



The Scottish Parliament  
Pàrlamaid na h-Alba

## RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

### AGENDA

30th Meeting, 2014 (Session 4)

Wednesday 26 November 2014

The Committee will meet at 9.30 am in the Adam Smith Room (CR5).

1. **Decision on taking business in private:** The Committee will decide whether to take item 6 in private.
2. **Subordinate legislation:** The Committee will take evidence on the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 2015 [draft] from—

Richard Lochhead, Cabinet Secretary for Rural Affairs, Food and the Environment, Brian Endicott, Deputy Scheme Manager, and Gemma MacAllister, Solicitor, Scottish Government.

3. **Subordinate legislation:** Richard Lochhead (Cabinet Secretary for Rural Affairs, Food and the Environment) to move—S4M-11642—That the Rural Affairs, Climate Change and Environment Committee recommends that the The Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 2015 [draft] be approved.
4. **The Scottish Government's Draft Budget 2015-16:** The Committee will take evidence from—

Richard Lochhead, Cabinet Secretary for Rural Affairs, Food and the Environment, David Barnes, Deputy Director, Agriculture and Rural Development, Drew Sloan, Director of Rural Payments and Inspections, Susan Davies, Deputy Director of Rural and Environmental Science, and Linda Rosborough, Director, Marine Scotland, Scottish Government.

5. **Community Empowerment (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Peter Peacock, Policy Director, Community Land Scotland;

Sandra Holmes, Head of Community Assets, Highlands and Islands Enterprise;

David Prescott, Chair of the Board, Holmehill Community Buyout;

Duncan Burd, Rural Affairs Sub-Committee, Law Society of Scotland;

John Watt, specialist in community land ownership.

6. **The Scottish Government's Wildlife Crime in Scotland - 2013 Annual Report:** The Committee will consider its letter to the Scottish Government.

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The papers for this meeting are as follows—

**Agenda item 2 and 3**

Note by the Clerk RACCE/S4/14/30/1

**Agenda item 3**

Note by the Clerk RACCE/S4/14/30/2

PRIVATE PAPER RACCE/S4/14/30/3  
(P)

**Agenda item 4**

Note by the Clerk RACCE/S4/14/30/4

PRIVATE PAPER RACCE/S4/14/30/5  
(P)

**Agenda item 5**

PRIVATE PAPER RACCE/S4/14/30/6  
(P)

**Subordinate legislation cover note for the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 2015 [draft]**

**Title of Instrument:** The Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 2015 [draft]

**Type of Instrument:** Affirmative

**Laid Date:** 15 October 2014

**Circulated to Members:** 21 November 2014

**Meeting Date:** 26 November 2014

**Minister to attend the meeting:** Yes

**Drawn to the Parliament’s attention by the Delegated Powers and Law Reform Committee:** No

**Reporting Deadline:** 5 December 2014

**Purpose**

1. This Order makes provision under section 30(3) of the Scotland Act 1998. It concerns functions related to the implementation of a European Union legislative instrument on the common agricultural policy, which apply to an agricultural area or an agricultural activity by reference to a holding, and prerogative and other executive functions under section 53(2)(a) of that Act.

2. By virtue of article 2 of this Order, so far as exercisable in relation to a farmer whose holding within the United Kingdom is situated wholly or partly in Scotland (a “Scottish farmer”, as defined in article 1 of this Order), those functions should be treated for the purposes of the Scotland Act 1998 as being functions which are exercisable in or as regards Scotland.

**Procedure**

3. The draft Order was laid on 15 October 2014 and referred to the Rural Affairs, Climate Change and Environment Committee. The Order is subject to affirmative procedure (Rule 10.6). It is for the Rural Affairs, Climate Change and Environment Committee to recommend to the Parliament whether the Order should be approved. The Cabinet Secretary for Rural Affairs and the Environment has, by motion S4M-11642 (set out in the agenda), proposed that the Committee recommends the approval of the Order.

**Delegated Powers and Law Reform Committee**

4. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 28 October 2014 and agreed not to draw the instrument to the attention of the Parliament.

## Action

5. The Committee must decide whether or not to agree to the motion, and then report to the Parliament accordingly, by 5 December 2014.

## POLICY NOTE

The above Instrument is proposed to be made under section 30(3) of the Scotland Act 1998. Section 30(3) confers a power on Her Majesty, by an Order in Council, to specify functions which are to be treated as functions which are exercisable in or as regards Scotland.

By virtue of paragraphs 1 and 2 of Schedule 7 to the Scotland Act 1998, this Order is subject to affirmative resolution procedures in both Houses of the UK Parliament and the Scottish Parliament.

## Policy Objectives

This Order will ensure that the Scottish Parliament and the Scottish Ministers have competence to deal with Scottish farmers. This Order will define a “Scottish farmer” as having land wholly or partly in Scotland. This is needed because a “farmer” under the Common Agricultural Policy (CAP) is defined by reference to a “holding” across the UK contained in European legislation, and it is otherwise not clear how the new support measures provided by Regulation (EU) No 1307/2013 of the European Parliament and of the Council are calculated.

A holding consists of all the production units used for agricultural activities and managed by the farmer in the Member State and, therefore, a Scottish farmer (as defined by the Order) may have a holding which straddles the border, or may have holdings which consist of land both in Scotland and England which exist as separate production units (and, therefore, do not straddle the border). The relevant functions which the Order concerns include those which relate to Regulation (EU) No 1306/2013 of the European Parliament and of the Council, as well as prerogative and other executive functions which are exercisable in relation to a Scottish farmer (as defined by the Order).

The section 30 Order will work in conjunction with an Order under section 106 of the Scotland Act 1998 that will have the effect of creating a separately exercisable function in relation to these Scottish farmers (whose holdings are situated partly in Scotland and partly in the territory of another administration). The two Scotland Act Orders will ensure that the Scottish Ministers can continue to administer claims as the competent authority under the IACS Regulations (see paragraph 7) in respect of these farmers.

## *Current Situation*

The CAP provides a system of agricultural support and programmes throughout the European Union (EU). First established in 1957, it currently accounts for almost 39% of the EU Budget. It is split into two Pillars: Pillar 1 relates to direct support payments, which is currently worth about £0.5bn a year to Scotland's farmers; Pillar 2 supports the Rural Development Programme (about £0.2bn a year).

The CAP Pillar 1 was reformed in 2003/2004 to provide income support for farmers. The reforms cut the link between subsidies and production but allowed payments to continue (conditional on observation of certain land management, environmental, animal welfare, and food safety standards). It is a long-standing regulatory requirement for farmers participating in the CAP and receiving Pillar 1 support payments that they must be treated by administrations as a single business within the member state. Farm businesses do not always fall neatly within administration boundaries so that there are a number of businesses with land in more than one administration. Such businesses are known as “cross-border farmers”.

In order to enable the administration of applications for subsidy for cross-border farmers under the CAP to continue, two Scotland Act Orders were taken forward at that time: (The Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 2004 (SI 2004/3324), a section 30 Order, and The Scotland Act 1998 (Modification of Functions) Order 2004 (SI 2004/2980), a section 106 Order). They combined to define a “Scottish farmer” and to facilitate the transfer of powers to the Scottish Ministers. These Orders also tie in with the UK SI (currently the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009 (SI 2009/3263) (“the IACS Regulations”) since the EU rules require claims for subsidy to be administered by a single competent authority. These 2004 Orders replicated two earlier Scotland Act Orders (SIs 1999/1748 and 1999/1756) which referred to the previous CAP arrangements and the Orders now proposed do nothing more than continue this long established aspect of devolution.

The current CAP arrangements will end on 31 December 2014. The latest reforms for direct payments to farmers under support schemes within the framework of CAP are set out in Council Regulation (EC) 1307/2013, which includes repealing Council Regulations (EC) 637/2008 and 73/2009, with effect from 1 January 2015. The new CAP reform proposal seeks to strengthen the competitiveness of the agricultural sector, promote innovation, combat climate change and support jobs and growth in rural areas. To achieve these aims, payments to farmers are being restructured, calculated in a different way and subject to different obligations.

#### *Effect of Instrument*

As stated above, section 30(3) of the Scotland Act 1998 confers a power on Her Majesty, by an Order in Council, to specify functions which are to be treated as functions which are exercisable in or as regards Scotland. In this case, this Instrument will define a “Scottish farmer” as having land wholly or partly in Scotland.

However, before a function can be specified in such an Order in Council as being exercisable in or as regards Scotland, it must be capable of being exercisable separately in or as regards Scotland. Therefore, a separate Order under section 106 of the Scotland Act 1998 (the Scotland Act 1998 (Modification of Functions) Order 2014) is being taken forward to enable subordinate legislation to be made to modify a function to make it so exercisable for the purpose of enabling or facilitating its transfer to the Scottish Ministers.

The Order under section 106 will have the effect of creating a separately exercisable function in relation to those farmers whose holdings are situated partly in Scotland and partly in the territory of another administration. This is needed because a

“farmer” under the CAP is defined by reference to a “holding” across the whole territory of a Member State and, on its own, it is not sufficient to identify those individuals over whom the Scottish Ministers have competence. Without the Order, it would not be clear which administration in the UK (as the member state) would be competent to manage applications and related payments in respect of those farmers in Scotland. The section 30 Order will ensure that the Scottish Parliament and the Scottish Ministers have competence to deal with Scottish farmers (as defined by the Order). Ultimately, the two Orders will combine to allow the administration of applications for subsidy for cross-border farmers under the CAP scheme to continue when the current arrangements end on 31 December 2014.

Under the current CAP arrangements, a farmer with land in the territories of more than one administration has his application forms dealt with by the administration in which the majority of the land lies. There exists for the farmer, however, the option to continue dealing with the administration, which historically has dealt with his claims even if subsequent changes in his land holdings mean that the majority of land now lies in a different administration. This allows the farmer to have continuity of service from the administration holding his relevant business details. The use of a particular administration or the election of a different administration has no impact on the value of support the farmer will receive. This option to choose an administration will continue under the new CAP arrangements.

The UK Government has agreed to this proposed course of action, and to the laying of the draft instrument before both Houses of Parliament at Westminster for approval, as required by paragraphs 1 and 2 of Schedule 7 to the Scotland Act 1998.

### **Consultation**

Although there has been no public consultation specific to the amendments of this Order, the UK Government, Northern Ireland Executive and Welsh Government departments with responsibility for the legislation which this Order affects have been consulted during the drafting of this Order. All amendments contained in this Order have the approval of the relevant departments.

### **Financial effects**

This Instrument (and its companion Instrument – see paragraph 10) does no more than give Scottish Ministers the powers to act. Other detailed provisions will be brought forward in secondary legislation to implement the respective schemes in each of the territories of the United Kingdom. There are, therefore, no financial implications.

This instrument has no impact of a regulatory nature on the private sector or civil society organisations and will not impose or reduce costs.

### **EXPLANATORY NOTE**

As per ‘*purpose*’ above, and including:

This includes functions which relate to Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No

1290/2005 and (EC) No 485/2008 (“the EU Regulation”). It also includes prerogative and other executive functions which are exercisable in relation to a Scottish farmer.

This Order makes clear the powers of the Scottish Parliament and the Scottish Ministers under the EU Regulation in relation to a Scottish farmer as a consequence of the reform of the common agricultural policy of the European Union.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

## Scrutiny of the Scottish Government's Draft Budget 2015-16

### Budget documents and related information

1. The Scottish Government published its *Draft Budget 2015-16*<sup>1</sup> on 9 October 2014 and Chapter 10<sup>2</sup> contains the proposed spending for the Rural Affairs and Environment portfolio (RAE). On 23 October 2014, the Scottish Government published a further level of budget information<sup>3</sup> (known as level 4) for each portfolio.
2. The Scottish Government published a *Carbon Assessment of the 2015-16 Draft Budget*<sup>4</sup> and an *Equality Statement*<sup>5</sup> alongside the draft budget. A *Scotland Performs Update*<sup>6</sup> document was also published.
3. On 16 October 2014, the Financial Scrutiny Unit (FSU) in the Scottish Parliament Information Centre (SPICe) published a briefing<sup>7</sup> on the draft budget. This was followed on 24 October 2014 by a second<sup>8</sup> FSU briefing designed to aid committees in their budget scrutiny. A SPICe briefing specific to the Rural Affairs and Environment budget<sup>9</sup> has also been published. In addition to this, SPICe has published an infographic<sup>10</sup> which shows the RAE EU Support and Related Services budget in detail. All of the FSU support and guidance on the budget can be viewed online<sup>11</sup>.
4. On 11 November 2014 the Scottish Government published its *Draft Budget 2015-16 - Details of funding for climate change mitigation measures*<sup>12</sup> document. This links the draft budget to the Scottish Government's Second Report on

<sup>1</sup> Scottish Government (2014). Scottish Draft Budget 2015-16. Available at: <http://www.scotland.gov.uk/Publications/2014/10/2706/0>.

<sup>2</sup> Scottish Government (2014). Scottish Draft Budget 2015-16. Chapter 10.

<sup>3</sup> Scottish Government (2014). Draft Budget 2015-16: level 4 figures. Available at: [http://www.scottish.parliament.uk/FinancialScrutiny/2015-16\\_budget\\_Level\\_4.xls](http://www.scottish.parliament.uk/FinancialScrutiny/2015-16_budget_Level_4.xls).

<sup>4</sup> Scottish Government (2014). Carbon Assessment of the Scottish Draft Budget 2015-16. Available at: <http://www.scotland.gov.uk/Resource/0046/00460459.pdf>.

<sup>5</sup> Scottish Government (2014). Equality Statement Scottish Government Draft Budget 2015-16. Available at: <http://www.scotland.gov.uk/Resource/0046/00460433.pdf>.

<sup>6</sup> Scottish Government (2014). Scotland Performs Update. Available at: <http://www.scotland.gov.uk/Resource/0046/00460523.pdf>.

<sup>7</sup> Scottish Parliament (2014). Financial Scrutiny Unit Briefing Draft Budget 2015-16. Available at: [http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB\\_14-70.pdf](http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_14-70.pdf).

<sup>8</sup> Scottish Parliament (2014). Financial Scrutiny Unit Second Briefing on the Draft Budget 2015-16. Available at: Scottish Parliament (2014). Financial Scrutiny Unit Briefing Draft Budget 2015-16.

Available at: [http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB\\_14-73.pdf](http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_14-73.pdf).

<sup>9</sup> Scottish Parliament (2014). SPICe Rural Affairs and Environment Briefing Draft Budget 2015-16. Available at: [http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB\\_14-77.pdf](http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_14-77.pdf).

<sup>10</sup> SPICe infographic for the EU Support and Related Services budget. Available at: [http://www.scottish.parliament.uk/S4\\_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/SPICE\\_Rural\\_Budget\\_infographic.pdf](http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/SPICE_Rural_Budget_infographic.pdf).

<sup>11</sup> FSU information on the Scottish Government Budget. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/17534.aspx>.

<sup>12</sup> Scottish Government (2014). Draft Budget 2015-16 Details of funding for climate change mitigation measures. Available at: <http://www.scotland.gov.uk/Resource/0046/00463182.pdf>.

Proposals and Policies (RPP2)<sup>13</sup> which sets out how Scotland will meet its climate change targets, as set out in the Climate Change (Scotland) Act 2009<sup>14</sup>.

5. The Finance Committee has published guidance<sup>15</sup> to subject committees to assist them in their scrutiny.

### **Rural Affairs and Environment budget and portfolio performance**

6. In cash terms<sup>16</sup>, the Rural Affairs and Environment (RAE) budget for 2015-16 is set at £608.0m (of which £521.4m is DEL<sup>17</sup> Resource, and £79.1m is DEL Capital). This is an increase on the 2014-15 spend which was £559.2m. In real terms<sup>18</sup>, the budget for 2015-16 is £598.4m (of which £513.2m is DEL Resource, £77.8m is DEL Capital, and £7.4m is listed as Annually Managed Expenditure<sup>19</sup>).

7. The RAE budget is broken down into six areas of spend: EU Support and Related Services; Research, Analysis and Other Services; Marine and Fisheries; Environment and Rural Services; Climate Change; and the Forestry Commission.

8. The Scottish Government's National Performance Framework (NPF) states that the Government's purpose is to "...focus Government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth." It lists eight Purpose Targets, one of which is specifically relevant to the RACCE Committee—

- Sustainability – Reduce Greenhouse Gas Emissions - to reduce emissions over the period to 2011 and to reduce emissions by 80% by 2050 (these both are recorded on the Scotland Performs website as performance improving).

9. The NPF lists "Greener" as one of its five overarching strategic objectives. Below that sit 16 National Outcomes, the most relevant of which are—

- we value and enjoy our built and natural environment and protect it and enhance it for future generations;

<sup>13</sup> Scottish Government (2013). *Low Carbon Scotland: Meeting our Emissions Reduction Targets 2013-2027: The Second Report on Proposals and Policies (RPP2)*. Available at: <http://www.scotland.gov.uk/Publications/2013/06/6387>.

<sup>14</sup> Climate Change (Scotland) Act 2009. Available at: <http://www.legislation.gov.uk/asp/2009/12/contents>.

<sup>15</sup> Scottish Parliament Finance Committee (2014). *Draft Budget 2015-16 - Guidance to other Committees*. Available at: [http://www.scottish.parliament.uk/S4\\_FinanceCommittee/General%20Documents/Guidance\\_to\\_subject\\_committees\\_-\\_Draft\\_Budget\\_2015-16.pdf](http://www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/Guidance_to_subject_committees_-_Draft_Budget_2015-16.pdf).

<sup>16</sup> Cash term figures have not been adjusted to take account of the effect of inflation.

<sup>17</sup> DEL stands for Departmental Expenditure Limits, which form the majority of the Scottish Government's budget and is the budget provision that the Scottish Government can plan and control over the Spending Review period.

<sup>18</sup> Real terms figures have been adjusted to take account of the effect of inflation.

<sup>19</sup> Annually Managed Expenditure (AME) is described in the draft budget (on page 183) as: "spending that does not fall within Departmental Expenditure Limits (DEL). AME is generally less predictable than expenditure in DEL and is not subject to multi-year limits. It is set each year and contains those elements of expenditure that are not really predictable, for example NHS and Teachers' pensions."

- we reduce the local and global environmental impact of our consumption and production; and
- we live in well-designed, sustainable places where we are able to access the amenities and services we need.

10. Below that sit 50 indicators, the most relevant of which are to—

- increase research and development spending (performance maintaining);
- improve knowledge exchange from university research (performance worsening);
- increase people's use of Scotland's outdoors (performance worsening);
- improve the condition of protected nature sites (performance maintaining);
- increase the abundance of terrestrial breeding birds: biodiversity (performance worsening);
- improve the state of Scotland's marine environment (performance worsening);
- reduce Scotland's carbon footprint (performance worsening); and
- reduce waste generated (performance improving).

11. The Committee will consider these indicators and the recorded performance of each as part of its scrutiny of the draft budget.

### **RACCE Committee scrutiny**

12. The RACCE Committee's role in the Parliament's scrutiny of the draft budget is to scrutinise the elements of it which are the responsibility of the Cabinet Secretary for Rural Affairs, Food and the Environment and which therefore fall within the Committee's remit and to report its findings to the Finance Committee.

#### *RACCE Committee agreed approach*

13. The Committee has agreed to focus its scrutiny on what the draft budget will deliver for rural Scotland and the environment and will use relevant aspects of the Scottish Government's National Performance Framework to assess this, including the strategic objectives, national outcomes, and national indicators. The Committee will be focussing on the prioritisation and value for money of funds within its remit.

14. The Committee also agreed to focus on the delivery of the following specific areas—

- Forestry - the Committee will examine the Forestry Commission's draft budget, together with any other parts of the rural affairs and environment portfolio budget (such as the Forestry Grant Scheme delivered as part of the SRDP package of measures funded under the EU Support and Related Services budget. which contribute to the delivery of related national targets, objectives, outcomes and indicators; and
- Scotland Rural Development Programme (SRDP) climate measures – the Committee will examine budgets within the SRDP package of measures funded under the EU Support and Related Services budget to assess impacts on climate change; and

- Equalities issues; age - the Committee will examine equalities issues relevant to its scrutiny of the rural affairs and environment chapter of the Scottish Government's draft budget, particularly with regard to age (for example, funding available for new entrants into agriculture; support for specific age groups in embracing Scottish Government climate adaptation and behaviour change ambitions; and access to the countryside for all age groups).

15. Scrutiny of climate change issues across other parts of the budget has again been mainstreamed this year with relevant subject committees being asked to consider the implications of planned expenditure on Scotland's climate change emissions when scrutinising their own relevant Scottish Government portfolios.

#### *Equalities*

16. The Committee will scrutinise the RAE budget to assess equalities impacts and any inequalities it may cause for any groups in Scotland's population, particularly in relation to the nine protected characteristics set out in the Equality Act 2010<sup>20</sup>. The Committee will also scrutinise the RAE section of the Scottish Government's Equality Statement on the budget.

17. The Committee is also keen to ensure that the challenges faced by older people in rural areas, and the funding of their access to services such as health care, transport and education, are not overlooked. Therefore, given that the Infrastructure and Capital Investment Committee (ICI) is focussing its own scrutiny of the draft budget on some of these issues, the Convener wrote<sup>21</sup> to the ICI Convener on 8 October 2014 to ask that consideration be given to including the issue of age in rural areas as part of the ICI Committee's budget scrutiny.

#### *Evidence gathering*

18. The Committee published a call for views<sup>22</sup> on the draft budget on 9 October 2014, setting deadlines for responses of 27 October 2014 (forestry); 3 November 2014 (SRDP climate measures); and 10 November 2014 (age issues in rural areas and all other issues). Written submissions to date can be found online<sup>23</sup>. Supplementary written submissions which have not been previously circulated in hard copy are also attached at the **Annexe**.

19. At its meeting on 5 November 2014<sup>24</sup> the Committee took evidence from stakeholders and Forestry Commission Scotland on the issue of forestry. At its

<sup>20</sup> Equalities Act 2010. Available at: <http://www.legislation.gov.uk/ukpga/2010/15/contents>.

<sup>21</sup> Scottish Parliament Rural Affairs, Climate Change and Environment Committee. Letter from the Convener to the Convener of the Infrastructure and Capital Investment Committee. Available at: [http://www.scottish.parliament.uk/S4\\_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2014.10.06\\_-\\_ICI\\_budget\\_age\\_letter.pdf](http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2014.10.06_-_ICI_budget_age_letter.pdf).

<sup>22</sup> Scottish Parliament Rural Affairs, Climate Change and Environment Committee. Draft Budget 2015-16 - call for views. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/82310.aspx>.

<sup>23</sup> Scottish Parliament Rural Affairs, Climate Change and Environment Committee. Draft Budget 2015-16 – written submissions. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/82310.aspx>.

<sup>24</sup> Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report, 5 November 2014*. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9617&i=87360>.

meeting on 12 November 2014<sup>25</sup> the Committee took evidence from stakeholders on the issue of SRDP climate measures. The Committee took evidence<sup>26</sup> from the Minister for Environment and Climate Change, Paul Wheelhouse, and his officials, on 19 November 2014.

20. The Committee will conclude its evidence-taking with a session with the Cabinet Secretary for Rural Affairs, Food and the Environment, Richard Lochhead, and his officials, on 26 November 2014. The session with the Cabinet Secretary will cover issues such as SRDP climate change measures, the wider Common Agricultural Policy budget, and equalities issues.

#### *Reporting*

21. The Committee will consider and agree its report to the Finance Committee at its meetings on 10 and 17 December 2014.

#### **Clerks/SPICe**

#### **Rural Affairs, Climate Change and Environment Committee**

#### **Annexe**

### **Supplementary written evidence from NFU Scotland**

#### **Beef package in SRDP**

#### **Introduction**

This briefing is a supplementary to written and oral evidence that NFU Scotland has submitted to the Rural Affairs, Climate Change and Environment Committee in relation to the SRDP climate measures contained within the Scottish Government's Draft Budget 2015-16. The below combines previous evidence submitted by NFU Scotland to the Scottish Government as part of its examination of draft Scottish Rural Development Programme proposals in February 2014, and thinking based upon the Irish model.

The below evidence provides further detail on a proposed Scottish beef improvement database as part of the new money that the Scottish Government has pledged towards a beef scheme within the SRDP. It should be noted that this is NFU Scotland's preferred method of delivery, however this may or may not be reflected in the Scottish Government's final implementation plans, the detail of which NFU Scotland keenly anticipates. The Scottish Government's Beef 2020<sup>27</sup> document may also be a useful point of reference to provide further context.

The aim of the beef scheme is to drive innovation, carbon efficiency and create an industry focused on meat yield and quality. The scheme would inject immediate

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<sup>25</sup> Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 12 November 2014. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9632&i=87485>.

<sup>26</sup> Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 19 November 2014. Available by 6pm on 21 November at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29876.aspx>.

<sup>27</sup> <http://www.scotland.gov.uk/Publications/2014/08/2085>

support to the sector and deliver data capture to guide immediate management decisions in Scottish farms. Established databank information would be available to underpin the design of future production systems, including genetics, and develop high quality production models. The central point for the entire program would be a national cattle database. The various aspects and stakeholders to consider are detailed in the Appendix.

### **Proposed Scottish Beef Improvement Database**

The creation of a Scottish beef improvement database would form the bedrock of the scheme, and therefore requires the political will of the sector to work. It needs a balance of science (SAC, Roslyn, Moredun), industry (SAMW and IAAS), farmers (NFUS, SBA, commercial farmer representatives, pedigree farmer representatives), quangos (Scotland Food and Drink, QMS) and the Scottish Government. This balance must drive the project forward whilst maintaining farmer credibility.

Participating farmers would receive a payment per animal if they were part of the scheme, with the overarching goal to collect information on the entire life cycle of animals. Results from information gathered, and the DNA testing, would be analysed with appropriate bench mark groups and published to help farmers select breeding and finishing stock. The corner stone of the programme is the database and its ability to collect information and feed it back to farmers. As data accumulates, systems and genetic efficiency can be identified to guide the strategic development of the sector.

The claimant would be obligated to fill in survey information for their herd. The core elements recorded would be on farm for calf and dam, and at the abattoir, and would include information indices on calving ease, vaccinations, genetics and health condition.

### **Irish example**

For the project to succeed, we need farmers to understand the benefits and use it for making decisions. Ireland has 30 contracted breeding specialists who highlight the benefit of the Irish Cattle Breeding Federation (ICBF) program. All pedigree breed societies who are part of the scheme have their own board who feed into the national breeding program and have their own breed EBVs. This is vital for keeping political differences to a minimum.

The Irish government has paid farmers to attend discussion groups in the past. For example, there is currently the Beef Technology Adoption Program which requires farmers to attend classes after which they receive a payment per animal. Each point outlined above is eminently possible in Scotland, however, we cannot rush into the project and need to ensure we are representing our members' interests.

Whilst genomics is certainly the direction of travel and does have a big part to play, genomic technology should be focused on confirming the sire and helping to fill the genetics map. Therefore, the database would need to be up and running before it is populated with more complicated genomic traits.

In the last thirteen years the Irish cattle breeding industry has undergone a complete redevelopment of its data gathering and genetic evaluation infrastructure. The key developments include:

- The establishment of ICBF as a working partnership between the organizations involved in Irish cattle breeding;
- The establishment of a shared cattle breeding database;
- The implementation of a data collection and sharing system that eliminates duplication at farm and organization level;
- The development of a genetic evaluation system which identifies, on a worldwide basis, those cattle that are most profitable under Irish conditions, and supporting and promoting increased international collaboration in beef breeding and genomics;
- Irish farmers, research scientists, Herd Books and AI Companies have responded by making good use of the greatly increased amount of information now available. As a result, Irish farmers are now able to better exploit the potential of genetics as a tool for improving the profitability of their enterprises.

### **Infrastructure**

A fundamental element of the scheme would be funding abattoir upgrades through the SRDP's food processing and marketing components. The programme would require the installation of Visual Imaging Analysis (VIA) and eating quality technology in abattoirs. The system will be able to improve the number of animals achieving higher eating quality. The entire life cycle of the carcass would be analysed and information fed back to the producer. Ultimately this would put Scottish beef on the strongest footing for our premium and reputation.

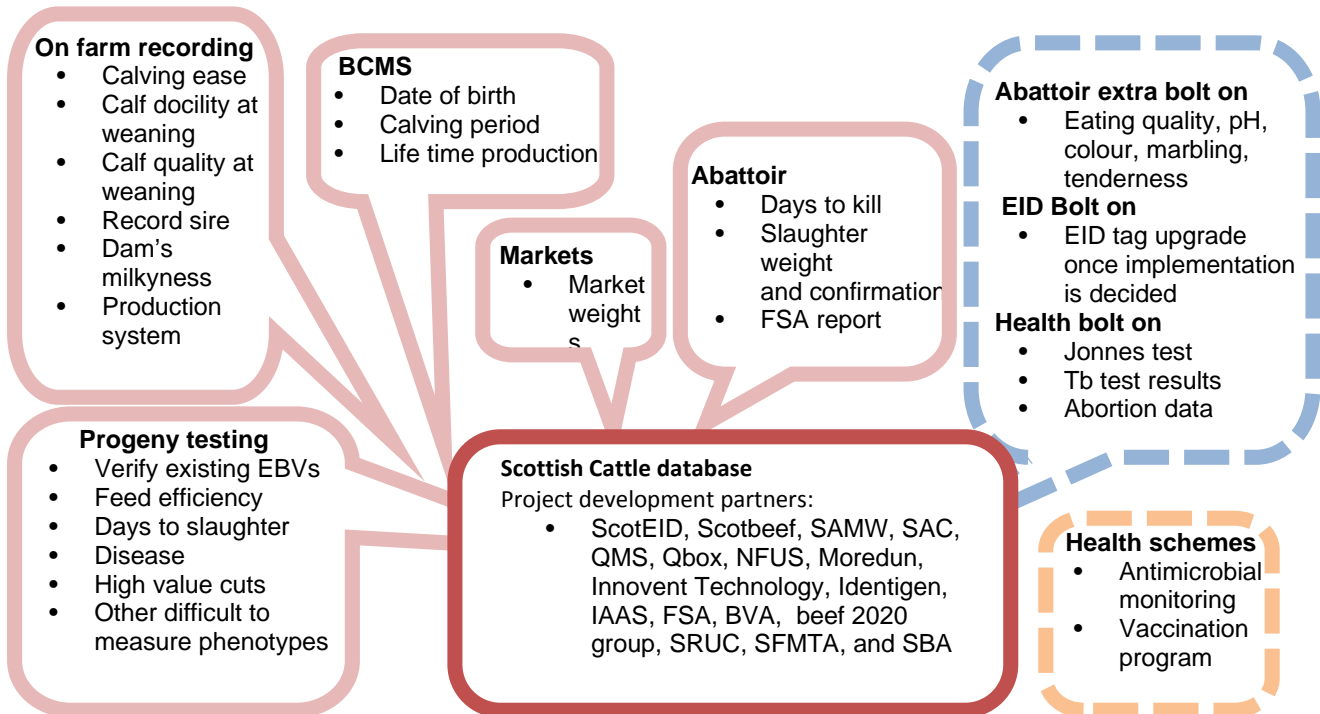
Scotland's livestock sector would become much more efficient. Gathering information on lifetime performance and yield can add further carbon gains and economic value. A genetic map of the national herd can identify traits and blood lines which deliver high performance under specific systems and pressures.

Scotland's Food Standards Agency must also be linked to the database allowing the flow of individual carcass food chain information from processing plants into the databank. Mapping disease profiles increases our ability to tackle diseases, like liver fluke and lung worm, by improving the targeting of therapy and the selection of appropriate drugs. This more strategic approach to parasite control can increase efficacy and performance.

In the near future, the European Commission will define the technology required for an EU-wide Bovine Electronic Identification (EID) system. Once the basic requirement is established, the scheme would incorporate the requirement to EID tag all calves to the required level. This would move the Scottish industry to an electronic, low-cost base traceability system.

This initiative provides production standards which can contribute to the green credentials of the Scottish brand and add value in premium and export markets.

Appendix – Scottish cattle database



Supplementary written submission from Confor

When I gave evidence 2 weeks ago to RACCE I undertook to answer one of Graeme Dey's questions more fully<sup>[28]</sup>:

**Graeme Dey:**

*To return to my original point, Mr Farquhar, have you identified where the additional sums of money that you are looking for might come from, or do you simply feel justified in asking for more?*

**Jamie Farquhar:**

*I am afraid that I do not have the information with me—I am happy to send it to you—but I did cover this point in the spring. From memory, when we were talking about the common agricultural policy and SRDP, Confor highlighted somewhere in the region of £40 million that is going to several different programme funding streams within SRDP. In our submission, those programmes could have been given either lower priorities or lower allocations—or, indeed, they could have been funded from other streams outwith SRDP.*

<sup>28</sup> RACCE Official Report from the meeting on 5 November 2014:  
<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9617#.VGNqAIRFC70>

The suggestions were made in the evidence we submitted for the RACCE meeting of 5<sup>th</sup> March 2014, copy attached, the relevant section bring:

**Possible ways to ameliorate the forestry budget problems**

Why must SRDP be seen as the panacea for everything? Confor believes there must be alternative ways of funding many of the non land-based support measures proposed for SRDP funding, and do these measures really need so much funding anyway? Consider:

- Small Rural Business Scheme £20m
- Business support – Food and Drink Support £70m
- Knowledge Transfer and Innovation Fund £10m
- Advice £20m
- Broadband £ 9m
- Technical assistance (Rural Network) £15m

Plant health is a newcomer to potential support under CAP, which is welcomed in principle. However Confor believes that particularly in respect of supporting work following the devastation of larch crops that has been, and will continue to be wrought to our countryside by Phytophthora ramorum, there is a case for this to be aided from central funds outwith SRDP. Alternatively increase the forestry budget so that it can cope with this new disaster, which many have likened to Foot & Mouth Disease.

LFASS – Despite the Cabinet Secretary’s political promise to “protect” funding for LFASS, this scheme is really another part of Pillar 1 support in disguise. It does *not* deliver rural development, but for most recipients merely supports the status quo. Confor is aware of and is sympathetic to the argument that too many changes at once, and more to the point changes in subsidy, could be confusing to some upland farmers. But change in direct support for farming is inevitable and will reduce over time. Refusing to start the process, however uncomfortable for some, is not logical. We suggest cutting the LFASS budget by 10% now, and/or at the very least curtailing the budget for support for ANCs in 2017 or whenever the change is introduced.

Don’t waste ‘forestry’ money on non essentials – WIAT, peatland restoration, plant health, agro-forestry – all these are placing a new additional financial burden on the forestry ‘pot’, viz:

- WIAT – Woods In and Around Towns are very desirable assets for the nation, but are very expensive to establish and to maintain. The work of the Central Scotland Forest Trust, and the Central Scotland Green Network has been very successful, and woodland cover in central Scotland is now at or above the national average. Whilst Confor supports this work in principle, we believe that in times of financial constraint this expensive work should have a definite limit to expenditure, especially as until now, much of this type of work has been funded outwith SRDP.

- Peatland restoration – any work associated with peatland restoration, including the emerging ideas for “transition woodland” should be funded from the agri-environment-climate budget, and not from the forestry ‘pot’.
- Plant health – already referred to above as more desirably being funded outwith SRDP. However if we retain funding via SRDP, then the forestry budget must be commensurately increased. This is particularly relevant for any work on the National Forest Estate, since for the first time work on public state forests may receive funding under the rural development regulations.
- Agro-forestry – now included as a support measure as a result of the politically correct WEAG process. If support is to be drawn down under any such option, then the funding should come from the agri-environment-climate budget, not the forestry ‘pot’.

## Scrutiny of the Community Empowerment (Scotland) Bill

### Introduction

1. The Community Empowerment (Scotland) Bill<sup>1</sup> (the Bill) was introduced in the Scottish Parliament on 11 June 2014. It seeks 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<sup>2</sup>; 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.

2. The Local Government and Regeneration (LGR) Committee was designated as lead committee by the Parliamentary Bureau. The Rural Affairs, Climate Change and Environment (RACCE) Committee received a letter<sup>3</sup> from the Minister for Parliamentary Business on 21 August 2014 requesting it to consider Part 4 of the Bill at Stage1. Part 4 of the Bill relates to the community right to buy land.

3. The Committee agreed, as part of its work programme discussion, on 1 October 2014 to this request and agreed its approach and timetable to scrutiny at its meeting on 8 October 2014.

### Background

4. The Explanatory Notes that accompany the Bill state that—

“the Bill reflects the policy principles of subsidiarity, community empowerment and improving outcomes and provides a framework which will—

- empower community bodies through the ownership of land and buildings and strengthening their voices in the decisions that matter to them; and
- support an increase in the pace and scale of public service reform by cementing the focus of achieving outcomes and improving the process of community planning.”

5. The Bill is a result of a number of consultations and other preparatory work and is set within the Scottish Government’s wider programme of public service reform.

6. The Bill is in a number of parts—

- Part 1 aims to provide a statutory basis for the issue of “National Outcomes”;
- Part 2 contains a number of reforms to the system of community planning;
- Part 3 provides for a process to allow community bodies to become involved in the delivery of public services;

<sup>1</sup> Community Empowerment (Scotland) Bill, as introduced (SP Bill 52, Session 4 (2014)) Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/77926.aspx>.

<sup>2</sup> Land Reform (Scotland) Act 2003. Available at: <http://www.legislation.gov.uk/asp/2003/2/contents>.

<sup>3</sup> Letter from the Minister for Parliamentary Business, 21 August 2014. Available at: [http://www.scottish.parliament.uk/S4\\_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2014.21.08\\_-\\_Community\\_Empowerment\\_\(Scotland\)\\_Bill.pdf](http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2014.21.08_-_Community_Empowerment_(Scotland)_Bill.pdf).

- Part 4 makes a range of changes to the community right to buy land;
- Part 5 provides for a process to allow community bodies to take on assets from the public sector;
- Part 6 makes a number of reforms to the system of common good;
- Part 7 is concerned with allotments; and
- Part 8 allows local authorities to set their own reliefs for business rates.

*Part 4: Community Right to Buy*

7. Part 4 of the Bill proposes a number of amendments and additions to the Land Reform (Scotland) Act 2003 “the 2003 Act”. At present the right to buy provisions in Part 2 of the 2003 Act apply only to community bodies representing rural areas.

8. Section 27 of the Bill amends the definition of “registrable land” and the power of the Scottish Ministers to define “excluded land”, so that the community right to buy applies across Scotland.

9. Section 28 of the Bill extends the types of body which may be community bodies under Part 2 of the 2003 Act and gives Ministers a power to make regulations which prescribe other types of area by which a community may define itself.

10. Sections 29 to 47 make a number of changes to the detailed procedures and requirements of the community right to buy process.

11. Section 48 of the bill inserts a new Part 3A into the 2003 Act to give community bodies a right to acquire land in certain circumstances, without a willing seller and sets out the processes and procedures involved. Eligible land is that, which in the opinion of Ministers, is wholly or mainly abandoned or neglected.

12. The Financial memorandum states that it does not anticipate that modifications to Part 2 of the 2003 Act should impose any significant additional costs on the Scottish Government.

**RACCE Committee approach to scrutiny**

13. The LGR Committee considered and agreed its initial approach to the Bill on 25 June 2014. It launched its call for evidence on 26 June with a closing date for receipt of written evidence of 5 September, it received 162 written submissions<sup>4</sup>. As such the RACCE Committee agreed, at its meeting on 8 October 2014, not to do a call for evidence but to review the written evidence received by the LGR Committee on Part 4 of the Bill and to then invite specific written evidence from those it invites to give oral evidence, who have not submitted written evidence or who wish to present additional evidence, in advance of the evidence sessions. These submissions will form part of the Committee papers for each evidence session.

14. Written submissions from stakeholders (originally made to the Local Government and Regeneration Committee) and a supplementary submission from Community Land Scotland are attached at the **Annexe**.

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<sup>4</sup> Scottish Parliament Local Government and Regeneration Committee, Written Submissions, available at:<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/79891.aspx>.

*Timetable for Stage 1 scrutiny*

15. At its meeting on 19 November 2014<sup>5</sup> the Committee heard evidence from the Scottish Government Bill team officials.

16. At its meeting on 8 October 2014 the RACCE Committee agreed its timetable for scrutiny of Part 4 of the Bill at Stage 1. This is set out below.

19 November	Oral evidence from Scottish Government Bill team officials
26 November	Oral evidence on operation of community right to buy to date (Panel 1)
3 December	Oral evidence on the rural context (Panel 2) and the urban context and ECHR issues (Panel 3)
10 December	Oral evidence from the Cabinet Secretary for Rural Affairs, Food and the Environment
14 January	Consideration of draft Stage 1 report
21 January	Agree Stage 1 report and subsequently forward report for inclusion in LGR Committee's Report.

**Other parliamentary committee consideration**

17. The LGR Committee is currently taking evidence at Stage 1, further information on the LGR Committee's Stage 1 scrutiny of the Bill can be found on its webpage<sup>6</sup>.

18. In June 2014, the Convenor of the LGR Committee wrote<sup>7</sup> to the Minister for Local Government and Planning, seeking clarification on a number of issues relating to the Policy Memorandum stating that it was "little more than a superficial overview" that does not provide "sufficient material to allow for this Part to be scrutinised in a timely manner as part of the Stage 1 process". The Scottish Government's response<sup>8</sup> was received on 1 August 2014. This provided some further detail, and the accompanying letter from the Minister states that the Government aimed to "provide a succinct and broad overview of the policy underlying the Bill as a whole and each Part individually", adding that "people can be put off by lengthy documents

<sup>5</sup> Scottish Parliament Rural Affairs, Climate Change and Environment Committee *Official Report* 19 November 2014: Available at: (after 21/11/2014)

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29876.aspx>

<sup>6</sup> Scottish Parliament Local Government and Regeneration Committee, details available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/78599.aspx>.

<sup>7</sup> Scottish Parliament Local Government and Regeneration Committee, Letter to Minister for Local Government and Planning, 25 June 2014. Available at: [http://www.scottish.parliament.uk/S4\\_LocalGovernmentandRegenerationCommittee/General%20Documents/20140109-KS\\_to\\_Minister\\_LGP\\_on\\_Comm\\_Emp\\_Bill\\_Policy\\_Memo\\_20140625.pdf](http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/20140109-KS_to_Minister_LGP_on_Comm_Emp_Bill_Policy_Memo_20140625.pdf)

<sup>8</sup> Scottish Parliament Local Government and Regeneration Committee, Letter from Minister for Local Government and Planning, 1 August 2014. Available at:

[http://www.scottish.parliament.uk/S4\\_LocalGovernmentandRegenerationCommittee/General%20Documents/Responses\\_to\\_LGR\\_Committee\\_Questions\\_-\\_1st\\_August\\_2014.pdf](http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Responses_to_LGR_Committee_Questions_-_1st_August_2014.pdf)

with a great deal of detail”, and that the PM is “only one of the suite of documents that accompany the Bill”.

19. The Finance Committee has completed its scrutiny of the Bill at Stage 1 and its report can be found on its webpage<sup>9</sup>.

20. The Delegated Powers and Law Reform Committee has also completed its Stage 1 scrutiny of the Bill and its report is available on its webpage<sup>10</sup>.

**Scottish Government’s Call for Evidence on proposed changes to Part 3 of Land Reform (Scotland) Act 2003 - Crofting Community Right to Buy**

21. The Minister for Parliamentary Business indicated in his letter to the Committee of 21 August 2014 that the Scottish Government intended to bring forward amendments to the Bill in relation to crofting community right to buy. A further letter<sup>11</sup> confirming this intention was sent to the LGR Committee and the RACCE Committee from the Minister for Local Government and Regeneration 6 November 2014. This provided details of the Scottish Government’s call for evidence<sup>12</sup> on proposed changes to crofting community right to buy legislation which was sent to stakeholders on 13 October 2014. The Committee understands the Scottish Government intends to bring forward amendments on this issue at Stage Two consideration of the Bill.

**Clerks**

**Rural Affairs, Climate Change and Environment Committee**

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<sup>9</sup> Scottish Parliament Finance Committee. Report on the Financial Memorandum of the Community Empowerment (Scotland) Bill. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/83231.aspx>.

<sup>10</sup> Scottish Parliament, Delegated Powers and Law Reform Committee. 63rd Report, 2014 (Session 4) *Community Empowerment (Scotland) Bill at stage 1*. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/83473.aspx>.

<sup>11</sup> Letter from Minister for Local Government and Regeneration. 6 November 2014. Available at: [http://www.scottish.parliament.uk/S4\\_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2014.11.06 - Minister to LGR Committee.pdf](http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2014.11.06_-_Minister_to_LGR_Committee.pdf).

<sup>12</sup> Scottish Government call for evidence on crofting community right to buy. Available at: <http://www.scotland.gov.uk/Topics/farmingrural/Rural/rural-land/right-to-buy/crofting/CallforEvidence>.

## Annexe

**Written submission from Community Land Scotland**

The principal focus of this submission is on Part 4 of the CEB – the amendments to the Land Reform (Scotland) Act 2003 (LRA).

High level summary of CLS evidence – CLS:

- Welcomes Part 4 of the CEB and the proposed simplifications to Part 2 of the Land Reform (Scotland) Act made
  - Welcomes the extension of the Community Right to Buy to all of Scotland
  - None-the-less, there are important omissions, clarifications and measures needed to strengthen this Part of the CEB
- Strongly welcomes the extended Community Right to Buy in Section 48
  - However, there are important clarifications and strengthening of the provisions required if they are to be effective
  - Welcomes the recent indication by the Scottish Government of its intention to use the CEB to also simplify Part 3 of the LRA. Not have done this would have been a serious omission and would have left important inconsistencies between Part 2, Part 3 and Part 3A.

**Committee Call for Evidence - Questions**

The Committee asked a number of questions and this submission principally addresses question 4 about the specific provisions of the Bill and changes respondents would like to see. Beyond this, CLS considers the Bill will help empower communities by giving them new or improved rights to exercise. The effect of the Land Reform (Scotland) Act 2003, which established community rights to buy land, has been to see a change in the whole climate for community purchases, in the knowledge that rights exist to support community aspirations. Community land owning, along with other asset owning activities through, for example, community woodlands and development trusts, has shown that communities do have the capabilities to do remarkable things, and have the capacity to utilise legal rights to help deliver the regeneration of their communities. This Bill puts in place an enabling framework which should add to the ability of communities to act in positive ways.

By enacting provisions that will empower communities, public sector organisations can benefit by more informed and capable communities acting to deliver sustainable development and help better design the delivery of public services. CLS can see no disadvantages to public bodies from this, even though it is recognised they will have some new obligations.

**Part 1 – National Outcomes; and Part 2 – Community Planning**

CLS does not have sufficient expertise in these matters to make comment on these provisions.

### **Part 3 – Participation Requests**

CLS regards these provisions as important in strengthening the hand of local communities to seek to be involved and potentially secure improvement in matters important to the life of their community. These provisions complement other provisions in the CEB designed to strengthen the rights of communities.

### **Part 4 – Community Right to Buy**

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

In principle and for the most part these modifications are welcome as a means to improve the workings of the LRA in light of experience over the decade since its implementation. This experience has shown a number of problems with the LRA and the provisions in the CEB seek to deal with key aspects which have been criticised.

#### **Section 27 – extending the Community Right to Buy to all of Scotland**

This is a welcome extension of community rights. There is no reason why communities in the urban realm and in towns of over 10,000 should not enjoy the same rights as smaller rural communities.

#### **Section 28 (3) (c) and (4) (1A) (g) - Provision of Minutes upon request**

There are practical matters that would benefit from clarification and/or change in what is proposed. It is not clear whether the minutes are of all meetings; in particular, the question of whether this is intended to include board meetings as well as members meetings; sub-committees; and whether it is 'approved' minutes that are referred to. Further, it appears this provision would apply retrospectively to community bodies and, if that is the case, the implication would be that existing community bodies would have to take steps very quickly to convene members' meetings for the purpose of passing special resolutions to make these alterations to their Articles. Failure to make change may have wider implications arising from 35(2) and (3) of the LRA and could terminate a registration of interest or trigger consideration of compulsory purchase by Ministers. It is not believed this is intended. Perhaps the same policy could be effected by, for example, a requirement for Community Bodies to enact such byelaws or Rules. These provisions do not seem to apply to a Part 3A or Part 3 body, and this would be anomalous.

#### **Section 30 - Period for indicating approval**

The proposal for a 6 month limit, before which time Ministers may not take into account certain matters, appears impractical. Registration of a community body can take in excess of 6 months itself in certain circumstances. Important feasibility and other studies which may be put to a community for support may well date back before 6 months. CLS believes Ministers should be free to take account of anything they consider relevant in indicating approval and not be artificially restricted, and this 6 month limit is unhelpful.

**Section 31 (4) - Late applications to register an interest in land**

This is an issue of very real significance to the future prospects of community ownership. For a variety of legitimate reasons, communities do not think of or register an interest in land as an abstract exercise. For all communities to protect the potential interests of the community through timeous registrations of interest in land, may require registrations of interest in a significant number of areas of land, with little prospect that they may ever come on to the market. There are considerable administrative implications for a community and for government from any process of 'mass registration' of interests in land by communities, yet the current LRA rather founds on that broad assumption. Experience shows communities are also very reluctant to register an interest in land if they feel that might be interpreted as a hostile act by an owner.

Communities tend only to engage with the need to register an interest in land when they become aware the land may be available for sale and this can happen often quite unexpectedly, thus triggering the need to consider a late registration of interest in the land. It is not unreasonable that communities behave in this way.

On the face of it, it is not clear why the proposed changes, which replace the need for a community to show "good reasons" why they did not apply timeously, with a new provision to show they had undertaken, sufficiently in advance, "such relevant work as Ministers consider reasonable was carried out, etc", are any less onerous than the original provision, if this is what is intended (Section 31 (4) & (9)(6)). The new provision may well make the opportunity for a late registration more difficult than it already is, and this would not assist any objective of greater community ownership that was in the public interest.

It would be best to accept late registration as the likely norm and of itself need not be justified by any prior action or lack of action, and instead rest on the other existing tests for late registration and which are already demanding;

- first, in showing significantly greater support for within the community than for a timeous application
- and second, that registering the interest would be strongly indicative that it is in the public interest

These provisions will continue and seem sufficient in themselves, without the new provisions, but with the deletion of the current need to "show good reasons".

Additionally and more pro-actively it might be possible to make provisions that where Ministers were notified by a land owner that they had an interest in selling their land, Ministers would take steps (through existing government agencies) to seek to establish whether a community had an interest in buying the land.

**Section 37 51A (6) - Information for balloter.**

It is not clear why the balloter would require this information to conduct the ballot, nor why, if that were justified, it would need to be separately supplied, when it forms part of the application process.

## **Significant omission from Part 2 LRA revisions**

There is one significant omission from the potential amendments to Part 2 of the LRA regarding re-registration of an interest in land after 5 years. The current re-registration provisions are seen as demanding and unnecessary.

The 5 year period is considered too short, and consideration should be given to extending this to 10 years. This would retain the ability to occasionally test the will of the community on their continuing interest in purchase, while reducing the burden on communities. Further, re-registration requires replicating the original registration demands, which can be considerable. A further way to simplify matters would be to change this requirement to one that is less demanding, while still open and transparent and providing opportunity for a community and landowner view. These points are supported in the final report of the independent Land Reform Review Group (Section 17.1 – 9 & 10)

The latter suggestion could be achieved through a registered interest remaining valid, with an occasional and simple procedure being adopted to confirm community views if there were no material changes in circumstances. For example, the community body could be required to take an advert in a local newspaper indicating that the community body was under an obligation to re-register its interest in land, what its view was, and offering an opportunity for any qualifying residents (on the electoral roll) to lodge an objection with the Scottish Government.

**Section 31(4)(aa)(iii)**, appears unnecessary and restricting.

**Section 31 (5) (3A) (b); Section 37 51A (5); Section 38 (6). Section 39 (1) (4) (5) (7) (9); and Section 42 - Time Limits**

The 7 day limits set above appear potentially tight for all circumstances and providing some latitude for a different time, if that was ever considered appropriate, might be helpful to all parties.

**Schedule 5** - repeals the word `substantial, and this is welcome. However, when it came to any question of the settlement or re-settlement of once cleared land, it may be difficult still to demonstrate a contemporary connection to the land, and this matter ought to be provided for by a separate permissive provision.

**Section 48 Part 3A - extending the community right to buy “abandoned or neglected land”**

CLS strongly supports the introduction of this new power extending the community right to buy. This is viewed by CLS as a last resort power. This proposal responds to a weakness in the current LRA that, even if it were in the public interest, there is no means for a community to acquire land unless it came on to the open market. The new provision means this matter can now be considered.

The challenge of this part of the CEB is to find the right balance between granting this welcome extended right, and setting tests for the exercise of the right so high that they would not, for all practical purposes, be possible to meet. CLS believes that the significant qualifications on the new right probably makes it impossible to be

exercised in practise. There are a number of ways in which the provisions in the CEB could be helpfully clarified and strengthened, and the balance in this regard improved, while still meeting all ECHR requirements. It would only be with important amendment to what is proposed that the cause of community land owning would be likely to be advanced by these provisions.

The Explanatory Notes and the Policy Memorandum make it clear that, respectively, the land in question, to be eligible, is wholly or mainly abandoned or neglected “for the purpose of the sustainable development of that land” and “in order to further the achievement of sustainable development”.

However, the provisions at Section 48 - 97C (1) do not make explicit that sustainable development connection. The provision appears to stand alone with the considerations solely about the physical condition of the land, not about the social and economic development of the place, the classic two pillars of sustainable development in addition to environmental considerations (See Lord Malcolm in the *Pairc Crofters Ltd and Another v Scottish Ministers* 2012 CSIH 96 at Para 112).

The everyday interpretations of “abandoned” and “neglected” do not link with the issue of the land’s lack of, or potential or need for, sustainable development, and there is therefore a risk that, even if subsection (2) of section 97C was used to bring in these issue as prescribed matters to which Ministers must have regard in determining whether land was eligible, that could be the subject of challenge on the grounds that the linkage between the concepts was not sufficiently warranted or reasonably envisaged by the statutory provisions, or was stretching the normal interpretation of the primary tests set out in subsection (1).

This matter could be clarified and the CEB strengthened by making it clear – within subsection (1) or via a further subsection within section 97C itself - that the land in question, to be eligible land, could be regarded as wholly or mainly abandoned or neglected, or otherwise in need of sustained development, when having regard to the sustainable development of that land. This would be one approach to seek to make clear the concepts of abandonment or neglect of land were related to sustainable development and not solely constrained to its physical condition, use or occupation. This would be consistent with policy as set out in the Policy Memorandum, and the agreed and statutorily required Scottish Land Use Strategy which stresses the use of land for community well-being contributing to a more prosperous and successful nation. Even with this improvement, the requirement to show land was wholly or mainly abandoned or neglected still sets a very considerable hurdle to be overcome. This clarification would need to apply equally to 48 97G (6) (b) and 97G (10) (c).

Any amendments along such lines above would, CLS believe, be compatible with ECHR A1P1 which requires that the interference in individual ownership rights must be - provided for by law; to pursue a legitimate aim; and the means of doing so must be proportionate to achieving that aim; and must achieve a fair balance between the demands of the community and the requirement of the protection of the individual’s rights. All these tests would be met as the matter would be provided for in law; would pursue the policy purpose of furthering sustainable development; would be proportionate [see *Pairc* case and Lord Gill, paras 36 and 40]

In the case of urban areas and particular sites within such areas, it may be possible to argue that a particular site or building had been abandoned or neglected (in the normal sense of those words) by pointing to its physical condition or the absence of occupation or use, and it is probably why these provisions are in the CEB. They still remain very high, or impossible, hurdles for a community to clear.

However, when considered in the rural context and over the potentially extensive areas of land of the sort that communities have acquired by voluntary agreement in recent years, it is difficult to see how a successful case could be made that land (except in the very narrow circumstances of a building, for example) had been abandoned. The sort of defences that an owner might put up can readily be seen; the abandonment being a deliberate act of land management for conservation purposes for example, or the appearance of abandonment is simply a function of the market conditions for development not being sufficient and there being an intention to use the land, or to take some small and immediate action which would have the effect of showing the land had not been abandoned.

Similar arguments can be made about the question of whether land is wholly or mainly neglected. Had these provisions existed at the time of the initial struggles by the islanders of Eigg, for example, to secure the island into community ownership, would they have been effective in securing that outcome (the 'Eigg Test')? Even with these provisions, this may still have been an impossible case to successfully argue. This might be marginally helped by the addition of "or significantly" to "wholly or mainly" in the definition at 97C(1).

Further, however, tying this Part 3A route to community ownership of land solely to the concept of abandonment or neglect, is too limiting. Community ownership of land is not only potentially motivated by questions of abandonment or neglect, it is principally motivated by communities considering barriers to the sustainable development of their place.

The objectives in the Policy Memorandum make clear the purpose of this part of the CEB is to remove barriers to the sustainable development of land. Wider human rights considerations also point to more positive justifications to promote change in the human condition toward achieving more adequate standards of living and the continuous improvement of living conditions, of the sort sought in the International Covenant on Economic, Social and Cultural Rights (ICESCR)(Article 2, Subsection 1). The ICESCR sets out that signatory states should, to the maximum of its available resources, seek to progressively achieve the full realization of the ICESCR by all appropriate means, including particularly the adoption of legislative measures. The Scotland Act 1998, Schedule 5, Paragraph 7 (2) makes clear that Scottish Ministers may take actions, inter alia, "observing and implementing international obligations". With ICESCR having been ratified by the UK Government, it is brought within the terms of the Scotland Act 1998 and as such, not reserved for this purpose. Ministers are empowered and encouraged by these various provisions to take actions that would further improvement in the human condition.

In all, the Bill could therefore be significantly strengthened with the addition of further criterion to the effect that eligible land could include land, for example, *the ownership of which by a community body would be conducive to furthering sustainable development (and in pursuance of objectives of the International Covenant on*

*Economic, Social and Cultural Rights*); or, (when having due regard to *International Covenant on Economic, Social and Cultural Rights*) the ownership of which by a community body would be conducive to furthering sustainable development and the public interest. These are initial ideas of potential ways to clarify and strengthen the CEB.

CLS recognise that part of the Scottish Government's reasoning in these matters is likely to be in relation to ECHR considerations and the rights of existing owners. CLS believes potential strengthening provisions, such as from the concepts above, would not threaten ECHR compliance, given their nature and given the provisions and procedures elsewhere in this part of the CEB which, in the view of CLS, addresses the principles of human rights law round due process. Further, CLS notes that the existing provisions in the LRA, and which have withstood Court challenge on ECHR Article 1 Protocol 1, do not require any notion of abandonment or neglect of land in order for it to be eligible land, so it is not clear why this would now be required. (See Lord Gill's judgement in the case of *Pairc Crofters Ltd and Another v The Scottish Ministers* 2012 CSIH 96)

It is further not clear whether, even if it were possible to identify some parts of a land holding in which a case could be mounted that they were either wholly or mainly (and possibly 'or significantly') abandoned or neglected, it is only those parts which could be eligible land, or whether it could be argued that the entire land holding was abandoned or neglected by virtue of those parts being abandoned or neglected. This matter needs further clarification.

As noted above, the Bill makes clear that (97C(2)) Ministers must have regard to prescribed matters in relation to what is eligible land. This makes the Regulations here absolutely critical to the interpretation of this provision and it would be vital to see these draft regulations before a final judgement could be made on the provisions or amended provisions themselves.

Lastly, with regard to 97C, it is not clear why *bonna vacantia* land is excluded from being eligible land, particularly when related to the need to identify ownership of land which, for reasons set out above, may not always be possible and potentially therefore rendering it *bonna vacantia*.

Further still, 97H (c) requires that Ministers must not consent to an application to buy by a community body unless they are satisfied – "that, if the owner of the land were to remain as its owner, that ownership would be inconsistent with furthering the achievement of sustainable development in relation to the land." It is difficult to see how this could ever be proved, it appears to require proof of a negative as distinct from proof of a probability and it goes much further than would be required in order to achieve a "fair balance" required by ECHR A1P1. This appears a very high and most probably an impossible hurdle to be overcome and unnecessary to meet ECHR requirements; it implies that, even if a community was able to show that the land was mainly neglected for the purpose of its sustainable development, and this was not in the public interest, if that owner could show that, none-the-less, their continuing ownership was not of itself "inconsistent" with some level of sustainable development, then the community's application must be refused.

Under the provisions, the Ministers already have to satisfy themselves that:

- The land is eligible land, ie, it is wholly or mainly (and possibly 'or significantly') neglected
- Purchase by the community body is in the public interest
- Purchase by the community body would be consistent with the achievement of sustainable development in relation to the land

Given these tests, and the fact that there is no equivalent of this requirement in Part 3 of the LRA, which was held to be compatible with ECHR A1P1 in the Pairc case, it appears unnecessary to have this further requirement. There is a strong case for deleting it entirely, which failing, it would be essential to clarify it to the effect that, the ownership of which by the current owner would be inconsistent with (or not conducive to) the public interest when having regard its potential for contributing to the sustainable development of that land. There is potential here too of linking this consideration to having due regard to (or, in pursuance of the objectives of) the International Covenant on Economic, Social and Cultural Rights.

It would be further helpful to clarify here and throughout Part 3A that in referring to "the sustainable development of that land" that the term "that land" refers to the place and community of that place and not just some physical condition of the land.

#### **Further revisions to Part 3A**

Clarifying that the date when it is to be determined that land is eligible land is the date of the application for consent. There appears no provision to this effect, although it may be argued that it is implied. In the absence of some provision, there could be arguments about this.

It may be worth considering the merits of providing whether or not a minimum period has to elapse before land is to be regarded as wholly or mainly (and possibly 'or significantly') abandoned or neglected and, if so, what is it and whether that period can be, or commence, before the date of commencement of Part 3A .

97H (d) requires that the owner of land is accurately identified. However, even if reasonable steps are taken to ascertain the ownership, this may not always be possible and may indeed be the root of why the land is not being used in a manner conducive to its sustainable development. There are instances where it might appear that ownership is purposefully concealed in off shore arrangements and/or and by other means; in addition, the existence of large areas of rural land which have not yet been brought within the mapping system of the Land Register continues to create uncertainties in identifying the owner in certain cases. It will, therefore, be important to make provision for such a deadlock to be broken through providing for the community taking reasonable steps by publicly advertising their intentions in an appropriate journal, when their reasonable steps to ascertain ownership have failed.

The requirement (97D) to have a separate Part 3A community body means that the creation of that body is an open and public process. This, of itself, can have the effect of alerting an owner such as to permit them to take steps at that point to seek to demonstrate the land in question was not wholly or mainly (and possibly 'significantly') abandoned or neglected, or to shift and possibly seek to conceal,

ownership. It will be important to provide for these circumstances in some way, so as not to allow an owner to circumvent the provisions of Part 3A, having been alerted to the community's interests by the provisions of Part 3A itself requiring a public process of registering an interest.

Further, 97H (j) might benefit from some clarification, possibly in guidance, as to what might have constituted circumstances in which it could be held a community had tried and failed to buy the land. This would be important in general, and not least in circumstances where ownership was not known.

97B the definition does not seem to include salmon and mineral rights, and this may be necessary for clarity.

97R could helpfully make it clear that whenever the process of valuation is complete, there is a period of 4 months for the completion of payment. This would exist if the valuation is completed timeously, but could be shorter if that was not the case, to the disadvantage of the community and while not a matter in their control.

### **Greater diversity in Scotland's land ownership patterns**

The Scottish Government has made clear in recent PQ answers, replies to debates in Parliament and policy pronouncements that it wants to see a greater diversity in the ownership of Scotland's land. This Bill could usefully support that objective. One way would be for the provisions at 97C to have a further provision to the effect that, *eligible land would be land, the sale of which to a community body, would contribute to the achievement of a greater diversity of ownership of land in Scotland.*

### **Consistency in revisions to Part 3A and Part 3 of the LRA**

Part 3A extends the community right to buy and is modelled on the crofting community right to buy in Part 3 of the LRA. Experience has shown real difficulties with Part 3 of the LRA which are, therefore, repeated in this new Section 48 Part 3A. This also has the effect of leaving substantial inconsistencies between the community right to buy for a community body in the revised Part 2 of the LRA introduced by Part 4 of the CEB (with the suggested amendments above), while utilising none of the helpful simplifications and flexibilities introduced into Part 2 in this new Part 3A, let alone Part 3 of the LRA. This is why it is very welcome the Scottish Government now intend to use the CEB to change Part 3 of the LRA.

The simple way to manage this would be for the changes to the definitions of a community body brought in by Part 4 of the CEB in relation to Part 2 of the LRA to be applied to the definitions of a Part 3A community body at 97D, and to Part 3 of the LRA. Similar provisions for the new balloting procedures in the revised Part 2 of the LRA introduced in Part 4 of the CEB should apply to the new Part 3A, and Part 3 of the LRA. Consistency more generally between the new Part 3A, Part 3 of the LRA and the revised Part 2 of the LRA should be sought throughout the provisions of the CEB, as appropriate.

Most importantly, among these matters, the mapping requirement at 97G (d) (ii), and in Part 3 of the LRA, are excessive. CLS contend that it is not necessary for any purpose for a Minister to know of all "sewers, pipes, lines, watercourses or other

conduits and fences, dykes, ditches or other boundaries in or on the land”, in order to make a decision and given all the other criteria, including a map of the location and boundaries of the area. This requirement is a near impossible task for any significant land holding and gives substantial room for technical appeals based on a minor error in the extent of a ditch within, say, a 40,000 acre estate of the sort purchased voluntarily in recent years. This mapping requirement should be deleted as being far in excess of what is needed. The Land Reform Review Group in their final report has acknowledged the excessive nature of the mapping requirements on which these requirements are based.

In addition, it seems odd and unnecessary that a Part 2 community body could not also be a Part 3A community body by some simple means, otherwise an unnecessary duplication of effort would be required when it is conceivable that a Part 2 community body which had registered an interest in land could proceed to the Part 3A provisions if they subsequently formed the view the land in question had in fact become abandoned or neglected.

CLS is aware of detailed evidence from Mr Simon Fraser on Part 3 of the LRA. Mr Fraser is highly experienced and respected in these matters and CLS draws particular attention to his submission in raising issues of importance for attention.

### **Prescribed matters**

There are significant matters to be dealt with in regulations throughout Part 4 and it would be important that a clear understanding of what the regulations will contain is seen prior to Stage 2 and where possible to see actual draft regulations, in order to consider whether leaving important matters to regulation is appropriate in all circumstances.

### **Power to Ministers to facilitate discussions and make regulations**

The new Part 3A sets up a process which holds the prospect of dispute arising between community and current owner, because of the nature of the request for what is a compulsory sale. These are circumstances under which dispute resolution or mediation would be helpful. Ministers do not have powers to facilitate this at present.

It would seem appropriate to give Ministers power to make such arrangements as they may regard appropriate to facilitate discussions between the community body and owner upon a request from either party and to have powers to set out procedures for such facilitated discussions through regulation, if they ever felt the need for this.

### **Part 5 - Asset Transfers**

CLS strongly supports the provisions of Part 5 as important in improving the potential transfer of public assets and building on practical experience in, for example, forest estate transfers to date.

The provisions could be strengthened by a duty to provide publicly accessible asset registers, and making clear, possibly in guidance, the local authority discretionary

power to transfer at less than market value is available to other public bodies in the Scottish Public Finance Manual, under certain conditions.

CLS recognises the expertise within DTAS and CWA both of whom have made submissions on these provisions, and supports their suggestions.

### **Part 6 - Common Good Property**

In so far as the provisions go, they are advantageous to greater transparency on the ownership, use and disposal of Common Good property. In the context of recent developments in community ownership of assets, the potential of common good land to be managed more locally and put to wider community development use could be significant. A wider review of the common good issues may be a preferred way of moving forward as part of the actions flowing from the recommendations of the Land Reform Review Group. This could embrace a statutory definition, rights for communities to take back title to common good assets that were foregone in 1975. A further useful change in the legislation, now, would be to remove the requirement for Sheriff Court approval for common good assets being transferred to communities. This seems an unnecessary and additional hurdle and adds extra time and cost.

### **Part 7 – Allotments; and Part 8 Non-domestic rates**

CLS has no comments on these Parts.

### **Conclusion**

Community Land Scotland continues to consider and develop thinking on suggested improvements, particularly to Part 3A, and will publish supporting reasoning on its website and share with the Committee and the Scottish Government any significant developments in thinking relevant to the above submission.

#### **Additional written submission from Community Land Scotland**

*[Submission from Community Land Scotland in addition to the previous submission to the Local Government and Regeneration Committee which comprises:*

- *Supporting arguments on the need for amendments to strengthen the Community Empowerment (Scotland) Bill; and*
- *Submission of evidence to the Scottish Government regarding proposed revisions to Part 3 of the Land Reform (Scotland) Act 2003 via the Community Empowerment (Scotland) Bill.]*

#### **Supporting arguments on the need for amendments to strengthen the Community Empowerment (Scotland) Bill:**

**The question of removing barriers to sustainable development; what can constitute sustainable development and the public interest; and related ECHR considerations.**

This paper builds on evidence submitted by CLS to the Local Government and Regeneration Committee in relation to the CEB, and is consequent upon close

examination of Scottish Ministers decision letters in relation to the Pairc Trust application to purchase land. (relevant extracts of the CLS evidence is attached at Appendix 1)

### **Community Empowerment (Scotland) Bill**

The CEB seeks to amend the Land Reform (Scotland) Act 2003 (LRA) by simplifying or streamlining various procedures and by extending the community right to buy land.

The policy aim of Part 3 of the LRA, which gave crofting communities a `compulsory' right to buy, was to **remove barriers to sustainable rural development.**(See Policy Memorandum to 2003 Act)

The terms of the LRA require that any application to use these powers must be approved by Scottish Ministers who must be satisfied, inter alia, that the application:

- furthers the achievement sustainable development, and
- is in the public interest

The only decision by Ministers in this regard has been in relation to the Pairc Trust. That decision was challenged in the Courts and withstood that challenge. (See *Pairc Crofters Ltd and Another v Scottish Ministers 2012 CSIH 96*)

The new Part 4 Section 48 of the CEB, which creates a new Part 3A in the LRA, seeks to provide a similar right to that given to crofting communities, (ie, to purchase land `compulsorily') to all communities in Scotland, is in pursuit of a policy aim stated as being a **general public interest in removing barriers to sustainable development.** (See *Policy memorandum to CEB*)

Within the CEB provisions, Ministers must be satisfied, inter alia, that in approving an application to purchase `compulsorily' by a community, the land in question is `eligible land', ie, land which is defined as:

- Wholly or mainly abandoned or neglected (CEB Section 48, 97C), and

That the application (97H), inter alia:

- furthers the achievement sustainable development
- is in the public interest

The CEB therefore introduces a new concept of `abandoned or neglected' land, something that was not considered necessary in analogous provisions within the LRA for crofting land, where the relevant tests were kept to only whether the application furthered the achievement of sustainable development, and was in the public interest.

This approach suggests that `abandonment or neglect' of land are considered to be the barriers to sustainable development, the removal of which are set out in the Policy Memoranda as the objectives for this part of the CEB. These barriers could be

removed through the exercise of the proposed new provisions to permit 'compulsory purchase'.

It is appreciated that, if land can be said to be abandoned or neglected by the owner, it may be easier to justify its expropriation for the purposes of enabling it to be sustainably developed by a community body. However, expropriation can be justified in other circumstances. What seems to be important in the first place is to ascertain what is regarded to be the general interest to be achieved by the expropriation.

Given there is a shared policy purpose **to remove barriers to sustainable development** to both the LRA and now the CEB, it is worth exploring whether abandonment or neglect of land are the only barriers to sustainable development, and what other barriers there may be.

### **Decisions of Scottish Ministers**

Revealed within decision letters on behalf of Scottish Ministers in relation to the Pairc Trust, there is a significant account of what Ministers regarded to be both sustainable development and what was in the public interest in that case. The reasoning in the decision letters extends the concept of what would be a barrier to sustainable development significantly beyond the concept of only 'abandoned or neglected' land.

The reasoning in support of the decisions is particularly helpful in that it sets out why an early application by the Pairc Trust was refused, on the grounds that it did not further sustainable development and was not in the public interest, and a later application then approved as meeting these requirements.

### **Furthering the achievement of sustainable development**

In refusing the early application Ministers made clear the application did not satisfy them in relation to the question of furthering the achievement of sustainable development as it, inter alia:

- proposed to deliver activities which were largely already being delivered by the current owner
- did not provide significant additional activities
- did not provide any clear benefit to the community
- offered only limited income generating opportunities which would therefore not provide significant benefit to the community

*(Pairc decision letters dated 21 March 2011 at Appendix 2)*

In light of this it was considered that the application was not compatible with furthering the achievement of sustainable development.

Central to this reasoning is the potential for the furthering of sustainable development delivered through the achievement of greater outcomes, the delivery of more activity, and of securing community benefit.

The reasons set out for why a subsequent Pairc Trust application was approved and why Ministers considered it did further the achievement of sustainable development, included, inter alia:

- that there was a credible sustainable plan for the development of the land, and
- the plan would introduce new activities

Those activities would:

- have the potential to diversify the economy
- give power to negotiate and carry out developments
- create employment
- improve local services and infrastructure
- provide for social housing and the sale of house plots
- deliver improved visitor services
- generate revenues for investment for the benefit of the community
- facilitated wider developments

That ownership by the community body and the above listed potential uses and developments would, in consort with others' actions, contribute to:

- fostering population growth
- increasing community capacity
- economic participation

In short, and in terms of the policy aim to remove barriers to sustainable development, it can be seen that the approval of the application providing for purchase by the community body would facilitate the potential achievement of all of the above matters, and further the achievement of sustainable development.

It seems clear the reasoning for Ministers decisions, set out in such detail, was to build defences to potential legal challenge under ECHR and more widely by being explicit in what Ministers regarded would not, and what would, further sustainable development. In the Court decision on a subsequent challenge it was held that, "the expression sustainable development is in common parlance in matters relating to the use and development of land." (our emphasis) (see Annex 3)

It would therefore seem reasonable and justifiable that the provisions of the CEB should be amended (potentially at 97C) to provide in an appropriate way to allow for considerations by Ministers, in addition to any considerations of abandonment or neglect of land, matters of use and development of land if purchased by a community body and of the sort set out in the decision letters referred to and which would permit the furthering of sustainable development.

### **The Public Interest**

Such a provision would also be capable of meeting what was in the public interest.

The decision letters in relation to the Pairc application also set out reasoning on what was in public interest, which included:

- the area had previously inadequate social and economic development opportunities
- ownership by the community would allow the development of a number of economic developments, such as housing, etc
- ownership would address long term decline, a shortage of available housing sites
- the creation of local services
- the development of income streams
- bring in more visitors
- greater employment and environmental benefits

Taken together, the decision letter set out this provided, “**greater opportunities** overall to achieve sustainable development”.

The benefits in this instance were considered to outweigh any disadvantages and were not disproportionate to the degree of any harm to any private interests, a matter central to ECHR considerations.

### **Conclusion**

The Court judgement on the Pairc case would not appear to cut across in any way what is suggested above by way of strengthening and improvement to the CEB as introduced. Indeed, the judgement might be held to strengthen the case for such improvement, and provide some comfort in thinking ahead to any question of future challenge to provisions within the CEB.

When considering the policy aim of removing barriers to sustainable development the concept of ‘abandoned or neglected’ land is too limited as there are wider circumstances which can be a barrier to sustainable development, such as the lack of achievement of the use and development that would deliver “greater opportunities” for sustainable development.

The conditions that must be satisfied within the CEB for non-crofting land to be ‘compulsorily’ purchased by requiring that the land be ‘abandoned or neglected’ appear in themselves greater than would be necessary to meet ECHR requirements, particularly when viewed in light of the Pairc judgement.

It is not clear there is such a fundamental difference between the objective of the sustainable development of land in crofting tenure and the sustainable development of land more generally to necessitate the additional requirements of that land being abandoned or neglected for it to be eligible land for the potential exercise of the new provisions.

If a requirement to show land is abandoned or neglected is to remain, given the evidence above on what would constitute “greater opportunities” relevant to the achievement of sustainable development, the policy objective of the various provisions, then it would appear there is a strong justification for an amendment to the CEB, to provide Ministers with the opportunity to also consider wider matters of use and development of that land in determining what land could be eligible land.

**Submission of evidence to Scottish Government regarding proposed revisions to Part 3 of the Land Reform (Scotland) Act 2003 via the Community Empowerment (Scotland) Bill.**

Community Land Scotland is pleased to be able to respond to the consultation questions on the above consultation in the following terms.

Community Land Scotland (CLS) strongly advocates the need for changes to Part 3 of the Land Reform (Scotland) Act 2003 in order to make its use simpler and fairer, while maintaining appropriate rigour to test what is in the public interest and furthers sustainable development.

CLS is conscious that others have insights into the challenges of the current Part 3. In particular Highlands and Islands Enterprise, but also experienced advisors to community owners, such as Simon Fraser. CLS is aware that Simon Fraser submitted evidence to the Local Government and Regeneration Committee on Part 3 and we commend his analysis of the issues and urge it is taken most seriously. In addition, John Randall, of Pairc Trust who have unrivalled experience of the practical issues, also submitted evidence in a personal capacity, and again we commend that evidence.

CLS has gained particular insights into the Pairc case and how the final reconciliation of positions represented in the level of agreement now reached between owner and community was achieved. Though yet to be finally concluded, the advanced stage of agreement now achieved was only reached by a process of voluntary mediation between the parties. While on this occasion that was possible, partly because of the physical location of the parties and the `mediator', it is not appropriate to leave such matters to chance and it would be helpful if this facility was available to all communities and owners in future, should the need arise. This points to a simple power being given to Ministers to be able make suitable arrangements for such mediation, if requested to do so. That power currently does not exist and would be a helpful addition to wider simplification measures around Part 3 as set out in the Appendices to this submission (this could have application to part 2 as well).

CLS will be happy to provide such further additional information or clarifications as may be requested.

**Responses to consultation questions**

**Question 1.** The Scottish Government proposes to allow SCIOs and BenComs to be crofting community bodies in addition to companies limited by guarantee. Do you agree with this proposal? Are there any other types of body which you think should be permitted to be a crofting community body?

**Agree with proposal, with Ministers having a power to add such other types of body as they may see fit to give future flexibility.**

**Question 2.** The Scottish Government proposes removing the requirement for the auditing of accounts to be included in a company limited by guarantee's articles of association in order for it to be a crofting community body. This proposal would

bring Part 3 of the Act in line with proposed amendments to Part 2 of the Act. Do you agree with this proposal?

**Agree.**

**Question 3.** The Scottish Government proposes expanding the definition of a crofting community. Do you agree with the proposal? Do you think that this is a more accurate description of a crofting community?

**Generally agree. However, very few crofts will be registered on the new register for some time to come. Instead, or in combination, the Commission's existing Register should be used.**

**A further potentially complicating circumstance that should be considered is where the number of crofting tenants or owner occupiers registered outweigh those actually resident within the immediate area. It is not clear whether this circumstance may arise, but it potentially could.**

**Question 4.** The Scottish Government proposes amending the existing mapping requirements which must be included in a Crofting Community Body's application. Do you agree with this proposal?

**Agree, although it will be important to see the final and specific proposed wording of the change.**

**Question 5.** The crofting community body's right to buy application must be advertised by Ministers by placing a public notice in a newspaper circulating in the area where the land or interests are located, and in the Edinburgh Gazette. The Scottish Government proposes that public notice of the crofting community body's right to buy application continues to be given by Ministers by advertisement, but that the form of this advertisement be set out in regulations. What is your view on this proposal?

**Agree.**

**Question 6.** The Scottish Government proposes that the owner, tenant, person entitled to sporting interests, (depending on the nature of land or interests that the application relates to) and any creditor in a standard security in relation to that land or interests are correctly identified in the application form in order for Ministers to consent to the crofting community body's application. What are your comments on the proposal?

**It does not seem an unreasonable proposition for a community to use all its best endeavours to accurately identify owner, person, etc.... However, the question arises of what would happen if the owner, person, etc ... could not, even after all reasonable steps had been taken by the community, be identified. This could arise by virtue of some of the complex and potentially overseas arrangements that can be put in place to hide ownership and beneficial interest, or simply by the passage of time, complex and dispersed ownership arrangements that can follow from one time changes in ownership. The same comment can be made about the Section 3A, which this proposal is designed to align with, and which Parliament has yet to consider. It is not**

**clear why this change is necessary either for Part 3A or for this proposed section. This proposal would only be acceptable if accompanied by a provision to allow Ministers to, notwithstanding this provision, grant consent when they are satisfied that the community has taken all reasonable steps to identify the owner, person, etc ..., but have been unable to do so.**

**Question 7.** The Scottish Government proposes Ministers having a specific power to make regulations setting out the information that the crofting community body is required to provide to Ministers about the ballot, or any consultation that the crofting community body may have held with the community about their application. The crofting community body already are responsible for paying for the cost of the ballot. The Scottish Government proposes to expressly state in the Act that the crofting community body is liable for meeting the expense of conducting the ballot. What are your comments on the proposals?

**The proposals in the Community Empowerment (Scotland) Bill regarding Part 2 of the Land Reform (Scotland) Act 2003 makes provision for the Scottish Government to in future take responsibility for the balloting arrangements and pay for such. As a matter of principle, this proposal was not seen as one of simply making it easier for the community body, it was also seen as a proposal which could ensure the proper conduct of any such ballot and which therefore provided re-assurance to the parties concerned and for the wider public interest. These latter reasons would apply equally and might even be seen to be more important to the conduct of ballots in the crofting community and in circumstances where there was not a willing seller. There is therefore a case for the same provisions as it is proposed will apply to Part 2 (through revisions in CEB) to apply to this part. If the concern was simply one that in such circumstances Government would be funding a ballot on what was a 'compulsory' sale, this could be readily justified as being appropriate to ensure proper conduct and public confidence in the conduct of such a ballot.**

**Question 8.** The Scottish Government proposes that, when an application is extinguished under section 76, Ministers should be required to notify each person invited to give views on the application. This proposal aligns Part 3 with the proposed Part 3A of the Act. What is your view on this proposal?

**Agreed.**

**Question 9.** The Scottish Government proposes clarifying the certain persons listed in section 81(1) of the Act who may refer a question to the Land Court at any time before Ministers reach a decision on an application made under Part 3. What is your view on this proposal?

**This does not seem unreasonable.**

**Question 10.** The Scottish Government proposes increasing the timescale in which the valuer must notify the value of the land from 6 weeks to 8 weeks. Do you agree with this proposal?

**Agreed.**

**Question 11.** The Scottish Government proposes requiring the valuer to seek counter-representations when representations regarding the valuation of the land are received from the land owner, tenant, person entitled to sporting interests, as the case may be, or the crofting community body. Do you agree with this proposal?

**Agreed.**

**Question 12.** Section 89 of the Act allows compensation to be paid in respect of a loss or expense incurred in connection with a crofting community right to buy application. Ministers are already required to set out the procedure for claiming compensation by way of order. The Scottish Government proposes amending this order so that Ministers may, via an order, specify the amounts payable in respect of compensation and who is liable to pay these amounts. What are your views on the proposal?

**This does not seem unreasonable.**

**Question 13.** The Land Court is required to give its decision in writing within 4 weeks of the date of the hearing. The Scottish Government proposes removing the 4 week time limit, and remove the provision requiring the reasons to be provided in writing. What is your view of this proposal?

**It is not clear why this is necessary or helpful to the parties involved. Having reasons in writing seem appropriate, as does having a reasonably short timescale for these matters being concluded.**

### **Written submission from Highlands and Islands Enterprise**

#### **Introduction**

As the Scottish Government's economic and community development agency for the Highlands and Islands, we welcome the legislative framework brought by the Bill. We strongly support the Bill's aims.

HIE is an established advocate and exponent of community empowerments and community-led development. The CEB presents an unprecedented opportunity to create a policy and legislative environment focused on community empowerment, community engagement and with community-centered outcomes. We are pleased to continue to be involved in the CEB development process and provide the following evidence for the Committee.

#### **Extent of empowerment of communities**

*To what extent do you consider the Bill will empower communities, please give reasons for your answer?*

Community empowerment means different things to different communities. Some will want to take on the ownership or lease of assets (land and buildings) and/or delivery of local services. Others may be more interested in engaging with the public sector to directly influence how services are delivered or how public assets are best used.

The Bill usefully differentiates engagement from empowerment; engagement is about giving communities a voice in public sector processes whereas community empowerment is where communities lead change for themselves. The Bill gives all public sector bodies responsibility to create the conditions to encourage and support strong, independent and resilient communities. Ensuring a focus on supporting community empowerment is a key tenet of public service reform. As such we consider the CEB will fundamentally provide opportunities for community empowerment and will do this by both the formative (new) provisions it includes and the provisions which update and strengthen existing legislation.

The extent to which the CEB will empower communities is most significant in the following areas:

Within Part 3 – provisions formalise the opportunity for communities to engage in improvement processes – which has the potential to create a step change in levels of engagement by communities in the design and delivery of public services.

The suggested amendments to improve the effectiveness and efficiency of Part 2 of the Land Reform (Scotland) Act 2003, have reflected well on the experience to date of using the provisions. We believe these will make operation of that Act more workable, and therefore empowering, as a means to realise community asset ownership. The extension to urban land brings equity of the provisions across Scotland.

Part 5 - Asset Transfer Requests confers significant new powers to communities that can appropriately demonstrate their ability to deliver enhanced community benefit through Public sector assets.

Similarly, the enhanced transparency of the extent of common good property through Part 6, enables communities to effectively use participatory, Community Planning and asset acquisition powers within the CEB, directly enabling community opportunities and potential benefit.

### **Benefits and Disadvantages**

*What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?*

We comment here from HIE's perspective, covering Parts 2-5 of the CEB only, as those are the most relevant to our work.

The CEB will impact on all public sector agencies and authorities. However the greatest impact may be on local authorities given the provisions which include: Community Planning; participation requests; public asset transfer; common good; allotments; and non-domestic rates. These provisions are equally pertinent to HIE in our role as Community Planning partner and owner of public assets.

Our dual remit of economic and community development means we have a corporate focus on strengthening communities. As such, many of the CEB's provisions can be integrated into our working practices. The CEB also provides an

enhanced range of opportunities for us to further support communities to realise their aspirations and growth ambitions.

There are also significant benefits for our pan-Scotland work supporting communities through the Scottish Land Fund and Community Broadband Scotland, where access to assets and ability to influence service design are very relevant. The empowering provisions of this Bill have a significant beneficial alignment with HIE's strengthening communities work.

The Bill will require us to take a range of steps to address its content. In particular, we will revisit and further enhance our internal focus on CPP delivery, we will look to work with public sector partners in receipt of participation requests and review our policy positions around property and asset transfer. New mechanisms to enable us to respond to CEB provisions will be needed and we anticipate being able to work with partners across the region as they develop their own responses. We consider regional coordination and collaboration across public sector authorities on CEB provisions may in some areas be appropriately led by HIE – having consulted our partners.

Whilst not significant in terms of resource implication, these actions arising from the Bill will mean some permanent adjustment corporately as we comply with the provisions of the CEB.

We recognise that the demand from communities, stimulated by the CEB, will undoubtedly have resource implications for all those engaged in community capacity building, locally, regionally and nationally.

### **Community capability to take advantage of the Bill**

*Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?*

Many, but not all, communities in Scotland will have the capabilities to take advantage of the CEB's provisions. Communities comprise individuals with wide ranging skills and abilities, but the capacity of individuals to contribute to community development varies due to issues such as competing priorities (employment, personal and family priorities) time availability, financial status and individual confidence. In addition there are cultural, experience and capacity differences between communities. For example, land ownership aspiration and practice is not uniform across Scotland, with that being much stronger in parts of the Highlands and Islands than in other parts of Scotland. The extension of powers to urban communities introduces many more communities to the opportunities which asset based community development offers, and those communities may require support in order to realise the opportunity. Our experience evidences that community-led developments often evolves over time, starting with smaller initiatives, to build up capacity/skills, following which more ambitious undertakings can be driven forward.

There are also differences between rural and urban communities as a result of service provision design/availability between more easily serviced population concentrations and the challenges of servicing more remote, sparsely populated

communities. Remote communities for example over time have more frequently exercised their capability to deliver a lifeline or amenity service themselves rather than do without it. In doing so, experience and capability is developed - even if out of need rather than opportunity. The provisions of the CEB may therefore be capitalised on more readily where capacity has been built through earlier experiences.

Public and third sector partners will have an on-going role to strengthen the capabilities of communities across Scotland to ensure equity of access to the empowering provisions of this Bill.

### **Suggested Changes to Specific Provisions in the Bill**

Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

We are content with the specific provisions of the CEB with the exception of the areas detailed below. We have made suggestions for changes which we believe would enhance the intended outcomes and workable delivery of the legislation. We are focusing our suggested changes on Parts 2 to 5 of the Bill, which relate most strongly to our remit and where we believe we have most value to add.

### **Part 2 Community Planning**

We have commented through earlier consultations that high impact outcomes through CPPs can be seen in those CPPs where strong engagements at the appropriate leadership level by partner organisations is in place. Where this is the case, the partnership can identify shared and lead responsibilities for the CPP outcomes and enable strong collaborative delivery. The CEB substantially strengthens CPP duties and this will support the process of mutual commitment to a shared locality agenda and allow innovation in public service design, planning and delivery.

The proposed approach to determining the make-up of community planning partnerships is proportionate and provides the necessary flexibility to ensure all relevant stakeholders are included in the setting of local priorities and outcomes. However, we are unclear as to the merits of establishing the proposed 'corporate bodies' as set out in section 12 within part 2 of the draft CEB. Effective collaboration and the established understanding of the advantages to CPP delivery through powerful partnerships should negate the requirement to establish new structures in this manner and would therefore suggest there is no need for its inclusion within the CEB.

Clear articulation of local outcomes provides valuable direction to operational teams across the public agencies; however, measuring progress requires reliable, timely and informative small area statistics. In many sparsely populated areas the availability and robustness of socio-economic data does not easily allow for the tracking of changes over time – at a sufficiently granular level to inform policy decisions. Complementing the objectives of the CEB, it would be helpful to in tandem review the approach taken to capturing and publishing small area statistics to ensure progress reporting can be undertaken in a meaningful manner.

The CEB policy memorandum suggests (para 41) that the list of key partners will be extended and schedule 1 indicates this. However, this does not appear to be consistent with Part 2 Section 8 (Governance). It may be helpful for CPPs to determine their essential partners to reflect local circumstances and priorities. In addition, under this section and in schedule 1, given the connected economic development remit of HIE and Scottish Enterprise, it would be reasonable for the Enterprise Agencies to agree together with CPPs the most effective representation (rather than require both to be represented across the Highlands and Islands, which appears to be indicated).

### **Part 3 Participation Requests**

We welcome the broad definition of ‘community-controlled body’ and ‘community participation body’ as by adopting this inclusive approach and not defining community in too narrow a context will enable a range of organisations with diverse interests to put into practice the provisions of the CEB.

The criteria as detailed for the refusal of a participation request appear to be proportionate. However, issues around consistency may arise if the criteria are open to interpretation. Guidance notes on each individual criterion would help in this respect, and we would be pleased to offer input here in due course. Additionally, it may be advisable to clarify whether all, or some, of the criteria are required to be met as detailed in Section 19(3)(c). Parity of the value(s) placed on qualitative and quantitative outcomes in the decision process would also be relative to include.

Outcome improves process - where a public service authority does not have an outcome improvement process in place (Section 20(3)), and subsequently Section 23, the consultation period from the time of agreeing a participation request to agreeing the outcome improvement process and subsequently establishing the process is extensive. This time period, as currently detailed in the Bill, may have a detrimental effect on the momentum of the community participation body making the request. Similarly, the CEB does not identify a maximum timeframe for the outcome improvement process to be completed within. Whilst we recognise that this may be agreed once the process has commenced, a maximum time period for the process would be beneficial for all parties involved as well as bringing clarity and certainty.

The reporting required within the CEB may be further enhanced if the learning from successful participation requests was linked more strongly to the Community Planning Process, and enhancing early community engagement in the design of services, as this may reduce the need for and number of participation requests in the future.

### **Part 4 Community Right to Buy Land (CRtB)**

The provisions will extend the scope and flexibility of the CRtB and make the existing legislation more workable. Noted below are a number of detailed points for consideration which we would be pleased to discuss further with officers or the Committee.

**31(4): *Late registration relevant work/steps requirements*** Removing ‘good reasons’ is helpful as this normalises late registrations. For a variety of well documented reasons late registrations are very much the rule rather than the exception.

**31(4)(a)(i):** It would be most helpful if this subsection enables communities to progress a late registration if they have considered purchase of an asset, specific or general, as detailed in a local development plan.

We advocate communities taking a strategic and holistic approach to their development through the establishment of whole community plans. Amongst other identified needs, these plans are likely to include asset ownership aspirations of specific or general nature. These plans involve widespread and detailed community consultation and are resource intensive for the community. As such they tend to have longevity of 3-5 years or more. If a whole community plan containing relevant asset ownership aspirations is considered appropriate evidence under the proposed ‘taking relevant work’ provision then this would be welcome. If so, it would be important for these actions to be considered ‘eligible’ for the lifetime of the plan. Consideration of guidance notes to clarify eligible relevant work/steps would be beneficial.

**31(4)(aa)(iii):** It is commonplace for the initial work to be undertaken by a community council or a working group with the intention that another body would pursue the CRtB. Pursuing a CRtB is a significant consideration and we advise communities to establish a community body (compatible with Section 34 of the Act) only when they are confident an application is to be made. Consideration should be given to decoupling the requirements for relevant steps/relevant work *and* the application being made by the [same] community body. This is an appropriate practical approach and does not render the initial work undertaken less relevant. Rather, it preserves capacity within the community as they consider a CRtB.

**37(6) *Appointment of balloter*** Much of this information has already been submitted to Ministers as part of the application process and as Ministers supply background information to the balloter in the proposed section 51A(2) we do not see any merits in this subsection. Further, we are not persuaded of the need for the balloter to hold this information as the balloter’s role is solely to undertake the ballot.

**48 *Abandoned or neglected land – compulsory purchase powers*** The inclusion of compulsory purchase powers, as a lever of last resort when all other efforts have failed and in certain considered circumstances, is noted. However, we would emphasise the need to be mindful of the local and wider consequences of inclusion of compulsory purchase provisions in contemporary legislation, especially where pre-existing powers are in place, for instance within other public body legislation. Having considered in detail the application of the CEB, we note the possible role of compulsory purchase as a mechanism (evident from thecrofting community right to buy (CCrTB) where the lever of a form of compulsory purchase has been a largely passive facilitator). However, we would favour resort to existing compulsory purchase powers rather than re-prescription of these within the CEB. To ensure a

balanced approach, we would only wish such powers to be available once a willing seller (negotiated) route to ownership has been exhausted and where a purchase by the community is demonstrably in the public interest.

### **Abandoned or neglected land**

Although supportive of this principle, we consider the proposed new section, Part 3A, could be strengthened by additional definitions and information, which could be provided as guidance notes.

For instance, how might the difference between abandoned and neglected be distinguished? What criteria might “prove” a land asset is abandoned or neglected? We are not aware of an obligation on an owner not to abandon or neglect their property – might this obligation be an unintended implication through the CEB as presently worded? Consideration might usefully be given therefore to definitions, terminology and the ability for their consistent applications in urban, rural and remote areas.

Proving continuing ownership – this requirement will be challenging to demonstrate and it is unclear how the proving of ownership is connected to the intentions of sustainable development and the mitigation of abandoned/neglected land.

As drafted, the Part 3A provisions reflect the content of the CCRtB which is widely acknowledged to be challenging forcrofting community bodies to use. We welcome the recent development to address CCRtB through the CEB and we will comment fully within any consultation offered in respect of these matters.

### **Part 5 Asset Transfer Requests**

Public assets account for just over 10% of Scotland’s land area (excluding the seabed) so it is beneficial to facilitate the transfer of public assets to communities where this will lead to enhanced outcomes and potentially a reduced demand for public services. Whilst supporting the intent of these provisions – which we consider to be appropriate and balanced - their effectiveness will be determined to a great extent by the regulations. Consultation on the regulations would be welcomed.

**51: *Meaning of ‘relevant authority’*** We suggest the Bill would be strengthened and simplified by extending ‘relevant authority’ to all Scottish public sector bodies.

**52: *Asset transfer requests*** To promote a connection between the community and the asset, we suggest the community transfer body is required to demonstrate a connection with the asset. NB As currently drafted, a large conservation body or third sector organisation operating at a national or UK level may satisfy the community transfer body requirements – if this is unintended, and local communities/communities demonstrated interests connected with asset are intended, wording may benefit from revision.

**54: Asset transfer requests - regulations** We recommend the regulations identify the criteria to be demonstrated by the community transfer body's asset transfer request. These could include:

- Information/evidence of organisational capacity
- A sustainable management/development/business plan
- Community involvement and evidence of community support
- Information on who/what will benefit and how they/it will benefit

**55: Asset transfer requests - decisions** We have a portfolio of industrial/commercial premises throughout our region, which we deploy to assist in achieving wider economic development. Our policy is not to be a long-term landlord but to sell on properties when appropriate. We favour an outcomes based approach regarding the assessment of asset transfer requests. This would be consistent with Parts 1 and 2 of the CEB and will ensure maximum impact and benefit is achieved taking full cognisance of local circumstances. For example, it is our standard practice to offer sitting tenants the first refusal to purchase the properties they occupy and we have also supported asset sales to community bodies. In the event of interest in one of our assets from both the sitting tenant and a community organisation we would wish to consider the merits of both these proposals. We are confident section 55(3) accommodates this approach.

Inclusion of the following, in our view, would further strengthen these provisions:

The establishment of a **national public asset register**; the Minister's announcement for all public assets to be recorded in the Land Register will facilitate this.

The experience of the Community Right to Buy and National Forest Land Scheme is that communities often respond to opportunities. We therefore suggest these provisions extend to the **disposal of surplus assets** by relevant authorities.

Finally, there is scope for communities to register an interest (CRtB) in public assets and common good land. We assume both routes will be available unless a prohibition is applied and suggest the guidance notes address such matters. At present there are examples of public authorities willing to sell assets to communities, yet require the community to first register an interest in the asset via the CRtB. This is a complex and demanding undertaking for the community and unnecessary where there is a willing seller. However, that public authorities currently use the process might indicate a preference to adopt an established process (potentially overlooking complexity for communities) over one which is more streamline and potentially effective. The opportunity exists within the CEB therefore to require public authorities to use the most efficient asset transfer mechanisms available for both the public authority and the community body.

### **Equal Rights Impacts as set out in Policy Memorandum**

What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

The Bill explicitly recognises the enabling power of the current duties placed on public bodies by the Equality Act 2010 and the Public Sector Equality Duty (PSED) and acknowledges that its provisions are compatible with the European Convention of Human Rights. These are powerful foundations on which to build on the realisation of equal rights through community empowerment (e.g. when making asset transfer or participation requests), making explicit the provisions on equality impact assessment already covered by PSED. The requirement to form Community Planning Partnerships strengthens opportunities to develop partnership equality outcomes which reduce inequalities through collective responsibility and action, ensuring an equalities dimension is integrated into place-based policies and activity, which are recognised as having a particularly beneficial impact on some groups of people in both urban and rural settings.

The provisions on participation requests and addressing concerns that community bodies are open, inclusive and truly represent their communities have the potential to significantly increase the realisation of rights for some groups of people. This strengthens community empowerment by creating the right for communities to be engaged and to be supported by public bodies, taking in to account the potentially differing needs of individual community groups, whether rural or urban.

The Policy Memorandum summary of the EqIA carried out focusses on only one element of the PSED, that the Bill is not discriminatory. Much of the impact of the Bill in achieving equality, as outlined above, will be accomplished through public bodies' influence in maximising opportunities to advance equality of opportunity and foster good relations, the other elements of the General Equality Duty. This may be outlined in greater detail in the full EqIA document.

Determination of the compatibility of right to buy proposals as they affect the landowner and the community require legal consideration and we are aware of the detailed legal engagement undertaken during the CEB development period.

### **Written submission from Holmehill (Dunblane) Community Buyout Group**

#### **The purpose of this written submission**

This submission has been written to set out the experiences of the Holmehill Community Buyout Group in their quest to purchase Holmehill in Dunblane.

#### **Key points:**

##### **Positive**

- **The Land Reform Act was extremely important for the Holmehill group. Without the catalyst of the, then recent, Act it is unlikely that the Group would have been formed at all.**
- **Once the Group was formed, it sought to buy Holmehill, but on failing to achieve that, it has since, so far successfully, engaged with the planning process to protect Holmehill against inappropriate development. This involvement with the community has led to much greater dialogue and involvement in the wider planning processes in Dunblane.**

### Points to consider for change

- The requirement to pre-register for a right to buy is unrealistic in most circumstances, as the community needs are often generated by unexpected change, such as land being advertised for sale
- The requirement in terms of the effort required to renew every five years is unrealistic in most communities.
- There does not appear to be a viable appeal process
- The use of an “Option to sell” effectively negates the aim of the “Right to Buy” legislation, if the owner wishes to frustrate the registration
- If the “Option” is to remain valid there needs to be transparency on the nature of the options (The Scottish Executive only provided a very heavily redacted version, removing the identity of the third party.) and whether it continues to exist. This might be resolved by a requirement to record Options on the Land Register.
- Planning enforcement needs to be much stronger to give confidence that the community’s interests are being protected and that developers and land owners cannot just run roughshod over land that is important to the community.
- The planning process needs revisiting as it is stacked against the community and in favour of developers, who only need to win once, whilst communities often have to react to serial planning applications.

**David Prescott Chair, Holmehill Community Buyout Group November 2014**

### Background Information

Holmehill is a 13 acre green space in the centre of Dunblane, which overlooks the 12<sup>th</sup> century Cathedral, and is within the Dunblane Conservation area.

The site currently supports mature policy woodlands, as well as open areas of grass land and scrub. A well-used path (now designated and signed as a Core Path) runs through the site and links the community on the east of Dunblane with the town centre. The trees, and the hill on which they sit, are a prominent and important landscape feature of the town, providing an important sense of place with a number of large mature trees dating from the construction of Holmehill House in 1820. The diverse habitats on the hill support a wide range of bird species as well as other wildlife.

Holmehill has been owned by the Templeton family and then by Mrs Donaldson of the shipping line family, who gave part of the site (not that subject to the buyout) to the children of Dunblane in the 1940s.

Built in the 1820s, Holmehill House was the Donaldson family home (ship-owners and proprietors of The Donaldson Line) before being sold in 1962 to Stakis PLC, the then owners of the Dunblane Hydro Hotel, which is across the Perth Road from Holmehill.

Holmehill House was demolished in 1980 and the whole site was sold to Hilton Hotels in 1999. So for some 30 years the hill remained untouched apart from the building of Holmehill Court (privately owned sheltered housing) and individual

houses on the west side of Smithy Loan in the 1990s (a total of 43 dwellings). A Section 75 Agreement was agreed between Stakis Ltd and Stirling Council accepting no further development on the remaining 13 acres, except possibly on the site of the demolished Holmehill House.

Thus Holmehill became established as public open space, a status acknowledged in the 1999 Local Plan. Most Dunblane residents understood it was a preserved green space, and that no further development could take place. It was, and still is, used regularly by local primary and nursery schools, as well as the wider public.

In December 2004 notices were erected on Holmehill advertising it for sale as a potential development site, taking the whole community by surprise. Hilton Hotels sold the Hydro hotel to the Stardon Group in 2005.

### **Getting Started**

A public meeting was held in Scottish Churches House on 3<sup>rd</sup> January 2005 and was attended by over 100 people. It was resolved to seek to register a community interest in Holmehill under the Land Reform (Scotland) Act 2003, with the aim of buying the hill for the benefit of the local community. Holmehill Ltd was formed in February 2005, as required by the legislation. It is a company registered in Scotland No 279947 and also a Scottish charity No SC036988.

### **Application for a Right to Buy Registration**

Our first application was submitted in March 2005. This application was a considerable task. The Group had and still has a number of ideas for proposed use; including local food production, a spiritual dimension, linked to Dunblane's significant ecumenical role as well as providing space for wildlife and quiet open space for all to enjoy. The ideas were developed through community consultation.

The Application was quickly refused, in spite of securing the signatures of more than 10% of the Dunblane electoral roll population on the supporting petition.

### **Rejection Decision**

Our first application was deemed to be a 'late application' because it was submitted after the land was put on the market. In order for a successful registration in these circumstances, applicants have to satisfy three additional tests to those of a timeous application (that is one received before the land is put up for sale). These tests are contained in Section 39 of the Act and are (paraphrased):

- (a) that there were good reasons why the applicant did not secure a timeous application
- (b) that there exists significantly greater support for the application among the community (compared to a timeous application)
- (c) that the application is even more in the public interest (compared to a timeous application).

Scottish Ministers refused Holmehill's application on the grounds that the reasons given in (a) were not good reasons and because they asserted that the applicant was using the Act to 'thwart the planning process' and thus the test at (c) was not

satisfied. This was the first rejection of a “late application”, although not the first “late application” to be submitted by other buyout groups.

### **Using the Appeal process**

Holmehill appealed the decision to the Sheriff Court on the basis that the reasons at (a) were indeed good ones and that at (c) it was in the public interest since, among many things, the site was already designated as green space in the Stirling Local Plan 1999 and that in any event, a registration under the Act cannot ‘thwart the planning process’.

The appeal process involved going to Court, a daunting process at the best of times, and even more so to find we were facing three adversaries: Scottish Ministers, Hilton Hotels and Stirling Council, although the latter took no part in the proceedings.

Sheriff McSherry refused the appeal and awarded costs against Holmehill Ltd. The appeal was refused not because of the merits or otherwise of the decision that Scottish Ministers had taken, but because the Sheriff concluded (based on precedents in other cases) that he should not interfere with the decisions of Scottish Ministers. As the decision was made by officials, in the name of Ministers, this suggests that there is no realistic appeal process, and thus no way in which decisions can be challenged.

In Court Holmehill members were surprised when it emerged that officers making this decision had not consulted the Stirling Local Plan to determine the planning status of Holmehill.

The award of costs was stressful, and many members of the Buyout Group had to fulfil financial pledges that they had made at the start of the Appeal process. Hilton Hotels waived their £20,000 legal bill, and Scottish Minister recovered only about a quarter of their legal costs, leaving the Buyout Group with a very small sum to ensure that they survived.

### **Second Application for a Right to Buy Registration**

The Scottish Executive encouraged us to reapply after the sale to Allanwater Developments was concluded. This revised application was lodged in March 2007, after a second set of signatures had been collected. This second application had cleared all the procedural hurdles when we were advised that it had to be refused.

### **Option and rejection**

The grounds for refusal were that the new owners, Allanwater Developments Ltd, had taken out an Option Agreement with a third party and, according to the Scottish Executive, ‘section S39(5) of the Act applies’.

### **Subsequent Applications for a “Right to buy Registration”**

The group took a decision not to attempt any further applications, because:

- a) It is not possible to find out if the “option” still exists, or if there is another Option in place
- b) Even if there was no Option in place Allanwater Developments could quickly create another one.

This ended our practical interest in the Land Reform legislation and we sought to protect Holmehill in other ways.

Both of our applications and the associated correspondence and decision letters can be viewed on the Scottish Executives RCIL website.

### **Subsequent Campaign History**

Allanwater Developments have lodged two separate Planning Applications for different parts of Holmehill. The Buyout Group was active in opposing both applications, which were contrary to the Stirling Local Plan 1999.

The first application (11/00788/FUL) was withdrawn, whilst the second (12/00788/FUL) was refused. Both were the subject of a significant number of local objections.

Immediately after the refusal of the second application Ian and David Stirling, (respectively former and current Managing Directors of Allanwater Developments) cut down all the naturally regenerating trees on the top of Holmehill in a single day at the end of June 2013. This was without any prior notification and contrary to the Conservation Order, which is understood to treat all trees in the Conservation area as if they are protected by a Tree Preservation Order. These trees were also one of the reasons why the planning application 12/00788/FUL was refused.

Community action by Holmehill members and supporters has forced the Council into some actions, including the belated introduction of a Tree Preservation Order for the whole of Holmehill. A Tree Replanting Order, which has been significantly watered down from the original tree replanting plan agreed with Allanwater Developments in response to their illegal actions, has been enforced, and planting was finally completed in early November 2014.

Temporary Heras fencing has been in place for over a year, restricting public access. A lot of site clearance has taken place, which looks suspiciously like the preparation for construction activity, and may have damaged any archaeology that exists on this site above the Cathedral.

The Holmehill Group are bracing themselves for another planning application, possibly for one or two large houses on the top of Holmehill.

Dunblane Community Council and some Dunblane councillors have been supportive of our efforts.

## **Local Planning Processes**

In parallel to these planning applications the Holmehill Group has actively engaged in the Stirling Local Planning process. We have succeeded in maintaining the “public open space” designation for the whole of Holmehill in the face of Allanwater Development’s pressure to secure a designation for housing. The Government Reporter’s decision strengthens the designation as it weighed up the merits of housing against open space and came down in favour of the open space.

The Group were unsuccessful in preventing the designation in the Local Plan of a small corner plot adjacent to Holmehill, which was gifted by Mrs Donaldson to the children of Dunblane in the 1940s, and where there was once a Scout hut, as suitable for social housing.

However the Holmehill Group are now actively participating in a design programme for a small group of houses for elderly or disabled Dunblane residents to be built on this site. They are to be built by Forth Housing Association using charitable funds which are required to aid the elderly and disadvantaged of Dunblane.

## **The future**

The Holmehill Group is celebrating its tenth anniversary on 3 January 2015. It will continue to pursue options that could secure community ownership of this important green space in the heart of Dunblane.

## **Written submission from Law Society of Scotland**

### **Introduction**

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members, but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

To help us do this, we use our various Society Committees which are made up of solicitors and non-solicitors and ensure we benefit from knowledge and expertise from both within and outwith the solicitor profession.

Both the Law Society of Scotland’s Planning Law and Rural Affairs Sub-Committees have considered The Scottish Parliament’s Local Government and Regeneration Committee’s call for evidence and should like to respond on behalf of the Society as follows:

### **General Comments**

The Society while welcoming the policy intent of the bill to empower community bodies through ownership of land and buildings in order that people can meaningfully participate in decisions that affect their lives, expresses some concern with regard to the complexity of this bill.

In particular, the Bill itself in terms of Part 4 (COMMUNITY RIGHT TO BUY LAND) modifies Part 2 of the Land Reform (Scotland) Act 2003. There are multiple amendments to certain sections of the 2003 Act of the Bill which are rather difficult to follow and this does not seem to sit well with the aim of empowering communities. The Society suggests that it would be simpler to repeal and re-enact part 2 of the 2003 Act.

For these proposals to work effectively, community empowerment requires to be easily acceptable and workable by the very communities it seeks to empower. The Society expresses a concern that if a community body requires to undertake much in the way of initial ground work then there is a risk that enthusiasm will be lost if the proposals appear overly bureaucratic.

The bill is intended to extend and increase the powers of communities in involving them in community right to buy in both urban and rural settings and also to provide them with a form of compulsory purchase order as outlined at part 4 of the bill (COMMUNITY RIGHT TO BUY LAND) in respect of abandoned and neglected land at section 48 of the bill which appears to be undefined.

The Society also notes that there are already in place a wide range of controls and powers ready for use where councils are so minded and that the justification exists. In general policy terms, the Society notes that the general swing towards de-regulation in order to assist business and increase competitiveness has an equivalent in a system in local government to do more with less.

Accordingly increased bureaucracy and managerial control is not always conducive to this. The Society believes enacting new measures which councils may find difficult to prioritise could have the unintended consequence of detracting from the credibility of the policy intent of this bill.

The Society also notes that a lot of the detail will be set out in subsequent regulation and also guidance and this makes it difficult at this stage to anticipate the overall effect of these provisions.

With particular reference to the questions set out by the Scottish Parliament's Local Government and Regeneration Committee, the Society should like to respond as follows:

**Question 1: To what extent do you consider the Bill will empower communities, please give reasons for your answer?**

The Society refers to its general comments.

While the Society that in terms of the Land Reform (Scotland) Act 2003 has assisted in bringing communities together in rural Scotland implementing a community right to buy, the Society questions the proposals as set out at Part 4 of the bill which extends the right to buy to the whole of Scotland and also provides a framework for community bodies to purchase abandoned or neglected land.

The Society highlights the marked differences between a right to buy exercised in rural Scotland and one now to be exercised with regard to land in an urban setting which may well have a higher acquisition and development consequent costs.

The Society highlights the unintended consequence of urban land in respect of which community interests may be registered where this land may already be subject to a redevelopment proposal (for example allocated in a development plan and/or subject to an extant planning permission). While the Society notes that Scottish Ministers may in those circumstances conclude that registration is not in the public interest, the uncertainty with such an application could have an adverse impact on investment decisions for developers.

The Society respectfully suggests that there requires to be clearer rules on how Scottish Ministers will deal with such an application where there are active development proposals and accordingly suggests that land subject to an active planning permission will, for a limited period of time, not be subject to registration under Part 4 of the bill. The Society also questions the lack of certainty as to whether the community purpose will be implemented and, in the case that it not being so implemented, what provisions are to be put in place with regard to “clawback”.

**Question 2: What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?**

Again, the Society refers to its general comments.

**Question 3: Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill. If not, what requires to be done to the Bill, or to assist communities to ensure this happens.**

The Society notes that at present Highlands and Islands Enterprise assist communities by awarding grants and assuming an advocacy role in the direction of other organisations which have exercised the right to buy.

The Society suggests that a central organisation could be set up in order to steer community bodies through the provisions of this bill .

**Question 4: Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?**

The Society's response to Question 1 identifies a requirement for further amendments to section 33 to restrict the application of community right to buy in urban areas where there is an active development proposal. If such provision is not made then an unrestricted community right to buy could have unintended but significant adverse effects on investment decisions. For example, it would not be uncommon to have a situation where planning permission is obtained for a redevelopment proposal with the aim of subsequently selling or leasing parts of the development to individual developers. There would currently be nothing to prevent an application for registration of a community interest being made in these circumstances as there would be no existing concluded missives or option in place. The risk of such an application being made, even if it is rejected by Scottish

Ministers, may be a disincentive to investment in a Scottish development. At the very least, it would cause delay.

The Society submits that the primary legislation (as opposed to guidance) should provide greater certainty in the circumstances in which the community right to buy would operate in relation to active development proposals. In particular, the Society suggests that consideration is given to allowing for a mechanism to obtain a certificate exempting a site from community right to buy for a certain amount of time. This would allow investment decisions to be made with a degree of certainty but would also retain the community right to buy in the event that the development did not proceed as envisaged.

The Society makes specific reference to section 48 of the bill (abandoned and neglected land) and notes that this term has not been defined but rather, land is eligible in terms of section 97C of the 2003 Act as amended by section 48 of the bill, if in the opinion of Ministers it is “wholly or mainly abandoned or neglected”. The Bill provides that in determining whether land is eligible, ministers “must have regard to prescribed matters. “. The lack of a definition for abandoned or neglected land gives rise to considerable uncertainty in relation to what land would be within the scope of section 97C,. The Society believes that there should be a proper definition of abandoned or neglected land. There is a particular concern about how the Part 3A process would operate in relation to long term development projects which may take a number of years to come to fruition

The Society further notes that the procedure with regard to the community right to buy abandoned or neglected land appears to be a similar procedure to compulsory purchase and accordingly believes that the tests should also be similar. Accordingly, there should be a requirement for a viable business plan and robust development proposals in respect of any community right to buy abandoned or neglected land.

From a more practical point of view, the Society notes that, in terms of section 97Q of the 2003 Act as inserted by section 48 of the bill, there is an ability for Ministers to impose statutory real burdens on the land and accordingly questions the relationship of these burdens with the ultimate decision of the Clerk to the Land’s Tribunal to confer title. The Society believes that it would be helpful to know what was to be envisaged here, e.g. what types of burdens and, in particular what types of clawback provisions should be put in place if the development contemplated by the community authority is not taken forward?

The Society further notes that the Clerk to the Lands Tribunal cannot grant better title than that possessed by the owner or person entitled and that accordingly title to be transferred to the community body will be subject to the same title conditions as that of the previous owner. This may cause difficulties for any project going forward and is to be distinguished from the provisions for a Compulsory Purchase Order which provide for a clean title to be obtained by way of a General Vesting Declaration. Accordingly, it may then follow that title transfer to the community cannot be used to fulfil its intended purchase with the consequent issues around funding.

The Society further highlights the practical issue with regard to the intent of the community bodies’ right to buy against the provisions of the Local Development

Plan and whether their proposal conflicts with the Local Development Plan or otherwise.

The Society highlights a further practical issue with regard to any owner who begins to maintain abandoned or neglected land once the provisions of section 48 of the bill are enacted.

The Society makes particular reference to section 97D (4) of the 2003 act as inserted by section 48 of the bill and note that the term “sustainable development” is undefined.

The Society also notes Part 5 of the bill (ASSET TRANSFER REQUESTS) and questions how this should apply to local government trusts, companies, joint organisations, or ALEOs

(Arms Length External Organisations). The Society questions why there is no appeal to Scottish Ministers against a refusal by a local authority for an asset transfer request.

The Society notes the provisions at part 6 of the bill (COMMON GOOD PROPERTY) and questions how an asset transfer request would work in relation to common good land. The Society would also suggest that the opportunity could be taken to simplify the law on common good land.

The Society makes particular reference to the recent Petition of East Renfrewshire Council for an order under section 75 (2) of the Local Government (Scotland) Act 1973 in respect of certain land at Cowan Park, Barrhead, East Renfrewshire [2014] CSOH 129 where that a PPP arrangement in respect of a new school to be built on common good account was held not to be a disposal and accordingly the Petition was refused as unnecessary. The case illustrates the current uncertainty on what constitutes a “disposal” as opposed to an “appropriation” in relation to common good land.

The difficulty is that whilst a local authority can submit a petition to court for alienation of common good land, there process cannot be used to authorise appropriation of common good land. The only alternative for a local authority in these circumstances is to petition for a private bill as was done with the recently enacted City of Edinburgh Council (Portobello Park) Act 2014,

The Society would suggest that the current bill could be used to clarify the law on alienation and appropriation of common good land. It is suggested that a requirement to resort to Private Bill procedure is not necessarily the best use of public resources and that the Bill should include a mechanism to authorise alienation or appropriation. Such a mechanism could, as is currently the case for alienation of common good land, be through a court petition. However, as the bill elsewhere vests public interest decisions on the use of land in Scottish Ministers, consideration could also be given to the authorisation procedure for alienation or appropriation of common good land similarly being through Scottish Ministers.

**Question 5: What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy Memorandum?**

The Society has no comments.