

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