

# Public Document Pack

## **Argyll and Bute Council** **Comhairle Earra Ghaidheal agus Bhoid**

Customer Services

Executive Director: Douglas Hendry



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21 January 2014

### **SUPPLEMENTARY PACK 2**

**ARGYLL AND BUTE COUNCIL - COUNCIL CHAMBER, KILMORY, LOCHGILPHEAD on**  
**THURSDAY, 23 JANUARY 2014 at 10:00 AM**

I enclose herewith item 14 (Appendix 2 of the Report by the SLWG) and item 19 (Community Empowerment Bill) which was marked to follow on the Agenda for the above Meeting.

Douglas Hendry  
Executive Director – Customer Services

### **ITEMS TO FOLLOW**

- 14. SHORT LIFE WORKING GROUP - POLITICAL MANAGEMENT ARRANGEMENTS**  
Appendix 2 – Committee Structure (Pages 1 - 2)
- 19. COMMUNITY EMPOWERMENT BILL**  
Report by Executive Director of Customer Services (Pages 3 - 48)

**ARGYLL AND BUTE COUNCIL**

Contact: Sandra McGlynn Tel: 01546 604401

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Councillor		Audit	Communities	Environmental Development & Infrastructure	Policy & Resources	PPSL	PRS
Gordon	Blair	x				x	x
Michael	Breslin					x	
Rory	Colville		x			x	
Maurice	Corry	x					x
Robin	Currie		x		x	x	
Vivien	Dance		x		x		
Mary Jean	Devon		x			x	
George	Freeman		x			x	
Louise	Glen-Lee		x	x			
Fred	Hall	x		x			
Anne	Horn		x	x			x
David	Kinniburgh			x		x	
Donald	Kelly		x		x		
John	McAlpine		x				x
Roddy	McCuish				x	x	
Iain Angus	MacDonald	x		x			x
Alistair	MacDougall			x		x	
Duncan	MacIntyre			x	x		
Robert E	Macintyre		x				
Robert G	MacIntyre			x-		x	
Donald	MacMillan			x		x	
Alex	McNaughton			x		x	
Jimmy	McQueen		x			x	
Bruce	Marshall			x	x		
Aileen	Morton		x		x		
Ellen	Morton			x	x		
Gary	Mulvaney				x		
Dougie	Philand		x		x		
James	Robb	x			x		
Elaine	Robertson		x	x			
Len	Scoullar				x		
John	Semple		x		x		x
Isobel	Strong		x		x		
Sandy	Taylor			x	x	x	x
Richard	Trail			x		x	
Dick	Walsh			x	x		

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**ARGYLL AND BUTE COUNCIL****COUNCIL****CUSTOMER SERVICES****23 JANUARY 2014**

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**COMMUNITY EMPOWERMENT BILL**

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**1 SUMMARY**

- 1.1 The Scottish Government issued a consultation document on the proposed Community Empowerment Bill in November. The deadline for responses is 24 January 2014.
- 1.2 In preparing the cross service response, the Council has engaged with community planning partners and in particular the third sector interface. The interface has a membership of over 2100 community and voluntary sector organisations across Argyll and Bute and set a deadline for consultation on the Bill of 15 January. The Council's response is consistent with the views gathered by the Third Sector in their consultation,/ which gathered over 460 responses.
- 1.3 The Community Empowerment Bill, alongside public service reform, is central to the Government's Programme for 2013/14. It relates to the following specific areas:
- Community Right to Request Rights in Relation to Property
  - Community Right to Request to Participate in Processes to Improve Outcomes of Service Delivery
  - Increasing Transparency about Common Good
  - Defective and Dangerous Buildings – Recovery of Expenses
  - Strengthening Community Planning
  - Allotments
  - Local Relief Schemes for non-domestic (business) rates (separate consultation)
  - Wider Policy Proposals – Embedding outcomes; subsidiarity and local decision making.
- 1.4 The draft Bill contains a number of detailed sections related to the above. The attached draft Council response indicates broad support for the provisions being made by the Bill. These are detailed in the relevant sections.
- 1.5 The consultation paper contains questions both in narrative and yes/no format. In some questions, there is not a simple yes/no answer, so the associated narrative explains this.

## **2 RECOMMENDATION**

- 2.1 1 That Council consider the draft response to the consultation.
- 2 2 That Council agree the response and remit officers to submit the response to the Scottish Government.

## **3 DETAIL**

- 3.1 The Community Empowerment Bill sets an important legislative basis for the future of public sector organisations and communities working together to achieve improved outcomes. Argyll and Bute has a strong track record in partnership working and has a very large number of community and voluntary organisations who play an essential role in community sustainability, wellbeing and prosperity.
- 3.2 The draft Bill is broad ranging and covers issues from the very specific to wider principles. The essence of the Bill is to provide a stronger support mechanism for communities to take ownership of assets and engage with public bodies on service outcomes.

### **3.3 Community Rights to Request in Relation to Property**

This section recognises the benefits of community ownership of assets, in the right circumstances, on positive economic, social and environmental benefits. This section deals with the definition of community bodies, timescales and rights of appeal to facilitate asset transfer. The Council's Third Sector Asset transfer process presents an excellent example of the forward thinking approach that the Council has taken to support communities and third sector organisations to access assets. This framework has been developed in consultation with communities and third sector organisations and supports sustainability of communities through optimising the use of assets for community benefit. Experience from this has informed the response.

### **3.3 Community Right to Request to Participate in Processes to improve Outcomes of Service Delivery**

The section sets out the importance of public sector engagement with communities and service users. It is recognised that Council use a wide range of techniques to engage over the years and excellent practice has been developed. The draft Bill seeks to strengthen communities' voices in shaping the services that affect them. It proposes that communities are given the lead in starting discussions with the public sector, on their own terms, about things that matter to them and strengthen 'bottom up' processes. The draft Bill puts the emphasis on communities/community bodies to explain and provide evidence of how it could contribute to improving the service outcomes. The public body must then agree to that request unless there are reasonable grounds for refusing.

In Argyll and Bute, the public sector bodies work very closely with the third sector partnerships, with communities of interest, with groups of service users and develop, review and improve services on the basis of consultation and engagement. We have worked on co-production of services and use the National Standards for Community Engagement as a basis for our approach.

### **3.4 Increasing Transparency About Common Good**

The draft Bill recognises that common good in Scotland is an important aspect of community and landscape in many areas. Some of these common good assets are owned by local authorities and the draft Bill seeks to improve transparency for communities on the common good asset. The Bill requires that Councils will have a new statutory duty placed on them to establish and maintain a register of all property held by them for the common good. This includes the requirement to consult with community Councils and other community bodies when preparing this register and also about the disposal and use of common good assets. The consultation document recognises the difficulties in framing a statutory definition, which may inadvertently lead to communities losing common good assets. It therefore offers the CIPFA guidance on Accounting for the Common Good a 'useful description of how common good arises', but does not offer a specific legislative definition.

### **3.5 Defective and Dangerous Buildings**

This section recognises that communities can be affected by buildings which become dangerous or defective. The Buildings (Scotland) Act 2003 gives Councils powers to deal with buildings and a mandatory duty to take action to deal with buildings that are 'dangerous'. Currently Councils can only recover costs through normal debt recovery methods, which can be difficult. The draft Bill proposes new sections be inserted into the Building (Scotland ) Act 2003 which allow for 'notice of liability for expenses' to be registered in the appropriate property register in relation to a building on which work has been done to aid cost recovery. This reinstates powers that were in the building Scotland Act prior to 2003. Although this provision aids recovery, the fabric of the built heritage in Argyll and Bute alongside the current economic situation means that this will only be one element of a long term, partnership approach to addressing derelict buildings in our communities.

### **3.6 Improve and Extend the Community Right to Buy**

The draft Bill recognises the benefits that the community right to buy has had in empowering communities. The proposal is to extend this to all of Scotland, including urban areas and settlements of 10,000 or more. It considers that there should be a compulsory right to buy for communities and seeks to streamline the process, removing barriers to communities and increasing opportunities. Argyll and Bute has seen a number of successful

community buy outs of varying size and complexity. This has had significant positive impact on communities and its extension is positive.

### 3.7 **Strengthening Community Planning**

The draft Bill sets out an ambition to amend the core legislation underpinning community planning (Local Government Scotland Act 2003) to place greater emphasis on delivering better outcomes. This legislative change would incorporate the Statement of Ambition for community planning, which was developed by the Scottish Government, COSLA and other partners in 2012. It would put the need for Community Planning Partnerships to deliver outcomes on a statutory basis.

The draft Bill recognises that the current legislation places a duty on Councils to initiate, facilitate and maintain community planning. This has resulted in the Accounts Commission finding that 'Community Planning has also been seen as a Council-driven exercise and not a core part of the day job for other partners who have little incentive to get fully involved'. Whilst this is not the case in Argyll and Bute, the extension of the duty to other partners will strengthen community planning in the long term. The consultation document recognises the important local, democratic mandate that Councils have and that the broad understanding of the needs and aspiration of local communities is critical to effective community planning.

### 3.8 **Allotments**

Allotments are identified in the draft Bill as an empowering tool for communities, enabling them to have access to land that can provide both health and social benefits. The draft Bill proposes the introduction of definitions of allotment plots as follows:

#### **Allotment Site:**

An area of land that is subdivided into allotment plots and which may or may not include communal areas and buildings

#### **Allotment Plot**

##### **Options**

A: A piece of land on an allotment site between 60-?m2

B: used mainly for the cultivation of vegetables, fruit and flowers for non-commercial use

C: leased to individuals, families, groups of individuals and organisations.

The Council has been working closely with local groups to improve the provision of allotments and recognises their benefits. The draft Bill presents a legislative framework for Councils to manage allotments



### 3.9 **Local Relief Schemes for Non-Domestic (business) Rates**

This will be consulted upon separately.

### 3.10 **Scotland Performs – Embedding the Outcomes Approach in Legislation**

This section of the consultation document relates to embedding the outcomes approach in each Community Planning Partnership's Single Outcome Agreement. The Bill would place a duty on Ministers to develop and consult on a set of National Outcomes and would seek to ensure that a full range of views were taken into account. This would strengthen the link between local delivery of outcomes and national impacts/consequences, improve co-ordination and ultimately result in improved outcomes. It would also introduce a complementary duty to report regularly and publicly progress towards these outcomes.

### 3.11 **Subsidiarity and Local decision Making**

The draft Bill recognises that local people are best placed to make decisions about their future and states that the Government is committed to subsidiarity and local decision making. It recognises that Councils are the level of government closest to the citizen.

The consultation document refers to the European Charter of Local Self Government and states that the Government is bound by treaty through the Council of Europe. The document recognises that there will be further relevant debates on this topic in the near future, particularly including COSLA's commission on local democracy. The paper therefore seeks wider views in this section to inform the debate.

## 4 **CONCLUSION**

- 4.1 The Community Empowerment Bill is wide ranging and seeks to strengthen communities' rights in relation to assets, land, property as well as engagement in outcomes. It paves the way for further legislation, particularly in relation to Community Planning, and provides a strong basis for better community empowerment, sustainability and prosperity.

## 5 **IMPLICATIONS**

5.1	Policy	None at this stage. There may be policy implications from the final Bill which will be brought forward as appropriate by the respective services.
5.2	Financial	None
5.3	HR	None
5.4	Legal	None from this paper

5.5	Equal Opportunities	None
5.6	Risk	None
5.7	Customer Service	None

**Jane Fowler, Head of Improvement and HR**  
**Tel 01546 604466**

#### **ATTACHMENTS**

Draft Argyll and Bute Council Consultation Response  
Draft Community Empowerment Bill

The full consultation document can be viewed at:  
<http://www.scotland.gov.uk/Publications/2013/11/5740>

## Consultation on the Community Empowerment (Scotland) Bill

### Response Questionnaire

#### Chapter 3 - Proposals with draft legislation

Please read the draft Bill provisions before you answer these questions. You do not need to answer all the questions in this questionnaire, only answer the questions that you have an interest in. Separate questionnaires are provided for each chapter of the consultation paper.

Please make sure you also return the Respondent Information Form with your response, so that we know how to handle it.

##### 3.1 Community Right to Request Rights in Relation to Property

**Please read Part 1 of the Draft Bill pages 1 to 9 before you answer these questions:**

Q1 Do you agree with the definition of community body at section 1?

Yes ☒ No ☐

Do you have any changes to suggest?

Yes, however there are risks associated with the transfer of assets to an unincorporated body that should be carefully considered before the legislation is finalised.

Q2 Do you agree with the list of public bodies to be covered in this Part at Schedule 1 of the Draft bill page 21)? Yes ☒ No ☐

What other bodies should be added, or removed?

The Forestry Commission should be considered as an addition.

Q3 What do you think would be reasonable timescales for dealing with requests, making an offer and concluding a contract, in relation to sections 5(6), 6(2)(c) and 6(6)?

As part of the Argyll and Bute Council Third Sector Asset Transfer Process we have estimated a time span of between nine months and two years from start to finish. We believe that the time span and level of information is dependent on the nature and scale of the asset in question, which can range from a toilet block to a village hall. This time span also allows for the community group to put in place funding, demonstrate both sustainability and that they are not displacing services, and enables them to develop the necessary skills if required. We are required to provide a business case on the asset, ensure that its release fits with our strategic plans and outcomes. In addition, our political approval process requires permission from our local area

committee and full Council.

- Q4 Do you agree that community bodies should have a right of appeal to Ministers as set out in section 8?

Yes ☒ No ☐

Are there other appeal or review procedures that you feel would be more appropriate?

It is important that there is a community right of appeal against decisions by any organisation. As presently drafted the Bill does not allow an appeal to Ministers where the relevant authority is the Scottish Ministers or a local authority. The appeal provisions relating to other relevant authorities would seem to be appropriate.

- Q5 What form of appeal or review processes, internal or external, would be appropriate in relation to decisions made by local authorities and by Scottish Ministers?

Where there are existing mechanisms for appeal already in place, these should be used as the basis for appeals.

- Q6 Do you have any other comments about the wording of the draft provisions?

Rather than the existing wording we would prefer: "the public body must agree to the request unless there are reasonable grounds for refusing it". Also conditions should be negotiated rather than imposed.

- Q7 What costs and savings do you think would come about as a result of these draft provisions? Please be as specific as you can.

Initially, there is a cost to both the community group and the Council in the transferring of an asset. The cost to the Council in officer time, legal and other services such as ballot and support to the group has been estimated at up to £20,000. The cost to the community has been estimated by Development Trust Association Scotland (DTAS).

After the transfer there are potential savings to the Council as it will not have to maintain the asset if it is underused or vacant. General savings may be accrued as a result of adaptations and/or upgrades to the asset and increased usage but these are dependent on the asset and difficult to quantify.

### 3.2 Community Right to Request to Participate in Processes to Improve Outcomes of Service Delivery

Please read Part 2 of the Draft Bill pages 9 to 14 before you answer these questions:

Q8 Do you agree with the definition of community body at section 11?

Yes ☒ No ☐

Do you have any changes to suggest?

None.

Q9 Do you agree with the list of public bodies to be covered in this Part at Schedule 2 (Draft Bill page 21)?

Yes ☒ No ☐

What other bodies should be added, or removed?

Consider adding the Forestry Commission.

Q10 Do you agree with the description at section 13 of what a participation request by a community body to a public service authority should cover?

Yes ☐ No ☐

Is there anything you would add or remove?

The council does not consider that this question is simply answered with a yes/no response.

We agree that dialogue should take place with regard to improving outcomes of Council service delivery. This fits with our service development, planning, review and improvement processes where consultation and engagement with our stakeholders, including third sector bodies and the community, is required.

Participation and dialogue was highlighted as a critical factor in the successful third sector delivery of Council services as part of our recent partnership research study, *Argyll and Bute Local Services Initiative*, supported by HIE and Carnegie UK Trust. This highlighted the need for open dialogue to ensure an understanding of both parties point of view, exchange of knowledge and information, and enhanced working relationships resulting in better services. This study is available at <http://www.argyll-bute.gov.uk/community-life-and-leisure/ablsi-report>

However the following caveat applies: If the community is a

stakeholder in the procurement process then yes, but challenge would have to be with Council as party to the contract. The issue is as always in the contract terms, and the contractual parties will be the Council and another party. As part of the regular monitoring that Council services should be undertaking via the contract and KPIs, any issues that arise from the communities should be addressed under the contract where and if appropriate. The contract management arrangements should ensure any issues that the communities raise with the Council could be addressed if relevant to the service delivery. We would not recommend setting up other structures/ complaints processes beyond those already in place – we believe there is no evidence to suggest that the formal internal complaints process/ SPSO route is not effective.

- Q11 Do you agree with the criteria at section 15 that a public service authority should use when deciding whether to agree or refuse a participation request?

Yes ☒ No ☐

Are there any other criteria that should be considered?

The list of criteria is appropriate:

- Economic Development
- Regeneration
- Public Health
- Social Wellbeing
- Environmental Wellbeing

Other community benefit should be included.

- Q12 Do you have any other comments about the wording of the draft provisions?

None.

- Q13 What costs and savings do you think would come about as a result of these draft provisions? Please be as specific as you can.

This is dependent on the number of requests and how expectations are managed and the systems established for this. For each request there will be a resource cost. Outcome improvements, if realised, could result in savings through better targeting and results but this is difficult to quantify and is dependent on the service in question.

### 3.3 Increasing Transparency about Common Good

**Please read Part 3 of the Draft Bill pages 14 to 16 before you answer this question:**

- Q14 Do you think the draft provisions will meet our goal 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?

Yes ☒ No ☐

What other measures would help to achieve that?

The measures outlined ensure that common good is transparent, monitored and subject to local consultation. It would be helpful to consider the removal of the reference to Sherriff Court approval.

### 3.4 Defective and Dangerous Buildings – Recovery of Expenses

**Please read Part 4 of the Draft Bill pages 17 to 19 before you answer these questions:**

- Q15 Do you agree that the cost recovery powers in relation to dangerous and defective buildings should be improved as set out in the draft Bill?

Yes ☒ No ☐

- Q16 Do you agree that the same improvements should apply to sections 25, 26 and 27 of the Building (Scotland) Act 2003?

Yes ☒ No ☐

## Consultation on the Community Empowerment (Scotland) Bill

### Response Questionnaire

#### Chapter 4 - Detailed Policy Proposals

Please read the draft Bill provisions before you answer these questions. You do not need to answer all the questions in this questionnaire, only answer the questions that you have an interest in. Separate questionnaires are provided for each chapter of the consultation paper.

Please make sure you also return the Respondent Information Form with your response, so that we know how to handle it.

##### 4.1 Improve and extend Community Right to Buy

- Q17 The Scottish Government proposes to extend right to buy to communities in all parts of Scotland, where the Scottish Government is satisfied that it is in the public interest. Do you agree with this proposal?

Yes ☒ No ☐

Are there any additional measures that would help our proposals for a streamlined community right to buy to apply across Scotland?

Timescales for acquisition could be extended to ensure that the necessary level of research and consultation with the community and other stakeholders takes place, for the development of robust business plans and to allow the development of an appropriate skills base. These elements are dependent on the asset, its location, and the social capital available in each location and there needs to be flexibility for this.

Argyll and Bute Council has provided support for undertaking ballots, but this does have a cost implication.

- Q18 Do you think that Ministers should have the power to extend “registrable” land” to cover land that is currently not included as “registrable land”?

Yes ☐ No ☒

What other land should also be considered as being “registrable”?

The Council cannot envisage the benefit of further extension of registrable land.



- Q19 Do you think that there should be a compulsory power for communities to buy neglected or abandoned land in certain circumstances?

Yes ☐ No ☐

What should these circumstances be?

The council does not consider that this question can simply be answered yes or no..

Compulsory purchase orders are complex and challenging to achieve through current CPO powers possessed by the Council and key agencies such as HIE. It is not certain that many communities would have the capacity to undertake such complex and time consuming processes and it is considered that the CPO process needs to be streamlined further before communities are given a role. There is potential for communities in future to have a positive role in tackling neglected buildings or abandoned land. However there is a need to ensure that a CPO is only considered where the building or land is considered to have a blighting (ie adversely impacting on a sense of place or economic investment potential) impact on a wider area and not just adjacent neighbours.

There is potential for local authority powers to be extended to take in a right to acquire abandoned property ie property the owner of which cannot be traced – all reasonable steps to do so having been taken. It would then be open to the local authority to enter into an asset transfer arrangement as per the agreed Council policy and procedure.

- Q20 How do you think this should work in practice? How do you think that the terms “neglected” and “abandoned” should be defined?

Definitions would be required in order to facilitate initial action. Work in practice would be dependent on the process put in place above, but should be informed by the procedures/processes already in place for similar activities.

- Q21 Do you think that the criteria to be met by a community body in section 38(1) of the Act are appropriate?

Yes ☒ No ☐

Do you think that there should be additional criteria? Please set out what changes or additions should be made to the criteria.

None.

- Q22 Do you think that the information that is included in the Register of

Community Interests in Land is appropriate?

Yes ✓ ☐ No ☐

If not, what should that information include?

The information is sufficient to identify the body having the registered interest and the land affected.

- Q23 How could the application form to register a community interest in land be altered to make it easier to complete (eg, should there be a word limit on the answers to particular questions)?

There is a varying degree of complexity between the areas of land that communities are interested in, so there needs to be scope to include a wide range of detail to enable an informed decision to be taken. The questions should relate to the provisions of the Act.

Should the questions be more specifically directed to the requirements of sections 36(2) and 38(1) of the Act?

Yes ✓ ☐ No ☐

Do you have any other suggestions?

None

- Q24 Do you agree that communities should be able to apply to register an interest in land in cases where land unexpectedly comes on the market and they have not considered using the community right to buy?

Yes ✓ ☐ No ☐

- Q25 Do you agree that the process to re-register a community interest should be a re-confirmation of a community interest in land?

Yes ✓ ☐ No ☐

- Q26 Do you think that the community body should be asked to show that its application is (1) still relevant, (2) has the support of its "community", and that (3) granting it is in the public interest?

Yes ✓ ☐ No ☐

- Q27 What do you think should be the length of the statutory period for completing the right to buy, taking into account both the interests of the landowner and the community body? Please explain the reasons for your proposal.

As part of the Argyll and Bute Council Third Sector Asset Transfer process we have estimated a time span of between nine months and two years from start to finish. We believe that the time span and level of information is dependent on the nature and scale of the asset in question, which can range from a toilet block to a village hall. This time

span also allows for the community group to put in place funding, demonstrate sustainability and that they are not displacing services and enables them to develop the necessary skills required if appropriate. We are required to provide a business case on the asset, ensure that its release fits with our strategic plans and outcomes. In addition, our political approval process requires permission from our local area committee and full Council.

- Q28 Do you think that some of the tasks within the right to buy (such as valuation, ballot etc) should be rearranged and the timescales for their completion changed in order to make the best use of the time available within the right to buy? Please set out what changes you think should be made and why.

We are aware of the burden placed on community groups with regard to the timescales for developing a robust plan for the asset in order to consult with the community and on the back of this, undertaking the ballot. We would therefore suggest that the timetable for ballot is extended.

- Q29 Do you agree that Scottish Ministers should organise the undertaking of a community body's ballot and pay its costs?  
Yes ☐ No ☐

If you disagree, please provide your reasons.

The council does not consider that this question can simply answered with a yes/no response.

There are pros and cons to this approach and the solution may be to make funding available for the local authority to undertake this.

- Q30 Should Scottish Ministers notify the ballot result to the landowner?  
Yes ☒ No ☐

Please explain your reasons.

As the landowner is a party in the process it would assist with transparency if the landowner was sent this information.

- Q31 Do you think Ministers should develop a pro-forma for community bodies to set out their plans for the sustainable development of land and community?

Yes ☒ No ☐

Please give reasons for your view.

A pro-forma would be useful to inform applicants what is required in

their plans. If this is used then it should be compatible with funders and local authority forms to ensure that there isn't an additional burden on the community. The pro-forma should not be prescriptive and a business plan should also be accepted so long as it addresses the criteria. The level of information required should always be proportionate to the nature and scale of the asset.

Argyll and Bute Council have a pro-forma for stage one applications to our Third Sector Asset Transfer Process as this contains questions related to the area of land, land use, whether the community has spoken to planning etc. This ensures that the proposal for the asset is viable. Our second stage allows for the submission of a business plan so long as all the criteria are feedback from stage one are addressed.

- Q32 Do you agree that community bodies should be able to define their "community" in a more flexible way by the use of either postcodes, settlement areas, localities of settlements, and electoral wards, or a mixture of these, as appropriate?

Yes.

- Q33 Are there any other ways that a "community" could be defined?

There may be communities of interest identified, but we would emphasise the importance of geographical community and sense of local place in defining the community.

- Q34 Do you agree that other legal entities in addition to the company limited by guarantee should be able to apply to use the community right to buy provisions?

Yes ☒ No ☐

- Q35 Do you agree that SCIOs should be able to apply under the provisions?

Yes ☒ No ☐

- Q36 What other legal entities should be able to apply under the community right to buy provisions – and why?

Organisations with an asset lock that recycle all profits for the benefit of the community.

- Q37 Do you agree that Ministers should only have to "approve" the changes to Articles of Association for community bodies that are actively seeking to use or are using the community right to buy?

Yes ☒ No ☐

- Q38 Do you think that the length of a registered interest in land should

remain as five years or be changed? If it should be changed, how long should it be – and what are your reasons for making that change?

Five years is a reasonable time for the interest to be registered.

- Q39 Do you agree that the valuation procedure should include counter representations by the landowner and community body?

Yes ☒ No ☐

If you disagree, please give your reasons for your decision.

n/a

- Q40 Do you think that there should be a provision to deter landowners from taking the land off the market after they have triggered the right to buy?

Yes ☐ No ☒

Please explain your reasons.

It would not be appropriate to have a provision to deter landowners from taking the land off the market. This may be contrary to provisions set out by the ECHR.

- Q41 Do you think that there should there be greater flexibility in a community body's level of support for a right to buy in the ballot result than is currently permitted?

Yes ☒ No ☐

- Q42 Do you think that the ballot result should focus on a sufficient amount of support to justify the community support to proceed with the right to buy the land?

Yes ☒ No ☐

If yes, please explain how secured community support should be measured

Fifty percent return on ballot is a high figure which is not matched in electoral turn out. We would support over 50% of the returning ballots in favour of the buy-out, and a flexible rate of return within reason and dependent on the nature and location of the community eg. in an area where there are a large number of second homes/holiday homes it may be more problematic to raise the number of returns required.

- Q43 Do you agree that community bodies should be able to submit evidence to Ministers in support of their ballot result where they believe that their ballot has been affected by circumstances outwith their control?

Yes ☒ No ☐

- Q44 Do you think that Scottish Ministers should be able to ask community bodies for additional information relating to their right to buy “application” which Ministers would then take into account in considering their right to buy “application”?

Yes ✓ ☐ No ☐

Please explain your reasons.

Clarification, further information and dialogue is a reasonable part of any process of development to ensure that what transpires is in the public interest.

- Q45 Do you think that Ministers should be able to accept an application to register a community interest in land which is subject to an option agreement (on part or all of the land)?

Yes ✓ ☐ No ☐

- Q46 If there is an option agreement in place, do you think that the landowner should be able to transfer the land as an exempt transfer while there is a registered interest over that land?

Yes ✓ ☐ No ☐

Please explain your answer.

If an option exists on the asset when transfer is to take place then the obligations of this option should also transfer. This would seem fair to the parties concerned. The landowner should be able to transfer as the rights will have been created in favour of the option holder prior to the application for registration of the interest and it would appear unfair that a subsequent application for registration could remove those rights.

- Q47 Do you think that the prohibition on the landowner from taking steps to market or transfer the land to another party should apply from the day after the day on which Ministers issue the prohibition letter rather than the day when the owner/heritable creditor receives the notice?

Yes ✓ ☐ No ☐

Please explain your answer.

A party could not be subject to prohibition from doing something if they were not yet aware that it had been prohibited.

- Q48 Do you agree that public holidays should be excluded from the statutory timescales to register a community interest in land and the right to buy?

Yes ✓ ☐ No ☐

- Q49 Do you agree that where a landowner makes an “exempt” transfer, this should be notified to Scottish Ministers?

Yes ☒ No ☐

If you disagree, please provide reasons for your decision.

N/A

- Q50 Do you agree that community bodies and landowners should notify Scottish Ministers of any changes to their contact details (including any registered office)?

Yes ☒ No ☐

- Q51 Do you think that Ministers should monitor the impact of the community right to buy?

Yes ☒ No ☐

How do you think that monitoring should be undertaken and what information should Ministers seek?

We believe that monitoring should be based on the outcomes defined in the community business plan and for ensuring that the asset is continuing to be used for community benefit. Information for this monitoring should make use of the community group's reports to funders and thus ease the burden of reporting.

Should the monitoring process be a statutory requirement, including provisions for reporting?

Yes ☐ No ☒

#### 4.2 Strengthening Community Planning

- Q52 What are your views on our proposals for requiring a CPP to be established in each local authority area, and for amending the core statutory underpinning for community planning to place stronger emphasis on delivering better outcomes??

The Council is fully committed to the requirement for a CPP to be established and to place stronger emphasis on delivering better outcomes.

- Q53 What are your views on the core duties for CPPs set out above, and in particular the proposal that CPPs must develop and ensure delivery of a shared plan for outcomes (i.e., something similar to a Single Outcome Agreement) in the CPP area?

The Council is fully committed to the core duties for CPP as set out. In particular the Council recognises the central importance of the development and delivery of a shared plan for outcomes in the CPP area. This is well underway in Argyll and Bute where partnership working is very well

established. We would seek the support of the Scottish Government to ensure that the SOA is also reflected clearly in the priorities set at Government level for public sector agencies to deliver on outcomes identified at the local, CPP level.

Q54 Do the proposed duties of the CPP support effective community engagement and the involvement of the third and business sectors?

Yes ☒ No ☐

What other changes may be required to make this more effective?

Engagement and involvement with the third and business sectors is paramount. This could be improved by recognising the role of, for example, the third sector interfaces that carry out this role as their core business and are key players in the CPP structures.

The Council notes that the national standards for community engagement are not referred to although these provide an important framework for effective community engagement. Reference to adhering to these standards would be a positive addition, particularly relating to ensuring feedback on consultation.

Communities require sufficient capacity to engage effectively with public bodies. In areas where that capacity does not exist or is not adequate, Community Planning must have a role in capacity building. There is a need to provide community capacity building support for those communities which may not currently be able to access the opportunities afforded by the new legislation.

For example, support to strengthen the skills, abilities and confidence of people and community groups to take effective action in the development of their communities is essential. Without this support, the opportunities of the Bill may not be enjoyed equitably and some communities will benefit while others may not, particularly those communities which are most marginalised, and in remote, island and rural locations, which is particularly the case in Argyll and Bute.

Q55 How can we ensure that all relevant partners play a full role in community planning and the delivery of improved outcomes in each CPP area? Do the proposed core duties achieve that?

Yes ☒ No ☐

What else might be required?

We cannot ensure that respective partners play a full role, but we can build strong partnership relationships to ensure that the delivery of outcomes is the priority, irrespective of the inevitable separation of duties. Clear and



positive examples of this as an effective approach can be seen in the Argyll and Bute Integrated Children's Services Plan, which as a multi-agency plan will deliver jointly on improved outcomes for Argyll and Bute's young people.

- Q56 What are the respective roles of local elected politicians, non-executive board members and officers in community planning and should this be clarified through the legislation?

There is a clear role for community and political leadership in community planning and the delivery of outcomes. The democratic accountability of local government is essential to ensuring that the CPP and SOA deliver on outcomes and are seen to deliver on outcomes.

There is not a requirement for legislative clarification of respective roles and responsibilities.

- Q57 Should the duty on individual bodies apply to a defined list of public bodies – if so, which ones? Or should we seek to take a more expansive approach which covers the public sector more generally?

There are core partners upon which the duty should apply. These have already been defined in relation to community planning. Each CPP area is complex and unique, with different challenges and different partners and stakeholders. It is essential that a list does not become exclusive. There has to be flexibility for each partnership to define its partners within an expansive approach.

- Q58 Local authorities are currently responsible for initiating, facilitating and maintaining community planning. How might the legislation best capture the community leadership role of Councils without the CPP being perceived as an extension of the local authority?

In Argyll and Bute, the Management Committee is chaired by partners on a rotational basis, which allows for the Council to lead and facilitate, but for other partners to drive and guide. There are also examples of Council committees being chaired by external appointees. As long as there are clear roles and responsibilities set out and agreed by the partnership, these can be filled as appropriate by partners and the process is not then viewed as an extension of the local authority.

As part of this training in partnership working is essential for all parties.

- Q59 How can the external scrutiny regime and the roles of organisations such as the Accounts Commission and Auditor General support the proposed changes? Does this require changes to their powers or functions?

There is no change required. Occasional review and guidance, such as the recent guidance by the Accounts Commission on improving community planning is useful and straightforward. It gives clear guidance and a framework for implementing improvements.

- Q60 What other legislative changes are needed to strengthen community planning?

There are no further legislative changes needed to strengthen community planning. The main requirement for effective community planning is good partnership working skills and the goodwill to work closely together in the interests of our communities.

### 4.3 Allotments

- Q61 Do you agree with the proposed definition of an allotment site and allotment plot?

Yes ☐ No ☐

How else would you suggest they be defined?

The council does not consider that this question can be answered simply yes or no.

Size has not been used in earlier legislation and its inclusion here does not appear to present any real benefits.

- Q62 In order to include all existing allotments in the new legislation they must fit within the size range. What is the minimum and maximum size of one allotment plot in your area/site?

See above

- Q63 Do you agree with the proposed duty to provide allotments?

Yes ☒ No ☐

Are there any changes you would make?

The proposed changes will strengthen the existing duty and this is likely to have some resource implications.

Do you agree with the level of the trigger point, ie that a local authority must make provision for allotments once the waiting list reaches 15 people?

Yes ☐ No ☐ (see response below)

Q64 Do you prefer the target Option A, B or C and why? Are there any other target options you wish to be considered here? Do you agree with the level of the targets?

A – waiting list of < 3 years

B – waiting list no more than 50% current number of plots

C – combination of options A and B

This question cannot be answered simply yes/no above.

It is not clear why the 15 person waiting list provision should apply only where there are no local authority allotments. It could also apply where existing allotments don't meet demands of waiting lists. From a legal perspective it is good that the measure of demand is objectively ascertainable.

Q65 Do you agree with the proposed list of local authority duties and powers?

Yes ✓ ☐ No ☐

Would you make any changes to the list?

No further changes proposed.

Q66 Do you think the areas regarding termination of allotment tenancies listed should be set out in legislation or determined by the local authority at a local level?

Legislation ☐

Determined by local authority ✓ ☐

Q67 Are there any other areas you feel should apply to private allotments?

None

Q68 Do you agree that surplus produce may be sold?

Yes ✓ ☐ No ☐

If you disagree, what are your reasons?

Surplus produce is in some instances currently sold to assist the allotment associations' fundraising. There would appear to be no reason to prevent this, subject to the normal provisions re public health etc.

Q69 Do you agree with the proposed list of subjects to be governed by Regulations?

Yes ✓ ☐ No ☐

Would you make any changes to the lists?

# Draft Community Empowerment (Scotland) Bill

[CONSULTATION DRAFT]

An Act of the Scottish Parliament to confer rights on community bodies in relation to assets of, and services provided by, public bodies; to make provision for establishing a register of common good property; and to enable local authorities to recover additional expenses and interest in respect of work carried out under the Building (Scotland) Act 2003.

## PART 1

### ASSET TRANSFER REQUESTS

#### *Key definitions: Part 1*

#### **1 Meaning of “community body”**

- (1) In this Part, a “community body” means—
  - (a) a body designated as such by an order made by the Scottish Ministers,
  - (b) a company of the type described in subsection (5).
- (2) An order under subsection (1)(a) may designate a body of persons, whether corporate or unincorporated, as a community body.
- (3) Where the power to make an order under subsection (1)(a) is exercised in relation to a trust, the community body is to be the trustees of the trust.
- (4) The Scottish Ministers may by order determine that such community body as may be specified in the order is to cease to be a community body.
- (5) The type of company mentioned in subsection (1)(b) is a company the articles of association of which include the following—
  - (a) a definition of the community to which the company relates,
  - (b) provision that the majority of the members of the company is to consist of members of the community,
  - (c) provision that the members of the company who consist of members of the community have control of the company,
  - (d) provision enabling the company to exercise the right to buy, or otherwise acquire rights, in relation to land,
  - (e) provision that any surplus funds or assets of the company are to be applied for the benefit of the community to which the company relates, and
  - (f) provision that, on the winding up of the company and after satisfaction of its liabilities, its property (including any land, and any rights in relation to land, acquired by it as a result of an asset transfer request under this Act) passes—

- (i) to such other community body as may be approved by the Scottish Ministers, or
  - (ii) if no other community body is so approved, to the relevant authority from whom any such land or rights were so acquired or to such other relevant authority as the Scottish Ministers may direct.
- (6) The articles of association of a company which is a community body may, notwithstanding the generality of paragraph (f) of subsection (5), provide that its property may, in the circumstances mentioned in that paragraph, pass to another person only if that person is a charity.
- (7) In subsection (6), “charity” means a body entered in the Scottish Charity Register.

## **2 Meaning of “relevant authority”**

- (1) In this Part, a “relevant authority” means a person listed, or of a description listed, in schedule 1.
- (2) The Scottish Ministers may by order modify schedule 1 so as to—
  - (a) add a person or description of person,
  - (b) remove an entry listed in it,
  - (c) amend an entry listed in it.
- (3) An order under subsection (2)(a) may add a person, or a description of person, only if the person, or (as the case may be) each of the persons within the description, is—
  - (a) a part of the Scottish Administration,
  - (b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998), or
  - (c) a publicly-owned company.
- (4) In subsection (3)(c), “publicly-owned company” means a company that is wholly owned by—
  - (a) the Scottish Ministers, or
  - (b) another relevant authority.
- (5) For that purpose, a company is wholly owned—
  - (a) by the Scottish Ministers if it has no members other than—
    - (i) the Scottish Ministers or other companies that are wholly owned by the Scottish Ministers, or
    - (ii) persons acting on behalf of the Scottish Ministers or of such other companies,
  - (b) by another relevant authority if it has no members other than—
    - (i) the relevant authority or other companies that are wholly owned by the authority, or
    - (ii) persons acting on behalf of the relevant authority or of such other companies.
- (6) In this section, “company” includes any body corporate.

*Requests***3 Asset transfer requests**

- (1) A community body may make a request in accordance with this section (in this Part, an “asset transfer request”) to a relevant authority.
- (2) An asset transfer request is a request—
  - (a) in relation to land owned by the relevant authority, for ownership of the land (or part of the land) to be transferred to the community body, or
  - (b) in relation to land owned or leased by the relevant authority—
    - (i) for the land (or part of it) to be leased to the body, or
    - (ii) for the authority to confer rights in respect of the land (or part of it) on the body (including, for example, rights to manage or occupy the land or use it for a purpose specified in the request).
- (3) An asset transfer request must be made in writing.
- (4) A community body making an asset transfer request must specify in the request—
  - (a) the land to which the request relates,
  - (b) whether the request falls within paragraph (a), (b)(i) or (b)(ii) of subsection (2),
  - (c) where the request falls within subsection (2)(a), the price that the body would be prepared to pay for the transfer of ownership of the land,
  - (d) where the request falls within subsection (2)(b)(i)—
    - (i) the amount of rent that the body would be prepared to pay in respect of any lease resulting from the request,
    - (ii) the duration of any such lease, and
    - (iii) any other terms and conditions that the body considers should be included in any such lease,
  - (e) where the request falls within subsection (2)(b)(ii), the nature and extent of the rights sought,
  - (f) any other terms or conditions applicable to the request,
  - (g) the reasons for making the request, and
  - (h) the benefits which the body considers will arise if the authority were to agree to the request.

**4 Asset transfer requests: regulations**

- (1) The Scottish Ministers may by regulations make further provision about asset transfer requests.
- (2) Regulations under subsection (1) may in particular make provision for or in connection with specifying—
  - (a) the manner in which requests are to be made,
  - (b) the procedure to be followed by a relevant authority in relation to requests,
  - (c) the information to be included in requests (in addition to that required under section 3(4)).

*Decisions***5 Asset transfer requests: decisions**

- (1) This section applies where an asset transfer request is made by a community body to a relevant authority.
- (2) The authority must decide whether to agree to or refuse the request.
- (3) In reaching its decision, the authority must take into consideration the following matters—
  - (a) the reasons for the request,
  - (b) any other information provided in support of the request (whether or not such other information is contained in the request or otherwise provided),
  - (c) whether agreeing to the request would be likely to promote or improve—
    - (i) economic development,
    - (ii) regeneration,
    - (iii) public health,
    - (iv) social wellbeing, or
    - (v) environmental wellbeing,
  - (d) any other benefits that might arise if the request were agreed to,
  - (e) any benefits that might arise if the authority were to agree to or otherwise adopt an alternative proposal in respect of the land to which the request relates,
  - (f) how such benefits would compare to any benefits such as are mentioned in paragraphs (c) and (d),
  - (g) how any benefits such as are mentioned in paragraph (e) relate to other matters the authority considers relevant (including, in particular, the functions and purposes of the authority),
  - (h) any obligations imposed on the authority, by or under any enactment or otherwise, that may prevent, restrict or otherwise affect its ability to agree to the request, and
  - (i) such other matters (whether included in or arising out of the request or not) as the authority considers relevant.
- (4) In subsection (3)(e), an “alternative proposal” includes—
  - (a) another asset transfer request,
  - (b) a proposal whether made by the authority or any other person.
- (5) The authority must, within the period mentioned in subsection (6), give notice (in this Part, a “decision notice”) to the body of—
  - (a) its decision to agree to or refuse the request, and
  - (b) the reasons for its decision.
- (6) The period is—
  - (a) a period prescribed in regulations made by the Scottish Ministers, or
  - (b) such longer period as may be agreed between the authority and the body.



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

## **6 Agreement to asset transfer request**

- (1) This section applies where a relevant authority decides to agree to an asset transfer request made by a community body.
- (2) The decision notice relating to the request must—
  - (a) specify the terms on which, and any conditions subject to which, the authority would be prepared to transfer ownership of the land, lease the land or (as the case may be) confer rights in respect of the land to which the request relates (whether or not such terms and conditions were specified in the request),
  - (b) state that, if the body wishes to proceed, it must submit to the authority an offer to acquire ownership of the land, lease the land or (as the case may be) assume rights in respect of the land, and
  - (c) specify the period within which such an offer is to be submitted.
- (3) The period specified under subsection (2)(c) must be a period of at least 6 months beginning with the date on which the decision notice is given.
- (4) An offer such as is mentioned in subsection (2)(b)—
  - (a) must reflect any terms and conditions specified in the decision notice,
  - (b) may include such other reasonable terms and conditions as are necessary or expedient to secure—
    - (i) the transfer of ownership, the lease or (as the case may be) the conferral of rights, and
    - (ii) that such a transfer, lease or (as the case may be) conferral of rights takes place within a reasonable time,
  - (c) must be made before the end of the period specified in the decision notice under subsection (2)(c).
- (5) Where no contract is concluded on the basis of such an offer before the end of the period mentioned in subsection (6), the decision to agree to the request is of no effect (but that is not to be treated as a refusal of the request for the purposes of an appeal under section 8).
- (6) The period is—
  - (a) the period of 6 months beginning with the date of the offer, or
  - (b) such longer period as may be—
    - (i) agreed between the authority and the body, or
    - (ii) directed by the Scottish Ministers under subsection (7).
- (7) Where the authority does not agree to a longer period such as is mentioned in subsection (6)(b)(i), the body may apply to the Scottish Ministers for a direction to extend the period within which the contract is to be concluded.
- (8) An application under subsection (7) may be made on more than one occasion.

- (9) The Scottish Ministers may by regulations make provision about—
  - (a) the form of, and procedure for making, an application for such a direction,
  - (b) the manner in which such a direction is to be given,
  - (c) the information that such a direction is to contain.

## **7 Prohibition on disposal of land**

- (1) Subsection (2) applies—
  - (a) where a relevant authority decides to agree to an asset transfer request made by a community body, and
  - (b) only during the relevant period.
- (2) The authority must not sell, lease or otherwise dispose of the land to which the request relates to any person other than the body.
- (3) In subsection (1), the “relevant period” is the period beginning on the day when the decision notice relating to the request is given and ending—
  - (a) if no offer such as is mentioned in paragraph (b) of subsection (2) of section 6 is made by the final day of the period specified in the decision notice under paragraph (c) of that subsection, on the day after that final day, or
  - (b) if such an offer is made by that final day, on one of the days mentioned in subsection (4).
- (4) The days are—
  - (a) the day on which the authority concludes a contract with the body on the basis of the offer,
  - (b) the day on which the period mentioned in paragraph (a) or (where applicable) paragraph (b) of subsection (6) of section 6 expires with no such contract having been concluded.
- (5) Where, by virtue of subsection (2), a relevant authority is prevented from selling, leasing or otherwise disposing of any land, any contract by virtue of which the authority is obliged to sell, lease or otherwise dispose of the land to a person other than the community body referred to in that subsection is void.

## *Appeals*

## **8 Appeals**

- (1) Subsection (2) applies where—
  - (a) an asset transfer request is refused by a relevant authority,
  - (b) an asset transfer request is agreed to by a relevant authority but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or
  - (c) a relevant authority does not give a decision notice relating to an asset transfer request to the community body making the request within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 5(6).
- (2) The community body making the request may appeal to the Scottish Ministers unless the relevant authority is—

- (a) the Scottish Ministers, or
  - (b) a local authority.
- (3) The Scottish Ministers may by regulations prescribe—
  - (a) the procedure to be followed in connection with appeals under subsection (2),
  - (b) the manner in which such appeals are to be conducted, and
  - (c) the time limits within which such appeals must be brought.
- (4) The provision that may be made by virtue of subsection (3) includes provision that the manner in which an appeal, or any stage of an appeal, is to be conducted is to be at the discretion of the Scottish Ministers or of a person appointed by them.
- (5) On an appeal under subsection (2), the Scottish Ministers—
  - (a) may allow or dismiss the appeal,
  - (b) may reverse or vary any part of the decision of the relevant authority (whether the appeal relates to that part of it or not),
  - (c) must, in the circumstances mentioned in either paragraph (a) or (b) of subsection (6), issue a direction to the authority requiring the authority to take such steps, or achieve such outcomes, as are specified in the direction within such time periods as are so specified,
  - (d) may, in any other circumstances, issue such a direction, including a direction relating to any aspects of the asset transfer request to which the appeal relates (whether or not the authority's decision relates to those aspects).
- (6) The circumstances are—
  - (a) that the appeal is allowed,
  - (b) that any part of the decision of the relevant authority is reversed or varied to the effect that the authority is required to—
    - (i) transfer ownership of any land, lease any land or confer rights in respect of any land, or
    - (ii) agree to the asset transfer request subject to such terms and conditions as may be specified in the direction.
- (7) The references in subsections (5)(b) and (6)(b) to any part of the decision includes any terms and conditions specified in the decision notice relating to the decision.
- (8) A direction issued under subsection (5)(c) must require the relevant authority to issue a further decision notice—
  - (a) specifying any terms and conditions subject to which the authority would be prepared to transfer ownership of the land, lease the land or (as the case may be) confer rights in respect of the land, including any terms and conditions required to be included by virtue of the direction,
  - (b) stating that, if the community body wishes to proceed, it must submit an offer to acquire ownership of the land, lease the land or (as the case may be) assume rights in respect of the land to the authority, and
  - (c) specifying the period within which such an offer is to be submitted (which must be at least 6 months beginning with the date the further decision notice was issued).

*Disapplication of certain lease restrictions***9 Disapplication of restrictions in lease of land to relevant authority**

- (1) This section applies where—
  - (a) land is leased to a relevant authority,
  - (b) an asset transfer request is made to the authority by a community body for the authority to—
    - (i) lease the land (or part of the land) to the body, or
    - (ii) confer a right of occupancy on the body in respect of the land (or part of the land),
  - (c) the land is leased to the relevant authority by another relevant authority or by a company that is wholly owned by another relevant authority, and
  - (d) no other person is entitled to occupy the land to which the request relates (whether by virtue of a sub-lease by the authority or otherwise).
- (2) Any restrictions in the lease of the land to which the request relates such as are mentioned in subsection (3) do not apply as between the relevant authority and the person from whom the authority leases the land.
- (3) The restrictions are any restrictions—
  - (a) on the power of the relevant authority to sub-let the land,
  - (b) on the power of the authority to share occupancy of the land,
  - (c) relating to how the land may be used by the authority or any other occupier of the land.
- (4) Nothing in this section affects any restrictions in the lease of the land to the relevant authority on the power of the authority to assign or transfer rights and liabilities under the lease.
- (5) If the relevant authority leases the land to, or confers a right of occupancy in respect of the land on, a community body, the authority continues to be subject to any obligations under the lease of the land to the authority.

*Power to decline subsequent requests***10 Power to decline certain asset transfer requests**

- (1) Subsection (2) applies where—
  - (a) an asset transfer request (a “new request”) relating to land is made to a relevant authority,
  - (b) the new request relates to matters that are the same, or substantially the same, as matters contained in a previous asset transfer request (a “previous request”) made in relation to the land,
  - (c) the previous request was made in the period of two years ending with the date on which the new request is made, and
  - (d) the authority refused the previous request (whether following an appeal or not).
- (2) The relevant authority may decline to consider the new request (but that is not to be treated as a refusal of the new request for the purposes of an appeal under section 8).

- (3) For the purposes of subsection (1)(b), a new request relates to matters that are the same, or substantially the same, as matters contained in a previous request only if both requests, in relation to the land to which they relate, seek (or sought)—
  - (a) transfer of ownership of the land,
  - (b) lease of the land, or
  - (c) the same or substantially the same rights in respect of the land.
- (4) For the purposes of this section, it is irrelevant whether the body making a new request is the same body or a different body from that which made the previous request.

## PART 2

### PUBLIC SERVICE DELIVERY

#### *Key definitions: Part 2*

#### **11 Meaning of “community body”**

- (1) In this Part, “community body” means—
  - (a) a community council established in accordance with Part 4 of the Local Government (Scotland) Act 1973, or
  - (b) a body of persons, corporate or unincorporated, described in subsection (2).
- (2) The body is a body the written constitution of which includes the following—
  - (a) a statement of the body’s aims and purposes,
  - (b) rules governing membership of the body,
  - (c) a description of a community for which an aim or purpose mentioned in paragraph (a) is, or includes, the promotion of a public benefit, and
  - (d) a description of the public benefit.

#### **12 Meaning of “public service authority”**

- (1) In this Part, “public service authority” means a body, office-holder or other person listed, or of a description listed, in schedule 2.
- (2) The Scottish Ministers may by order modify schedule 2 so as to—
  - (a) add a person or description of person,
  - (b) remove an entry listed in it,
  - (c) amend an entry listed in it.
- (3) An order under subsection (2)(a) may add a person, or description of person, only if the person, or (as the case may be) each of persons within the description, is—
  - (a) a part of the Scottish Administration,
  - (b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998), or
  - (c) a publicly-owned company.
- (4) In subsection (3)(c), “publicly-owned company” means a company that is wholly owned by—

- (a) the Scottish Ministers, or
  - (b) a public service authority.
- (5) For that purpose, a company is wholly owned—
  - (a) by the Scottish Ministers if it has no members other than—
    - (i) the Scottish ministers or other companies that are wholly owned by the Scottish Ministers, or
    - (ii) persons acting on behalf of the Scottish Ministers or of such other companies,
  - (b) by a public service authority if it has no members other than—
    - (i) a public service authority or other companies that are wholly owned by the authority, or
    - (ii) persons acting on behalf of the public service authority or of such other companies.
- (6) In this section, “company” includes any body corporate.
- (7) Subsection (8) applies where the Scottish Ministers make an order under subsection (2)(a).
- (8) The Scottish Ministers may specify in the order a public service that is or may be provided by or on behalf of the person, or (as the case may be) a person of that description, in respect of which a specified outcome may not be specified in a participation request.

#### *Participation requests*

### **13 Participation request**

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



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

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

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

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

#### **14 Participation requests: regulations**

- (1) The Scottish Ministers may by regulations make further provision about participation requests.
- (2) Regulations under subsection (1) may in particular make provision for or in connection with specifying—
  - (a) the manner in which requests are to be made,
  - (b) the procedure to be followed by public service authorities in relation to requests,
  - (c) the information to be provided in connection with requests (in addition to that required under section 13(2)).
- (3) Regulations under subsection (1) may provide that an outcome may not be specified under section 13(2)(a) if it results from, or is contributed to by virtue of, the provision of such public service as may be specified in the regulations.
- (4) A public service may be specified under subsection (3)—
  - (a) in general, or
  - (b) by reference to—
    - (i) the public service authority by or on behalf of which it is provided,
    - (ii) an area in which the service is provided,
    - (iii) land in respect of which the service is provided,
    - (iv) circumstances, or cases, in which the service is provided.

#### *Decisions about participation requests*

#### **15 Participation requests: decisions**

- (1) This section applies where a participation request is made by a community body to a public service authority.
- (2) The authority must decide whether to agree to or refuse the participation request.
- (3) In reaching its decision under subsection (2), the authority must take into consideration the following matters—
  - (a) the reasons set out in the request under section 13(2)(b),
  - (b) any other information provided in support of the request (whether or not such other information is contained in the request or otherwise provided),

- (c) whether agreeing to the request mentioned in subsection (2) would be likely to promote or improve—
    - (i) economic development,
    - (ii) regeneration,
    - (iii) public health,
    - (iv) social wellbeing, or
    - (v) environmental wellbeing,
  - (d) the nature of the community described in the constitution of the body (see section 11(2)(c)),
  - (e) any other benefits that might arise if the request were agreed to, and
  - (f) any other matter (whether or not included in or arising out of the request) that the authority considers relevant.
- (4) The authority must agree to the request unless there are reasonable grounds for refusing it.
  - (5) The authority must, before the end of the period mentioned in subsection (6), give notice (in this Part, a “decision notice”) to the body of—
    - (a) its decision to agree to or refuse the request, and
    - (b) if its decision is to refuse the request, the reasons for the decision.
  - (6) The period is—
    - (a) a period prescribed in regulations made by the Scottish Ministers, or
    - (b) such longer period as may be agreed between the authority and the body.
  - (7) The Scottish Ministers may by regulations make provision about—
    - (a) the information (in addition to that required under this Part) that a decision notice is to contain, and
    - (b) the manner in which a decision notice is to be given.

## **16 Decision notice: information about outcome improvement process**

- (1) This section applies where a public service authority gives a decision notice agreeing to a participation request by a community body.
- (2) Where the authority at the time of giving the notice has established an outcome improvement process, the decision notice must—
  - (a) describe the operation of the outcome improvement process,
  - (b) specify what stage in the process has been reached,
  - (c) explain how and to what extent the body is expected to participate in the process, and
  - (d) if any other person participates in the process, describe how the person participates.
- (3) Where the authority at the time of giving the notice has not established an outcome improvement process, the decision notice must—
  - (a) describe how the proposed process is intended to operate,



- (b) explain how and to what extent the body which made the participation request is expected to participate in the proposed process, and
- (c) if any other person is expected to participate in the proposed process, describe how the person is expected to participate.

#### **17 Proposed outcome improvement process**

- (1) This section applies where a public service authority gives a community body a decision notice as mentioned in section 16(3).
- (2) The body may make written representations in relation to the proposed outcome improvement process.
- (3) Any representations under subsection (2) must be made before the end of the period of 28 days beginning with the day on which the notice is given.
- (4) Before giving notice under subsection (5), the authority must take into consideration any representations made under subsection (2).
- (5) The authority must, before the end of the period of 28 days beginning with the day after the expiry of the period mentioned in subsection (3), give a notice to the body containing details of the outcome improvement process that is to be established.
- (6) The authority must publish such information about the process as may be specified in regulations made by the Scottish Ministers.
- (7) The authority must publish the information mentioned in subsection (6) on a website or by other electronic means.

#### *Outcome improvement processes: establishment and modification*

#### **18 Duty to establish and maintain outcome improvement process**

A public service authority that gives notice under section 17(5) must—

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

#### **19 Modification of outcome improvement process**

- (1) This section applies where a public service authority establishes an outcome improvement process under section 18(a) following a participation request by a community body.
- (2) Following consultation with the body, the authority may modify the outcome improvement process.
- (3) Where the outcome improvement process is modified under subsection (2), the authority must publish such information about the modification as may be specified in regulations made by the Scottish Ministers.

*Reporting***20 Reporting**

- (1) This section applies where—
  - (a) a participation request has been made, and
  - (b) the outcome improvement process relating to that request is complete.
- (2) The public service authority that established the process must publish a report—
  - (a) summarising the outcomes of the process, including whether (and, if so, how and to what extent) the specified outcome to which the process related has been improved,
  - (b) describing how and to what extent the participation of the community body that made the participation request to which the process related influenced the process and the outcomes, and
  - (c) explaining how the authority intends to keep the community body and any other persons informed about—
    - (i) changes in the outcomes of the process, and
    - (ii) any other matters relating to the outcomes.
- (3) The authority must publish the report mentioned in subsection (2) on a website or by other electronic means.
- (4) The Scottish Ministers may by regulations make provision about reports published under subsection (2), including the information (in addition to that required under that subsection) that reports are to contain.

*Interpretation of Part 2***21 Interpretation of Part 2**

In this Part—

- “decision notice” is to be construed in accordance with section 15(5),
- “outcome improvement process” has the meaning given by section 13(5),
- “participation request” has the meaning given by section 13(5),
- “public service” has the meaning given by section 13(5),
- “specified outcome” has the meaning given by section 13(5).

**PART 3**

## COMMON GOOD PROPERTY

*Registers***22 Common good registers**

- (1) Each local authority must establish and maintain a register of property which is held by the authority as part of the common good (a “common good register”).
- (2) Before establishing a common good register, a local authority must publish a list of property that it proposes to include in the register.

- (3) The list may be published in such a way as the local authority may determine.
- (4) On publishing a list under subsection (2), the local authority must—
  - (a) notify the bodies mentioned in subsection (5) of the publication, and
  - (b) invite those bodies to make representations in respect of the list.
- (5) The bodies are—
  - (a) any community council established for the local authority's area, and
  - (b) any community body of which the authority is aware.
- (6) In establishing a common good register, a local authority must have regard to—
  - (a) any representations made under subsection (4)(b) by a body mentioned in subsection (5), and
  - (b) any representations made by other persons in respect of the list published under subsection (2).
- (7) Representations as mentioned in subsection (6) may in particular be made in relation to—
  - (a) whether property proposed to be included in the register is part of the common good,
  - (b) the identification of other property which, in the opinion of the body or person making the representation, is part of the common good.
- (8) A local authority must—
  - (a) make arrangements to enable members of the public to inspect, free of charge, its common good register at reasonable times and at such places as the authority may determine, and
  - (b) make its common good register available on a website, or by other electronic means, to members of the public.

## **23 Guidance about common good registers**

- (1) In carrying out any of the duties imposed on it by section 22, a local authority must have regard to any guidance issued by the Scottish Ministers in relation to the duties.
- (2) Before issuing any such guidance, the Scottish Ministers must consult—
  - (a) local authorities,
  - (b) community councils, and
  - (c) such community bodies as the Scottish Ministers think fit.

### *Disposal and use*

## **24 Disposal and use of common good property: consultation**

- (1) Subsection (2) applies where a local authority is considering—
  - (a) disposing of any property which is held by the authority as part of the common good, or
  - (b) changing the use to which any such property is put.

- (2) Before taking any decision to dispose of, or change the use of, such property the local authority must publish details about the proposed disposal or, as the case may be, the use to which the authority proposes to put the property.
- (3) The details may be published in such a way as the local authority may determine.
- (4) On publishing details about its proposals under subsection (2), the local authority must—
  - (a) notify the bodies mentioned in subsection (5) of the publication, and
  - (b) invite those bodies to make representations in respect of the proposals.
- (5) The bodies are—
  - (a) any community council established for the local authority's area, and
  - (b) any community body that is known by the authority to have an interest in the property.
- (6) In deciding whether or not to dispose of any property held by a local authority as part of the common good, or to change the use to which any such property is put, the authority must have regard to—
  - (a) any representations made under subsection (4)(b) by a body mentioned in subsection (5), and
  - (b) any representations made by other persons in respect of its proposals published under subsection (2).

## **25 Disposal etc. of common good property: guidance**

- (1) In carrying out any of the duties imposed on it by section 24, a local authority must have regard to any guidance issued by the Scottish Ministers in relation to the duties.
- (2) A local authority must have regard to any guidance issued by the Scottish Ministers in relation to the management and use of property that forms part of the common good.
- (3) Before issuing any guidance as mentioned in subsection (1) or (2), the Scottish Ministers must consult—
  - (a) local authorities,
  - (b) community councils, and
  - (c) such community bodies as the Scottish Ministers think fit.

### *Interpretation*

## **26 Interpretation of Part 3**

In this Part—

“community bodies” has the meaning given in section 15(4) of the Local Government in Scotland Act 2003,

“community council” means a community council established by a local authority under Part 4 of the Local Government (Scotland) Act 1973.

## PART 4

## LIABILITY FOR EXPENSES UNDER BUILDING (SCOTLAND) ACT 2003

**27 Liability for expenses of work under Building (Scotland) Act 2003**

- (1) The Building (Scotland) Act 2003 is amended as follows.
- (2) Before section 44, insert—

**“43A Administrative expenses and interest in connection with carrying out work**

- (1) A local authority may recover from a person who is liable for expenses under section 25(7)(b), 26(3)(b), 27(7)(b), 28(10)(b), 29(2) or (3) or 30(4)(b)—
  - (a) any administrative expenses (including fees in respect of registration) reasonably incurred by the authority in connection with recovering those expenses, and
  - (b) interest at such reasonable rate as the authority may determine on the expenses mentioned in those sections and paragraph (a) in respect of the period beginning on a date specified by the authority and ending when the whole amount of the expenses is paid.
- (2) The date specified under subsection (1)(b) must be after the date on which a demand for payment for the expenses referred to in that subsection is served by the authority.
- (3) In subsection (1)(a), “registration” means registration of—
  - (a) a notice of liability for expenses under section 43B,
  - (b) a notice of discharge under section 43D.
- (4) In this Part, “relevant expenses” means expenses mentioned in section 25(7)(b), 26(3)(b), 27(7)(b), 28(10)(b), 29(2) or (3) or 30(4)(b) or subsection (1)(a) of this section.

**43B Liability of owners and successors for expenses and interest**

- (1) An owner of a building who is liable for relevant expenses or for interest under section 43A(1)(b) does not, by virtue only of ceasing to be such an owner, cease to be liable for those expenses or that interest.
- (2) Subject to subsection (3), where a person becomes the owner of a building (any such person being referred to in this section as a “new owner”) the person is severally liable with any former owner of the building for—
  - (a) any relevant expenses for which the former owner is liable, and
  - (b) any interest for which the former owner is liable under section 43A(1)(b).
- (3) A new owner is liable as mentioned in subsection (2) only if—
  - (a) a notice (in this Part, a “notice of liability for expenses”) in the form prescribed under section 36 is registered in relation to the building, and
  - (b) the notice was registered at least 14 days before the acquisition date.
- (4) A notice of liability of expenses is to specify—
  - (a) the relevant expenses for which the owner of the building is liable,

- (b) the work to which the expenses relate, and
- (c) whether interest is payable under section 43A(1)(b).
- (5) In this section, “acquisition date” means the date on which the new owner acquired right to the building.
- (6) Where a new owner of a building pays any relevant expenses, or interest, for which a former owner of the building is liable, the new owner may recover the amount so paid from the former owner.
- (7) A person who is entitled to recover an amount under subsection (6) does not, by virtue only of ceasing to be the owner of the building, cease to be entitled to recover that amount.
- (8) This section applies as respects any relevant expenses and interest for which an owner of a building becomes liable on or after the day on which this section comes into force.

**43C Notice of liability for expenses: further provision**

- (1) A notice of liability for expenses may be registered only on the application of a local authority.
- (2) A notice of liability for expenses may be registered in respect of—
  - (a) expenses relating to more than one set of works carried out on a building,
  - (b) different owners of a building in respect of the expenses of carrying out work on the building.
- (3) The Keeper of the Registers of Scotland is not required to investigate or determine whether the information contained in a notice of liability for expenses submitted for registration is accurate.

**43D Discharge of notice of liability for expenses**

- (1) Subsection (2) applies where—
  - (a) a notice of liability for expenses in relation to a building is registered,
  - (b) any liability for relevant expenses to which the notice relates has been fully discharged, and
  - (c) any liability under section 43A(1)(b) for interest on such expenses has been fully discharged.
- (2) The local authority which registered the notice must apply to register a notice (in this Part, a “notice of discharge”) in the form prescribed under section 36 stating that liability has been fully discharged.
- (3) On being registered, a notice of discharge discharges the notice of liability for expenses.
- (4) The Keeper of the Registers of Scotland is not required to investigate or determine whether the information contained in a notice of discharge submitted for registration is accurate.



**43E Meaning of “register” in relation to notices**

- (1) In relation to a notice mentioned in subsection (2), “register” means register the information contained in the notice in question in the Land Register of Scotland or, as appropriate, record the notice in question in the Register of Sasines; and “registered” and other related expressions are to be read accordingly.
- (2) The notices are—
  - (a) a notice of liability for expenses,
  - (b) a notice of discharge.”.
- (3) In section 44 (expenses)—
  - (a) in subsection (1)—
    - (i) the words from “of” to the end of the subsection become paragraph (a) of that subsection,
    - (ii) after that paragraph insert—
      - “(b) administrative expenses incurred by the authority in connection with recovering expenses mentioned in paragraph (a) in relation to a building,
      - (c) interest on expenses mentioned in paragraph (a) or (b) relating to a building.”,
  - (b) after subsection (5) insert—
    - “(6) Subsection (3) applies in relation to administrative expenses and interest mentioned in subsection (1)(b) and (c) as it applies in relation to expenses mentioned in that subsection; and subsections (4) and (5) apply accordingly for the purposes of that application.”.
- (4) In section 45 (compulsory purchase where owner cannot be found), after subsection (4) add—
  - “(5) In subsection (1)(b), “expenses” includes administrative expenses, and interest, recoverable under section 43A(1).”.

**PART 5**

## GENERAL

**28 Subordinate legislation**

- (1) Any power of the Scottish Ministers to make an order or regulations under this Act includes a power to make—
  - (a) different provision for different purposes,
  - (b) incidental, supplementary, consequential, transitional or transitory provision or savings.
- (2) An order under section 29(1) containing provisions which add to, replace or omit any part of the text of an Act is subject to affirmative procedure.
- (3) All other orders and regulations under this Act are subject to the negative procedure.
- (4) This section does not apply to orders under section 30(2).

**29 Ancillary provision**

- (1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitional or transitory provision or savings as they consider necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) An order under this section may modify any enactment (including this Act), instrument or document.

**30 Commencement**

- (1) This Part comes into force on the day after Royal Assent.
- (2) The remaining provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may include transitional or transitory provision or savings.

**31 Short title**

The short title of this Act is the Community Empowerment (Scotland) Act 2014.



SCHEDULE 1  
*(introduced by section 2(1))*

RELEVANT AUTHORITIES

The board of management of a college of further education (those expressions having the same meanings as in section 36(1) of the Further and Higher Education (Scotland) Act 1992)

The British Waterways Board

The Crofting Commission

A Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978

Highlands and Islands Enterprise

A local authority

A National Park authority established by virtue of schedule 1 to the National Parks (Scotland) Act 2000

The Police Service of Scotland

The Scottish Court Service

Scottish Enterprise

The Scottish Environment Protection Agency

The Scottish Fire and Rescue Service

The Scottish Ministers

Scottish Natural Heritage

Scottish Water

SCHEDULE 2  
*(introduced by section 12(1))*

PUBLIC SERVICE AUTHORITIES

The board of management of a college of further education (those expressions having the same meanings as in section 36(1) of the Further and Higher Education (Scotland) Act 1992)

A Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978

Highlands and Islands Enterprise

A local authority

A National Park authority established by virtue of schedule 1 to the National Parks (Scotland) Act 2000

The Police Service of Scotland

Scottish Enterprise

The Scottish Environment Protection Agency

The Scottish Fire and Rescue Service

Scottish Natural Heritage