DPLRC Committee) includes to consider and report on proposed powers to make subordinate powers in legislation including whether any proposed powers are appropriate. They considered the proposed powers in the Bill and reported to us on 5 November 2014. A copy of their report is at Annexe C. The parts of the report relevant to Part 4 of the Bill have been considered by the RACCE committee and are covered in their report to us (see part 4 of this report).

69. Before considering the detailed comment on three specific powers we draw to the attention of Parliament the general comments the DPLRC committee made at paragraph 17 of their report in relation to the deficiencies in the material presented to them both initially and during their scrutiny.

70. In relation to the powers being sought in the Bill the DPLR Committee report noted 3 areas of concern relevant to aspects of the Bill we considered.

71. The first (at paragraph 34) relates to Part 1 of the Bill when the Committee notes an absence of a role for the Scottish Parliament in the setting and review of the national outcomes (see Part 1 of the Bill). Adding—

“a more active scrutiny role for the Parliament appears to be justified having regard to the significance of the national outcomes, the discretion afforded to the Scottish Ministers in deciding how the outcomes are presented and measured, and the fact that all public bodies and other persons carrying out functions of a public nature as described in section 1(1) would require to have regard to the outcomes.”

72. We look more closely at this aspect in Part 1 of our report as well as the DPLR's comments regarding minimum levels of consultation required.

73. The second concern of the DPLR asks the Scottish Government to amend the Bill at Stage 2 so as to make the powers in sections 4(6) and 8(3) (re bodies to be part of CPP's) subject to the affirmative procedure when exercised so as to add bodies to the lists in schedule 1 or section 8(2) respectively. The Committee also

⁴⁰ See Footnote 39.

⁴¹ Paragraphs 66 and 67 were agreed to, by division: For 4 (Cameron Buchanan; Cara Hilton; Alex Rowley; John Wilson), Against 3 (Clare Adamson; Willie Coffey; Kevin Stewart), Abstentions 0.

recommended that the powers in sections 16(3) and 51(3) be made subject to the affirmative procedure.

74. We were pleased to learn both these recommendations will be taken forward by the Scottish Government.⁴²

75. The third concern of the DPLR relates to section 10 powers to issue guidance. The Committee had a number of concerns, in principle, noting also that such a power is unusual. The Committee noted reasons for taking such a power were not clear from evidence to the Committee nor was it clear how it could be exercised. Other aspects regarding how it would be differentiated, which parts of guidance would be binding and which would not allowing local discretion and innovation were equally unclear and not provided for in section 10. Finally the DPLR Committee commented on the absence of any mechanism to enforce compliance or sanction for failure to comply with guidance issued.

76. Again here we were pleased to learn these concerns will be addressed by the Scottish Government at stage 2.⁴³

General Principles of the Bill and Accompanying Documents

77. The Committee report to Parliament they are content with the general principles of the Bill although ask Parliament to note the comment made throughout this report on the detail.

78. The Committee also draws to the attention of Parliament a general concern around the accompanying documents. We have noted the concerns of the Finance Committee and the DPLR Committee. And also those of the RACCE Committee in their report to us.

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

80. Compliance with Standing Orders should embrace the spirit of openness and the provision of full information. We regret in this instance that may only have been achieved belatedly and to the extent it was achieved only after significant persuasion by the committees undertaking scrutiny. We regret this, not least given the purpose of this Bill.

⁴² Scottish Government. Letter from the Minister for Local Government and Community Empowerment. Available here:

http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/20141202_-

[Letter from Minister for Local Government and Community Empowerment to KS.pdf](#)

⁴³ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 23

81. Having given this overview the remainder of this report consider each Part of the Bill in turn.

PART 1 NATIONAL OUTCOMES

Background

82. In 2007, the Scottish Government introduced a new outcomes-based National Performance Framework (NPF). In June 2008, the Government launched Scotland Performs, a website designed to present information on how Scotland is performing against the range of indicators outlined in the NPF. The Framework sets out the Government's core Purpose, supported by 5 Strategic Objectives and 16 National Outcomes.

83. Underpinning the Framework are detailed Purpose Targets and National Indicators which track progress towards the Purpose and National Outcomes.

84. The overall aim of this part of the Bill is to support approaches that can contribute to improving outcomes in all aspects of people's lives such as crime, health, and reducing inequalities. Community empowerment can therefore have an important impact on a range of outcomes in the NPF.⁴⁴

85. The proposals in the Bill apply to all devolved public services in Scotland all of whom are aligning their work to this single framework. The Bill also covers private or third sector bodies contracted to deliver public services.

Bill proposals

86. Part 1 of the Bill places a duty on the Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, which must be reviewed at least once every 5 years.

87. The Bill also requires Scottish Ministers to publish regular reports on progress on the National Outcomes, although it does not specify a timescale for these reports.

88. The Bill does not prescribe what the National Outcomes should be, nor the structure of any future NPF, leaving decisions on these matters to future governments. There was a high degree of support for this proposal in the Government's second consultation. We note also the proposal was welcomed in the Finance Committee's [final report on the 2014-15 Draft Budget](#) (Finance Committee 2013).

89. The Policy Memorandum suggests the Bill reflects policy principles of subsidiarity, community empowerment and improving outcomes and provides a strategic framework which with particular reference to Part 1 will—

“Support an increase in the pace and scale of Public Service Reform by cementing the focus on achieving outcomes and improving the process of community planning.”

⁴⁴ Policy Memorandum, paragraph 7

90. The Policy Memorandum says Scotland Performs has been recognised both in the UK and internationally as an innovative and useful approach to defining strategic outcomes for government, and demonstrating progress towards them. In particular we noted the Carnegie UK Trust recommended in its report *Shifting the Dial in Scotland* (2013) that the outcomes approach should be embedded in legislation, to ensure it continues to be used in the long term.

91. Overall the Scottish Government suggested that—

“by aligning the whole public sector around a common set of goals, we can deliver real collaboration and lasting partnership working. Different organisations are now working towards shared goals defined in terms of benefits to citizens, rather than simply efficient service delivery.”⁴⁵

92. The Bill, in keeping with normal practice of not binding successive governments, does not require future governments to use the same model of purpose, targets, outcomes and indicators as currently used in Scotland Performs. It does however require national outcomes to be determined and seeks to provide flexibility as to how these may be presented and measured.

Committee submissions

93. From our call for evidence we received a number of comments and suggestions on this Part of the Bill. A number of respondents commented on the need for the Scottish Government to undertake a widespread consultation exercise when revising the NPF.

94. In answer to our written question on who would be involved and consulted on a review of national outcomes⁴⁶, the Scottish Government explained—

“We would anticipate that all governments would want to consult widely and inclusively on the national outcomes as a whole. However, if a review related only to individual outcomes on particular topics, it might be more appropriate to have a more focused consultation.”⁴⁷

95. Voluntary Action Scotland in their response echoed the response of a number of other bodies including SEPA, Health and Social Care Alliance Scotland, Highland Council officials, Barnardo’s Scotland Inverclyde Council, Co-Cheangal Innse Gall, Glasgow City Council, Oxfam Scotland, North Lanarkshire Council and COSLA. They stated Part 1 –

“needs to be strengthened further to ensure that meaningful consultation is undertaken on the outcomes with a broad range of stakeholders, allowing for civic society and communities to voice their opinion and help set the outcomes. This will help empower communities rather than the process being driven and set by the centre.”⁴⁸

⁴⁵ Q&A 22

⁴⁶ Section 2(5)

⁴⁷ Q&A 27

⁴⁸ Voluntary Action Scotland. Written submission.

96. The Minister in relation to a role for communities stated—

“We expect to consult widely and to publish and review that set of outcomes. If something is about the people of Scotland, we should engage with them. I would not want to specify in primary legislation how that should be done, but it absolutely should be done.”⁴⁹

97. UNISON Scotland expressed hope for the development of the Scotland Performs Website, comparing it to the Virginia system—

“Scotland Performs has surface similarities to Virginia Performs but is nowhere near as extensive in terms of data or analysis. The Virginia site offers both easy to read graphics for a range of geographical and subject areas for those looking for snapshots as well as explanations/discussions of issues and extensive data for those seeking wider information or wishing to do their own analysis. Scotland Performs is not the “go to” place for data on Scotland or the delivery of its services nor has it become a source of debate or discussion.”⁵⁰

98. We were interested in understanding whether there is any role for the Scottish Parliament in the NPF, either as a consultee or in scrutinising results as neither is provided under the Bill. The Government in response to our written questions on the Policy Memorandum explained that the Parliament will be able to use the published information to hold Ministers to account.⁵¹ The Minister elaborated on how he saw this working in relation to scrutiny of CPPs—

“I am not sure that the committee and the Parliament should have a specific role in probing individual community planning partnerships, because it would feel slightly centralist if we were to pick on a community planning partnership. We should understand the national strategy, the national themes and the legislative framework, and the committee should hold the Government, ministers and local authorities to account collectively on our performance.”⁵²

99. We were advised Scottish Ministers are ultimately accountable for delivery of the national outcomes. Further it was suggested—

“Accountability will be enhanced due to the prominence of the national outcomes approach. There will be a clear line of sight between delivery and the national outcomes.”⁵³

100. We note in this regard the recurring themes of Parliament’s annual budget scrutiny on the need to focus on outcomes. Successive Finance Committees have expressed reservations about the extent to which the Executive is subject to

⁴⁹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 36

⁵⁰ Unison Scotland. Written submission.

⁵¹ Q&A 32

⁵² Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 35

⁵³ Q&A 29 and 30

robust performance scrutiny. This was also a finding of the Christie Commission who noted an outcomes based approach had not been fully embraced.

101. The Christie Commission also recommended “tightening the oversight and accountability of public services including consistent data-gathering and performance comparators and the introduction of a new set of statutory powers and duties for all public service bodies, focused on improving outcomes.”

102. The Independent Budget Review (IBR) established by the Scottish Government came to a similar conclusion. The IBR report recommended the—

“need to move towards a more outcomes-based approach to public service management and to improve the quality, availability and application of evaluation, monitoring and reporting data and information in relation to outcomes across the public sector in order to ensure that resources are applied to full benefit. This is vital if the Scottish Parliament is to exercise an effective monitoring and scrutiny role.”⁵⁴

103. The Accounts Commission and Auditor General also made a number of comments on Part 1, including—

“if the commitment to set national outcomes is intended to provide greater clarity about trends in national performance, it is important to recognise that national outcomes can mask significant local variation in performance. Given this, it would be important that any national indicators that are set help assess how reductions in the wide inequalities of outcomes (health, life expectancy, educational attainment, etc.) that persist across Scotland are being addressed.”⁵⁵

Committee recommendations on Part 1

104. Having considered the responses received on this Part of the Bill we make the following observations and recommendations.

105. We consider Part 1 of the Bill will be extremely valuable in allowing the Scottish Parliament, as well as Ministers, to hold the public sector bodies to account.

106. We consider it one of the duties of the Parliament to not only hold Ministers to account, but also to follow the public pound and hold spending bodies to account. Given the amounts of monies they control we specifically include in this scrutiny the spending of and outcomes achieved by CPPs and those bodies falling within our remit who contribute to them.

107. We agree with the Minister that communities must be empowered. Given this fundamental principle we expect to see the Scottish Government leading by example. In relation to consultation and engagement with those who are affected,

⁵⁴ Independent Budget Review: the report of Scotland's Independent Budget Review Panel - July 2010. Available at: <http://www.scotland.gov.uk/Resource/Doc/919/0102410.pdf>

⁵⁵ Accounts Commission for Scotland & Auditor General for Scotland. Written submission.

i.e. communities, provision should be enshrined in this Part of the Bill by means of a suitable amendment to Part 1.

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

PART 2 COMMUNITY PLANNING

Background

109. Part 2 of the Local Government in Scotland Act 2003 places a duty on local authorities to initiate, facilitate and maintain a process called community planning by which public services are provided, after consultation with such community bodies and other bodies or persons as is appropriate. This is undertaken by Community Planning Partnership's (CPPs) of which there are currently 32 in Scotland, one for each local authority area.

110. Currently guidance expands on the statutory requirements, by focusing the purpose of community planning (including engagement with community bodies) around the planning and achievement of better outcomes on local priority themes. Part 2 of the Bill reflects these expectations in legislation for the first time and proposes a number of reforms to the system of community planning. These replace provisions in the 2003 Act and provide for the first time a statutory basis for CPPs, placing duties on them around the planning and achievement of local outcomes. They also focus responsibilities on community planning partners to support each partnership to fulfil its duties.

111. Part 2 also includes scope to produce guidance to add detail to the new framework provided for. We understand⁵⁶ from the Scottish Government that guidance may include the purpose and content of new generation local outcomes improvement plans (under section 5) and how governance duties (section 8) should be applied.

112. A range of reports have criticised the development of community planning since its introduction, including the Christie Commission⁵⁷ in 2011. In March 2013, Audit Scotland published a report on Improving Community Planning in Scotland (Audit Scotland 2013)⁵⁸, which concluded that—

“Partnership working is now generally well established and many examples of joint working are making a difference for specific communities and groups across Scotland. But overall, and ten years after community planning was given a statutory basis, CPPs are not able to show that they have had a significant impact in delivering improved outcomes across Scotland.

“Our audit work in recent years has found shortcomings in how CPPs have performed. These are widespread and go beyond individual CPPs. Community planning was intended as an effective vehicle for public bodies to work together improve local services and make best use of scarce public money and other resources. Barriers have stood in the way of this happening. All community planning partners needs to work together to overcome the barriers that have stood in the way of this happening. For

⁵⁶ Q&A 52

⁵⁷ Commission on the Future Delivery of Public Services. Available at: <http://www.scotland.gov.uk/Resource/Doc/352649/0118638.pdf>

⁵⁸ Improving Community Planning in Scotland (Audit Scotland 2013). Available at: http://www.audit-scotland.gov.uk/docs/central/2013/nr_130320_improving_cpp.pdf

example, shifting the perception that community planning is a council-driven exercise, and not a core part of the day job for other partners.”

113. The Local Government and Regeneration Committee has returned to the topic of community planning regularly in Session 4, most notably in our 2013 report on Public Services Reform⁵⁹ which concluded that—

“... we share the view of the AC/AGS that 10 years of community planning has yielded little significant evidence of major improvements in public services. Like the AC/AGS, we also found major differences in perceptions about CPPs in terms of their impacts, outcomes, rates of progress, and above all levels of community engagement. We also note that this lack of progress has had its greatest impact on some of the most disadvantaged communities in Scotland.”

114. Putting community planning on a statutory basis, and requiring participation from all partners, not just local authorities, has long been considered a way in which community planning could be improved. In our above report on public service reform, we commented that—

“COSLA argued in its written submission and in oral evidence that an overall statutory duty on other public sector partners to participate in community planning would strengthen the ability to deliver public services in new ways, through greater partnership working. COSLA called this a “paradigm shift”. We consider this term to be misguided. We do not believe that a proposed statutory duty will be enough in itself to ensure that all public bodies participate effectively in community planning, and deliver the public services communities want to see.”⁶⁰

Bill proposals

Community Planning

115. Section 4 of the bill defines community planning as “planning that is carried out with a view to improving the achievement of outcomes in relation to the area of the local authority resulting from, or contributed by, the provision of services delivered by or on behalf of the local authority or the persons listed in schedule 1.” These outcomes must be consistent with the National Outcomes set out by Scottish Ministers. Schedule 1 lists the bodies the bill proposes should be considered to be “community planning partners”. These include Police Scotland, Health Boards, Integration Joint Boards, SEPA, SNH and SDS.

Local outcomes improvement plan

116. Sections 5, 6 and 7 of the Bill require each CPP to produce a local outcomes improvement plan. These are plans which—

⁵⁹ Local Government and Regeneration Committee, 9th Report, 2013 (Session 4): Public Services Reform in Scotland: Strand 3 – Developing New Ways of Delivering Services – paragraph 7. Available at:

http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Reports/lgr-13-09w.pdf

⁶⁰ See footnote 57 – paragraph 12

- set out each local outcome to which the community planning partnership is to give priority with a view to improving the achievement of the outcome;
- contain a description of the proposed improvement in the achievement of the outcome; and
- specify the period within which the proposed improvement is to be achieved.

117. The plan must be reviewed “from time to time” and the CPP must publish an annual report on progress towards achieving the stated outcomes.

118. The Policy Memorandum confirms local outcomes improvement plans are the equivalent of Single Outcome Agreements, currently used by all CPPs. But, it does not explain why new terminology has been used in the Bill.

Governance, funding and other provisions

119. The remainder of Part 2 contains a number of other provisions on community planning. Notably requirements for partners to participate in the community planning process, co-operate with the other partners, and also provision on sharing resources. Each partner must contribute “such funds, staff and other resources” as required by the CPP.

Committee submissions

120. Part 2 received a range of detailed comments from across all sectors. Comments, written and oral, fell into 3 broad categories covering—

- community involvement;
- governance and accountability; and
- partner bodies.

121. Many highlighted problems with the current system of community planning, especially in relation to community involvement. Others sought clarity regarding how the new provisions would work with other existing legislation, including the status of existing community planning partners.

Community Involvement

122. As well as public bodies, the Bill requires CPPs to “make all reasonable efforts to secure the participation” of those community bodies it considers are “likely to be able to contribute to community planning”. The Government confirmed the Bill—

“does not prescribe a process which CPPs should adopt for engaging with community bodies. These are decisions for CPPs and partner bodies to take locally, as they are best placed to determine which approach is most suitable for the particular circumstances of each occasion.”⁶¹

123. The Bill also makes specific non-prescriptive provision for community bodies to be consulted in the preparation of the local outcomes improvement plan.

⁶¹ Q&A 43

124. The involvement of communities and community bodies in the process of community planning has been a key thread running through our work both on public service reform and on regeneration. In our report on Strand 3 of the public service reform inquiry, we stated—

“We have not found evidence that successes are being collated and replicated systematically. We have found some apparent contradictions amongst our witnesses, especially in terms of perceptions on the rate, scale, nature, direction and levels of community engagement in decisions on PSR, particularly within and across CPPs. Ten years on, there is a consensus that insufficient progress has been made by CPPs. We found varying degrees of community engagement in partnerships generally, and CPPs in particular. We emphasise that there are also significant differences in perception about the levels and effectiveness of community engagement.”⁶²

125. Similarly, concerns were also raised in responses to the Government’s 2013 consultation. These suggested that providing statutory underpinning could actually marginalise communities even further, as it would reinforce the public sector partners as principal partners, and others as less important.

126. Another dominant theme in that consultation was the need for investment in community capacity building if all communities were to take full advantage of the opportunities in the Bill.

127. We asked the Scottish Government to elaborate on the detail in the Policy Memorandum suggesting communities would be placed at the core⁶³ and not simply restricted to being consultees. The Scottish Government indicated—

“The role of communities goes well beyond that of consultees. The duties which sections 4, 5 and 9 of the Bill place on CPPs and partner bodies collectively provide a basis within which community bodies can engage closely in community planning.

“Sections 4 and 5 include duties on CPPs around engaging communities. Section 4(5) places a general duty on CPPs to participate with community bodies in community planning – that is, planning that is carried out with a view to improving the achievement of outcomes. In complying with this duty, a CPP must make all reasonable efforts to secure the participation of whichever community bodies it considers can contribute to community planning. It should then take all reasonable steps to enable a community body which wishes to participate to do so. This provides community bodies with a role at the core of community planning activity, which can include understanding needs and circumstances, identifying priority outcomes, deciding how to respond to these priorities and reviewing progress made. Section 5(3) places an additional specific requirement on

⁶² Local Government and Regeneration Committee, 9th Report, 2013 (Session 4): Public Services Reform in Scotland: Strand 3 - Developing New Ways of Delivering Services. Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Reports/lgr-13-09w.pdf

⁶³ Policy Memorandum, paragraph 39

CPPs, to consult community bodies and such other persons as it considers appropriate in preparing a local outcomes improvement plan.

“Section 9(3) places complementary duties on community planning partners. In particular, it requires partner bodies to contribute funds, staff and resources as the partnership consider appropriate to secure the participation of community bodies. This may therefore support community capacity building activity. Community planning partners may also resource community bodies to deliver services, as part of their related duty to provide resources to support the improvement of a local outcome.”⁶⁴

128. Given our earlier interest and the comments received from our call for evidence we are particularly interested in the consultation required by CPPs both in preparing local improvement plans and the more general involvement of local bodies and communities in the process. Given this part of the Bill is in response to failures by CPPs over the last 10 years we wondered why the legislation had not set out to be more prescriptive in relation to local involvement. We were also concerned to understand how the Bill would ensure the necessary “paradigm shift” from a top down approach to one that involved people at its core.

129. We asked the Scottish Government a series of questions on the above designed to supplement the information about how the Bill will operate. We were told—

“Section 4 of the Bill does not prescribe a process which CPPs should adopt for engaging with community bodies. These are decisions for CPPs and partner bodies to take locally, as they are best placed to determine which approach is most suitable for the particular circumstances of each occasion.”⁶⁵

“Section 4(5) imposes a general duty to involve community bodies in community planning. In complying with this duty, CPPs will decide for themselves which community bodies to involve because they are likely to be able to contribute to community planning, and how to do so.

“Section 5(3) applies specifically to the preparation of a local outcomes improvement plan. The scope of this consultation may encompass community bodies and persons who are otherwise unable or do not wish to contribute to community planning.”⁶⁶

“CPPs use a range of sources to understand the needs and circumstances of people and communities in the CPP. This includes statistical information and feedback which partners receive from their own engagement with communities. The consultation with community bodies which a CPP will be required to conduct under section 5(3) will add to this understanding. A CPP may in addition undertake a public consultation if it considers this would be valuable for obtaining this understanding of local needs and

⁶⁴ Q&A 39

⁶⁵ Q&A 43

⁶⁶ Q&A 45

circumstances. We consider it should be for CPPs to decide for themselves which methods they adopt to acquire this understanding.”⁶⁷

130. Overall the most common written comment was to express disquiet as to the extent to which and indeed whether the provisions in this part of the bill empowered communities. There were two main strands of concern covering the role of the community, namely the extent to which consultation with communities was undertaken meaningfully as well as the timing of their involvement.

131. On the latter point the Accounts Commission for Scotland and the Auditor General in their report *Improving Community Planning in Scotland* stated—

“many CPPs were rethinking how they consult with local communities with the aim of tailoring services around a clear understanding of local need by involving local communities in identifying local issues and deciding how best to respond to them. However, much of the focus was still on consultation and getting people involved. Therefore there is a long way to go before services are truly designed around communities and the potential of local people to participate in, shape and improve local services is realised”⁶⁸

132. That was a theme echoed by others including COSLA who talked about levelling the playing field between communities and authorities.

133. Others were more critical, Leslie Howson summarised the position when he suggested--

“I am not convinced that the process will be sufficiently inclusive at any level. The community planning partnership decides what are the priorities as regards outcomes and then also decides whom they will or will not consult.”⁶⁹

134. The SCVO quoting the Royal Society of Edinburgh, noted concerns at the continuation of a top-down approach with “agenda design” remaining with the relevant public body. They went on to suggest—

“community action is only sought when the implementation phase is reached. However, this approach falls short of genuine empowerment. The ‘bottom-up’ approach, which sees the identification of local agendas and desired outcomes taking place at the grassroots level, requires that a much larger degree of power and trust be handed to communities. By this approach, it truly is the community which identifies the societal challenges it wishes to see addressed, and it is the community which designs the processes to address these and to deliver the changes it wants. If

⁶⁷ Q&A 46

⁶⁸ *Improving Community Planning in Scotland* (Audit Scotland 2013). Available at: http://www.audit-scotland.gov.uk/docs/central/2013/nr_130320_improving_cpp.pdf

⁶⁹ Leslie Howson. Written submission.

empowerment is to be an aim of public policy, taking a bottom-up approach will be necessary and inevitable.”⁷⁰

135. Others expressed concerns about who would be consulted. Midlothian Voluntary Action expressing a concern that CPPs chose who to consult—

“We believe that it is important that communities, including voluntary organisations, have some say in who represents them as it is important that community bodies involved in the community planning process engage with other organisations in order to feed into/and from the process.”⁷¹

136. Some thought there should be a duty on CPPs to consult. A number, including Scottish Community Development Centre and East Ayrshire Council, stated engagement should be in line with the definition of community engagement embodied within the National Standards for Community Engagement.

137. We were pleased to learn from the Minister that he intends to bring forward an amendment at Stage 2 to strengthen accountability in community planning partnerships by extending and expanding their duties to consult people by reference to the national standards on engagement.⁷²

138. Others noted the need to develop capacity within communities suggesting CPPs should have an explicit duty to undertake this task. We cover this in our introduction and throughout this report.

139. There was confusion at times between the meaning of engagement and empowerment and Alex Rowley summarised the difference by highlighting an example of (lack of) empowerment with the following example from his constituency—

“In Rosyth, in my constituency, there is a housing estate where trees were planted in the grass panels when it was built. The wrong trees were probably put in, because they are now massive. That means that, in the summer, no light comes in people’s windows and, in the winter and on wet days of the kind that we have had this week, the wet leaves make walking dangerous for people, as they might slip.

“The majority of people tell me that the issue needs to be dealt with. That seems to be common sense, but the tree surgeon says that the trees are perfectly healthy and council policy is that such trees are not cut down. For the life of me, I do not understand why that is the case. If we were truly empowering the people on that estate, we would enable them to deal with the issue”.⁷³

⁷⁰ Scottish Council Voluntary Organisations. Written submission.

⁷¹ Midlothian Voluntary Action. Written submission.

⁷² Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 2 November 2014, column 35

⁷³ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 24 September 2014, column 13

140. Out of 160+ submissions sadly only one highlighted the benefits to be gained by public bodies from meaningful consultation with and involvement of the community. The Scottish Council for Development and Industry, correctly in our estimation, observed—

“Communities can be considered experts in their own needs and by enabling greater input into service planning and delivery, the public sector may uncover innovative delivery mechanisms which more effectively meet their service users’ requirements.”⁷⁴

141. We show this specifically to highlight why the legislation has become necessary following the widespread failure of public bodies to engage, consult and empower communities. It is agreed only legislation can bring about the critical cultural change towards “An organisational mindset which sees communities as often best placed to develop local solutions to local issues.”⁷⁵

142. During our first oral evidence session on this aspect of the Bill we noted all the witnesses, with the exception of the police, were exclusively focussed on a top down approach with at best discussion between CPP partners to determine priorities, activities and the allocation of resources. We did not detect any indication of any role, never mind meaningful involvement, at community level. Frequent references to planning at the strategic level suggest to us the size of the cultural change required if involvement, never mind empowerment, is to happen.

143. When in Dumfries we put the quote at 138 above to witnesses with a mixed response. While acknowledging “ideas could come forward that might result in more savings and efficiencies”⁷⁶ witnesses were concerned that complexities and conflicts would arise. Kay Gilmour from East Ayrshire Council was perhaps more hopeful saying—

“Public bodies need to go on a journey that is all about a culture of improvement. I am by no manner of means saying that that culture is not there at the moment, but this is a journey and some are further along it than others. If we have a culture of improvement, we do not get anxious if communities, individuals in the community or community groups make suggestions about how to innovate or do things differently and better.”⁷⁷

144. The police had a different viewpoint from other witnesses noting “different communities want and expect different things from public services.” Before adding—

“As soon as we start engaging with and consulting communities, it drives services in a different way. The challenge is in how the consultation and engagement drive the single outcome agreement. I have seen good examples in which a lot of the outcomes that have been identified in single

⁷⁴ Scottish Council for Development and Industry. Written submission.

⁷⁵ Perth and Kinross Council. Written submission.

⁷⁶ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 27 October 2014, column 40

⁷⁷ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 27 October 2014, column 40

outcome agreements were driven by consultation. On the other hand, others have simply been driven by a set of strategic priorities that organisations have put on the table. We need to make sure that that is the right way round and that the outcomes are community driven.”⁷⁸

145. While we recognise Scottish Enterprise’s wider role we were disappointed to hear about their focus being solely on the business community. It is clear to us the views of the community are of no consequence to them. This lack of community focus is all the more surprising given the comments of the then Economy Enterprise and Tourism Committee in 2011 when they recommended in their report “A fundamental review of the purpose of an enterprise agency and the success of the recent reforms” the following—⁷⁹

“The Committee believes that interventions in rural economic development should enable rural communities to imagine the future of its local area and build its capacity to realise that vision. The Committee has heard evidence of and seen for itself the types of project which have had success through such capacity building, or place-shaping approaches, particularly as a result of HIE’s Strengthening Communities remit. The Committee believes that the same approach could successfully be applied to communities outside the HIE area.”

146. We consider Scottish Enterprise are an example of an organisation doing things to people as opposed to with people. Neither Skills Development Scotland nor North Lanarkshire Health Partnership were much better in their outlook.

Governance and Accountability

147. Comments on this aspect were largely from public bodies and considered issues around joint partnership working including leadership, budgets and general governance issues. Comments were also received on the section 12 powers to create corporate bodies.

148. Glasgow City Council highlighted core duties of CPP partners in section 9 in relation to communities and indicated—

“it is not clear what steps will be taken to make it easier for partners to meet them in particular how they will be assisted to commit “appropriate resources to the achievement of local outcomes set out in ... [the Local Outcomes]... plan”

“Whilst the change in duties addresses perceived problem of lack of accountability of other public bodies for their contribution to Community Planning, the question arises as to whether this new formulation alters the role of local authorities in Community Planning. On one reading the new duties offer a shared leadership model. However, how will this work in

⁷⁸ Scottish Parliament Local Government and Regeneration Committee, *Official Report, 1 October 2014, column 16*

⁷⁹ Economy, Energy and Tourism Committee Report, 2nd report 2011, Economy, Energy and Tourism Committee Report. Paragraphs 308-310
<http://archive.scottish.parliament.uk/s3/committees/eet/reports-11/eer11-02-01.htm>

practice, if partners don't agree roles and responsibilities. In addition does it meet the test of accountability?"⁸⁰

149. We agree with Superintendent Irvine who summarised the need for and benefit of leadership in the CPP—

“Without leadership, there is no governance, and without governance, there is no activity. Leadership is a critical part of what we need to strengthen at local level.”⁸¹

150. West Dunbartonshire Council indicated they were content with the proposed changes to governance and structure and North Lanarkshire Council had some queries about how the new arrangements will sit with existing accountability and audit mechanisms. The Accounts Commission for Scotland and the Auditor General wondered about the existing statutory leadership role on CPPs exercised by local authorities as well as: “the extent to which the resourcing of the administration of the community planning process should be seen as a partnership task.”⁸²

151. The Accounts Commission for Scotland and the Auditor General were also concerned about how the performance of CPPs as partnerships will be assessed. How governance and accountability arrangements will work and how CPPs will be held to account for the discharge of the duties set out in the Bill, including their progress against outcomes. They also saw the absence of provision in section 8 as a significant gap.

152. COSLA, while welcoming the duties being placed on CPP partners, indicated “it is difficult to see how this can be effectively enforced.”⁸³

153. We asked the Scottish Government to comment on this area and they responded as follows—

“Like Part 2 of the 2003 Act, the Bill does not specify sanctions on CPPs and partner bodies for non-compliance. Partners can expect to be held to account for how they fulfil community planning duties as part of their existing formal lines of accountability (e.g. those of NHS Boards to Scottish Ministers, or a council to its electorate).

“In addition, external CPP audit reports are recent additions to the scrutiny landscape. They have been valuable in identifying strengths and areas for improvement in CPP and partner performance, supporting ongoing improvement and providing assurance that expected progress is being made. Themes covered by these audits include clarity of vision leadership, governance, operational structures, performance management, how

⁸⁰ Glasgow City Council. Written submission.

⁸¹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 1 October 2014, column 24

⁸² Accounts Commission for Scotland & Auditor General for Scotland. Written submission.

⁸³ COSLA. Written submission.

partners engage with local communities, how partners hold each other to account and the quality of public reporting.”⁸⁴

154. The Minister did not consider there was any role for Government or Parliament in probing individual CPPs, suggesting Government Ministers and local authorities should be held to account collectively on their performance.⁸⁵ Adding this was a role for communities to hold individual CPPs to account.

155. The commitment of resources to the CPP by CPP partners raised a number of questions. NHS Tayside⁸⁶ and Angus Community Planning Partnership⁸⁷ both felt this was “a step too far”. Inverclyde Council noted some practical concerns around community planning partners committing resources towards both delivery of actions and securing participation of community bodies. Inverclyde Council also noted the absence of “freedom in budget setting that would facilitate the easy commitment of resources to particular projects.”⁸⁸

156. Police (Scotland) indicated potential difficulties under their current centralised budgeting system which sees the spending of all monies determined centrally by the Scottish Police Authority. While there are good examples of local planning by the police involving communities this is restricted to the allocation of people as opposed to monetary resource.

157. South Lanarkshire Council⁸⁹ thought duties around collective accountability were vague and SEPA saw—

“real challenges around the practicalities of dovetailing SEPA’s own priorities with those identified in the LOIP [Local Outcome Improvement Plan]. SEPA’s priorities set out in our Corporate Plan and Annual Operating Plan tend to be strategic and usually non-locationally specific.”⁹⁰

158. In relation to sharing resources the Scottish Government said the duties in section 9(2) to (5) applying to community planning partners will vary from one CPP to another, depending on the particular needs, circumstances and priorities of the area. An example of where the restrictions on applying duties to a CPP partner (section 9(1)) might apply is a scenario where a partner and CPP agree the duties

⁸⁴ Q&A 50

⁸⁵ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 35-36

⁸⁶ Written submission from NHS Tayside. Available at:

http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/45_NHS_Tayside.pdf

⁸⁷ Written submission from the Angus Community Planning Partnership. Available at:

http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/122_Angus_Community_Planning_Partnership.pdf

⁸⁸ Written submission from Inverclyde Council. Available at:

http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/91_Inverclyde_Council.pdf

⁸⁹ Written submission from South Lanarkshire Council. Available at:

http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/73_South_Lanarkshire_Council.pdf

⁹⁰ Written submission from the Scottish Environment Protection Agency. Available at:

http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/60_SEPA.pdf

on the partner in that area can be waived because the duties on that partner under the rest of section 9 would contribute only modestly to the work of the CPP.⁹¹

159. Both Highlands and Islands Enterprise and Skills Development Scotland were concerned about possible conflicts should a CPP determine to utilise the provisions in section 12 to establish the CPP as a corporate body. We earlier asked the Scottish Government about these provisions. They did not expect it would be used to establish a corporate body that substantially delivered services by itself.⁹²

160. In their recent report “Community Planning” Audit Scotland note “although aspects of community planning are improving, leadership, scrutiny and challenge are still inconsistent.” Adding: “There is little evidence that CPP boards are yet demonstrating the levels of leadership and challenge set out in the Statement of Ambition”⁹³

Partner bodies

161. A number of responses commented on the proposed membership of CPPs. sportscotland argued they should not be included whereas a number made suggestions for others to be included. The Third Sector Interface were suggested by Community Learning and Development Managers, Orkney Islands Council and by Children 1st although the TSI representative in Dumfries was clear they did not desire a formal role, rather wishing to retain their independence.⁹⁴

162. Some made pleas for enhanced roles to be given to Community Councils. We heard from a number of community councillors as well as receiving submissions from councils themselves. We recognise the enthusiasm and willingness to be involved that we heard which, as we observed in our earlier report,⁹⁵ is not unique to community councils. We are also aware some are truly representative of their communities having been duly elected. Others, perhaps the majority, are not. The Minister commented on the variability of community councils—

“although some are very good and provide services or run things, others are more mid- range, some are talking shops and some are, frankly, barely legitimate. That is why we will not pick one group over another as a key community anchor organisation and say that that group is more important than another. The situation will differ from one community to another. The

⁹¹ Q&A 51

⁹² Q&A 54

⁹³ Audit Scotland. Community planning Turning ambition into action - paragraph 1. Available at: http://www.audit-scotland.gov.uk/docs/central/2014/nr_141127_community_planning.pdf

⁹⁴ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 27 October, column 9

⁹⁵ Local Government and Regeneration Committee, 8th Report, 2014 (Session 4): Flexibility and Autonomy in Local Government. Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Reports/lGR-14-08w.pdf

key organisation might be the housing association, the community council or the parent and toddler group.”⁹⁶

163. COSLA questioned whether the legislation included all the relevant partners that should be at the table noting an absence of key justice partners.

164. Regional Transport Partnerships made a request to be included, while SEPA noted significant issues around their own involvement particularly relating to resourcing and outcome conflicts.

165. While in Fort William we heard a plea for local flexibility in the composition of the CPP board with partners having the ability to identify the most appropriate composition.⁹⁷

166. While the focus of the Bill and witnesses is on the role of public bodies we were also interested in what, if anything, the private sector could input and in what ways they could assist the operation of CPPs.

167. Some responses highlighted a need for more business participation with Scottish Enterprise drawing to attention, both in their oral and written submissions, the importance of involving the business community. The Federation of Small Businesses reminded us small businesses are a key part of their communities with skills and expertise that can assist communities.⁹⁸ The Minister agreed, indicating participation needs to go deeper than “just a seat at the table”.⁹⁹

168. In relation to Scottish Enterprise we note the differences in remit between them and Highlands and Island Enterprise and have concerns as to how Scottish Enterprise can properly undertake partner duties under their current remit which does not include community support. We reach this view despite the evidence from the Minister that they are mindful of their obligations to community planning and his laying out of the support they can provide.¹⁰⁰ The Minister was clear Scottish Enterprise would not be bringing their budget “to the table” which leaves us unable to reconcile their partnership role with the budgetary requirements under the Bill. If one partner is able to choose the extent of their involvement we cannot understand how others can be encouraged to fully participate.

169. The point was made that the DWP (albeit it was suggested for issuing communications as opposed to receiving input) expends significant local resources and is in partnership with other bodies¹⁰¹.

⁹⁶ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 16

⁹⁷ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 24 November 2014, column 5

⁹⁸ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 24 September 2014, column 10

⁹⁹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 33

¹⁰⁰ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 17-18

¹⁰¹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 1 October 2014, columns 10 & 25

170. Finally in this section we note the comments of the Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy when discussing the approach to health and social care integration with us. After expressing frustration around internal disputes between partners over budgeting and support to individuals, and lamenting the consequential consumption of resources that causes he stated: “Adult health and social care integration must lance that, and do so ferociously.” He then this linked to the role of CPPs in taking forward the wider public service reform agenda particularly relating to prevention, adding—

“We look to community planning partnerships to break down the barriers, boundaries or silos ...to make sure that we have a much more integrated and focused approach to the delivery of public services. That is crucial to ensuring that we guarantee that the resources that we have at our disposal have the maximum impact and that individuals are able to secure the support that they require.”¹⁰²

Committee Recommendations on Part 2

171. Having considered the responses we have received on this Part of the Bill we make the following recommendations:

Community Involvement

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

173. We remain concerned local communities are not sufficiently and directly involved with CPPs. The Bill should require CPPs to seek involvement and input from a level below that of community representatives. It is for the Scottish Government to suggest how this be done, and as importantly, how it will be assessed.

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

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

¹⁰² Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 26 November 2014, column 27-28

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

Governance and Accountability

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

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

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

180. The Committee will seek to hold CPPs to account alongside their partners for their individual actions as part of our ongoing scrutiny functions. We would anticipate other committees will do likewise as appropriate.

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

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

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

Partner Bodies

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

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

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

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

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

Other

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

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

PART 3: PARTICIPATION REQUESTS

Background

191. Part 3 sets out how a “community participation body” (a community council or another community group with a constitution) can make a request to a “public service authority” (a public service authority listed in Schedule 2, e.g. local authorities, health boards or the police) to participate in a process to improve an outcome of a public service. It also provides how the public sector should deal with these requests. Part 3 is similar to Part 5 on Asset Transfer Requests in that it creates a process for requests and is intended to promote consistency of experience to encourage communities to become involved.

192. The Policy Memorandum states—

“There is a strong history of the public sector engaging with communities across Scotland. In particular, local authorities have used a variety of engagement methods over the years and have promoted the use of tools like the National Standards for Community Engagement [...] The Scottish Government sets clear expectations that all public sector organisations must engage with communities and support their participation in setting priorities and in the design and delivery of services.”

193. An example of the type of opportunity which might be explored through a participation request would be a request to improve outcomes related to the upkeep of open spaces owned by public service authorities, for example, a community group could request to take over maintenance of a space from the public body’s private sector maintenance contractors.¹⁰³

194. Also, the new participation requests process could be used by communities, who have identified a need for a service currently not being delivered, to design a new service with the public service authority to meet their needs. This could be transport to hospitals, childcare, employment skills, whatever communities’ aspirations are.

195. The Commission on the Future of Public Service Delivery (“the Christie Commission) was clear our system of public service delivery was in need of significant transformation. Design and delivery of services had to include people rather than forcing them into pre-determined systems.¹⁰⁴

196. Our recent report into the Flexibility and Autonomy of Local Government has shown how community participation and local democracy are tightly linked and can be an indicator of active, resilient and democratic communities. One of our key

¹⁰³ Federation of City Farms and Community Gardens (Scotland). Written submission.

¹⁰⁴ Commission on the Future Delivery of Public Services, Introduction, para 1.8. Available at: <http://www.scotland.gov.uk/resource/doc/352649/0118638.pdf>

findings was “adequate powers to devolve responsibilities currently exist which local authorities must begin to exercise.”¹⁰⁵

197. Ideally, further legislation should not be needed to empower communities, but we also appreciate it is a sizable and complex task to shift power from public service authorities into the hands of the community and to move from a controlling model to one which is more listening and reactive to communities setting the agenda. It has been a few years since the Christie Commission reported, and since then the pace and scale of change has been slower than expected, therefore legislation to create the conditions for further empowerment and consistency of change, at a faster pace, is welcomed.

198. Part 3 builds on Part 2 which establishes local outcomes improvement plans. Participation requests are provided for under sections 14 to 26, and Schedule 2, of the Bill. These sections provide the structure of the process and some of the detail of the procedure. How information is to be provided and published is left to the Scottish Ministers to set out in subordinate legislation.

199. Section 15 defines a “community participation body” which can make a request under section 17 of the Bill. In this section of the Report they are referred to as ‘community groups’. Community groups can be a more formal grouping such as a community council or a less formal group as long as it has a written constitution (section 14 lists the requirements of a constitution). The Scottish Ministers can designate other groups. Requests to participate are made to a “public service authority as listed in Schedule 2, for example, a local authority or a Regional Transport Partnership.

Participation Requests Process

The process for participation requests is set out in sections 17 to 25 of the Bill. In summary, the process will run as follows:

- 1 When a community participation body (or more than one body jointly) believes it can improve the outcome of a public service, it can make a participation request to the body (or bodies) that run that service.
- 2 In doing so, the community participation body will need to set out the outcomes it expects to achieve and its experience of the public service.
- 3 It is then for the public service authority to make a decision on whether to agree to the request – but the authority must agree to the request unless there are reasonable grounds not to do so.
- 4 Following a decision agreeing to the request, the public service authority must issue a decision notice outlining how the outcome improvement process will work.

200. It will be for the public service authority to decide whether to make any changes to existing service delivery arrangements. If the community group proposes to deliver services itself, the public service authority will need to decide

¹⁰⁵ Local Government and Regeneration Committee, 8th Report (2014), Report on Flexibility and Autonomy in Local Government, paragraph 71. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/78987.aspx#b>

whether the community group has an appropriate corporate structure and the capacity to take on that role. A public service authority, after agreeing a participation request must establish an outcome improvement process. At the end of an outcome improvement process the public service authority must publish a report on whether the outcomes were improved and how the community group contributed to that improvement.

201. A public service authority may decline a participation request in certain circumstances, e.g. if a new request is made within two years about the same outcome relating to the same service, whether it is from the same community group or a different community group. There is no appeal process unlike Part 5, Asset Transfer Requests.

Committee submissions

202. A great many of those who responded to our call for evidence took the opportunity to comment on this part of the Bill, although we had very few responses from individuals who might seek to use these powers. We undertook an extensive public engagement programme to seek the views of individuals and communities from across Scotland on the issues surrounding participation requests for example, are participation requests the best way of getting people's ideas in front of the decision makers; whether it is easier to participate as a group or individual; as well as what help is needed to encourage participation.

203. As part of this process we undertook fact-finding visits, produced a short internet video and made use of social media to engage with people and communities.

204. The engagement greatly added to our scrutiny of Part 3 of the Bill, and Annex D sets out the extent of this in more detail, as well as containing responses we received via social media.

205. The matters which arose are summarised under the following headings—

- effectiveness of legislating for participation requests
- public service authorities' willingness to allow community participation
- a community officer
- role of community engagement in enabling participation
- capacity of community groups to participate
- building community capacity and empowering the disempowered
- operation of the participation request process
- requirement for a written constitution
- refusal of a request
- publicity and guidance to encourage participation

Effectiveness of legislating for Participation Requests

206. Martin Doherty of Volunteer Scotland told us—

“If communities and individuals are not involved at the beginning, you might as well not bother. If the aim is to design a participation request, my advice is that it be designed around the people who need it.”¹⁰⁶

207. A few respondents wondered why there was a need to legislate to provide for a formal participation process. The Scottish Community Alliance (SCA) believed the debate around community empowerment was heavily shaped by the extent to which communities have been able to engage with the current system of local government. SCA considered “the current level of interest in how communities can be empowered correlates directly with the level of concern about this democratic deficit”.¹⁰⁷ Social Enterprise Scotland also contributed to this discussion, it stated “democracy is not just about elected representatives or local authorities but is also about direct community democracy and community organisations i.e. social enterprises.”¹⁰⁸

208. The Scottish Government in its response to the Committee’s letter on the Policy Memorandum pointed us to research undertaken by the Electoral Commission which showed social exclusion is strongly correlated with low turnout in elections and limited participation in other forms of democracy.¹⁰⁹

209. A number of submissions were in favour of legislating, but considered public service authorities should be subject to more directive powers to make supporting participation a priority for public service authorities. This perhaps highlights that without such a specific duty there is a fear, within the third sector and communities, not enough is being done by public bodies to engage with them in a meaningful way.

210. Others considered the Bill had missed additional opportunities to strengthen communities’ participation. Scottish Council for Voluntary Organisation (SCVO) was “disappointed that this single mechanism is the only concrete proposal for increasing participation in the decision making and the design and delivery of public services” for example SCVO suggested the Scottish Government could have legislated for “10% of the total budget for the public sector in each local authority area could be allocated for participatory budgeting processes.”¹¹⁰

211. When the Minister was asked to respond to criticism voiced by Lesley Riddoch that the Bill was ‘toothless’ and ‘a missed opportunity’, he replied

“the bill is about swinging the balance of power towards communities. It does that through participation requests, which will empower groups and communities to initiate decisions and consultations that affect them on their terms”.¹¹¹

¹⁰⁶ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 8 October 2014, column 34

¹⁰⁷ Scottish Community Alliance. Written submission.

¹⁰⁸ Social Enterprise Scotland. Written submission.

¹⁰⁹ Q&A 11

¹¹⁰ Scottish Council for Voluntary Organisations. Written submission.

¹¹¹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 12

Public service authorities' willingness to allow community participation

212. The Christie Commission believed “front-line staff, along with people and communities are best placed to identify how to make things work better. It is critical that managers at all levels support staff in empowering users and communities, and to give fresh meaning to their own work”.¹¹²

213. The Scottish Government’s Response to the Christie Commission Report, *Renewing Scotland’s Public Services: Priorities for Reform in Response to the Christie Commission 2011*, reiterated the importance of this point “Reshaping public services to deliver better outcomes for the people of Scotland must be an inclusive and collaborative endeavour involving the workforce at all levels.”¹¹³

214. Some of those who wrote or spoke to us, although welcoming a participation process, felt using the process should be a last resort and that a culture of participation needed to be embedded within public service authorities. Orkney Council considered legislation should be there if the simpler route to participation were to be blocked, rather than being obligatory on every occasion.¹¹⁴ Steve Rolfe, an academic responding in a personal capacity, said—

“Whilst it is important for communities to have the new right to request participation, one of the aims of this legislation should be to ensure that it rarely needs to be used, as public sector agencies incorporate community participation and support for community action into their everyday operations.”¹¹⁵

215. Glasgow and West of Scotland Forum of Housing Associations took a slightly different view of the impact of the participation request process. It believed the process “seems designed to introduce a confrontational, ‘stick rather than carrot’ approach between the community and the public body rather than a partnership or co-productive approach”.¹¹⁶

216. Some public service authorities also recognised the need to change their mindset. South Lanarkshire Council cautioned that without significant change in public bodies’ culture and the resulting ways of working, they are likely to face a growing disconnection from the communities they exist to serve.¹¹⁷

217. SCVO suggested the focus should be on developing staff working in public service authorities—

“Effectiveness will still be dependent on the culture and attitudes within the relevant public body. Improving the understanding of participative approaches within public bodies through training or demonstrations of

¹¹² Commission on the Future Delivery of Public Services, *Services Built Around People and Communities*, paragraph 4.46. Available at:

<http://www.scotland.gov.uk/Publications/2011/06/27154527/6>

¹¹³ *Renewing Scotland’s Public Services: Priorities for Reform in Response to the Christie Commission 2011*, Workforce and Leadership, Available at:

<http://www.scotland.gov.uk/Publications/2011/09/21104740/6>

¹¹⁴ Orkney Islands Council. Written submission.

¹¹⁵ Steve Rolfe. Written submission.

¹¹⁶ Glasgow and West of Scotland Forum of Housing Associations. Written submission.

¹¹⁷ South Lanarkshire Council. Written submission.

good practice is more likely to achieve success than bringing forward legislation that could be ignored or regarded as a nuisance by these bodies.”¹¹⁸

218. A further concern for SCVO of legislating was that a formal process “might disrupt positive interactions which already take place if it becomes the main route for engaging the sector in improving services.”¹¹⁹

219. We heard from public service authorities at our meeting on 8 October there is a tension between their overarching priorities and those set by communities, however Dundee City Council had worked at finding an approach which meshed these priorities. John Hosie from the Council told us it had developed an impact assessment for their local community plans. These plans are based on community engagement and do not contain top-down actions; there are around 900 actions based on consultation with local people, which allows the Council to measure how effective it is in meeting these objectives and outcomes.¹²⁰

220. Whilst acknowledging there was good practice around, Robin Parker from Barnardo’s Scotland considered participation requests strengthened the community’s hand by enabling communities to say—

“No, it’s our right to be involved in this decision. We think we’ve got something to bring to it, and we want to be involved in the decision-making process.”¹²¹

221. Legislation can be an aid to cultural change, but public service authorities need to ensure all staff members are knowledgeable about the ethos of community empowerment, are trained to respond to participation requests and feel enabled to adopt best practice and suggest improvements.

A community officer

222. A common theme which arose in our enquiries into both Parts 3 and 5 of the Bill was the difficulty communities encountered when trying to find a staff member who had the requisite knowledge to address their questions.

223. Heather Hall from the Inspired Community Enterprise Trust explained during our stakeholder roundtable event held in Dumfries she had had to speak to 17 people to get information on a single matter. Earlier the Trust had provided us with a presentation about ‘The Usual Place’, a community café to help deliver training services to young people with additional needs to help them gain skills to find employment. Amy Duffy, a potential beneficiary of the project, shared her experience of trying to find employment and told us what it meant to her to have an opportunity to learn new skills. Heather Hall and Linda Whitelaw said the process was very time intensive; so much so they had had to give up their jobs for the sake of pursuing the social enterprise.

¹¹⁸ Scottish Council for Voluntary Organisations. Written submission.

¹¹⁹ As footnote 116 above.

¹²⁰ Scottish Parliament Local Government and Regeneration Committee, *Official Report, 8 October 2014, column 12*

¹²¹ Scottish Parliament Local Government and Regeneration Committee, *Official Report, 8 October 2014, column 25*

224. Other community representatives at the event talked about how the process to acquire a community hall was stalled by a series of council staff changes and a particular individual's interpretation of the asset transfer process. A participant described their experience of engaging with a local authority while trying to get a decision on a community project as "like wading through treacle", while another labelled council processes as "lethargic".

225. When asked about the effect of centralisation of power in the Highlands to Inverness, Rachael McCormack from Highlands and Islands Enterprise (HIE) explained how HIE combat this issue—

"We recognise that, across the region, we have diverse local economies and communities with wide-ranging ambitions and aspirations, and it is imperative that we are close to them and accessible. In addition to our area teams, we have other locally based teams, so, wherever someone is in the Highlands and Islands, they are not terribly far from HIE staff."¹²²

226. In response to the suggestion there should be an officer responsible for assisting communities, the Minister said—

"we want to ensure that there is a shared understanding of community participation. Having clarity on who community groups go to is a good thing, but we are not passing all the responsibility for community engagement or communication in a full public authority to one named person. It might be good practice for that person to be a co-ordinator who can oversee the sharing of information, but that is a matter for that authority".¹²³

Role of community engagement in enabling participation

227. The Scottish Government states in its Policy Memorandum, "it is important that community voices are heard in public sector processes, but that this engagement differs from community empowerment, where communities lead change for themselves."¹²⁴ It sees participation requests as complementary to public authorities' existing community engagement and participation activities "The provisions in this Part of the Bill are not intended to replace that activity, but they give community bodies an additional power to initiate that dialogue on their own terms, and a right to have their views properly considered."¹²⁵

228. Poverty Alliance, however, pointed to the varied implementation of the Standards for community engagement across Scotland.¹²⁶ Glasgow and West of Scotland Forum of Housing Associations¹²⁷ shared this view. In terms of improving the current patchy implementation of the Standards, Poverty Alliance, Voluntary Action Scotland, and other third sector organisations, considered the Bill was an opportunity to require public service authorities to adhere to an updated set of

¹²² Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 24 November 2014, column 5

¹²³ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 23

¹²⁴ Policy Memorandum, paragraph 11

¹²⁵ Policy Memorandum, paragraph 51

¹²⁶ The Poverty Alliance. Written Submission.

¹²⁷ Glasgow and West of Scotland Forum of Housing Associations. Written Submission.

National Standards for Community Engagement.¹²⁸ Inverclyde Council concurred with this view and described it as “a missed opportunity to build on the Standards of Community Engagement”.¹²⁹ Robin Parker of Barnardo’s Scotland said “putting the national standards on a statutory basis would make it clear that high-quality and genuine involvement should always take place”.¹³⁰

229. National Standards of Community Engagement are an important method in unlocking a community’s ability to participate. Implementation of the National Standards varies across Scotland, which is not satisfactory given the aim of the Bill is to create the conditions for community empowerment and provide a consistent route to influence services. Although we are not attracted in this part of the Bill to enshrining the National Standards in legislation because we believe these should be reactive to developments in engagement techniques and updated regularly to reflect best practice, we are clear a high standard of engagement is integral to building communities’ trust and confidence in public service authorities’ ability to handle participation requests in a fair manner.

Capacity of community groups to participate

230. Many considered it would be the more affluent communities who would benefit from these powers because they already possess the skills necessary to engage with the process. A few responses went further suggesting there was a risk that these new rights could in fact “exacerbate inequality”.¹³¹ ¹³² Oxfam provided figures which set these views in context – “more than half the people living in Scotland’s most deprived 20% of areas report difficulties in improving local circumstances, compared to less than one-third of people in the least deprived areas”.¹³³

231. Professor Annette Hastings described this trend as “‘middle class capture’ of public services”. She advised that research suggests “a key part of the work undertaken by those working at a range of levels within public services involves ‘managing the middle classes’: that is, resisting or accommodating the demands of an often vociferous, articulate and well-connected social group.”¹³⁴

232. Robin Parker’s comment to us further illustrated this point, “there are groups that are often described as ‘hard to reach’, but Barnardo’s much prefers the term ‘easy to ignore’”.¹³⁵

233. Scottish Community Development Centre suggested a legislative approach taken to rebalance power in favour of the least powerful was more important than

¹²⁸ Voluntary Action Scotland. Written Submission.

¹²⁹ Inverclyde Council . Written Submission.

¹³⁰ Scottish Parliament Local Government and Regeneration Committee, *Official Report, 8 October 2014, column 33*

¹³¹ Steve Rolfe. Written Submission.

¹³² The Poverty Alliance. Written Submission.

¹³³ Oxfam Scotland. Written Submission.

¹³⁴ Professor Annette Hastings. Written Submission.

¹³⁵ Scottish Parliament Local Government and Regeneration Committee, *Official Report, 8 October 2014, column 42*

a “broad-brush intention to empower”.¹³⁶ Leslie Howson, an individual responding to the Committee, further illustrated this concern—

“Power to the people is meaningless if the people whilst been shown the route, do not have the wherewithal for the journey, let alone reaching the outcome stage set for them.”¹³⁷

234. Various other reasons were given as to why communities lacked the capacity to participate. Midlothian Voluntary Action considered the main barriers to be: “less education; transient populations; no access to professionals to join Boards; less confidence; and less relevant skills” noting these communities could potentially need considerable support.¹³⁸

235. Inclusion Scotland considered marginalised communities, such as disabled people, may become even more disempowered by the Bill and referred to its recent survey of 138 disabled people, which found that—

“a third felt that they rarely have adequate opportunities to be included in their community. Cuts to disability benefits & care services and rising living costs, including community care charges, are all reducing disabled people’s ability to meet the access costs of participation”.¹³⁹

236. An attendee at our stakeholder event in Dumfries talked about high levels of fatigue among those who choose to participate in community activities. Capacity to support community empowerment policy initiatives was also highlighted by Volunteer Scotland who drew our attention to the decline in volunteering rates during the past decade across Scotland. Martin Doherty said—

“If there is not at least some stabilisation or increase in the number of people identifying as volunteers, we will not have an empowered community. For us, that rings alarm bells for not only this bill but a range of policy agendas, including the integration of health and social care, areas of which rely heavily on volunteering activity.”¹⁴⁰

237. He was also keen to point out despite there being a link between low levels of volunteering and deprivation, there were a lot of skilled people in communities of high deprivation, “but, what is lacking are the opportunities to use that skill and to be listened to.”¹⁴¹

Building community capacity and empowering the disempowered

238. Our discussions over the past 18 months with individuals, community groups, third sector organisations, and the information gathered from the call for evidence on the Bill, shows there is some concern Parts 3 and 5 (Asset Transfer Requests)

¹³⁶ Scottish Community Development Centre. Written Submission.

¹³⁷ Leslie Howson. Written submission.

¹³⁸ Midlothian Voluntary Action. Written Submission.

¹³⁹ Inclusion Scotland. Written Submission.

¹⁴⁰ Scottish Parliament Local Government and Regeneration Committee, *Official Report, 8 October 2014, columns 26-27*

¹⁴¹ Scottish Parliament Local Government and Regeneration Committee, *Official Report, 8 October 2014, column 28*

of the Bill will only serve to reinforce the position of already empowered communities. Not all communities are the same – many have different needs and different aspirations. Those commonly termed ‘disadvantaged communities’ does not necessarily mean the people within these communities have less ability to effect change, but often instead have less opportunity. We were keen to explore this further with our witnesses.

239. Building capacity in those less able community groups was seen as critical to the success of the participation request process. Angus Hardie from Scottish Community Alliance said—

“The Government has invested a lot in capacity building in the past and, frankly, it has not worked. We have to look at how we can change our approach to building capacity in the most disadvantaged communities so that it makes an impact and changes the normal pattern of those communities being the last to benefit.”¹⁴²

240. Community Learning and Development Managers described capacity building as “a long-term, purposeful process that builds cohesion and confidence and establishes a social and organisational infrastructure.”¹⁴³ They explained that sharing practice to support the implementation of legislation was their core purpose with their current focus being on “identifying communities’ needs for community learning and development” under the Requirements for Community Learning and Development (Scotland) Regulations 2013.¹⁴⁴

241. John Hosie, Dundee City Council, explained his Council’s approach to building capacity, “our resources are deployed in areas of greatest need to plug the inequalities gap”. He recognised this was a long-term aspiration and went on to say—

“It is our core business to build capacity among groups of people who happen to reside in the areas of greatest deprivation. That is negotiated, and sometimes it involves a balance between challenge and support. Sometimes we have to challenge groups to see things slightly differently, while supporting them on their journey”.¹⁴⁵

242. John Hosie further explained the Council’s wider framework to support this work, advising there were regeneration forums in six of the eight most deprived wards in Dundee. These forums elect 15 local people to make decisions about funding allocations with the chairs meeting each month. Beyond this the Dundee

¹⁴² Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 24 September, column 5

¹⁴³ Community Learning and Development Managers Scotland. Written Submission.

¹⁴⁴ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 8 October 2014, column 30

¹⁴⁵ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 8 October 2014, column 18

Partnership runs a community conference every six months for people who sit on community groups and the people set the conference agenda.¹⁴⁶

243. The Minister drew our attention to funding dedicated to building capacity—

“through a £3 million strengthening communities programme, we will support 150 community-led organisations to build their capacity. That will have a great multiplier effect at local level.”¹⁴⁷

244. In terms of spreading best practice Douglas Sinclair, Accounts Commission wondered whether there was a greater role for scrutiny bodies to identify good practice or share lessons learned from approaches which have not worked so well. He recognised the difficulty in spreading good practice and referred to a report on public services in Wales which said “good practice is a bad traveller” which encapsulated the challenge of sharing best practice.¹⁴⁸

Requirement for a written constitution

245. The Policy Memorandum states the main reason for requiring those wishing to make participation requests to have a written constitution was “to ensure community bodies are open, inclusive and truly represent their communities”.¹⁴⁹

246. Participation requests formalise the process of community involvement in shaping services and their delivery. A number of respondents challenged the need for a group to have a written constitution, particularly where a loose grouping of individuals is campaigning on a single issue. Also not all community groups will wish to deliver services, many may just want to suggest a minor change to an existing service or discuss the level of service without contributing to an outcome improvement process. Voluntary Action Scotland, thought it was “overly prescriptive”¹⁵⁰ and Highland Council commented “it still appeared overly complex”.¹⁵¹

247. We heard concerns that individuals or loose groupings of individuals, might face increased difficulty in engaging with public service authorities about services more generally. Children in Scotland considered the—

“formality and organisation required of groups before they can apply to participate may deter or disqualify less formal and ad hoc groupings, or single-issue topical campaigns. Specifically we are concerned that those in less advantaged communities and groups may find these requirements a barrier to access.” The organisation believed individuals and groups, formally constituted or not, should feel able to be involved in issues that

¹⁴⁶ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 8 October 2014, columns 20-21

¹⁴⁷ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 11

¹⁴⁸ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 39

¹⁴⁹ Policy Memorandum, paragraph 46

¹⁵⁰ Voluntary Action Scotland. Written Submission.

¹⁵¹ Highland Council. Written Submission.

affect them directly, such as litter in their street or about standards in their local school.¹⁵²

248. This need for flexibility was supported by Barnardo's Scotland¹⁵³ a view also supported by some who came to our stakeholder events, who considered public service authorities may become less responsive to individuals' calls to improve services and considered that as an individual they should have a right to 'lobby'. Jeannie Mackenzie who responded to our video on participation request said—

“Sometimes an individual has a very good idea for improving public services, but lacks the time or opportunity to find others and form a constituted group. Therefore, there should also be a place for individual ideas to be presented”¹⁵⁴

249. In making the process more accessible, Development Trust Association Scotland (DTAS) suggested it was first necessary to separate *influence* of service delivery from communities *delivering* public services. DTAS believed—

“While there is a relationship between both aspects, it would appear to us that a more light touch process would be applicable to the former activity, which should also arguably be available to a wider range of community organisations.”¹⁵⁵

250. Scottish Government officials told us this was an area they had simplified following consultation. They had responded to concerns by simplifying the definition of a constitution and by using the same definition across different parts of the Bill. Also the definition was refined so it could include communities of interests leaving it to the community to define itself. Given it was a legislative process they suggested some sort of structure was required. They suggested not a huge amount was required to get involved; a written constitution being the minimum requirement.¹⁵⁶

Publicity and guidance to encourage participation

251. Many people highlighted the need for a concerted publicity campaign with plain language guidance to encourage the use of the participation process and support effective implementation more generally. Highland Council made the point “simple guidance will be critical to ensure that groups are not only enabled legislatively, but are able to understand what they have been empowered to participate in” for example the Council suggested the meaning of ‘participation’ in an ‘outcome improvement process’ needed to be clarified.¹⁵⁷ Maggie Paterson, Community Learning and Development Manager Scotland, said “we need to ensure the processes are clear enough and that the jargon is translated so that

¹⁵² Children in Scotland. Written Submission.

¹⁵³ Scottish Parliament Local Government and Regeneration Committee, *Official Report, 8 October 2014, column 26*

¹⁵⁴ Response to Podcast on Participation Requests

¹⁵⁵ Development Trusts Association Scotland. Written Submission.

¹⁵⁶ Scottish Parliament Local Government and Regeneration Committee, *Official Report, Scottish Government officials, 24 September, column 40*

¹⁵⁷ Highland Council. Written Submission.

people know what the bill means for them”.¹⁵⁸ A delegate at the Scottish Older Persons Assembly, when discussing the Bill, advised older people find ‘official’ language very hard to understand and confusing.¹⁵⁹

252. Some questioned whether the right to participate extended to arm’s length external organisations (ALEOs) and suggested specific guidance would be needed on this aspect. In order to clarify the position, John Glover, Community Land Advisory Service, suggested Parts 3 and 5 should automatically apply to publically owned companies with those excepted being prescribed in regulations, thus making it easier for communities to identify who is subject to the Bill.¹⁶⁰

253. Scottish Government officials explained there is no single definition of an ALEO and this can take a range of legal forms and carry out a range of functions. It would be possible to designate an ALEO as a public service authority if it was a body corporate and wholly owned by one or more public service authorities. They also clarified “no ALEOs are currently listed in Schedule 2 to the Bill” and Urban Regeneration Companies could also be designated if they were wholly publically owned.¹⁶¹

Refusal of a request

254. Further clarity was sought by us about the grounds to be considered by public service authorities when coming to a decision about either a participation request, under Part 3, or an asset transfer request, under Part 5 of the Bill. Some submissions were concerned about consistency of application and thought issues might arise if the criteria were open to interpretation. Glasgow City Council warned—

“until there is clarity in this area, the effect may be disempowering, as in having raised expectation and then having hopes dashed. This could impact on working relationships and may be counter productive to establishing longer term collaboration and trust on which effective community planning and community empowerment should be based”.¹⁶²

255. In terms of how Dundee City Council anticipated addressing reasonable grounds, John Hosie said, “A starting point would be to offer support to the group. The way in which we have developed our outline framework for assessment means that 50 per cent weighting is given to community benefit”.¹⁶³

256. A further operational issue raised was the lack of an arbitration or appeal procedure where dispute about a participation request arises.

¹⁵⁸ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 8 October 2014, column 39

¹⁵⁹ Committee meeting papers, LGR/S4/14/28/9, page 108. Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Meeting%20Papers/20141112_Agenda_and_Meeting_Papers.pdf

¹⁶⁰ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 8 October 2014, column 44

¹⁶¹ Q&A paragraph 61

¹⁶² Glasgow City Council. Written Submission.

¹⁶³ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 8 October 2014, column 15

257. Scottish Community Alliance suggested the absence of an appeal mechanism “leaves the balance of power with the public body” and this omission “may ultimately discourage communities from exercising this right”.¹⁶⁴ The Scottish Youth Parliament also believed there “should be an appropriate appeals procedure in line with the basic principles of due process and transparency.”¹⁶⁵ Martin Doherty, Volunteer Scotland also welcomed an appeals process as he considered it unreasonable to expect small voluntary organisations to be able to challenge a public service authority in the courts.¹⁶⁶

258. The Minister, however, considered the Bill would have a positive influence on how public service authorities treated community requests—

“The legal requirements should encourage authorities to put good processes in place. If they do not and a request is not handled competently and effectively, I suspect that the Scottish Public Services Ombudsman will have something to say about that.”¹⁶⁷

259. He went on to say “given the presumption in the bill, the courts and the ombudsman will be able to point to what councils should have done. That is a game changer for community rights.”¹⁶⁸

Recommendations on Part 3

260. Many of our recommendations about the changes required to public service authorities are to ensure the intention of the Bill is achieved in practice. Given the need for this Bill follows the failure of voluntary arrangements we consider it vital progress is closely monitored. To allow that to happen we recommend the Bill require all public service authorities to produce periodic public reports. The following recommendations set out areas to be covered in such a published report and also other recommendations in respect of this Part.

A community officer (Parts 3 and 5)

261. We support the idea of a community officer with responsibility for coordinating activity under the Bill. We recognise public service authorities should have flexibility and freedom to put in place local solutions when implementing the legislation. We also acknowledge the argument there could be a tendency for staff to rely on the ‘community officer’ rather than individuals within the organisation taking responsibility for this policy in their work area. Taking these concerns into account rather than recommending this role should be a statutory one we recommend the report set out the arrangements made by each body to support communities to utilise these provisions.

¹⁶⁴ Scottish Community Alliance. Written Submission.

¹⁶⁵ Scottish Youth Parliament. Written Submission.

¹⁶⁶ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 8 October 2014, column 41

¹⁶⁷ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 27

¹⁶⁸ See footnote 166

Role of community engagement in encouraging participation

262. The report should set out the methods used to encourage community participation and comment on how successful they have been.

Capacity of community groups to participate

263. The report should set out the steps taken to underpin the community focused provisions in the Bill (Parts 3 and 5). It should also identify those communities which have been supported along with a summary of the support provided and details of how successful this has been.

Building community capacity

264. The report should set out how they have built capacity in communities which has allowed them to take advantage of participation requests and asset transfer requests. In addition it should set out measures taken to address inequalities between communities in their area.

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

Requirement for a written constitution

266. In a Bill designed to empower communities the requirement for a written constitution is disempowering. Part 3 is about the community coming forward with ideas to improve services and nothing in the Bill should be a barrier to this happening by any individual or group of people. The need to have this Part of the Bill has arisen as a consequence of the failure of an informal system and it seems counter-intuitive to provide a process for the community more restrictive than currently exists.

267. Accordingly we recommend the removal of the need for an application to be by a group and in the event of an application under this Part by a group for the requirement for any written constitution together with the removal of any other restrictions which could dilute the community accessing these provisions. For any that are to remain we expect to hear compelling reasons for their inclusion otherwise as the process, which is designed also to assist public service authorities in improving services, should be open to all.

Publicity and guidance to encourage participation

268. We also recommend the report set out the steps taken to provide information to communities, including publicity, and how successful this has been in making the participation request process accessible to all.

Refusal of a request

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

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

PART 4: COMMUNITY RIGHT TO BUY

271. The report on Part 4 of the Bill by the Rural Affairs, Climate Change and Environment Committee can be found at Annexe A of this report.

PART 5: ASSET TRANSFER REQUESTS

Background

272. Part 5 sets out a framework for an asset transfer process for certain public bodies. In other words, how a “community transfer body” (the community body acquiring the asset) can request to buy, lease, manage, occupy or use land belonging to a “relevant authority” (a public body listed in Schedule 3, for example a local authority or a health board), and how the authority is to deal with such requests. The definition of “land” in the Bill relies on the Interpretation and Legislative Reform (Scotland) Act 2010¹⁶⁹, and as such ‘land’ referred to in this report also includes buildings and other structures, land covered with water, and any right or interest in or over land.

273. At present, a number of public authorities have established asset transfer schemes to allow communities to take control (i.e. buy, lease, manage, occupy or use) of assets within their area. The Policy Memorandum welcomes the existence of current schemes but states that—

“The Bill goes further, giving the initiative to communities to identify property they are interested in, and placing a duty on public authorities to agree to the request unless they can show reasonable grounds for refusal.”¹⁷⁰

274. The Policy Memorandum also highlights that the intention is not for the focus of asset transfer requests to necessarily be on buildings and land considered surplus to the public sector’s requirements, but on—

“what the community seeks to achieve and what property would help them achieve that”.¹⁷¹

275. Community ownership of assets is one approach to achieving community participation, developing community enterprises and community renewal. The Christie Commission findings highlighted the value of transferring assets that the public sector currently owns on behalf of communities to communities themselves allowing them to achieve better outcomes.

276. Prior to the Bill, other policy approaches have sought to stimulate the transfer of public assets to communities. For example, the Scottish Government commissioned the Development Trusts Association Scotland (DTAS) to raise awareness and improve the practice of local authority asset transfer which subsequently led to the creation of the Community Ownership Support Service (COSS). COSS supports and represents over 200 Development Trusts in

¹⁶⁹ Interpretation and Legislative Reform (Scotland) Act 2010 asp10, Schedule 1 Definitions of Words and Expressions. Available at: <http://www.legislation.gov.uk/asp/2010/10/schedule/1>

¹⁷⁰ Policy Memorandum, paragraph 76

¹⁷¹ Policy Memorandum, paragraph 75

Scotland.¹⁷² This work has led some local authorities to develop their own asset transfer strategies and procedure. COSS has been involved in 38 asset local authority transfers from 2011 to 2014¹⁷³ and almost half of Scotland's local authorities now have asset transfer strategies in place.¹⁷⁴

277. In addition, a recent relaxation in the procedural requirements to be followed by local authorities when disposing of assets now means that under the Disposal of Land by Local Authorities (Scotland) Regulations 2010¹⁷⁵ a local authority can dispose of an asset for less than market value where the local authority is satisfied that it is achieving "best value" through economic, regeneration, social, environmental or health benefits.

278. Some communities in Scotland have already acquired assets ranging from village halls and bowling greens to sports facilities; from amenity land to rural estates. A study in 2009 showed 75,891 assets are owned by a total of 2,718 community-controlled organisations in Scotland and have a combined value of £1.45bn. Included in these assets is 483,006 acres – 2.38% of Scotland's land area. Also as part of the overall figure 2,740 assets are "community assets" (bring benefits to the whole community) and these have a combined value of £0.65bn¹⁷⁶

279. Even though some assets have transferred into community hands, there are cases across Scotland where community asset transfer was possible but had not been achieved because the process had not been clear or had taken too long. The Scottish Government believes both the public sector and communities could benefit from having clear and realistic processes to manage community asset transfer. By making the process more consistent and ensuring relevant authorities provide a reasoned response to requests, the Government hopes the provisions will result in an increase in the number of assets transferred.¹⁷⁷

280. Section 50 defines a "community transfer body" as either a 'community-controlled body', as defined in section 14, or a body designated as a community transfer body by the Scottish Ministers, such as a company or a Scottish Charitable Incorporated Organisation (SCIO). Section 51 defines a "relevant authority" as a person (or organisation) listed in schedule 3, for example Scottish Water or Scottish Enterprise, or one designated as a "relevant authority" by the Scottish Ministers by subordinate legislation.

¹⁷² Elected Member Briefing Note No.23, Community Ownership and Transfer of Local Authority Assets, The Improvement Service, July 2014, About this briefing note. Available at: <file:///C:/temp/EM%20Briefing%2023%20-%20community%20asset%20transfer.pdf>

¹⁷³ Financial Memorandum, paragraph 72

¹⁷⁴ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 8 October, column 37

¹⁷⁵ The Disposal of Land by Local Authorities (Scotland) Regulations 2010, SSI 2010 No.160. Available at: <http://www.legislation.gov.uk/ssi/2010/160/contents/made>

¹⁷⁶ Elected Member Briefing Note No.23, Community Ownership and Transfer of Local Authority Assets, The Improvement Service, July 2014, How do we know it works? Available at: <file:///C:/temp/EM%20Briefing%2023%20-%20community%20asset%20transfer.pdf>

¹⁷⁷ Financial Memorandum, paragraphs 71-72

Asset Transfer Requests

The process for asset transfer requests is set out in sections 52 to 62 of the Bill. In summary, the process will run as follows:

- 1 Community transfer bodies can approach a relevant authority for detailed information about the property they are interested in, before making a formal request. What this information can be will be set out in secondary legislation.
- 2 Once an asset transfer request is made, the relevant authority must assess the proposals, and take a decision based on the economic, social and environmental benefits and any other relevant factors, including the function and purpose of the authority.
- 3 As with participation requests, the presumption in the Bill is that it must be agreed to, unless there are reasonable grounds for refusal. Although, as with part 3, what these grounds might be is unclear at this point.
- 4 There is an appeals mechanism to the Scottish Ministers for decisions concerning all authorities other than Scottish Ministers and local authorities. Local authorities are expected to make their own arrangements for appeals. There appears to be no mechanism of appeal against a decision by the Scottish Ministers.

281. Other provisions set out further procedures and time limits to be followed along with how appeals are dealt with by different relevant authorities. In addition there is provision to help relevant authorities deal with repeated or vexatious requests. For example, if a second request relating to the same land or building is made within two years of a previous request, which was refused, the relevant authority may choose not to consider that second request.

Committee submissions

282. Overall, the right to request an asset transfer has been welcomed by those responding to our call for evidence, particularly because the power extends not only to ownership of an asset, but also to the right to use, manage or lease. The Big Lottery Fund wrote—

“the Bill provides communities with a variety of ways in which they can make better use of public land and buildings. It also gives them the option to ‘test their mettle’ by maybe starting off by leasing and managing an asset to see how they get on before deciding to buy it outright from the public authority.”¹⁷⁸

283. Another reason for support was it permitted community use in situations where the property was earmarked for another use in the longer term, Linda Gillespie of COSS told the Committee she was supportive of the Bill because it would encourage “meanwhile use of land”.¹⁷⁹

284. Notwithstanding the overall positive response, there were a number of general concerns about the approach taken in the bill—

- Capacity of communities to request an asset transfer

¹⁷⁸ Big Lottery Fund. Written submission.

¹⁷⁹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 8 October, column 24

- Relevant authorities' willingness to respond to requests
- Timescale for consideration of requests
- Information to be provided to the community transfer body
- Publically available asset register
- Exclusion of certain public bodies
- Appeals process
- Definition of a community transfer body

Capacity of communities to request an asset transfer

285. Much like Part 3 of the Bill (participation requests), a great many written and oral submissions focussed on the ability of communities to acquire an asset and the potential inequality of access for some communities. Inclusion Scotland considered "marginalised, fractured and impoverished communities will, by definition, have fewer assets, or assets of lower quality, in their areas, which will in turn be harder and more expensive to manage and maintain."¹⁸⁰ sportScotland cautioned against "asset grab" where strong community groups seek asset transfer for exclusive use to the detriment of the wider community and suggested that inclusivity should be fostered with any community asset transfer.

286. Linda Gillespie was less concerned on the above—

"In general, we find that communities react to threat and opportunity—when there is the threat of closure or when an opportunity emerges"¹⁸¹

287. Where the difference occurs, advised Linda Gillespie, was in the cost of going through the transfer process. If a community required grant funding to go through the process it would be in the region of £20,000 to £25,000 whereas if the skills were available in the community the cost would be around £12,000 to access the professional services only.¹⁸²

288. A number of submissions called for dedicated support to be provided to community groups. Children 1st considered support to "navigate complex bureaucratic processes is vital to ensure communities do not find the process alienating".¹⁸³

289. Unlike participation requests, in terms of supporting communities to take over control of a public sector asset, witnesses considered there could be a conflict of interest. Approaches to this 'dilemma' differed. Geraldine McCann, South Lanarkshire considered the Council's role was to direct communities to where they could get advice.¹⁸⁴ Whereas, Kay Gilmour from East Ayrshire considered the dedicated council team (which includes lawyers) could provide professional advice without compromising the council's overall legal service.¹⁸⁵ John Glover of the

¹⁸⁰ Inclusion Scotland. Written submission.

¹⁸¹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 8 October, column 31

¹⁸² See footnote 181

¹⁸³ Children 1st. Written submission.

¹⁸⁴ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 27 October, column 30

¹⁸⁵ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 27 October, column 30

Community Land Advisory Service suggested third sector support services should be developed to fill this gap.¹⁸⁶

290. We have quoted the Ministers response on conflict of interests concerns that they are an excuse he does not consider valid at paragraph 46. He went on to add that “authorities are more at liberty to do that than they suggested to you.”¹⁸⁷

291. We agree with the Minister that ‘conflict of interest’ is an unacceptable excuse to avoid suitably supporting communities to acquire assets.

292. DTAS and the Big Lottery Fund believed there was an opportunity to export the knowledge of those who had been through the process of asset transfer. DTAS argued—

“We need to recognise that the knowledge and expertise increasingly rests, not within external support organisations, but within the development trusts and other community anchor organisations who are turning around failing assets, developing renewable energy projects, managing landed estates, successfully regenerating high streets, taking over post offices, petrol stations and local shops, etc, etc! The implementation of the Community Empowerment Bill presents an exciting opportunity to recognise this, and develop a peer education and peer support programme which taps into and effectively utilises this knowledge and expertise. Such a programme would be incredibly resource efficient in relation to other methods of capacity building, with the added benefit that the main financial beneficiaries would be community organisations themselves.”¹⁸⁸

Relevant authorities’ willingness to respond to requests

293. It is clear to us, not only from the information gathered in response to this Bill but also through our work on the delivery of regeneration, that a negative experience of trying to acquire an asset is all too commonplace. We were keen to examine whether there were coordinated strategies for asset transfers and proactive, knowledgeable, frontline staff who have the backing from the very top of the organisation as this can have a significant bearing on the success of communities’ aspirations in relation to acquiring assets.

294. It is apparent not all the relevant authorities who spoke to us were well placed to deal with the impact of the legislation. The Health Boards, although engaging with the community about community health priorities, were focussed on the integration of health and social care. It appeared they had not fully quantified how asset transfers would affect the property they were responsible for. NHS Tayside expressed its concern that—

“The benefits to communities to exercise their rights to buy and request asset transfers have many potential positive outcomes. However, at a

¹⁸⁶ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 8 October, column 36

¹⁸⁷ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, columns 15-16

¹⁸⁸ Development Trusts Association Scotland. Written submission.

time when we are and will continue to be challenged financially, for most NHS Boards, the need to vacate property 'not fit for purpose' and secure optimal returns from the sale of such assets via the open market has been an absolute necessity. The right to buy should therefore be at the full market value of the land or buildings and through the open market."¹⁸⁹

295. Although most witnesses acknowledged the legislation was a "catalyst for change"¹⁹⁰ and could "stimulate culture change"¹⁹¹ some community representative witnesses were doubtful whether relevant authorities were ready to respond to asset transfer requests.

296. David Coulter from Dumfries Third Sector Interface considered "there needs to be a long-term change in culture around the way in which public authorities view assets." He sensed public bodies regard assets as being owned by them saying "that might be the legal position, but the reality is that we as a community in Scotland own them".¹⁹² Linda Gillespie from COSS also considered more work was required "to get public authorities into a mindset where it becomes second nature to make land available to communities".¹⁹³

297. As well as a change in culture, others noted some relevant authorities would need to make practical changes to facilitate the process.

298. One of the main frustrations expressed by groups wishing to acquire an asset was the difficulty in finding the right person to speak to within a public body who had the knowledge to answer their questions or to direct them to such a person. This was brought into sharp focus in the experiences recounted by the community groups in North Lanarkshire and Dundee. Teresa Aitken from Glenboig Neighbourhood House felt there was "no consistency or accountability" in her dealings with North Lanarkshire Council. She expanded on this point saying "within the authority and its various departments, people do not communicate with one another, so we have to communicate with all the different departments". This was echoed by Ryan Currie from Reeltime Music who said "public bodies do just enough to get by, and it does not always seem to be joined up".

299. We heard about successful interactions and the difference these had made to groups trying to acquire an asset. Both Alice Bovill of St Mary's Centre Dundee and Yvonne Tosh from Douglas Community Open Spaces Group commended Dundee City Council's approach. Yvonne Tosh commented that in Dundee "we are lucky" adding "we usually get help quite easily and it is sustained, so that is a

¹⁸⁹ Written Submission 45

¹⁹⁰ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 27 October, column 6

¹⁹¹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 8 October, column 39

¹⁹² Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 27 October, columns 6 & 7

¹⁹³ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 8 October, column 24

big help.”¹⁹⁴ Alice Bovill pointed to the success of the community officer approach, which “will help us with every individual aspect of what we are trying to do”.¹⁹⁵

300. Other local authorities adopted an approach where the personnel required to underpin asset transfer were grouped. Kay Gilmour explained East Ayrshire Council’s approach to handling asset transfer requests. The Council established a dedicated community asset transfer team which comprised a surveyor, a lawyer, a person from property services and “importantly” two community workers.¹⁹⁶ She said the team “has been critical in building capacity in our communities”. While South Lanarkshire did not group particular professions together, Geraldine Gilmore told us housing and technical services, planning and regeneration teams have had “a great deal of involvement” and “a number of assets have been transferred successfully to community groups”.¹⁹⁷

301. Under the current processes, to acquire an asset commonly requires community groups to have a great deal of drive and determination, diverse skills, and even personal finances, to tackle unnecessarily bureaucratic and disjointed procedures. It is of concern to us the Bill will have little impact unless there is a change to public bodies’ mindset to underpin the new asset transfer process; we believe if relevant authorities do not rise to the challenge a large number of good community ideas will be stifled at a very early stage.

302. We commend those relevant authorities which have already geared up for asset transfers and have a proactive and positive approach to assisting communities. By marshalling expertise to support the transfer process these bodies are making it easier for communities to become empowered.

Timescale for consideration of requests

303. An area of significant concern for community groups was the time it took to acquire an asset. There is no period set for a relevant authority to issue a decision notice. We note there is a six month period for a community transfer body to conclude a contract, failing which, the offer falls.

304. In Teresa Aitken’s experience, deadlines were set for them to provide information but the authority did not meet its deadlines “the community has to do all the running”.¹⁹⁸ This view was echoed by Ryan Currie who reflected “work is very much done on a piecemeal basis”.¹⁹⁹

305. One of the sticking points for community groups acquiring an asset is the length of time negotiations take with the relevant public body. We heard from Louise Matheson about her Council’s approach to asset transfers—

¹⁹⁴ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 8 October, column 46

¹⁹⁵ See footnote 194

¹⁹⁶ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 27 October, column 25

¹⁹⁷ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 27 October, column 27

¹⁹⁸ See footnote 194

¹⁹⁹ See footnote 194

“Dumfries and Galloway Council has a process that allows a maximum period of 18 months for the community group to bring forward its proposals and for the transfer to happen.”²⁰⁰

306. However Inspired Community Enterprise Trust explained it had taken 18 months to negotiate a lease with Dumfries and Galloway Council and this was still on-going. We heard this could have had significant implications for the viability of the project had the Enterprise Trust not successfully separated the funding conditions from the leasing of a property. We have continued to keep an eye on the progress of these negotiations, not least to gain a deeper understanding of the issues involved.

307. Other local authorities advised timescales could vary. Scottish Borders Council advised timescales could vary according to—

“the complexity of the project. Sometimes it can take 2/3 months but it could extend to several years due the need to work with communities to ensure that they have robust and sustainable business plans which enable them to be ready to take on the asset.”²⁰¹

308. We also heard from community representatives about the vagaries of the application process for funding. An inordinate amount of time is spent locating funding streams, making applications for funding, and reapplying to meet previously not communicated conditions. While in Fort William, an attendee at the stakeholder event told us funding organisations are disconnected from local communities today much more so than 20 – 25 years ago. The LEADER programme is managed by business gateway and other funds are managed differently. So it is very hard for local communities and community groups to track where funding is coming from or where it might be available.

309. Yvonne Tosh of Douglas Community Open Spaces Group told us —

“Getting funding has been quite hard for us. We would keep getting told that we fitted the criteria, but when we put in an application we were told that the words were too official. We took it back and wrote it in our language, but it came back to us because we did not fit the criteria.”²⁰²

310. When asked about whether timescales could be set to minimise the impacts for community groups in the Bill, the Minister advised he was not keen on centralising timescales but said, “we can consider the timescales issue more closely, but I would rather that authorities acted in good faith and considered and responded timeously to any requests that are made of them. I would be slightly

²⁰⁰ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 27 October, column 26

²⁰¹ Scottish Borders Council. Supplementary Written Information, 27 October 2014. Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Scottish_Borders_Council_supplementary_CE_Bill.pdf

²⁰² Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 8 October 2014, column 49

fearful if an arbitrary timescale were set whereby they might simply say no.”²⁰³ However, he commented further, “we must ensure that we better calibrate and organise the various funding streams to support community groups, rather than going through the process time and time again.”²⁰⁴

311. The Bill does not set a time limit for consideration of a community group’s asset transfer request and the issue of a decision notice. Section 55(8) does enable the Scottish Ministers to prescribe by regulations the period within which a decision notice should be issued. In addition there is no timescale for relevant authorities to conclude a contract, whereas the community transfer body has to conclude the contract within six months of the date of the offer, otherwise a transfer agreement ceases to have effect. The community transfer body can negotiate with the relevant authority to agree a longer period. If a longer period is not agreed then the community transfer body can apply to Scottish Ministers to direct that the period should be extended.

312. We sought to query the timescales with the Minister and following an exchange of correspondence²⁰⁵ were advised—

“The scenario you outline in your letter is that a relevant authority has agreed to an asset transfer request, given notice of its decision to the community body, specified the terms of the transfer, lease or other arrangement and has received an offer from the community body. The relevant authority then deliberately delays the conclusion of the contract so that the process ends and is treated as if the asset transfer had not been agreed.”²⁰⁶

313. Minister Biagi said “I believe that this scenario is unlikely to happen in practice”.²⁰⁷ He added—

“We have no plans to amend these provisions. Property transactions can be complex, and issues may arise which take time to work out, or which ultimately make the transfer unachievable, despite the best intentions of both parties.”²⁰⁸

314. It is important that an asset transfer is not thwarted by delay, as funding can be time-barred. An appropriate balance must be found between speed and rigor because no one wants to see failed asset transfers in Scotland.

²⁰³ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 19

²⁰⁴ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 19

²⁰⁵ Letter from the Convener of LGR Committee to the Minister for Local Government and Community Empowerment, 9 December 2014. Available at:

http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/20141217_Letter_from_Minister_for_Local_Government_and_Community_Empowerment.pdf

²⁰⁶ See footnote 205

²⁰⁷ See footnote 205

²⁰⁸ See footnote 205

Information to be provided to community transfer body

315. The Policy Memorandum²⁰⁹ states secondary legislation will stipulate what information relevant authorities will be required to provide to community groups before they decide to request the transfer of an asset. Examples of maintenance costs and energy efficiency are provided in the Memorandum. We received a number of suggestions which were considered vital by respondents to inform a community's assessment of whether to obtain an asset:

- value of the asset (if appropriate)
- rental value (if appropriate)
- yearly running costs
- details of impending repairs or maintenance costs
- energy efficiency.

316. Of these submissions, a good number focussed on the importance of valuations within the asset transfer process.

317. Section 52(4)(e) of the Bill requires the community transfer body making an asset transfer request to specify in its request the price it is prepared to pay for the asset it wishes to acquire. The Big Lottery Fund pointed out this would entail the community body having to arrange and pay for a survey/valuation at a very early stage. The Fund believed this to be unfair and onerous at this stage of the process. Instead, it suggested the public body should give prior notice to the community body of the minimum price it would accept. This could prevent the community body having to become embroiled in a costly and time consuming negotiation.²¹⁰

318. The preferred approach of both DTAS and Big Lottery Fund would be for the community group to have the valuation early as part of the information relevant authorities are required to provide to community transfer bodies. Big Lottery Fund explained the benefits – it would let the group know the amount of funding they would need and give them the opportunity to make early contact with potential funders to gauge the likelihood of funding being made available.²¹¹ DTAS covered this Part in detail in its submission, concluding—

“The commercial sustainability of an asset transfer will often hinge on the value of the asset and the conditions (e.g. economic burdens) attached to the transfer. It is essential that there is scope for negotiation on these issues within the asset transfer processes and we suggest that clause 56(2)(a) could be reworded to encourage negotiated settlements.”²¹²

319. Some third sector respondents were concerned to ensure that liabilities were not “offloaded” to communities. On this subject, Professor Annette Hastings, University of Glasgow, drew attention to her ongoing work with English local authorities which are “involved in ambitious asset transfer programmes as part of their approach to managing severe budget cuts”. She suggested offloading “will be

²⁰⁹ Policy Memorandum, paragraph 77

²¹⁰ Big Lottery Fund. Written submission.

²¹¹ Big Lottery Fund. Written submission.

²¹² Development Trusts Association Scotland. Written submission.

a real danger in some places”.²¹³ However, local authority witnesses advised us it was important to work with communities to ensure any proposal was viable and sustainable; Geraldine McCann of South Lanarkshire said “it would be wrong to allow an asset to be transferred if by doing so we were setting someone up to fail”.

320. Business organisations had concerns about the impact on local businesses. In particular, the Federation of Small Businesses (FSB) suggested—

“if the transfer of an asset is accompanied by any form of public funding, a rigorous test of displacement is required when assessing the proposed activity. For example, using a vacant building to fund community-run commercial activity which directly competes with existing businesses (or may do so at some point in the future) is particularly unhelpful for our high streets”.²¹⁴ The FSB suggested a potential solution would be to require relevant authorities to consult with any business using the asset, prior to agreeing to the transfer request.²¹⁵

Publically available asset register

321. Many of the submissions made to us centred on the lack of a publically-available asset register for relevant authorities which would enable communities to recognise opportunities within their community. It was also a topic discussed by those attending our community events. Many wanted a national asset register.

322. SCVO, the Alliance, DTAS and the Poverty Alliance were strong proponents of a requirement for relevant authorities to maintain and publish an asset register. SCVO stated—

“We are disappointed that the Bill does not provide a duty for public bodies to maintain and publish an asset register. Knowing what assets a public body holds which could be made available for community use would be a significant resource for communities. It would allow them to look at all the assets in their area and identify those which would suit their purpose.”²¹⁶

323. The Minister confirmed in a letter to us he too believed, “there is benefit in requiring relevant authorities to publish their registers of assets, to help community bodies understand what land or buildings may be available for asset transfer.”²¹⁷

324. The Minister did not agree about the benefits of a national asset register, “I do not see what purpose that would serve. As this is about local empowerment and participation, I do not see how a national picture would help us.”²¹⁸

²¹³ Professor Annette Hastings, Written submission.

²¹⁴ Federation of Small Businesses Scotland. Written submission.

²¹⁵ Federation of Small Businesses Scotland. Written submission.

²¹⁶ Scottish Council for Voluntary Organisations. Written submission.

²¹⁷ Letter from the Minister, 6 November 2014. Available at:

http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Kevin_Stewart_MSP_Letter_-_6_November_2014.pdf

²¹⁸ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 25

Exclusion of certain public bodies

325. The Bill lists the bodies subject to asset transfer requests at Schedule 3 – “relevant authorities”. It does not currently extend to bodies such as the National Museums of Scotland or the National Galleries of Scotland amongst other Scottish public bodies.

326. We would welcome an explanation of the rationale as to why some bodies have been listed as a “relevant authority” at Schedule 3 and why others are deemed not appropriate for inclusion.

327. For many communities, usage of an asset may be as important as ownership. A number of submissions, including those from Federation of City Farm and Community Gardens,²¹⁹ Nourish Scotland²²⁰ and the Community Land Advisory Service, were concerned the:

“main issue with asset transfer requests is that the terms of the Bill do not permit a request to be made to public sector landowners whose functions and governance are reserved to Westminster, so limiting the community benefits that might be realised.”²²¹

328. Nourish Scotland said the Crown Estate, the Forestry Commission, Ministry of Defence and Network Rail are all significant land-owners.²²²

329. Andy Brown from the Scottish Woodlot Association drew our attention to the incompatibility of the provisions of the Bill with those of the Forestry Act 1967, which precludes Forestry Commission Scotland from leasing woodland for forestry purposes. He went on to explain a further complication in regards to the Public Services Reform (Scotland) Act 2010 which is very specific on the bodies that can lease land—

“While the bill that is before us could in theory enable a non-profit co-operative to lease land from the Forestry Commission, the 2010 Act says that only companies limited by guarantee can do so”.²²³

330. The Forestry Commission do lease land to the community as Sunny Lochaber Urban Gardeners told us when we visited Fort William, but we note this was for allotments and not for forestry cultivation.

Appeals process

331. Sections 58 and 59 of the Bill deal with Appeals and Reviews. Where a relevant authority refuses an asset transfer request, or specifies conditions which vary significantly from the request, or does not give a decision notice within the prescribed timescale or otherwise agreed timescale, the community transfer body can appeal to Scottish Ministers. Where the relevant body is a local authority the

²¹⁹ Federation of City Farms and Community Gardens (Scotland). Written submission.

²²⁰ Nourish Scotland. Written submission.

²²¹ Community Land Advisory Service. Written submission.

²²² Nourish Scotland. Written submission.

²²³ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 27 October 2014, column 8

community group can seek a review. The procedure, manner and timescale are to be set out in regulations.

332. DTAS welcomed the introduction of an appeal provision within the local authority asset transfer process. It requested that appeals should be considered by elected members. DTAS also sought clarification of whether the appeal process will apply to the valuation of the asset and the conditions attached to the transfer.²²⁴

333. The Bill currently makes no provision for a right of appeal against a refusal by Scottish Ministers to agree to an asset transfer request.

Definition of a community transfer body

334. We received submissions concerning what type of body should be included within the definition of a “community transfer body”. Section 53 stipulates a community group must be incorporated as a company or a Scottish Charitable Incorporated Organisation (SCIO). The Scottish Woodlot Association would have liked to have seen Industrial & Provident Societies (IPS) included within this definition.²²⁵ The Association had an understanding that the Scottish Ministers have discretion to designate particular bodies (which might include IPSs) as eligible for asset transfer by purchase, but the timescale for this was not clear. Others, such as Co-Operatives UK considered co-operatives and Community Benefit Societies (BenComs) had an appropriate structure.²²⁶ While Social Enterprise Scotland believed Community Interest Companies (CICs) should be specifically mentioned in the Bill.²²⁷

335. In correspondence it was explained a key reason for requiring a community body to be a company or a SCIO was because it was seeking to take ownership of an asset. These structures ensured the body had proper governance and financial management, regulated either by Companies House or by the Office of the Scottish Charity Regulator (OSCR). Officials advised there were many resources and model articles of association etc. available, and becoming incorporated was not overly onerous in the context of the other responsibilities of owning land or buildings.²²⁸

336. We note the Minister’s commitment²²⁹ to bring forward amendments to include BenComs as a type of body which can make an asset transfer request for ownership of land, under section 53 and note BenComs are now defined under the Co-operative and Community Benefit Societies Act 2014.

²²⁴ Development Trusts Association Scotland. Written submission.

²²⁵ Scottish Woodlot Association. Written submission.

²²⁶ Co-operatives UK. Written submission.

²²⁷ Social Enterprise Scotland. Written submission.

²²⁸ Scottish Government. Officials Correspondence, 24 October 2014. Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Scottish_Government_Definition_of_Community_Controlled_Bodies.pdf

²²⁹ Scottish Government. Letter from the Minister, 6 November 2014. Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Kevin_Stewart_MSP_Letter_-_6_November_2014.pdf

337. In addition we note from Scottish Government officials²³⁰ it will be for the public body to satisfy itself that the community body has an appropriate structure to take on the responsibilities involved. It may be appropriate for a 25 year lease to require the body to be a company or SCIO; whereas for a short lease or use agreement, an unincorporated association may be sufficient.

338. The Minister gave a commitment to look at the Co-operative and Community Benefit Societies Act 2014 and consider how this will impact on the implementation of the Bill. We are concerned to ensure as many community groups, as long as they have the right safeguards in place, can access ownership of an asset without delay.

Committee Recommendations on Part 5

339. Some of our recommendations are directed at the changes required to public bodies to ensure the intention of the Bill is achieved in practice. Given this Bill has been found to be necessary we consider it vital progress is closely monitored. To allow that to happen we recommend the Bill require all public bodies to produce periodic reports. The following recommendations include areas to be set out in such a published report and other recommendations.

Capacity of communities to request an asset transfer

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

Relevant authorities' willingness to respond to requests

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

Timescale for consideration of an asset transfer request

342. The Bill should stipulate a 6 month²³¹ maximum time limit following receipt of community transfer body's offer within which relevant authorities must conclude contracts unless otherwise agreed by all parties.

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

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

Information to be provided to community groups

345. To enable groups to assess the funding options available to them we recommend the Bill should stipulate that as a minimum the information listed at paragraph 315 be included in subordinate legislation.

²³⁰ See footnote 228

²³¹ See paragraph 311 for explanation of timescales

Publically available asset register

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

Exclusion of certain public bodies

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

Appeals process

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

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

Definition of a community transfer body

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

PART 6: COMMON GOOD

Background

351. Part 6 of the Bill proposes to reform the law on common good assets held by Scottish local authorities. Sections 63 to 67 of the Bill place new statutory duties on local government in the way they acquire, handle, manage and dispose of assets held for the common good of the community (“common good assets”).

352. The concept of “common good” property has its origins in the Middle Ages where local communities used areas of land/property for communal purposes. Over time such property and other assets became part of the Scottish burghs where they were administered on behalf of local inhabitants.²³²

353. In today’s terms common good property is owned by local authorities for the common good of the inhabitants in their areas. Common good property can include land, buildings, moveable items such as furniture and art, and cash funds.

354. The Local Government (Scotland) Act 1973 (1973 Act) brought an end to the burgh system in 1975 by abolishing the town councils which had responsibility for the burghs. Their common good assets were, however, transferred to the new district or islands councils and then, in 1996, to the current unitary local authorities (Local Government etc. (Scotland) Act 1994 (1994 Act)) Common good property is, therefore, limited to those assets held by the burghs at the time of their abolition. No new common good property can now be created.²³³

355. It is sometimes difficult to know whether property is part of the common good, and there may be restrictions on how certain items of common good property are allowed to be used and whether the local authority can dispose of them. Under the common law those that can be used for a different purpose or disposed of are called “alienable” and those which cannot are “inalienable”. In some cases this has to be decided by the courts.²³⁴

356. Common good assets are required to be treated differently by local councils when compared to other assets a council holds. They enjoy a certain status and stand apart from other property owned by local authorities and in handling them consideration requires to be given to the particular purpose for which the land or other assets were originally granted to the burgh.

357. The governing framework for these assets is complex and combines elements of both statutory law enacted over time, as well as case law from judicial rulings.

²³² SPICe Briefing: *Community Empowerment (Scotland) Bill* (SB 14-58), page 23. Available at: http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_14-58_.pdf [Accessed 21 January 2015].

²³³ SPICe Briefing: *Community Empowerment (Scotland) Bill* (SB 14-58), page 23. Available at: http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_14-58_.pdf [Accessed 21 January 2015].

²³⁴ Explanatory Note, paragraph 276

358. The Bill places a statutory duty on local authorities to establish and maintain a register of all property and assets held by them for the common good. It also requires local authorities to publish their proposals and consult community bodies before disposing of, or changing the use of common good assets.²³⁵

359. The Policy Memorandum explains the aim of Part 6 of the Bill is to increase transparency “about the existence, use and disposal of common good assets, and to increase community involvement in decisions taken about their identification, use and disposal.”²³⁶

Committee submissions

360. From the submissions received, the Committee’s oral evidence sessions, and external visits several key issues emerged:

- The definition of common good assets and resolving disputes;
- Assessing whether an asset is alienable or inalienable;
- The scale of the task and the resource implications of Part 6 of the Bill;
- The coordination, timescales and reporting on common good registers (“CG Register”)
- Equalities and devolved powers.

Defining common good assets and resolving disputes

361. The provisions of the 1973 Act in relation to common good assets continue to apply and it is the principal piece of primary legislation regulating the administration of common good assets by local government in Scotland. It does not define the “common good. Neither does Part 6 of the Bill provide a statutory definition of ‘common good’. Local authorities and others in Scotland rely on a series of common law definitions of common good from court rulings supplemented by statutory or regulatory provisions on such issues as how such assets are to be used and disposed of, or how they are to be accounted for in local authority accounts etc.

362. The Policy Memorandum states—

“These provisions do not seek to provide a new definition of common good. Inclusion on the register, or exclusion from it, will not determine whether property is in fact common good. Given the complexity of the subject, there is a high risk that any such approach might not cover all existing assets which are considered to be common good, and might cover things which are currently excluded. Rather, the intention is to provide an opportunity for community councils, other community bodies and individuals to see what the local authority considers to be common good property, and to highlight any items they believe should be included (or omitted). It is not intended that local authorities will be expected to legally verify the status of every

²³⁵ Policy Memorandum, paragraph 4

²³⁶ Policy Memorandum, paragraph 87

item on the register or proposed during the consultation; this will normally only be necessary if there is significant dispute.”²³⁷

363. The issue of a definition for common good was raised by a number of witnesses. Glasgow City Council in its written submission stated—

“One of the main difficulties encountered by local authorities in dealing with common good issues is determining what actually constitutes ‘common good land’. The existing law on common good is obscure and uncertain due, mainly, to the lack of legislation in the area and the absence of definitive and clear case law. The Bill does not attempt to “define ‘common good land’ and no guidance is given as to which assets ought to be included in the Register.”²³⁸

364. Jim Grey of Glasgow City Council, set out the scale of the task facing a council like Glasgow—

“Glasgow City Council might have in the region of 20,000 title deeds to look at. I am not commenting on what proportion of those could fall within the common good definition, but if you want to do an exhaustive analysis, you will require to look at them.”²³⁹

365. The Society of Local Authority Lawyers and Administrators in Scotland (SOLAR) also raised the following concerns—

- “How and in what circumstances moveable assets held on the common good account [of a local authority] could be disposed of? The legislation is currently silent on this point;
- Definitions of “alienable” and “inalienable” common good. The lack of clarity on these definitions has resulted in the Keeper of the Registers of Scotland refusing to issue a full title indemnity on the sale of any common good land, even where the property is clearly alienable;
- Ideally, the Bill would attempt to define common good rather than having to rely on less than perfect common law definitions.”²⁴⁰

366. Commenting on this, Andrew Ferguson of SOLAR stated the main problem with the management of common good assets by local authorities “is uncertainty about the law”²⁴¹. He pointed out the Bill provides an “opportunity to clarify that situation”, adding—

“If property had been held on the common good account or had been acquired and put on the common good account, it would be difficult for a

²³⁷ Policy Memorandum, paragraph 91

²³⁸ Glasgow City Council. Written submission.

²³⁹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014 columns 11-12

²⁴⁰ SOLAR. Written submission.

²⁴¹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014 column 3

council, even now, to claim that it was not common good. I do not really see that as a difficulty. I suppose that you could expand the definition to talk about the common good account, so that if property had been acquired after the burgh days it would be included in that definition, but I just do not see it being too difficult.”²⁴²

367. Mr Ferguson added “people have argued that there is a risk that doing that could exclude something that people have always thought was common good” but he felt that “with a bit of thought, that need not necessarily be the case”.²⁴³

368. However, he insisted “defining common good is not terribly difficult”... Indeed, a definition of common good land would also be useful. At the moment, the situation relies on lawyers interpreting some very old case law, and it would be far better if we had modern legislation that anyone could read and make a decent stab at understanding.”²⁴⁴

Disputes over common good assets

369. The Policy Memorandum states it is “not intended that local authorities will be expected to legally verify the status of every item on the register or proposed during the consultation; this will normally only be necessary if there is significant dispute.”

370. Dr Lindsay Neil of the Selkirk Regeneration Company spoke from the perspective of a group who would seek to engage with its local authority on the drawing up and maintaining of a common good register—

“The bill should aim to restore to communities their control and influence over what happens to their common good fund. It should also act as a referee on the management by local authorities of common good funds, because we have had experience—and new examples are still cropping up—of failures by local authorities to observe the existing regulations, never mind any change in regulation. The main thing is to involve local people, because the best guardians of property are its owners.”²⁴⁵

371. Recent cases in Edinburgh and East Renfrewshire²⁴⁶ appear to demonstrate disputes over common good assets can be time consuming and expensive, as well as very detrimental to good community relations.

372. Jim Grey of Glasgow City Council outlined some of the additional expense faced by the Council and explained why they sometimes seek external legal advice on common good assets—

²⁴² Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014 column 3

²⁴³ See footnote 242

²⁴⁴ See footnote 242

²⁴⁵ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014 column 4

²⁴⁶ Portobello Park Action Group, Petitioners [2012] CSIH 69 and East Renfrewshire Council, Petitioners [2014] CSOH 129

“We take that course of action to minimise disputes. Other parties and stakeholders might not agree with the legal advice that we receive from our own solicitors; we will want to create a degree of independence; and such a move stops just short of our going to court. That is the only reason why we would do that, because in general we rely on our own legal advice.”²⁴⁷

373. We also heard from Audit Scotland. Responding to comments about its consideration of common good assets it recognised the importance of these issues for communities noting that although councils have made significant strides in registering common good land, buildings and other assets they have made different choices about the priority that should be attached to reconstructing historical records. Audit Scotland recognised making information complete would be a very expensive and possibly impossible task.²⁴⁸

374. A further concern raised is the approach taken by the Keeper of the Registers of Scotland who, we were told, had indicated a full title indemnity on the sale of any inalienable common good land could not be issued without court authority. The Minister did not consider the issue to be relevant stating—

“I am not requiring all common good assets to be registered with the keeper of the registers of Scotland or with the land register. The common good register should be a user-friendly register that people can understand and which can trigger their involvement when decisions are being taken about the disposal of assets.”²⁴⁹

375. Nevertheless we wrote to the Keeper on this issue who advised—

“One of the changes made by the coming in of the 2012 Act [Land Registration etc. (Scotland) Act 2012 which commenced on 8 December 2014] is to make rectification of the register more straightforward, by breaking the link to the warranty scheme (which replaces indemnity). Accordingly, the consequences of a wrongful registration decision are easier to correct. I anticipate that this may shift the balance in dealing with these borderline cases. In particular, I will be less likely to limit warranty in the majority of cases where the applicant for registration is able to certify the validity of the deed implementing the transfer, bearing in mind that I am entitled to be compensated by the applicant if they fail to comply with the new duty to take reasonable care to ensure that I do not inadvertently make the register inaccurate.”²⁵⁰

²⁴⁷ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 14

²⁴⁸ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, columns 40-41

²⁴⁹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 25

²⁵⁰ Registers of Scotland. Written submission.

376. The Minister did not believe definitions of common good or inalienability are necessary for the Bill.”²⁵¹ As an alternative he suggested—

“...current CIPFA guidelines are clear that the best professional practice is that local authorities should maintain a separate register of their common good assets, so it should not be a significant cost or bureaucratic exercise to fulfil the bill’s requirements. I fear that the understanding of some local authorities might be that they have to clarify title deeds and have them registered, but that is a different interpretation.”²⁵²

He added we--

“...chose not to [define common good] because there is an understanding of what common good is at the moment. If people are carrying out their duties with the CIPFA guidance in mind, they should already have an understanding of what common good is.... Frankly, I think that [a definition] would be a feast for lawyers, and I do not see the need for that.”²⁵³

Alienable vs inalienable common good assets

377. As stated earlier, there may be restrictions on how certain items of common good property are allowed to be used and whether the local authority can dispose of them. Those that can be used for a different purpose or disposed of are called “alienable” and those which cannot are “inalienable”. In some cases this has to be decided by the courts.

378. Following recent cases²⁵⁴ in which the courts rejected attempts by local authorities to utilise inalienable land to build new schools we were advised this has created an anomaly with disposal of inalienable land to a third party for commercial purposes being permitted without the need for any authority²⁵⁵

379. Dr Michael Pugh and Dr John Connolly of the University of the West of Scotland called for the Bill to provide “clearer steps for community groups taking control of common good property”.²⁵⁶

380. Fife Community Safety Partnership expressed general concern in terms of the division of common good assets into alienable and inalienable and the problems this can cause in terms of determining whether a common good asset can be disposed of without court consent. The Partnership suggested the Bill—

“provide more certainty for local authorities and communities alike as to what common good property needs consent for disposal, and what does not. This could be provided by a requirement on local authorities to maintain, in their register, separate lists of what they consider to be alienable and inalienable common good property; to do this, it would be

²⁵¹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 24

²⁵² Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 20

²⁵³ See footnote 251

²⁵⁴ See paragraph 246

²⁵⁵ Fife Community Safety Partnership. Written submission.

²⁵⁶ Dr Michael Pugh and Dr John Connolly. Written submission.

extremely helpful to have a statutory definition inserted. Again, this would not in itself be overly difficult. It would be a case of codifying the existing case law and ensuring that the definition was as clear as possible.”²⁵⁷

381. Both SOLAR and Glasgow City Council were anxious to ensure Part 6 of the Bill was clarified so that the transfer of common good assets, under Part 5 of the Bill, from councils to community ownership was made easier, and not inadvertently made more difficult. It was suggested to us “if the community has a plan for it, why should it not be able to take on that asset without there being blocks standing in the way?”²⁵⁸

382. Dr Lindsay Neil of the Selkirk Regeneration Company pointed to the issue of community benefit of common good assets. He contrasted this against the role of local authorities holding the title to assets and the importance this has for common good—

“A fine distinction avoided by many people is that the Local Government (Scotland) Act 1973 did not confer to local authorities the entire ownership of common good funds. It transferred the title, not the beneficial ownership. The beneficial ownership remains with the citizens as a form of power and, in the present day and age, they have very little say indeed in what happens to their common good fund.”²⁵⁹

383. On the decision not to define common good assets in the Bill the Minister stated “the same reasons apply [for not defining common good] because of how common good has been constructed over the years. Some approaches are centuries old and some are the construct of changes to local authority structures.”²⁶⁰

384. Responding to the transfer of common good assets to community groups under Part 5 of the Bill, the Minister stated— “there would be no restriction on a community body using, managing or leasing such an asset—transfer of ownership or disposal is the issue—as long as that fits with the use for which the property was acquired.”²⁶¹

The scale of the task and resources implications

385. In considering the evidence received on common good there was a lack of knowledge on the extent of the task involved in estimating the scale and extent of the work required by councils in complying with Part 6 of the Bill.

²⁵⁷ Fife Community Safety Partnership. Written submission.

²⁵⁸ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 7

²⁵⁹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 4

²⁶⁰ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 24

²⁶¹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 26

386. Jim Gray of Glasgow City Council told us there was a significant potential task facing the Council in assessing the title ownership of its assets, both for the purposes of common good and more generally.²⁶²

387. Audit Scotland stated that at 31 March 2011, councils managed common good assets valued at £219 million. While this accounts for less than 1% of the estimated total value of council owned property assets (then valued at £35 billion), common good assets often have strong historical and emotional value to local communities, as well as being of practical use to them.

388. Many who gave evidence referred to the administrative task facing councils in relation to the common good provisions of the Bill. For example North Ayrshire Council referred to the challenge it faced in—

“identifying all of the community bodies which are known to the authority. Central registers will require to be established, which can be accessed when representations are required to be offered.”²⁶³

389. This concern was also echoed by Highland Council. They pointed out that as a local authority, they have—

“...responsibility for administering ten different Common Good Funds... In relation specifically to Community Councils, the current wording in the Bill would require Highland Council to consult with all 156 Community Councils in its area on the establishment of a register and each disposal of property across any of the funds.”²⁶⁴

390. Highland Council went on to “strongly suggest” the wording [in the Bill] be amended to read “consult only with Community Councils that represent the inhabitants of the areas to which the Common Good related prior to 16 May 1975.” Community bodies agreed, Kincardine and Mearns Community Planning Group stated it would be “unmanageable and unadvisable that every community council in Aberdeenshire be located on every possible change of use of common good land”.²⁶⁵

391. In certain local authorities common good assets make up a large proportion of total assets. Community Planning Aberdeen stated—

“Aberdeen City Council’s Common Good makes up approximately a third of the total city assets therefore Aberdeen has one of the most substantial asset bases of Common Good land in Scotland”.²⁶⁶

392. In response to the debate around the costs of the provisions of the Bill to local authorities, and especially on the compilation of Common Good Registers, the Minister said—

²⁶² Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 11

²⁶³ North Ayrshire Council. Written submission.

²⁶⁴ Highland Council. Written submission.

²⁶⁵ Kincardine & Mearns Community Planning Group. Written submission.

²⁶⁶ Community Planning Aberdeen. Written submission.

“The bureaucracy—the cost of servicing the process—could easily be subsumed. Take the common good requirements, for example. The Chartered Institute of Public Finance and Accountancy already requests that the register—the understanding of assets as they relate to common good—be kept separate from mainstream council funding. Therefore, it should not be too onerous to produce a register of what is in the common good fund and what those assets are. The question is then about how we engage with communities. If the public sector engaged more collaboratively—through community planning partnerships, for example—it could remove some of the costs of duplicating the consultation by consulting just once, properly and more effectively.”²⁶⁷

The coordination, timescales and reporting on common good registers (“CG Register”).

393. It is clear local authorities have had a scattergun approach to common good registers. Given the pressures placed upon them over the last 30 to 40 years in terms of delivering complex and interlinked public services, it is perhaps not surprising that common good had not featured as a priority in their work.

394. Responding to the view that the public would find it hard to understand how a local authority was unable to state with any certainty all of the assets under their control, Jim Grey of Glasgow City Council responded—

“We have a register, but we regard it as imperfect. We are trying to perfect it and to make it as comprehensive as possible... It is regrettable, but the matter is very complex and over years and decades local authorities have perhaps not given it the priority that they might have.”²⁶⁸

395. Andrew Ferguson of SOLAR told us—

“I do not see why the timescale for producing a common good asset register should not be fairly short. As colleagues have said, most local authorities have a common good asset register of some sort. The first step, in terms of the legislation, is to publish those registers, which will lead to a discussion. There is no doubt that community interests will have local knowledge; I know that because we have been through the process in Fife. That local knowledge will feed in and help to create a robust common good register. I see no reason why the timescale for initial publication, as proposed by the bill, should not be short. However, getting to the end of having a common good asset register that is absolutely 100 per cent accurate is a bit like painting the Forth bridge.”²⁶⁹

396. Responding on timescales for local authorities to draw up registers, the Minister told us he would consider whether that should be set out in regulations.

²⁶⁷ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 4

²⁶⁸ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 12

²⁶⁹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, columns 14-15

Committee Recommendations on Part 6

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

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

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

PART 7: ALLOTMENTS

Background

400. Existing allotments legislation is a complex area, particularly in relation to land owned by local authorities. The principal legislation governing allotments is the Allotments (Scotland) Act 1892 as amended by the Land Settlement (Scotland) Act 1919 and the Allotment (Scotland) Acts of 1922 and 1950. These acts currently detail the duty of local authorities to provide land in their local area for allotments, and the conditions under which this duty is placed. The legislation also gives local authorities powers to provide sufficient numbers of allotments in their area by purchasing or leasing suitable land.

401. Further, the 2003 Local Government Act (Part 3) creates a discretionary power which enables local authorities to do anything they consider is likely to promote well-being of their area and/or people.

402. Part 7 of the Bill proposes to repeal the existing legislation (that specifically relates to allotments) and make a new “updated, simplified and clarified” provision for allotments. The Policy Memorandum notes this was considered to be a more straightforward approach than to seek to amend the previous legislation. The new legislation includes the restatement of existing legislation where appropriate.

403. The Scottish Government published its first National Food and Drink Policy, Recipe for Success in 2009, which included a commitment to strategically support allotments and community growing spaces. Following on from this publication, the Grow Your Own Working Group was established in 2009 and their report (Grow Your Own Working Group 2011) contained a recommendation to amend the existing legislation governing allotments. The Group specifically highlighted the need to review the duties placed on local authorities in this area.

404. In addition to two consultations on the Bill, the Scottish Government also held a separate consultation on the proposed allotments legislation in April-May 2013, which they advise has informed the detail of the provisions in the Bill.

405. The provisions in Part 7 of the Bill seek to ensure local authorities have a duty to provide allotments and to manage requests through the maintenance of a waiting list. Local authorities also have a duty under the Bill to take “reasonable steps” to provide a sufficient number of allotments to ensure that waiting lists are kept below a specified target. This part of the Bill also defines the duties of local authorities in respect of running, maintaining and reporting on their allotment sites. This includes preparing a food-growing strategy and an annual allotments report. The remainder of Part 7 relates primarily to local authority powers to manage allotments and to the rights of allotment tenants in respect of these powers.

Committee submissions

406. Initially only a relatively small number of submissions received focussed on allotments. Given the community focus of this part of the Bill, we undertook an additional public engagement programme to seek the views of allotment holders and communities from across Scotland on the issues surrounding the role of

allotments, access to land and food growing space and how community-based food initiatives could add to physical, economic and social well-being. As part of this process we undertook fact-finding visits, produced a short internet video and made use of social media to engage with people and communities. Annexe D sets out the extent of this in more detail, as well as containing responses we received via social media.

407. A number of areas highlighted were examined further through the Committee's oral evidence sessions. These matters can be summarised under the following main heading:

- The number of allotments
- Provision of allotments
- Size of an allotment plot
- Availability of land for allotments
- Food growing strategy
- Food growing skills
- CPPs, food growing strategies and cultural change
- Equality and accessibility

The number of allotments

408. The number of allotments in Scotland has fluctuated greatly over the last century. The high water mark for allotment use came towards the end of World War II, owing to rationing and the need to generate food during the war, when there were approximately 65,000 allotments in Scotland. Since then numbers have declined.

Provision of allotments

409. We heard "more than half" of the current stock of active allotments are "in our four main cities, and the rest—fewer than 3,000 of the 6,500—were scattered across the rest of Scotland".²⁷⁰ And we were told statistics show there are currently about 4,500 people on waiting lists in our four main cities.²⁷¹

410. While there is existing legislation to regulate the operation and management of allotments in Scotland, there is currently no statutory duty on local authorities to provide members of the public with allotment sites. Part 7 requires local authorities to "take all reasonable steps" to provide an allotment to those who request one.

411. Scottish Allotments and Garden Society (SAGS) was concerned local authorities would reduce plot sizes to meet demand. Others suggested many people did not put their names on waiting lists as the wait was too long. John Hancock told us "There is a need for provision for people who arrive in town and want to just get on with things rather than putting their name on a waiting list in the expectation that they will still be living in Glasgow in five years' time."²⁷²

²⁷⁰ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 26

²⁷¹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 29

²⁷² Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 28

412. In this regard the Minister told us—

“...councils must take all reasonable steps to satisfy demand. We are not talking about some absolute trigger point whereby, when a certain level is reached, allotments must be produced within said time in said place for said people, because that would take away from the flexibility of local authorities to adapt to circumstances. It is about taking all reasonable steps to meet the demand.”²⁷³

Size of an allotment plot

413. The ‘traditional’ size for an allotment plot was about 300 square yards, or about 250m². SAGS is keen to see this specified in the Bill. It was also concerned about the lack of precision when referencing the size of an allotment and proposed the Bill should refer to a normal plot as being 250m², which could then be subdivided into halves or quarters to suit local circumstances.²⁷⁴

414. SAGS justified the need for a normal size to be set in term of allotment plots—

“A 250m² plot is sufficient for someone to feed a family of four. Plots that are smaller than that will not have that capability.”²⁷⁵

415. We explored issues around flexibility for local authorities, and others, to meet the demand for varying types of growing spaces, suitable to the needs of the applicant.

416. Mr Hancox, who has petitioned the Parliament regarding the right of access to land to grow food, told us “small-size growing, which can be growing in a square metre, a barrel or in a flower pot on a windowsill, is all great and I would encourage all of it.”²⁷⁶ He continued—

“Although I am very much in favour of increasing allotment provision, I think that it is essential that we allow considerable flexibility, whereby local authorities and other agencies can allow land to be used for a period of time without getting too bogged down in legal hurdles.....There has to be a partnership approach with landowners. That is critical. My petition looks at publicly owned land—health board land, local authority land and so forth.”²⁷⁷

417. Responding to the need for local authorities to have flexibility in the provision of growing spaces, SAGS stated—

²⁷³ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, columns 6-7

²⁷⁴ Scottish Allotments and Gardens Society. Written submission.

²⁷⁵ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, columns 21-22

²⁷⁶ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 25

²⁷⁷ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, columns 22-23

“I take your point about flexibility. We want the 250m² there as a reference standard, not as an obligatory standard that has to be applied in all instances. Part of the response that we have had to our concerns about the removal of any reference standards is that, if it appeared that the majority of plots provided through local authorities in future were reducing in size, action could be taken but, if there is no reference standard, what would that action be based on?”²⁷⁸

418. The Minister told us the Government wished to be “quite flexible” and to “not be too prescriptive” by leaving it up to local authorities “to decide the size and nature of allotments”. He sought to reassure local authorities that the Bill “will not place a huge new burden on them, but it will certainly move things along more proactive lines.”²⁷⁹

419. On a standard size for allotments he stated—

“...the spirit of the legislation is that the trigger point encourages a local authority to meet demand, which might simply be for a space to grow things in, not necessarily for an allotment of a set size. We want local authorities to be able to define that for themselves. It would send the wrong message about empowerment and localism if I determined everything centrally in Edinburgh, including the size of an allotment, when, for good reason, local variations might be required in relation to things such as the size and nature of a site or the size of allotment that local people want.”²⁸⁰

420. He noted also the Government “have powers under the bill to prescribe the size of allotments, if necessary.”²⁸¹

Availability of land for allotments

421. Many local authorities raised concerns about the cost of providing suitable land to meet the statutory duty placed upon them by Part 7 of the Bill. Access to suitable land is, in many respects, central to the discussion around the provision of allotments and access to space for growing food.

422. Much of urban Scotland has parcels of land which are, or could be, made available for cultivation but which are currently sitting idle and not being used for a variety of reasons. Three categories of such land were referred to in evidence to us.

423. The first category is vacant or derelict land earmarked for development at some future point for other uses, such as for house construction, or commercial or retail development. Such land may be owned either by public or private interests, and its interim use is often referred to as *meanwhile land* (i.e. land which is used

²⁷⁸ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 21

²⁷⁹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 7

²⁸⁰ See footnote 279

²⁸¹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 8

for a temporary purpose, such as food growing, until such time as it is required by its owner to use for some other form of development).

424. The second category is vacant or derelict land which may be unsuitable for growing due to contamination of the soil with the by-products of its former use. Often this land is former industrial land which may contain hazardous material, chemicals or heavy metals making the land unsuitable for cultivation without remediation and decontamination works being carried out.

425. The final category is land currently used for other purposes, such as parks, green spaces, or land which either forms part of the grounds of existing public or private buildings (e.g. hospitals, offices, or other buildings) or land which is adjacent to major infrastructure systems (such as the road and rail networks, water infrastructure or other areas).

426. Speaking about vacant and derelict land, and its potential usefulness in cultivation and growing areas, John Hancox told us “in Glasgow, there is around 3,000 hectares of vacant and derelict land. There are vast areas of what is known in the trade as green desert—great areas of grass where nothing happens.”²⁸²

427. Nourish Scotland suggested—

“... we need more ground under community cultivation, whether that is allotments or community gardens. There is 300 hectares of derelict land in Edinburgh alone ... Less ground is being used for allotments in Scotland than there is derelict land in Edinburgh.”²⁸³

428. Nourish Scotland said there was a need to approach the provision of allotments as part of a much wider strategic process of land reform, and to seek to see such land as a resource to be utilised—

“A strategic approach to supporting allotments and community gardens and, as John Hancox said, using land that is not being used for other purposes will form part of a much more strategic approach by local authorities to promoting local food growing and more sustainable food consumption and reducing food inequalities. We have to see food as part of a much more strategic approach. We also expect that the new land reform legislation will broaden our approach to looking at the use of land in the public interest and for the common good.”²⁸⁴

429. We have been impressed by the meanwhile use of land as a method to provide access to growing space for community-based projects, such as the Grove Garden Project at Fountainbridge in Edinburgh. We took the example of the Grove as the basis for a short engagement video to seek further engagement from the public on this Part of the Bill. This video can be viewed on the Parliament’s

²⁸² Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 26

²⁸³ See footnote 282

²⁸⁴ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 22

YouTube Channel²⁸⁵ and Annex D contains examples of the feedback in response.

430. The Federation of City Farms and Community Gardens (FCFCG) spoke of the “potential to use a lot of derelict and underused land” at present. We were told “in Glasgow, the stalled spaces programme has been quite successful in using such land. Guerrilla gardening is but one type of community gardening that people can do to make use of that kind of land.”²⁸⁶

431. Nourish Scotland while pointing out the costs associated with decontaminating such land spoke of “good examples of growing on derelict contaminated land” using systems such as raised beds and the like.²⁸⁷

432. The FCFCG told us that the “grow your own working group recently launched a contaminated land guide for groups wishing to assess whether their land is contaminated. There could be more support for organisations that are doing that kind of work.”²⁸⁸

433. Responding to the view that a broader approach should be taken by requiring land owning public sector bodies to have a duty in relation to both the provision of allotments and the food-growing strategies, the Minister stated—

“That is a very helpful suggestion.I would expect a local authority to be able to work with other public sector—or even private sector—partners to identify suitable sites.... Although the absolute duty rests with local authorities, I would expect them to work with other public sector partners, whether the police service, the fire service or the health service, to meet that demand. That would be an example of the true joint planning and resource management that we intend to take place in community planning partnerships.”²⁸⁹

Food growing strategy

434. Part 7 also introduces a statutory requirement for local authorities to draw up and maintain a food growing strategy. The requirement reflects the growing awareness of the need to promote sustainable food production locally, and many local authorities already have food growing or horticultural strategies in their areas. This provides an opportunity to link several policy developments together, namely local food growing strategies, the national food and drink strategy and community planning.

435. In its written submission, Nourish Scotland noted—

²⁸⁵ Local Government and Regeneration Committee video on allotments and the Community Empowerment (Scotland) Bill: http://youtu.be/Zj2zorW_vvM

²⁸⁶ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 30

²⁸⁷ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 31

²⁸⁸ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 23

²⁸⁹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 21

“the local authority is also under an obligation to prepare a food growing strategy within two years of the Bill coming into force. The strategy should also identify areas that might be used to provide allotment sites or other areas of land that may be used for community growing. This must be reviewed every 5 years but there is no requirement to report on it.”²⁹⁰

436. On 20 November 2014 the Parliament debated the progress to date of *A Recipe for Success*,²⁹¹ and considered how it would be improved and built upon.²⁹² During the debate reference was made to the need to develop food growing and horticultural skills amongst the public, especially children.

437. Responding to questions about the need to encourage children to take part in gardening and food growing the Cabinet Secretary for Environment and Rural Affairs, Richard Lochhead, said—

“...we have fantastic, nutritious food on our doorstep but not enough people, particularly our children, enjoy and have access to it. If we can make that happen, it will also be good for our economy.”²⁹³

438. During this debate Alex Rowley MSP said the national food and drink policy, and the provisions of the Bill – especially those relating to allotments – should complement each other—

“...I think that it is important that we look right across Government. The Community Empowerment (Scotland) Bill, which is currently being scrutinised, has a part on allotments. A lot more can be done....local authorities must be a clear partner in the strategy. They are doing a lot of work.”²⁹⁴

439. Nourish Scotland indicated a need for a wide approach—

“We should not focus our allotments policy on the existence of waiting lists. We should have a clear public policy that we want to see more people growing more of their own food. It is part of community empowerment and part of a resilient food strategy.”²⁹⁵

“We think that the food-growing strategy should include clear provision for traditional allotments, for the use of meanwhile land for community growing, and also for more ambitious larger-scale programmes.”²⁹⁶

²⁹⁰ Nourish Scotland. Written submission.

²⁹¹ *A Recipe for Success* (2009): <http://www.scotland.gov.uk/publications/2009/06/25133322/0>

²⁹² Meeting of the Parliament, *Official Report 20 November 2014*:

<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9639&mode=pdf>

²⁹³ Meeting of the Parliament, *Official Report 20 November 2014, column 45*

²⁹⁴ Scottish Parliament Local Government and Regeneration Committee, *Official Report, 20 November 2014, column 60*

²⁹⁵ Scottish Parliament Local Government and Regeneration Committee, *Official Report, 5 November 2014, column 26*

²⁹⁶ Scottish Parliament Local Government and Regeneration Committee, *Official Report, 5 November 2014, column 30*

Food growing skills

440. The FCFCG highlighted that “more thought needs to be given to strategically addressing the skills and resources of community groups”. They told us there “is a massive skills gap in horticulture at the moment, and the food-growing strategy seems to be an opportunity to address that at a local authority level”.²⁹⁷

441. SAGS also reflected concerns over the “lack of knowledge and skill” which exists in terms of food growing and gardening, one of the reasons for which is the fact that the “allotment world has shrunk so much that it is not something that features in many people’s experience any longer”. SAGS went on to state—

“...community gardens and the other smaller growing initiatives all have a part to play. That is where people will learn, so there is undoubtedly a value to all that, but there needs to be a mechanism to allow for people who learn and then want more”.²⁹⁸

CPPs, food, growing strategies and cultural change

442. The Parliamentary debate on 20 November reflected a theme we identified in our scrutiny of this Part of the Bill, namely how allotments and community food growing projects can empower communities, not only assisting them in becoming food resilient and reducing their dependency on food banks, but also to assist towards promoting a food-growing economy.

443. In their evidence to us, Nourish Scotland said “there should be an emphasis on a community food economy in and around our cities and that food-growing strategies should contribute to developing that.”²⁹⁹

444. Nourish Scotland did not consider the Bill would support the Government’s strategy of providing allotments and food growing space, it suggested a wider cultural change was necessary.³⁰⁰

445. John Hancox was more positive, suggesting the Bill—

“has the potential to change the culture in local authorities and institutions such as the Forestry Commission, so that they can use their considerable landholdings and financial clout to enable community engagement and develop growing.”³⁰¹

He added—

“There ought to be a culture in which people are able to identify bits of ground that are not being used and can then dig holes and get on with it. The essence of community empowerment is that people are able to get on with it. The onus should be put on to local authorities and others to be

²⁹⁷ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 23

²⁹⁸ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 24

²⁹⁹ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 30

³⁰⁰ Nourish Scotland. Written submission.

³⁰¹ See footnote 297

supportive and to enable that process to happen, rather than to create onerous frameworks that put a lot of responsibilities around public liability on to the local groups, which can be difficult for groups that are not terribly powerfully constituted to deal with.”³⁰²

CPPs, National Performance Framework and local development plans

446. Many we heard from suggested there was potential for food growing strategies to provide the platform necessary to ensure allotment policy and provision of food growing space becomes a central element of community planning.

447. This, in turn, could ensure all CPP partners, and not just local authorities, become responsible for the delivery of allotments and food growing space.

448. Nourish Scotland spoke of the link to outcomes and the importance of ensuring the forthcoming sustainability United Nations goals are integrated into food growing strategies from the outset—

“We welcome the part of the bill that focuses on outcomes being part of community planning. We want to see an outcome related to food squarely in the middle of the new set of outcomes that are agreed with local authorities’ post-2016. We would want them to draw on the new, post-2015 United Nations sustainable development goals, which are being published next year and which include the strategic goal to end hunger, improve nutrition and promote sustainable agriculture. Once those UN goals are in place, they will frame a lot of the single outcome agreements. Once an outcome relating to food is part of the national performance framework, we will see a much greater focus by local authorities on food-growing strategies.”³⁰³

449. In response to a question as to whether allotments and garden spaces should feature in councils’ local development plans, SAGS responded “yes” and said—

“It is important that people get decent affordable housing, but it is equally important that land is set aside for some type of growing activity or whatever type of green space activity that people want.”³⁰⁴

450. Nourish Scotland called for food growing strategies to deliver “far more allotments and community gardens in Scotland,” adding a concern “the bill does not have any levers to require that to happen. The framework of single outcome agreements is the lever that we need.”³⁰⁵

³⁰² Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 22

³⁰³ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 21

³⁰⁴ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 31

³⁰⁵ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, column 24

451. During our visit to Fort William we were told of the work of Sunny Lochaber Urban Gardeners (“SLUG”), and how they had in 2010 established allotments on land provided by the Forestry Commission owing to a lack of suitable allotment land in the Fort William area.

452. Up until now most of the produce generated by SLUG has been for the personal consumption of the allotment holders and their immediate families. However, SLUG now has ambitions to move into the commercial food growing economy, by selling its produce to local people and businesses (such as restaurants and hotels etc). This is where the commercial restrictions of allotment legislation intersect with the social, commercial and empowering effects which successful community-based allotment and food growing enterprises have, as well as clashing with the longer term aspirations of those involved. SLUG recognised with this might come a need to change its legal basis.

Equality and accessibility

453. The need to ensure the Bill delivers allotments and growing spaces which are accessible to all sectors of society was raised with us.

454. The Glasgow Third Sector Forum sought to ensure the allotments provided under Part 7 of the Bill were accessible and they recommended the Bill be amended by—

“adding a requirement to include a proportionate number of accessible allotments in any new allotment, for use by wheelchair users and buggies. Accessibility aspects would include wide, all-weather decking and raised planting areas. For all existing allotments, we recommend that accessibility be phased-in over five years from the date of the implementation of the Bill. This equalities-based suggestion would clearly need to be resourced, and public bodies should be encouraged or required to make provision for this.”³⁰⁶

455. Similar issues were raised during our fact-finding visits to Glasgow, Dumfries and Fort William. Several allotment holders expressed concerns about a lack of accessible or suitable growing space by local authorities. Many felt the Bill should specifically reflect the benefits to wellbeing and health which allotments and growing space can have for people.

456. These points were acknowledged by the Minister when he told us—

“It is fair to say that we need to expand our communities’ capacity, but we need to make the approach more consistent and to build in legislative provision to tackle inequality. In the guidance, we are very mindful of the inequalities that exist and of the fact that there is not a level playing field.”³⁰⁷

457. He mentioned a proposed amendment at stage 2 which we understand will broaden the definition of “disability”—

³⁰⁶ Glasgow Third Sector Forum. Written submission.

³⁰⁷ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 11

“That is necessary so that, when people are weighing up decisions on asset transfers and so on, they think about inequalities. Local authorities might well want to consider that more fully in relation to allotments.”³⁰⁸

Committee Recommendations on Part 7

458. A consistent message we have taken from our scrutiny of Part 7 of the Bill is the opportunities for community empowerment and physical, mental and social well-being through access to allotments and food growing space. In essence it is the basis for a shared community of place and interest, providing many with networking links, and human interaction.

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

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

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

462. The Scottish Government should indicate how it will ensure CPPs are required to engage private and commercial sector land owners to assist in supporting food growing and allotments. As examples such as the Grove Project in Fountainbridge have shown, there are economic and commercial benefits for private landowners to engage and support food-growing strategies.

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

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

³⁰⁸ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, column 34

465. We recommend the community-based allotment and food growing sector be encouraged to become part of a viable empowering food economy while also ensuring the land available to them is not taken advantage of by the larger scale commercial food production industry. We look forward to an appropriate amendment loosening the restrictions in section 87 to make this clear.

466. The need to ensure allotments and food-growing strategies support the equality agenda is an important one. We welcome the proposed Stage 2 amendment to ensure the provisions relating to physical disabilities address a broader definition of disability and inequality.

PART 8 NON-DOMESTIC RATES

Background

467. Part 8 of the Bill introduces a new power to allow local authorities to create localised relief schemes relating to non-domestic rates (“NDR”). These are also known as “business rates” and are a property based tax charged on properties used as businesses (e.g. shops, offices, warehouses and factories) and the public sector. As at 1 April 2012 there were 217,598 properties subject to non-domestic rates.

468. The rates liability for each property is determined by taking the rateable value and multiplying by a rates poundage set annually by the Scottish Ministers, less any relief to which a ratepayer may be eligible. The rates poundage rises annually, usually in line with inflation.

469. The Scottish Government has a series of relief schemes that are aimed at helping businesses by reducing their rates bill. The main relief is the Small Business Bonus Scheme aimed at supporting small to medium enterprises and business start-ups. Other reliefs include empty property reliefs and reliefs for charitable properties and properties in rural areas. Agricultural land is generally exempt from NDR.

470. In 2011, 57% of business properties paid zero or reduced rates. Currently reliefs are set centrally by the Scottish Government, with local authorities having very limited scope to vary the terms locally.

471. NDR income is currently the single largest source of revenue under the control of the Scottish Government and in the last five years has been increasing annually, principally as rateable values have increased.

472. The administration of business rates and relief schemes is a matter for each local authority. The income is pooled at a Scotland wide level and distributed to each local authority as part of the local government funding settlement. Once set local authorities are guaranteed to receive the amount stipulated, with central government making up any shortfall and local authorities returning any excess collected.

473. This differs from other arrangements for example the Business Rates Incentivisation Scheme (BRIS) which, from 2013/14, allows an authority to keep 50% of any rates growth with the remainder being passed to the Scottish Government.

474. With reference to Part 8 of the Bill the Policy Memorandum states “there will be no restrictions on this power; local authorities will be able to grant the relief to any type of ratepayer or for any reason, as they see fit.” But, it goes on to state that any reliefs “will need to be fully funded by that authority, so it will need to balance the interests of taxpayers across its area.”³⁰⁹

³⁰⁹ Policy Memorandum, paragraph 103

475. The Committee sought elaboration on the potential uses of the power in this Part. The Government replied—

“Relief could be granted to a sole property, a street, a town centre or a particular type of business or sector. They could be used, for example, to support or create employment, or to encourage regeneration of a particular area.”³¹⁰

The reply add relief--

“will vary depending on local economies and communities. By reducing business rates taxation local authorities may, for example, reduce the overheads of community based groups, or owners/ occupiers of properties that otherwise support vulnerable communities, or could incentivise such groups to occupy premises they could not otherwise afford.”³¹¹

476. These provisions were consulted upon as part of a wider consultation on reform of business rates by the Scottish Government in 2013, [Supporting Business, Promoting Growth](#) and received a high level of support (75% of those who expressed a view).

477. The summary of responses to the Government consultation concluded—

“The creation of a new power for local Councils to offer their own localised discounts on business rates was viewed by most consultees as a positive step, including by a majority of Councils themselves. Such a power could, for example, be used to attract new or support existing businesses.”

478. Overall forty-one respondents to the Scottish Government consultation supported the proposal with 13 against. The Committee were interested to note that more councils (5) opposed the proposal than business representatives (3).

479. 13 respondents said councils should not have flexibility to introduce and fund relief schemes to reflect local circumstances and priorities. The main theme was the need for uniformity across Scotland. Some said non-domestic rates are a national tax and, as such, there should be limited differences across Scotland while another felt this flexibility might favour large councils. Another noted it may lead to businesses playing councils off against each other.

480. One response from business representative organisation/ trade body groups was illustrative—

“Consistency between Local Authorities is important and we would not wish to see a return to the 32 Scottish Councils having flexibility to set their own poundage rates or fund relief schemes. We believe such flexibilities could only be funded by other local existing business rates payers, increasing their bills and acting as a disincentive to investment. This would create a competitive distortion.”

³¹⁰ Q&A 135

³¹¹ Q&A 132

481. Consistency was also a theme in other responses as well as funding considerations with neither local authorities nor existing local businesses keen to fund discounts.

Committee submissions

482. Only a few respondents to the Committee's call for evidence commented on Part 8. Argyll and Bute Council were of the view—

“there should not be any flexibility to introduce local relief schemes as NDR is a national tax which local government collects on behalf of the Scottish Government and as such there should be very limited difference in how this is levied across Scotland.”

483. They were particularly concerned they would be—

“subject to many more calls for us to offer rates relief e.g. in response to roadwork disruptions. However it will usually be difficult to fit individual circumstances into an overall “scheme” - which is what is required under this new legislation.”

484. In evidence to us John Mundell, Chief Executive Inverclyde Council highlighted an advantage of the provisions in Part 8 of the Bill—

“They will allow a local authority to take notice of specific local conditions, possibly right down to an individual street or particular community in a local authority area, and to target that area to help incentivise and support businesses.”³¹²

485. Garry Clark from Scottish Chambers of Commerce suggested—

“The power to reduce business rates in a local authority area could be a cost to a local authority. That is only right, but the business rates incentivisation scheme ought to be geared to allow that local authority to benefit at least in part from the encouragement of enterprise in its area.”³¹³

486. North Lanarkshire Council suggested the current strength of the existing system is it provides a consistent, and reasonably non-discriminatory, tax on business regardless of the location of the business within Scotland. They were concerned the proposal may create a ‘race to the bottom’ where businesses will look to the local authority to better the scheme on offer elsewhere and the cost of the relief granted will be met by the council tax payer. This, they suggested, may favour larger/Council Tax rich local authorities in their ability to fund such schemes at the expense of other local authorities.

487. East Ayrshire Council noted—

³¹² Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 5 November 2014, 1 October 2014, column 37

³¹³ See footnote 312

“should the Council wish to continue such schemes for example, to help regenerate town centres by encouraging empty properties back into use, then it would be potentially at the Council’s expense. It would be important therefore that [other] Scottish Government/national funding streams continued to be made available and accessible to support local authorities.”

Adding--

“the ability to introduce local relief schemes puts a degree of control in the hands of the Council. However, while we continue to operate a national pool, this will only impact on the margins. The key determinant of the cost of Non-Domestic Rates for businesses will remain the rateable value (determined by the assessor) and the rate poundage (determined by Scottish Ministers). The challenge will therefore be ensuring that any scheme is fair, affordable and delivers community benefits.”

488. We heard from Garry Clark from the Scottish Chambers of Commerce that “business rates are usually the number 2 or 3 cost for many businesses”³¹⁴ and the proposed scheme could be a “useful tool in the box”. He added the power would—

“allow a local authority to fine tune the non-domestic rating system in its area, perhaps to target an area or a type of business that it wants to encourage. It could target streets or communities in an area.”³¹⁵

489. East Lothian council’s submission to the Finance Committee noted the potential for interested parties to make representations to obtain relief and the concomitant effect that would have administratively. They then answer their concerns indicating—

“To facilitate an orderly administration of relief available under the scheme it would be essential to include any provisions within our Discretionary Rates Relief policy thereby ensuring that decisions are made in a consistent manner, robust enough to withstand appeal.”³¹⁶

490. East Lothian council also noted potential benefit based on experience in Leeds which sought to attract new businesses to their area and to encourage economic growth by awarding relief for a limited period. Observing short term costs could be beneficial in the longer term.³¹⁷

491. The Scottish Retail Consortium (SRC) supported the principle behind the proposed local discretionary relief, viewing it as a welcome acknowledgement of the need to keep down costs for retailers and other businesses.

³¹⁴ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 1 October 2014, column 30

³¹⁵ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 1 October 2014, column 28

³¹⁶ Submission to Finance Committee. Available at: [http://www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/East_Lothian_Council_Community_Empowerment_\(Scotland\)_Bill.pdf](http://www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/East_Lothian_Council_Community_Empowerment_(Scotland)_Bill.pdf)

³¹⁷ See footnote 316

492. However the SRC strongly counselled against any amendment to allow councils to increase rates bills, for example in the form of a local discretionary supplement. Their research showing one in every eleven retail premises is empty, and anything that makes it more expensive or more difficult for retailers to invest would only exacerbate this problem.

493. Similarly the Royal Incorporation of Architects Scotland noted a potential benefit; if schemes resulted in an increase in the use of redundant/neglected properties there would be an overall net financial gain. They also suggested the provisions will help empower communities to create solutions to their needs and revitalise run-down town centres.

494. The FSB Scotland suggested local discretion over extending reliefs may be one way to support small, independent businesses. However, they remained “cautious about the likely impact of this new power, particularly if they have to be fully funded by the local authority.”

495. Both the Historic Houses Association Scotland (HHAS) and Scottish Land and Estates cautioned against “*any relief scheme which arbitrarily gives a market advantage to one particular type of ownership or governance structure.*” HHAS added—

“we could perceive difficulties arising for instance in the rural sphere where a community-owned shop was party to relief, which was not available to an adjacent privately family owned historic house shop paying full rates.”

496. The Scottish Property Federation’s submission to the Finance Committee raised the potential impact this could have on landlords. They were concerned local authorities might seek to recoup the reduced rates income by passing it on to local landlords. Given the restrictions inherent in the scheme we do not understand how this could occur. An alternative scenario was expressed in oral evidence by Jim McCafferty from the Institute of Revenues, Rating and Valuation who suggested there was anecdotal evidence that some landlords would seek to increase rentals for some types of properties benefiting from rates reductions.³¹⁸

497. John Mundell, Inverclyde Council made the point that—

“any grant or support given by the community planning partnership, or indeed by the council, would have to be tied to some performance measure so that we get some transformational change through that process to help business to grow or to attract them to the area.”³¹⁹

498. Finally we considered a petition from Ellie Harrison that raised issues about the growth of the large retail sector, such as the Tesco Metro and Sainsbury’s and suggesting their local shops are being created to the detriment of some of the smaller traders in high streets and town centres. We asked whether Part 8 of the Bill takes on board communities’ concerns about the number of Tesco Metros,

³¹⁸ Scottish Parliament Local Government and Regeneration Committee, *Official Report, 1 October 2014, column 34*

³¹⁹ Scottish Parliament Local Government and Regeneration Committee, *Official Report, 1 October 2014, column 32*

Sainsbury's Locals or whatever else that are coming into an area and potentially decimating local high street traders.

499. John Mundell from Inverclyde Council in response indicated powers were more likely to be used to assist—

“not necessarily the Tesco Metros but, say, a local butcher to develop in a town centre or on the high streets of our small towns.” He added “I would rather use the powers in a selective and focused way to attract smaller businesses instead of the national networks such as Tesco that you mentioned.”³²⁰

Committee Recommendations on Part 8

500. Having considered the responses we have received on this Part of the Bill we make the following observations:

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

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

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

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

³²⁰ Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 1 October 2014, column 36

**ANNEXE A: RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT
COMMITTEE REPORT ON PART 4 OF THE COMMUNITY EMPOWERMENT
(SCOTLAND) BILL**

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

EXECUTIVE SUMMARY

1. The Rural Affairs, Climate Change and Environment Committee considered Part 4 of the Community Empowerment (Scotland) Bill and reports to the lead committee as follows.

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

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

4. The Committee is concerned about the level of detail provided in the Policy Memorandum and in the Financial Memorandum. The Committee believes that the significance and complexity of the provisions within Part 4 of the Bill would have merited further explanation and clarification within the Policy Memorandum. The Policy Memorandum could also have provided further consideration of sustainable development and human rights could have been brought into the wider context of the Bill which may have assisted, and might still assist, in establishing an environment which would facilitate a more constructive dialogue between landowners and communities.

5. Whilst the Committee understands that community right-to-buy will be demand-led, the costs for communities and landowners and the costs to public bodies of providing support to communities are unclear and the Committee is of the view that the Financial Memorandum ought to have given greater consideration to this. The Committee recommends that the Scottish Government monitor the cost implications of the Part 4 provisions closely over the coming years, in terms of both the direct costs to communities and landowners and the indirect costs to public bodies and keep the funding requirements under review.

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

7. The Committee heard the views of those who would prefer the Bill to define the characteristics of an eligible community body rather than specify the eligible legal structure. However at this time the Committee remains unconvinced of this approach. The Committee welcomes the commitment of the Cabinet Secretary to consider potential amendments at stage 2 to extend the list of eligible community bodies and recommends that the Scottish Government bring forward amendments to include Community Benefit Societies and Community Interest Companies.

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

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

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

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

12. The Committee is aware that for many communities and applications late registration will continue to be the norm. The Committee considers that the process for late registration should reflect the practical reality for

communities and should be redesigned to accommodate this. The Committee remains unconvinced, where there is a late application, of the need to impose a requirement on communities to show either good reason or demonstrate relevant work.

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

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

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

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

17. The Committee considers that there are convincing arguments that the tests of 'furthering sustainable development' and of being 'in the public interest' are capable of testing all requirements. On that basis, the Committee recommends that the Scottish Government reconsider the requirement that eligible land be restricted to land which is wholly or mainly abandoned or neglected and recommends that the Scottish Government consider a definition that relates to the wider circumstances which can be a barrier to sustainable development, such as the lack of achievement of the use and/or development of land that could deliver greater public benefit.³²¹

18. In the absence of an unambiguous and acceptable definition³²² of abandoned or neglected land produced by the Scottish Government which both removes the barrier that the present proposal is likely to erect, and which avoids the problems of interpretation giving the existing legal concept

³²¹ Alex Fergusson MSP and Jim Hume MSP dissent from paragraphs 14 to 17.

³²² Sarah Boyack MSP and Claudia Beamish MSP dissent from paragraph 18 on the basis of the evidence to the Committee which suggested that the requirement on communities to demonstrate that land is neglected or abandoned is likely to present a barrier which would undermine the aims of the Bill.

of abandoned land, then the Committee is likely to ask the Scottish Government to remove the term ‘abandoned or neglected land’ and bring forward a proposal which will allow the widest possible opportunity for community purchase. The Committee reserves the right to take evidence on this issue at stage 2.

19. Should the Scottish Government wish to retain this provision, the Committee recommends that the Scottish Government bring forward amendments at stage 2 to the following effect—

- the term “abandoned” is sub-optimal and should be removed entirely, leaving the legislation to relate to “wholly or mainly neglected land;
- the definition of neglected should relate to the sustainable development of the land and not solely to a description of its physical condition and there should be a clear justification for the inclusion of the term;
- if prescribed matters in relation to eligible land are to be set out in regulation these regulations should be laid under the affirmative procedure; and
- owners and communities are entitled to know, prior to the Bill becoming law, what is meant by the separate terms. The Committee considers it is not appropriate to deal with the transfer of fundamental property rights through secondary legislation. The Committee recommends that any definition of terms be set out on the face of the Bill.

20. The Committee considers that there may be a differentiation in urban and rural circumstances and there could be challenges in measuring neglect and abandonment in rural areas. Should this provision remain the Committee considers that it should apply uniformly outwith crofting land. However, further consideration to the criteria for determining neglect or abandonment is necessary and should be set out on the face of the Bill. The Committee considers that land which is classified as agricultural land should be exempt from this provision unless it is determined that it fails to meet ‘good agricultural and environmental condition’. The Committee is also concerned about the possibility that land that is under a low intensity/zero management regime for a valid reason (e.g. natural regeneration for biodiversity or natural flood protection) could be considered ‘wholly or mainly abandoned or neglected’. The Committee considers that land which is intended for recognised conservation or environmental purposes should be exempt from the provision.

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

Government to reconsider the provision and remove the power of prescription.

22. **The Committee recognises that there can be very real practical difficulties in identifying land owners and considers that there ought to be a mechanism in this Bill, similar to the existing provisions in the Land Reform (Scotland) 2003 Act, providing for communities to be able to register an interest in land without knowing who the owner is.**

23. **The Committee agrees with those stakeholders who consider that the mapping requirements for community right-to-buy are excessive and strongly believes that there is a need to streamline the mapping process, simplify the information requirements and align the eligibility criteria with those for Parts 2 and 3A of the amended Act.**

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

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

26. **The Committee recognises the difficulties faced by communities in seeking to exercise their right-to-buy and is keen to ensure that appropriate support and funding is available to all communities across Scotland to facilitate meeting their aspirations. The Committee considers that public sector bodies have an important role in that regard and welcomes the Scottish Government's commitment to establish a community land unit to provide support and advice to communities.**

27. **The Committee understands that the Scottish Government intends to bring forward amendments at stage 2 to include provision for crofting community right-to-buy. The Committee considers that it would have been preferable had consultation on the crofting community right-to-buy been undertaken alongside consultation on the existing part 4 provisions, and that amendments to the crofting community right-to-buy had been included in the Bill as introduced, rather than at stage 2. The Committee considers that the introduction of significant new provisions by way of amendments at stage 2 is undesirable in terms of effective parliamentary scrutiny, as the time available at stage 2 to consider new evidence is limited.**

INTRODUCTION

Parliamentary scrutiny

28. The Community Empowerment (Scotland) Bill³²³ was introduced in the Scottish Parliament on 11 June 2014. The Bill was accompanied by Explanatory Notes³²⁴, which include a Financial Memorandum, and by a Policy Memorandum³²⁵, as required by the Parliament's *Standing Orders*.³²⁶

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

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

“[the Government is now keen to improve the crofting community right-to-buy legislation in line with the amendments to Part 2 of the 2003 Act and intend to take this forward in the Community Empowerment (Scotland) Bill. [...] we discussed and agreed that while the Local Government and Regeneration Committee was still best placed to lead on the overall Bill, there would be merit in the Rural Affairs, Climate Change and Environment Committee taking the lead on consideration of the community right to buy provisions of Part 4 of the Community Empowerment (Scotland) Bill at Stage 1 and reporting its findings to the Local Government and Regeneration Committee. We also thought there would be merit in having any relevant amendments on community right to buy referred to the Rural Affairs, Climate Change and Environment Committee at stage 2. I am happy to confirm that this is the Scottish Government's preferred way forward.”³²⁷

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

³²³ Community Empowerment (Scotland) Bill, as introduced (SP Bill 52, Session 4 (2014)). Available at: [http://www.scottish.parliament.uk/S4_Bills/Community_Empowerment_\(Scotland\)_Bill/b52s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Community_Empowerment_(Scotland)_Bill/b52s4-introd.pdf).

³²⁴ Community Empowerment (Scotland) Bill. Explanatory Notes (SP Bill 52-EN, Session 4 (2014)) Available at: [http://www.scottish.parliament.uk/S4_Bills/Community_Empowerment_\(Scotland\)_Bill/b52s4-introd-en.pdf](http://www.scottish.parliament.uk/S4_Bills/Community_Empowerment_(Scotland)_Bill/b52s4-introd-en.pdf).

³²⁵ Community Empowerment (Scotland) Bill. Policy Memorandum (SP Bill 52-PM, Session 4 (2014)) Available at: [http://www.scottish.parliament.uk/S4_Bills/Community_Empowerment_\(Scotland\)_Bill/b52s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Community_Empowerment_(Scotland)_Bill/b52s4-introd-pm.pdf).

³²⁶ Scottish Parliament (2012). *Standing Orders*, 4th Edition (4th Revision). Available at: http://www.scottish.parliament.uk/Parliamentaryprocedureandguidance/SO4_Revisions_Complete.pdf.

³²⁷ Correspondence from the Scottish Government (21 August 2014). Available at: [http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2014.21.08_-_Community_Empowerment_\(Scotland\)_Bill.pdf](http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2014.21.08_-_Community_Empowerment_(Scotland)_Bill.pdf).

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

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

34. The Scottish Parliament Information Centre (SPICe) published a briefing³²⁸ on the Bill which proved very helpful to the Committee during its scrutiny.

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

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

Witnesses

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

37. Extracts from the minutes of all the meetings at which the Bill was considered are available online³²⁹. Where written submissions were made in support of evidence given at meetings, these are linked, together with links to the *Official Report* of the relevant meetings are available online³³⁰. A link to all other written submissions, including supplementary written evidence, can be found online³³¹.

³²⁸ Scottish Parliament Information Centre. (2013) Crofting (Amendment) (Scotland) Bill. SPICe Briefing 12/68. Available at: http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_13-25.pdf [Accessed 10 May 2013].

³²⁹ Rural Affairs, Climate Change and Environment Committee. Extracts of Minutes. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/86067.aspx>

³³⁰ See footnote 329

³³¹ Rural Affairs, Climate Change and Environment Committee. Community Empowerment (Scotland) Bill, written submissions. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/82153.aspx>

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

BACKGROUND TO AND PURPOSE OF THE BILL

Legislative background

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

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

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

Contents/purpose of the Bill

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

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

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

43. The Bill is in a number of parts—

- Part 1 aims to provide a statutory basis for the issue of ‘National Outcomes’;
- Part 2 contains a number of reforms to the system of community planning;
- Part 3 provides for a process to allow community bodies to become involved in the delivery of public services;
- Part 4 makes a range of changes to the community right to buy land;
- Part 5 provides for a process to allow community bodies to take on assets from the public sector;

- Part 6 makes a number of reforms to the system of common good
- Part 7 is concerned with allotments; and
- Part 8 allows local authorities to set their own reliefs for business rates.

Part 4 Community Right to Buy

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

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

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

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

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

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

Scottish Government consultation

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

51. The Committee explored the effectiveness of the consultation process on the Bill with stakeholders. Many stakeholders who had been actively involved in the issue of land reform; who had engaged with consultations issued by the Land Reform Review Group; who had participated in consultations on the Bill and; who were also used to dealing with legislation, stated that they were reasonably satisfied with the level of information that was provided. However, the Committee heard that some who were perhaps less used to dealing with legislation found it confusing and would have welcomed further information. Some stakeholders who had been engaged with the land reform agenda considered that there could have been further consultation on some elements of the Bill. In oral evidence to the Committee, Sarah-Jane Laing of Scottish Land and Estates stated—

“We would probably have liked more consultation on the definitions of abandoned land and neglected land, which I am sure we will talk about later”.³³²

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

GENERAL ISSUES CONSIDERED BY THE COMMITTEE

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

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

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

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

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

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

³³² Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 9.

confusion if we have parallel pieces of legislation dealing with the same issue”.³³³

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

“We have used the last 10 years’ experience of the Land Reform (Scotland) Act 2003 to ensure that the new Act will be easier to use and will give communities greater flexibility. As a whole the Community Empowerment (Scotland) Bill creates new rights for community bodies and new duties on public authorities, providing a legal framework that will promote and encourage community empowerment and participation...”³³⁴

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

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

Has the Bill been appropriately drafted?

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

“There are multiple amendments to certain sections of the 2003 Act which are rather difficult to follow and this does not seem to sit well with the aim of empowering communities. The Society suggests that it would be simpler to repeal and re-enact part 2 of the 2003 Act...The Society also notes that a lot of the detail will be set out in subsequent regulation and also guidance and

³³³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Cols 9-10.

³³⁴ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 3.

this makes it difficult at this stage to anticipate the overall effect of these provisions.”³³⁵

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

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

Will the Bill solve the problem?

62. The Committee understands that almost 500,000 acres of land is now in community ownership. The Development Trusts Association Scotland’s survey of 2012 notes that “the vast majority of this area (95%) comprises 17 large rural estates under community ownership”.³³⁶ Almost 60,000 acres of land has been purchased by 16 communities under Part 2 of the 2003 Act and there are currently 171 Community Bodies with an interest in local assets across Scotland. The Scottish Government’s target for community ownership is 1 million acres by 2020. The Policy Memorandum from the 2003 Bill states that—

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

63. Oral evidence to the Committee suggested that the 2003 Act could be viewed as enabling legislation, the benefits of which were challenging to quantify. However, there was broad consensus that community confidence and cohesion in rural Scotland had been transformed in the last 10 years. Jon Hollingdale, of the Community Woodlands Association, stated—

³³⁵ Written submission. Law Society of Scotland.

³³⁶ Development Trusts Association Scotland baseline survey 2012

“The number of successful acquisitions under the 2003 Act is pretty low; I think that there have been about 16 in 10 years, which does not seem a hugely positive track record, although the Act has a wider symbolic value. The Act sets a framework, and it has been easier to negotiate settlements for other transfers to community ownership because the Act is there. In that respect, the Act has had a very positive effect. Nevertheless, it is probably fair to say that there has not been a step change in the rate of community ownership. .. It has definitely helped, but perhaps not to the extent that we had hoped it would.”³³⁷

64. This view was echoed by a number of stakeholders in the oral evidence sessions including Malcolm Combe³³⁸, Rory Dutton of the Development Trusts Association Scotland and Sarah-Jane Laing.

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

“... the Bill has not addressed some of the fundamental structural problems with part 2 of the 2003 Act and the ways in which it does or does not work.... Questions such as whether we need a two-step registration process that is very much at the seller’s whim are far bigger and more fundamental than what form of community body is sitting there, waiting for the land or whatever to become available.”³³⁹

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

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

³³⁷ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 26 November 2014, Col 14.

³³⁸ Appearing in an individual capacity.

³³⁹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 26 November 2014, Col 16.

SUPPORTING DOCUMENTATION

Policy Memorandum

68. In June 2014, the Convener of the LGR Committee wrote to the Minister for Local Government and Planning, seeking clarification on a number of issues relating to the Policy Memorandum stating that it was “little more than a superficial overview” that did not provide “sufficient material to allow for this Part to be scrutinised in a timely manner as part of the Stage 1 process”.³⁴⁰

69. The Scottish Government’s response was received on 1 August 2014. This provided some further detail, and the accompanying letter from the Minister states that the Government aimed to “provide a succinct and broad overview of the policy underlying the Bill as a whole and each Part individually”, adding that “people can be put off by lengthy documents with a great deal of detail”, and that the Policy Memorandum is “only one of the suite of documents that accompany the Bill”.³⁴¹

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

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

“I am not sure we have had enough information. I have come to the conclusion having discussed elements of the Bill, because we have different people saying provisions mean different things. That means that, somewhere along the line, the explanatory notes and the policy memorandum are not providing enough information”.³⁴²

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

“What was missing—we will probably pick up this later—is how certain provisions are expected to deliver the outcomes in the Policy Memorandum. On a line-by-line basis, there are gaps. Although the Government wants to achieve X, it is saying Y. That does not appear to work for us”.³⁴³

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

³⁴⁰ Correspondence from the Local Government and Regeneration Committee to the Scottish Government (June 2014). Available at:
[http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/20140109-KS to Minister LGP on Comm Emp Bill Policy Memo 20140625.pdf](http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/20140109-KS%20to%20Minister%20LGP%20on%20Comm%20Emp%20Bill%20Policy%20Memo%2020140625.pdf).

³⁴¹ Correspondence from the Scottish Government (1 August 2014). Available at:
[http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Kevin Stewart MSP Letter - 1st August 2014.pdf](http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Kevin%20Stewart%20MSP%20Letter%20-%201st%20August%202014.pdf).

³⁴² Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 10.

³⁴³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 10.

“The brevity of the Policy Memorandum probably does not help, bearing in mind the complexity of the issues that are addressed in the Bill....I work in the community environment and try to make sure that we liaise and serve our communities in the right way. The Bill is very complex. I am not sure that we have managed to simplify the issues enough so that normal members of the public who are not, as we are, immersed in the issues can understand what the Government is trying to achieve”.³⁴⁴

74. Wendy Reid of the Development Trusts Association Scotland was of the view that the Policy Memorandum set out “quite well the policy context in relation to community empowerment, what is meant by that and the purposes of the bill...” although she continued “...we were also disappointed that the word “renewal” was dropped from the Bill title, because we thought that that contextualised the Bill as being about renewal and regeneration, as well as community empowerment. Community empowerment must be for a purpose: that purpose is renewal and regeneration.”³⁴⁵ This view was supported by Dr Coleen Rowan, of the West of Scotland Forum of Housing Associations.

75. The Committee questioned the Cabinet Secretary on how best to strike a balance between encouraging public dialogue and participation and providing sufficiently detailed information. The Cabinet Secretary responded by outlining the importance of presenting the high level and broad policy objectives and striking the balance between these.³⁴⁶

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

Sustainable development

77. Argyll and Bute Council raised concerns in relation to sustainable development stating “There is limited consideration of the Bill on the various elements of Scotland’s sustainable development (e.g. land use/environment) and it would be useful if a more comprehensive assessment of the impact was provided”. The Scottish Environment Protection Agency suggested that the Policy Memorandum provides a “light touch” assessment of the sustainable development aspects of the Bill stating “...the Bill has the potential to make a positive contribution to sustainable development and there may be an opportunity for Government to provide regulations and/or guidance to help all parties maximise these opportunities”.³⁴⁷

³⁴⁴ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 48.

³⁴⁵ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 48.

³⁴⁶ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 4.

³⁴⁷ Written submission. Argyll and Bute Council.

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

Human rights and equalities

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

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

“The yin that is the apparently retarding force of A1P1 is balanced against the yang of Article 11 of the UN Covenant on Economic, Social and Cultural Rights, which guarantees certain rights such as sanitation, food and housing. Scottish legislation must not be in breach of the ECHR, in terms of the Scotland Act 1998, but the Committee should be aware that human rights do not begin and end at Strasbourg (where the European Court of Human Rights sits.)”³⁴⁸

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

“This appears to be a very high and most probably impossible hurdle to be overcome and unnecessary to meet ECHR requirements; it implies that, even if a community was able to show that the land was mainly neglected for the purpose of its sustainable development, and this was not in the public interest, if that owner could show that, none the less, their continuing

³⁴⁸ Written submission. Malcolm Combe.

ownership was not “inconsistent” with some level of sustainable development then the community’s application must be refused”.³⁴⁹

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

“If human rights is seen in the wider context that I have set out, there will be a realisation that it drives us not towards courts and lawyers but towards having an environment in which there is more constructive dialogue between landowners and communities”.³⁵⁰

83. Professor Miller went on to state—

“If we are talking about community empowerment, we really have to understand what the community’s rights are, and we should not let the debate be polarised by the notion of an absolute right-to-buy, which does not exist. Communities cannot be given that. There has to be a public interest, so it is a qualified right and not an absolute right-to-buy”.³⁵¹

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

“We note the reference to the centrality of equality and human rights to the Bill’s aims as set out in the Policy Memorandum (para 6) and look forward to the publication of the Equality Impact Assessment for the Bill. Given the centrality of equality principles, law and policy to the Bill’s proposals, it would have been helpful to see the Equality Impact Assessment earlier in Stage 1: at the time of writing (late August) it is still not available”.³⁵²

85. When questioned on the issues of human rights in relation to the Bill and the Part 4 provisions, the Cabinet Secretary talked about the need to strike a balance between property rights and the public interest, he stated “...we must have at the forefront of our mind the rights of communities and the wider public interest as much as the rights of landowners or property owners”.³⁵³ He noted sympathy with Professor Miller’s comments and undertook to reflect on the points made by Professor Miller and others in relation to human rights issues.

86. The Committee was interested to hear the views of Professor Alan Miller, Chair of the Scottish Human Rights Commission, and considers that human rights could have been brought into the wider context of the Bill. The

³⁴⁹ Written submission. Community Land Scotland.

³⁵⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 45.

³⁵¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 36.

³⁵² Written submission. Equalities and Human Rights Commission.

³⁵³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 6.

Committee believes that a wider consideration may have assisted, and might still assist, in establishing an environment which would facilitate a more constructive dialogue between landowners and communities.

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

Financial Memorandum

88. The Financial Memorandum states that Ministers do not anticipate that modifications to Part 2 of the 2003 Land Reform Act (sections 27 to 47), or the new Part 3A (section 48) “should impose any significant additional costs on the Scottish Government. (...) All additional costs would be met from existing resources.”³⁵⁴

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

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

“... there are difficulties in estimating demand in the first three years of operation of the new community right-to-buy, and that a reasonable estimate has been made to capture the costs, however the Bill is: [...] likely to generate significantly more community right-to-buy applications. We agree it is difficult to quantify the increased demand and consider an increase of between 5 and 10 per year to be on the conservative side. There are around 15 applications / year to register an interest at present. Extending these provisions to urban communities (with 80% of the population) is, in our view, likely to generate more applications than anticipated which will generate additional costs for Scottish Government”³⁵⁵

³⁵⁴ Community Empowerment (Scotland) Bill. Explanatory Notes (SP Bill 52-EN, Session 4 (2014)) Available at: [http://www.scottish.parliament.uk/S4_Bills/Community_Empowerment_\(Scotland\)_Bill/b52s4-introd-en.pdf](http://www.scottish.parliament.uk/S4_Bills/Community_Empowerment_(Scotland)_Bill/b52s4-introd-en.pdf).

³⁵⁵ Written submission to the Finance Committee. Highlands and Islands Enterprise.

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

“The simple fact is that, in urban communities, there is not only significant deprivation but significant lack of resource. There is no point floating the possibility of ownership without resourcing that with capital and on-going revenue. There is no magic wand that will allow deprived communities suddenly to have the confidence and experience to own and manage resources; there must be resources coming in that would make that feasible”³⁵⁶.

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

“...In addition the financial implications for Glasgow may be significant in the circumstance where the proposed acquisition may deal with a short term issue but is not aligned to the Council’s longer term strategy...(and)...in the circumstance where a registered interest has a negative impact on potential investment in the city..”³⁵⁷.

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

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

95. The Cabinet Secretary confirmed the demand-led nature of community acquisitions and the difficulties in estimating what that demand may be, with the resultant degree of uncertainty in the Financial Memorandum. He noted the increase in the Land Fund to £10m from 2016 and a further £10m for the Empowering Communities Fund that will be available from 2015. He confirmed that the Scottish Government’s commitment to meeting costs related to community right-to-buy (such as balloting costs) would have to be met from within the Government’s budget and stated “Primarily the budgets will be used for

³⁵⁶ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 49.

³⁵⁷ Written submission. Glasgow City Council.

communities as opposed to public bodies. If there are costs for public bodies, we will have to take them into account. However, the primary focus of the funds is helping communities.” The Committee heard that funds for the Registers of Scotland to support the registration of all land in Scotland would be made available from Government. The Cabinet Secretary stated that “a number of public agencies and bodies will have to take the burden of this agenda as we move forward.”³⁵⁸ He also confirmed that the available funds would need to be kept under review in future years.

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

97. The Committee is also concerned that the costs for communities and landowners (e.g. legal costs arising from appeals, costs to communities in preparing and developing proposals and bids) and the costs to public bodies of providing support to communities are unclear. The Committee is of the view that the Financial Memorandum should have better reflected this.

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

Rules relating to lottery funding

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

“We would not wish to see liabilities handed to community groups who then need to seek financial or other support from national organisations such as ours which funding rules do not allow us to give. As a distributor of National Lottery resources.....we are required to ensure the additionality principle...”³⁵⁹

100. The Committee sought clarity from the Cabinet Secretary on how the rules relating to lottery funding might impact on the community right-to-buy. The Cabinet Secretary responded saying “...our initial view is that there is not a conflict and it should not present a problem.”³⁶⁰

³⁵⁸ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 8.

³⁵⁹ Written submission to the Finance Committee. Sport Scotland.

³⁶⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 13.

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

SPECIFIC ISSUES CONSIDERED IN PART 4

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

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

103. Extending the community right-to-buy to the whole of Scotland was welcomed by the majority of stakeholders who considered that parity of opportunity should be extended to all and saw no reason why urban communities and those in settlements of over 10,000 people should not enjoy the same rights as those in smaller rural communities. Nourish Scotland highlighted the importance that small urban sites can have for a high number of people and believe that these sites can have a considerable impact on the surrounding community even though many do not contribute significantly to the acreage target.³⁶¹

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

“... a small community in an urban environment might be interested in a particular asset that is part of a larger asset that is capable of development. In such a case, the development could become blighted and there could be a scenario of competing interests. It is important [...] to include a safeguard to balance out the greater development good to the Community”.³⁶²

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

“[...] the blight that we experience in the areas that have bought their land in rural Scotland is not being caused by the community purchase; rather the community bought the land to get round the blight that it felt was there, because the land was not being developed to its full potential by the current ownership structure. The Communities that Sandra Homes and John Watt

³⁶¹ Written submission. Nourish Scotland.

³⁶² Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 26 November 2014, Cols 40-41.

help, through their roles, are interested in developing their assets, because they feel that that has not happened in the past. I am sure that the technical points that Mr Burd raised are worth considering, but it would be wrong to characterise the communities as causing blight, because that is not necessarily the case.”³⁶³

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

“The Law Society describes a scenario that would be taken into account as part of the process. Ministers would not want to create a blight because blight is negative. That would be taken into account in the context of sustainable development.”³⁶⁴

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

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

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

“... greater certainty in the circumstances in which the community right to buy would operate in relation to active development proposals. In particular, the Society suggests that consideration is given to allowing for a mechanism to obtain a certificate exempting a site from community right-to-buy for a certain amount of time. This would allow investment decisions to be made

³⁶³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 26 November 2014, Cols 40-41.

³⁶⁴ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 15.

with a degree of certainty but would also retain the community right to buy in the event that the development did not proceed as envisaged”.³⁶⁵

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

111. The Community Land Advisory Service questioned whether specific mention of salmon fishings and mineral rights may create an implication that the right-to-buy is not exercisable in relation to other separate tenements³⁶⁶ and, in its written submission, states—

“... the right-to-buy should also be available for rights to gather oysters and mussels, rights of port and ferry, and also sporting rights separate tenements created under section 65A of Abolition of Feudal Tenure (Scotland) Act 2000”.³⁶⁷

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

Meaning of community (section 28)

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

114. Oral evidence broadly supported the amendments to extend the type of bodies that can be considered to be a community body and to provide greater flexibility in the definition of community. However stakeholders expressed concerns in relation to the way in which community bodies were defined and some stakeholders suggested that the Bill should specify the characteristics of a community body rather than list the types of legal entity that can apply to register.

³⁶⁵ Written submission. Law Society of Scotland.

³⁶⁶ A tenement is defined as any type of property of a permanent nature, including land, houses and other buildings and attached rights.

³⁶⁷ Written submission. Community Land Scotland.

Opinion was divided on the focus on geographic communities and on the inclusion of communities of interest. Some stakeholders considered that their inclusion could be ‘a good deal more complex’, and others considered that a way had to be found to put the emphasis on people rather than place.

Defining community bodies

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

“In our experience many community organisations using a Bencom structure can meet the ‘prescribed requirements’ of an appropriate community body, and given the increasing use of community shares to fund the acquisition and development of assets, the omission of Bencoms from the legislation seems perplexing.”³⁶⁸

116. In written evidence,³⁶⁹ the Scottish Federation of Housing Associations call for the Bill to be amended to specifically list housing associations and co-operatives as community bodies. Similarly, the Church of Scotland Trustees proposed that the definition of community body be widened to include charities such as them.³⁷⁰

117. In its written submission to the Committee, Brodies LLP highlighted six different type of community body provided by the Bill and questioned the necessity for this and what it considered to be the “lack of consistency for the requirements of different bodies.”³⁷¹ It suggested that clear guidance on the constitution and powers of each should be provided.

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

“Further, we feel it is inconsistent to include SCIOs as eligible community bodies but not other types of community organisation for example a community benefit society. In Section 28(2) of the Bill, Ministers will be able to make orders allowing other organisational types of community bodies to be eligible. Our concern with this level of non-specificity is that there is no certainty as to when this might happen or what the mechanism for making an allowance order is. Clarification on these points is welcomed.”³⁷²

119. The Plunket Foundation also suggested it would be better for legislation to simply define the characteristics of a democratically accountable community body

³⁶⁸ Written submission. The Development Trusts Association Scotland.

³⁶⁹ Written submission. The Scottish Federation of Housing Associations

³⁷⁰ Written submission. Church of Scotland Trustees.

³⁷¹ Written submission. Brodies LLP.

³⁷² Written submission. Forest Policy Group.

and not restrict the choice of legal structure to the two options currently proposed. It raised particular concerns about the exclusion of Registered Societies (Formerly known as Industrial and Provident Societies) and the inability within the 2003 Act to use community shares to fund the acquisition of the assets, stating—

“We cannot predict now what legal structures communities will need in the future to take advantage of the opportunities presented by the Bill, so cannot see any reason to restrict them unnecessarily? If Ministers are uncomfortable with the proposal that the exact type of legal structure for an eligible community body is left open, eligibility in principle should at the very least be extended to include Community Benefit Societies and Community Interest Companies as well as SCIOs”.³⁷³

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

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

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

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

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

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

³⁷³ Written submission. Plunkett Foundation.

“The Bill says that a SCIO must not have “fewer than 20 members”. That is particularly restrictive. We have a couple of SCIOs that are working very well, one of which has eight members and the other has 10. Are we now saying that, even though we know what the SCIO wants to achieve and we are doing everything that we can to support it, because someone in an ivory tower has said that the SCIO must have 20 members, it cannot continue? It does not have 20 members, but it is an active and progressive community and wants to make things happen, but it cannot, because it is barred. That issue needs to be addressed. Does the bill have to be prescriptive about having a minimum of 20 members on a SCIO?”³⁷⁴

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

Communities of place and communities of interest

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

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

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

“Communities of interest have a legitimate role but, under the existing structure, the definition of “community” is centred on a geographic community. Currently, the geographic community has to be described using postcodes—although that might change—and the membership of the community has to be established to demonstrate that a majority of them are in favour. It is difficult to get a constituency of voters for a community of interest—how do we determine where the community of interest is and who would get a vote in a ballot?”³⁷⁵

129. In its written submission, Helensburgh Community Woodland Group raised concerns about the definition of community where, in its view, individual projects in urban areas may only concern part of an area and a minority of those who live within it and questioned whether it would be appropriate to use a single council election ward for a specific area as the interested community rather than the

³⁷⁴ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 64.

³⁷⁵ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 26 November 2014, Col 46.

settlement as a whole. It stated that its preferred option would be that of defining the community by people who would be directly affected or would directly benefit from the facility.

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

“In theory a community of interest could be an organisation that is based far away from the community. It might have some local members and it might have an interest in the community but that is not really a community. It does not have a sense of place and it is not rooted in a place”. He continued to say “...it is important that the community that defines itself as a “community” is actually the community. The idea that we should allow a community of interest to be included in the definition of “community” gives us some concerns. Therefore we are not proposing to include it in the definition because it is quite clear that a body could be set up that has an interest in the community but is not the community itself. We want to maintain the sense of place and ensure that we are genuinely dealing with the community”.³⁷⁶

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

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

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

133. Some stakeholders who have been active in community land acquisitions highlighted a number of practical concerns in relation to the provision of minutes upon request. The Highland Council³⁷⁷ and Community Land Scotland³⁷⁸ sought clarity on a number of points: whether the minutes relate to all meetings – Board meetings, members meetings, sub committees; and whether these provisions relate only to ‘approved minutes’. Community Land Scotland had concerns that this provision would apply retrospectively to existing community bodies (not to a Part 3A or Part 3 body) which would have to convene special meetings to make alterations to their Articles and failure to do so could then result in a termination of interest or trigger consideration of compulsory purchase by Ministers. Community Land Scotland suggested that the same policy could be affected by a requirement for community bodies to enact bylaws or rules.

³⁷⁶ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Cols 19-20.

³⁷⁷ Written submission. Highland Council.

³⁷⁸ Written submission. Community Land Scotland.

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

Detailed procedures - Sections 29 - 47

135. The Scottish Government's letter of 1 August³⁷⁹ states that sections 29 to 47 of the Bill make a number of changes to "the detailed procedures and requirements of the community right-to-buy process, including streamlining and increasing flexibility."

136. Evidence to the Committee indicated some areas of concern in relation to the detailed procedures. In written evidence, John Randall³⁸⁰ noted a need to simplify procedures so that "genuine and strong applications cannot be thwarted by legal action on technical issues contrary to the wishes of Parliament when they passed the legislation".³⁸¹

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

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

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

139. Community Land Scotland³⁸² and the Community Woodlands Association³⁸³ raised practical concerns in relation to the proposal for a six-month limit precluding Ministers considering any community support that is dated earlier than six months before the date an application to register a community interest in land is received. They both stated that registration of a community body can take in excess of 6 months itself in certain circumstances and feasibility and other studies may date back before that period. These bodies believe that Ministers should be free to take account of anything they consider relevant in indicating approval.

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

³⁷⁹ Correspondence from the Scottish Government (1 August 2014). Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Responses_to_LGR_Committee_Questions_-_1st_August_2014.pdf.

³⁸⁰ Writing in an individual capacity.

³⁸¹ Written submission. John Randall.

³⁸² Written submission. Community Land Scotland.

³⁸³ Written submission. Community Woodlands Association.

material. The Committee would welcome further consideration of this section by Ministers.

Procedure for late applications (section 31)

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

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

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

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

The requirement to register

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

“I am in two minds about the registration process. The need to register is a prompt for communities to think about how they would like their communities to develop and what opportunities they would like to have to influence how things develop. However, the process is onerous, as is the reregistration process. There is something to be said for having an easier process for registering interest if a piece of land comes up for sale that the community had never anticipated would come up for sale, because things happen that no one could have predicted. As the Bill stands, it will be extraordinarily difficult for communities to do anything about such situations, which might involve the loss of a service or whatever. I am not sure about getting rid of registration altogether, although I can see that that would have advantages. What is useful about having to register is that it gets community organisations to think about why they might want assets and what they might want to do with them. We might not want to lose that prompt if we were to go down the route of not having early registration of interest”.³⁸⁴

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

“As I understand it, the idea behind pre-registration is to encourage communities to be proactive, and I think that we will agree that being proactive and thinking ahead are generally better than simply being reactive to opportunities. However, having been encouraged to be proactive and make these registrations, communities are then not rewarded for doing that... If I were designing things from scratch, I would have a system in which communities...would carry out community development planning and identify the sort of land and buildings assets that they need to deliver the things that their community wants.... A specification would be laid down and when land came on to the market, communities would have the possibility of pre-emption if that land fitted their previously announced specification”.³⁸⁵

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

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

“...The first right that we suggested was a “right lite” whereby a community could simply register an interest. Under the 2003 act, there is a right of pre-emption. However, if there was a right to register an interest and to be

³⁸⁴ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Cols 14-15.

³⁸⁵ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 18.

notified when land was coming on to the market or ownership was changing, that would trigger the process of the “heavier” right of registering a right of pre-emption. We thought that that might be a way of getting round everything becoming a late registration”.³⁸⁶

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

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

“The Government has to balance people’s right to sell their assets with the rights of the community” and he suggested that a community which is preparing and thinking about the future and is already defined would need to be in place. He also stressed his concerns that otherwise there would be a disadvantage to an owner who would have to wait for some time for the community to be formed and the process concluded and this would interfere with the rights of the owner wishing to sell.”³⁸⁷

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

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

152. Notwithstanding that, the Committee considers that the registration process requires considerable simplification. The Committee was also interested to hear the proposals from stakeholders to allow communities to register a purpose. The Committee considers that there may be scope for a dual registration process to enable registration for specified areas of land or buildings and to enable registration for a purpose which could potentially be

³⁸⁶ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 26 November 2014, Col 53.

³⁸⁷ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Cols 25-26.

met by a range of assets. The Committee recommends that the Scottish Government give consideration to a simplified registration process that would also include the option to register ‘a purpose’ and bring forward amendments to that effect at stage 2.

Registration for late applications

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

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

“For a variety of legitimate reasons, communities do not think of or register an interest in land as an abstract exercise. For all communities to protect the potential interests of the community through timeous registrations of interest in land may require registrations of interest in a significant number of areas of land, with little or no prospect that they may ever come on the market. There are considerable administrative implications for a community and for government from any process of ‘mass registration’ of interests in land by communities, yet the current LRA rather founds on that broad assumption. Experience shows communities are also very reluctant to register an interest in land if they feel that might be interpreted as a hostile act by an owner”.³⁸⁸

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

“In an ideal world a community body would survey all local land and assets, agree amongst themselves which assets are of strategic long term importance to the community and then set about making a multiple set of applications, thereby registering interest in all these key assets. But the real world is not the ideal world. Communities are reactive not proactive by nature, and are galvanised into action usually only when something is threatened. But even if they had the inclination to think forward to the day that any of these strategic assets were to be put on the market it is unlikely they would wish to assert their rights due to the potential for ill feeling that this might arouse from the potential seller who will perceive this as a constraint on their freedom to access the best market price possible. The additional hurdles associated with a late registration also appear to be too burdensome. We would therefore support the position of Community Land Scotland in respect of this aspect of the Bill”.³⁸⁹

156. Community Land Scotland suggested that the new provision which replaces the need for a community to show “good reasons” why it did not apply timeously with a provision to show they had undertaken sufficiently well in advance “such

³⁸⁸ Written submission. Community Land Scotland.

³⁸⁹ Written submission. Scottish Community Alliance.

relevant work as Ministers consider reasonable was carried out”...may well make the opportunity for a late registration more difficult than it already is. It suggests that “this would not assist any objective of greater community ownership that was in the public interest.”³⁹⁰

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

“Given the likelihood that the number of late registrations will increase, it is considered that existing hurdles regarding the requirement to demonstrate additional community support and that the registration would be strongly in the public interest are of themselves sufficient without the new requirements suggested in the Bill.”³⁹¹

158. Community Land Scotland suggested that it would be best to accept late registration as the likely norm and that it, of itself, need not be justified by any prior action or lack of action, and instead could rest on the other existing tests for late registration. It also suggested that it might be possible to make provisions that where Ministers were notified by a land owner that they had an interest in selling their land, Ministers would take steps to seek to establish if a community had an interest in buying the land.³⁹²

159. This evidence was supported by Highlands and Islands Enterprise (HIE), which suggested it would be helpful if communities could progress a late registration if they had considered purchase of an asset (specific or general) as detailed in a local development plan and stressed the importance of communities taking a strategic and holistic approach to their development through the establishment of whole community plans. HIE believes that community plans should be considered as appropriate evidence under the proposed ‘taking relevant work’ provision. It also suggested that guidance to clarify eligible work/steps would be beneficial. Based on their experience of working with communities, where often initial work was undertaken by a community council or working group with the intention that another body would pursue the community right to buy application, it suggests that consideration be given to de-coupling the requirements for relevant steps/relevant work and the practical application being made by the same community body.³⁹³

160. Contrary to these views, the Historic Houses Association for Scotland³⁹⁴ and Scottish Land and Estates³⁹⁵ considered that the legitimacy of the process is undermined where late applications become almost standard. These organisations suggested that the late application procedure could be improved if a landowner could obtain exemption from a late application by giving forward notification (of six months) of a potential sale of land by advertisement in a local newspaper, giving the community body four months to organise itself and register an interest in the land, after which time Ministers would not consider a late application. They also

³⁹⁰ Written submission. Community Land Scotland.

³⁹¹ Written submission. Highland Council.

³⁹² Written submission. Community Land Scotland.

³⁹³ Written submission. Highlands and Islands Enterprise.

³⁹⁴ Written submission. Historic Houses Association for Scotland

³⁹⁵ Written submission. Scottish Land and Estates.

suggested that they would welcome the introduction of a monitoring system into delays in the process for (Ministerial) consideration of applications.

161. Brodies LLP was of the view that community bodies should be obliged to explain why an application was not submitted prior to the land being put on the market and raised concerns that removing the good reasons test could make some landowners wary of putting land on the market for fear of “triggering” community interest.”³⁹⁶

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

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

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

Re-registration

165. Many stakeholders expressed concerns with regard to the process and timescale for re-registering an interest in land. Community Land Scotland, the Community Woodland Association, the Development Trusts Association Scotland, Highland Council, and many others, suggested that the five-year timescale is too short and consideration should be given to extending this to ten years. The Committee understands that this view is supported by the Land Reform Review Group in its final report (section 17.1-9 &10).³⁹⁷

166. Many stakeholders considered that it was important to retain the ability to test the will of the community on their continuing interest in purchase, while reducing the burden on communities and were concerned that the proposed re-registration provisions would require replicating the original registration demands.

³⁹⁶ Written submission. Brodies LLP.

³⁹⁷ The Land of Scotland and the Common Good – Report of the Land Reform Review Group (2014). Available at: <http://www.scotland.gov.uk/Resource/0045/00451597.pdf>.

Stakeholders suggested that there was considerable scope to simplify the process. Sarah-Jane Laing said—

“...I think that all that is necessary is for it to be asked at the point of reregistration is whether there have been material changes. If the answer is yes, those involved would go down one route, and if it is no, they would go down another. I do not think that it would be a problem to have a dual process for reregistration...a material change such as a huge swell of opinion in the community, which could have different views and different needs, must be taken into consideration, but it would be possible to have a dual registration process”³⁹⁸

167. Highland Council suggested that the requirement to re-register should be extended to ten years, in line with the recommendations of the Land Reform Review Group.³⁹⁹ The Scottish Community Alliance stated that—

“Given the procedural burden placed on communities to re-register their interest after five years have lapsed, and given the assumption that late applications are viewed generally as the exception rather than the rule (and therefore the assumption that multiple applications should be being made by community bodies) we would support the proposition that the re-registration should be required after ten years rather than five”.⁴⁰⁰

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

“...Things can change in ten years. You can imagine a community defining itself, imagining its future, putting together its ideas and carrying out its registration but then finding that, ten years later, things were quite different. We do not think that ten years would be a wise approach. The five year period was our judgement of a good timescale.”⁴⁰¹

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

170. Whilst the Committee has some sympathy with those stakeholders who proposed an extension of the re-registration period from five to ten years, the Committee considers that circumstances can change over time and, if

³⁹⁸ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 26 November 2014. Cols 23-24.

³⁹⁹ Written submission. Highland Council.

⁴⁰⁰ Written submission. Scottish Community Alliance.

⁴⁰¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 25.

the re-registration process is substantially simplified, a requirement to re-register every five years is appropriate.

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

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

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

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

174. Scottish Land and Estates,⁴⁰² the Historic Houses Association for Scotland⁴⁰³ and the Community Land Advisory Service⁴⁰⁴ comment on section 33, which introduces a requirement for an owner to inform Ministers within 28 days of an exempt transfer being made of this taking place. They considered this to be at odds with the transfer being “exempt” and suggest that as the Registers of Scotland maintain both the Land and Sasine Property Registers and the Register of Community Interests in Land, it would be sufficient to include a declaration in the disposition detailing the exemption rather than placing what they consider to be an unnecessary additional burden on the owner to notify.

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

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

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

⁴⁰² Written submission. Scottish Land and Estates.

⁴⁰³ Written submission. Historic Houses Association for Scotland.

⁴⁰⁴ Written submission. Community Land Advisory Service.

“.. this is the wrong policy choice; ... it should be possible for Ministers to consider whether, in the given circumstances, a community interest may be registered over land subject to a prior option.”⁴⁰⁵

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

“we are concerned that there are still too many opportunities within the Bill in its current form that enables landowners/property owners to avoid the community’s ability to register/lease or buy. For example, there exists an option for owners to grant a ten year option to purchase to their siblings, children or other family members. If this type of loophole is not removed it will only frustrate the community right to buy process and ultimately lead to the Bill having to be amended.”⁴⁰⁶

179. Other stakeholders took a different view on the issue of options. The Scottish Property Federation welcomed the inclusion of consideration of option agreements within the Bill but stated “we believe that other pre-agreed rights over the land that may be extant between the landowner and a third party should also be considered by Ministers.”⁴⁰⁷

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

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

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

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

⁴⁰⁵ Written submission. Community Land Advisory Service.

⁴⁰⁶ Written submission. Helensburgh Community Woodland Group.

⁴⁰⁷ Written submission. Scottish Property Federation.

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

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

“Scottish Ministers [will] arrange for this to be conducted by an independent third party, and [...] meet the cost of this, making the community right-to-buy process easier for community bodies.”⁴⁰⁸

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

185. HIE suggested that, as much of the information will already have been submitted to Ministers as part of the application process and as Ministers supply background information to the balloter, it did not see merits in this subsection and stated it was “... not persuaded of the need for a balloter to hold this information as the balloter’s role is solely to undertake the ballot.”⁴⁰⁹

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

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

“Given the Bill intends to make it clear that the right to buy can be exercised in relation to separate tenements, I think that the requirement to affix a notice to the land needs to be relaxed for those cases...”⁴¹⁰

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

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

189. Sections 38 – 42 relate to the information Ministers must take into account when deciding whether to approve a community body’s exercise of the right-to-buy

⁴⁰⁸ Policy Memorandum. Paragraph 63.

⁴⁰⁹ Written submission. Highlands and Islands Enterprise.

⁴¹⁰ Written submission. Community Land Advisory Service.

and relates to the provision of information and evidence relating to ballot results; Ministerial powers to review whether ballots have been properly conducted; the timescale for the conduct of the ballot; and the timescale for payment by the community body.

190. Both Scottish Land and Estates⁴¹¹ and the Historic Houses Association Scotland⁴¹² suggest that as the ballot is at the initiation of the community body, the community body should meet the expenses of this rather than the public purse.

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

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

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

193. The Policy Memorandum states that the Bill gives Ministers discretion to allow them to recover the cost of the independent valuation from the landowner where the landowner has withdrawn the land from sale after the valuer has been appointed, thus deterring landowners from allowing the process to proceed where land is not genuinely being offered for sale.⁴¹³

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

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

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

196. The Historic Houses Association for Scotland⁴¹⁴ and Scottish Land and Estates⁴¹⁵ raised concerns in relation to section 44. In particular, they highlighted

⁴¹¹ Written submission. Scottish Land and Estates.

⁴¹² Written submission. Historic Houses Association Scotland.

⁴¹³ Policy Memorandum. Paragraph 63.

⁴¹⁴ Written submission. Historic Houses Association for Scotland.

that under community right-to-buy an owner has a right to withdraw his or her land from a sale to a community body after the right-to-buy has been activated, provided the appropriate notification has been given. They sought comfort that this section would not be used arbitrarily to penalise a landowner who, for a variety of reasons (such as where family or financial circumstances of the landowner change or where the land is held in trust, not all of the trustees being made aware of the sale) decide not to proceed with the sale. They sought further clarification on the criteria that would form the basis for Ministers' decisions on recovery of expenses. They suggested, as did Brodies in its written submission,⁴¹⁶ that Ministers should exercise their discretion with care.

197. Some stakeholders, including the Community Land Advisory Service, raised concerns in relation to the basis of the Minister's decision. Specifically, stakeholders sought further clarification on the criteria which would form the basis of that decision and highlighted the potentially adverse effects on land owners, who might be pursuing long term development proposals.⁴¹⁷

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

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

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

200. The Community Land Advisory Service⁴¹⁸ commented on section 47 (the proposed new section 67A of the 2003 Act) highlighting that some periods specified in the revised 2003 Act would include public and local holidays and some would not and this could potentially cause confusion and lead to mistakes.

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

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

⁴¹⁵ Written submission. Scottish Land and Estates.

⁴¹⁶ Written submission. Brodies LLP.

⁴¹⁷ Written submission. Pinsett Masons LLP.

⁴¹⁸ Written submission. Community Land Advisory Service.

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

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

“Land that is neglected or abandoned can be a barrier to the sustainable development of land. In some cases it may prevent the community from developing or improving facilities. There are also cases where derelict or neglected sites become a blight on the surrounding area, and the community could bring the land back into productive use. The Scottish Government considers that in such circumstances, where all other options fail to achieve improvement, communities should be able to acquire the land without having to wait for it to be put on the market.”⁴¹⁹

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

Meaning of Land (Section 97B)

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

Eligible land (Section 97C)

206. The new section 97C of the 2003 Act defines eligible land as that which is, in the opinion of Ministers, “Wholly or mainly abandoned or neglected” for “the purpose of the sustainable development of that land” and “in order to further the achievement of sustainable development”. Factors which Ministers must have regard to when deciding whether land is eligible will be set out in regulations. Land which is not eligible includes—

- land on which there is an individual’s home, though this can be subject to exceptions set out in regulations;
- land pertaining to an individual’s home as may be set out in regulations;
- eligible croft land (as defined in section 68 of the 2003 Act) or croft land which is occupied or worked by its owner or members of their family;

⁴¹⁹ Policy Memorandum. Paragraph 65.

- certain land that is owned by the Crown (because no owner or heir to the previous owner exists or can be identified); or
- land of such other descriptions that Ministers may set out in regulations.

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

“The physical condition of the land or building; its current use (or non-use); any detrimental economic or environmental impact on the local area; and any failure by the landowner to comply with regulatory requirements. Ministers would also need to consider any environmental, planning or historic designations affecting the land and buildings, for example if there are any restrictions on its use or development relating to conservation purposes.”⁴²⁰

208. Many stakeholders supported the introduction of the new power extending the community right-to-buy where there is no willing seller, but the majority who commented on this provision viewed it as a power of last resort, to be exercised when other methods and negotiations had failed. They considered that the existence of the power would, however, have an important role in incentivising negotiation. Stakeholders such as the Community Woodland Association⁴²¹ and Community Land Scotland⁴²² suggested that this proposal responds to a weakness in the 2003 Act, that is, even if it were in the public interest, there is no means by which a community can acquire land unless it comes on the open market. In their view, the new provision means that the matter can now be considered.

209. Whilst stakeholders were broadly supportive of the introduction of this power in principle, many questioned whether the provisions, as drafted, effectively meet the policy objectives. Many also highlighted significant concerns with respect to the definition of abandonment and neglect and the additional requirements resulting from the definition; the scope of eligible land; and the provision for exceptions in relation to an individual’s home. Many stakeholders raised practical concerns in relation to the operation of the provisions. Community Land Scotland⁴²³ and the Community Woodland Association⁴²⁴ stated that, in their view, the significant qualifications on the new right would probably make it impossible to exercise in practice. The Community Woodland Association stated—

“The bar is being set too high, there are too many obstacles in the way and there are clear opportunities for avoidance on the part of landowners. We are concerned that this requirement is overly limiting and whilst it may be possible to demonstrate this requirement is met for buildings we do not believe it will be workable in practice with respect to woodlands and other extensive land holdings.”⁴²⁵

⁴²⁰ Policy Memorandum. Paragraph 68.

⁴²¹ Written submission. Community Woodland Association.

⁴²² Written submission. Community Land Scotland.

⁴²³ Written submission. Community Land Scotland.

⁴²⁴ Written submission. Community Woodland Association.

⁴²⁵ Written submission. Community Woodland Association.

210. Highland Council shared those concerns, suggesting that section 48 appears to introduce a significantly higher barrier to community ownership than currently exists. It had particular concerns that the requirement for an interested community to demonstrate that land had been abandoned, particularly in a rural setting, would be very challenging indeed.⁴²⁶

211. Community Land Scotland also stated that it did not believe that there was a clear and fundamental difference between the sustainable development of crofting land (as required by the crofting community right-to-buy in the 2003 Act) and the sustainable development of other land which necessitates the additional requirements of abandonment or neglect in order for it to be eligible for the potential exercise of these new powers.⁴²⁷

212. John Watt told the Committee that he would prefer the Bill to mention “fulfilling the greatest potential for sustainable development”, rather than including a requirement that land should be proven to be “abandoned or neglected.”⁴²⁸

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

The public interest and sustainability tests

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

215. In oral evidence, Peter Peacock stated—

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

⁴²⁶ Written submission. Highland Council.

⁴²⁷ Written Submission. Community Land Scotland.

⁴²⁸ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 29.

development. That would allow the social and economic considerations to be taken into account".⁴²⁹

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

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

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

219. The Committee considers that there are convincing arguments that the tests of 'furthering sustainable development' and of being 'in the public interest' are capable of testing all requirements. On that basis, the Committee recommends that the Scottish Government reconsider the requirement that eligible land be restricted to land which is wholly or mainly abandoned or neglected and recommends that the Scottish Government consider a definition that relates to the wider circumstances which can be a barrier to sustainable development, such as the lack of achievement of the use and/or development of land that could deliver greater public benefit.⁴³⁰

220. In the absence of an unambiguous and acceptable definition⁴³¹ of abandoned or neglected land produced by the Scottish Government which both removes the barrier that the present proposal is likely to erect, and which avoids the problems of interpretation giving the existing legal concept of abandoned land, then the Committee is likely to ask the Scottish Government to remove the term 'abandoned or neglected land' and bring forward a proposal which will allow the widest possible opportunity for community purchase. The Committee reserves the right to take evidence on this issue at stage 2.

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

⁴²⁹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 26 November 2014, Col 59.

⁴³⁰ Alex Fergusson MSP and Jim Hume MSP dissent from paragraphs 216 to 219.

⁴³¹ Sarah Boyack MSP and Claudia Beamish MSP dissent from paragraph 220 on the basis of the evidence to the Committee which suggested that the requirement on communities to demonstrate that land is neglected or abandoned is likely to present a barrier which would undermine the aims of the Bill.

Definitions of abandonment and neglect

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

223. The Law Society of Scotland stated—

“The lack of a definition for abandoned or neglected land gives rise to considerable uncertainty in relation to what land would be within the scope of section 97C. The Society believes that there should be a proper definition of abandoned or neglected land”.⁴³²

224. Scottish Land and Estates⁴³³ considered that an owner is entitled to know, prior to the Bill becoming law, what is meant by the separate terms “abandoned” and “neglected”. This concern was shared by the Scottish Community Alliance which stated—

“...We would also support the view that more clarity is needed to determine what is meant by abandoned and neglected land....Given that these provisions could result in an asset owner being deprived of his/her property against their wishes, it is very important that there is absolute clarity around the circumstances in which this would be permissible”.⁴³⁴

225. Community Land Scotland raised the question of fairness to landowners and, in its written submission, stated—

“that more consultation and discussion is needed on the sorts of land susceptible to the proposed right to buy. This should include consideration of (1) land land-banked for future development, (2) farmland left fallow as a matter of good agricultural practice and (3) spaces deliberately allowed to go wild for good environmental reasons”.⁴³⁵

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

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

⁴³² Written submission. Law Society of Scotland.

⁴³³ Written submission. Scottish Land and Estates.

⁴³⁴ Written submission. Scottish Community Alliance.

⁴³⁵ Written submission. Community Alliance.

“The Committee should consider carefully whether “abandoned” is appropriate. One drastic solution might be to remove “abandoned” entirely, leaving the legislation to relate to “wholly or mainly neglected land”.⁴³⁶

228. This concern was shared by other stakeholders, including the Historic Houses Association for Scotland, who suggested that “mainly abandoned” did not appear to be a legally competent term.⁴³⁷

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

230. The Church of Scotland General Trustees stated—

“...While there are clear difficulties in setting out criteria to define “abandoned or neglected”, it appears to the Trustees that the definition of these terms is at the heart of this element of the proposals. Without statutory definition of these terms, Parliament is being asked to approve a concept, rather than scrutinise the specific terms and application of the legislation with the danger of unintended consequences. The Trustees submit that the terms “abandoned or neglected” should be defined within the primary legislation and should take into account: a property owner’s right to peaceful enjoyment of his or her possessions...”⁴³⁸

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

“In terms of the process set out in the Bill, we believe that deprivation of ownership is not the appropriate final outcome and it is questionable in ECHR terms whether this is in fact a proportionate response. Where there is “abandoned and neglected” land, the key issue the Bill requires to address is land use, not land ownership.”⁴³⁹

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

“I think that matters that the Minister would have to consider in deciding whether that definition applies will be followed up within regulation rather than in the Bill, but you are right that the definition should be in the Bill itself. We

⁴³⁶ Written submission. Malcolm Combe.

⁴³⁷ Written submission. Historic Houses Association for Scotland.

⁴³⁸ Written submission. Church of Scotland General Trustees.

⁴³⁹ Written submission. Scottish Land and Estates.

are still actively considering exactly what the definition should be, to ensure that we get it right.”⁴⁴⁰

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

234. Notwithstanding the Committee’s recommendation in paragraph 220, with respect to the terms wholly or mainly abandoned or neglected land, which takes precedence,⁴⁴¹⁴⁴² should the Scottish Government wish to retain this provision, the Committee recommends that the Scottish Government bring forward amendments at stage 2 to the following effect—

- **the term “abandoned” is sub-optimal and should be removed entirely, leaving the legislation to relate to “wholly or mainly neglected land;**
- **the definition of neglected should relate to the sustainable development of the land and not solely to a description of its physical condition and there should be a clear justification for the inclusion of the term;**
- **if prescribed matters in relation to eligible land are to be set out in regulation these regulations should be laid under the affirmative procedure; and**
- **owners and communities are entitled to know, prior to the Bill becoming law, what is meant by the separate terms. The Committee considers it is not appropriate to deal with the transfer of fundamental property rights through secondary legislation. The Committee recommends that any definition of terms be set out on the face of the Bill.**

Impact of the provisions in urban and rural areas

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

236. Some stakeholders including Scottish Land and Estates⁴⁴³ and the Historic Houses Association Scotland⁴⁴⁴ raised the question as to whether the provisions relating to abandoned and neglected land should apply only in an urban context if

⁴⁴⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 19 November 2014, Col 54.

⁴⁴¹ Alex Fergusson MSP and Jim Hume MSP dissent from paragraphs 216 to 219.

⁴⁴² Sarah Boyack MSP and Claudia Beamish MSP dissent from paragraph 220 on the basis of the evidence to the Committee which suggested that the requirement on communities to demonstrate that land is neglected or abandoned is likely to present a barrier which would undermine the aims of the Bill.

⁴⁴³ Written submission. Scottish Land and Estates.

⁴⁴⁴ Written submission. Historic Houses Association Scotland.

the focus was on small parcels of land which prevent sustainable development or cause blight.

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

238. The National Farmers Union of Scotland (NFUS) was concerned that some agricultural land may be out of “regular” use for periods of time and may, as a result, be subject to these provisions. It considered that where land is classified as agricultural land it should be exempt from this provision unless it is proven that it fails to meet “good agricultural and environmental condition”.⁴⁴⁵

239. The Committee shares the concerns of the National Farmers Union of Scotland (NFUS) in relation to the possible impact of the provisions on agricultural land that may be out of regular use for periods of time. The Committee considers that land which is classified as agricultural land should be exempt from this provision unless it is determined that it fails to meet “good agricultural and environmental condition”. The Committee recommends that the Scottish Government bring forward amendments to that effect at stage 2.

Timescales

240. Some stakeholders, including the NFUS and Community Land Scotland suggested that consideration be given to the timescales in which land would be considered to be abandoned or neglected and proposed that a minimum timescale be set out.⁴⁴⁶⁴⁴⁷

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

Other potential impacts of the provisions

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

243. The Scottish Property Federation⁴⁴⁸ highlighted significant concerns in relation to land that may be part of a complex development process (possibly comprising several small plots or buildings) and the impact of potential uncertainty on investor decisions. It also raised concerns in relation to land owned by an entity in administration or other insolvency process connected with the land and

⁴⁴⁵ Written submission. National Farmers Union Scotland.

⁴⁴⁶ Written submission. National Farmers Union Scotland.

⁴⁴⁷ Written submission. Community Land Scotland.

⁴⁴⁸ Written submission. Scottish Property Federation.

suggested that there was a need for appropriate and clear policy in relation to this issue.

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

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

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

Management of land

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

“... we are concerned that the concept as presented in the Bill will be of limited value in many cases. There may be cases where it will be of real use to communities so we are not suggesting that it is removed, rather that it is strengthened. The key issue is not that the land is un-managed, but how it is managed...consequently we consider that the Community Empowerment Bill should include the ability for the local community to take ownership of land that is not being used in line with the defined planning designation and where there is a clear community need...”⁴⁴⁹

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

“...may have very limited control over the utilisation of the leased land and short of going through time consuming and potentially costly court processes may be unable to rectify this. It would seem inequitable for land to be

⁴⁴⁹ Written submission. Holmehill Community Buyout.

compulsorily acquired, where the owner is not actually responsible for the perceived absence of activity or poor management.”^{450 451}

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

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

251. Scottish Natural Heritage, referred to paragraph 73 of the *Consultation on the Community Empowerment (Scotland) Bill 2013*⁴⁵² which stated that “land which is intended for recognised conservation purposes would not be considered to be neglected or abandoned”. It suggests that this does not seem to be reflected in Section 48 of the Bill, and states—

“In our response to the consultation we commented that the term *neglected or abandoned land* should be defined so as to exclude land that is delivering wider public goods in the form of ecosystem services despite it not being “actively” managed. The absence of active management is not necessarily a sign of “abandonment” or “neglect”. For example, areas of peat-land might be helping to deliver carbon capture which is part of the Scottish Government’s response to climate change. Owning and managing land for nature conservation is an important land use. We would welcome the legislation reflecting the statement made in the consultation on the draft Bill”.⁴⁵³

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

“...there is nothing in the Bill which would suggest that land or buildings held for conservation could not be considered to be abandoned or neglected. The Scottish Wildlife Trust⁴⁵⁴ and the National Trust for Scotland would like all land held for conservation to be excluded from the statutory provisions. In addition the National Trust for Scotland requested that the Trust’s inalienable land should be deemed to be held for conservation. “Should this not be accepted by the Committee, we would suggest that the Scottish Ministers should have the power to reject an application where land is held for conservation and the Trust’s inalienable land should be presumed or (preferably) deemed to be held for conservation. If the Trust’s inalienable

⁴⁵⁰ Written submission. Scottish Land and Estates.

⁴⁵¹ Written submission. Historic Houses Association for Scotland.

⁴⁵² Scottish Government (2013). Consultation on the Community Empowerment (Scotland) Bill. Available at: <http://www.scotland.gov.uk/Resource/0043/00437584.pdf>.

⁴⁵³ Written submission. Scottish Natural Heritage.

⁴⁵⁴ Written submission. Scottish Wildlife Trust

land is not absolutely excluded from the statutory provisions, then we would seek a special parliamentary process to be built into the legislation to allow the Trust to appeal any compulsory sale order (in the same form as in the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 and the Crofters Acts...⁴⁵⁵

253. SEPA also noted that there could be cases where abandoned or neglected land could have a high value in terms of the ecosystem services it offers such as supporting biodiversity and flood risk management. It highlighted the importance of having a robust evidence base to inform decision making and suggested that both the land valuation and processes of determining requests for transfer of land should take account of ecosystem value in a systematic way. SEPA also suggests that there may be cases where abandoned or neglected land is partly or wholly contaminated and may not be suited to the use that the community would like to see. SEPA suggested that there was a need for appropriate mechanisms to ensure that communities had access to expert advice and support.⁴⁵⁶

254. The Historic Houses Association for Scotland stated that—

“...the absence of active management is not necessarily a sign of either “abandonment” or “neglect”. Land may be delivering wider public good in the form of ecosystem services despite not being actively managed. Active management of itself can therefore not be properly used as a term in defining abandonment and neglect. Biodiversity, carbon capture, recreation and cultural value may all be components of different sites and the Bill as drafted does not take into account such circumstances”.⁴⁵⁷

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

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

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

⁴⁵⁵ Written submission. National Trust for Scotland.

⁴⁵⁶ Written submission. Scottish Environment Protection Agency.

⁴⁵⁷ Written submission. Historic Houses Association for Scotland.

Government addresses these concerns and ensures that appropriate guidance, advice and support is provided to communities.

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

258. The Delegated Powers and Law Reform (DPLR) Committee reported on the Delegated Powers Memorandum and made a number of specific comments in relation to this, as well as some general observations about the quality of responses received from Scottish Government officials and the detail of the Bill. One of the DPLR Committee’s main concerns relates to the new section 97c(3)(a) on eligible abandoned or neglected land, which states—

“Eligible land does not include land on which there is a building or other structure which is an individual’s home unless the building or structure falls within such classes as may be prescribed”. In its report the DPLR Committee stated that it “[...] remains in a position, having considered both written and oral evidence, whereby it is unable to form a view as to how this power is intended to be used. The Government has not provided an explanation for taking this power beyond a need to retain flexibility within the Bill. The Committee considers that explanation to be inadequate in light of the significance of this power and what it appears to permit. The Committee further finds it concerning that the thinking behind a power of such significance to the scope and application of the Bill appears still to be in the early stages of development”.⁴⁵⁸

259. Brodies LLP⁴⁵⁹ and the Community Land Advisory Service⁴⁶⁰ also raised concerns in relation to the exclusion of an individual’s home and, in its written evidence, Brodies stated “We are however wary that this exclusion is also subject to further regulation”.

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

261. No detailed information on the thinking behind the power or examples of how it might be used in practice or how it was intended to be used were offered. The Cabinet Secretary stated that he was aware of concerns in relation to the power and undertook to review those concerns but stated “We will still have to have the power to exclude homes...”⁴⁶¹.

262. The Committee shares the concerns of the Delegated Powers and Law Reform Committee in relation to the new section 97C(3)(a) on eligible abandoned or neglected land, which states “Eligible land does not include land on which there is a building or other structure which is an individual’s

⁴⁵⁸ Scottish Parliament Delegated Powers and Law Reform Committee. 63rd Report 2014, Community Empowerment (Scotland) Bill at Stage 1. Available at: http://www.scottish.parliament.uk/S4_SubordinateLegislationCommittee/Reports/su-R14-63w.pdf

⁴⁵⁹ Written submission. Brodies LLP.

⁴⁶⁰ Written submission. Community Land Advisory Service.

⁴⁶¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 14.

home unless the building or structure falls within such classes as may be prescribed". The Committee is also concerned that the thinking behind this significant power is in the early stages of development.

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

Bona vacantia land and Crown land

264. Some stakeholders sought clarity as to why bona vacantia⁴⁶² land is excluded from eligible land, particularly when related to the need to identify ownership of the land, which may not always be possible. Clarity was also sought on why Crown land was excluded.

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

Queen's and Lord Treasurers Remembrancer (QLTR)

266. The Community Land Advisory Service questioned the proposed new section 97C(3) of the 2003 Act, which states that land administered by the Queen's and Lord Treasurers Remembrancer (QLTR) is an exception to the general rule.⁴⁶³

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

Part 3A community bodies (section 97D)

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

269. Subsection (1) specifies that a Part 3A community body must be a company limited by guarantee. It also lists the requirements which must be included in the company's articles of association. In terms of subsection (2) Ministers have discretion over the minimum number of members a Part 3A community body must

⁴⁶² bona vacantia means vacant goods and is the name given to ownerless property which passes to the crown.

⁴⁶³ Written submission. Community Land Advisory Service.

have. Ministers must also be satisfied that the body's main purpose is consistent with furthering the achievement of sustainable development.

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

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

272. The Community Land Advisory Service states that—

“The types of body permitted to acquire a Part 3A right to buy should be the same as those permitted to acquire a Part 2 right to buy under Part 2 as proposed to be amended by the Bill. Accordingly this provision should be amended to permit SCIOs and other bodies prescribed by statutory instrument to be Part 3A community bodies”.⁴⁶⁴

273. Both Scottish Land and Estates and the Historic Houses Association for Scotland stated that they were unclear (in terms of the proposed Section 97D) why the community body for this part of the Act effectively required to be a company limited by guarantee and suggested that there should be parity with the new provisions for “normal community right-to-buy”.⁴⁶⁵⁴⁶⁶

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

Section 97E(1) of the 2003 Act

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

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

⁴⁶⁴ Written submission. Community Land Advisory Service.

⁴⁶⁵ Written submission. Scottish Land and Estates.

⁴⁶⁶ Written submission. Historic Houses Association for Scotland.

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

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

278. The Community Land Advisory Service suggested that such a register would be unnecessary, as in its view, the proposed Part 3A right to buy is absolute and not pre-emptive. When the Land Registration etc (Scotland) Act 2012 has been fully commenced, it argued, the Keeper of the Registers of Scotland will be empowered to unilaterally register any unregistered parcel and relevant information would be disclosed in routine conveyancing searches.⁴⁶⁷

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

Right to buy: application for consent – Section 97G

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

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

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

282. A Part 3A community body must also list in the application why it believes that its proposed purchase is in the public interest, how it is compatible with furthering the achievement of sustainable development of land, and the reasons why it considers the land to be wholly or mainly abandoned or neglected. This application must also be sent to the land owner and any creditor. On the invitation of Ministers, owners and creditors would then have a 60 day period to provide written comments on the application. There is also a 60 day period for public notice and for receipt of the comments from the community body which is provided with all views received by the Minister.

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

⁴⁶⁷ Written submission. Community Land Advisory Service.

Identification of the owner

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

“As the 2003 act stands, the current community right-to-buy provides for communities to be able to put a registration on land without knowing who the owner is, although they have to demonstrate, and the Minister has to accept, that they have taken reasonable steps to find out who the owner is. If it is not possible to find out, a registration can still stand. At the very least, there ought to be a similar mechanism in the Community Empowerment (Scotland) Bill. It strikes against the whole abandonment issue. If the land is abandoned, that suggests that we would not know who the owner was because they had run away”.⁴⁶⁸

285. Concerns were also expressed by the Community Land Advisory Service and others in relation to the practical difficulties of tracing owners, as ownership records may not provide information on the identity and contact details of a current owner, making it difficult or impossible to trace or to make contact with them. The Community Land Advisory Service referred to their experience stating it would find it difficult to comply with the requirements of this provision. It also raised concerns that in a situation where the owner can be identified but may be an adult with incapacity or a lapsed trust with no surviving trustees capable of acting.⁴⁶⁹

286. In oral evidence to the Committee, members of the Bill team discussed the absolute requirement to identify the owner and suggested that there was an alternative procedure whereby if the owner could not be found and the land were declared bona vacantia, the Queen’s and Lord Treasurer’s Remembrancer could be approached to purchase the land.⁴⁷⁰

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

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

289. In relation to the proposed section 97 G (10) some stakeholders considered that the information to be provided by the owner should include information about

⁴⁶⁸ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 39.

⁴⁶⁹ Written submission. Community Land Advisory Service.

⁴⁷⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 19 November 2014, Cols 54-55.

the effect on the owner's funder and/or the existence of any leases or other contractual commitments which bind the owner in relation to the land and sought further clarity on this, particularly as such contracts can be rendered void by section 57 (5).

290. In its written submission, Brodies LLP proposed—

“In terms of Section 97G(11) Bill the community body is to receive copies of all views submitted to the Ministers. The landowner should also be entitled to see these views and make counter representations if necessary.”⁴⁷¹

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

Crichel Down rules

292. Where land is acquired by, or is under the threat of, compulsory purchase, a non-statutory arrangement known as the Crichel Down Rules provide that surplus land should be offered back to former owners and their successors.⁴⁷² Some stakeholders considered that the equivalent to Crichel Down Rules should apply where land acquired under the amended 2003 Act is not used for the purpose for which it was acquired. It was suggested that the former owner or their successors should be entitled to first refusal if the land is no longer used by the community for the intended purpose.⁴⁷³ Others⁴⁷⁴ commented that the Bill was silent on this issue and suggested that it would be helpful to have some clarity on this aspect of the community right to buy process.

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

294. The Finance Committee also invited the RACCE Committee to seek clarification of how the expansion of community right-to-buy might interact with the Crichel Down Rules.⁴⁷⁵

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

⁴⁷¹ Written submission. Brodies LLP.

⁴⁷² The procedure for the resale of the land is set out in Planning Circular 5-2001 in the Scottish Government Planning Series (Disposal of surplus government land – the Crichel Down Rules).

⁴⁷³ Pinsent Masons LLP, submission number 50.

⁴⁷⁴ Written submission. Scottish Property Federation.

⁴⁷⁵ Scottish Parliament Finance Committee. Report on the Community Empowerment (Scotland) Bill. Available at: http://www.scottish.parliament.uk/S4_FinanceCommittee/Reports/fiR14-CommunityEmpowermentReport.pdf.

“...it will depend on what is in the public interest. The rules do not preclude a community having the right to buy, but it would be considered on a case by case basis whether what the community proposes is in the public interest.”⁴⁷⁶

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

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

Mapping requirements

298. Many stakeholders such as the Community Woodlands Association and Community Land Scotland raised concerns in relation to the mapping requirements for community right-to-buy, which, in their view, are widely considered to be excessive. They suggested that there was a need to address streamlining the mapping process and aligning the eligibility criteria with those for Parts 2 and 3A of the amended Act.^{477 478}

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

“there seems no logical or functional rationale for being required to provide the following details: a map and written description showing not only the boundary of the land or lease to be acquired, but also all sewers, pipes, lines, watercourses or other conduits, and fences, dykes, ditches or other boundaries. This goes far beyond what is required in other land or lease transactions and there seems no functional reason to require this information. It is particularly onerous when the area to be purchased extends to several thousand hectares. Yet similar detailed requirements are proposed in Section 48 of the Bill (Clause 7G(6)(d) and (f) for the new proposed Part 3A”.

300. He also had concerns in relation to the requirement for inclusion of all postcodes and OS 1km grid squares to be included in the land or lease area to be

⁴⁷⁶ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 12.

⁴⁷⁷ Written submission. Community Woodland Association.

⁴⁷⁸ Written submission. Community Land Scotland.

published, particularly where the area extended to several thousand acres and highlighted the possibilities for technical challenge due to inadvertent omissions. He stated that in his view—

“...in relation to the mapping requirements, the new Part 3A is modelled on the Part 3 of the 2003 Act, and this “goes far beyond what is required in other land or lease transactions, and there seems no functional reason to require this information...”⁴⁷⁹

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

Criteria for consent (section 97H)

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

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

⁴⁷⁹ Written submission. John Randall.

- that the Part 3A community body has tried and failed to buy the land, other than by making an application under Part 3A.

Ownership inconsistent with the achievement of sustainable development

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

304. In its written submission, Community Land Scotland stated that this “appears a very high and most probably impossible hurdle to overcome and unnecessary to meet ECHR requirements”. It was of the view that the tests under the provisions that Ministers have to satisfy themselves that the land is eligible, that is that purchase by the community body is in the public interest and would be consistent with the achievement of sustainable development in relation to the land, were sufficient. Community Land Scotland highlighted that there was no equivalent of this requirement in Part 3 of the 2003 Act and in their view this further requirement was unnecessary.⁴⁸⁰ This view was echoed by the Community Woodland Association⁴⁸¹. In oral evidence, Peter Peacock referred to this as “a killer clause.”⁴⁸²

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

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

“on the second part of the test – whether continuing ownership under the current arrangements from the existing owner will further sustainable development – I offer the reassurance that ministers will want evidence and proof from the existing owner...They will want evidence that things are happening, investments are being made, a plan is in the pipeline and people

⁴⁸⁰ Written submission. Community Land Scotland.

⁴⁸¹ Written submission. Community Woodland Association.

⁴⁸² Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 26 November 2014, Co 61.

have been commissioned to bring the land out of neglect or abandonment.”⁴⁸³

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

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

Community demonstration of trying and failing to purchase land

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

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

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

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

312. The new section 97J sets out the requirements for a ballot to establish that a right to buy application by a Part 3A community body has the support of its community. A proposal to exercise a community right to buy will be deemed to have been approved by the relevant community if—

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

⁴⁸³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 32.

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

314. Stakeholders raised concerns with regard to the timing of the valuation in relation to the ballot, specifically that under the current 2003 Act the community body is aware of the valuation at the time at which the ballot takes place. Stakeholders were concerned that, under the proposed provisions, at the time of the ballot communities will not have this information and therefore will not have complete information on the option on which they are voting and the valuation may subsequently turn out to be significantly higher than had been anticipated.⁴⁸⁴

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

316. Under the provisions of Part 3 of the 2003 Act, the Scottish Government is responsible for the expense of conducting the ballot. The new provisions propose to make the community body responsible for that cost. There was concern amongst stakeholders that this could cause issues for many communities, particularly for those more disadvantaged communities, which, in the absence of adequate financial support, might find it difficult to source the necessary funds to conduct the ballot.⁴⁸⁵

317. The Community Land Advisory Service suggested that this provision should be modified in the same way as the equivalent provision in Part 2, in order to provide that the ballot is to be conducted by an independent balloter appointed and paid for by Ministers.⁴⁸⁶

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

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

⁴⁸⁴ Written submission. Anonymous.

⁴⁸⁵ Written submission. Anonymous.

⁴⁸⁶ Written submission. Community Land Scotland.

“Groups wishing to undertake the Community Right-to-Buy only have access to the edited register whereby up to 30% of the electorate may not be included. This makes the initial 50% threshold difficult to achieve.”⁴⁸⁷

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

Detailed procedural matters (Sections 97K – R)

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

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

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

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

Consent conditions (Section 97L)

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

325. The National Trust for Scotland considered that this section should be explicit in stating that the conditions set could include the application of Conservation Agreements or Conservation Burdens with a provision relating to conservation agreements similar to those in the Crofters (Scotland) Act 1993 (p.5).⁴⁸⁸

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

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

⁴⁸⁷ Written submission. Fife Community Safety Partnership.

⁴⁸⁸ Written submission. National Trust for Scotland.

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

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

Completion of purchase (Section 97Q)

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

330. The Law Society of Scotland noted that, in its view, this provides an opportunity for Ministers to impose statutory burdens and sought clarity as to what was envisaged. For example, what types of burdens and claw-back provisions should be put in place should the plans of the community body not be implemented?⁴⁸⁹ Similarly, the Scottish Property Federation questioned what would happen were a community body to fail to deliver the proposed benefit within a reasonable period of time.⁴⁹⁰

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

Assessment of the value of land (Section 97S)

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

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

334. The Committee received a written submission highlighting that there may be situations in which the valuation has been agreed between the parties but the valuer may not arrive at the same valuation. The submission suggests that this

⁴⁸⁹ Written submission. Law Society of Scotland.

⁴⁹⁰ Written submission. Scottish Property Federation.

may be an issue should the figure agreed be higher than the valuer's assessment and public money is being used to finance the acquisition.⁴⁹¹

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

336. The Big Lottery Fund suggested that it would be useful for the community body to have the valuation early, as it could provide the basis for a negotiated settlement with the owner. It would also give an early indication of the amount of funding needed and provide an opportunity for the community body to make early contact with potential funders to gauge the likelihood of funding being made available.⁴⁹²

337. The Committee considers that the valuation procedure should ensure that both parties are treated fairly by giving each the opportunity to comment on issues raised in the other's representations and draw attention to anything inaccurate or potentially misleading. The Committee recommends that the Scottish Government bring forward amendments at stage 2 to provide both the owner and the community body the right to comment on the valuation and other party's representations.

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

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

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

340. The Development Trusts Association Scotland raised concerns about this section, which provides owners with a right of compensation from the community body stating that this should be limited to situations where the application is approved.⁴⁹³

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

⁴⁹¹ Written submission. Anonymous.

⁴⁹² Written submission. The Big Lottery Fund.

⁴⁹³ Written submission. Development Trusts Association Scotland.

“...what is to happen where the absolute right-to-buy causes the owner a capital gains tax or corporation tax liability on the price which could have been avoided or reduced had the owner had control over the timing of the sale. I certainly do not think that the community should bear this cost, but equally do not think the owner is being properly compensated for the deprivation if they are left in this position.”⁴⁹⁴

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

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

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

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

345. Section 97V provides that the landowner, a member of the community to which a Part 3A community body relates and a creditor in a standard security may appeal against the Ministers’ decision to consent to the application. Subsection (2) allows the Part 3A community body to appeal against a decision to refuse an application and, where there is more than one community body wishing to purchase the land, subsection (3) provides that Ministers’ decision on which body’s application will proceed is final and cannot be appealed.

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

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

⁴⁹⁴ Written submission. Community Land Advisory Service.

The Committee recommends that the Scottish Government give consideration to an appropriate mediation process and include provision for this within the Bill by way of bringing forward amendments at stage 2.

Other issues considered by the Committee

Community use of land

348. The Community Land Advisory Service commented on communities which may have more of an interest in securing the use of land rather than securing ownership at a future date.⁴⁹⁵ The Royal Town Planning Institute Scotland suggested that the Bill should consider not only the right-to-buy, but the right to manage as part of the community rights, and provide detail on how this might be facilitated.⁴⁹⁶

349. Brodies LLP suggested that communities could be given the chance to lease property in the first instance to establish whether they could make the property work to pass the test of sustainable development.⁴⁹⁷

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

Best value and best public benefit

351. The Committee heard oral evidence that suggested that some local authorities' interpretation of "best value" (under the Local Government in Scotland Act 2003)⁴⁹⁸ might hinder a number of aspects of the proposed legislation.

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

“...If we are disposing of assets, we are always required to obtain best value, and that normally means market value, whether we use the district valuer or another mechanism to value assets. That is a key issue, but it is not one that the Bill addresses”.⁴⁹⁹

353. The Royal Town Planning Institute Scotland suggested that there was a need for clarity in the definition of 'best value' and 'best public benefit' in terms of the disposal of public land. It stated that this should not only be about financial value, but should also take into consideration social, community and environmental aspects, particularly in terms of the transfer of land to community or voluntary organisations.⁵⁰⁰

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

⁴⁹⁵ Written submission. Community Land Advisory Service.

⁴⁹⁶ Written submission. Royal Town Planning Institute.

⁴⁹⁷ Written submission. Brodies LLP.

⁴⁹⁸ Local Government in Scotland Act 2003. Available at:

http://www.legislation.gov.uk/asp/2003/1/pdfs/asp_20030001_en.pdf.

⁴⁹⁹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 3 December 2014, Col 50.

⁵⁰⁰ Written submission. Royal Town Planning Institute.

“There is a reason why there has been less movement of other public sector assets into community ownership. According to the Scottish public finance manual, those other public sector bodies have to get the best financial return from assets, whereas local authorities have a bit of dispensation, in that they can dispose of assets at less than market value under the Disposal of Land by Local Authorities (Scotland) Regulations 2010. Communities are very interested in other assets, but up until now, it has been easier to negotiate transfers of local authority assets, because of that flexibility for local authorities to dispose of land at less than best consideration. It would be interesting to see whether the Scottish public finance manual will be reviewed to allow other public sector bodies the same flexibility.”⁵⁰¹

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

356. The Committee explored the issue of best value with the Cabinet Secretary and questioned whether some local authorities might consider the best value of the land they hold to be the financial value that they can obtain rather than value to the community being the number one priority. The Committee notes that if that were to be the case it could be a potential hindrance to some communities that might wish to access local authority land or the land of other public bodies. The Cabinet Secretary stated that as local authorities had the power to dispose of land at lower than market value and could treat the public interest as having a value, the issue should not be an obstacle. The Committee subsequently agreed to write to all local authorities in Scotland to ask for confirmation of their policy and practice in relation to the holding and disposal of their land-holdings. The Committee awaits receipt of all the responses from the local authorities in relation to their policy and practice in relation to the holding and disposal of their land holdings and their approach to best value.⁵⁰² Responses received to date⁵⁰³ are available on the Committee’s website. **The Committee will review the responses received and consider what further action it wishes to take.**

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

⁵⁰¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 3 December 2014, Col 58.

⁵⁰² Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 16.

⁵⁰³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. Correspondence from local authorities regarding best value. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/82153.aspx>.

to local authorities in relation to their assets, their considerations of best value, and supporting communities to acquire land.

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

Provision of support to communities

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

“I hear about capacity building all the time, but quite frankly this is not about building capacity; it is about releasing it. That is what really needs to happen. The capacity is there; it is just not released. There are too many barriers for people to get past.”⁵⁰⁴

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

“It is critical that communities are properly supported to take advantage of opportunities the Bill presents....Outwith this area (the highlands and islands), in lowland and southern rural Scotland, the support is much more fragmented, and communities face a patchy landscape of advice and signposting. Marginalised and disadvantaged communities will need a lot more support in capacity building and confidence raising to realise the potential opportunities.”⁵⁰⁵

361. The Children’s Wood referred to its experience and suggested that mechanisms should be established to monitor and report on levels of community engagement and report on any difficulties.⁵⁰⁶

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

⁵⁰⁴ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 61.

⁵⁰⁵ Written submission. Plunkett Foundation.

⁵⁰⁶ Written submission. The Children’s Wood.

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

364. The Cabinet Secretary responded by stating—

“... your point about equipping communities with more information about and understanding of the issues is a good one. We have to give much more thought to that. The Land Reform Review Group recommended that we set up a community land agency, and we responded by saying that we will set up a unit in Government, which will look at the issues and work with communities, giving much better advice and operating as a huge support mechanism that facilitates community buyouts. An important function of that new unit will be to explain state aid and the pathway....and I will ensure that it does that”.⁵⁰⁷

365. The Committee questioned the Cabinet Secretary on HIE’s social and land remit and whether the Scottish Government had plans to extend the remit of Scottish Enterprise. The Cabinet Secretary responded by stating that all agencies, including Scottish Enterprise and HIE, must play a role in taking the agenda forward. The Cabinet Secretary also suggested that the Scottish Government should give further thought as to how the social remit should be taken forward outwith the Highlands and Islands.⁵⁰⁸

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

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

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

⁵⁰⁷ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 9.

⁵⁰⁸ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Cols 9-10.

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

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

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

371. The Community Woodland Association stated that the interaction of Part 3 of the 2003 Act and the asset transfer provision contained in Part 5 of the Bill require to be addressed. Specifically, it questioned whether communities, having failed with an asset transfer request, can then attempt a Part 3A acquisition and, if so, sought clarification as to what the decision-making process would be in cases where Scottish Ministers are the landowner.⁵⁰⁹

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

ISSUES NOT INCLUDED IN THE BILL

Crofting Community Right to Buy (Part 3)

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

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

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

⁵⁰⁹ Written submission. Community Woodland Association.

the crofting community right-to-buy as a consequence of the new measures.”⁵¹⁰

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

⁵¹⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 9.

ANNEXE B: FINANCE COMMITTEE REPORT TO THE LOCAL GOVERNMENT AND REGENERATION COMMITTEE ON THE COMMUNITY EMPOWERMENT (SCOTLAND) BILL

INTRODUCTION

1. The [Community Empowerment \(Scotland\) Bill](#) (“the Bill”) was introduced on 11 June 2014 by the Scottish Government (“the Government”). As with all bills, it was accompanied by a Financial Memorandum (FM) (page 51 of the [Explanatory Notes](#)) which set out the estimated financial implications of the Bill’s provisions.

2. Under Standing Orders Rule 9.6, the lead committee at Stage 1 is required, among other things, to consider and report on the Bill’s FM. In doing so, it is required to consider any views submitted to it by the Finance Committee (“the Committee”).

THE BILL

3. The FM states that the Bill “reflects the policy principles of subsidiarity, community empowerment and improving outcomes” and provides a framework which will—

- empower community bodies through the ownership of land and buildings and strengthening their voices in the decisions that matter to them; and
- support an increase in the pace and scale of public service reform by cementing the focus on achieving outcomes and improving the process of community planning.”

4. The FM states that it sets out the costs associated with the following parts of the Bill—

- **Part 1** places a duty on the Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, which builds on the Government’s internationally acclaimed “Scotland Performs” framework.
- **Part 2** places community planning partnerships (CPPs) on a statutory footing and imposes duties on them around the planning and delivery of local outcomes.
- **Part 3** provides a mechanism for communities to have a more proactive role in having their voices heard in how services are planned and delivered.
- **Part 4** amends Part 2 of the Land Reform (Scotland) Act 2003, extending the community right to buy to all of Scotland, and introduces a new Part 3A to that Act to make provision for community bodies to purchase neglected and abandoned land where the owner is not willing to sell that land.
- **Part 5** provides community bodies a right to request to purchase, lease, manage or use land and buildings belonging to local authorities, Scottish public bodies or the Scottish Ministers.

- **Part 6** places a statutory duty on local authorities to establish and maintain a register of all property held by them for the common good and requires local authorities to publish their proposals and consult community bodies before disposing of or changing the use of common good assets.
- **Part 7** updates and simplifies legislation on allotments. It requires local authorities to take reasonable steps to provide more allotments if waiting lists exceed certain trigger points and ensures appropriate protection for local authorities and ploholders.
- **Part 8** provides for a new power which will allow councils to create and fund their own localised business rate relief schemes to better reflect local needs and support communities.

5. A table summarising the additional costs expected to arise as a result of the Bill's provisions is provided on pages 52 to 60 of the FM.

EVIDENCE

6. The Committee received 16 responses to its call for evidence on the FM, around half of which were from local authorities. Responses were also received from organisations including COSLA, Highlands and Islands Enterprise (HIE), NHS Lothian, The Office of the Scottish Charities Regulator (OSCR), the Scottish Environmental Protection Agency (SEPA), the Scottish Property Federation (SPF) and SportScotland. All written evidence is available [on the Committee's website](#).

7. The Committee also received a letter dated 3 October 2014⁵¹¹ from the Minister for Local Government and Planning ("the Minister") which provided further financial information with regard to forecasting the use of participation requests and asset transfer requests.

8. The letter highlighted the difficulties the Government and stakeholders had faced in estimating the financial impacts of the Bill, but provided "examples based on current practice to show the level of resource and costs that may be involved in both participation requests and asset transfer requests."

9. At its meeting on 8 October the Committee took oral evidence on the FM from the Scottish Government Bill Team. The Official Report of the evidence session can be found on the Parliament's website via the following link: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9573&mode=pdf>

Issues highlighted in evidence

10. A number of written comments were received in respect of specific aspects of the Bill and their estimated financial impacts as set out in the FM. The Committee then raised a number of these points in its oral evidence session with the Bill Team.

⁵¹¹ [Letter to Convener from Minister for Local Government and Planning dated 3 October 2014](#)

11. However, several respondents also commented on the possible financial implications of the Bill as a whole and expressed concerns regarding its overall impact on their budgets. Given that some of the Bill's costs are expected to be demand driven, the Committee notes that the FM does not fully quantify the total estimated financial implications of the Bill.

General Comments

12. A number of general comments about the FM were received with several respondents acknowledging the difficulty in predicting demand. HIE for example, stated that—

“The FM makes a good ‘estimate’ of ‘unit costs’ for aspects of the Bill’s delivery, in many cases providing ranges where those are informative, however, the inability to profile demand take up makes it impractical for the FM to estimate the total costs that might be expected in say the first three years of operation.”⁵¹²

13. Several local authorities, however, foresaw difficulties in meeting the costs of the Bill and called for additional resources from central government. East Lothian Council for example, stated that—

“Local government will incur extra cost as a result of these provisions (which constitute a new legislative burden) and it is not possible to allocate money to these costs from within our budgets without taking it from other activities. We would expect central Government to add to our settlement any money necessary to fulfil the provisions of the Bill.”⁵¹³

14. Glasgow City Council echoed this view stating that likely additional costs on local authorities were not quantified to any reliable extent in the FM due to difficulties in predicting demand and activity. However, it stated “that the costs will be significant and that local authorities will find it challenging to meet these costs from existing resources.”⁵¹⁴

15. Inverclyde Council also stated that there was “no evidence” to support the FM’s assertion that costs, in many cases, would be minimal and able to be contained within existing budgets. In its view, this was “not the case” and there was no additional fund within the Council to absorb any demand.⁵¹⁵

16. Similar suggestions that additional resources would be required to implement the Bill’s provisions were made by other respondents including North Lanarkshire Council and North Ayrshire Council which stated that—

“Where costs have been included in the narrative the ranges are sufficiently wide to accommodate a huge amount of uncertainty. However in other sections there is no mention of costs but it does mention there will

⁵¹² [Highland and Islands Enterprise, written submission](#)

⁵¹³ [East Lothian Council, written submission](#)

⁵¹⁴ [Glasgow City Council, written submission](#)

⁵¹⁵ [Inverclyde Council, written submission](#)

be additional costs incurred. The implication is that the additional costs will be minimal but there is uncertainty that is not addressed in the bill.”⁵¹⁶

17. However, North Ayrshire Council also stated that “in the main the council was in agreement with the financial implications contained in the Bill.”

18. COSLA also acknowledged the difficulties in quantifying demand—

“it is difficult to anticipate the uptake and demand that will be placed upon Local Authorities. This makes it very difficult to quantify the financial cost that will be placed upon local government in complying with the legislation and indeed the Financial Memorandum makes no attempt to quantify a cost for these areas of the proposed legislation...

COSLA seeks reassurance that further work be undertaken to better quantify these costs before the Community Empowerment (Scotland) Bill is passed.”⁵¹⁷

19. When asked about the work it had undertaken to attempt to anticipate demand and to ensure local authorities are adequately resourced to effectively deliver the Bill’s measures, the Bill Team explained that work had been undertaken prior to publication of the Bill. However, it stated that “little financial information and cost information was provided by others” in response to its consultations and it had “found it difficult to amass information on how the legislation might be used” meaning that “it was difficult to consider what demand might be.”⁵¹⁸

20. The Bill Team explained that, as communities are not homogenous and will have different priorities and needs which could not be amalgamated into a single demand profile, it “will be hard to predict what communities will do.” It further pointed out that “no one else has been able to do it either.”⁵¹⁹

21. In response to concerns expressed by the Committee that the Bill might raise expectations where there was insufficient support available to meet them, the Bill Team explained that, the Government had a general convention that it would provide additional funding where new costs had arisen from legislation. However—

“The difficulty with the bill is that we cannot quantify that funding at the moment. That additional funding would need to be demonstrated and quantified through practice. That would happen through the normal processes and the funding would be provided in that way.”⁵²⁰

22. When questioned about how the funding mechanism would work, given the impossibility of estimating figures, the Bill Team replied—

⁵¹⁶ [North Ayrshire Council, written submission](#)

⁵¹⁷ [COSLA, written submission](#)

⁵¹⁸ [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 48](#)

⁵¹⁹ [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 48](#)

⁵²⁰ [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 49](#)

“We cannot say at this time. If local authorities can demonstrate and quantify what the new duties in the bill have cost them, that will be part of the on-going process of local authority settlements.”⁵²¹

23. Given that the Bill was expected to take effect during financial year 2015-16 and the draft budget for that year was expected to be published imminently, the Committee asked how much would be set aside to cover the costs of the Bill’s provisions. In response the Bill Team stated—

“We are not anticipating any particular financial burden in 2015-16. COSLA is right to say that it will not be overly onerous and therefore could be encapsulated within current resources. However, we recognise that additional funding might be required in the future.”⁵²²

24. When it was pointed out that COSLA’s position appeared to be that whilst the costs of the Bill’s individual elements might not be overly onerous, overall costs had the potential to be so, the Bill Team acknowledged this point but stated that it did not agree that overall costs had the potential to be significant. It confirmed that it believed that—

“the cost can be managed within current resources, with some addition if the demand is more than local authorities can cope with.”⁵²³

25. In the event that costs did turn out to be greater than expected as a direct consequence of the Bill, The Bill Team confirmed that—

“That would be part of the normal discussions with local authorities through the annual budgeting process. Local authorities would have to demonstrate and quantify what was involved and then go into discussions with the Scottish Government”⁵²⁴

26. However, the Bill Team further stated that it would be for the Minister for Local Government and Planning to respond more fully to this question.

27. The Committee invites the lead committee to seek clarity from the Minister regarding whether and by what mechanism additional funding will be made available for local authorities should they incur significant additional costs as a result of the Bill.

28. With particular regard to Parts 3 and 5 of the Bill, the lead committee may wish to explore the issue of how the Government can be confident that any additional costs can be managed within current resources, given that costs are expected to be demand driven.

29. In response to questions from the Committee about whether there was a risk that, had the FM presented more concrete estimates of potential demand and

⁵²¹ [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 54](#)

⁵²² [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 55](#)

⁵²³ [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 55](#)

⁵²⁴ [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 55](#)

costs, these might have been seen as “an upper limit for how much could be done”, the Bill Team agreed—

“Absolutely: demand will be led by communities, so we cannot work in that way. If we set a limit, that will confine the process and box it in.”⁵²⁵

30. Expanding on this point, the Bill Team explained that it did not wish to set a benchmark as “we want the legislation to be successful and we want as many communities as possible to use it—it is for the communities to use and not for us to tell them to use it.”⁵²⁶

31. Towards the end of the evidence session, the Committee drew attention to Standing Orders rule 9.3.2 which states that—

“A Bill shall on introduction be accompanied by a Financial Memorandum which shall set out the best estimates of the administrative, compliance and other costs to which the provisions of the Bill would give rise, best estimates of the timescales over which such costs would be expected to arise, and an indication of the margins of uncertainty in such estimates.”⁵²⁷

32. When asked whether the FM met these criteria, The Bill Team explained—

“We attempted to include costs in the financial memorandum in a number of places where we believed that we could actually indicate what the costs will be. In some areas, we know that the costs under the current provisions are fairly low, for example, and we therefore have an idea of what the costs may be in the future.

We express a caveat a number of times about the margins of uncertainty, because to attempt to state what the bill might cost in future would be unreasonable and potentially misleading.”⁵²⁸

33. Following the oral evidence session the Convener wrote to the Minister⁵²⁹ seeking an explanation of how the FM met the requirements of Standing Orders and also of the Scottish Government’s own guidance on Financial Memoranda (SG 2009/1).⁵³⁰

34. The Committee received a letter from the Minister dated 24 October⁵³¹ which confirmed his view that the FM did meet the requirements of Standing Orders and had been conducted in line with the Government’s guidance.

⁵²⁵ [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 52](#)

⁵²⁶ [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 52](#)

⁵²⁷ [Standing Orders of the Scottish Parliament](#)

⁵²⁸ [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 58](#)

⁵²⁹ [Letter from Convener to Minister for Local Government and Planning dated 14 October 2014](#)

⁵³⁰ [Scottish Government Guidance Note 2009/01: Financial Memoranda that accompany Scottish Government Bills](#)

⁵³¹ [Letter from Minister for Local Government and Planning to Convener of Finance Committee dated 24 October 2014](#)

35. The letter highlighted the work that had been undertaken with stakeholders in order to estimate unit costs and noted that the FM had provided examples of costs arising from similar processes—

“Thus the FM and the additional information supplied contains the full range of financial information that can be made available with certainty in relation to this Bill.”

36. However, the letter also stated that “the FM cannot estimate the level of demand for asset transfer or participation requests, and consequently does not provide ranges for the total potential costs of these provisions.” This, the Minister explained, was intended to avoid giving a flawed figure as the variables inherent to the Bill in terms of “the number of requests, their complexity and their distribution over time” “would make a specific figure or range far too questionable.”

37. Therefore, the letter concluded—

“the information provided is clearly the best estimate that can be provided of the administrative, compliance and other costs to which the provisions of the Bill would give rise, the best estimate of the timescales over which such costs would arise and has given a very clear indication of the margins of uncertainty in such estimates.”

38. The Committee acknowledges the difficulties faced in quantifying potential future costs arising from services that will be demand driven. However, the Committee remains concerned that, despite the requirements of Standing Orders, best estimates have not been fully provided.

39. The Committee invites the lead committee to ask the Minister what plans are in place to ensure that any costs arising from the Bill will be monitored on an ongoing basis. It also invites the lead committee to seek clarity regarding the funding mechanism by which resources will be made available to local authorities in the event that such costs prove to be significant.

Part 2: Community Planning

40. The FM states that the Bill seeks to strengthen CPPs by placing new duties on public sector partners “to play a full and active role in community planning and the resourcing and delivery of local priority outcomes.” It explains that some of these bodies are already statutory community planning partners, whilst others are not, although in practice they “frequently participate in community planning.”

41. The FM states that “for those public bodies which are complying with national and local action already underway at policy level to strengthen community planning it is anticipated that the provisions will impose either no or minor costs” (such as costs relating to travel or staff time).

42. Similarly, the FM states that “for those local authorities which are complying with national and local action already underway at policy level to strengthen community planning, it is anticipated that the provisions will impose either no or

minor additional indirect costs, in terms of commitment by senior officers and elected members.”

43. COSLA’s written submission agreed that any additional costs arising from this part of the Bill “would appear to be minimal.”⁵³²

44. SEPA expressed surprise that it had been designated as a public body for community planning and expressed concerns about “false expectations that SEPA will fully engage with all CPPs in Scotland” stating that this would be “highly resource intensive and not cost neutral”, especially if it did not “have the flexibility to tailor our engagement with different CPPs, and to deploy our limited resource where we can add the most value.”⁵³³

45. The Bill Team confirmed that SEPA would be a partner to the 32 CPPs across Scotland, but pointed out that the Bill did not stipulate what the level of engagement with each CPP should be. Therefore, “how SEPA engages will be flexible and will be decided in collaboration with CPP partners, so we do not necessarily see the same resource issues as SEPA does.”⁵³⁴

Part 3: Participation Requests

46. The FM states that the Bill will enable community bodies to seek to participate, along with a public body, in a process to improve the outcome of a service delivered by that public body. Public bodies will only be able to decline a request for dialogue where there are “reasonable grounds” to do so and will be required to publish a report at the end of the process.

47. The FM acknowledges that public bodies (including local authorities) are likely to incur costs in responding to participation requests. However, it provides no estimates of what these potential costs might be, stating that “the costs will depend on how often community participation bodies use the provisions and at this stage it is difficult to forecast use across Scotland.”

48. Expanding on this point in oral evidence, the Bill Team gave the example of one local authority area where demand for participation requests might be very low as the public authorities were already excelling in public engagement and participation as opposed to another area which might have low demand as a result of lack of capacity in the community. This scenario, it suggested, highlighted the difficulties in attempting to estimate the demand profile across Scotland.

49. The Bill Team also suggested that demand might increase over time as communities became increasingly aware of their new rights—

“When people see such requests being used, they might catch on. If people see them having an impact in their local area, demand may

⁵³² [COSLA, written submission](#)

⁵³³ [Scottish Environmental Protection Agency, written submission](#)

⁵³⁴ [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 50](#)

increase from that. It all depends on what communities want to do and how they want to use the provisions.”⁵³⁵

50. In response to questioning as to why other FMs previously scrutinised by the Committee where costs were also expected to be demand driven had set out approximate upper and lower limits, albeit with appropriate caveats, yet this one did not, the Bill Team explained that any such ranges would “be too large to be considered worthwhile.” Levels of demand, it stated, would only be seen when the Bill took effect.⁵³⁶

51. Expanding on this, the Bill Team continued—

“There are too many variables to factor into what would be a reasonable demand profile, or a reasonable idea of how many requests could come forward. We have gone back to what the unit cost might be and, as COSLA says, it is not overly onerous.”⁵³⁷

52. When asked to give an example of a piece of previous legislation for which the costs had been similarly unquantifiable the Bill Team confirmed that it had looked but had been unable to find a similar example.

53. The letter from the Minister dated 24 October explained that “there is no existing community-led mechanism comparable to participation requests on which to base estimates of demand” and highlighted the uncertainties over uptake of participation requests and the work required to respond to them.⁵³⁸

54. The Committee acknowledges the difficulty in providing concrete estimates of services that will be demand driven but emphasises that Standing Orders require FMs to provide best estimates of costs, their timescales and margins of uncertainty.

55. The FM also states that public bodies (including local authorities) will incur costs in relation to the provision of an outcome improvement process, although again, no estimates are provided. Two examples of the costs incurred by a local authority in relation to community engagement events (ranging from £1,100 to £41,000) are provided with the FM stating that they mainly related to staffing costs.

56. HIE agreed that there were “inevitable uncertainties” associated with the extent to which communities would seek to utilise the opportunities presented by the Bill, but anticipated that communities in its area would wish to engage strongly and utilise the new powers conferred by it. However, with regard to participation requests it expected that it would be able to absorb them “to a large extent within the costs of staff time currently devoted to on-going business improvement activities.”⁵³⁹

⁵³⁵ [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 57](#)

⁵³⁶ [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 53](#)

⁵³⁷ [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 54](#)

⁵³⁸ [Letter from Minister for Local Government and Planning to Convener of Finance Committee dated 24 October 2014](#)

⁵³⁹ [Highland and Islands Enterprise, written submission](#)

57. COSLA's submission drew parallels between the potential impact of participation requests and that of the existing Freedom of Information laws and expressed concerns about the associated administrative burden. However, the Bill Team stated that the Bill was not directly comparable to the Freedom of Information Act 2000 as it applied to everyone whilst participation requests would only apply to community bodies which met the criteria set out by the Bill. Furthermore, any such requests would then be assessed against certain criteria meaning that demand would be more limited.

Capacity Building

58. A number of respondents raised the topic of "capacity building" in community bodies with NHS Lothian, for example, suggesting that the FM's costs were "arguably understated" and noting that its original consultation response had stated that—

"community bodies may not possess the relevant skills, experience or knowledge to allow them to be meaningfully or effectively involved. Public service authorities would therefore need to consider how they could provide support for capacity building. This could add pressure to public service authorities from an already under-resourced position.... There does not seem to be consideration in the bill that addresses the inevitable financial and capacity implications of participation for community bodies in the improvement process."⁵⁴⁰

59. NHS Lothian also drew attention to the impact of the Bill in terms of tackling inequalities in Scotland, stating that—

"there needs to be specific regard made to what support infrastructures are in place to empower our less equipped communities, if not, the bill will further increase the inequalities gap between communities, some of whom are well equipped and able to articulate their needs while some will struggle to be heard/access this empowerment opportunity.

Without appropriate support and investment in community empowerment the key components of the Bill will not be fairly accessible to communities (both geographic or communities of interest)."⁵⁴¹

60. East Lothian Council stated that, in order to assist community groups to develop the capacity to take on the opportunities and challenges represented by the Bill, appropriate consideration should be given to the provision of adequate resources nationally "rather than assuming that local authorities will be able to find the resources from current spending allocations."⁵⁴²

61. This view was echoed by South Lanarkshire Council, which suggested that additional resource was required to establish appropriate structures and to support CPPs in maximising the Bill's impact.

⁵⁴⁰ [NHS Lothian, written submission](#)

⁵⁴¹ [NHS Lothian, written submission](#)

⁵⁴² [East Lothian Council, written submission](#)

62. However, the Bill Team stated in oral evidence, that whilst it agreed that “communities are not necessarily on a level playing field”, it did not believe that this was a matter for the Bill. Whilst the Bill provided a legal framework for such requests, support for capacity building in community bodies was provided through different avenues such as the Strengthening Communities Fund announced in April.⁵⁴³

63. South Lanarkshire Council also sought clarification of the definition of a community body, questioning whether such bodies were “restricted locally” or whether national organisations were also covered by the provisions. In the event that the latter was the case, it suggested it could be left open to “vast quantities of requests” leading to substantial costs which it was not resourced to deal with. It also expressed concerns that it could face further substantial costs if the outcome of the improvement process was that it had to “markedly change the way in which it sets its priorities and delivers services.”⁵⁴⁴

64. [The Explanatory Notes](#) state that—

“There are no restrictions on how a community may be defined for this purpose: it may be based, for example, on geographical boundaries, common interests, or shared characteristics of its members (such as ethnic background, disability, religion, etc.).

65. The lead committee may wish to invite the Minister to respond to the concerns raised by South Lanarkshire Council regarding the definition of a community body.

66. Fife Council also suggested that consideration might need to be given to levels of staffing needed to take on the organisation, assessment, and administration of additional requests from community groups. Whilst acknowledging that any investment in additional staffing might not be significant in terms of its overall budget, it noted that specific services such as Community Learning and Development were already under pressure as a result of having to respond to requests from local groups.⁵⁴⁵

67. The letter from the Minister dated 3 October provided examples showing that the overall costs for participation and engagement events could vary depending on the issues being looked at. It suggested that this was also likely to be the case with regard to participation requests and on this basis, estimated that costs per request could range between £1,000 and £7,500 “in most cases”. Therefore, should there be 100 participation requests across Scotland, the total cost could be expected to be between £100,000 and £750,000.⁵⁴⁶

Part 4: Community Right to Buy Land

68. The FM states that the Bill makes changes to community right to buy (CRTB) in order “to make the process easier and more flexible for communities while

⁵⁴³ [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 49](#)

⁵⁴⁴ [South Lanarkshire Council, written submission](#)

⁵⁴⁵ [Fife Council, written submission](#)

⁵⁴⁶ [Letter to Convener from Minister for Local Government and Planning dated 3 October 2014](#)

continuing to strike a fair balance between the rights of communities and landowners.” The FM further states that the Bill extends the right to buy to all of Scotland and removes the power of Ministers to designate “excluded land”.

69. Whilst the FM acknowledges that these changes could be expected to lead to more communities taking up the right to buy, it states that “it is not possible at this stage to accurately estimate the demand and how many new applications may be received.”

70. HIE agreed that it was difficult to quantify the likely increase in demand, but suggested that the extension of the right was “likely to generate significantly more CRTB applications” than anticipated with the attendant increase in costs to the Government. Whilst the FM does not make concrete predictions of the likely increase in CRTB applications, it provides examples on the basis of increases of five and ten additional applications per year which HIE suggests is “on the conservative side”, particularly given the extension of the provisions to urban communities. This point was echoed by the SPF which questioned whether this assumption could “remain credible.”⁵⁴⁷

71. The Bill Team agreed that HIE could expect more work as a result of the Bill, but stated that it would have “a certain amount of flexibility” in how it assisted communities. When communities come to HIE, it suggested that —

“the process will not be about engagement and consultation through HIE’s mechanisms; it will be about what the communities want to do.”⁵⁴⁸

72. The Committee acknowledges that bodies such as HIE will have some flexibility in how they deal with increased volumes of CRTB applications. However, the lead committee may wish to seek further clarity over what support might be put in place for such bodies in the event that demand exceeds expectations.

73. Glasgow City Council stated that the FM “wrongly suggests that there are no financial implications for local authorities in relation to right to buy.” It expected costs to arise as a result of the council “putting a process in place and of utilising resource from a range of services in order to enable a response to be made within a very short timescale” where the request relates to its land or that of an Arms Length External Organisation. It also raised the issue of possible financial implications “in the circumstance where the proposed acquisition may deal with a short term issue but is not aligned to the Council’s longer term strategy.”⁵⁴⁹

74. The SPF also suggested that the Bill might result in costs relating to events that did not happen or were delayed as a result of CRTB, for example where funding or investment was available for a limited time only and financial losses might be incurred as a result of delays resulting from CRTB applications.

75. Expanding on this point the SPF stated that its main concern was—

⁵⁴⁷ [Highland and Islands Enterprise, written submission](#)

⁵⁴⁸ [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 51](#)

⁵⁴⁹ [Glasgow City Council, written submission](#)

“that the enhanced scope of CRTB and by extension asset transfer may inhibit larger scale and complicated investment in development land in a manner that has not hitherto been an issue under the existing CRTB rights.”⁵⁵⁰

76. However, the Bill Team rejected this suggestion, explaining that similar concerns had been expressed during the passage of the Land Reform (Scotland) Bill, but they had not come to fruition. It further explained that in the event that community applications were made with the intention of inhibiting large-scale projects, it was unlikely that they would meet the public interest case set out in the Bill.

77. When asked whether it was correct that “the community land fund was established with a finger in the air to make a judgment, because nobody knew how many communities would apply or register interest in land” the Bill Team confirmed that it understood that to have been the case, although it did not know how the figure was arrived at.⁵⁵¹

78. The Committee invites the lead committee to seek clarification of how the community land fund’s budget was arrived at and to consider what parallels can be drawn between it and funding for CRTB in the context of the Bill.

79. A further point raised by the SPF was the lack of a clear explanation of how the expansion of CRTB inter-relates with the Government’s guidance on what is known as “the Crichton Down rules” and the potential for costs in the event of a challenge under them. It explained that—

“This is where land has been compulsorily purchased by a public authority but is then surplus and subject to disposal by the public authority in question. In these circumstances it is government policy for the previous owner to have right of first refusal. We do not see any assessment of the costs of ensuring this guidance is followed or indeed, provision made for where challenges might be made by former owners to the (erroneous) sale of properties to CRTB.”⁵⁵²

80. The lead committee may wish to seek clarification of how the expansion of CRTB might interact with “the Crichton Down Rules”.

81. The SPF also questioned whether NDPBs such as Historic Environment Scotland would “no longer have the same level of protection under the Bill as had been previously envisaged when they were an Agency of Government”, suggesting that were this to be the case, there could be significant financial implications for its estate and for those of other public bodies.

82. A final point raised by the SPF related to what might happen in the event that a community body—

⁵⁵⁰ [Scottish Property Federation, written submission](#)

⁵⁵¹ [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 56](#)

⁵⁵² [Scottish Property Federation, written submission](#)

“successfully purchases via CRTB from, for example, a public sector authority but then two or three years later finds it is unable to continue to hold the property and needs to sell the asset on but is unable to. A public authority may well be obliged to resume ownership and we do not see that this has been factored into the financial implications of CRTB or asset transfer.”⁵⁵³

83. SportScotland expressed concerns in the context of its duties under funding rules stating—

“We would not wish to see liabilities handed to community groups who then need to seek financial or other support from national organisations such as ours which funding rules do not allow us to give. As a distributor of National Lottery resources, continuing to invest in line with national guidance, we are required to ensure we protect the additionality principle. This means lottery investment adds to, and does not replace, other funding sources, achieving additional impact to what otherwise would have been achieved. Furthermore our standard terms and conditions attached to awards state that lottery monies must be used for the purpose set out in the approved application and are non-transferable. Any proposed disposal of assets wholly or partially acquired, restored, conserved or improved through lottery (or Scottish Government funding) cannot be progressed without first giving us written notification and we are satisfied that full market value is being sought.”⁵⁵⁴

84. The lead committee may wish to seek clarification of how rules relating to lottery funding might impact on CRTB.

Part 5: Asset Transfer Requests

85. The FM states that the Bill seeks to increase the amount of asset transfers from public bodies to community bodies by allowing such bodies to identify for themselves what they wish to achieve and the assets that they wish to acquire. It notes that the service which supports asset transfers was involved in 38 asset transfers from 2011 to 2014 but states that it cannot accurately predict future demand post-implementation.

86. The FM also states that the Government and/or local authority may decide to transfer an asset at lower than its market value following a full cost/benefit analysis which would include predicted future savings.

87. In respect of the Scottish administration and public bodies, the FM states that “the costs of these provisions will depend on the arrangements put in place and any additional costs will be met from existing resources.”

88. The FM provides no estimate of the financial impact of these provisions on local authorities stating that they “were not able to provide monetary estimates for any costs and savings that may arise.” It explains that this was in part due to the

⁵⁵³ [Scottish Property Federation, written submission](#)

⁵⁵⁴ [SportScotland written submission](#)

difficulty of predicting the number and variety of requests as well as the “complexity in predicting savings associated with better service provision.”

89. As with participation requests, the Bill Team explained that there were too many variables in terms of potential demand to quantify the potential volumes of asset transfers—

“As we go forward, we will see what the bill involves, but we cannot give the committee a definite figure for how much it might be used.”⁵⁵⁵

90. East Lothian Council estimated that it would require an additional full-time post costing around £40,000 per annum due to increased workloads arising from asset transfer requests. This additional work would include dealing with enquiries, the provision of detailed information, responding to and processing asset requests, preparing reports and valuations, responding to appeals, and providing plans and information. District Valuer valuations were also estimated to lead to fees of around £5,000 per annum.

91. East Lothian Council also estimated that its legal team could incur costs of between £400 and £1,200 per transaction and that it could spend around £500 each year in dealing with reviews (estimated at four per year).⁵⁵⁶

92. The letter from the Minister dated 3 October provided further information on the possible costs of dealing with asset transfer requests. In addition to the estimates provided by East Lothian Council, the letter also highlights figures from the Forestry Commission Scotland which indicate that it currently incurs costs of between £7,500 and £12,500 per asset transfer under its National Forest Land Scheme which enables communities to buy or lease Forestry Commission land.

93. The letter also provided a breakdown of the potential costs to community bodies undertaking an asset transfer. This states that “the estimate for community transfer bodies to obtain agreement to transfer is between £13,480 and £25,040.”⁵⁵⁷

94. With regard to overall costs, the Minister’s letter dated 24 October explained that “any estimate or range would be inherently flawed” as a result of uncertainties relating to the complexity of requests and demand over time.⁵⁵⁸

95. East Lothian Council also drew attention to councils’ duty to secure best value in their activities and to maximise the use of their assets. It pointed out that—

“It may not necessarily be in the best interests of the community as a whole to transfer a surplus building to a community group on request. The community as a whole may be better-served by attracting an economic use of such a building. In other words, there might be both economic and

⁵⁵⁵ [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 54](#)

⁵⁵⁶ [East Lothian Council, written submission](#)

⁵⁵⁷ [Letter to Convener from Minister for Local Government and Planning dated 3 October 2014](#)

⁵⁵⁸ [Letter from Minister for Local Government and Planning to Convener of Finance Committee dated 24 October 2014](#)

community wellbeing justification in seeking interest from the market to see if we could attract an economic use which would increase footfall and employment in the local area.”⁵⁵⁹

96. Fife Council agreed that it was “difficult to estimate savings, especially if assets are being disposed at less than market value (as has been the case in transfers to community organisations).” With regard to potential costs it stated that—

“Local Councils may need to develop a cross Service team with a suitable skill mix to fully implement and manage any programme of transfer of assets. There is also an unknown potential cost to Councils as they will require to be reactive to communities’ aspirations. In addition to suitable community work expertise to engage with local organisations, legal, financial and property management skills may be required.”⁵⁶⁰

97. However, Fife Council did confirm that it did not expect these costs to be prohibitive in terms of implementing the Bill.

98. South Lanarkshire Council also noted that it could incur costs relating to asset transfers where it had to retain a property off market while the process was ongoing. These could include costs in relation to empty property rates, insurance, security, utility bills, repairs and maintenance. Noting that it could also lose income where the community body sought a reduction in price or rent (which it stated could be expected “in most cases”), it also drew attention to its responsibility to ensure that any such reduction was “clearly set against community benefits.”⁵⁶¹

99. NHS Lothian echoed these concerns stating—

“The longer and more complex the disposal process becomes, the greater the cost to the public sector body. Non-domestic rates will be incurred, security costs will have to be paid and the potential for deterioration and vandalism increases.”⁵⁶²

100. In addition to these costs, NHS Lothian shared the views of East Lothian Council, suggesting that “the increased complexity and more onerous process may necessitate additional staff resources and a greater demand for consultancy services” as well as costs relating to legal fees and the valuation of assets.

101. In terms of potential savings, South Lanarkshire Council acknowledged that these were more difficult to identify as they would depend on the specific proposal. It stated that savings could be made if the alternative to asset transfer was demolition or if maintenance and operational costs were to be borne by the community organisation. However, it also pointed out that these savings could also be achieved through a sale or lease on the open market.⁵⁶³

⁵⁵⁹ [East Lothian Council, written submission](#)

⁵⁶⁰ [Fife Council, written submission](#)

⁵⁶¹ [South Lanarkshire Council, written submission](#)

⁵⁶² [NHS Lothian, written submission](#)

⁵⁶³ [South Lanarkshire Council, written submission](#)

102. COSLA's submission stated—

“Very little information on the potential cost savings have been outlined, as again this will be demand driven and COSLA is concerned that these savings may have been overstated. COSLA would welcome clarity around this area of the Financial Memorandum.”⁵⁶⁴

103. The Committee invites the lead committee to ask the Minister to respond to COSLA's request for further clarity in this area.

104. NHS Lothian drew attention to anecdotal evidence that local authorities might regard the transfer of assets to community groups as a cost saving exercise and expressed concerns that such groups might not have “the funds nor the capacity to maintain these areas once a lease has been drawn up.”

105. It also expressed concerns that public bodies could incur losses as a result of the Bill—

“There may be potential costs to public service bodies as a result of land not necessarily being disposed of at true market value. Public bodies may bear a cost if they are not properly financially compensated for any asset transfers under Part 5 of the Bill. The Bill does not appear to require public bodies to be compensated for asset transfers.”⁵⁶⁵

Part 6 – Common Good Property

106. The FM states that as of 31 March 2011, local authorities managed common good assets valued at £219 million. It explains that the Bill seeks to improve transparency around such assets and to increase community involvement in decisions regarding their identification, use and disposal.

107. To this end, the Bill will require local authorities to establish and maintain a register of common good assets and to invite community groups to comment on it in draft form.

108. Fife Council pointed out that the Bill does not amend the law of common good to allow local authorities to use certain categories of common good land for other purposes such as building new schools. It went on to suggest that this might have unintended financial consequences for local authorities as it would reduce their options for using their land. This, it suggested, could force councils to “acquire land from third parties at cost rather than making best use of existing resources.”⁵⁶⁶

Part 7 – Allotments

109. The Bill replaces existing legislation relating to allotments, “updating and clarifying” the requirements on local authorities.

⁵⁶⁴ [COSLA, written submission](#)

⁵⁶⁵ [NHS Lothian, written submission](#)

⁵⁶⁶ [Fife Council, written submission](#)

110. Local authorities will be required to provide more allotments when certain trigger points are reached in relation to numbers on a waiting list.

111. The FM states that local authority costs “will be dependent on how much provision is required to meet their targets, how much provision is actually possible due to land availability and costs, and factors such as the local cost of land and whether road access, toilets etc. need to be created.” It also states that estimates provided by some local authorities indicate a cost ranging from £1,900 to £6,250 per plot and from £21,000 to £150,000 for a whole site. The FM states that demand is variable, with some local authorities facing substantial demand whilst others would need no more plots to meet this target.

112. North Ayrshire Council, however, stated that its response to a recent COSLA consultation had indicated an upper limit of £250,000 for a whole site.⁵⁶⁷

113. South Lanarkshire Council drew attention to the right of the Scottish Ministers to prescribe the size of allotments, which it stated would—

“clearly impact on the cost to the Council since a prescribed size will mean that the Council will have to consider this when acquiring land. Clearly, the larger an allotment is the greater the cost to the Council.”⁵⁶⁸

114. Whilst Glasgow City Council pointed out that—

“Specific costs are noted for the aspects of the Bill relating to allotments but this focuses on the administrative costs as opposed to the capital investment costs. The council believes that the capital investment costs would be significant.”⁵⁶⁹

115. COSLA also suggested that significant financial implications could arise for local authorities as a result of the development of new allotments, “in particular, where this includes the provision of roads for access and facilities such as toilets and access to water on site” and expressed concerns that the costs of site maintenance and utility bills had not been considered in the FM.⁵⁷⁰

116. In oral evidence, the Bill Team agreed that costs in relation to allotments would be “dependent on existing provision and demand” but explained that the FM’s figures were based on information provided by “the 15 out of 32 local authorities that responded” to its consultation.⁵⁷¹

117. The Minister’s letter dated 24 October confirmed that—

⁵⁶⁷ [North Ayrshire Council, written submission](#)

⁵⁶⁸ [South Lanarkshire Council, written submission](#)

⁵⁶⁹ [Glasgow City Council, written submission](#)

⁵⁷⁰ [COSLA, written submission](#)

⁵⁷¹ [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 48](#)

“the costs associated with the allotments provisions will depend on the amount of provision already in place compared with any unmet demand, as well as the local cost and availability of land.”⁵⁷²

118. However, it went on to state that “the figures provided by local authorities provide some examples but do not allow robust national estimates to be constructed.”

119. The Committee invites the lead committee to seek clarification as to whether additional resources will be made available to any local authorities which incur significant additional costs as a result of the duty to provide additional allotments.

Part 8 – Non-Domestic Rates

120. The FM states that, in effect, this provision allows local authorities “to create localised relief schemes to respond to local needs and demands.” Any such discretionary reliefs awarded by a local authority must be funded from within that authority’s existing resources and not at the expense of the [Government’s central NDRI] pool.”

121. The Bill does not give local authorities equivalent powers to levy any additional rates.

122. Fife Council stated that “in effect it proposes the establishment of localised relief schemes which could be used to help incentivise development and investment in areas deemed appropriate by the local authority.”⁵⁷³

123. However, Fife Council also noted that whilst this could create opportunity, it could also lead to additional costs in terms of administration costs and the loss of income arising from the reliefs themselves. It further pointed out that the Bill explicitly prevented local authorities from raising NDR in other areas to compensate for any loss of income.

124. East Lothian Council stated that any reliefs would have to be funded by savings elsewhere and would ultimately be borne by council tax payers. It further suggested that the Bill could be expected to lead to a marked increase in applications for NDR relief and related disputes and in their complexity which would inevitably impact on its workload. This additional work, it suggested, could lead to a reduction in the collection of NDR as the absorbing of the additional workload could leave its Business Rates Team with fewer resources to target poor payers.

125. East Lothian Council did acknowledge that longer-term financial benefits could result from the targeted use of reliefs to stimulate economic growth in certain

⁵⁷² [Letter from Minister for Local Government and Planning to Convener of Finance Committee dated 24 October 2014](#)

⁵⁷³ [Fife Council, written submission](#)

areas, but stated that in the short-term, it would “be costly in a time of monetary constraint as we would be funding any reduction.”⁵⁷⁴

126. North Lanarkshire Council also suggested that “the new localised relief scheme has the potential to benefit larger/Council Tax rich local authorities at the expense of other local authorities.”⁵⁷⁵

127. The SPF raised the issue of whether local authorities might seek to spread the costs of NDR relief among local landlords and expressed the hope that central government would provide some financial support for the policy.⁵⁷⁶

CONCLUSION

128. The lead committee is invited to consider this report as part of its scrutiny of the Community Empowerment (Scotland) Bill’s FM.

⁵⁷⁴ [East Lothian Council, written submission](#)

⁵⁷⁵ [North Lanarkshire Council, written submission](#)

⁵⁷⁶ [Scottish Property Federation, written submission](#)

ANNEXE C: DELEGATED POWERS AND LAW REFORM COMMITTEE REPORT ON THE COMMUNITY EMPOWERMENT (SCOTLAND) BILL

The Committee reports to the Parliament as follows—

1. At its meetings on 19 August, 30 September, 28 October and 4 November the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Community Empowerment (Scotland) Bill (“the Bill”) at Stage 1⁵⁷⁷. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

OVERVIEW OF BILL

2. This Government Bill was introduced by John Swinney MSP on 11 June 2014. The lead Committee is the Local Government and Regeneration Committee. The Bill makes wide-ranging provision in relation to various types of community body and their rights. It is divided into 9 parts.

3. Part 1 places a duty on the Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, to be reviewed every 5 years. Public authorities are to have regard to the national outcomes in carrying out their functions, as are all persons carrying out functions of a public nature. The Scottish Ministers are obliged to prepare and publish reports about the extent to which the national outcomes have been achieved.

4. Part 2 concerns community planning. Section 4(1) provides that local authorities, the bodies listed in schedule 1 of the Bill and community bodies must participate with each other in community planning. ‘Community planning’ is defined as planning that is carried out with a view to improving the achievement of outcomes in relation to the area of a local authority resulting from, or contributed to by, the provision of services delivered by or on behalf of the local authority or the persons listed in schedule 1 to the Bill. Schedule 1 lists bodies such as National Park authorities, Scottish Enterprise and the Scottish Fire and Rescue Service.

5. Part 2 of the Bill also makes provision in relation to local outcomes improvement plans. These are plans prepared and published by community planning partnerships setting out local outcomes to which the partnership must give priority with a view to improving the achievement of the outcome, as well as a description of the proposed improvement action and the time period within which the improvement is to be achieved. The local outcomes improvement plan is to be kept under review by the community planning partnership.

6. Part 3 of the Bill relates to participation requests. A participation request is a request made by a community controlled body to a public authority to permit the body to participate in an outcome improvement process. In making a request, the community body must set out details of any knowledge, expertise and experience

⁵⁷⁷ Community Empowerment (Scotland) Bill [as introduced] available here:
[http://www.scottish.parliament.uk/S4_Bills/Community%20Empowerment%20\(Scotland\)%20Bill/b52s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Community%20Empowerment%20(Scotland)%20Bill/b52s4-introd.pdf)

the body has in relation to the specified outcome. The Bill also sets out the process to be followed by an authority where it receives a participation request.

7. Part 4 of the Bill does two things. Firstly, sections 27-47 make amendments to Part 2 of the Land Reform (Scotland) Act 2003 (“the 2003 Act”). The principal amendment is an extension of the community right to buy (currently available in respect of rural land only) to all land in Scotland. Sections 27-47 of the Bill also make various other changes to Part 2 of the 2003 Act so as to improve the working of those provisions.

8. Secondly, Part 4 creates a new community right to buy in respect of abandoned or neglected land. Section 48 of the Bill introduces a new Part 3A into the 2003 Act. The provisions set up a process whereby community bodies may apply to the Scottish Ministers to exercise their right to buy land which is abandoned or neglected. The new right to buy differs from the existing rights in Part 2 of the 2003 Act in one important respect, which is that the right to buy abandoned or neglected land may be exercised in circumstances where the owner of the land does not wish to sell.

9. Part 5 of the Bill relates to asset transfer requests. An asset transfer request is a request made by a community controlled body to a ‘relevant authority’ which seeks permission to buy, lease or otherwise acquire rights in respect of property owned by that relevant authority. A ‘relevant authority’ is a body listed in schedule 3 to the Bill, and includes local authorities, the Scottish Ministers, SEPA and the Scottish Court Service. Part 5 sets out the requirements to be met by a community body before it can make a request, the process to be followed in making a request and the rights of appeal that are available in the event that a request is refused.

10. Part 6 of the Bill relates to common good property. “Common good” refers to assets originally acquired from former burghs to which local authorities have taken title. The Bill requires each local authority to establish and maintain a common good register which must be available to members of the public for inspection. The Bill also imposes requirements on local authorities to publish details of any decision it proposes to take to dispose of common good assets or to change their use. The authority is required to have regard to any representations it receives in relation to the proposed disposal of common good assets.

11. Part 7 of the Bill concerns allotments. It replaces the provisions of the Allotments (Scotland) Acts of 1892, 1922 and 1950 which are repealed in their entirety. The Bill also repeals some provisions of the Land Settlement (Scotland) Act 1919. The Bill creates a new definition of ‘allotment’ and ‘allotment site’, and it places a duty on local authorities to hold and maintain waiting lists for allotments and to take reasonable steps to provide more allotments if the waiting list exceeds key trigger points. The Bill creates compensation rights in favour of tenants of allotments for disturbance, deterioration of an allotment site or loss of crops.

12. Part 8 concerns non-domestic rates. It amends the Local Government (Financial Provisions etc.) (Scotland) Act 1962 and the Local Government Finance Act 1992. The effect of the amendments is that local authorities are given power

to grant localised relief from business rates. Any relief granted is to form part of a relief scheme which is funded by the authority. Before creating such a scheme, the authority is required to have regard to the interests of persons liable to pay council tax which is set by that authority.

13. Part 9 of the Bill makes general provision in relation to subordinate legislation, ancillary provision, commencement and short title.

DELEGATED POWERS

14. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”)⁵⁷⁸. Due to the volume of powers in the Bill the Committee adopted a staged approach to its scrutiny. At its first consideration of the Bill, the Committee delegated authority to its legal advisers to ask written questions of the Scottish Government. The questions issued and the responses received from the Scottish Government are included in this report at **Annex B**.

15. At its meeting on 30 September, the Committee took oral evidence from Scottish Government officials on a number of powers in the Bill following receipt of the Scottish Government’s answers to the written questions.

16. The Committee makes no recommendation in respect of the powers listed at **Annex A** to this report. These powers are divided into powers with which the Committee was initially content; powers with which the Committee was content following written evidence from the Scottish Government; and powers with which the Committee was content following both written and oral evidence from the Scottish Government.

17. The Committee’s comments and recommendations on the remaining delegated powers in the Bill are detailed below. Before considering the individual powers, the Committee makes the following general observations:

- i. **The reasons advanced in the DPM for taking many powers in the Bill were not sufficiently detailed so as to enable the Committee to reach a view on whether those powers were acceptable in principle. With regard to several powers, the necessary information was only obtained following both written and oral evidence.**
- ii. **The quality of some of the written answers provided by the Scottish Government in response to the Committee’s questions was inadequate, requiring the Committee to explore a number of issues further with Scottish Government officials in oral evidence. In relation to some key powers in the Bill, for example the power in the new section 97C(3)(a) of the 2003 Act, the answers given by the officials in oral evidence failed to provide the information sought by the Committee.**

⁵⁷⁸ The Delegated Powers Memorandum is available here:
http://www.scottish.parliament.uk/S4_Bills/CE_DPM.pdf

- iii. In relation to the power in the new section 97C(3)(a) of the 2003 Act, the Committee remains in a position, having considered both written and oral evidence, whereby it is unable to form a view as to how this power is intended to be used. The Government has not provided an explanation for taking this power beyond a need to retain flexibility within the Bill. The Committee considers that explanation to be inadequate in light of the significance of this power and what it appears to permit. The Committee further finds it concerning that the thinking behind a power of such significance to the scope and application of the Bill appears still to be in the early stages of development. The Scottish Government may wish to reflect on its reasons for taking this power as the Bill progresses through the Parliament and the lead Committee may wish to explore the power further when it takes oral evidence from the Minister for Local Government and Planning.
- iv. More generally, the Committee finds it unsatisfactory that the Parliament is being asked to confer certain wide-ranging powers on the Scottish Ministers in circumstances where the Scottish Government has not informed the Parliament in sufficient detail of its plans for using those powers or of the reasons for taking a particular approach to the framing of certain powers. The Committee considers that there is a clear need for delegated powers to be fully explained, their terms appropriately framed and their scope clearly delineated.
- v. The points made above are concerning to the Committee given the significance of many of the powers in this Bill. The quality of delegated powers memoranda in particular is an issue that the Committee is monitoring on an ongoing basis, and will continue to raise in its annual and quarterly reports and, as appropriate, with the Minister for Parliamentary Business.

Recommendations

Sections 1 and 2 – National outcomes

| | |
|---------------------------------|--------------------------------|
| Powers conferred on: | the Scottish Ministers |
| Powers exercisable by: | published determination |
| Parliamentary procedure: | none |

Scrutiny procedure for setting and review of national outcomes

18. Section 1(1) of the Bill places a duty on the Scottish Ministers to determine national outcomes in relation to Scotland that result from, or are contributed to by, the carrying out of functions of Scottish public authorities, cross-border public authorities, and other persons carrying out functions of a public nature. Such bodies are required to have regard to the national outcomes in carrying out their functions.

19. Section 1(2) of the Bill places a requirement on the Scottish Ministers to consult on the national outcomes and section 1(3) requires Ministers to publish the outcomes. There is no provision for Parliamentary scrutiny of the outcomes prior to their publication, or for the outcomes to be laid before Parliament once published. The Committee sought written explanation as to why it is considered appropriate for the power to decide on national outcomes to be exercisable by informal published determination as opposed to by, for example, Scottish statutory instrument.

20. The Scottish Government's written response to the Committee indicated that Parliamentary scrutiny will focus on progress toward the national outcomes, not the setting of the outcomes. The response also indicated that it may be that the Parliament would wish to debate the outcomes set out by Ministers, and that the arrangements put forward by the Bill do not prevent that.

21. The Committee explored these issues further with the Scottish Government officials at its meeting on September 30th. Anne-Marie Conlong of the Scottish Government's Performance Unit explained that—

“The Scottish Government believes that what we have set out in the provisions reflects the current separation of powers between the Scottish Government and the Parliament. It would be for the Scottish Ministers to co-ordinate Government business and to set out the strategic direction for Government – within its overall accountability to the Parliament, of course - and the Parliament would exercise a scrutiny function, holding ministers to account on progress toward the national outcomes and objectives.”⁵⁷⁹

22. Furthermore, officials indicated that they were—

“...more than happy to take back for further consideration with Ministers the Committee's views on the respective roles of the Parliament and the Government in setting the outcomes.”⁵⁸⁰

23. There is recent comparable provision for national outcomes to be set out in subordinate legislation. Section 3(2) of the Public Bodies (Joint Working) (Scotland) Act 2014 requires that a local authority and a health board must, in preparing an integration plan, have regard to the national health and wellbeing outcomes in section 5 (and the integration planning principles in section 4). Section 5(1) enables the Scottish Ministers to prescribe the national health and wellbeing outcomes by regulations which are subject to the affirmative procedure.

24. In the DPM for the 2014 Bill, the Scottish Government explained why it was considered appropriate that the health and wellbeing outcomes should be prescribed by regulations subject to the affirmative procedure: “By allowing Ministers to set national outcomes, it provides for a consistent focus nationally. It is appropriate that outcomes are set by regulations as this requires a process of

⁵⁷⁹ *Delegated Powers and Law Reform Committee, Official Report, 30 September 2014, Col.3*

⁵⁸⁰ *Delegated Powers and Law Reform Committee, Official Report, 30 September 2014, Col.3*

consultation to be followed, contemporaneously with integration plans being prepared, to inform the outcomes. It also provides flexibility for the Scottish Ministers to amend outcomes in the future, in response to innovation locally and changing circumstances, and in order to support continuous improvement... This is subject to affirmative procedure as the national outcomes are fundamental to health and social care integration in that they express its practical purpose. Whilst this level of scrutiny involves more parliamentary time, it is considered that the national outcomes are sufficiently important to justify this, and it is not anticipated that they will be regularly amended.”

25. The Committee considers that there is a clear comparison to be drawn between the health and wellbeing outcomes for Scotland as provided for by the Public Bodies (Joint Working) (Scotland) Act 2014, and the national outcomes under this Bill. The Committee also observes that the national outcomes set under the Bill will be applicable to a wider range of bodies than the health and wellbeing outcomes therefore the requirement for Parliament to have a role in the process of setting or reviewing the outcomes is, in the Committee’s view, greater.

26. The Committee acknowledges, however, that there are alternative ways to afford the Parliament an opportunity to scrutinise the national outcomes. By way of example, the Committee notes the provision in section 16 of the Judiciary and Courts (Scotland) Act 2008. Section 16 relates to guidance issued by the Scottish Ministers or the Lord President as to the manner of exercise by the Judicial Appointments Board for Scotland of its functions. Section 16 provides that before issuing guidance, the Scottish Ministers or, as the case may be, the Lord President, must lay a draft of the proposed guidance before the Parliament. The guidance must not be issued until 21 days after it has been laid before Parliament, and the Parliament may by resolution make recommendations in relation to the draft guidance to which the Government or the Lord President must have regard. The Parliament does not, however, have power to prevent the guidance from being issued.

27. While the Committee acknowledges that the Parliament would not be prevented from debating such outcomes as are set by the Scottish Government, the Committee considers that a more active scrutiny role for the Parliament in relation to the outcomes would be appropriate and should be set out on the face of the Bill. One clear way to enable Parliament to scrutinise the outcomes would be for the outcomes to be prescribed in regulations subject to scrutiny by the affirmative procedure, although as noted above, the Committee acknowledges that there may be alternative ways in which the Parliament could be afforded a role in considering the outcomes and that the formulation of such a role is ultimately a matter for the Scottish Government.

Consultation on the national outcomes

28. Sections 1(2) and 2(5) of the Bill provide that before determining or revising the outcomes, the Scottish Ministers must consult such persons as they consider appropriate. The Committee explored in the oral evidence session why, in principle, the provision does not specify any persons or bodies which (at a minimum) the Scottish Ministers would need to consult.

29. It was explained in the oral evidence session that the intention is to leave the potential scope for consultation as broad as possible, which has been favoured by stakeholders. In some cases consultation would be very wide, but in other cases focussed. The intention is not to limit or narrow the scope of the persons who may be consulted. It was indicated that if the Committee was of the view that the Bill should include a minimum list of bodies that suggestion would be considered further, however the Scottish Government would not want to limit the scope of potential consultation in any future review.

30. Sections 1(2) and 2(5) provide that the consultation on the national outcomes will be with such persons as (subjectively, at the particular time) the Scottish Ministers consider appropriate. The Committee accepts that this approach keeps the scope for consultation as broad as possible, but observes that, equally, it does not offer any guarantee of consultation at a minimum level, where the outcomes are to be set or revised.

31. The Committee also notes that, by comparison, section 5 of the Public Bodies (Joint Working) (Scotland) Act 2014 specifies a minimum level of required consultation before the national health and wellbeing outcomes are prescribed by regulations. Ministers must consult in advance local authorities, Health Boards, each integration joint board at the time established, and in respect of various groups set out in section 5(4) involved in health and social care provision, such persons appearing to be representative of the group as the Ministers think fit.

32. The Committee considers that a list of persons or bodies that, at a minimum, the Scottish Ministers must consult when national outcomes are set or reviewed should be adopted in the Bill. Such an approach could be tailored to ensure a minimum base for consultation while leaving it open to Ministers to consult such other bodies as they think fit in the particular circumstances, having regard to the nature of the outcomes being set or revised.

33. The Committee has concerns that the process for setting and reviewing national outcomes under Part 1 of the Bill leaves no role for the Parliament to scrutinise the outcomes that are proposed to be set or, as the case may be, revised, before they are published.

34. The Committee considers that it would be appropriate for the setting and review of the national outcomes to be subject to the scrutiny of Parliament, possibly through scrutiny of regulations subject to the affirmative procedure. A more active scrutiny role for the Parliament appears to be justified having regard to the significance of the national outcomes, the discretion afforded to the Scottish Ministers in deciding how the outcomes are presented and measured, and the fact that all public bodies and other persons carrying out functions of a public nature as described in section 1(1) would require to have regard to the outcomes.

35. Sections 1(2) and 2(5) provide that before exercising the power to determine or revise the national outcomes, the Scottish Ministers must consult such persons as they consider appropriate. The Committee recognises that the determination of which bodies and persons ought to be

consulted is a policy matter. The Committee draws to the attention of the Local Government and Regeneration Committee however that sections 1(2) and 2(5) keep the scope for consultation as broad as possible, but equally they do not guarantee any minimum level of consultation that might be suitable, depending on whether it is proposed to set or change the outcomes generally or to have a more focussed review.

Sections 4(6), 8(3), 16(2) and 51(3) – power to add or remove bodies

| | |
|---------------------------------|---|
| Powers conferred on: | the Scottish Ministers |
| Powers exercisable by: | regulations (sections 4(6) and 8(3)); order (sections 16(2) and (3) and 51(2) and (3)) |
| Parliamentary procedure: | negative |

36. Section 4(6) allows Ministers to modify schedule 1 of the Bill to expand the list of community planning partners to which Part 2 of the Bill applies. The power also enables Ministers to remove bodies from the list, thereby reducing the scope of Part 2 of the Bill. Section 8(3) provides a similar power in respect of the list of community planning partners which have governance requirements in relation to community planning as set out in section 8(2).

37. Sections 16(2) and (3) provide powers to expand or reduce the list of public service authorities to which a participation request may be made in terms of Part 3 of the Bill (the list is contained in schedule 2). Sections 51(2) and (3) create similar powers in respect of the list of relevant authorities to whom an asset transfer request may be made under Part 5 (the list of relevant authorities is set out in schedule 3).

38. These powers are subject to the negative procedure. The Committee sought explanation from the Scottish Government as to why that was considered appropriate as opposed to the affirmative procedure, which would afford the Parliament a greater measure of scrutiny over the exercise of these powers which not only permit the modification of primary legislation, but which could also have a considerable impact on the scope and application of Parts 2, 3 and 5 of the Bill.

39. In response, the Scottish Government explained that the negative procedure was considered appropriate for the exercise of these powers, as adding or removing bodies from a list in one of the schedules to the Bill is unlikely to be controversial. The response also drew a parallel with section 4(1) of the Freedom of Information (Scotland) Act 2002 (“the 2002 Act”) where a power to amend a list of bodies is subject to the negative procedure. In oral evidence, the officials explained that these powers provide flexibility to make changes to the relevant lists should that be considered necessary.

40. The Committee considers that the exercise of these powers is capable of having a considerable impact on the scope and applicability of some of the key provisions in the Bill. For example, the power in section 4(6) could in theory be used to considerably expand the application of Part 2 of the Bill by adding large numbers of bodies to the list of community planning partners contained in

schedule 1. Conversely, it could also be used to reduce the application of Part 2 of the Bill by removing bodies from the schedule 1 list.

41. The Scottish Government draws a parallel with section 4(1) of the Freedom of Information (Scotland) Act 2002 as a similar provision to add or remove bodies to or from a list which is also subject to the negative procedure. The Committee observes, however, that more recent powers to make amendments to lists of bodies have adopted a different procedural approach. For instance, section 25 of the Public Services Reform (Scotland) Act 2010 provides that an order which adds a body to the list in schedule 5 is subject to the affirmative procedure, but to the negative procedure where a body is removed from the list. A similar example pertains in section 7 of the Regulatory Reform (Scotland) Act 2014 (power to modify the list of regulators).

42. These examples, which post-date the 2002 Act, suggest that where bodies are added to lists, the powers should be subject to the affirmative procedure. Conversely, where the application of the Bill is shrunk and bodies are removed from lists, the negative procedure may be appropriate. Standing the absence of reasons why the present Bill should not follow these more recent examples, the Committee recommends that the Scottish Government amend the Bill at Stage 2 so as to require these powers to be subject to the affirmative procedure where they add bodies to the lists, but to the negative procedure where they are exercised so as to remove bodies from the lists.

43. The Committee calls on the Scottish Government to amend the Bill at Stage 2 so as to make the powers in sections 4(6) and 8(3) subject to the affirmative procedure when exercised so as to add bodies to the lists in schedule 1 or section 8(2) respectively. The Committee also recommends that the powers in sections 16(3) and 51(3) be made subject to the affirmative procedure.

Section 10 – Power to issue guidance

Power conferred on: the Scottish Ministers
Power exercisable by: guidance (published)
Parliamentary procedure: none

44. Section 10(1) provides that each community planning partnership must comply with any guidance issued by the Scottish Ministers about the carrying out of functions conferred on the partnership by Part 2 of the Bill. Section 10(2) provides that each community planning partner must comply with any guidance issued by the Ministers about the carrying out of functions conferred on the partner by Part 2. Before issuing either set of guidance, the Ministers must consult such persons as they think fit. Section 95 provides that the guidance will be published on issue, in such manner as the Scottish Ministers think fit.

45. The Committee explored two aspects of the power to issue guidance in the oral evidence session: a) why the guidance is proposed to be binding on community planning partnerships and partners, rather than there being a requirement that they will have regard to it; and b) why there is no provision for

any Parliamentary procedure to apply to the guidance or for it to be laid before Parliament.

46. As to a), the proposed automatically binding nature of the guidance is a change to the provision in section 18 of the Local Government in Scotland Act 2003. That section provides that every person initiating, maintaining, facilitating or participating in community planning shall, in doing so, have regard to any guidance provided by the Scottish Ministers about community planning. The consultation requirement in section 10(3) is similar to that already in section 18(2) of the 2003 Act.

47. The Committee explored in oral evidence the considerations underlying the proposal that the guidance should be binding. A key aspect as outlined by the Scottish Government officials was that the policy intention is that there should be local discretion and local innovation in how community planning is approached and dealt with, but there may be some matters that the Scottish Government feels are fundamental enough to apply on a national level, where the guidance could specify binding requirements on community planning partnerships and partners.

48. In reply to the question how it is foreseen that this power of binding guidance would be utilised, the officials responded—

“It is hard to know at the moment...the guidance will be subject to quite a lot of consultation before we put it out...It is hard to say what particular provisions will be used for, but that will emerge from the process.”⁵⁸¹

49. The Committee considers that a power to issue guidance which is automatically binding according to its terms is highly unusual, and might be expected to require particular explanation as to why the power is needed. A binding requirement in such guidance would in law be binding in the same way as if the provision was contained in a statutory instrument or in an Act. The Bill appears to put no enforcement mechanism in place for compliance with the guidance. The guidance must cover matters “about the carrying out of functions conferred on community planning partners and partnerships under part 2 of the Bill.” But this is a broad requirement, and there is no enforcement or scrutiny mechanism proposed in the Bill to review whether matters required by the guidance are properly covered as concerning the various functions conferred in Part 2.

50. It was explained to the Committee in evidence that the policy intention is that some matters covered by the guidance should be matters which would be binding on a national level, while others would permit local discretion. However, the scope of the power in section 10 makes no such distinction, for instance by specifying a range of matters or requirements which possibly could be included as binding.

⁵⁸¹ *Delegated Powers and Law Reform Committee, Official Report, 30 September 2014, Col.9*

51. The Committee accordingly draws to the attention of the Local Government and Regeneration Committee that it has concerns, in principle, as to the proposal that the guidance should be binding on community planning partnerships and partners. This concern has a number of factors, and a power of this nature is unusual.

52. The Scottish Government officials were not clear in their oral evidence to the Committee as to the reasons why this power was being taken and how it could be exercised. It was indicated that there is a policy intention that some matters would be fundamental enough to be binding on a national level, while others would not and could permit local discretion and innovation. This distinction, however, is not provided for in section 10.

53. The Bill also makes no provision for an enforcement mechanism, to enforce compliance with the guidance. The guidance must cover matters “about the carrying out of functions conferred on community planning partners and partnerships under Part 2 of the Bill”. This is a broad requirement and the Bill makes no provision for a scrutiny or review mechanism, to review whether any automatically binding matters which may be specified in the guidance are properly included, because they concern the carrying out of functions conferred in Part 2 of the Bill.

54. These concerns would not apply if, in a similar way to the existing provision for guidance in section 18 of the Local Government in Scotland Act 2003, there was provision that community planning partners and partnerships would “have regard to” the guidance.

Section 48 inserting section 97C(3)(a) into the 2003 Act – Eligible land

| | |
|---------------------------------|-------------------------------|
| Power conferred on: | the Scottish Ministers |
| Power exercisable by: | regulations |
| Parliamentary procedure: | affirmative |

55. The new Part 3A of the 2003 Act as inserted by Part 4 of the Bill will apply only in respect of “eligible land”. Eligible land is defined in the new section 97C(1) of the 2003 Act as land which the Scottish Ministers consider is wholly or mainly abandoned or neglected. The remainder of the new section 97C provides further detail as to the meaning of eligible land.

56. Section 97C(3)(a) provides that eligible land does not include land on which there is a building or structure which is an individual’s home, unless the building or structure falls within such class or classes as may be prescribed. The word ‘prescribed’ adopts the definition set out in section 98(1) of the 2003 Act, meaning “prescribed in regulations made by the Scottish Ministers”. The effect of section 97C(3)(a), therefore, is that Ministers may make regulations prescribing buildings or structures which are eligible for acquisition by a Part 3A community body notwithstanding the fact that such buildings or structures may constitute an individual’s home.

57. The DPM states that the policy intention is that eligible land should not include an individual's home. It also states that this power will enable there to be flexibility as to exactly what buildings or structures constitute an individual's home. The power is subject to the affirmative procedure and the DPM states that this is considered appropriate, given that what constitutes "eligible land" is fundamental to the scope and application of the new Part 3A.

58. While the Committee agrees that this power is fundamental to the scope and application of the new Part 3A of the 2003 Act, it does not consider that the DPM provides a sufficiently detailed explanation as to how it is intended to be used. The Committee accordingly sought written clarification from the Scottish Government as to what this power enables the Scottish Ministers to do and how it is intended that the power will be used.

59. In its written answer, the Scottish Government confirmed that section 97C(3)(a) enables Ministers to add prescribed classes of building back into the pool of eligible land to which the new Part 3A applies. The Government explained that it was unable to provide examples of the kinds of building or structure which may be prescribed using this power, but that the power "allows for flexibility". The Government also stated in its written answer that it would be happy to consider changes to the provision should the Committee be of the view that that would be of benefit to the Bill.

60. At the oral evidence session on 30 September, Members sought further information from the Scottish Government officials as to why this power was being taken, standing the lack of detailed explanation in the Government's written response and the DPM. Members also asked what factors – other than flexibility – were taken into account in framing this power.

61. In oral evidence Dave Thomson from the Scottish Government's Land Reform and Tenancy Unit repeated that the power was required to allow for flexibility—

"The flexibility on those powers is the key part at the moment. The policy intent is not to take people's homes away in any circumstances, but still to allow community bodies to take control of assets. Essentially, the powers that we are looking to take on through that provision are simply to allow that flexibility to set out in detail the types of buildings or assets that can be included or excluded. At the moment, we do not have specific examples, hence the current need for flexibility in those powers."⁵⁸²

62. Rachel Rayner of the Scottish Government Legal Directorate also commented on this power:

"[A]ny regulations made by Ministers would have to comply with the European Convention on Human Rights. As you will be aware, Article 8 of the ECHR provides a right to respect for private and family life, which would include

⁵⁸² *Delegated Powers and Law Reform Committee, Official Report, 30 September 2014, Col.10*

respect for a person's home, and that would have to be taken into account were the power to be used."⁵⁸³

63. The Committee finds it concerning that the taking of a power as significant as that proposed in section 97C(3)(a) of the 2003 Act has not been justified by the Scottish Government, either in written or oral evidence, beyond the apparent need for flexibility. While the Committee accepts that some flexibility in the available powers could be appropriate to ensure that the scheme envisaged by the new Part 3A of the 2003 Act is capable of operating effectively in practice, it considers that flexibility is not in and of itself sufficient explanation for the taking of such an important power. The Committee also observes that any regulations made by the Scottish Ministers in exercise of this power - or indeed any power - require to be ECHR-compatible.

64. In oral evidence, the Scottish Government officials explained that the policy intent underpinning these provisions is not to take individuals' homes away in any circumstances. The power appears, however, to directly contemplate making buildings and structures available for compulsory acquisition by community bodies despite the fact that those buildings and structures are an individual's home. If it is not the Government's intention to make homes available for acquisition by Part 3A community bodies as the officials explained in oral evidence, the Committee finds it difficult to decide what this power is intended to do.

65. The Committee further finds it unsatisfactory that the Parliament is being asked to confer this power upon the Scottish Ministers without having received satisfactory answers to questions asked about its intended use. When asked to give examples to demonstrate how the power might be used in practice, the Scottish Government did not do so either in written or in oral evidence. The Committee considers it unsatisfactory that the Parliament is being asked to approve powers where the thinking behind them appears still to be in the early stages of development and where officials are unable to offer a detailed explanation of the circumstances in which it is planned that they will be used.

66. The Committee draws the power in the new section 97C(3)(a) of the 2003 Act to the attention of the Local Government and Regeneration Committee on the basis that it has concerns about the scope of the power and its intended use.

67. The power permits the Scottish Ministers to make regulations prescribing buildings or structures which are eligible for acquisition by a Part 3A community body notwithstanding the fact that such buildings or structures may be described as an individual's home. The Committee's questions of the Scottish Government, both written and oral, did not elicit a clear explanation from the Scottish Government as to its reasons for taking this power, or how the power is intended to be exercised. The Scottish Government also did not provide the Committee with any examples of the

⁵⁸³ *Delegated Powers and Law Reform Committee, Official Report, 30 September 2014, Col.12*

kinds of building or structure that may be prescribed in regulations made in exercise of this power.

68. **The Committee finds it unsatisfactory that the Parliament is being asked to confer a power of this significance upon the Scottish Government in the absence of a detailed explanation as to why it is necessary or what it is for and in circumstances where the thinking underpinning the power appears to be in the early stages of development. Together with the lack of examples of the kinds of building or structure which may be prescribed using this power, the Committee finds it difficult to reach a view as to whether the power is acceptable in principle and recommends that the lead Committee explore the power further as part of its further consideration of the Bill.**

69. **The Scottish Government may wish to reflect on its reasons for taking this power as the Bill progresses through the Parliament and the lead Committee may wish to explore the power further when it takes oral evidence from the Minister for Local Government and Planning.**

Section 97N(1) and (3) – Effect of Ministers’ decision on right to buy

| | |
|---------------------------------|-------------------------------|
| Powers conferred on: | the Scottish Ministers |
| Powers exercisable by: | regulations |
| Parliamentary procedure: | affirmative |

70. New section 97N(1) of the 2003 Act provides that Ministers may, by regulations, make provision for or in connection with prohibiting prescribed persons from transferring or otherwise dealing with land which is the subject of an application under Part 3A during the prescribed period. Section 97N(2) provides that those regulations may in particular include provision prescribing transfers or dealings which are not prohibited; requiring or enabling prescribed persons to register prescribed notices in the Register of Community Interests in Abandoned or Neglected land; and in prescribed circumstances, requiring information to be incorporated into prescribed deeds relating to the land.

71. Section 97N(3) provides that Ministers may, by regulations, make provision for or in connection with suspending, during the prescribed period, such rights in or over land in respect of which a Part 3A community body has made an application as may be prescribed. Section 97N(4) provides that such regulations may in particular include provision specifying rights to which the regulations do not apply, and rights to which the regulations do not apply in prescribed circumstances.

72. The Committee considers that it may be appropriate for the Scottish Ministers to make regulations for the purpose of suspending rights in or over land for the duration of the period within which Ministers are considering a Part 3A community body’s application. The Committee also considers it appropriate that these powers are subject to the higher level of scrutiny afforded by the affirmative

procedure. Despite these conclusions, the Committee considers that there are issues of clarity with the drafting of these powers. The Committee explored these issues with the Scottish Government both in written and oral evidence.

73. Section 97N uses the word “prescribed” a number of times. “Prescribed” has a specific definition in section 98(1) of the 2003 Act, meaning “prescribed in regulations made by the Scottish Ministers”. The Committee wrote to the Scottish Government to ask whether the word “prescribed” as used multiple times in section 97N is intended to attract the definition of that term set out in section 98(1) with the effect that section 97N in fact creates a new power to make subordinate legislation each time that word is used, in addition to the two free-standing powers conferred by sections 97N(1) and (3).

74. In its written response, the Scottish Government confirmed that the use of the word “prescribed” in section 97N is intended to attract the definition of that term set out in section 98(1). The Government also stated, however, that its view is that section 97N confers only two powers to make subordinate legislation: the power in section 97N(1) and that in section 97N(3). Sections 97N(2) and (4) are intended to provide further detail of the matters which regulations made under subsections (1) and (3) may cover, and the use of the word “prescribed” in those subsections does not have the effect of conferring separate powers to make subordinate legislation.

75. The Committee considers that if the word “prescribed” as used in section 97N is intended to adopt the definition in section 98(1) of the 2003 Act, it seems clear that multiple powers are being conferred. The existence of the definition means that wherever the word “prescribed” appears in the 2003 Act, including where it appears as a result of amendments made to that Act by this Bill, it is an instruction to the reader to construe the word as conferring a power upon the Scottish Ministers to make regulations unless contrary provision is made.

76. The Committee therefore asked the Scottish Government officials for further explanation of the power when it took oral evidence on 30 September. The Scottish Government officials reiterated their position, which is that section 97N confers only two powers to make subordinate legislation. The officials offered to write to the Committee following the meeting to explain further their position. A letter dated 8 October 2014 is attached at **Annex C**.

77. This is a technical drafting point. The Committee does not object to the powers in sections 97N in principle, not to the selection of the affirmative procedure as the appropriate level of Parliamentary scrutiny over the powers. Nevertheless, the Committee finds that the use of the word “prescribed” in section 97N is apt to cause confusion when construed in accordance with section 98(1), and, as such, draws the conclusion that the Bill should be clarified at Stage 2.

78. The Scottish Government’s intention is that section 97N confers only two powers to make subordinate legislation: the power to make regulations prohibiting the transfer of land pending a decision on a Part 3A application in section 97N(1); and the similar power to suspend other rights e.g. rights of pre-emption or redemption that is set out in section 97N(3). The Committee considers, however,

that this intention is not readily compatible with the use of the word “prescribed” in section 97N and its definition in section 98(1) of the 2003 Act. Other provisions in the Bill use the word “prescribed” and rely on the definition of that term in section 98(1) to create a free-standing power to make subordinate legislation. It is not clear from the evidence received from the Scottish Government why that same reliance does not apply in the case of the word as used in section 97N.

79. The Committee calls on the Scottish Government to clarify the new section 97N of the Land Reform (Scotland) Act 2003 as inserted by section 48 of the Bill. Section 97N makes repeated use of the word “prescribed”, and the Scottish Government has explained to the Committee, both in written and oral evidence, that while the use of the word “prescribed” in section 97N is intended to adopt the definition of that term in section 98(1) of the 2003 Act meaning “prescribed in regulations made by the Scottish Ministers”, section 97N is considered to confer only two powers to make subordinate legislation: the power in section 97N(1) and the power in section 97N(3).

80. The Committee considers that if the use of the word “prescribed” in section 97N is not intended to confer separate and free-standing powers to make subordinate legislation, the Bill should be clarified for Stage 2 so as to remove the scope for doubt over the interpretation of the section and the powers it confers by re-drafting the provision so as to remove the references to “prescribed”.

Annex A

The Committee was content with the following powers on first consideration of the Bill:

- Section 7(3) - local outcomes improvement plan: progress report
- Section 12(2)(d) - power to prescribe other matters to be addressed in an application for incorporation
- Section 15(2) - meaning of “community participation body”
- Section 18(1) - regulations (further provision about participation requests)
- Section 19(7)(a) - participation requests: decisions
- Section 19(8) - participation requests: decisions
- Section 21(6) - power to specify information to be published about the outcome improvement process
- Section 24(3) - modification of outcome improvement process
- Section 25(4) - reporting (of outcome improvement process)
- Section 28(2) - power to prescribe bodies that are “community bodies”
- Section 28(7) - power to define a “community”
- Section 33 - power to specify the description of land
- Section 37 - power to prescribe the information to be provided to the ballotter by the Scottish Ministers
- Section 37 - power to prescribe information to be provided to the ballotter by a community body
- Section 38 - power to make regulations which set out the information a community body must provide to the Scottish Ministers
- Section 40 - ballot not conducted as prescribed
- Section 48 - power to prescribe that eligible land does not include certain land for the purposes of Part 3A
- Section 48 - power to approve/direct the transfer of property on

- winding up
- Section 48 - power to set out the definition of a “community”
- Section 48 - payment of charges for copies of entries in the Part 3A Register of Community Interests in Abandoned or Neglected Land
- Section 48 - power to prescribe the application form for Ministers to consent to a Part 3A community body’s right to buy
- Section 48 - power to prescribe the manner in which an application under Part 3A is given public notice
- Section 48 - power to prescribe how the ballot of the community is undertaken and the form of the ballot return to Ministers
- Section 48 - Ministers’ notification of their decision on an application under Part 3A
- Section 48 - power to direct that community body’s right to buy is extinguished
- Section 48 - power to make provision in relation to compensation
- Section 48 - power to make grants towards Part 3A community bodies’ liabilities to pay compensation
- Section 48 - rules affected by Ministers in relation to the Lands Tribunal Act 1949
- Section 50(2)(a) - designation of a community transfer body
- Section 50(2)(b) - designation of a class of bodies as community transfer bodies
- Section 53 - power to approve or direct the transfer of property on winding up
- Section 54(3) - power to make provision about information relating to land in respect of which an asset transfer request is proposed
- Section 55(8) - power to prescribe a time for a decision notice to be given
- Section 55(9) - power to make provision regarding the information contained in a decision notice and the manner in which it is to be given
- Section 56(7)(b)(ii) - power to direct an extended period within which a

- contract is to be concluded
- Section 56(10) - power to make provision about a direction to extend the period within which a contract is to be concluded
- Section 58(5)(c) and (d) - power to issue directions following an appeal
- Section 64(1) - guidance about common good registers
- Section 66(1) and (2) - guidance about disposal etc. of common good property
- Section 68(d) - meaning of “allotment”
- Section 70(2)(b) - request to lease allotment
- Section 72(4) and (5) - duty to provide allotment
- Section 77(3)(d) - duty to prepare food-growing strategy
- Section 79(2)(n) - annual allotments report
- Section 81(3)(b)(ii) - delegation of management of allotment sites
- Section 83(10) - termination of lease of allotment or allotment site
- Section 87(1) - sale of surplus produce
- Section 89(4) - compensation for disturbance
- Section 90(4) - compensation for deterioration of allotment
- Section 91(3) - compensation for loss of crops
- Section 97(1) - ancillary provision
- Section 99(2) - commencement

The Committee was content with the following powers after receiving written evidence from the Scottish Government:

- Section 12 - power to establish a body corporate for community planning purposes
- Section 28(6) - meaning of “community”
- Section 48 (inserting sections 97C(2), 97C(3)(b) and 97C(4) into the 2003 Act) - eligible land

- Section 48 - register of Community Interests in Abandoned or Neglected Land
- Section 48 - right to buy: application for consent
- Section 73(1) - allotment site regulations: additional provision

The Committee was content with the following powers after receiving both written and oral evidence from the Scottish Government:

- Section 48 - provisions supplementary to section 97D
- Section 54(1) - power to make further provision about asset transfer requests
- Sections 58(3) and 59(3) - appeal or review of decisions on asset transfer requests
- Section 80(7) - power to remove unauthorised buildings from allotment sites

Annex B – Written Correspondence

Part 1 – National Outcomes

1. Sections 1-3 – publication of national outcomes

a) Sections 1(3), 2(4) and 3(1) provide for the publication of the national outcomes that are determined by the Scottish Ministers, and reports about the extent to which they have been achieved. The Scottish Government is asked to explain why it has been considered appropriate that the power to decide on the national outcomes should be exercisable by informal published determination, and not by Scottish statutory instrument which could be subject to Parliamentary scrutiny and procedure.

The decision was taken not to use Statutory Instruments as we envisage the primary role of Parliament to be scrutiny of progress towards the national outcomes. It may well be that the Scottish Parliament may wish to debate on the national outcomes set by the Scottish Ministers and the arrangements proposed do not prevent that.

b) Section 1(2) states that before determining the national outcomes, the Ministers must consult such persons as they consider appropriate. The Scottish Government is asked to explain why this provision does not specify any persons or bodies which (as a minimum requirement) the Ministers would consult.

The intention here is to leave the potential scope for consultation as broad as possible. In some cases, e.g. where a review is of a technical nature and focuses

on specialist or statistical issues, it may be more appropriate to limit the scope of consultation to those who have expertise and experience in that area. In other cases, the review may be of a more general nature and in those cases, it would be appropriate to consult more widely. Consultation with appropriate people would also include consultation with the public as a whole if appropriate.

Part 2 – Community Planning

2. Section 4(6) – power to modify schedule 1

The power in section 4(6) is capable of being used to considerably expand the list of community planning partners to which Part 2 of the Bill applies, or alternatively to considerably reduce the scope by removing bodies that are listed in schedule 1.

The Scottish Government is asked to explain therefore why it is considered more suitable that any regulations made under section 4(6) should be scrutinised by the negative procedure - rather than by the affirmative procedure where regulations add or remove persons from the schedule 1 list, and the negative procedure for regulations which amend an entry (which could adjust an entry on a change of name of a body).

This power provides flexibility to make future changes to the list of community planning partners in schedule 1. The power to amend the primary legislation is restricted to amending the list of public bodies who are members of a community planning partnership. Adding a body to, or removing it from, the list is unlikely to generate controversy. An example of a power to amend a list of public bodies in a schedule to primary legislation which is subject to negative procedure can be found in section 4(1) of the Freedom of Information (Scotland) Act 2000. In these circumstances it is considered that subjecting the exercise of the power to negative procedure is appropriate.

3. Section 8(3) – power to modify section 8(2)

The power in subsection (3) of section 8 is capable of being used to considerably expand the list of community planning partners in subsection (2) which have governance requirements in relation to community planning, or alternatively to considerably reduce the scope by removing bodies from that list.

The Scottish Government is asked to explain therefore why it is considered more suitable that any regulations made under section 8(3) should be scrutinised by the negative procedure - rather than by the affirmative procedure where regulations add or remove persons from the schedule 1 list, and the negative procedure for regulations which amend an entry (which could adjust an entry on a change of name of a body).

The power relates to making changes that may be required as the nature and practice of community planning evolves and the provisions of this part of the Bill take effect. It is restricted to allowing the Scottish Ministers to amend a list of

public bodies who are partners in a community planning partnership so that they are also subject to a governance role. As with the power in section 4(6), it is not considered that the exercise of this power would generate controversy. It is considered that the negative procedure offers an appropriate level of parliamentary scrutiny.

4. Section 10 – power to issue guidance

The Scottish Government is asked to explain why the powers to issue guidance in section 10 are appropriate, and how the powers could be used. In particular an explanation is sought as to-

- a) why the guidance is proposed to be binding on community planning partnerships and partners, rather than there being a requirement that they will have regard to it; and**
- b) why there is no provision for any Parliamentary procedure to apply to the guidance or for it to be laid before Parliament.**

With regard to the request for an explanation as to why the powers to issue guidance are appropriate, the Scottish Ministers have inherent power to issue guidance and the Bill does not confer express powers to that effect. The purpose of section 10 is to confer a status on any guidance Ministers may issue regarding the carrying out of functions by the Community Planning Partnership. Section 10(3) requires that any guidance must be the subject of consultation before it is issued.

- a) The Scottish Government believes that this section will help to enable the dissemination of best practice in community planning across Scotland and is necessary to support the process by which public bodies work together and with community bodies to plan for, resource and provide services which improve local outcomes in the area. With regard to the obligation to comply with guidance, we would of course be happy to consider amending this to an obligation to have regard to the guidance if the Committee feel it would be of benefit to the Bill.
- b) There is currently no provision for any Parliamentary procedure to apply to the guidance or for it to be laid before Parliament as it was considered that the guidance would deal with a range of issues in some detail, including administrative issues as necessary and that this was not a necessary or appropriate use of valuable Parliamentary time and resources.

5. Section 12 – power to establish bodies corporate

- a) The Scottish Government is asked to explain why the wide power to specify any other matters in section 12(3)(h) is required, and how this power could be used.**
- b) What additional matters would this power enable, beyond the ancillary powers to make incidental, supplementary or consequential provisions contained in sections 96(1) and 97?**

Section 12(3)(h) is in the same terms as, and replaces, section 19(3)(h) of the Local Government in Scotland Act 2003. The inclusion of 12(3)(h) provides the necessary flexibility to deal with any new development which may need to be addressed when exercising the power in section 12(1). It also makes it clear that the provision that can be included in the regulations made under section 12(1) is not restricted to the matters listed in section 12(3)(a) to (g).

Part 3 – Participation Requests

6. Section 16 – meaning of “public service authority”

a) The powers in section 16(2) and (3) are capable of being used to considerably expand the list of “public service authorities” to which participation requirements could be made in accordance with Part 3 of the Bill, or alternatively to considerably reduce the scope by removing bodies (or types of body) from the list in schedule 2.

The Scottish Government is asked to explain therefore why it is considered more suitable that any order made under sections 16(2) and (3) should be scrutinised by the negative procedure - rather than by the affirmative procedure where the order proposes to remove persons from the schedule 2 list and/or designate more persons or classes of person as “public service authorities” and the negative procedure for an order which amends an entry in schedule 2 (which could adjust an entry on a change of name of a body).

b) The Delegated Powers Memorandum (“DPM”) states in relation to section 16(2) that the Scottish Ministers are included in schedule 2, but this is not the case. Clarification is sought as to whether there is any intention to include the Ministers in the schedule.

a) These powers provide flexibility to make future changes to the list of public service authorities in schedule 2. The power to amend the primary legislation is restricted to amending the list of public bodies to whom a community participation body may make a participation request. Adding a body to, or removing it from, the list is unlikely to generate controversy. An example of a power to amend a list of public bodies in a schedule to primary legislation which is subject to negative procedure can be found in section 4(1) of the Freedom of Information (Scotland) Act 2000. In these circumstances it is considered that subjecting the exercise of the power to negative procedure is appropriate.

b) The reference to the Scottish Ministers in the Delegated Powers Memorandum in relation to section 16(2) was an error.

Part 4 – Community Right to Buy Land

7. Section 28(6) – duty to provide information about community right to buy

The power in the new section 34(4B) of the 2003 Act, as inserted by section 28(6) of the Bill, appears to be subject to the negative procedure while the DPM refers to the power being subject to the affirmative procedure. Section 98(5) of the 2003 Act, as amended by paragraph 4 of schedule 4 to the Bill, provides that regulations made under the new section 34(4A) will be subject to the affirmative procedure, but there is no reference to regulations made under the new section 34(4B), the effect of which would appear to be to leave such regulations to take the negative procedure.

Can the Scottish Government explain whether this is an error or, if the Scottish Government intends the power to be subject to the negative procedure, can it explain why this is considered appropriate?

The Scottish Government agree that the new section 34(4B) of the 2003 Act, as inserted by section 28(6) of the Bill, is subject to the negative procedure but that it would be appropriate for this power to be subjective to affirmative procedure, as stated in the DPM.

8. New section 97C of the 2003 Act – eligible land

a) Can the Scottish Government provide more information as to how it envisages using the power in the new section 97C(2) of the Land Reform (Scotland) Act 2003 (“the 2003 Act”)? The DPM refers only to the power being used to prescribe matters which are “too detailed to include in the primary legislation”. Can the Scottish Government provide any examples of matters which it is intended will be prescribed in regulations made in exercise of this power so as to inform the Committee’s consideration of the power?

b) The Scottish Government is asked for a fuller explanation as to the relationship between the powers in the new section 97C(3)(a), 97C(3)(b) and 97C(4) of the 2003 Act, as inserted by section 48 of the Bill. How is it considered that these powers will interact?

c) Does the Scottish Government agree that the power in section 97C(3)(a) enables Ministers to add prescribed classes of building back into the ‘pool’ of eligible land to which the new Part 3A applies despite the fact that such buildings may constitute an individual’s home? Can the Scottish Government provide any examples of classes of building or structure which it intends to prescribe in regulations made in exercise of this power?

(a) The matters that Ministers should take account of in considering whether land is wholly or mainly abandoned or neglected is currently under discussion with stakeholders. Some examples of matters might include the physical condition of land, environmental or historic designations affecting the land and the extent to which the land is having a detrimental effect on the local environment, where environment can be physical or social.

(b) The relationship between the various powers is that that section 97C(3)(a) provides that land on which there is an individual’s home is not eligible land but

this doesn't apply to classes or descriptions of land set out in regulations. This will enable exceptions to be made should this be considered appropriate in the future. Section 97C(3)(b) will enable regulations to provide that land associated with an individual's home such as private gardens and land forming the curtilage of the home will not be eligible land, and section 97C(4) allows regulations to be made treating buildings or structures as homes and so the land which these are situated on will not be eligible land. For example a house that is used just for holidays and which doesn't constitute an individual's home could be treated as a home and so the land which it is on would not be eligible land.

(c) Section 97C(3)(a) enables Ministers to add prescribed classes of building back into the 'pool' of eligible land to which the new Part 3A applies. At this point in time, we are not able to give specific examples, but this power allows for flexibility. We would of course be happy to consider changes if the Committee feel it would be of benefit to the Bill.

9. Section 97E(4) - power to make an order relating to matters connected with the acquisition of the land

Can the Scottish Government explain how the power in the new section 97E(4) is intended to be exercised and why it requires to be drawn in such wide terms? Can the Government provide any examples of the kinds of modifications to primary legislation that the Scottish Government anticipates making in exercise of this power as permitted by the provision in section 97E(5)?

The underlying reason behind the power in section 97E(4) is to ensure that the process for buying back land from a community body is open and transparent as well as robust. There are examples of similar powers e.g. sections 1 and 2 of the Transport and Works (Scotland) Act 2007.

10. Section 97F(6) – power to modify the information and documents that are to be contained in the Register of Community Interests in Abandoned or Neglected Land

The Scottish Government is asked to explain further its reasons for taking the power to modify new sections 97F(3) and (4) of the 2003 Act as inserted by section 48 of the Bill. In particular, can the Government explain the circumstances in which it considers that it may be appropriate to modify those subsections given that they exempt, in circumstances where a Part 3A community body requires it, any information or documents relating to the raising or expenditure of money by that body from being entered in the Register of Community Interests in Abandoned or Neglected Land?

There is already a similar power in respect of the Register of Community Interests in Land in Part 2 of the Land Reform (Scotland) Act 2003 (section 36(6)) so the power in section 97F(6) ensure that Parts 2 and 3A are consistent. It allows the Register to be kept relevant should there be any changes to the requirements of community bodies, or the information that they are required, by law, to provide.

11. Section 97G(5)(c) – power to prescribe information in an application form for Ministers to consent to a Part 3A community body’s right to buy

a) The Scottish Government is asked to justify the power in section 97G(5)(c) as distinct from the power in section 97G(5)(a). The DPM provides the same information in respect of both powers, however the power in section 97G(5)(a) is a power to prescribe the form of an application under Part 3A of the 2003 Act, whereas the power in section 97G(5)(c) is a power to prescribe kinds of information to be included in such a form, or to accompany such a form.

b) Can the Scottish Government explain why this power is necessary, and can it provide examples of the types of information it intends to prescribe in regulations made in exercise of this power?

These powers allow the style of the form, and the information contained in that form, to be set out in regulations. These are two separate things, hence the need for the two powers. There are examples of the sort of form (both in terms of style and content) anticipated in The Community Right to Buy (Prescribed Form of Application and Notices) (Scotland) Regulations 2009.

12. Sections 97N(1) and 97N(3) – effect of Ministers’ decision on right to buy

a) The Scottish Government is asked whether the word “prescribed”, as used multiple times in the drafting of the new section 97N of the 2003 Act is intended to capture the definition of that term as set out in section 98(1) of the 2003 Act with the effect that new section 97N confers multiple powers to make subordinate legislation, or whether the matters which may be “prescribed” as referred to in that new section are intended to form specific aspects of the two standalone powers expressly conferred by sections 97N(1) and 97N(3).

b) If the Scottish Government does not intend for the word “prescribed” to adopt the definition in section 98(1) of the 2003 Act when it is used in section 97N, can it explain how the Bill prevents this?

Section 98(1) of the 2003 Act defines “prescribed” for the Act and provides that it means “prescribed by regulations made by Ministers”. We agree that the use of “prescribed” in section 97N attracts that definition.

Each time the expression is used in section 97N it effectively confers power to specify something in regulations. These powers operate in the context of the powers in section 97N(1) and (3). For example, in section 97N(1) “prescribed period” means the period set out in regulations made by Ministers prohibiting the transfer or other dealing in certain land.

Part 5 – Asset Transfer Requests

13. Section 51(2) – power to modify schedule 3

The Scottish Government is asked whether, given that the power in section 51(2) of the Bill permits the modification of primary legislation, this power should be subject to the affirmative procedure.

This powers provides flexibility to make future changes to the list of relevant authorities in schedule 3. The power to amend the primary legislation is restricted to amending the list of public bodies to whom a community transfer body may make an asset transfer request. Adding a body to, or removing it from, the list is unlikely to generate controversy. An example of a power to amend a list of public bodies in a schedule to primary legislation which is subject to negative procedure can be found in section 4(1) of the Freedom of Information (Scotland) Act 2000. In these circumstances it is considered that subjecting the exercise of the power to negative procedure is appropriate.

14. Section 54(1) – power to make further provision about asset transfer requests

The Scottish Government is asked why this power requires to be drawn in such wide terms. The specification of particular matters about which regulations may be made in exercise of this power does not appear to restrict the overall width of the power, and consequently the power would appear to be capable of being used to make different provision, subject only to the requirement that that provision be “about asset transfer requests”. The Government is invited to explain why such a wide power is considered to be necessary.

Section 54(2) sets out some of the general scope of the matters which it is envisaged that the regulations relating to asset transfer requests will deal with and the wording of section 54(1) is to ensure flexibility so that other matters which it may be appropriate to include could be included if necessary. As the Committee point out the power is limited by the requirement that the regulations only enable provisions to be made in relation to asset transfer requests and, as the Delegated Powers Memorandum states, the further provision that may be required regarding process and procedure is a largely administrative matter.

15. Section 58(3) and 59(3) – power to prescribe asset transfer request appeal and review procedures, time limits and the manner in which appeals and reviews are to be conducted

a) **The Scottish Government is asked for further explanation of the meaning of sections 58(4) and 59(4) of the Bill, which provide that the provision that may be made by virtue of the powers in section 58(3) or 59(3) to prescribe the procedure to be followed in an appeal against or a review of a decision on an asset transfer request includes provision that the manner in which an appeal or review, or any stage of an appeal or review, is to be conducted is to be at the discretion of, respectively, the Scottish Ministers or the local authority.**

b) **The Scottish Government is asked to explain what aspects of an appeal or review it considers might be made subject to the discretion of the**

Scottish Ministers or the local authority in exercise of these powers, and why the Government considers that that would be appropriate, as opposed to specifying the appeals procedure in the subordinate legislation that is made under sections 58(3) or 59(3).

Section 58(4) and 59(4) follow the approach taken in relation to appeal processes in planning (see section 267(1C) of the Town and Country Planning (Scotland) Act 1997). The intention is that the regulations setting out appeal processes would enable the choice of appeal procedure to be flexible and selected in particular cases to meet the needs of that case. It is envisaged, as with planning appeals, that the selection of the appropriate process for conducting the appeal, for example, by written submission or a form of hearing, or mix of procedures would be determined by the Scottish Ministers in the light of the circumstances of each case.

Part 7 – Allotments

16. Section 73(1) – Allotment site regulations: additional provision

Can the Scottish Government explain why the power in section 73(1) is proposed to be exercised by the local authority by way of regulations rather than, for example, by way of byelaws subject to confirmation by the Scottish Ministers (as under section 202 of the Local Government (Scotland) Act 1973)? If it is considered appropriate for the power to be exercised by the local authority by regulations, can the Scottish Government explain why there are no proposals for the regulations to be confirmed by the Scottish Ministers or laid before Parliament, or otherwise to be subject to scrutiny?

The Scottish Government does not consider that the power in section 73(1) falls within the scope of byelaws. Section 201 of the Local Government (Scotland) Act 1973 (“the 1973 Act”) confers power on local authorities to make byelaws, “for the good rule and government of the whole or any part of their area, and for the prevention and suppression of nuisances therein”. Contravention of byelaws is generally dealt with by summary prosecution. The current approach has been taken since the Regulations are not principally intended to address nuisance and as such carry no criminal sanctions. The sanctions are that the lease holder would be given notice to quit the allotment.

The Scottish Government does not consider it necessary for the regulations proposed under section 73(1) to be confirmed by the Scottish Ministers, laid before Parliament, or otherwise subject to scrutiny. The Scottish Government notes that byelaws made under the 1973 Act have no effect until confirmed (section 202(3)), however contravention of byelaws will generally carry criminal sanctions. Management rules under the Civic Government (Scotland) Act 1982 (to which the Scottish Government considers the proposed regulations more similar) are not subject to confirmation or other scrutiny. In line with the procedure for making management rules, section 74 of the Bill requires local authorities to consult interested persons and provides for a period of notice with an opportunity for representations before regulations under section 73(1) are made. Given the relatively narrow purpose of such regulations and the absence of offences relating

to their contravention, the Scottish Government does not consider scrutiny by the Scottish Ministers or Parliament to be required.

17. Section 80(7) – power to remove unauthorised buildings from allotment sites

Can the Scottish Government explain further the intended purpose of the power in section 80(7) and in particular what further provision, standing the procedural requirements already contained in section 80(5) and (6), the power in section 80(7) might be used to make?

Section 80(7) permits, but does not require, the Scottish Ministers to expand upon the detail of the procedure set down in sections 80(5) and 80(6). At this point in time, we are unable to give specific examples of what further provision this power might be used to make, but the power allows for flexibility. We would of course be happy to consider changes if the Committee feel it would be of benefit to the Bill.

Annex C – Letter from the Scottish Government:

CLARIFICATION OF POWERS CREATED BY NEW SECTION 97N OF THE LAND REFORM (SCOTLAND) ACT 2003.

Section 97N(1) and (3) of new Part 3A of the Land Reform (Scotland) Act 2003 (“2003 Act”) (to be inserted by section 48 of the Bill) confers powers on the Scottish Ministers to make regulations. Section 98(1) of the 2003 Act defines “prescribed” for the purposes of the 2003 Act and provides that it means “prescribed by regulations made by [the Scottish] Ministers”. The use of “prescribed” in section 97N has, and is intended to have, the meaning given in section 98(1) of the 2003 Act.

Regulations made under section 97N(1) and (3) will be subject to the affirmative procedure (see paragraph 2(5)(a)(ii) of schedule 4 to the Bill which will amend section 98(5) of the 2003 Act).

Section 97N(1) confers powers on the Scottish Ministers to make regulations prohibiting the transfer of land or otherwise dealing with land if a Part 3A community body has made an application under section 97G for consent from the Scottish Ministers to exercise the right to buy that land. Subsection (1) further provides that those regulations can specify: (a) the period of the prohibition; and (b) the persons who are prohibited from transferring or otherwise dealing with the land during that period.

Subsection (2) sets out particular matters that may be included in any regulations made under subsection (1). Subsection (2) is not a free-standing power. It provides some detail of the provision that may be made in regulations made under section 97N(1).

So for example, the power conferred by section 97N(1) would enable the Scottish Ministers to make regulations setting out that, from when the landowner has received notice of an application made by a Part 3A community body until the Scottish Ministers have determined the application, the landowner is prohibited

from transferring or otherwise dealing in the land that is the subject of the application. The regulations could also make provision for exceptions to this prohibition. The regulations would be made under section 97N(1) and would specify the period of the prohibition and also specify the persons to whom the prohibition applies. In making exceptions to the prohibition, the Scottish Ministers would still be making use of the power in subsection (1) as further described in subsection (2).

Section 97N(3) confers power on the Scottish Ministers to make regulations making provision for suspending rights in or over land in respect of which a Part 3A community has made an application under section 97G. This subsection further provides that the regulations may specify: (a) the period during which the rights are to be suspended; and (2) the rights that are to be suspended during that period. Subsection (4) provides that any regulations made under subsection (3) may include provision specifying any rights that are not to be suspended and any rights to which the regulations do not apply in certain circumstances. These are examples of the kind of provision that may be made in regulations made under subsection (3). Subsection (4) is not a free-standing power. It provides some detail of the provision that may be made in regulations made under section 97N(3).

ANNEXE D: EVIDENCE RECEIVED VIA SOCIAL MEDIA AND ONLINE VIDEOS

The Committee utilised social media to ensure as much individual and community engagement as possible on the Bill

The Committee produced two short engagement videos on the Bill, on—

- Part 5 - Participation Requests http://youtu.be/yVgICS_Rgro, and
- Part 7 - Allotments: http://youtu.be/Zj2zorW_vvM

Evidence was received via Facebook, Twitter and Email.

Responses received via Facebook

Video 1 (Participation Requests)



The screenshot shows a Facebook post from 'The Scottish Parliament' dated 6 October 2014. The post asks 'Will your community be empowered?' and mentions that the Local Government and Regeneration Committee is considering a new law on community empowerment in Scotland. It includes a link to www.scottish.parliament.uk/lgrc-community-empowerment and a video thumbnail titled 'MSPs seek your help on community empowerment law (October 2014)'. The video description states: 'The Local Government and Regeneration Committee is considering a new law on community empowerment in Scotland. See the video to have your say on this work. h...'. Below the video, there are 33 shares and several comments from users like Marika Loughlin, Chaz Carrington, Russell Deacon, John Edwards, and Martin Allan, all discussing the proposed law and its implications for local authorities and communities.

Video 2 (Allotments)

The screenshot shows a Facebook post from 'The Scottish Parliament' dated 12 November 2014. The post asks for thoughts on allotments and lists three questions: 1. What are the benefits of having access to an allotment? 2. What other types of spaces could be used to grow food and plants? 3. How could a food-growing plan assist you? It includes a video player with the title 'MSPs seek your help to shape new law on empowering communities (November 2014)'. Below the video are several comments from users like Louise Gourley, Johnnie Wales, Gina Steven, Peter Campbell, James Neil, Barb Fraser, Alexandra Petrie, and Suzanne Rintoul, all expressing support for the idea of allotments.

Responses received via email/twitter to engagement videos

From: Phil Sykes

Received – 22/10/2014

I'd like to make the following comments on the community empowerment bill:-

1. Firstly, I'd like to say that I support a bill like this
2. I'm concerned that if public bodies have a right to decide whether the community group can participate, then there is a danger that only those groups

which are seen to support the public bodies agenda, are allowed to participate, without a long process of appeal.

3. Will there be a process of appeal for those groups the public body does not want to work with?

4. Will there need to be a partnership agreement with the public body for the community group to work with them? These are, in my experience, painful to get, and are written by the public bodies. Adequate legal support is beyond most community groups and there is a danger that they are forced to sign up for things that they don't understand.

5. I understand that the community group should be formally constituted, but it is often difficult to get groups to form within communities: not because there is lack of interest, but because of many other factors. If this is going to work, then some thought needs to be put to how communities communicate within themselves.

6. Within my community, which was a regeneration area previously, but is now an area of need, we have two community groups – a community council, which represents everyone and a Neighbourhood Management Board which is organised and controlled by the local council. There is a real risk of conflict of interest in having more than one representative community group. How does the bill intend to deal with this situation?

From: Russell McLarty

Received: 8/10/2014

I write as co-ordinator of the Chance to Thrive 5-year church-community pilot project.

We certainly welcome effective ways of taking forward ideas from local communities where we have been offering processes to encourage local communities to take forward their own ideas.

Over the past few years we have provided 'spaces' where local ideas have been generated in 8 of the poorest parishes in Scotland – Lochee, Raploch, Drumchapel, Maryhill, Red Road, Cranhill, Castlemilk & Strutherhill in Larkhall.

Particular features of Chance to Thrive are

- regular group meetings for vision and strategy – 'dreaming and scheming'
- volunteer mentors giving encouragement and helping extend ambition and connections
- the groups have been open to church folk, community folk, project partners and local politicians & officers
- the 8 local groups meeting together to share ideas and approaches

- the project has £70,000 research budget in partnership with Carnegie UK Trust to work over a 3 year period with a research team

<http://www.carnegieuktrust.org.uk/changing-minds/people---place/chance-to-thrive>

The big challenge is always to find ways of funding the ideas generated by the local groups. If the Community Empowerment Bill provides ways of partnership working with government this would be welcomed.

- **Do you think the Bill as it stands is the best way of getting people's ideas in front of the decision makers?**

It really depends on what level removed from the local community this will happen.

We have the sense that the more local the engagement with 'decision-makers' the better.

In the past Community Planning Partnerships are often quite remote from 'natural communities' where decisions are made far away by 'token' representatives who don't really know the communities involved

There might be greater local engagement in some sort of participatory budgeting process where local communities could generate ideas and decide on their own priorities – the local community being 'decision-maker'.

- **Would you use this new right?**

The local Chance to Thrive Groups would certainly welcome opportunities to put forward ideas

- **If not, why not?**

Remoteness from 'decision-makers'

- **What would stop you?**

Lack of engagement by 'decision-makers' with local groups

- **Would you find it easier to participate as a group or individual?**

Chance to Thrive has a rigorous methodology where the group works through a process looking firstly at the 'life' of a community, then 'place making' and lastly at buildings where they are possible assets to achieving goals. The process, guided by a volunteer mentor, helps refine and develop ideas getting a wider 'buy in' where the group is actively involved. Chance to Thrive looks to work with groups over a number of years and in this way

1. build up local confidence
2. look to short, medium & longer term goals with a more strategic approach

3. get encouragement from small successes

- **What help do you need to become involved?**

Participation of local politicians and officers with the Chance to Thrive groups has proved in a couple of places to be a great way of building partnership in setting up processes of engaging with the wider community and in thinking through how ideas might be brought into reality.

Russell McLarty - Coordinator

From: Colin McGrath

Received: 4/10/2014

Scottish Borders Community Councils Network (representing 67 Community Council Areas) Evidence Submission to Scottish Government Community Empowerment (Scotland) Bill

*“The Bill sets out a plan for **empowering all the people of Scotland**. This means everyone can get involved and help to make important decisions.”*

(page 3 Policy Memorandum – Easy Read Version)

1. **Community Planning** contains no mention of involvement of Community Councils in the formation of ‘Community Planning Partnerships’. What is the reason for excluding them?

2. **Community Organisations** contains no mention of Community Councils, which are organisations already existing for this service. What is the reason for excluding them?

3. Empowering all the People of Scotland?

Empowering **all** the People of Scotland is now of much higher importance following the Referendum. Community Councils are the way of achieving this objective. Local Councillors do not have the in-depth local knowledge of those on Community Councils who are also independent of thinking and do not have any party political allegiance

NOTE

The Response for Evidence had to be submitted by 5th September 2014. I requested an extension because not only was the Community Council Network not meeting but Community Councils themselves did not meet in July and August. An extension was agreed. However today I telephoned to check details and was informed that the person who had agreed to this extension was not empowered to do so as Scot Sayers had left the department and it was under reorganisation. Today a senior member of staff, Jean Waddie, informed me that our submission should be sent to David Cullum, Clark to the Local Government and Regeneration Committee. I telephoned David Cullum on his direct line, but it was an

answerphone, so I left a message saying that our response would be received shortly.

Colin McGrath

From: Nick Underdown – Scottish Environment LINK

Received: 29/09/2014

Response to the call for evidence by the Local Government & Regeneration Committee for the draft Community Empowerment (Scotland) Bill

by the Scottish Environment LINK Marine Taskforce

Date: September 2014

Summary

Scottish Environment LINK's marine taskforce outlines the potential of Community Empowerment Bill to consider issues of public participation in marine planning and decision-making, namely:

- how the process for participation requests could be adopted in the future by Regional Marine Planning Partnerships
- how broader measures in marine planning governance could assist with community empowerment in Scotland

Background:

The members of Scottish Environment LINK's marine taskforce collectively engage on a number of marine policy issues relating to the implementation of the Marine (Scotland) Act; specifically the legal framework for marine spatial planning and marine conservation in Scotland via the development of a National Marine Plan, Regional Marine Planning Partnerships and an ecologically coherent network of Marine Protected Areas.

The main interest of LINK's marine taskforce in the CE Bill is the potential for its provisions to enable community empowerment in relation to marine planning.

The context:

Marine spatial planning is an emerging area in Scotland. It is commonly understood that marine planning in Scotland is 40 years behind the terrestrial planning system, insofar as there has to date been no statutory system that plans, balances and coordinates marine activities in line with national level objectives and commitments to achieve sustainable development. A strategic and responsive marine planning system is urgently required due to the growing competition for limited marine resources: the increasingly varied, interconnected and often competing uses of the sea are occurring within the context of severe ecological decline, documented in the Scottish Government's own Marine Atlas. Coordinating activities to ensure sustainable development and fulfil a legal duty to "enhance" Scotland's seas is therefore critical. The role of communities to help drive this

sustainability agenda should not be under-estimated – coastal communities can be the agents of change in marine management and often experience before the wider public the consequences – both positive and negative - of marine policy and planning decisions.

Marine governance in Scotland is complex. The Scottish Government is a signatory to the UK Marine Policy Statement. The Scottish Government has consequent jurisdiction over marine planning matters from 0 -12 nautical miles and has executively devolved powers (from the UK Government) for marine planning matters from 12 – 200 nautical miles. Marine Scotland takes overall responsibility for most marine planning matters; Transport Scotland is responsible for ferry services, ports and harbours; and Scotland's local authorities currently have responsibilities for aquaculture. This work is also supported by Local Coastal Partnerships. There are also considerable overlaps with components of the terrestrial planning system via statutory arrangements such as the River Basin Management Plans of the SEPA-led Area Advisory Groups. In short there is a complex multi-agency governance framework for policy and decision-making in the development, management and conservation of the marine environment. This framework has developed organically and is still developing.

A more regional approach to marine planning issues is now on the near horizon. The Marine (Scotland) Act gives Scottish Ministers powers to establish Regional Marine Planning Partnerships (RMPPs), but this is a work in progress and therefore the development would benefit from strategic join up with a community empowerment agenda. Efforts to 'engage' communities in policy-making via public consultations in recent years has been notable, but for the reasons set out in response to **Question 1** below there is currently reduced scope for meaningful and genuinely community-led policy-making.

This response therefore focuses simply on two aspects of the Community Empowerment Bill:

1. Outcome Improvement processes
2. The future role of Regional Marine Planning Partnerships

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

We do not attempt to consider whether the Bill will empower communities generally. We also recognise that the Bill was not designed to empower communities in relation to marine planning. However, for many coastal communities decision-making around the use and development of the inshore marine area is of vital importance to the health of those communities. Participation in those processes is therefore a wider requirement of their empowerment. The development of Scottish Marine Regions (and their RMPPs) is understandably a work in progress – such a major administrative change cannot be effected overnight. The continuing lack of clarity around regional marine planning therefore remains a significant blind-spot in the community empowerment agenda. The Clyde and Shetland Scottish Marine Regions will likely develop as 'pilot areas' for the roll-out of regional marine planning. This is an approach we support, as both regions will identify a wide spectrum of different challenges owing to the fact that

Shetland comprises just one local authority, whereas the Clyde encompasses seven local authority areas.

Section 12 of the Marine (Scotland) Act provides that Scottish Ministers may develop regional marine plans and delegate functions in relation to those RMPs to a 'delegate' (or Regional Marine Planning Partnership). A commissioned report for the Scottish Coastal Forum <http://www.scotland.gov.uk/Resource/Doc/295194/0122653.pdf> suggested that the delegate be supported by a technical group; and consultative/advisory groups. The consultative and advisory groups would appear likely to be the only mechanism for community involvement in decision-making and there is no obvious recommendation that would ensure communities have a transparent procedure to proactively request participation in the work of the RMPP. "The Scottish Ministers' direction should require the establishment of general, topic or geographically based advisory or consultative groups to assist in preparation of the Regional Marine Plan. ***The number, remit and administrative arrangements of such groups should be decided by the delegate.***"

LINK MTF members therefore suggest that procedures for participation requests in outcome improvement processes outlined in sections 17-24 the CE Bill could be considered as a mechanism for giving communities a clear right to participate in regional marine planning. This would indeed contribute to the wider National Performance Framework. One of the 50 key indicators of the Scotland Performs framework (designed to track progress towards achieving Scotland's National Outcomes) is "Improve the state of Scotland's Marine Environment."

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill

No comment

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions of the Bill? If not what requires to be done to the Bill, or to assist communities, to ensure this happens?

No comment

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

Section 16 & Schedule 2 set out the definition and list of "public service authorities" respectively. Regional Marine Planning Partnerships (because they do not yet exist) are not listed in Schedule 2. LINK members note that this list can be modified by Scottish Ministers in the future, but suggest that it would be a strategic time to consider how regional and national marine planning processes can be integrated with community planning processes more widely and whether this would have any implications for the draft Bill.

5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

No comment

This response was compiled on behalf of LINK Marine Taskforce and is supported by:

Hebridean Whale and Dolphin Trust
Marine Conservation Society
National Trust for Scotland
RSPB Scotland
Scottish Ornithologists Club
Scottish Wildlife Trust
Whale & Dolphin Conservation
WWF Scotland

From: Bruce Morrison – Ferintosh Community Council

Received: 8/10/2014

Hi there,

Some comments on the 'participation request' idea.

- The way it is described in the video would be usable by a Community Council like ourselves with no help required
- I question, however, the statutory approach to compulsion of public servants to comply and respond. Re-designing services through formal request and response will not be nearly as effective as would improving working relationships between public officials and residents. For that to happen there has to be education and culture change and introducing more form filling takes vital time away from relationship building.

From: Jeannie Mackenzie

Received: 6/10/2014

The Local Government and Regeneration Committee ask the following questions for individuals and groups to respond to:

- **Do you think the Bill as it stands is the best way of getting people's ideas in front of the decision makers?** More support needs to be built in to help groups be constituted and the public bodies concerned should be obliged to set out in public their reasons for NOT making the changes. These reasons should have to fall into specific criteria - public bodies should not be let off the hook with spurious excuses.
- **Would you use this new right?** Yes, definitely. I am involved in a local group which may well wish to make such representation to a public body. As an individual, I often have creative ideas for improving services, but don't feel at the moment I have anywhere to take these ideas.

- **If not, why not?**
- **What would stop you?** I think what would stop people becoming involved would be the need to form a 'properly constituted' group. Some groups need support to achieve this and the current community development workforce is too poorly resourced at present to do this work.
- **Would you find it easier to participate as a group or individual?** Sometimes an individual has a very good idea for improving public services, but lacks the time or opportunity to find others and form a constituted group. Therefore, there should be also be a place for individual ideas to be presented
- **What help do you need to become involved?** Personally, I don't require any, but many groups may. They need strong advocates of community empowerment, people skilled in helping groups form and achieve constitution. The workforce in community development needs to be better resourced.

From: Mairianna Clyde

Received: 7/10/2014

Dear Sir/Madam

I am responding to your request for feedback on the Community Empowerment Bill, specifically on how local groups or individuals can have an idea and engage with local government to improve the delivery of services.

I am a member of a community council in Edinburgh, and have been for some years. I have endured no end of frustration with the City of Edinburgh Council in response to issues that residents think are a good idea but the Council apparently does not.

I do not see how the proposals in the bill as outlined in your video take us any further forward. Councils like Edinburgh are battle-hardened into saying 'No'. The usual excuse is 'resource implications' but more honest councillors will tell you frankly that the real reasons initiatives from the public are not carried forward is 'lack of political will'. Another frequent excuse we hear for doing nothing is 'we have insufficient powers'. Councils employ wily officials who are able to cite numerous laws as to why they can't do what you request. They are less good at finding laws which might actually support their authority to be proactive - except where it suits their own purposes, but not yours. For instance when a group of Edinburgh citizens recently challenged the right of the Council to appropriate 4.5 ha of a public park in order to build a school, successfully gaining a Court of Session ruling in their favour (clarifying the law on common good which suggested that Councils did not have the alleged right), the Council sought the advice of its legal department and overturned this ruling via a private bill from the Scottish Parliament. Now councils all over Scotland are gearing up to consider how they might also acquire common good land for public building purposes thanks to this precedent.

In your video, which featured Whale Arts Centre in Edinburgh, you suggested that the bill aimed to ensure that local people had some say in the services they received and in being able to approach the local council with fresh ideas. You stated that whilst people could come forward with an idea, that currently a Council did not need to respond, but that the bill would mean that councils will now be obliged to respond. Sorry, but this seems like a minuscule gain for local democracy! The right to receive a response! The right to be told No! The obligation of a Council to engage in a futile exercise they have no intention of delivering on! I fail to see how this will lead to actual delivery, given our experience of a 'listening Council' like Edinburgh, especially as your bill proposes that the group must comply with a range of criteria which will put a brake on initiatives and ensure they are controlled by the Council. I'm sorry, but this does not sound like people power, just more authoritarian paternalism of the kind that is a dead weight on civic life in Scotland. It does not enable proactive citizenship.

I cannot speak for other parts of the country but I will say quite emphatically that to their credit, the City of Edinburgh Council DOES respond. It is a 'listening' Council. However that is not to say that it necessarily responds in the way that residents wish, even when they have presented a good case. The way it responds is often to prevent you from going forward with your suggestion by attempting to educate you into how futile and intractable are the proposals you are trying to put forward. They have a welter of ammunition with which to stymie civic initiative.

I will give a couple examples of civic initiatives in my fifteen years of campaigning which have been killed stone dead by a local authority paying only lip service to being a 'listening' Council.

1. Houses in Multiple Occupation

About the turn of the millennia residents in tenemental areas in Edinburgh began experiencing considerable disruption and nuisance from rented flats in areas such as Marchmont. A problem had built up in the 1990s (after Thatcher's 1989 Short Assured Tenancy Act de-regulated the private rented sector, ending 74 years of consensus on fair rents and security of tenure in the private rented sector that had informed policy since the Glasgow Women's Rent Strike of 1915). The 1991 census had revealed only 3% of city centre dwellings were in the private rented sector; the 2011 census revealed that this was now closer to 20%. That this was concentrated in particular streets of an already compact city exacerbated the problem. The problem was specifically that this intensive type of use was accumulating in whole stairs, pushing the settled population out, because there was no on site management. Loud music, frequent parties, litter, stairs not being swept, gardens left to go to ruin, railings being removed, fires, floods, caused owner-occupiers to vote with their feet. As For Sale signs went up the properties were bought by other landlords so that over time only a minority of mainly elderly residents too ill to move were left to manage an unmanageable situation, and there were no longer 'neighbours' in the accepted sense to aid or support them, as the tenants changed so frequently.

In response to this a local group was formed in Marchmont called Magpie, which initially took an environmental focus to the problem, but eventually began arguing for HMO planning controls to be implemented on a per stair quota basis, as it was discovered that Glasgow had done. This group gained some support from a sympathetic ward councillor.

The Scottish Government also began new legislation on HMOs around that time, but this was geared towards helping tenants, and not towards addressing the fact that tenants, in unmanaged situations, could be making victims of others. Licences for HMOs were to be placed under the control of local authorities and it was hoped that those who were victims of badly managed HMOs might also receive some justice via this means. But sadly this was not to be the case.

Around 2003 the Council also began plans to implement Neighbourhood Partnerships in accordance with recent legislation. NPs were an attempt to do what the community empowerment bill now attempts to do, bring local government closer to communities and enable a more participative approach; and at the initial public meetings, councillors and officials were bombarded by legions of residents wanting action via planning controls on the HMO issue.

Accordingly one councillor proposed setting up a Short Life Working Group on HMOs, to which Magpie and various community councillors like myself were invited to send representatives, but it quickly became apparent that this was a set-up to ensure that though there was an appearance of democracy and participation, that the community's proposal for planning controls or other remedial action would be perpetually blocked. Representatives of various Council services and departments were invited to attend, including those in the Council charged with the new HMO legislation, the Council's legal services, Edinburgh University Students Association, Edinburgh University Accommodation Service, and various landlords and letting agents associations. Discussions were repeatedly stalled by an inability to make any progress because residents groups were outnumbered and outgunned by the preponderance of other stake-holders. As we attempted to move the ball across the pitch, we would find that one or other stake-holder was neatly positioned to block it. Game, set, and match, to Goliath v David.

I accept that governance is always a compromise, and that you can only hope to get a portion of what you ask for, but every single proposal as regards fairness for permanent residents in the implementation of the HMO legislation by the Council that residents groups put forward was blocked. I finally gave up on attending this group when our modest proposal that the Council at least keep a record to be presented before the licensing committee of known bad landlords who owned multiple properties across the city each time a licence renewal came up, was refused on the spurious grounds by the Council's legal officer that this would breach data protection and compromise the landlord's human rights... I had vainly thought this was one area at least that we could all have agreed on; the Council doesn't like bad landlords who avoid registration and other legal compliances; tenants don't like dodgy landlords who withhold deposits and fail to make repairs; ditto university accommodation officers with a duty of care towards students; letting agents and landlords associations like to put across an image of responsible professionalism, so they don't appreciate rogue landlords tarring the rest either. To cap it all, the said legal officer came up with a new legal directive

from the EU, which stated that henceforth all licences granted by local authorities to commercial operators were to be regarded as the perpetual property of the operator, and that once a licence had been granted 'Europe' was effectively blocking the Council's ability to refuse a licence renewal to a rogue landlord on any grounds whatsoever!

Any educated person can see that the law can be variously argued and interpreted. Such is the complexity of the law that authority can usually be found (after scrutiny and reasoning) when authority is needed. What we were perpetually confronted with was a refusal to engage in that process. Or as one councillor honestly and helpfully put it, 'the lack of political will'.

2. Seagull Action Group

In recent years lesser black backed gulls have been nesting on urban rooftops so successfully that their numbers have increased dramatically and during August at the height of the nesting season these become a fearsome problem, nosediving and threatening attacks on residents. Sometimes they actually do attack - the back of the head, causing gashes needing stitches, and sometimes concussion. Earlier in the season noise and bird mess are the main problem. This species is social and forms large colonies so that there is a build up of the problem over several years where the birds find easy nest sites. And they find that the flat sections of tenement roofs are particularly amenable as here they have space to form large groups. Thus large gull colonies build up where there are also large concentrations of people. So large numbers of residents suffer large amounts of noise and mess. In my local streets we took direct action ourselves after the Council refused to do anything, saying it was not a statutory responsibility and as it was private property it was therefore for private owners to do something. Community meetings were held. I raised money amongst neighbours to hire a falconer as I'd heard this had been tried in Dumfries, and over two seasons between 2000 and 2001 we had entirely eradicated the problem. It was astonishingly successful.

But it became clear that it wasn't the falconer/falcon that was doing the trick, but the nest clearance that he and I undertook to remove the nests as we walked across the roofs. The next and next again seasons I didn't bother to hire the falconer but did these patrols myself with the help of a neighbour. This method was so astonishingly simple, cheap, and effective, (and non-violent) that I felt I had to tell the Council about it, so that other communities could do the same. This fell on deaf ears, and advice was not amended in published Council leaflets which continued to say 'there is nothing you can do'. But not all communities are so well organised, especially in those tenement areas where there is now a large transient population with few owner-occupiers or long term residents willing to take ownership of the issue.

One of our community councillors lived in such an area, and using my experience of what works as a template, she managed to win the support of the Transport and Environment Committee to make a trial of similar methods in her area during 2011-2012. This was an astonishing achievement, and the project (surprise, surprise) came out under budget, just as I advised it would do; because once you gain access to one tenement roof in a street, you can access all the others in that street section. The logistics of the operation turned out to be far less than the

Council had anticipated, and I felt vindicated. The legal issues of such action and access were also explored and found not to be a problem. The costs were negligible. The project was deemed a success. Gull nuisance isn't a specific statutory responsibility, but other aspects of environmental responsibilities do come into play. For instance gull faeces spread a number of pathogens such as e-coli, cryptosporidium and campylobacter. Plus, a Council can choose to take on non-statutory responsibilities if it so wishes. Festivals aren't a statutory responsibility either, but Edinburgh does plenty of them.

But following the local elections and a change in the political composition of the Council, the continuation of the project was abandoned by the next Convener. Grounds of cost were raised as an excuse, although the costs were spurious; Council labour only was used, and there were no capital outlays. The trial was a pilot, merely for the Council's pest control service to become aware of how easily this menace could be dealt with from within the Council's own resources. What I had envisaged emerging out of this eventually was a small Council 'hit' team, of about three men, doing about 12 hours nest clearance during May, June, and early July, plus some slight administration costs. This 'service' would eventually be available to affected areas throughout the city on a rota request basis, as what I discovered was that once nesting populations are dislodged by intensive, targeted action, they disperse and do not return to that area. Thus over several seasons, bit by bit, city centre tenement areas could be progressively cleared of gull colonies.

Having campaigned and attempted to raise the profile of this problem over many years, and having discovered how cheap, effective, and humane the simple solution to it is, I was bitterly disappointed to find that such civic endeavour was so lightly cast aside, apparently on the whim or prejudice of the new Convenor, who seemed to be under the impression that mine's was a 'posh' area trying to hog scant resources, though it contains streets where low income groups live, and it was specifically these sorts of areas that our initiative was trying to help. Plus my plan was to help all of the city, but a bit at a time (unless further resources became available). Citizens can be patient if they see some steady progress; what is utterly disheartening is to see none at all, and problem just ignored.

I could cite several other incidences where local groups have campaigned on local issues and not got anywhere.

I have therefore come to the reluctant conclusion that if community empowerment is ever to be meaningful it needs to bypass large unitary authorities like Edinburgh. The bill's proposals may work better in smaller more rural authorities where there is more of a face-to-face society, life is simpler, and the layers of bureaucracy are less complex.

Direct action by community groups accessing funds directly from the Scottish Government for projects and receiving advice and assistance from the SG to run them themselves would I feel work better than having to deal with the fickleness, bad faith, and arterial sclerosis of large local authorities.

Allotments Video - Responses

From: Ron Smith

Received: 13/11/2014

Quite frankly, I am flabbergasted by this latest 'consultation'. It seems to relate only to allotments, a subject which has little to do with true 'community empowerment'. Even worse, the video relates to only a temporary arrangement at the (welcome) whim of a prospective developer, pending development.

Whilst I would be the first to support any reasonable legislation to ensure that there is a proper provision of permanent allotment garden sites for folk who want them, having promoted two allotment garden sites when I was responsible for the Regeneration of Oatlands in Glasgow and being the Chairman of Burgh Beautiful Linlithgow, I feel that this should NOT be under the heading of 'community empowerment'.

As you will be aware, I did respond to the last stage of the consultation, suggesting that the best form of community empowerment would be the delegation of a range of powers to local communities - 'town councils' or similar. As far as I can see, this representation was completely ignored.

This is most disappointing!

Perhaps the title of the bill needs to be changed to the 'Allotments and Extension of Bureaucracy Bill'!

From: Karen Allan

Received: 21/11/2014

I started the Stonehaven Allotments a few years ago. Despite having many interested members, we got the run-around from the Council who, legally, only have to "consider" providing allotments, not actually provide them!! They asked us what land we wanted, we asked them what land they had, they offered us land, then changed their mind, offered us other land, changed their minds again, and offered us the land they proposed in the first place! All this took about 3 years by which time some of our founding members were too old, others were losing heart, and people were starting to fall out. It is all sorted now, after a generous donation and fundraising helped us on our way, but it was such a strain I would be loath to get involved in a similar project. I propose that District Councils MUST provide land, and perhaps some money, and that allotment societies be set up under the auspices of Community Council. Local parks could also contain community gardens, perhaps not with vegetables, but with herbs, flowers (for bees) and fruit trees/bushes.

That is my tuppence worth.

Good luck!

From: Lynne Palmer

Received: 19/11/2014

Community Empowerment Bill,-: further questions. FAO Kevin Stewart MSP & Ann McTaggart. I received an email asking for more suggestions. Lynne Palmer, Nov. 19th 2014.

1) What are the benefits of having access to an allotment?

In my experience, stress relief & relaxation are at the top of the list. Also distraction from life's problems/escape etc. Relief from city life. Fresh air & exercise. Good for anyone living in a flat or tenement/multi-storey.

Contact with natural things & seeing wildlife. Growing & eating your own food & enjoying the growing process.

Some plot-holders enjoy the hard physical work; I remember some years ago asking one tenant about the amount of digging she did, by her response I judged that she loved it & watching her I noticed that the rhythm of digging was possible what she enjoyed. Others I have noticed have great problems getting on with the hard graft, including myself!

2) What other types of spaces could be used to grow food & plants?

a. Community gardens on land which Local Authorities don't (or won't) seem to get on & make use of e.g. in Perth, Tulloch Marshalling Yards. Also there's a large open space of green land between the Marshalling Yards & the back of Fairfield Housing Association; this land includes The Town Lade & a narrow public footpath. These could be incorporated with a new growing area/community garden.

b. Bee-keeping could happen on railway sidings or unused railway land. High fences keep people off railways in built-up areas, at least they do at the above mention site. But danger need not be a problem as proper training should be given to bee-keepers who are in an authorised group with permits to enter by certain locked gates.

3) How could a food-growing plan assist you?

As I don't grow fruit & vegetables, (I have flowering shrubs & plants), I can only suggest help for an allotment association that has problems with pests/diseases. e.g. eel worm on potatoes on more than one plot. So a Plan for plot-holders to try & rid their Association of pests by agreeing to the Plan & sticking to it. An Association would have to start practicing working together.

From: Jane Brennan

Received: 24/11/2014

Hello

We are Edinburgh Garden Partners, an Edinburgh based/focused charity that matches up people who have growing space to spare with those who want to grow.

We target people on the allotment waiting list and match them with people who can no longer, for whatever reason, manage their gardens. They share the garden space and share the produce. A very simple and obvious idea that works really well. We currently have over 50 gardens in production just now with around 90 volunteer gardeners involved.

In reality the people who 'gift' their green space for sharing in this way are elderly, vulnerable people who can no longer maintain their outside space. In return for giving over a dedicated patch to a volunteer gardener the garden is maintained (basic tidying and keeping it looking 'looked after'). It's an exchange that works well and very often results in lasting friendships and an improved quality of life for the elderly garden owners.

If any more information would be useful at this stage please do not hesitate to get in touch.

Best regards

From: Gavin Rosborough

Received: 25/11/2014

Hi Anne,

It's good to hear you are involved in something like this. I have recently got a small allotment in Yoker. I'm on a waiting list for Scotstounhill which I have been for around 3 years now – getting an allotment isn't easy and the allotments that are available are not full size allotments due to the government not providing funding and land to expand current plots. The Yoker allotments is a perfect example of this, the surrounding areas have a massive amount of disused space which should be looked at with a view for expansion.

1. What are the benefits of having access to an allotment?
 - Growing your own food and helping the environment is one of the main perks of having an allotment. It also helps communities together and increase friendship within the local community.
2. What other types of spaces could be used to grow food and plants?
 - Disused ground should be used to kick-start new allotment space, there is so much disused ground around the communities it should be used which will reek benefits in the long term as the communities start to bond together.
3. How could a food-growing plan assist you?
 - A food growing plant would help in the learning of growing your own food and how to maintain the land you have. This learning process will be passed on to the younger generation which is would hope to carry on growing.

From: Nick Virgo

Received: 25/11/2014

Dear Ms McTaggart

This is my response to the request for feedback on the allotments part of the Community Empowerment Bill. Apologies, I ramble on a bit.

What are the benefits of having access to an allotment?

I've had an allotment with my wife in Riddrie by the M8 for the past twelve years or so. The first thing I would say is that despite where it is situated, it is a haven and it is amazing how quickly the noise of traffic disappears as I get on with digging and planting. For me, there is a whole aspect of mental well-being associated with having my plot. It's not just about physical health and I think this is very important. In high summer we spend at least 17 person hours on the plot per week which I think is a considerable investment of time but absolutely worth it.

We grow a lot of plants as well as veg. Some of the plots are places of extreme beauty when they are fully in bloom. I greatly value the impact this has on our environment. This year our plant growing had the knock on effect of there being enough seedlings to put up hanging baskets in our back court.

We are virtually self-sufficient over the summer months for vegetables. Apart from huge levels of self-satisfaction, I have become more aware of issues around the politics of food: it's quality, taste, where it comes from and who gets it. The first pack of supermarket salad leaves in the Autumn always highlights these things: it is such a huge disappointment when it could be so much more.

What other types of spaces could be used to grow food and plants?

There are all kinds of spaces begging to be grown on. For example large areas of land in Royston and Cranhill which are currently serving no real purpose could be used for growing. I know that groups like Dennistoun Diggers in Glasgow have been proactive in growing on new sites. I'm also aware of pop-up community gardens. My one fear is the transitory nature of many of these: here one moment and gone the next. I was particularly sad when I realised that the Greyfriar's Gardens in Glasgow Merchant City was only temporary. It was obvious considering the amount of development going on round about, but so many people appeared to have caught the growing bug and in the heart of a city too. I understand they are now joining the waiting lists for allotments outwith the Merchant City.

I think there is room for all kinds of strategies where land is reclaimed on a temporary basis, but local authorities must be proactive and back this up by creating additional allotment sites which are permanent and which meet popular demand. Growing spaces need to be nurtured over years if necessary; a small orchard or decent area for strawberries or other fruit isn't created in one season. Only permanent spaces will enable this.

If there is one drawback to some of the community gardens I've seen, it tends to be to do with the size of growing spaces that are available. These tend to be just large containers. Not much can be grown on them. The old size of allotment was always meant to be enough to sustain a family of four. This seems like a good definition of what an optimum size of growing space should be. Obviously, different people will have different needs but these spaces need to be flexible and cater for all kinds of commitment and need. But I would hate to see spaces proscribed but what is convenient for an authority and not for a grower.

Twelve years ago, our plots were derelict and we couldn't give them away. Over the last six years, we have created a variety of spaces on our plots: the majority are still full-size plots but we also have a number of half and quarter plots and raised beds. These enable people with different needs and abilities to work on them. Some trade up over the years and some trade down. Some just try out a raised bed for a year and then decide it is not for them. We also have customers from Fair Deal and the Riddrie Centre using their own spaces on the site. It is a thriving community.

How could a food-growing plan assist you?

I'm one of the lucky ones. However, I've worked in primary schools in Glasgow's East End and know that getting decent food (or even enough food in some cases) really is a central part of changing people's lives. Connecting with growing and rediscovering how to cook it is an important part of that.

Anecdotally, our plots have kept bees for the past two years. This year we had the first batch of honey (around 110 jars). At our open day, local people (not from the plots themselves) were queuing to bag a jar. I think the honey was a source of fascination (bees in Riddrie), it was produced by the slightly odd people behind the fence (so that's what they do), and it was also a source of local pride.

Many thanks for taking the time to read this. Hope it makes sense.

With best wishes

From: Barbara De La Rue

Received: 26/11/2014

There are benefits for the individual with access and also for the wider community.

For the individual:

- * there is the opportunity to grow and consume really high quality fruit and vegetables - allotment soil has recently been shown by scientific studies to produce food with a greater range of nutrients than soil of commercial growers
- * there is the opportunity for regular exercise in the fresh air,
- * there is the companionship of other plot holders

For the wider community

* there is an attractive green space providing a safe habitat for a wide range of wild life (allotment gardeners tend to be mean about their use of pesticides)

* there is a reduction in 'carbon footprint' because the fruit and vegetables grown on allotments usually are grown and supplied to the table using relatively little petro-chemical derived fertiliser, little use of tractors and other petrol driven tools and little use of petrol driven transport.

What other spaces can be used to grow food?

Food can be grown in adequately sized private gardens, but modern developments are tending to minimize garden size. Food can also be grown in communal spaces, but the problem here is who has the right to use the crop. Food is best grown directly in the earth. It is fun, but financially crazy to grow food crops in small raised beds and window boxes. It is possible that the damage done to peat bogs in renewing the compost in such spaces far outweighs any carbon footprint benefits. Food grown commercially in polytunnels etc. requires large inputs of artificial fertiliser and pesticide.

How could a food growing plan assist me? Sorry I do not understand the question. What is meant by a food growing plan? Is this different from the advice given in a good gardening book?

Hope this is helpful

From: Karin Chipulina

Received: 26/11/2014

As an employee for Carr Gomm my remit is to help organisations who work with isolated members of the community in Edinburgh especially in Craigmillar to develop areas of ground to grow food in.

I can therefore say from my own experience of working in this field for 20 odd years that growing food, and being outdoors has many values and one of the very important ones is combating isolation.

Obviously there are an incredible amount of other benefits, difficult to quantify but these include, self-reliance, empowerment, self-esteem, socialisation, community cohesion, health, better diet, fitness, better integration of different cultures through cooking, creating local food networks, keeping things local, fresher food and so on.

Other types of spaces could be roof tops, walls, stalled spaces, brown field land, small areas of unused ground around the centre of town and backyards.

A local food growing plan would assist me in making it easier to find accessible land for various communities, make it more straightforward when it comes to leases and costs and make it easier to get in touch with the right person in the council to deal with such issues.

It is sometimes hard for communities to understand planning laws and who owns which areas of land. It would also be useful as there would be a better understanding of the value of growing food and the many benefits it brings.

From: Barbara Glass

Received: 1/12/2014

Having been an allotmentee for the past three years and having worked in the social care sector for thirty nine years, I would like to comment favourably on the stabilising influence that allotments offer in our communities.

Both from an intergenerational and a socioeconomic perspective, the shared experience of working the soil transcends many levels.

Varying gender, cultural, ethnic and religious beliefs work side by side.

Our own allotment is one of the oldest and we have a made space for a local nursery, primary school and learning disability project - alongside our ploholders in their eighties and our patents of new babies.

It is imperative that we protect these stable legacies for the future generation.

The opportunity to grow organic, low carbon impact food and sustain our living environment whilst developing our neighbourhoods shared responsibility for biodiversity is a valuable life skill but needs to be sensitively managed by local government and local people and needs to be maintained at a level we can afford

From: Georgia Skinner

Received: 2/12/2014

I was the Secretary of Aden Community Allotment Association for two years right from the very start of the project from the find raising right through to our first growing season. Would like to help in any way possible.

From: Rob Gray

Received: 2/12/2014

Allotments in Scotland where who are owned and let by a local authority must be compatible with current laws i.e. the human rights act Allotments holder must be forced to join an allotment association to obtain an allotment from a local council.

Policing of allotment sites in scotland where the land is owned and let by a local authority must by policed by them and not by the allotment association to whom of many are left in charge in some circumstances are left to run an allotment site with over a hundred people on them without having the proper funding nor training to do so.

From: Laura Thomson

Received: 3/12/2014

I have heard that you're interested in hearing from people with experience of allotments and community growing and have posed several questions. I'd like to share with you how having an allotment since February of this year has benefitted me.

I am 41. I was diagnosed with mental health problems in my late twenties having been ill but untreated for a long time. I have had various jobs - from temping in various offices as a student to being a Public Relations Executive. Most of the time I was feeling pretty desperate - I couldn't cope with the interpersonal relationships in the workplace, wasn't actually good at what I was doing and didn't see the point to most of it in any case. When I had a psychotic breakdown and was finally diagnosed I was working as a Training & Development Advisor for ScottishPower. After several failed attempts to return to work they and I accepted that this wasn't going to happen and I accepted an Ill Health Retiral when I turned 31.

There followed ten years of therapy, medications, illness, self-harm and changing diagnoses. I made a few attempts to work again, self-employed or as a volunteer. None of these really had a happy ending. I'd try one activity after another, trying to find some kind of meaning to my life but couldn't sustain my interest for more than a few days or a couple of weeks. Every time I dropped the threads of a project I felt a failure. I was depressed, unfulfilled and couldn't see that there was any point in living. I was so ill that Leverndale authorised me to take a high, unlicensed dose of one of my medications with the attendant risks to my physical health that this brings.

In September/October last year I decided to try gardening. I planted vegetable seeds in troughs in a cold frame my parents weren't using. I watered them. They grew as I watched and, eventually, I ate them. I had grown my own food! Here was something for which I could see the point in working even when I didn't feel much like it. I kept adding pots and troughs to my parents' garden and had good results. But I wanted more ... and my parents wanted their garden back!

At the beginning of this year I decided to take the plunge and apply for an allotment. I expected to have to wait years and I would have if I wasn't prepared to travel. It takes two hours to reach 'Lottie' by public transport, a little less if I can afford to take the train. Lottie was in quite a state when I first met her but the Allotment Committee gave me lots of support and practical help (and two skips and a lot of muscle power) but by June of this year I was cooking food I'd grown myself. My best moment this year has been cooking a meal using only produce I'd grown myself.

Over the year I've learned that:

- * I am strong and love hard, physical work.
- * I can make friends with people I have something in common with.

- * I can work as part of a team.
- * It's OK to ask for help.
- * People seem to like me.
- * Sometimes all you need is to sit down and watch the birds.

My mental health has improved greatly - I've had my medication reduced three times this year and am nearly back to the licensed dose. I'm stronger and healthier than I have been in years. I'm eating well of fresh, organic produce. I'm getting exercise. I'm making friends - something I haven't been able to do for a very long time, if ever. And I know that there is one place I can go to in Glasgow when I'm feeling ill that somehow makes me feel like all is well with the world.

I couldn't cope with the world of work and I don't know if I'll ever work again. In today's climate that left me feeling useless and a drain on society even though I knew I'd done my best and damaged myself in the process. But Lottie has given me purpose and a fulfilment I have never felt before. I don't know why working outside to grow my own food should make such a difference. But it does.

From: Dr Lindsay Neil

Received: 4/12/2014

Comment on the forthcoming Community Empowerment Bill

Allotments

There is no doubt that there is a national demand for allotment provision as there is indeed in Selkirk. A need identified in 2007 was partly met by an entirely private allotment initiative in Bannerfield housing estate in lower Selkirk but the Community Council was unable to help towards allotment provision in Selkirk burgh proper owing to Local Authority inability/refusal to provide. The successful initiative provided 15 allotments for 20 people but there is a present unmet demand for another dozen.

It is also noteworthy that a recent Forestry Commission scheme in D & G to provide 10 smallholdings generated 90 applicants. So one can conclude from these and other sources that there is an embedded desire in Scotland to be part of the food production chain and a widespread desire to 'grow your own'.

Food security for the next decades must be given a high priority. There is compelling and irrefutable argument for developing a greater level of food production because of the international situation. One of the predictable problems facing the world and Scotland in the next 50 years is shortage of food. This is because of unrestricted world and UK national population increases, diminishing food resources owing to many factors and increasing cost due to competing international demand for what food is available. Add to this unpredictable physical calamities such as weather, conflict etc.

Scotland currently meets approximately 70% of its own food needs before imports. Figures for Scottish agricultural production in the early 1970s show that Scotland produced a surplus¹. This was used to trade for those things which don't grow well here and is a situation we should strive to recreate.

Encouraging individual 'home' expertise in growing food and exploiting popular desire combined with developing potentially cultivable parcels of derelict or presently unused land all round the country is a way to achieve this. Greater provision of allotments could help but will only have a small overall impact. However the ability of the Scottish Parliament to recognise and plan for a predictable future food problem will proclaim to all that Scotland has a mature understanding of international problems. I have 4 suggestions on that which I will detail below.

Future food security is essential. This is a theme that runs through the 2008 "Committee of Enquiry into the Future of Scotland's Hills and Islands"² (see recommendations 2,3,5,17 & 19, which all mention in passing the advantages of co-ordination among the various agencies in order to achieve better outcomes including food security)

Possible areas the Bill could address:

1. Peremptory encouragement to Local Authorities to provide allotments towards meeting the demand.
2. Empowerment of Local Authorities to use CPOs (Compulsory purchase orders) to acquire land to make allotment provision. The present slow CPO process could be shortened and criteria for CPO eligibility clearly defined for allotment purposes. (derelict or undeveloped land with unmatriculated planning permission, industrial sites etc and any appropriate land suitable for allotments).
3. Ex-industrial urban sites which would be otherwise too polluted for housing and too expensive to develop could be assessed for 'carpetting' with impermeable membrane enabling either topsoil or polytunnel facilitation of horticulture/allotments.
4. Extension of Crofting to the Lowlands and better enforcement of crofting regulations re absenteeism and dereliction. The re-establishment of crofts, where decrofting has taken place eg. in the furtherance of sporting estates. (See attached paper which was sadly disregarded when the Crofting amendment act was considered) [Not strictly allotments but can be considered alongside]

¹ **'Scotland in Figures' 1972 compiled by RBS.**

² **Royal Society of Edinburgh; "Committee of Inquiry into the Future of Scotland's Hills and Islands"** Report, September 2008.

ex Chairman, Selkirk Community Council and ex-director, Selkirk Regeneration Company. (Scheduled re-appointment May 2015). Ex-Master, Selkirk Merchant Company.

From: Maureen McKendrick

Received: 6/12/2014

I have been lucky enough to have had an allotment over the past 2 years and thought it important to share my experience so you can consider it when discussing the Community Empowerment bill.

My closest allotments (Budhill and Springboig) put me on their waiting list but in the meantime, I applied to Kennyhill Community Allotments and within a reasonably short time, I was offered a large raised bed to see how I managed this, was I able to plan, prepare the bed etc. and more importantly commit to maintaining it.

Kennyhill is a great site but it's a 15 minute drive there and back so it's not just around the corner.

My raised bed was a great success and within a few months I had potatoes, garlic, leeks, onions, strawberries, sprouts and swede all growing away. The only problem was the size of the bed and the constraints I faced due to the limitations of what I could physically cram into the ground!

In the meantime a large plot was being divided into quarters and I was offered one of them as my commitment to growing was clear to see and I was ready to start all over again.

This quarter plot gave me the scope to try out proper crop rotation, good growing principles etc. and I constructed 4 raised beds for this purpose. I grew tomatoes, broccoli, sweetcorn, courgette, and used the lasagne no dig method to try to minimise the amount of heavy digging while at the same time improving the soil.

This plot also opened the possibility of having a shed available for storing hand tools etc. and especially somewhere to shelter from the rain and take a well-earned break!

I had made so much good progress over the year that when a larger half plot came up for grabs I went for it straight away as I wanted to have the space to start off my growing as early as possible in a greenhouse and there just wasn't the space available in my quarter plot.

This half plot had been neglected and it was really hard work initially to clear the space of weeds, composting as much as possible and laying out raised beds, getting the ground ready for planting. This plot benefitted from an old greenhouse and linked shed so it provided all I needed for growing and shelter - apart from it being in a really derelict state! The fact that a gang of wasps also liked my shed

did not deter me and we seemed to get along well by simply ignoring one another! (They were there first after all).

I was delighted to receive an email from Budhill and Springboig Allotments offering me one of 5 x plots which had become available. I walked round with a committee member and although I couldn't get access to view my current plot, I knew right away that it was going to be the size I wanted and I would never have to move again.

The plot I have now is a full plot and has everything I need in the one place. I can properly rotate my crops, it has a pond with fish and all the associated wildlife this automatically attracts (cats and all), a good strong greenhouse and shed, running water, etc. and I can walk to it in 15 minutes.

This means that I now have the scope to become totally self-sufficient in terms of growing fruit and vegetables to feed my family. Large plots are not for everyone but it is really important that they remain available to those people who first of all prove they can commit the time and effort required to maintain them, but who also want to do what allotments are all about - i.e. saving money, managing what we as a family eat, know where the food is coming from and that it has been grown using good practice.

The current rumblings of having to reduce large plots in order to provide raised beds so that local government can meet their waiting list quotas fills me with dread. This move is absolutely not about promoting the benefits of becoming self-sufficient in producing food for a family, but is simply a box ticking exercise - literally a window box exercise in this case because some of the raised beds currently being offered are no more than that.

All that is required to manage plot waiting lists effectively is that allotment committees become more organised and consistent in their guidance around what constitutes activity (i.e. a plot that is being actively worked) as opposed to a plot which is clearly being neglected. As long as monthly inspections are maintained and followed up, this will naturally make plots become available as people move out and thereby waiting lists will begin to fall naturally.

Allotments have been running themselves successfully for over a hundred years in some cases and will continue to do so. We don't need bureaucracy to make things work better - please leave it to the people who know what they are talking about to make the right decisions for their communities.

From: G Williamson

Received: 7/12/2014

Dear All

I am an allotment holder in Kilmarnock and wish to respond to the community empowerment (Scotland) bill

The benefits of having access to an allotment are many but the basics include the benefit to health and wellbeing of the individual. My allotment provides me with much needed exercise at a pace suited to me and allows muscles all over the body to benefit from the non normal everyday use. This exercise promotes a better life for me and also helps to fight off the occasional small dips into a depression type mode which can happen to anybody.

The allotments also promote a sense of comradeship where everyone can help one another and be a social pleasure in meeting and discussing with others the benefits of what they are growing.

My allotment provides me with produce I would probably never buy but allows me to have a taste of the vegetables, it also allows me to pick fresh produce that is ready and picked and on my plate within hours.

My allotment gives me the chance to eat and control what I eat without incurring costs to my normal household bills as I am pretty much self-sufficient throughout the year in a lot of the vegetable areas.

My allotment also helps me know what has gone into the food I grow and eat and whether I wish to be organic or use chemicals which often end up banned in years to come.

My allotment give me a taste of what food was like years ago when food actually had a taste instead of being pumped full of chemicals and other ingredients.

My allotment encourages me to eat more healthy foods and more often instead of reverting to junk food.

My allotment has a wide species of bird life that may help keep the population growing instead of helping with their decline.

So to quickly sum up that section I would say health wealth and wellbeing are the main points of having an allotment.

Other types of spaces that could be used in growing food and plants are many and varied but require more encouragement and security as any work done in these areas may result in vandalism and a sense of despondency.

The use of communal space or a communal garden can be utilised to grow produce along with areas in public parks whereby the local populace may wish to be involved. I know from my experience of youth many years ago that going through our public parks when we had council gardeners was a lovely sight when the parks and gardens were in bloom. These have all been affected by various cut backs and the parks and gardens are no longer the places they used to be. Motorway and Bypass bankings can be used to grow more wildlife friendly areas as we often think only of ourselves when it comes to food produce.

A food-growing plan is like many other plans and ideas. It will only work if the weather allows it to work and the person follows it. I am all for a food growing plan as I have had an allotment now for 25 years and always seem to make the same mistakes every year but also have the same success every year. Food growing

plans are possibly useful depending on the situation but I would never knock one without having tried it.

Allotment growing was a big issue during the war years whereby everything helped but nowadays the generations seem to care less and less about things like this and seem to believe that produce actually comes straight out of the ground all washed and clean and that every swede turnip is the same size and all fruit and veg can be bought cheaply and thrown away if not used. Too much foodstuff is sent to landfill and allotment use may help encourage less of this issue as you would then pick as you need and compost anything that goes over and thus return the compost back to the soil

From: Pat Abel

Received: 16/11/2014

This was discussed at a Land Use working group that arose from Edible Edinburgh and we endorsed the concerns put forward by John Glover at our first meeting.

Community Empowerment Bill – John Glover

John gave an outline of his paper on the concerns about the bill

- **Participation Requests** The right for community groups to pro-actively approach the public bodies including council and NHS with proposals to improve public services – could include proposals about planting and maintenance of their land. Concern that this right limited to devolved public bodies.

Extension and Improvement of pre-emptive community right to buy to include urban as well as rural land. However, Bill does nothing to assist community groups in raising the purchase price of the ground or building. Also there is no provision for specialist help and support for community groups going through the buy-out process.

- **Community Right to Buy Abandoned and Neglected Land** There is little in the way of definition and this could lead to decisions by Ministers be challenged in court by the landowner with the great loss of time and money for the community. Nor is there support for the community in finding out who the land owner is, this can be difficult and costly. Timescale from assessment of market value of the land to actual purchase has to be within 6 months. It may be difficult for a community to raise the purchase price in that time.

- **Asset Transfer Requests** – right to request transfer of ownership, grant of a tenancy or rights of use and management from certain public bodies. Where a transfer of ownership is sought there is a requirement that the community purchase vehicle be a SCIO or a company subject to an asset lock which, on winding up, prevents the property acquired under the asset transfer passing to members of the company; or such other constitutional form as may be prescribed. The community is to have the right to appeal if the decision does not go their way. Again the public bodies concerned include the Council and NHS but not bodies whose functions are outwith the devolved competence of the Scottish Parliament (e.g. MoD or Network Rail.) John thinks Westminster should legislate to make it

possible to make participation and asset transfer requests to reserved public landowners.

- **Common Good Land** Councils will be required to publish registers of their common good land. However, the Bill does nothing to clarify the obscure rules on what is or is not common good land, and what can or cannot be done with it.

- **Allotments Sections 77 and 78** They place local authorities under a duty to prepare, publish and keep under review a food-growing strategy. This should be separated out from the allotments section as it is about all forms of community growing and not just allotments.

As described in the Youtube, from the Grove Garden in Edinburgh, Community Gardens are a new and growing phenomenon, however, they come in many different shapes and sizes and therefore different needs. The land use sub group has put in a response to the Good Food Nation which might give an understanding of the place of community gardens. More than happy for you to visit the Gracemount Walled Garden and to discuss some of the issues the community there has to provide a long term hub for the community.

Members who would like a printed copy of this *Numbered Report* to be forwarded to them should give notice at the Document Supply Centre.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by APS Group Scotland

All documents are available on
the Scottish Parliament website at:

www.scottish.parliament.uk

For details of documents available to
order in hard copy format, please contact:
APS Scottish Parliament Publications on 0131 629 9941.

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@scottish.parliament.uk

ISBN 978-1-78534-798-6
