

# Community Empowerment (Scotland) Bill

[AS INTRODUCED]

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ACCOMPANYING DOCUMENTS

Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 52-EN. A Policy Memorandum is printed separately as SP Bill 52-PM.

# Community Empowerment (Scotland) Bill

[AS INTRODUCED]

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

## PART 1

### NATIONAL OUTCOMES

#### 1 National outcomes

- 10 (1) The Scottish Ministers must determine outcomes for Scotland (referred to in this Part as “the national outcomes”) that result from, or are contributed to by, the carrying out of functions by—
- 15 (a) a Scottish public authority which is not a cross-border public authority, but only in relation to functions carried out by the authority that do not relate to reserved matters,
- (b) a cross-border public authority, but only in relation to functions carried out by the authority—
- 20 (i) that are exercisable in or as regards Scotland, and
- (ii) that do not relate to reserved matters, and
- (c) any other person carrying out functions of a public nature, but only in relation to such functions—
- (i) that are exercisable in or as regards Scotland, and
- (ii) that do not relate to reserved matters.
- 25 (2) Before determining the national outcomes, the Scottish Ministers must consult such persons as they consider appropriate.
- (3) The Scottish Ministers must publish the national outcomes.

- (4) A Scottish public authority which is not a cross-border public authority must have regard to the national outcomes in carrying out any function of the authority that does not relate to reserved matters.
- (5) A cross-border public authority must have regard to the national outcomes in carrying out any function of the authority that—
- (a) is exercisable in or as regards Scotland, and
  - (b) does not relate to reserved matters.
- (6) Any other person carrying out functions of a public nature must have regard to the national outcomes in carrying out such functions, but only in so far as such functions—
- (a) are exercisable in or as regards Scotland, and
  - (b) do not relate to reserved matters.
- (7) In this section—
- “cross-border public authority” has the meaning given by section 88(5) of the Scotland Act 1998,
- “reserved matters” is to be construed in accordance with the Scotland Act 1998.

## 2 Review of national outcomes

- (1) The Scottish Ministers may review the national outcomes at any time (but subject to subsections (2) and (3)).
- (2) The Scottish Ministers must begin a review of the national outcomes before the expiry of the period of 5 years beginning with the date on which the national outcomes were published under section 1(3).
- (3) The Scottish Ministers must begin further reviews of the national outcomes before the expiry of each 5 year period.
- (4) Following a review, the Scottish Ministers—
- (a) may revise the national outcomes, and
  - (b) must—
    - (i) where the national outcomes are revised, publish the outcomes as revised,
    - (ii) where the national outcomes are not revised, republish the outcomes.
- (5) Before making any revisions to the national outcomes under subsection (4)(a), the Scottish Ministers must consult such persons as they consider appropriate.
- (6) References to the national outcomes in subsections (4) to (6) of section 1 and in section 3 include references to the national outcomes revised under subsection (4)(a) of this section.
- (7) In subsection (3), “5 year period” means the period of 5 years beginning with the date on which the national outcomes were published under sub-paragraph (i) of paragraph (b) of subsection (4) or, as the case may be, republished under sub-paragraph (ii) of that paragraph.

## 3 Reports

- (1) The Scottish Ministers must prepare and publish reports about the extent to which the national outcomes have been achieved.



- 5
- (2) The Scottish Ministers must include in reports published under subsection (1) information about any change in the extent to which the national outcomes have been achieved since the publication of the previous report under that subsection.
  - (3) Reports must be prepared and published at such times as the Scottish Ministers consider appropriate.

## PART 2

### COMMUNITY PLANNING

#### 4 Community planning

- 10
- (1) Each local authority, the persons listed in schedule 1 and any community bodies (as mentioned in paragraph (c) of subsection (5) and to the extent mentioned in that paragraph) must participate with each other in community planning.
  - (2) In subsection (1), “community planning” means planning that is carried out with a view to improving the achievement of outcomes in relation to the area of the local authority resulting from, or contributed to by, the provision of services delivered by or on behalf of the local authority or the persons listed in schedule 1 (“community planning”).
  - (3) Outcomes of the type mentioned in subsection (2) (“local outcomes”) must be consistent with the national outcomes determined under section 1(1) or revised under section 2(4)(a).
  - (4) In relation to the area of each local authority—

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    - (a) the local authority and the persons listed in schedule 1 when participating in community planning are collectively referred to in this Part as a “community planning partnership”, and
    - (b) the authority and each such person is referred to in this Part as a “community planning partner”.
  - (5) A community planning partnership must—

25

    - (a) consider which community bodies are likely to be able to contribute to community planning,
    - (b) make all reasonable efforts to secure the participation of such community bodies in community planning, and
    - (c) to the extent (if any) that such community bodies wish to participate in community planning, take such steps as are reasonable to enable the community bodies to participate in community planning to that extent.
  - (6) The Scottish Ministers may by regulations modify schedule 1 so as to—

30

    - (a) add a person or a description of person,
    - (b) remove an entry listed in it,
    - (c) amend an entry listed in it.
  - (7) Regulations under subsection (6) may provide that a person or a description of person listed in schedule 1 is to participate in community planning for a specific purpose.
- 35

- (8) In this section, “community bodies”, in relation to a community planning partnership, means bodies, whether or not formally constituted, established for purposes which consist of or include that of promoting or improving the interests of any communities (however described) resident or otherwise present in the area of the local authority for which the community planning partnership is carrying out community planning.

## **5 Local outcomes improvement plan**

- (1) Each community planning partnership must prepare and publish a local outcomes improvement plan.
- (2) A local outcomes improvement plan is a plan setting out—
- (a) each local outcome to which the community planning partnership is to give priority with a view to improving the achievement of the outcome,
  - (b) a description of the proposed improvement in the achievement of the outcome, and
  - (c) the period within which the proposed improvement is to be achieved.
- (3) In preparing a local outcomes improvement plan, a community planning partnership must consult—
- (a) such community bodies as it considers appropriate, and
  - (b) such other persons as it considers appropriate.
- (4) Before publishing a local outcomes improvement plan, the community planning partnership must take account of —
- (a) any representations received by it by virtue of subsection (3), and
  - (b) the needs and circumstances of persons residing in the area of the local authority to which the plan relates.

## **6 Local outcomes improvement plan: review**

- (1) Each community planning partnership must keep under review the question of whether it is making progress in improving the achievement of each local outcome referred to in section 5(2)(a).
- (2) Each community planning partnership—
- (a) must from time to time review the local outcomes improvement plan published by it under section 5,
  - (b) may, following such a review, revise the plan.
- (3) Subsections (3) and (4) of section 5 apply in relation to a local outcomes improvement plan revised under subsection (2)(b) as they apply in relation to a local outcomes improvement plan prepared and published under subsection (1) of that section (but subject to the modification in subsection (4)).
- (4) The modification is that the reference in subsection (4)(a) of section 5 to representations received by virtue of subsection (3) of that section is to be read as if it were a reference to representations received by virtue of that subsection as applied by subsection (3) of this section.
- (5) Where a community planning partnership revises a local outcomes improvement plan under subsection (2)(b), it must publish a revised plan.

- (6) Subsection (2) applies in relation to a revised local outcomes improvement plan published under subsection (5) as it applies in relation to a local outcomes improvement plan published under section 5; and the duty in subsection (5) applies accordingly.

## **7 Local outcomes improvement plan: progress report**

- (1) Each community planning partnership must prepare a progress report for each reporting year.
- (2) A progress report is a report setting out the community planning partnership's assessment of whether there has been any improvement in the achievement of each local outcome referred to in section 5(2)(a) during the reporting year to which the report relates.
- (3) In this section, “reporting year” means—
- (a) a period of one year beginning on 1 April, or
  - (b) in relation to a particular community planning partnership, a period of one year beginning on such other date as may be specified in a direction given by the Scottish Ministers to the community planning partnership.

## **8 Governance**

- (1) For the area of each local authority, each community planning partner mentioned in subsection (2) must—
- (a) facilitate community planning,
  - (b) take reasonable steps to ensure that the community planning partnership carries out its functions under this Part efficiently and effectively.
- (2) The persons are—
- (a) the local authority,
  - (b) the Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978 whose area includes, or is the same as, the area of the local authority,
  - (c) Highlands and Islands Enterprise where the area within which, or in relation to which, it exercises functions in accordance with section 21(1) of the Enterprise and New Towns (Scotland) Act 1990 includes the whole or part of the area of the local authority,
  - (d) the chief constable of the Police Service of Scotland,
  - (e) the Scottish Fire and Rescue Service,
  - (f) Scottish Enterprise.
- (3) The Scottish Ministers may by regulations modify subsection (2) so as to—
- (a) add a person or a description of person,
  - (b) remove an entry listed in it,
  - (c) amend an entry listed in it.

**9 Community planning partners: duties**

- (1) Despite the duties imposed on community planning partners by this Part, a community planning partnership may agree—
- 5 (a) that a particular community planning partner need not comply with a duty in relation to a particular local outcome, or
- (b) that a particular community planning partner need comply with a duty in relation to a particular local outcome only to such extent as may be so agreed.
- (2) Each community planning partner must co-operate with the other community planning partners in carrying out community planning.
- 10 (3) Each community planning partner must, in relation to a community planning partnership, contribute such funds, staff and other resources as the community planning partnership considers appropriate—
- (a) with a view to improving, or contributing to an improvement in, the achievement of each local outcome referred to in section 5(2)(a), and
- 15 (b) for the purpose of securing the participation of the community bodies mentioned in section 4(5)(a) in community planning.
- (4) Each community planning partner must provide such information to the community planning partnership about the local outcomes referred to in section 5(2)(a) as the community planning partnership may request.
- 20 (5) Each community planning partner must, in carrying out its functions, take account of the local outcomes improvement plan published under section 5 or, as the case may be, section 6(5).

**10 Guidance**

- 25 (1) Each community planning partnership must comply with any guidance issued by the Scottish Ministers about the carrying out of functions conferred on the partnership by this Part.
- (2) Each community planning partner must comply with any guidance issued by the Scottish Ministers about the carrying out of functions conferred on the partner by this Part.
- 30 (3) Before issuing guidance of the type mentioned in subsection (1) or (2), the Scottish Ministers must consult such persons as they think fit.

**11 Duty to promote community planning**

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

- 35 (a) community planning,
- (b) a community planning partner.

## **12 Establishment of corporate bodies**

- 5 (1) Following an application by a local authority and at least one other community planning partner for the area of the authority, the Scottish Ministers may by regulations establish a body corporate with such constitution and functions about community planning (including in particular its conduct and co-ordination) as may be specified in the regulations.
- (2) The application referred to in subsection (1) must include information about the following matters—
- 10 (a) any consultation about the question of whether to make the application,  
(b) representations received in response to any such consultation,  
(c) the functions to be specified in regulations made under subsection (1),  
(d) such other matters as may be prescribed by the Scottish Ministers by regulations.
- (3) Regulations under subsection (1) may include provision about—
- 15 (a) the membership of the body established by the regulations,  
(b) the proceedings of the body,  
(c) the transfer of property and other rights and liabilities to and from the body,  
(d) the appointment and employment of staff by the body,  
(e) the supply by other persons of services to the body,  
(f) the audit of accounts by the body,  
20 (g) the dissolution of the body, and  
(h) such other matters as the Scottish Ministers think fit.
- (4) A function may be specified in regulations under subsection (1) even if another enactment or rule of law—
- 25 (a) provides that the function is to be carried out by a person other than the body established by virtue of subsection (1), or  
(b) prevents the carrying out of the function by that body.

## **13 Interpretation of Part 2**

In this Part—

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

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

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

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

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

**PART 3**

## PARTICIPATION REQUESTS

*Key definitions***14 Meaning of “community-controlled body”**

- 5 In this Part, a “community-controlled body” means a body (whether corporate or unincorporated) having a written constitution that includes the following—
- (a) a definition of the community to which the body relates,
  - (b) provision that the majority of the members of the body is to consist of members of that community,
  - 10 (c) provision that the members of the body who consist of members of that community have control of the body,
  - (d) provision that membership of the body is open to any member of that community,
  - (e) a statement of the body’s aims and purposes, including the promotion of a benefit for that community, and
  - 15 (f) provision that any surplus funds or assets of the body are to be applied for the benefit of that community.

**15 Meaning of “community participation body”**

- (1) In this Part, “community participation body” means—
  - (a) a community-controlled body,
  - 20 (b) a community council established in accordance with Part 4 of the Local Government (Scotland) Act 1973, or
  - (c) a body mentioned in subsection (2).
- (2) The body is a body (whether corporate or unincorporated)—
  - 25 (a) that is designated as a community participation body by an order made by the Scottish Ministers for the purposes of this Part, or
  - (b) that falls within a class of bodies designated as community participation bodies by such an order for the purposes of this Part.
- (3) Where the power to make an order under subsection (2)(a) is exercised in relation to a trust, the community participation body is to be the trustees of the trust.

**16 Meaning of “public service authority”**

- (1) In this Part, “public service authority” means—
  - (a) a person listed, or of a description listed, in schedule 2, or
  - (b) a person mentioned in subsection (3).
- (2) The Scottish Ministers may by order modify schedule 2 so as to—
  - 35 (a) remove an entry listed in it,
  - (b) amend an entry listed in it.
- (3) The person is a person—

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

5 (4) An order under subsection (3) may designate a person, or class of persons, only if the person, or (as the case may be) each of the persons falling within the class, 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
- 10 (c) a publicly-owned company.

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

(6) For that purpose, a company is wholly owned by one or more public service authorities if it has no members other than—

- 15 (a) the public service authority or (as the case may be) authorities,
- (b) other companies that are wholly owned by the public service authority or (as the case may be) authorities, or
- (c) persons acting on behalf of—
  - 20 (i) the public service authority or (as the case may be) authorities, or
  - (ii) such other companies.

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

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

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

### *Participation requests*

#### **17 Participation requests**

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

(2) In making such a request, the community participation body must—

- (a) specify an outcome 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,
- 35 (b) set out the reasons why the community participation body considers it should participate in the outcome improvement process,
- (c) provide details of any knowledge, expertise and experience the community participation body has in relation to the specified outcome, and
- 40 (d) provide an explanation of the improvement in the specified outcome which the community participation body anticipates may arise as a result of its participation in the process.

(3) A participation request may be made jointly by two or more community participation bodies.

(4) 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).

## 18 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 17(2)).

### *Decisions about participation requests*

## 19 Participation requests: decisions

(1) This section applies where a participation request is made by a community participation 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 17(2)(b),

(b) any other information provided in support of the request (whether 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) any other benefits that might arise if the request were agreed to, and
- (e) any other matter (whether or not included in or arising out of the request) that the authority considers relevant.

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

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

10 (6) The authority must, before the end of the period mentioned in subsection (7), give notice (in this Part, a “decision notice”) to the community participation 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.

(7) The period is—

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

(8) 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
- 20 (b) the manner in which a decision notice is to be given.

## **20 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 participation body.

25 (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 community participation body is expected to participate in the process, and
- 30 (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,
- 35 (b) explain how and to what extent the community participation 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.

**21 Proposed outcome improvement process**

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

**22 Power to decline certain participation requests**

- (1) Subsection (2) applies where—
- a participation request (a “new request”) is made to a public service authority,
  - the new request relates to matters that are the same, or substantially the same, as matters contained in a previous participation request (a “previous request”), and
  - the previous request was made in the period of two years ending with the date on which the new request is made.
- (2) The public service authority may decline to consider the new request.
- (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 relate to—
- the same public service, and
  - the same, or substantially the same, outcome that results from, or is contributed to by virtue of, the provision of the public service.
- (4) For the purposes of this section, it is irrelevant whether the body making a new request is the same body as, or a different body from, that which made the previous request.

*Outcome improvement processes***23 Duty to establish and maintain outcome improvement process**

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

- 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
- maintain that process.

## 24 Modification of outcome improvement process

- (1) This section applies where a public service authority establishes an outcome improvement process under section 23(a) following a participation request by a community participation body.
- 5 (2) Following consultation with the community participation 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

## 25 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.
- 15 (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,
  - 20 (b) describing how and to what extent the participation of the community participation 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 participation body and any other persons informed about—
    - 25 (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.
- 30

### Interpretation of Part 3

## 26 Interpretation of Part 3

In this Part—

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

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

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

“decision notice” is to be construed in accordance with section 19(6),

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

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

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

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

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

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

## PART 4

### COMMUNITY RIGHT TO BUY LAND

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

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

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

(a) in subsection (1)—

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

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

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

(c) after subsection (2), insert—

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

(a) salmon fishings, or

(b) mineral rights,

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

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

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

#### **28 Meaning of “community”**

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

(2) Before subsection (1), insert—

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

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

(b) a body of such other description as may be prescribed which complies with prescribed requirements.”.

(3) In subsection (1)—

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

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

(c) after paragraph (f) insert—

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

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

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

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

(d) in paragraph (h)—

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

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

(4) After subsection (1), insert—

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

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

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

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

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

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

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

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

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

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

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

(i) provision that any surplus funds or assets of the SCIO are to be applied for the benefit of the community.”.

- (5) In subsection (2), after “(1)(c)” insert “or (1A)(c)”.
- (6) After subsection (4), insert—
- “(4A) Ministers may by regulations from time to time amend subsections (1) and (1A).
- (4B) If provision is made under subsection (A1)(b), Ministers may by regulations make such amendment of section 35(A1) and (1) in consequence of that provision as they consider necessary or expedient.”.
- (7) In subsection (5)—
- (a) the words “Unless Ministers otherwise direct” are repealed,
- (b) in paragraph (a), at the end, insert “or a prescribed type of area (or both such unit and type of area)”,
- (c) in paragraph (b)(i), at the end, insert “or in that prescribed type of area”, and
- (d) in paragraph (b)(ii), after “units” insert “or that prescribed type of area”.
- (8) In subsection (8)—
- (a) after “section” insert “—”, and
- (b) at the end insert—
- ““Scottish charitable incorporated organisation” has the meaning given by section 49 of the Charities and Trustee Investment (Scotland) Act 2005.”.

## **29 Modification of memorandum, articles of association or constitution**

- (1) Section 35 of the 2003 Act (provisions supplementary to section 34) is amended as follows.
- (2) Before subsection (1) insert—
- “(A1) During the relevant period, a community body may not modify its memorandum, articles of association or constitution without Ministers’ consent in writing.
- (A2) In subsection (A1), “relevant period” means the period—
- (a) beginning on the day on which the community body submits an application under section 37(1) for registration of a community interest in land, and
- (b) ending with—
- (i) registration of the community interest in land,
- (ii) a decision by Ministers that the community interest in land should not be registered,
- (iii) Ministers declining, by virtue of section 39(5), to consider the application, or
- (iv) withdrawal of the application.”.
- (3) In subsection (1), for “or articles of association” substitute “, articles of association or constitution”.

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

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

- (a) in subsection (2), at the beginning insert “Subject to subsection (2A) below,”,
- (b) after that subsection, insert—

5 “(2A) Ministers may not take into account, for the purposes of subsection (2), the approval of a member of the community if the approval was indicated earlier than 6 months before the date on which the application to register the community interest in land to which the approval relates was made.”.

**31 Procedure for late applications**

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

(2) For subsection (1), substitute—

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

- (a) the conditions mentioned in subsection (1A), or
- (b) the condition mentioned in subsection (1B).

(1A) The conditions are that—

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

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

- 25 (i) missives for the sale and purchase of the land in pursuance of that action have not been concluded, or
- (ii) an option to acquire the land in pursuance of that action has not been conferred.

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

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

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

(3) In subsection (2)—

(a) after paragraph (a), insert—

40 “(aa) Ministers may, before the end of the period of 7 days following receipt of the views of the owner of the land or, as the case may be, such a creditor under that section, request—

- (i) the owner, such a creditor or the community body making the application to provide such further information as they consider necessary in connection with their being informed as mentioned in paragraph (a), and
- 5 (ii) that the further information be supplied within 7 days of the request,” and
- (b) in paragraph (b)(ii), after ““30”” insert “or (in a case where further information is requested under paragraph (aa)) “44””.
- (4) In subsection (3), for paragraph (a) substitute—
- 10 “(a) that—
- (i) such relevant work as Ministers consider reasonable was carried out by a person, or
- (ii) such relevant steps as Ministers consider reasonable were taken by a person,
- 15 (aa) that the relevant work was carried out or the relevant steps were taken—
- (i) at a time which, in the opinion of Ministers, was sufficiently in advance of the owner of the land or, as the case may be, the creditor taking the action such as is mentioned in subsection (1A), or giving notice such as is mentioned in subsection (1B),
- 20 (ii) in respect of land with a view to the land being used for purposes that are the same as those proposed for the land in relation to which the application relates, and
- (iii) by the community body making the application or by another person with a view to the application being made by the community body.”.
- 25 (5) After subsection (3), insert—
- “(3A) Ministers may, before the end of the period of 7 days following receipt under section 37(5) of the views of the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land, request—
- 30 (a) any person they believe may be able to provide them with such further information as they consider necessary in connection with the matters mentioned in subsection (3) to provide the information, and
- (b) that the information be supplied within 7 days of the request.”.
- (6) In subsection (4)(c), after “59(1)” insert “, 60A(1)”.
- 35 (7) After subsection (4), insert—
- “(4A) Subsection (5) applies in relation to an application to register a community interest in land where the application is received by Ministers after the following have occurred—
- 40 (a) the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land has taken action which, if a community interest in land had been registered, would be prohibited under section 40(1), and
- (b) either—



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

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

(9) After subsection (5), insert—

5 “(6) In subsection (3)—

“relevant work” means anything done by way of preparation of an application to register a community interest in land,

“relevant steps” means any steps towards securing ownership of land by a community body.

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

### 32 Evidence and notification of concluded missives or option agreements

After section 39 of the 2003 Act, insert—

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

15 (1) Subsection (2) applies where—

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

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

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

(3) Subsection (4) applies where—

- (a) an application to register a community interest in land is made,
- 35 (b) on the date on which the application is received by Ministers—
  - (i) missives for the sale and purchase of the land have been concluded, or
  - (ii) an agreement conferring an option to acquire the land exists,

- (c) the application discloses that such missives have been concluded or such an agreement has been conferred, and
- (d) accordingly, by virtue of section 39(4A) and (5), no copy of the application is sent to the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land.

(4) Ministers must—

- (a) send a copy of the application and the accompanying information to the owner of the land or, as the case may be, the creditor,
- (b) notify the owner of the land or, as the case may be, the creditor that Ministers must decline to consider the application by virtue of section 39(5), and
- (c) require the owner of the land or, as the case may be, the creditor to provide Ministers with the information mentioned in subsection (5) within 21 days of receipt of the copy of the application sent under paragraph (a).

(5) The information is—

- (a) evidence of the concluded missives or, as the case may be, the agreement, and
- (b) where there is an agreement such as is mentioned in subsection (3)(b)(ii) which contains a date on which it will expire—
  - (i) that date, and
  - (ii) information about whether, and if so how, the agreement is capable of being extended.”.

### 33 Notification of transfer

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

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

- (a) notify Ministers of—
  - (i) the transfer,
  - (ii) the name and address of the person to whom the land was transferred, and
  - (iii) the date of the transfer, and
- (b) provide Ministers with a description of the land transferred, including maps, plans or other drawings prepared to such specifications as may be prescribed.”.

### 34 Changes to information relating to registered interests

After section 44 of the 2003 Act, insert—

**“44A Duty to notify changes to information relating to registered interest**

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

(2) Where—

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

(b) there is a change in that information,

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

(3) Where—

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

(b) there is a change in that information,

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

(4) Where—

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

(b) there is a change in that information,

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

(5) Subsection (6) applies where—

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

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

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

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

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

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

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

**35 Notification under section 50 of 2003 Act**

In section 50 of the 2003 Act (power to activate right to buy land where breach of Part 2)—

(a) in subsection (3)(b), after “land”, insert “, to any creditor in a standard security with a right to sell the land”, and

(b) after subsection (5), insert—

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

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

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

### 36 Approval of members of community to buy land

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

(a) in sub-paragraph (i)—

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

(ii) after “above,” insert “who”, and

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

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

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

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

After section 51 of the 2003 Act, insert—

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

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

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

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

(b) such other information as may be prescribed.

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

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

(5) The community body must, before the end of the period of 7 days following receipt of notification under section 60(2) of the valuation of the land, provide the balloter with wording for the proposition mentioned in section 51(2)(b); and the balloter must conduct the ballot on the basis of such wording.

(6) At the same time as providing that wording, the community body must also provide the ballot, in such form as may be prescribed, with such information as may be prescribed relating to—

- (a) the community body,
- (b) its proposals for use of the land in relation to which it has confirmed it will exercise its right to buy,
- (c) the valuation, and
- (d) any other matters.

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

### 38 Consent under section 51 of 2003 Act: prescribed information

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

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

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

- (a) the information mentioned in subsection (2), and
- (b) any other information they consider relevant.

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

- (a) provided by the community body, and
- (b) that is of such a kind as may be prescribed.

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

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

- (a) information relating to the matters mentioned in section 51(3), and
- (b) additional information relating to such information.

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

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

### 39 Representations etc. regarding circumstances affecting ballot result

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

#### “51C Circumstances affecting result of ballot

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

(2) Where the community body makes such representations it must, when making them—

(a) provide Ministers with such evidence as is reasonably necessary to establish the existence and effect of the circumstances to which the representations relate, and

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

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

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

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

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

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

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

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

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

(a) representations made under subsection (1),

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

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

(d) comments under subsection (5), and

(e) views under subsection (7).”.

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

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

#### 40 **Ballot not conducted as prescribed**

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

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

(a) reviewing whether a ballot was conducted in accordance with provision prescribed under subsection (1),

- (b) providing notification to such persons, or description of persons, as may be prescribed that a ballot has not been so conducted,
- (c) in a case where a ballot has not been so conducted, requiring a further ballot to be conducted on such a basis, and by such persons or description of persons, as may be prescribed,
- (d) requiring any such further ballot to be conducted—
  - (i) in compliance with such conditions as may be prescribed (including conditions that the ballot be conducted in accordance with provision prescribed under subsection (1)),
  - (ii) within such timescales as may be prescribed,
- (e) specifying persons, or descriptions of persons, who are to meet the expenses of conducting any such further ballot,
- (f) specifying that any review mentioned in paragraph (a) be carried out by—
  - (i) such persons,
  - (ii) such description of persons, or
  - (iii) such a court or tribunal,as may be prescribed,
- (g) specifying the action that may be taken by such persons, persons of such description or such a court or tribunal following such a review.”.

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

- (1) In section 52 of the 2003 Act (ballot procedure), in subsection (4), for the words from “28 days” to the end of the subsection, substitute “12 weeks beginning with—
  - (a) the date on which a valuer is appointed under section 59(1) in respect of the land in relation to which the community body has confirmed it will exercise its right to buy, or
  - (b) where—
    - (i) the ballotter receives notification under subsection (3C) of section 60, and
    - (ii) the date notified under paragraph (c) of that subsection is after the end of the 12 week period beginning with the date on which a valuer is appointed as mentioned in paragraph (a) above,the day following the date notified to the ballotter under paragraph (c) of that subsection.”.
- (2) In section 60 of the 2003 Act (procedure for valuation), after subsection (3) insert—
  - “(3A) An application under subsection (3) must be made within the period of 21 days beginning with the date of appointment of the valuer.
  - (3B) Any longer period as mentioned in that subsection must be fixed under that subsection within the period of 7 days beginning with the day on which the application was received.

(3C) Where such a longer period is fixed, Ministers must notify the persons mentioned in subsection (3D) of—

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

(3D) The persons are—

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

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

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

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

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

- (a) notify Ministers in writing of the agreement,
- (b) inform Ministers—
  - (i) of the date on which the agreement was made, and
  - (ii) what the later date is, and

(c) provide evidence to Ministers of the matters mentioned in paragraph (b).”.

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

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

- (a) after subsection (1), insert—

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

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

(1B) In carrying out a valuation under section 59, the valuer must consider any views sent under subsection (1A).”, and

- (b) in subsection (3), for the word “6” substitute “8”.

#### 44 Expenses of valuation of land

After section 60 of the 2003 Act, insert—



**“60A Liability of owner of land for valuation expenses**

- (1) Subsection (2) applies where—
- (a) Ministers have received a confirmation sought by them under section 49(2)(a) that a community body will exercise its right to buy land in which it has a registered interest, and
  - (b) after Ministers have appointed a valuer under section 59(1) to assess the value of the land, the owner of the land gives notice under section 54(5) of the owner’s decision not to proceed further with the proposed transfer.
- (2) Ministers may require the owner of the land to pay any expense incurred by them in connection with the valuation of the land under section 59 by sending the owner a demand for payment of the expense.
- (3) Where Ministers are considering sending a demand under subsection (2), they may request the owner of the land to provide such information as they consider necessary for the purposes of enabling Ministers to determine whether or not to send the demand.
- (4) The owner of the land may, within 21 days of the receipt of a demand under subsection (2), appeal to the sheriff against the demand.
- (5) The decision of the sheriff in an appeal under subsection (4) is final.
- (6) The owner of the land must pay the amount specified in a demand under subsection (2)—
- (a) within 28 days of receipt, or
  - (b) where an appeal against the demand is made under subsection (4) and not upheld, within 28 days of the determination of the appeal.”.

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

In section 61 of the 2003 Act (appeals)—

- (a) after subsection (3), insert—

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

- (a) a decision by Ministers that a community interest in the land is to be entered in the Register, or
- (b) a decision by Ministers to give consent to the exercise by a community body of its right to buy the land.”,

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

- (c) in subsection (6)—

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

- (iii) any creditor in a standard security with a right to sell the land to which the appeal relates;”,
- (v) the word “and” immediately following paragraph (c)(ii) is repealed,
- (vi) in paragraph (c), after sub-paragraph (iii), insert “and
- 5 (iv) any creditor in a standard security with a right to sell the land to which the appeal relates;”, and
- (vii) after paragraph (c), insert “or
- (d) under subsection (3A) above, the creditor must intimate that fact to—
- (i) the community body,
- 10 (ii) the owner, and
- (iii) Ministers.”.

#### **46 Calculation of time periods in Part 2 of 2003 Act**

After section 67 of the 2003 Act, insert—

##### **“67A Calculation of time periods**

- 15 (1) In calculating for the purposes of this Part any period of time within which an act requires to be or may be done, no account is to be taken of any public or local holidays in the place where the act is to be done.
- (2) Subsection (1) does not apply to a period of time specified in—
- (a) section 56(3)(a) or (b),
- 20 (b) section 60(3), or
- (c) Chapter 6 of this Part.”.

#### **47 Duty to provide information about community right to buy**

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

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

- 25 (1) Ministers may, for the purpose of monitoring or evaluating any impact that the right to buy land conferred by this Part has had or may have, request a person mentioned in subsection (2) to provide them with the information mentioned in subsection (3).
- (2) The persons are—
- 30 (a) a community body,
- (b) the owner or former owner of land in respect of which an application to register a community interest under section 37 was made.
- (3) The information is such information as Ministers may reasonably require for the purpose mentioned in subsection (1) relating to the effects that the operation of the provisions of this Part have had, or may be expected to have,
- 35 on such matters as may be specified in the request.
- (4) A person to whom a request under subsection (1) is made must, to the extent that the person is able to do so, provide Ministers with the information requested.”.

*Abandoned and neglected land*

**48 Abandoned and neglected land**

After section 97A of the 2003 Act, insert—

**“PART 3A**

COMMUNITY RIGHT TO BUY ABANDONED OR NEGLECTED LAND

**97B Meaning of “land”**

In this Part, “land” includes—

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

**97C Eligible land**

- (1) Land is eligible for the purposes of this Part if in the opinion of Ministers it is wholly or mainly abandoned or neglected.
- (2) In determining whether land is eligible, Ministers must have regard to prescribed matters.
- (3) Eligible land does not include—
  - (a) land on which there is a building or other structure which is an individual’s home unless the building or structure falls within such class or classes as may be prescribed,
  - (b) such land pertaining to land of the type mentioned in paragraph (a) as may be prescribed,
  - (c) eligible croft land (as defined in section 68(2)),
  - (d) any croft occupied or worked by its owner or a member of its owner’s family,
  - (e) land which is owned or occupied by the Crown by virtue of its having vested as *bona vacantia* in the Crown, or its having fallen to the Crown as *ultimus haeres*,
  - (f) land of such other descriptions or classes as may be prescribed.
- (4) Ministers may prescribe descriptions or classes of building or structure which are to be treated as being an individual’s home for the purposes of subsection (3)(a).
- (5) In subsection (3)(d), the reference to a croft being occupied includes—
  - (a) a reference to its being occupied otherwise than permanently, and
  - (b) a reference to its being occupied by way of the occupation by its owner of any dwelling-house on or pertaining to it.

**97D Part 3A community bodies**

- (1) A Part 3A community body is, subject to subsection (4) below, a company limited by guarantee the articles of association of which include the following—
- 5 (a) a definition of the community to which the company relates,
- (b) provision enabling the company to exercise the right to buy land under this Part,
- (c) provision that the company must have not fewer than 20 members,
- 10 (d) provision that the majority of the members of the company is to consist of members of the community,
- (e) provision whereby the members of the company who consist of members of the community have control of the company,
- (f) provision ensuring proper arrangements for the financial management of the company,
- 15 (g) provision that any surplus funds or assets of the company are to be applied for the benefit of the community, and
- (h) provision that, on the winding up of the company and after satisfaction of its liabilities, its property (including any land acquired by it under this Part) passes—
- 20 (i) to such other community body or crofting community body as may be approved by Ministers, or
- (ii) if no other community body or crofting community body is so approved, to Ministers or to such charity as Ministers may direct.
- (2) Ministers may, if they think it in the public interest to do so, disapply the requirement specified in subsection (1)(c) in relation to any body they may specify.
- 25 (3) In subsection (1), “company limited by guarantee” has the meaning given by section 3(3) of the Companies Act 2006.
- (4) A body is not a Part 3A community body unless Ministers have given it written confirmation that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development.
- 30 (5) A community—
- (a) is defined for the purposes of subsection (1)(a) by reference to a postcode unit or postcode units or a prescribed type of area (or both such unit and type of area), and
- 35 (b) comprises the persons from time to time—
- (i) resident in that postcode unit or in one of those postcode units or in that prescribed type of area, and
- (ii) entitled to vote, at a local government election, in a polling district which includes that postcode unit or those postcode units or that
- 40 prescribed type of area (or part of it or them).

- (6) In subsection (5), “postcode unit” means an area in relation to which a single postcode is used to facilitate the identification of postal service delivery points within the area.
- (7) The articles of association of a company which is a Part 3A community body may, notwithstanding the generality of paragraph (h) of subsection (1), provide that its property may, in the circumstances mentioned in that paragraph, pass to another person only if that person is a charity.
- (8) In this section, “charity” means a body entered in the Scottish Charity Register.

**97E Provisions supplementary to section 97D**

- (1) A Part 3A community body which has bought land under this Part may not, for as long as the land or any part of it remains in its ownership, modify its memorandum or articles of association without Ministers’ consent in writing.
- (2) If Ministers are satisfied that a Part 3A community body which has, under this Part, bought land would, had it not so bought that land, no longer be entitled to do so, they may acquire the land compulsorily.
- (3) Subsection (2) does not apply if the Part 3A community would no longer be entitled to buy the land because the land is not eligible for the purposes of this Part.
- (4) Where the power conferred by subsection (2) is (or is to be) exercised in relation to land, Ministers may make an order relating to, or to matters connected with, the acquisition of the land.
- (5) An order under subsection (4) may—
- (a) apply, modify or exclude any enactment which relates to any matter as to which an order could be made under that subsection,
  - (b) make such modifications of enactments as appear to Ministers to be necessary or expedient in consequence of any provision of the order or otherwise in connection with the order.

**97F Register of Community Interests in Abandoned or Neglected Land**

- (1) The Keeper must set up and keep a register, to be known as the Register of Community Interests in Abandoned or Neglected Land (the “Part 3A Register”).
- (2) The Part 3A Register must be set up and kept so as to contain, in a manner and form convenient for public inspection, the following information and documents relating to each application to exercise the right to buy under this Part registered in it—
- (a) the name and address of the registered office of the company which constitutes the Part 3A community body which has submitted the application,
  - (b) a copy of the application to exercise the right to buy under this Part,
  - (c) a copy of any notification given under section 97K(4)(b),
  - (d) a copy of the notice given under section 97M(1),
  - (e) a copy of any notice under section 97P(1),

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

- 5 (3) If the Part 3A community body registering an application requires that any such information or document relating to that application and falling within subsection (4) as is specified in the requirement be withheld from public inspection, that information or document is to be kept by or on behalf of Ministers separately from and not entered in the Register.
- 10 (4) Information or a document falls within this subsection if it relates to arrangements for the raising or expenditure of money to enable the land to which the application relates to be put to a particular use.
- (5) Nothing in subsection (3) or (4) obliges an applicant Part 3A community body, or empowers Ministers to require such a body, to submit to Ministers any information or document within subsection (4).
- 15 (6) Ministers may by regulations modify—
- (a) paragraphs (a) to (h) of subsection (2),
  - (b) subsection (3),
  - (c) subsection (4).
- 20 (7) The Keeper must ensure—
- (a) that the Part 3A Register is, at all reasonable times, available for public inspection free of charge,
  - (b) that members of the public are given facilities for getting copies of entries in the Part 3A Register on payment of such charges as may be prescribed, and
  - (c) that any person requesting it is, on payment of such a charge, supplied with an extract entry certified to be a true copy of the original.
- 25 (8) An extract so certified is sufficient evidence of the original.
- (9) In this Part, “the Keeper” means—
- 30 (a) the Keeper of the Registers of Scotland, or
  - (b) such other person as Ministers may appoint to carry out the Keeper’s functions under this Part.
- (10) Different persons may be so appointed for different purposes.

**97G Right to buy: application for consent**

- 35 (1) The right to buy under this Part may be exercised only by a Part 3A community body.
- (2) That right may be so exercised only with the consent of Ministers given on the written application of the Part 3A community body.
- 40 (3) That right may be exercised in relation to more than one holding of land but in order so to exercise the right an application must be made in respect of each such holding and applications so made may be differently disposed of.

- (4) In subsection (3), a “holding” of land is land in the ownership of one person or in common or joint ownership.
- (5) An application under this section—
- (a) must be made in the prescribed form,
- (b) must specify—
- (i) the owner of the land, and
- (ii) any creditor in a standard security over the land or any part of it, and
- (c) must include or be accompanied by information of the prescribed kind including information (provided, where appropriate, by or by reference to maps or drawings) about the matters mentioned in subsection (6).
- (6) The matters are—
- (a) the reasons the Part 3A community body considers that its proposals for the land are—
- (i) in the public interest, and
- (ii) compatible with furthering the achievement of sustainable development in relation to the land,
- (b) the reasons the Part 3A community body considers that the land is wholly or mainly abandoned or neglected,
- (c) the location and boundaries of the land in respect of which the right to buy is sought to be exercised,
- (d) all—
- (i) rights and interests in the land,
- (ii) sewers, pipes, lines, watercourses or other conduits and fences, dykes, ditches or other boundaries in or on the land, known to the applicant body or the existence of which it is, on reasonably diligent inquiry, capable of ascertaining,
- (e) the proposed use, development and management of the land, and
- (f) whether and how the matters referred to in paragraph (e) would affect any of the facilities referred to in paragraph (d)(ii) in so far as those facilities connect with similar facilities on other land or also serve other land.
- (7) A Part 3A community body applying under this section must, at the same time as it applies—
- (a) send a copy of its application and the accompanying information to the owner of the land to which the application relates, and
- (b) where there is a standard security in relation to the land or any part of it, send a copy of the application and the accompanying information to the creditor who holds the standard security and invite the creditor—

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- (i) to notify the Part 3A community body and Ministers, within 60 days of receipt of the invitation, if any of the circumstances set out in subsection (8) has arisen (or arises within 60 days of receipt of the invitation), and
- 5 (ii) if such notice is given, to provide Ministers, within that time, with the creditor's views in writing on the application.
- (8) Those circumstances are that—
- (a) a calling-up notice has been served by the creditor under section 19 of the Conveyancing and Feudal Reform (Scotland) Act 1970 in relation to the land which the Part 3A community body is seeking to exercise its right to buy or any part of the land and that notice has not been complied with,
- 10 (b) a notice of default served by the creditor under section 21 of that Act in relation to the land or any part of the land has not been complied with and the person on whom the notice was served has not, within the period specified in section 22 of that Act, objected to the notice by way of application to the court,
- 15 (c) where that person has so objected, the court has upheld or varied the notice of default,
- 20 (d) the court has granted the creditor a warrant under section 24 of that Act in relation to the land or any part of the land.
- (9) On receipt of an application under this section, Ministers must—
- (a) invite—
- (i) the owner of the land,
- 25 (ii) any creditor in a standard security over the land or any part of it, and
- (iii) any other person whom Ministers consider to have an interest in the application,
- 30 to send them, so as to be received not later than 60 days after the sending of the invitation, views in writing on the application,
- (b) take reasonable steps to invite the owners of all land contiguous to the land to which the application relates to send them, so as to be received not later than 60 days after the sending of the invitation, views in writing on the application, and
- 35 (c) send copies of invitations given under paragraphs (a) and (b) to the Part 3A community body.
- (10) An invitation given under subsection (9)(a)(i) must also invite the owner to give Ministers information about—
- 40 (a) whether the owner considers that it would be in the public interest for Ministers to consent to the application and, if not, the reasons the owner considers that it would not be in the public interest for such consent to be given,



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- (b) whether the owner's continuing to own the land would be compatible with furthering the achievement of sustainable development in relation to the land,
  - (c) whether the owner considers the land to be wholly or mainly neglected or abandoned and the reasons for the owner's view,
  - (d) any proposals that the owner has for the land,
  - (e) any rights or interests in the land of which the owner is aware that are not mentioned in the application, and
  - (f) any other matter that the owner considers is relevant to the application.
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- (11) Ministers must, as soon as practicable after receiving an application, give public notice of it and of the date by which, under subsection (9)(a), views are to be received by them and, in that notice, invite persons to send to Ministers, so as to be received by them not later than 60 days after the publication of the notice, views in writing on the application.
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- (12) That public notice is to be given by advertisement in such manner as may be prescribed.
- (13) Ministers must—
- (a) send copies of any views they receive under this section to the Part 3A community body, and
  - 20 (b) invite it to send them, so as to be received by them not later than 60 days after the sending of that invitation, its responses to these views.
- (14) Ministers must, when considering whether to consent to an application under this section, have regard to all views on it and responses to the views which they have received in answer to invitations under this section.
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- (15) Ministers must decline to consider an application which—
- (a) does not comply with the requirements of or imposed under this section,
  - (b) is otherwise incomplete, or
  - (c) otherwise indicates that it is one which Ministers would be bound to reject;
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- and Ministers are not required to comply with subsections (9) to (14) in relation to such an application.
- (16) Ministers must not reach a decision on an application before—
- (a) the date which is 60 days after the last date on which the Part 3A community body may provide Ministers with a response to the invitation given under subsection (13), or
  - 35 (b) if by that date the Lands Tribunal has not advised Ministers of its finding on any question referred to it under section 97X in relation to the application, the date on which the Lands Tribunal provides Ministers with that finding.

- (17) A Part 3A community body may require Ministers to treat as confidential any information or document relating to arrangements for the raising or expenditure of money to enable the land to be put to a particular use, being information or a document made available to Ministers for the purposes of this section.

### **97H Criteria for consent**

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

- (a) that the land to which the application relates is eligible land,
- (b) that the exercise by the Part 3A community body of the right to buy under this Part is—
  - (i) in the public interest, and
  - (ii) compatible with furthering the achievement of sustainable development in relation to the land,
- (c) that, if the owner of the land were to remain as its owner, that ownership would be inconsistent with furthering the achievement of sustainable development in relation to the land,
- (d) that the owner of the land is accurately identified in the application,
- (e) that any creditor in a standard security over the land or any part of it is accurately identified in the application,
- (f) that the owner is not—
  - (i) prevented from selling the land, or
  - (ii) subject to any enforceable personal obligation (other than an obligation arising by virtue of any right suspended by regulations under section 97N(3)) to sell the land otherwise than to the Part 3A community body,
- (g) that the Part 3A community body complies with the provisions of section 97D,
- (h) that—
  - (i) a significant number of the members of the community defined under section 97D to which the application relates have a connection with the land, or
  - (ii) the land is sufficiently near to land with which those members of that community have a connection,
- (i) that the community so defined have approved the proposal to exercise the right to buy, and
- (j) that, otherwise than by virtue of this Part, the Part 3A community body has tried and failed to buy the land.

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

- (1) The community, defined in pursuance of section 97D in relation to a Part 3A community body which has applied to buy land, are to be taken for the purposes of section 97H(i) as having approved a proposal to buy if—
- 5 (a) a ballot of the members of the community so defined has, during the period of six months which immediately preceded the date on which the application was made, been conducted by the Part 3A community body on the question whether the Part 3A community body should buy the land,
- 10 (b) in the ballot—
- (i) at least half of the members of the community so defined have voted, or
- (ii) fewer than half of the members of the community so defined have voted but the proportion which voted is sufficient to justify the Part 3A community body's proceeding to buy the land, and
- 15 (c) the majority of those voting have voted in favour of the proposition that the Part 3A community body buy the land.
- (2) The ballot is to be conducted as prescribed.
- (3) The provisions prescribed must in particular include provision for—
- 20 (a) the ascertainment and publication of the number of persons eligible to vote in the ballot,
- (b) the number who did vote,
- (c) the numbers of valid votes respectively cast for and against the proposition mentioned in subsection (1)(c), and
- 25 (d) the form and manner in which the result of the ballot is to be published.
- (4) The Part 3A community body which conducts a ballot must, within 21 days of the ballot (or, if its application under section 97G is made before the expiry of that period, together with the application), and in the prescribed form of return, notify Ministers of—
- 30 (a) the result,
- (b) the number of persons eligible to vote,
- (c) the number of persons who voted, and
- (d) the number of persons who voted in favour of the proposition mentioned in subsection (1)(c).
- 35 (5) Ministers may require the Part 3A community body—
- (a) to provide such information relating to the ballot as they think fit, and
- (b) to provide such information relating to any consultation with those eligible to vote in the ballot undertaken during the period in which the ballot was carried out as Ministers think fit.
- 40 (6) The expense of conducting a ballot under this section is to be met by the Part 3A community body.

- (7) If the ballot is not conducted as prescribed, the Part 3A community body's right to buy the land to which the body's application relates is, so far as proceeding on that application, extinguished.

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

- (1) Only one Part 3A community body may exercise the right under this Part to buy the same land.
- (2) Where two or more such bodies have applied to buy the same land, it is for Ministers to decide which application is to proceed.
- (3) Ministers may not make such a decision unless they have had regard to all views on each of the applications, and responses to the views, which they have received in answer to invitations under section 97G.
- (4) On Ministers so deciding—
- (a) the other body's right to buy the land which is the subject of the body's application is, so far as proceeding on that application, extinguished, and
  - (b) they must notify the bodies and each person invited, under section 97G(9)(a), to send them views on the application of that fact.

**97L Consent conditions**

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

**97M Notification of Ministers' decision on application**

- (1) Ministers must give written notice, in prescribed form, of their decision on an application made under section 97G, and their reasons for it, to—
- (a) the applicant Part 3A community body,
  - (b) the owner of the land to which the application relates,
  - (c) every other person who was invited, under section 97G(9)(a), to send them views on the application, and
  - (d) the Keeper of the Registers of Scotland.
- (2) The form of notice is to be prescribed so as to secure that the notice includes a full description of—
- (a) the land to which the application relates (provided, where appropriate, by or by reference to maps and drawings), and
  - (b) where their decision is to consent to the application, any conditions imposed under section 97L.
- (3) The notice given under subsection (1) must—
- (a) contain information about the consequences of the decision notified and of the rights of appeal against it given by this Part, and
  - (b) state the date on which consent is given or refused.

**97N Effect of Ministers' decision on right to buy**

- 5 (1) Ministers may by regulations make provision for or in connection with prohibiting, during the prescribed period, prescribed persons from transferring or otherwise dealing with land in respect of which a Part 3A community body has made an application under section 97G.
- 10 (2) Regulations under subsection (1) may in particular include provision—
- (a) prescribing transfers or dealings which are not prohibited by the regulations,
  - (b) requiring or enabling prescribed persons in prescribed circumstances to register prescribed notices in the Register of Community Interests in Abandoned or Neglected Land,
  - (c) in prescribed circumstances, requiring prescribed information to be incorporated into prescribed deeds relating to the land.
- 15 (3) Ministers may by regulations make provision for or in connection with suspending, during the prescribed period, such rights in or over land in respect of which a Part 3A community body has made an application under section 97G as may be prescribed.
- 20 (4) Regulations under subsection (3) may in particular include provision specifying—
- (a) rights to which the regulations do not apply,
  - (b) rights to which the regulations do not apply in prescribed circumstances.
- 25 (5) Nothing in this Part—
- (a) affects the operation of an inhibition on the sale of the land,
  - (b) prevents an action of adjudication from proceeding, or
  - (c) affects the commencement, execution or operation of any other diligence.

**97P Confirmation of intention to proceed with purchase and withdrawal**

- 30 (1) A Part 3A community body's right to buy land under this Act is exercisable only if, within 21 days of the date of notification under section 97S(10), it sends notice in writing confirming its intention to proceed to buy the land to—
- (a) Ministers, and
  - (b) the owner of the land.
- (2) A Part 3A community body may, at any time after—
- (a) making an application under section 97G, withdraw the application, or
  - (b) confirming its intention to proceed under subsection (1), withdraw that confirmation,
- by notice in writing to that effect sent to Ministers.
- 40 (3) Ministers must, within 7 days of receipt of notice under subsection (1) or (2), acknowledge receipt and send a copy of that acknowledgement to the owner of the land.

**97Q Completion of purchase**

- (1) It is for the Part 3A community body to secure the expeditious exercise of its right to buy and, in particular—
- (a) to prepare the documents necessary to—
    - (i) effect the transfer to it of the land, and
    - (ii) impose any conditions (including any real burdens or servitudes) which Ministers, under section 97L, require to be imposed upon the title to land, and
  - (b) in so doing, to ensure—
    - (i) that the land in the application to which Ministers have consented is the same as that to be transferred, and
    - (ii) that the transfer is to be effected in accordance with any other conditions imposed by Ministers under section 97L.
- (2) Where the Part 3A community body is unable to fulfil the duty imposed by subsection (1)(b) because the land or part of the land in respect of which Ministers' consent was given is not owned by the person named as its owner in the application made under section 97G, it must refer that matter to Ministers.
- (3) On a reference under subsection (2), Ministers must direct that the Part 3A community body's right to buy the land is, so far as proceeding on that application, extinguished.
- (4) The owner of the land being bought is obliged—
- (a) to make available to the Part 3A community body such deeds and other documents as are sufficient to enable the body to proceed to complete its title to the land, and
  - (b) to transfer title accordingly.
- (5) If, within 6 weeks of the date on which Ministers consent to an application to buy land, the owner of the land refuses or fails to make those deeds and other documents available, or they cannot be found, the Lands Tribunal may, on the application of the Part 3A community body, order the owner or any other person appearing to the Lands Tribunal to have those deeds and documents to produce them.
- (6) If the owner of the land refuses or fails to effect such sufficient transfer as is mentioned in subsection (4), the Lands Tribunal may, on the application of the Part 3A community body, authorise its clerk to adjust, execute and deliver such deeds or other documents as will complete such transfer to the like force and effect as if done by the owner or person entitled.

**97R Completion of transfer**

- (1) The consideration for the transfer of the land is its value as assessed under section 97S.
- (2) Subject to subsections (3) and (4), that consideration must be paid not later than the "final settlement date", being the date on which expires a 6 month period beginning with the date (the "consent date") when Ministers consented to the application made under section 97G to buy the land.

(3) Where—

- (a) the Part 3A community body and the owner so agree, the consideration may be paid on a date later than the final settlement date,
- (b) the assessment of the valuation of the land has not been completed by a date 4 months after the consent date, the consideration must be paid not later than 2 months after the date when that assessment is completed,
- (c) that valuation is the subject of an appeal which has not been determined within 4 months of the consent date, the consideration must be paid not later than 2 months after the date of that determination.

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

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

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

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

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

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

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

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

**97S Assessment of value of land etc.**

(1) Where Ministers consent to an application made under section 97G, they must, subject to subsection (2), within 7 days of doing so appoint a valuer, being a person who appears to Ministers to be suitably qualified, independent and to have knowledge and experience of valuing land of a kind which is similar to the land being bought, to assess the value of the land to which the application relates.

- (2) The validity of anything done under this section is not affected by any failure by Ministers to comply with the time limit specified in subsection (1).
- (3) In assessing the value of land in pursuance of an appointment under subsection (1), a valuer—
- 5 (a) does not act on behalf of the owner of the land or of the Part 3A community body which is exercising its right to buy the land under this Part, and
- (b) is to act as an expert and not as an arbiter.
- 10 (4) The value to be assessed is the market value of the land as at the date when Ministers consented to the application made under section 97G relating to the land.
- (5) The “market value” of land is the aggregate of—
- (a) the value it would have on the open market as between a seller and a buyer both of whom are, as respects the transaction, willing,
- 15 (b) any depreciation in the value of other land or interests belonging to the seller which may result from the transfer of land, including depreciation caused by division of the land by the transfer of land to the Part 3A community body, and
- 20 (c) the amount attributable to any disturbance to the seller which may arise in connection with the transfer of the land to the Part 3A community body.
- (6) In arriving, for the purposes of this section, at the value which land would have on the open market in the circumstances mentioned in subsection (5)(a)—
- 25 (a) account may be taken, in so far as a seller and buyer such as are mentioned in subsection (5) would do so, of any factor attributable to the known existence of a person who (not being the Part 3A community body which is exercising its right to buy the land) would be willing to buy the land at a price higher than others would because of a characteristic of the land which relates peculiarly to that person’s interest in buying it,
- 30 (b) no account is to be taken of—
- (i) any depreciation of the type mentioned in subsection (5)(b),
- (ii) any disturbance of the type mentioned in subsection (5)(c),
- 35 (iii) the absence of the period of time during which the land would, on the open market, be likely to be advertised and exposed for sale.
- (7) The expense of a valuation under this section is to be met by Ministers.
- (8) In carrying out a valuation under this section, the valuer must—
- (a) invite—
- (i) the owner of the land, and
- 40 (ii) the Part 3A community body which is exercising its right to buy the land,
- to make representations in writing about the value of the land, and



(b) consider any representations made accordingly.

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

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

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

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

### 97T Compensation

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

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

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

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

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

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

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

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

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

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

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

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

40 (5) Where, at the expiry of such period of time as may be fixed for the purposes of this subsection by an order under subsection (4)(d), any question as to whether compensation is payable or as to the amount of any compensation payable has not been settled as between the parties, either of them may refer the question to the Lands Tribunal.

**97U Grants towards Part 3A community bodies' liabilities to pay compensation**

- (1) Ministers may, in the circumstances set out in subsection (2), pay a grant to a Part 3A community body.
- (2) Those circumstances are—
- 5 (a) that after settlement of its other liabilities connected with the exercise of its right to buy land under this Part, the Part 3A community body has insufficient money to pay, or to pay in full, the amount of compensation it has to pay under section 97T,
- 10 (b) that the Part 3A community body has taken all reasonable steps to obtain money in order to pay, or to pay in full, that amount (other than applying for a grant under this section) but has been unable to obtain the money, and
- (c) that it is in the public interest that Ministers pay the grant.
- (3) The fact that all the circumstances set out in subsection (2) are applicable in a particular case does not prevent Ministers from refusing to pay a grant in that case.
- 15 (4) A grant under this section may be made subject to conditions which may stipulate repayment in the event of breach.
- (5) Ministers may pay a grant under this section only on the application of a Part 3A community body.
- 20 (6) An application for such a grant must be made in such form and in accordance with such procedure as may be prescribed.
- (7) Ministers must issue their decision on an application under this section in writing accompanied by, in the case of a refusal, a statement of the reasons for it.
- 25 (8) Ministers' decision on an application under this section is final.

**97V Appeals**

- (1) An owner of land may appeal to the sheriff against a decision by Ministers to give consent to the exercise by a Part 3A community body of its right to buy the land.
- 30 (2) A Part 3A community body may appeal to the sheriff against a decision by Ministers not to give consent to the exercise by the Part 3A community body of its right to buy.
- (3) Subsection (2) does not extend to Ministers' decision under section 97K on which of two or more applications to buy the same land is to proceed.
- 35 (4) A person who is a member of a community as defined for the purposes of section 97D in relation to a Part 3A community body may appeal to the sheriff against a decision by Ministers to consent to the exercise by the Part 3A community body of its right to buy land.
- 40 (5) A creditor in a standard security with a right to sell land may appeal to the sheriff against a decision by Ministers to give consent to the exercise by a Part 3A community body of its right to buy the land.

- 5
- (6) An appeal under subsection (1), (2), (4) or (5) must be lodged within 28 days of the date on which Ministers decided to consent to the exercise of the right to buy land or refuse such consent.
- (7) The sheriff in whose sheriffdom the land or any part of it is situated has jurisdiction to hear an appeal under this section.
- (8) Where an appeal is made—
- 10
- (a) under subsection (1) the owner must intimate that fact to—
- (i) the Part 3A community body,
- (ii) Ministers, and
- (iii) any creditor in a standard security with a right to sell the land to which the appeal relates,
- (b) under subsection (2) the Part 3A community body must intimate that fact to—
- 15
- (i) the owner,
- (ii) Ministers, and
- (iii) any creditor in a standard security with a right to sell the land to which the appeal relates,
- (c) under subsection (4) the member of the community must intimate that fact to—
- 20
- (i) the Part 3A community body,
- (ii) the owner,
- (iii) Ministers, and
- (iv) any creditor in a standard security with a right to sell the land to which the appeal relates, or
- 25
- (d) under subsection (5), the creditor must intimate that fact to—
- (i) the Part 3A community body,
- (ii) the owner, and
- (iii) Ministers.
- (9) The decision of the sheriff in an appeal under this section—
- 30
- (a) may require rectification of the Register of Community Interests in Abandoned or Neglected Land,
- (b) may impose conditions upon the appellant,
- (c) is final.

**97W Appeals to Lands Tribunal: valuation**

- 35
- (1) The owner of the land and the Part 3A community body which is exercising its right to buy the land may appeal to the Lands Tribunal against the valuation carried out under section 97S.

- (2) An appeal under this section must state the grounds on which it is being made and must be lodged within 21 days of the date of notification under section 97S(10).
- (3) In an appeal under this section, the Lands Tribunal may reassess the value of the land.
- (4) The valuer whose valuation is appealed against may be a witness in the appeal proceedings.
- (5) The Lands Tribunal must give reasons for its decision on an appeal under this section.
- (6) Ministers are not competent parties to any appeal under this section by reason only that they appointed the valuer whose valuation is the subject of the appeal.
- (7) Ministers' powers under the Lands Tribunal Act 1949 to make rules as respects that Tribunal extend to such rules as may be necessary or expedient to give full effect to this section.

#### 97X Reference to Lands Tribunal of questions on applications

- (1) At any time before Ministers reach a decision on an application which has been made under section 97G—
- (a) Ministers,
  - (b) any person who is a member of the community defined in relation to the applicant Part 3A community body in pursuance of section 97D,
  - (c) the owner of the land which is the subject of the application,
  - (d) any person who has any interest in the land giving rise to a right which is legally enforceable by that person, or
  - (e) any person who is invited, under section 97G(9)(a)(iii), to send views to Ministers on the application,
- may refer to the Lands Tribunal any question relating to the application.
- (2) In considering any question referred to it under subsection (1), the Lands Tribunal may have regard to any representations made to it by—
- (a) the applicant Part 3A community body,
  - (b) the owner of the land which is the subject of the application, or
  - (c) any other person who, in the opinion of the Lands Tribunal, appears to have an interest.
- (3) The Lands Tribunal—
- (a) must advise Ministers of its finding on any question so referred, and
  - (b) may, by order, provide that Ministers may consent to the application only if they impose, under section 97L, such conditions as the Tribunal may specify.
- (4) If the Lands Tribunal considers any question referred to it under this section to be irrelevant to Ministers' decision on the application to which it relates, it may decide to give no further consideration to the question and find accordingly.

**97Y Agreement as to matters referred or appealed**

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

**97Z Interpretation of Part 3A**

- (1) Any reference in this Part to a creditor in a standard security with a right to sell land is a reference to a creditor who has such a right under—
- (a) section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970, or
  - (b) a warrant granted under section 24(1) of that Act.
- (2) In calculating for the purposes of this Part any period of time within which an act requires to be or may be done, no account is to be taken of any public or local holidays in the place where the act is to be done.
- (3) Subsection (2) does not apply to a period of time specified in section 97R(2), 97V(6), or 97W(2).”.

*Meaning of “the 2003 Act”*

**49 Meaning of “the 2003 Act” in Part 4**

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

**PART 5**

ASSET TRANSFER REQUESTS

*Key definitions*

**50 Meaning of “community transfer body”**

- (1) In this Part, “community transfer body” means—
- (a) a community-controlled body, or
  - (b) a body mentioned in subsection (2).
- (2) The body is a body (whether corporate or unincorporated)—
- (a) that is designated as a community transfer body by an order made by the Scottish Ministers for the purposes of this Part, or
  - (b) that falls within a class of bodies designated as community transfer bodies by such an order for the purposes of this Part.
- (3) Where the power to make an order under subsection (2)(a) is exercised in relation to a trust, the community transfer body is to be the trustees of the trust.

**51 Meaning of “relevant authority”**

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

- (b) a person mentioned in subsection (3).
- (2) The Scottish Ministers may by order modify schedule 3 so as to—
- (a) remove an entry listed in it,
  - (b) amend an entry listed in it.
- 5 (3) The person is a person—
- (a) that is designated as a relevant authority by an order made by the Scottish Ministers for the purposes of this Part, or
  - (b) that falls within a class of persons designated as relevant authorities by such an order for the purposes of this Part.
- 10 (4) An order under subsection (3) may designate a person, or a class of persons, only if the person or (as the case may be) each of the persons falling within the class 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
  - 15 (c) a publicly-owned company.
- (5) In subsection (4)(c), “publicly-owned company” means a company that is wholly owned by one or more relevant authorities.
- (6) For that purpose, a company is wholly owned by one or more relevant authorities if it has no members other than—
- 20 (a) the relevant authority or (as the case may be) authorities,
- (b) other companies that are wholly owned by the relevant authority or (as the case may be) authorities, or
- (c) persons acting on behalf of—
- (i) the relevant authority or (as the case may be) authorities, or
  - 25 (ii) such other companies.
- (7) In this section, “company” includes any body corporate.

### *Requests*

#### **52 Asset transfer requests**

- 30 (1) A community transfer 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 to be transferred to the community transfer body, or
  - (b) in relation to land owned or leased by the relevant authority—
- 35 (i) for the land to be leased to the community transfer body, or
- (ii) for the authority to confer rights in respect of the land on the community transfer 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 of the type mentioned in subsection (2)(a) may be made only by a community transfer body falling within section 53; and references in the remainder of this Part to the making of an asset transfer request by a community transfer body are to be read accordingly.

5 (4) A community transfer 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) the reasons for making the request,

10 (d) the benefits which the community transfer body considers will arise if the authority were to agree to the request,

(e) where the request falls within subsection (2)(a), the price that the community transfer body would be prepared to pay for the transfer of ownership of the land,

(f) where the request falls within subsection (2)(b)(i)—

15 (i) the amount of rent that the community transfer 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 community transfer body considers should be included in any such lease,

20 (g) where the request falls within subsection (2)(b)(ii), the nature and extent of the rights sought, and

(h) any other terms or conditions applicable to the request.

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

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

25 (a) it is a company the articles of association of which include provision such as is mentioned in subsection (2),

(b) it is a Scottish charitable incorporated organisation the constitution of which includes provision that the organisation must have not fewer than 20 members,

30 (c) in the case of a body designated by an order under paragraph (a) of subsection (2) of section 50, the order includes provision that the body may make an asset transfer request of the type mentioned in section 52(2)(a), or

(d) in the case of a body falling within a class of bodies designated in an order made under paragraph (b) of that subsection, the order includes provision that bodies falling within the class may make an asset transfer request of that type.

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

(a) the company must have not fewer than 20 members, and

(b) 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 Part) passes—

40 (i) to another community transfer body,

(ii) to a charity,

- (iii) to such community body (within the meaning of section 34 of the Land Reform (Scotland) Act 2003) as may be approved by the Scottish Ministers,
- (iv) to such crofting community body (within the meaning of section 71 of that Act) as may be so approved, or
- (v) if no such community body or crofting community body is so approved, to the Scottish Ministers or to such charity as the Scottish Ministers may direct.

#### 54 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—
  - (a) specifying the manner in which requests are to be made,
  - (b) specifying the procedure to be followed by a relevant authority in relation to requests,
  - (c) specifying the information to be included in requests (in addition to that required under section 52(4)),
  - (d) requiring publication, by such method as may be prescribed in the regulations, of the fact that a request is being made,
  - (e) requiring notification of the making of a request to be given to such persons or descriptions of persons, and in such circumstances, as may be prescribed in the regulations.
- (3) The Scottish Ministers may make regulations for or in connection with—
  - (a) enabling a community transfer body to request information from a relevant authority about land in respect of which it proposes to make an asset transfer request,
  - (b) specifying how the authority is to respond to the request for information,
  - (c) specifying the circumstances in which the authority must provide information,
  - (d) specifying the type of information the authority must provide in circumstances specified under paragraph (c),
  - (e) specifying the circumstances in which the authority need not provide information.

#### *Decisions*

#### 55 Asset transfer requests: decisions

- (1) This section applies where an asset transfer request is made by a community transfer 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 such other information is contained in the request or otherwise provided),
- (c) whether agreeing to the request would be likely to promote or improve—
- 5           (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,
- 10 (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),
- 15 (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 or not included in or arising out of the request) as the authority considers relevant.
- 20
- (4) The authority must exercise the function under subsection (2) in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (5) The authority must agree to the request unless there are reasonable grounds for refusing it.
- 25
- (6) In subsection (3)(e), an “alternative proposal” includes—
- (a) another asset transfer request,
- (b) a proposal made by the authority or any other person.
- (7) The authority must, within the period mentioned in subsection (8), give notice (in this Part, a “decision notice”) to the community transfer body of—
- 30           (a) its decision to agree to or refuse the request, and
- (b) the reasons for its decision.
- (8) The period is—
- (a) a period prescribed in regulations made by the Scottish Ministers, or
- 35           (b) such longer period as may be agreed between the authority and the community transfer body.
- (9) 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
- 40           (b) the manner in which a decision notice is to be given.

**56 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 transfer body.
- (2) The decision notice relating to the request must—
- 5 (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),
- 10 (b) state that, if the community transfer 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.
- 15 (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—
- 20 (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).
- 25 (5) Where no contract is concluded on the basis of such an offer before the end of the period mentioned in subsection (7), the decision to agree to the request is of no effect.
- (6) Where a decision to agree to a request is of no effect under subsection (5), that is not to be treated as a refusal of the request for the purposes of an appeal under section 58.
- (7) The period is—
- 30 (a) the period of 6 months beginning with the date of the offer, or
- (b) such longer period—
- (i) as may be agreed between the authority and the community transfer body, or
- 35 (ii) in the absence of any such agreement, as may be specified in a direction by the Scottish Ministers.
- (8) A direction under subsection (7)(b)(ii) may be made only on the application of the community transfer body.
- (9) An application under subsection (8) may be made on more than one occasion.
- (10) The Scottish Ministers may by regulations make provision about—
- 40 (a) the form of, and procedure for making, an application such as is mentioned in subsection (8),

- (b) the manner in which a direction under subsection (7)(b)(ii) is to be given,
- (c) the information that such a direction is to contain.

## **57 Prohibition on disposal of land**

- 5 (1) Subsection (2) applies where a relevant authority decides to agree to an asset transfer request made by a community transfer body.
- (2) During the relevant period, the authority must not sell, lease or otherwise dispose of the land to which the request relates to any person other than the community transfer body.
- (3) In subsection (2), the “relevant period” is the period beginning on the day on which the decision notice relating to the request is given and ending—
- 10 (a) if no offer such as is mentioned in paragraph (b) of subsection (2) of section 56 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).
- 15 (4) The days are—
- (a) the day on which the authority concludes a contract with the community transfer 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 (7) of section 56 expires with no such contract having
- 20 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 transfer body referred to in that subsection is void.

## *Appeals and reviews*

## **58 Appeals**

- 25 (1) Subsection (2) applies where—
- (a) an asset transfer request is refused by a relevant authority,
- 30 (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 transfer body making the request within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 55(8).
- 35 (2) The community transfer 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—
- 40 (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.
- (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 asset transfer request.
- (8) A direction issued under subsection (5)(c) must require the relevant authority to issue a further decision notice—
- (a) specifying 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, including any terms and conditions required to be included by virtue of the direction,
  - (b) stating that, if the community transfer 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) specifying the period within which such an offer is to be submitted (which must be at least 6 months beginning with the date on which the further decision notice was issued).
- (9) A further decision notice issued by virtue of a direction mentioned in subsection (8) replaces any decision notice relating to the asset transfer request in respect of which the appeal was made.

(10) Subsections (4) to (10) of section 56 apply in relation to a further decision notice issued by virtue of a direction mentioned in subsection (8) as they apply in relation to a decision notice referred to in that section; but as if in subsection (4) of that section—

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

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

## **59 Review by local authority**

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

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

(b) the authority—

(i) refuses the request,

(ii) agrees to the request 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

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

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

(3) The Scottish Ministers may by regulations prescribe—

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

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

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

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

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

(a) confirm its decision,

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

(c) substitute a different decision for its decision.

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

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

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

(7) A decision notice issued under subsection (6) replaces any decision notice relating to the asset transfer request in respect of which the review was carried out.

- (8) Subsections (3) to (5) of section 55 apply in relation to a decision relating to an asset transfer request in a review under subsection (2) of this section as they apply in relation to a decision relating to the request under subsection (2) of that section.
- (9) Section 56 applies in relation to a decision to agree to an asset transfer request (including a decision to confirm such an agreement) following a review under subsection (2) as it applies in relation to a decision mentioned in subsection (1) of that section.

*Disapplication of certain lease restrictions*

**60 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 transfer body for the authority to—
    - (i) lease the land to the body, or
    - (ii) confer a right of occupancy on the body in respect 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 transfer body, the authority continues to be subject to any obligations under the lease of the land to the authority.

*Power to decline subsequent requests*

**61 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,

5 (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.

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

10 (a) an appeal under section 58, or

(b) a review under section 59.

(4) 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)—

15 (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.

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

20 *Interpretation of Part 5*

**62 Interpretation of Part 5**

(1) In this Part—

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

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

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

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

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

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

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

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

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

**PART 6**

## COMMON GOOD PROPERTY

*Registers***63 Common good registers**

- 5 (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.
- 10 (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—
- 15 (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—
- 20 (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—
- 25 (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—
- 30 (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.

**64 Guidance about common good registers**

- 35 (1) In carrying out any of the duties imposed on it by section 63, 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*

**65 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).

**66 Disposal etc. of common good property: guidance**

- (1) In carrying out any of the duties imposed on it by section 65, 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 of Part 6***67 Interpretation of Part 6**

In this Part—

“community bodies”, in relation to a local authority, means bodies, whether or not formally constituted, established for purposes which consist of or include that of promoting or improving the interests of any communities (however described) resident or otherwise present in the area of the local authority,

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

**PART 7**

## ALLOTMENTS

*Key definitions***68 Meaning of “allotment”**

In this Part, “allotment” means land that is—

- (a) owned or leased by a local authority,
- (b) leased or intended for lease by a person from the authority,
- (c) used or intended for use—
  - (i) wholly or mainly for the cultivation of vegetables, fruit, herbs or flowers, and
  - (ii) otherwise than with a view to making a profit, and
- (d) of such size as may be prescribed.

**69 Meaning of “allotment site”**

In this Part, “allotment site”—

- (a) means land consisting wholly or partly of allotments, and
- (b) includes other land owned or leased by a local authority that may be used by tenants of allotments in connection with their use of allotments.

*Request to lease allotment***70 Request to lease allotment**

- (1) Any person may make a request to the local authority in whose area the person resides to lease an allotment from the authority.
- (2) A request must be made in writing and include—
  - (a) the name and address of the person making the request, and
  - (b) such other information as may be prescribed.
- (3) Where the person making the request is a disabled person who has a physical impairment, the request may include information about the person’s needs on the grounds of disability relating to—

- (a) access to an allotment site or an allotment,
  - (b) possible adjustments to an allotment.
- (4) A request may be made to a local authority even if the authority does not own or lease any allotments.
- 5 (5) A request may be made jointly by two or more persons if each person resides in the area of the local authority to which the request is made.
- (6) The local authority must give written notice to a person who made a request under subsection (1) confirming receipt of the request before the expiry of the period of 28 days beginning with the date on which the request is received by the authority.
- 10 (7) Before making regulations under subsection (2)(b), the Scottish Ministers must consult—
- (a) each local authority, and
  - (b) any other person appearing to the Scottish Ministers to have an interest.

*Local authority functions*

15 **71 Duty to maintain list**

- (1) Each local authority must establish and maintain a list of persons who make a request to it under section 70(1).
- (2) The list may be established and maintained by the local authority in such form as the authority thinks fit.
- 20 (3) The duty to maintain a list under subsection (1) includes a duty to remove from the list—
- (a) the name of any person—
    - (i) whose request under section 70(1) is agreed to, or
    - (ii) who withdraws such a request before it is agreed to, and
  - (b) any other information relating to any such person.
- 25

**72 Duty to provide allotments**

- (1) Where subsection (2) or (3) applies, each local authority must take reasonable steps to ensure that the number of persons entered in the list maintained under section 71(1) is no more than one half of the total number of allotments owned and leased by the authority.
- 30 (2) This subsection applies where—
- (a) on the commencement date, a local authority does not own or lease any allotments, and
  - (b) at any time after that date, the number of persons entered in the list mentioned in subsection (1) is 15 or more.
- 35 (3) This subsection applies where—
- (a) on the commencement date, a local authority owns or leases allotments, and
  - (b) at any time after that date, the number of persons entered in the list mentioned in subsection (1) is one or more.

- (4) The Scottish Ministers may by order amend subsection (1) by substituting for the proportion for the time being specified there such other proportion as they think fit.
- (5) The Scottish Ministers may by order amend subsection (2) or (3) by substituting for the number of persons for the time being specified there such other number of persons as they think fit.
- (6) Where a request under section 70(1) is made jointly by two or more persons, the persons making the request are to be treated as one person for the purposes of calculating the number of persons referred to in—
- (a) subsection (1),
  - (b) subsection (2) (including that subsection as amended by an order under subsection (5)),
  - (c) subsection (3) (including that subsection as amended by an order under subsection (5)),
  - (d) section 79(2)(g) or (l).
- (7) In this section, “commencement date” means the date on which this section comes into force.

### 73 Allotment site regulations

- (1) Each local authority must make regulations about allotment sites in its area.
- (2) The first regulations under subsection (1) must be made before the expiry of the period of two years beginning with the date on which this section comes into force.
- (3) Regulations under subsection (1) must in particular include provision for or in connection with—
- (a) allocation of allotments,
  - (b) rent,
  - (c) cultivation of allotments,
  - (d) maintenance of allotments,
  - (e) maintenance of allotment sites,
  - (f) buildings or other structures that may be erected on allotments, the modifications that may be made to such structures and the materials that may or may not be used in connection with such structures,
  - (g) the keeping of livestock (including poultry), and
  - (h) landlord inspections.
- (4) Regulations under subsection (1) may in particular include provision for or in connection with—
- (a) buildings or other structures that are permitted,
  - (b) buildings or other structures that may be erected on land mentioned in paragraph (b) of the definition of “allotment site” in section 69, the modifications that may be made to such structures and the materials that may or may not be used in connection with such structures,
  - (c) access by persons (other than allotment tenants) and domestic animals,

- (d) liability for loss of or damage to property,
- (e) acceptable use of allotments and allotment sites,
- (f) sale of surplus produce (in addition to the provisions of any regulations made under section 87(1)).

5 (5) Regulations under subsection (1) may make different provision for different areas or different types of allotment site.

**74 Allotment site regulations: further provision**

(1) Before making regulations under section 73(1), a local authority must consult persons appearing to the local authority to have an interest.

10 (2) At least one month before making regulations under section 73(1), a local authority must—

(a) place an advertisement in at least one newspaper circulating in its area giving notice of—

- 15 (i) the authority's intention to make the regulations,
- (ii) the general purpose of the proposed regulations,
- (iii) the place where a copy of the proposed regulations may be inspected,
- (iv) the fact that any person may make written representations in relation to the proposed regulations,
- (v) the time within which a person may make representations, and
- 20 (vi) the address to which any representations must be sent, and

(b) make copies of the proposed regulations available for inspection by the public without payment—

- (i) at its offices, and
- 25 (ii) if it considers it practicable, at the allotment site to which the regulations are to apply.

(3) Any person may make a representation in writing in relation to the proposed regulations no later than one month after the last date on which notice under subsection (2)(a) is given.

(4) Before making the regulations, the authority must—

- 30 (a) offer any person who makes a representation under subsection (3) the opportunity to make further representations in person, and
- (b) take account of any representations received by it by virtue of subsection (3) and paragraph (a).

(5) The regulations are executed by being signed by the proper officer of the authority.

35 (6) The regulations—

- (a) come into force on the day after the day on which they are executed or such later date specified in the regulations, and
- (b) continue in force unless revoked.

(7) Subsections (1) to (4) apply in relation to—

- (a) a proposed amendment,
- (b) a proposed revocation,
- (c) an amendment, or
- (d) a revocation,

5 of regulations under section 73(1) as they apply in relation to proposed regulations, or (as the case may be) the making of proposed regulations, under that section.

(8) Subsections (5) and (6) apply in relation to an amendment, or a revocation, of regulations under section 73(1) as they apply in relation to regulations under that section (but subsection (6)(b) does not apply in relation to such a revocation).

10 (9) A copy of the regulations must be displayed at the entrance to an allotment site to which they apply.

(10) A local authority must provide a copy of the regulations without charge to any person following a request.

15 (11) In the case where an allotment site is leased by a local authority, the regulations are subject to any provision of such a lease which is contrary to, or otherwise inconsistent with, the regulations.

#### 75 Disposal etc. of allotments and allotment sites owned by local authority

(1) This section applies where a local authority owns an allotment site.

20 (2) A local authority may not dispose of the allotment site or change the use of the allotment site without the consent of the Scottish Ministers.

(3) The Scottish Ministers may make the granting of consent subject to such conditions as they think fit.

(4) The Scottish Ministers may not grant consent unless they are satisfied that—

25 (a) the tenant of each allotment on the allotment site is to be offered a lease of another allotment in the area of the local authority within a reasonable distance of the allotment site, or

(b) the provision of another allotment for the tenant is unnecessary or not reasonably practicable.

#### 76 Disposal etc. of allotments and allotment sites leased by local authority

30 (1) This section applies where a local authority leases an allotment site.

(2) A local authority may not renounce its lease of the allotment site without the consent of the Scottish Ministers.

35 (3) In the case where a change of use of the allotment site proposed by the local authority is permitted by the lease, the local authority may not change the use of the allotment site without the consent of the Scottish Ministers.

(4) The Scottish Ministers may make the granting of consent mentioned in subsection (2) or (3) subject to such conditions as they think fit.

(5) The Scottish Ministers may not grant consent mentioned in subsection (2) or (3) unless they are satisfied that—

- (a) the tenant of each allotment on the allotment site is to be offered a lease of another allotment in the area of the local authority within a reasonable distance of the allotment site, or
- (b) the provision of another allotment for the tenant is unnecessary or not reasonably practicable.

**77 Duty to prepare food-growing strategy**

- (1) Each local authority must prepare a food-growing strategy for its area.
- (2) A local authority must publish the food-growing strategy before the expiry of the period of two years beginning with the day on which this section comes into force.
- (3) A food-growing strategy is a document—
- (a) identifying land in its area that the local authority considers may be used as allotment sites,
- (b) identifying other areas of land in its area that could be used by a community for the cultivation of vegetables, fruit, herbs or flowers,
- (c) describing how, where the authority is required to take reasonable steps under section 72(1), the authority intends to increase the provision in its area of—
- (i) allotments, or
- (ii) other areas of land for use by a community for the cultivation of vegetables, fruit, herbs or flowers, and
- (d) containing such other information as may be prescribed.
- (4) The authority must publish the food-growing strategy on a website or by other electronic means.

**78 Duty to review food-growing strategy**

- (1) Each local authority must review its food-growing strategy before the end of—
- (a) the period of 5 years beginning with the day on which the strategy is first published under section 77(2), and
- (b) each subsequent period of 5 years.
- (2) If, following a review under subsection (1), the authority decides that changes to its food-growing strategy are necessary or desirable, the authority must publish a revised food-growing strategy on a website or by other electronic means.

**79 Annual allotments report**

- (1) As soon as reasonably practicable after the end of each reporting year, each local authority must prepare and publish an annual allotments report for its area.
- (2) An annual allotments report is a report setting out in respect of the reporting year to which it relates—
- (a) the location and size of each allotment site,
- (b) the number of allotments on each allotment site,

- (c) the proportion of land on each allotment site (excluding any land falling within paragraph (b) of the definition of “allotment site” in section 69) that is not leased from the authority,
- (d) where an allotment site is leased by the local authority—
- 5           (i) the period of the lease of each allotment site, and
- (ii) the rent payable under the lease by the authority,
- (e) the period of any lease between the authority and the tenant of an allotment site,
- (f) the rent payable under any lease between the authority and the tenant of an allotment site,
- 10           (g) the number of persons entered in the list maintained under section 71(1) on the final day of the reporting year to which the report relates,
- (h) the steps taken by the authority to comply with the duty imposed by section 72(1),
- (i) reasons for any failure to comply with that duty,
- (j) the number of allotments on each allotment site that are accessible by a disabled person who has a physical impairment,
- 15           (k) the number of allotments on each allotment site adjusted by the authority during the reporting year to meet the needs of a tenant who is a disabled person who has a physical impairment,
- (l) the number of persons entered in the list maintained under section 71(1) during the reporting year whose request under subsection (1) of section 70 included information under subsection (3) of that section,
- 20           (m) the income received, and expenditure incurred, by the authority in connection with allotment sites, and
- (n) such other information as may be prescribed.

- 25           (3) The authority must publish the annual allotments report on a website or by other electronic means.
- (4) In this section, “reporting year” means—
- (a) the period of a year beginning with any day occurring during the period of a year after the day on which this section comes into force, and
- 30           (b) each subsequent period of a year.

## 80 Power to remove unauthorised buildings from allotment sites

- (1) This section applies where—
- (a) a building or other structure that is not permitted by, or does not comply with, a provision of regulations made under section 73(1) is erected on an allotment site,
- 35           and
- (b) at the time the building or other structure was erected or, as the case may be modified, regulations made under section 73(1) prohibited such erection or modification.
- (2) The local authority within whose area the allotment site is situated may—
- 40           (a) remove the building or other structure from the allotment site,



- (b) dispose of the materials that formed the building or other structure as it thinks fit, and
- (c) recover the cost of the removal, and the disposal of the materials, of the building or other structure from a liable tenant.

5 (3) “Liable tenant” means, where the building or other structure was erected by or on behalf of a tenant—

- (a) on the tenant’s allotment, that tenant, or
- (b) on other land as mentioned in paragraph (b) of the definition of “allotment site” in section 69, and the building or other structure on that other land was erected—

10 (i) without the consent of the tenants of other allotments on the allotment site of which that other land forms part, that tenant, or

(ii) with the consent of any tenants of such other allotments, that tenant and any other tenant who consented.

15 (4) A liable tenant mentioned in subsection (3)(b)(ii) is jointly and severally liable with other liable tenants mentioned in that subsection.

(5) Where a local authority proposes to take any action in exercise of a power conferred by subsection (2), it must—

(a) no later than one month before taking such action, give notice in writing of the authority’s proposed action to each tenant who would be affected by such action,

20 (b) allow each such tenant the opportunity to make representations to the authority in relation to the proposed action,

(c) take account of any representations received by it by virtue of paragraph (b), and

(d) give notice in writing to each tenant mentioned in paragraph (a) to inform them of the authority’s decision in relation to the proposed action and, if applicable, the date on which the proposed action is to take place.

25 (6) If the authority decides to take the proposed action, any tenant who was notified under subsection (5)(a) may appeal to the sheriff against the decision of the authority before the expiry of the period of 21 days beginning with the day on which the notice mentioned in subsection (5)(d) is given.

30 (7) The Scottish Ministers may by regulations make further provision for or in connection with the procedure to be followed in relation to the exercise of the powers conferred by subsection (2).

(8) In the case where an allotment site is leased by a local authority, the authority may not exercise a power conferred by subsection (2) if such exercise would contravene a provision of the lease.

## 81 Delegation of management of allotment sites

(1) A person who represents the interests of the tenants of each allotment on an allotment site may make a request to the local authority that owns or leases the site that the authority delegate to the person any of the authority’s functions mentioned in subsection

40 (2) in relation to the allotment site.

(2) The functions are—

(a) the functions under—

- 
- (i) section 70(6) (request to lease allotment),
  - (ii) section 71(1) (duty to maintain list),
  - (iii) section 74(9) and (10) (display and copies of allotment site regulations),
  - (iv) section 82 (promotion and use of allotments: expenditure),
- 5 (b) the giving of notice under—
- (i) section 83(1) (notice of termination of lease of allotment or allotment site),
  - (ii) section 84(2)(c) (notice of resumption),
  - (iii) section 85(2) (notice of termination: sublease by local authority).
- (3) A request under subsection (1) must—
- 10 (a) be made in writing, and
- (b) include—
- (i) the name and address of the person making the request, and
  - (ii) such other information as may be prescribed.
- (4) The authority may within 14 days of receiving the request, ask—
- 15 (a) the person making the request for such further information as it considers necessary in connection with the request, and
- (b) that the information be supplied within 14 days of the authority's request.
- (5) The authority must give notice to the person making the request of its decision to agree to or refuse the request—
- 20 (a) where further information is requested by the authority under subsection (4), before the expiry of 56 days beginning with the date on which the request is received by the authority, or
- (b) in any other case, before the expiry of 28 days beginning with the date on which the request is received by the authority.
- 25 (6) If the decision is to refuse the request, the notice referred to in subsection (5) must include reasons for the authority's decision.
- (7) If the decision is to agree to the request, the authority must decide—
- (a) which of its functions that are mentioned in subsection (2) are to be delegated to the person making the request, and
- 30 (b) the timing of any review of the delegation of those functions by the authority.
- (8) Before making a decision under subsection (7), the authority must consult the person who made the request.
- (9) The authority may recall the delegation of any of its functions delegated under this section if—
- 35 (a) it considers that the person to whom the functions are delegated is not satisfactorily carrying out a function, or
- (b) there is a material disagreement between the authority and the person to whom the functions are delegated about the carrying out of the functions.

- (10) In the case where an allotment site is leased by a local authority, the authority must not delegate any functions under this section to the person making the request where the delegation would contravene a provision of the lease.

## 82 Promotion and use of allotments: expenditure

A local authority may incur expenditure for the purpose of—

- (a) the promotion of allotments in its area, and
- (b) the provision of training by or on behalf of the authority to tenants, or potential tenants, of allotments about the use of allotments.

### *Termination of lease*

## 83 Termination of lease of allotment or allotment site

- (1) A local authority may terminate the lease of the whole or part of an allotment or an allotment site on a specified date if the authority has given the tenant of the allotment or the allotment site notice of the termination in accordance with subsection (2).

- (2) Notice is given in accordance with this subsection if—

- (a) it is in writing, and
- (b) it is given—
  - (i) if subsection (3) applies, at least one month before the specified date,
  - (ii) if subsection (4) applies, at least one year before the specified date.

- (3) This subsection applies if, following the expiry of the period of 3 months beginning with the date on which the lease commenced, the tenant has failed to a material extent to comply with any provision of the regulations made under section 73(1).

- (4) This subsection applies if the Scottish Ministers have consented to—

- (a) the disposal of the allotment site subject to the lease or, as the case may be, the allotment site on which the allotment is situated under section 75,
- (b) the change of use of the allotment site subject to the lease or, as the case may be, the allotment site on which the allotment is situated under section 75 or 76,
- (c) to the renunciation by the local authority of its lease of the allotment site subject to the lease or, as the case may be, the allotment site on which the allotment is situated under section 76.

- (5) Before sending any notice under subsection (1), a local authority must—

- (a) no later than one month before giving any notice under that subsection, write to the tenant to inform the tenant that the authority is proposing to give notice of termination under that subsection and give reasons for the authority's proposal,
- (b) allow the tenant the opportunity to make representations to the authority in relation to the authority's proposal,
- (c) take account of any representations received by it by virtue of paragraph (b), and
- (d) either—

(i) write to the tenant to inform the tenant that the authority no longer proposes to give notice under subsection (1) for the reasons referred to in paragraph (a), or

(ii) give notice under subsection (1) for those reasons.

5 (6) A tenant who is aggrieved by a notice given under subsection (1) may appeal to the sheriff within 21 days of the date of the notice.

(7) If subsection (4) applies, an appeal under subsection (6) may be made on a point of law only.

(8) A notice under subsection (1) has no effect until—

10 (a) the period within which an appeal may be made under subsection (6) has elapsed without an appeal being made, or

(b) where such an appeal is made, the appeal is withdrawn or finally determined.

(9) The decision of the sheriff on appeal under this section is final.

15 (10) The Scottish Ministers may by regulations make further provisions as to the procedure to be applied in connection with the exercise of the power conferred by subsection (1).

(11) Where, under subsection (2) of section 85, a local authority sends a copy of the notice mentioned in that subsection to a person, the authority need not also send a notice under subsection (1) of this section.

(12) In this section, “specified” means specified in the notice under subsection (1).

20 **84 Resumption of allotment or allotment site by local authority**

(1) This section applies where a person leases an allotment or an allotment site from a local authority.

(2) Despite any provision of the lease, the authority may resume possession of the whole or part of the allotment or the allotment site if—

25 (a) the resumption is required for building, mining or any other industrial purpose or for the construction, maintenance or repair of any roads or sewers necessary in connection with any such purpose,

(b) the Scottish Ministers have consented to the resumption, and

30 (c) the authority has given the tenant notice of the resumption in accordance with subsection (3).

(3) Notice is given in accordance with this subsection if—

(a) it is in writing,

(b) it is given at least three months before the date on which the resumption is to take place, and

35 (c) it specifies that date.

(4) The Scottish Ministers may make the granting of consent mentioned in subsection (2)(b) subject to such conditions as they think fit.

(5) The Scottish Ministers may not grant consent unless they are satisfied that—

- (a) the tenant of the allotment, or (as the case may be) the tenant of each allotment on the allotment site, is to be offered a lease of another allotment in the area of the local authority within a reasonable distance of the allotment site or the allotment site on which the allotment is situated, or
- 5 (b) the provision of the same or another allotment for the tenant is unnecessary or not reasonably practicable.

*Notice of termination: sublease*

**85 Notice of termination: sublease**

- (1) Subsection (2) applies where—
  - 10 (a) a local authority leases an allotment site from another person,
  - (b) the authority has granted a sublease of the allotment site or an allotment on the allotment site to a person, and
  - (c) the authority receives notice of termination of the lease of the allotment site.
- (2) The authority must—
  - 15 (a) send a copy of the notice to—
    - (i) the subtenant of the allotment site, or
    - (ii) the subtenant of each allotment on the allotment site, and
  - (b) inform each subtenant to whom a copy of the notice is sent under paragraph (a) that the effect of the notice is that the subtenant’s sublease is terminated on the  
20 date specified in the notice as the date on which the lease of the allotment site is terminated.

**86 Notice of termination: sublease by allotment association**

- (1) Subsection (2) applies where—
  - 25 (a) the local authority gives a notice under section 83(1), 84(2) or 85(2)(a)(i) to the tenant of an allotment site,
  - (b) allotments on the allotment site are sublet to another person (“subtenant”) by the tenant, and
  - (c) the tenant of the allotment site represents the interests of each subtenant.
- (2) The tenant must—
  - 30 (a) send a copy of the notice to each subtenant, and
  - (b) inform each subtenant that the effect of the notice is that the subtenant’s sublease is terminated on the date specified in the notice as the date on which the lease of the allotment site is terminated or, as the case may be, the date on which the allotment site is resumed.

35 *Tenants’ rights*

**87 Sale of surplus produce**

- (1) A tenant of an allotment may sell (other than with a view to making a profit) produce grown by the tenant on the allotment if the produce falls within a prescribed description.

- (2) Before making regulations under subsection (1), the Scottish Ministers must consult each local authority and any other person appearing to the Scottish Ministers to have an interest.

### 88 Removal of items from allotment by tenant

- 5 (1) A tenant of an allotment may remove from the allotment any of the items mentioned in subsection (2) before the expiry or termination of the tenant's lease.
- (2) The items are—
- (a) any buildings (or other structures) erected by or on behalf of the tenant,
- (b) any produce, trees or bushes—
- 10 (i) planted by or on behalf of the tenant, or
- (ii) acquired by the tenant.

### Compensation

### 89 Compensation for disturbance

- (1) Subsection (2) applies where—
- 15 (a) the lease of the whole or part of an allotment is terminated—
- (i) by notice under section 83(2)(b)(ii),
- (ii) as a result of a notice of termination of the lease of the allotment site on which the allotment is situated under section 83(2)(b)(ii),
- 20 (iii) as a result of resumption of the allotment, or the allotment site on which the allotment is situated, under section 84(2), or
- (iv) as a result of a notice mentioned in section 85(1)(c), and
- (b) the tenant of the allotment suffers damage caused by disturbance of the enjoyment of the tenant's allotment as a result of the termination of the lease.
- (2) The local authority in whose area the allotment is situated is liable to compensate a
- 25 person referred to in subsection (1)(b).
- (3) The minimum amount of compensation payable under subsection (2) is—
- (a) where the termination of the lease relates to the whole of an allotment, an amount equal to one year's rent of the allotment payable immediately before the termination of the lease,
- 30 (b) where the termination of the lease relates to part of an allotment, a proportion of the amount mentioned in paragraph (a) that is in the same proportion that the part of the allotment bears to the whole of the allotment.
- (4) The Scottish Ministers must by regulations make further provision for or in connection with compensation payable under subsection (2).
- 35 (5) Regulations under subsection (4) must include, in particular, provision about the procedure to be followed in—
- (a) determining whether the local authority is liable to pay compensation under subsection (2), and

(b) subject to subsection (3), assessing the amount of compensation for which the local authority is liable in cases where the lease does not make such provision.

(6) Before making regulations under subsection (4), the Scottish Ministers must consult—

(a) each local authority, and

(b) any other person appearing to the Scottish Ministers to have an interest.

(7) A person referred to in subsection (1)(b) who is aggrieved about any decision by the local authority in connection with the duty imposed by subsection (2) may appeal to the sheriff within 21 days of receiving notice of the authority's decision.

## 90 Compensation for deterioration of allotment

(1) This section applies where—

(a) the lease of a person (“the tenant”) of an allotment has expired or been terminated, and

(b) it appears to the local authority that leased the allotment to the tenant that—

(i) the allotment deteriorated during the tenant's lease of the allotment, and

(ii) the deterioration was caused by the fault or negligence of the tenant.

(2) The tenant is liable to pay compensation for the deterioration to the local authority.

(3) The amount of compensation payable is the cost of remedying the deterioration.

(4) The Scottish Ministers must by regulations make further provision for or in connection with compensation payable under subsection (2).

(5) Regulations under subsection (4) must include, in particular, provision about the procedure to be followed—

(a) in determining whether the tenant is liable to pay compensation under subsection (2), and

(b) in accordance with subsection (3), assessing the amount of compensation for which the tenant is liable in cases where the lease does not make such provision,

(6) Before making regulations under subsection (3), the Scottish Ministers must consult—

(a) each local authority, and

(b) any other person appearing to the Scottish Ministers to have an interest.

(7) A tenant who is aggrieved about any decision by the local authority in connection with the duty imposed by subsection (2) may appeal to the sheriff within 21 days of receiving notice of the authority's decision.

## 91 Compensation for loss of crops

(1) This section applies where—

(a) the whole or part of an allotment is resumed under section 84(2), and

(b) the tenant of the allotment suffers loss of any crop as a result of the resumption.

(2) The local authority that resumed the allotment under section 84(2) is liable to compensate the tenant.

- (3) The Scottish Ministers must by regulations make further provision for or in connection with compensation payable under subsection (2).
- (4) Regulations under subsection (3) must include, in particular, provision about the procedure to be followed in—
- 5           (a) determining whether the local authority is liable to pay compensation under subsection (2), and
- (b) assessing the amount of compensation for which the local authority is liable in cases where the lease does not make such provision.
- (5) Before making regulations under subsection (3), the Scottish Ministers must consult—
- 10           (a) each local authority, and
- (b) any other person appearing to the Scottish Ministers to have an interest.
- (6) A tenant who is aggrieved about any decision by the local authority in connection with the duty imposed by subsection (2) may appeal to the sheriff within 21 days of receiving notice of the authority's decision.

15   **92   Set-off of compensation etc.**

- (1) Where a local authority is liable to pay compensation to a former tenant under section 89(2) or 91(2), the local authority may deduct from the compensation any sum that the former tenant is liable to pay to the local authority in connection with the lease that was terminated.
- 20   (2) Where a tenant is liable to pay any sum to the local authority in connection with a lease of an allotment, the tenant may deduct from the sum any compensation that the local authority is liable to pay to the tenant under section 89(2) or 91(2).

*Interpretation of Part 7*

25   **93   Interpretation of Part 7**

In this Part—

“allotment” has the meaning given by section 68,

“allotment site” has the meaning given by section 69,

“disabled person” means a person who is disabled for the purposes of the Equality Act 2010,

30   “food-growing strategy” has the meaning given by section 77(3),

“lease” and “leased” include “sublease” and “subleased”,

“prescribed” means prescribed by the Scottish Ministers by regulations,

“tenant” includes “subtenant”.



**PART 8**

NON-DOMESTIC RATES

**94 Schemes for reduction and remission of non-domestic rates**

- 5 (1) After section 3 of the Local Government (Financial Provisions etc.) (Scotland) Act 1962, insert—

**“3A Schemes for reduction and remission of rates**

- (1) This section applies in relation to rates leviable for the year 2015-16 and any subsequent year.

- 10 (2) A rating authority may, in accordance with a scheme made by it for the purposes of this section, reduce or remit any rate leviable by it in respect of lands and heritages.

- (3) Any reduction or remission under subsection (2) ceases to have effect at such time as may be determined by the rating authority.

- 15 (4) A scheme under subsection (2) may make provision for the rate to be reduced or remitted by reference to—

- (a) such categories of lands and heritages as may be specified in the scheme,  
(b) such areas as may be so specified,  
(c) such activities as may be so specified,  
(d) such other matters as may be so specified.

- 20 (5) Any reduction or remission under subsection (2) ceases to have effect on a change in the occupation of the lands and heritages in respect of which it was granted.

- 25 (6) Before exercising the power conferred by subsection (2), or amending a scheme made under that subsection, the rating authority must have regard to the interests of persons liable to pay council tax set by the authority.”.

- (2) In Schedule 12 to the Local Government Finance Act 1992 (payments to local authorities by the Scottish Ministers), in paragraph 10(3)(a)—

- (a) in sub-paragraph (iii), after “Provisions” insert “etc.”, and  
(b) after that sub-paragraph insert—

- 30 “(iia)section 3A (schemes for reduction and remission of rates) of that Act;”.

- (3) In paragraph 2 of Schedule 1 (rules for the calculation of non-domestic rating contributions) to the Non-Domestic Rating Contributions (Scotland) Regulations 1996 (S.I. 1996/3070), in sub-paragraph (c), after “section” insert “3A or”.

- 35 (4) Paragraph 10(4) of Schedule 12 to the Local Government Finance Act 1992 does not apply in relation to the amendment made by subsection (3).

**PART 9**

## GENERAL

**95 Guidance under Parts 2 and 6: publication**

The Scottish Ministers must publish, in such manner as they think fit, any guidance issued by them relating to Part 2 or Part 6.

**96 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—

(a) section 72(4) or (5), or

(b) section 97(1) containing provisions which add to, replace or omit any part of the text of an Act,

is subject to the affirmative procedure.

(3) Regulations under section 12(1) are subject to the affirmative procedure.

(4) Any other orders and regulations under this Act are subject to the negative procedure.

(5) This section does not apply to—

(a) regulations under section 73(1), or

(b) orders under section 99(2).

**97 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.

**98 Minor and consequential amendments and repeals**

(1) Schedule 4 contains minor amendments and amendments consequential on the provisions of this Act.

(2) The enactments mentioned in the first column of schedule 5 (which include enactments that are spent) are repealed to the extent set out in the second column.

**99 Commencement**

(1) This section, sections 95 to 97 and section 100 come 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.

5      **100      Short title**

The short title of this Act is the Community Empowerment (Scotland) Act 2015.

SCHEDULE 1

*(introduced by section 4(1))*

COMMUNITY PLANNING PARTNERS

5 The board of management of a regional college designated by order under section 7A of the Further and Higher Education (Scotland) Act 2005 which is situated in the area of the local authority

The chief constable of the Police Service of Scotland

10 The Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978 whose area includes, or is the same as, the area of the local authority

Highlands and Islands Enterprise where the area within which, or in relation to which, it exercises functions in accordance with section 21(1) of the Enterprise and New Towns (Scotland) Act 1990 includes the whole or part of the area of the local authority

15 Any integration joint board established by virtue of section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014 to which functions of the local authority and the Health Board are delegated

A National Park authority, established by virtue of a designation order under section 6 of the National Parks (Scotland) Act 2000, for a Park whose area includes the whole or part of the area of the local authority

20 A regional strategic body specified in schedule 2A to the Further and Higher Education (Scotland) Act 2005 which is situated in the area of the local authority

Scottish Enterprise

The Scottish Environment Protection Agency

The Scottish Fire and Rescue Service

25 Scottish Natural Heritage

The Scottish Sports Council

The Skills Development Scotland Co. Limited

30 A regional Transport Partnership established by virtue of section 1(1)(b) of the Transport (Scotland) Act 2005 whose region includes, or is the same as, the area of the local authority

VisitScotland

SCHEDULE 2

*(introduced by section 16(1))*

PUBLIC SERVICE AUTHORITIES

35 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(1)(a) of the National Health Service (Scotland) Act 1978

40 Highlands and Islands Enterprise

A local authority

A National Park authority established by virtue of a designation order under section 6 of the National Parks (Scotland) Act 2000

The Police Service of Scotland

5 Scottish Enterprise

The Scottish Environment Protection Agency

The Scottish Fire and Rescue Service

Scottish Natural Heritage

10 A regional Transport Partnership established by virtue of section 1(1)(b) of the Transport (Scotland) Act 2005

SCHEDULE 3  
*(introduced by section 51(1))*

RELEVANT AUTHORITIES

15 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

20 A Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978

Highlands and Islands Enterprise

A local authority

A National Park authority established by virtue of a designation order under section 6 of the National Parks (Scotland) Act 2000

25 The Scottish Court Service

Scottish Enterprise

The Scottish Environment Protection Agency

The Scottish Fire and Rescue Service

The Scottish Ministers

30 Scottish Natural Heritage

The Scottish Police Authority

Scottish Water

A Special Health Board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978

35 A regional Transport Partnership established by virtue of section 1(1)(b) of the Transport (Scotland) Act 2005

SCHEDULE 4  
*(introduced by section 98(1))*

MINOR AND CONSEQUENTIAL AMENDMENTS

*Local Government Act 1992*

- 5     1     In section 1 of the Local Government Act 1992 (publication of information as to standards of performance), in subsection (1)(b), for the words “Part 2 (community planning) of the Local Government in Scotland Act 2003 (asp 1)” substitute “Part 2 (community planning) of the Community Empowerment (Scotland) Act 2015”.

*Land Reform (Scotland) Act 2003*

- 10     2     (1)   The Land Reform (Scotland) Act 2003 is amended in accordance with this paragraph.
- (2)   In section 37 (registration of interest in land)—
- (a)   after subsection (7)(b) insert “and
- (c)   any notice sent under section 44A,”,
- (b)   in subsection (11)(c), for the words “not registrable land” substitute “excluded land as defined in section 33(2) above”,
- 15           (c)   in subsection (18), after paragraph (a), insert—
- “(aa) where the decision is that such an interest is to be entered in the Register, contain information about the duties imposed under section 44A,”,
- (d)   in subsection (19), after “above” insert “, including that subsection as modified by
- 20           section 39(2)(b) below,”.
- (3)   In section 51 (exercise of right to buy: approval of community and consent of Ministers)—
- (a)   in subsection (2)(a)(i), the words “conducted by the community body” are repealed, and
- 25           (b)   in subsection (6)—
- (i)   in paragraph (a), after “receipt” insert “by Ministers”,
- (ii)   in that paragraph, the words “conducted by the body” are repealed, and
- (iii)   in paragraph (b), the words “conducted by those bodies” are repealed.
- (4)   In section 52 (ballot procedure)
- 30           (a)   in subsection (3)—
- (i)   for the words “community body which conducts a ballot” substitute “ballotter appointed under section 51A”,
- (ii)   after “notify” insert “Ministers, the community body, the owner of the land to which the ballot relates and any creditor in a standard security with a right to sell the land of”,
- 35           (iii)   the word “and” immediately following paragraph (c) is repealed,
- (iv)   after paragraph (d) insert—
- “(e) the wording of that proposition, and

(f) any information provided by the ballotter to persons eligible to vote in the ballot.”,

(v) the words “to Ministers” are repealed, and

(b) after subsection (4) insert—

“*(5)* Within 7 days of receiving notification under subsection (3) above, Ministers may—

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

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

(6) The validity of anything done under this Part of this Act is not affected by any failure by a ballotter to comply with the time limit specified in subsection (4).”.

(5) In section 98 (general and supplementary provisions)—

(a) in subsection (5)—

(i) for “or 94” substitute “94 or 97E(4)”, and

(ii) after “above” insert “or regulations made under section 34(A1)(b) or (4A), 97C(2), (3) or (4), 97F(6) or 97N(1) or (3) above”, and

(b) in subsection (8), for “and 52(3)” substitute “, 52(3), 97G(7) and (9) and 97J(4)”.

SCHEDULE 5

*(introduced by section 98(2))*

REPEALS

<i>Enactment</i>	<i>Extent of repeal</i>
Allotments (Scotland) Act 1892	The whole Act.
Land Settlement (Scotland) Act 1919	Part 3 and paragraph 6 of the First Schedule.
Allotments (Scotland) Act 1922	The whole Act.
Allotments (Scotland) Act 1950	The whole Act.
Local Government (Scotland) Act 1973	Section 73(2) and (3).
Local Government in Scotland Act 2003	Part 2.
Land Reform (Scotland) Act 2003	In section 38(1), paragraph (a) and, in paragraph (b), the word “substantial” where it appears in each of sub-paragraphs (i) and (ii).
	Section 40(4)(g)(iv).

<i>Enactment</i>	<i>Extent of repeal</i>
	In section 50, subsection (2)(b).
	In section 51, subsection (3)(a).
	In section 52, subsection (2).
5	In section 61(3), the words from “or” to “person”.
	In section 62, subsections (5), (6) and (8) and, in subsection (7), the words “within 4 weeks of the hearing of the appeal”.
10	In section 98(5), the word “33”.





# **Community Empowerment (Scotland) Bill**

[AS INTRODUCED]

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

Introduced by: John Swinney  
Supported by: Derek Mackay, Paul Wheelhouse  
On: 11 June 2014  
Bill type: Government Bill

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Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by APS  
Group Scotland.

ISBN 978-1-78457-641-7