

# COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: National outcomes**

5. The Act places a duty on the Scottish Ministers to consult on, develop and publish a set of national outcomes for Scotland. The Scottish Ministers must also regularly and publicly report on progress towards these outcomes and review them at least every five years. These duties do not require the Scottish Government to use a particular model of purpose, targets, outcomes and indicators. They require national outcomes to be determined, but there is flexibility as to how these may be presented and measured.

#### **National outcomes**

6. Subsection (1) of section 1 provides that the Scottish Ministers must determine national outcomes. National outcomes are outcomes for Scotland that result from or are contributed to by the devolved functions set out in subsection (3) carried out by the persons set out in subsection (2). The provisions are wide to allow the inclusion of all organisations that could be considered as “public bodies”, and other organisations that carry out public functions, such as private or third sector bodies who are contracted to deliver public services. The persons included in the category of “Scottish public authority” include the Scottish Ministers and local authorities.
7. Subsection (4) requires that when determining the national outcomes, the Scottish Ministers must have regard to the reduction of inequalities of outcomes which result from socio-economic disadvantage.
8. Subsection (5)(a) requires the Scottish Ministers to consult persons who appear to them to represent the interests of communities in Scotland as well as any other persons they consider appropriate before determining the national outcomes. For the purposes of this provision, “community” is defined widely as including communities of interest, identity or geography (subsection (11)). Having consulted under subsection (5)(a), subsection (5)(b) requires the Scottish Ministers to prepare draft national outcomes and subsection (5)(c) requires the Scottish Ministers to consult the Scottish Parliament on these draft national outcomes for a period of 40 days (as defined in subsection (8)).
9. For the purposes of the consultation with the Scottish Parliament under subsection (5) (c), subsection (6) requires the Scottish Ministers to lay before the Parliament a document describing the consultation with the public carried out under subsection (5) (a), including details of any representations received and whether any account has been taken of these representations in preparing the draft national outcomes.
10. Subsection (7) provides that the national outcomes cannot be published until after the 40 day period for consulting the Scottish Parliament.

11. Subsection (9) imposes a duty on those persons set out in subsection (2) to have regard to the national outcomes in carrying out the devolved functions mentioned in subsection (3). The duty in subsection (9), however, does not apply to the Scottish Parliament and the Scottish Parliamentary Corporate Body (subsection (10)).

### **Review of national outcomes**

12. Subsection (1) of section 2 provides that the Scottish Ministers may review the national outcomes at any time. This is subject to subsection (2) which requires that, once the Scottish Ministers have published national outcomes, they must begin to review them no later than the expiry of 5 years from the day of publication. It will be for the Scottish Ministers to decide how frequently within that 5 year period they wish to review the national outcomes.
13. Subsection (1) is also subject to subsection (3) which provides that the Scottish Ministers must begin further reviews of the national outcomes at least every 5 years from the date of publication of revised national outcomes or the republication of the existing national outcomes. It is also subject to subsection (4) which provides that in any review of the national outcomes the Scottish Ministers must consult persons who appear to them to represent the interests of communities in Scotland and any other persons they consider appropriate. Subsection (9) defines “community” for the purposes of this provision as including communities based on common interest, identity or geography.
14. Subsection (5) provides that the Scottish Ministers may revise the national outcomes following a review. Subsection (5)(b) provides that if after a review revisions are made to the national outcomes, the Scottish Ministers must then consult the Scottish Parliament for a period of 40 days on these proposed revisions. It also provides that if after a review has taken place no revisions are proposed, the Scottish Parliament will still be consulted for the 40 day period on the existing national outcomes. Subsection (10) provides detail on how the 40 day period is to be calculated.
15. For the purposes of the consultation with the Scottish Parliament under subsection (5) (b), subsection (6) requires the Scottish Ministers to lay before the Parliament a document describing the consultation carried out under subsection (4), any representations received and whether any account was taken of those representations in preparing the proposed revisions to the national outcomes.
16. After the consultation with the Scottish Parliament, the national outcomes must either be published as revised or, where no changes are made, they must be republished (subsection (5)(d)).

### **Reports**

17. Subsection (1) of section 3 requires the Scottish Ministers to prepare and publish reports about the extent to which the national outcomes have been achieved or not achieved. The format of the reporting will be for the Scottish Ministers to decide. The report must include information on progress since the previous report (subsection (2)). The Scottish Ministers must prepare and publish a report when they consider it appropriate (subsection (3)).

### **Part 2: Community planning**

18. This Part replaces provisions on community planning in Part 2 of the Local Government in Scotland Act 2003. It provides a statutory basis for community planning partnerships, and places duties on them around the planning and achievement of local outcomes. It also focuses responsibilities on community planning partners to support each partnership to fulfil its duties.

## **Community planning**

19. [Section 4](#) defines “community planning”, “community planning partner” and “community planning partnership”. Community planning is planning that is carried out for the purpose of improving the achievement of outcomes resulting from, or contributed to by, the provision of services delivered by or on behalf of the community planning partners. Subsection (3) states that these local outcomes must be consistent with national outcomes which the Scottish Ministers determine under section 1(1), or as revised under section 2(5)(c). The persons listed in schedule 1, together with local authorities, are the community planning partners. The community planning partnership comprises these partners when they participate together in community planning.
20. Subsection (6) requires a community planning partnership to consider which community bodies are likely to be able to contribute to community planning, having regard in particular to which of those bodies represent the interests of persons who experience inequalities of outcome which result from socio-economic disadvantage. The community planning partnership must make all reasonable efforts to secure the participation of those community bodies in community planning, and to take steps to enable them to participate in community planning to the extent they wish to participate.
21. Subsection (7) enables the Scottish Ministers to amend the list of community planning partners in schedule 1 by regulations. Subsection (8) states that the regulations may provide that a community planning partner may participate in community planning for a specific purpose, where participation is required in relation to some of that partner’s functions but not others.

## **Socio-economic inequalities**

22. [Section 5](#) requires that community planning partnerships when carrying out their functions do so with a view to reducing inequalities of outcome which result from socio-economic disadvantage, unless the partnership considers it inappropriate to do so. Whilst community planning partnerships must act with a view to reducing inequalities this should not preclude them taking actions which improve outcomes but which do not, of themselves, reduce inequalities of outcome which result from socio-economic disadvantage.

## **Local outcomes improvement plan**

23. Under section 6 each community planning partnership must prepare a local outcomes improvement plan. To that end the community planning partnership must identify the local outcomes to which it is to give priority with a view to improving the achievement of the outcomes. The plan will provide a description of the improvement in local outcomes that is sought, the timeframe for achieving the improvement and a description of the needs and circumstances of persons residing in the area of the community planning partnership (subsection (2)). Subsection (3) requires the partnership to consult such community bodies and other persons as it considers appropriate when it prepares its plan. Subsection (4) sets out what a partnership must take account of before it publishes its final plan. This includes representations it receives as a result of the consultations with community bodies and other persons carried out in accordance with subsection (3). The partnership must also take account of the needs and circumstances of people and communities in the area.

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

24. [Section 7](#) requires that the community planning partnership must monitor progress in improving the achievement of local outcomes referred to in its local outcome improvement plan. It must keep the plan under review to determine whether the plan itself is still appropriate and must publish any revised plan which results from such a review.

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

25. Under section 8, each partnership must prepare and publish an annual report of progress, setting out its assessment of whether there has been any improvement in the achievement of local outcomes referred to in its local outcome improvement plan, the extent to which the community planning partnership has participated with community bodies, and the extent to which that participation has been effective in contributing to community planning. The period which these reports must cover is the year beginning on 1 April, unless the Scottish Ministers specify another date from which the reporting year must begin in a direction to the partnership.

### **Localities: comparison of outcomes**

26. [Section 9\(1\)](#) and [\(3\)](#) requires that each community planning partnership must divide its area into smaller localities and identify those localities where persons are experiencing significantly poorer outcomes than those experienced elsewhere in the area of the community planning partnership or those experienced generally by persons in Scotland. Community planning partnerships in carrying out this duty must take account of the needs and circumstances of persons residing in its area (subsection (4)). This section confers a power on the Scottish Ministers to make regulations specifying areas of a type or description which can be localities, subject to any conditions specified in the regulations (subsection (5)). Separately it also confers on the Scottish Ministers a power to make regulations specifying that localities in the area of a local authority must each be of the same type or description (subsection (6)).

### **Locality plan**

27. Under section 10 each community planning partnership must prepare and publish a locality plan for each locality that it has identified as experiencing significantly poorer outcomes. Subsection (2) also provides community planning partnerships with a power to prepare and publish local outcomes improvement plans for any other locality within its area. Under subsection (3)(a) locality plans must contain local outcomes to which priority is to be given with a view to improving the achievement of those outcomes. Subsection (4) requires the partnership to consult such community bodies and other persons as it considers appropriate when it prepares its locality plan. Subsection (5) provides that before it publishes its final plan the community planning partnership must take account of any representations it receives as a result of the consultations with community bodies and other persons carried out in accordance with subsection (4). The partnership must also take account of the needs and circumstances of persons in the locality.

### **Locality plan: review**

28. [Section 11](#) requires that each community planning partnership keep under review the question of whether it is making progress in improving the achievement of each local outcome in the locality plan. It must also from time to time review the locality plan itself and must publish any revised locality plan which results from such a review.

### **Locality plan: progress report**

29. Under section 12, each community planning partnership must prepare and publish a locality plan progress report for each locality plan for each reporting year. This report must include the community planning partnership's assessment of whether there has been any improvement in the achievement of the local outcomes in the locality plan. The period which these reports must cover is the year beginning on 1 April, unless the Scottish Ministers specify another date from which the reporting year must begin.

## **Governance**

30. [Section 13](#) places responsibilities on specified community planning partners to facilitate community planning and to take reasonable steps to ensure that the community planning partnership for the area of the local authority carries out its functions efficiently and effectively. Subsection (2) lists the persons to whom these governance duties apply. Subsection (3) enables Ministers to modify this list by regulations.

## **Duties on community planning partners**

31. [Section 14\(1\)](#) allows a community planning partnership to allow a particular community planning partner not to comply with a community planning duty in relation to a particular local outcome or to comply with a duty in relation to a particular outcome only to a limited extent.
32. Subsections (2) to (5) of section 14 describe how the community planning partners, listed in schedule 1, must participate in community planning. These responsibilities include co-operating with other community planning partners in carrying out community planning (subsection (2)) and taking account of the published local outcomes improvement plan as part of its work (subsection (5)). They also include committing appropriate resources to the achievement of local outcomes set out in that plan and for the purpose of securing the participation of relevant community bodies in community planning (subsection (3)). Each community planning partner must provide the partnership with such information about the local outcomes in the plan which the partnership may request (subsection (4)).

## **Guidance**

33. [Section 15](#) provides that each community planning partnership and community planning partner must have regard to any guidance issued by the Scottish Ministers about the carrying out of their community planning functions. The Scottish Ministers must consult such persons as they think fit before they issue any such guidance.

## **Duty to promote community planning**

34. [Section 16](#) requires the Scottish Ministers to promote community planning when discharging any function which might affect community planning, or a community planning partner. It is a restatement (with amendment) of section 16(8) of the Local Government in Scotland Act 2003.

## **Establishment of corporate bodies**

35. Section 19 of the Local Government in Scotland Act 2003 gives the Scottish Ministers a power to establish corporate bodies to co-ordinate community planning. As a body corporate, a community planning partnership could, for example, hold its own budgets and assets and employ its own staff.
36. [Section 17](#) of the Act retains the option of incorporation in appropriate cases, by replacing the provisions of section 19 of the 2003 Act. Subsection (1) allows the Scottish Ministers to establish a body corporate by regulations, following an application made jointly by each person mentioned in section 8(2). Any application must include information about the matters which are listed in subsection (2). Subsection (3) lists matters about the body corporate which the Scottish Ministers can specify in any regulations they make. Subsection (4) allows the regulations to provide that the corporate body may discharge a function even where another enactment specifies that it is the function of another body or prevents the carrying out of that function by the corporate body.

### **Part 3: Participation requests**

37. This Part sets out how a “community participation body” can make a request to a “public service authority” to participate in a process with a view to improving an outcome that results from (or is contributed to by virtue of) the provision of a public service, and how public service authorities are to deal with such requests. The Act provides the main structure of the approach, and there are powers for the Scottish Ministers to make regulations adding more detail about procedures to be followed, timescales, and information to be provided or published. There is also a requirement (in section 34) for public service authorities to have regard to guidance in carrying out their functions under this Part.

#### **Community controlled body**

38. [Section 19](#) defines a “community-controlled body”. This can be a corporate body or unincorporated but it must have a written constitution which:
- defines the community to which the body relates;
  - provides membership rules which ensure the body is open to and controlled by members of that community, and that the majority of the members of the body are members of that community;
  - sets out aims and purposes which include the promotion of a benefit for that community; and
  - provides that any surplus funds or assets are to be used for the benefit of that community.
39. There are no restrictions on how a community may be defined for this purpose. It may be based, for example, on geographical boundaries, common interests, or shared characteristics of its members (such as ethnic background, disability, religion, etc.).

#### **Community participation body**

40. [Section 20](#) defines a “community participation body”, which is the type of body which can make a participation request under section 22. A community participation body may be a community-controlled body, a community council, a body designated by the Scottish Ministers by order or a group as described in subsection (4).
41. Subsection (2) provides that the Scottish Ministers may designate individual bodies as community participation bodies, or may designate a whole class of bodies, so that any body of that type will qualify as a community participation body. Subsection (3) states that where a trust is designated, the designated body will be the trustees, since a trust is not incorporated.
42. A group described in subsection (4) is one that has no written constitution, unlike a community-controlled body. It must nonetheless relate to a particular community; its membership must be open to any member of that community, its decisions must be made or otherwise controlled by members of the group who are members of that community, and its surplus funds and assets must be applied for the benefit of that community.

#### **Public service authority**

43. [Schedule 2](#), introduced by section 21, lists the bodies to which a participation request can be made, to be known as “public service authorities”. This includes local authorities, Health Boards, and certain other Scottish public bodies. The public bodies selected are involved in providing or supporting local services. The list does not include, for example, boards which advise Ministers or which regulate certain professions.
44. The remainder of section 21 gives the Scottish Ministers a power to remove or amend any entry on the list, or to make an order designating other persons or classes of

person as public service authorities. Subsection (4) provides that persons may only be designated if they fall into the following categories:

- part of the Scottish Administration (which has the meaning given in section 126(6) to (8) of the Scotland Act 1998);
- “Scottish public authorities with mixed functions or no reserved functions under the Scotland Act 1998” – this means that UK Government departments and public bodies that deal with matters reserved to the UK Parliament cannot be included;
- companies wholly-owned by public service authorities.

45. Under subsection (9), when adding a person to the list, the Scottish Ministers may exclude some of the services they provide from being subject to participation requests.

### **Participation requests and the outcome improvement process**

46. [Section 22](#) provides that a community participation body, or two or more bodies jointly, may make a participation request to a public service authority. This is a request to take part in a process established by the authority with a view to improving an outcome that results from (or is contributed to by virtue of) the provision of a public service. Subsection (2) says that the request must specify an outcome relating to a service provided by that authority, and the community participation body must explain why it considers it should be involved, what it can bring to the process (for example, members’ experience as users of the service), and what improvement it expects might be achieved as a result. Subsections (3) and (4) relate to a request made by a group without a written constitution, and require the group to provide sufficient information to the public service authority to allow the authority to be satisfied that the group meets the requirements set out in section 20(4). Subsection (6) provides that the request may also ask that one or more other public service authorities should participate in the outcome improvement process, in addition to the authority to which the request is made.
47. [Section 23](#) gives the Scottish Ministers powers to make regulations setting out further detail on participation requests. Regulations can, in particular, cover how requests are to be made, how public service authorities should deal with them, additional information to be provided in connection with requests, and ways in which public service authorities are to promote the use of participation requests and support communities to form community participation bodies in order to make participation requests and participate in outcome improvement processes.
48. [Section 24](#) requires a public service authority to agree to or refuse any participation request it receives, and sets out in subsections (3) to (5) how the authority must make that decision. In addition to the reasons provided in the request, the authority must consider whether agreeing to the request would be likely to promote or improve economic development, regeneration, public health, social or environmental wellbeing, to reduce inequalities that arise from socio-economic disadvantage or increase participation of people experiencing such disadvantage, and any other benefits or matters the authority considers relevant. The authority must also take into account its responsibilities in relation to equal opportunities. It must agree to the request unless there are reasonable grounds for refusal. Subsection (6) requires the authority to give notice of its decision to the community participation body within a period prescribed in regulations made by the Scottish Ministers or a longer period if agreed between the public service authority and the community participation body. In addition, if the public service authority is to refuse the request, it must give reasons for that refusal.
49. When a public service authority agrees to a participation request, the decision notice sent to the community participation body must, under section 25, describe how the outcome improvement process will work, how the body is expected to take part in the process, and whether and how any other person (including another body or another authority) will be involved. The authority may already have established a process with

which the community participation body can join in, in which case the authority must say what stage the process has reached. If a new process is to be established as a result of the request, the community participation body has 28 days to comment on that new process (section 26(2) and (3)). The public service authority has a further 28 days to provide final details of that process, taking those representations into account, and must then (under section 28) establish the outcome improvement process within 90 days, and maintain it. The authority must publish information about the process if required to do so by regulations made under section 26(6). Section 29 provides that the public service authority may modify the process, following consultation with the community participation body. If it does so, it must publish information about the modification, if required to do so by regulations.

50. [Section 27](#) allows a public service authority to decline to consider a participation request, if a new request is made within 2 years about the same outcome relating to the same service. The new request may be declined whether it is made by the same community participation body as the previous request or by a different body.
51. [Section 30](#) gives the Scottish Ministers power to make provision for appeals or reviews in relation to decisions on participation requests, by regulations.
52. When an outcome improvement process has been completed, section 31 requires the public service authority to publish a report on the process. The report must summarise the outcome of the process, including whether the outcome to which it related has been improved, and describe how the community participation body that made the request influenced the process and the outcomes. It must also explain how the authority will keep the community participation body and others informed about changes in the outcomes of the process and any other matters relating to the outcomes. In preparing the report, the public service authority must seek the views of the community participation body which made the request and any other community participation bodies that participated in the outcome improvement process. Subsection (6) gives the Scottish Ministers power to make regulations setting out further detail about these reports and the information they are to contain.
53. [Section 32](#) requires a public service authority to publish an annual report on the number of participation request received and their outcomes, and any action taken by the authority to promote the use of participation requests and support community participation bodies to make them. The report will relate to a year from 1 April to 31 March and must be published no later than 30 June following the end of the period to which the report relates. Section 33 requires the Scottish Ministers to produce a report on the operation of participation requests within 3 years of section 22 coming into force and lay it before the Scottish Parliament.

#### **Part 4: Community rights to buy land**

##### **Modifications of [Part 2 of Land Reform \(Scotland\) Act 2003](#) : the community right to buy**

###### Introduction

54. [Sections 36 to 61](#) of the Act amend provisions of Part 2 of the Land Reform (Scotland) Act 2003 (“the 2003 Act”).
55. Part 2 of the 2003 Act provides bodies representing rural communities with rights to register an interest in land with which the community has a connection. These bodies have a right to purchase that land if the owner is willing to sell it. Part 2 of the 2003 Act sets out the land in respect of which an interest can be registered, and the procedure for registering an interest. It also sets out the circumstances in which the right to buy the land in respect of which an interest is registered arises and the procedures for exercising it (including procedures for valuation of the land, for appeals and for compensation).

Nature of land in which community interest may be registered

56. **Section 36** of the Act amends section 33 of the 2003 Act. Section 33 of the 2003 Act sets out the land in which a community body may register an interest. It provides that an interest can be registered in “registrable land”, which is anything other than “excluded land”. “Excluded land” is designated in the Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2009 as land comprising the settlements listed in the order (which are all settlements of over 10,000 people). In this way, the community right to buy under the 2003 Act applies to community bodies representing rural communities.
57. **Section 36(1)(a)** of the Act removes references to “registrable land” in section 33(1) of the 2003 Act which means that an interest can be registered in any land other than “excluded land”. As a result, community bodies will be able to register an interest in respect of land across Scotland, irrespective of the size of settlement.
58. **Section 36(1)(b)** of the Act removes the power of the Scottish Ministers to define “excluded land” by order. It amends the definition of “excluded land” in section 33(2) of the 2003 Act to make reference to land consisting of a separate tenement in which an interest cannot be registered if these rights are owned independently of the land.
59. **Section 36(1)(d)** of the Act repeals subsections (3) to (7) of section 33 of the 2003 Act. Section 36(1)(c) inserts new subsection (2A) into section 33 of the 2003 Act which reflects the terms of the repealed subsection (6) to provide that a community interest may be registered in salmon fishings and mineral rights (other than rights to oil, coal, gas, gold or silver) which are owned separately from the land to which those interests relate.

#### Community bodies

60. **Section 37** of the Act modifies section 34 of the 2003 Act which defines a community body eligible to register an interest in land. Section 34 of the 2003 Act provides that a community body is a company limited by guarantee that meets certain criteria.
61. **Section 37(2)** of the Act inserts subsection (A1) into section 34 of the 2003 Act. This extends the types of body which may be community bodies under Part 2 of the 2003 Act to include Scottish charitable incorporated organisations (“SCIOs”), community benefit societies (“BenComs”) and any other type of body which Ministers specify in regulations. Section 37(2) also confers a power on Ministers to specify in regulations, and subsequently modify, any requirements which must be met by any such type of body.
62. **Section 37(3)(e)** of the Act provides an additional requirement that must be satisfied for a company limited by guarantee to be a community body. The company’s articles of association must make provision for the minutes of meetings to be given to a person on request within 28 days of the request being made if that request is reasonable. The articles of association must also allow the community body to withhold information, provided that reasons are given for doing so.
63. **Section 37(3)(f)** of the Act amends section 34(1)(h) of the 2003 Act to include reference to “Part 3A community bodies” which are provided for in the new Part 3A of the 2003 Act (inserted by section 74 of the Act). This means that community bodies eligible to apply to purchase land under the new Part 3A of the 2003 Act are among the alternative bodies to which community bodies under Part 2 of the 2003 Act may pass their assets upon winding up in terms of their articles of association.
64. **Section 37(4)** of the Act inserts new subsections (1A) and (1B) into section 34 of the 2003 Act, which set out the provisions that a SCIO or BenCom must include in its constitution or registered rules for it to be a community body and so eligible to apply to register an interest in land under Part 2 of the 2003 Act.
65. **Section 37(5)** of the Act amends section 34(2) of the 2003 Act to allow Ministers to disapply the requirement that the articles of association, constitution or registered rules must state that a community body must have a minimum of 10 members.

66. [Section 37\(6\)](#) of the Act inserts subsection (4A) into section 34 of the 2003 Act. This subsection gives Ministers the power to modify, by way of regulations, the criteria which must be met by companies limited by guarantee, SCIOs and BenComs in order to be community bodies under Part 2 of the 2003 Act.
67. [Section 37\(6\)](#) of the Act also inserts subsection (4B) into section 34 of the 2003 Act. This subsection gives Ministers the power to amend, by way of regulations, subsection (1) and the new subsection (A1) of section 35 of the 2003 Act (inserted by section 38 of the Act) where Ministers have exercised the power contained in the new subsection (A1)(b) of section 34 of the 2003 Act to extend, by way of regulation, the types of bodies which may be eligible to be community bodies under Part 2 of the 2003 Act. The power contained in subsection (4B) means that the prohibition on a community body modifying its articles of association, memorandum or constitution without the written consent of the Scottish Ministers can be amended to extend to any other kind of constitutive document which may apply to new types of body which may be community bodies as a result of the regulations made by Ministers under the new subsection (A1)(b) of section 34 of the 2003 Act.
68. [Section 37\(7\)](#) of the Act amends subsection (5) of section 34 of the 2003 Act which provides for the use of postcode units in order to define the community that the community body represents. Section 37(7) of the Act confers a power on Ministers to make regulations which prescribe other types of area by reference to which a community may define itself.
69. [Section 37\(8\)](#) of the Act inserts definitions of “community benefit society”, “registered rules” and “Scottish charitable incorporated organisation” into the 2003 Act.

#### Modification of memorandum, articles, constitution or registered rules

70. [Section 38](#) of the Act amends section 35 of the 2003 Act which provides that a community body may not modify its memorandum or articles of association without Ministers’ consent whilst they hold a registered interest or own land purchased under Part 2 of the 2003 Act.
71. [Section 38\(2\)](#) of the Act inserts subsection (A1) into section 35 of the 2003 Act which prohibits a community body from modifying its memorandum, articles of association, constitution or registered rules without the consent of Ministers during a specified period prior to registration of an interest. Section 38(2) of the Act also inserts subsection (A2) into section 35 of the 2003 Act which provides that the specified period starts with the day a community body submits an application for a registered interest in land and ends with the registration of interest in land, rejection of the application to register land, Ministers declining to consider the application under section 39(5) of the 2003 Act or withdrawal of the application by the community body. This means that the existing prohibition which applies whilst the interest is registered and throughout the time they own land purchased under Part 2 of the 2003 Act (in terms of subsection (1) of section 35 of the 2003 Act) is extended to the period prior to registration.
72. [Section 38\(3\)](#) of the Act amends subsection (1) of section 35 of the 2003 Act to make reference to the “constitution” or “registered rules” of a community body. This amendment takes account of the inclusion of SCIOs and BenComs as bodies which may be community bodies.
73. Section 35(3) of the 2003 Act allows Ministers to compulsorily acquire land from a community body which has bought land but, had it not so bought that land, it would no longer be entitled to do so. Section 38(4) of the Act inserts subsections 35(4) and 35(5) into the 2003 Act which allow Ministers to make an order relating to, or to matters connected with, the compulsory acquisition of that land from the community body.

#### Register of Community Interests in Land

74. [Section 39](#) of the Act amends section 36 of the 2003 Act. Section 36 of the 2003 Act provides that the Keeper of the Registers of Scotland is required to set up and maintain

the Register of Community Interests in Land. Section 36 also provides what information is to be publicly available via the Register, and requires a community body which is a company limited by guarantee to have its name and address in the Register. Subsections (1) and (2) of section 39 of the Act amend this, so that a community body which is a Scottish charitable incorporated organisation or community benefit society is also required to have its name and address in the Register.

75. [Section 39\(3\)](#) of the Act inserts subsections (5A) and (5B) into section 36 of the 2003 Act. Subsections (5A) and (5B) require a community body to notify the Keeper of a change to the community body's name or registered or principal office as soon as is reasonably practicable after the change has been made.

#### Public notice of certain applications

76. [Section 40](#) of the Act amends section 37(4) of the 2003 Act and inserts subsections (4A) and (4B). The new provisions set out that, where the owner of the land is unknown or cannot be found and the type of proposed application is one to register an interest in land consisting of salmon fishings or mineral rights which are owned separately from the land in respect of which they are eligible, Ministers have the power to set out in regulations the manner in which the public notice of the application must be made.

#### Criteria for registration of interest in land

77. [Section 41](#) of the Act amends section 38 of the 2003 Act which sets out the criteria which must be met before an application to register a community interest in land is approved by Ministers. Subsection (1)(d) of section 38 of the 2003 Act provides that there must be sufficient community support to justify the registration.
78. The word "substantial" is repealed in section 38(1)(b) of the 2003 Act and so the requirement concerning community members having a substantial connection with the land that the community body is seeking to register an interest in will be amended to just refer to a connection with that land. The repeal of "substantial" is effected by the repeals schedule (schedule 5 to the Act).
79. Section 38(1)(b) of the 2003 Act provides that Ministers must be satisfied that (i) a significant number of the members of the community must have a substantial connection with the land, and (ii) the land must be sufficiently near to land with which those members of the community have a substantial connection ("substantial" to be repealed as above). Section 41(a)(vi) of the Act adds 2 alternative criteria into section 38(1)(b) of the 2003 Act, in addition to the existing 2 criteria. The alternative criteria are (iii) where the community body is an eligible body for the purposes of Part 2 of the 2003 Act, that the land is in or sufficiently near to the area of the community, and (iv) where the community body is a body as prescribed by Ministers, the land is in or sufficiently near to the area of the community.
80. [Section 41\(c\)](#) of the Act inserts new subsections (2A) and (2B) into section 38 of the 2003 Act. Subsection (2A) precludes Ministers considering any community support that is dated earlier than 6 months before the date an application to register a community interest in land is received by Ministers. Subsection (2B) gives Ministers the power to amend the time limit in which the approval of a member of the community supporting a community body's application must be dated. That time limit must not be less than 6 months.

#### Procedure for late applications

81. [Section 42](#) of the Act amends section 39 of the 2003 Act relating to the procedure for late applications. An application is deemed to be "late" when it is received by Ministers after the owner of the land to which an application relates has taken action to transfer the land but before missives are concluded, or an option to acquire is granted, in pursuance of that action.
82. [Section 42\(2\)](#) of the Act rewords subsection (1) of section 39 of the 2003 Act which sets out the conditions which must be met in order for section 39 to apply.

83. **Section 42(3)** of the Act inserts a new paragraph (aa) into section 39(2) of the 2003 Act. The new paragraph allows Ministers to request further information from the owner of the land or a creditor in a standard security with the right to sell the land before the end of the 7-day period following the landowner or the creditor giving their views on the application under section 37(5) of the 2003 Act. The owner of the land or the creditor must provide the information within 14 days of receipt of the request. This information is requested to ensure that Ministers have the necessary evidence on which to decide whether the application is “late”.
84. **Section 42(3)(b)** of the Act modifies subsection (2)(b)(ii) of section 39 of the 2003 Act to extend the time in which Ministers have to make a decision on whether the interest should be registered in the case of a “late” application where further information is requested. Where Ministers request further information, this period will be 44 days instead of 30 days.
85. **Section 42(4)** of the Act amends subsection (3) of section 39 of the 2003 Act which sets out matters on which Ministers must be satisfied, in addition to the matters set out in section 38, before approving a “late” application. Section 42(4) of the Act removes the requirement to show “good reasons” why an application was not submitted prior to the land coming on the market and replaces it with a requirement that such relevant work as Ministers consider reasonable was carried out by a person or such relevant steps as Ministers consider reasonable were taken by a person. Section 42(4) of the Act inserts paragraph (ab) into subsection (3) which provides that Ministers shall not consent to an application if the land was offered to the same or a ‘similar’ community body within the last 12 months, unless, in the opinion of Ministers, there are good reasons why the body did not purchase the land. Section 42(9) of the Act inserts a new subsection (6) into section 39 of the 2003 Act to define “relevant work” and “relevant steps”. Section 42(9) of the Act also inserts subsection (7) into section 39 of the 2003 Act which defines references to “the land”, “an offer” and “similar community body” for the purposes of section 39(3)(ab).
86. **Section 42(4)** of the Act also inserts paragraph (aa) into section 39(3). This includes provision relating to the time within which the relevant work or steps must have been taken. It is for Ministers to determine whether the relevant work or steps were carried out sufficiently in advance of the landowner taking action with a view to selling the land or giving notice that a transfer was proposed under section 48(1). The new paragraph (aa) also provides that the relevant work or steps undertaken must be in relation to the land to which the application relates or other land being used for the same purposes as the land to which the application relates. The relevant work or steps are to have been carried out by the community body or by another person with a view to the application being made by the community body. Section 42(5) inserts subsection (3A) into section 39 which sets out that, in cases where there are good reasons that relevant work or steps have not been undertaken prior to the land being marketed for sale, and that there are good reasons to allow the late application despite the lack of relevant work or steps prior to the land being marketed for sale, Ministers may accept the application.
87. **Section 42(5)** of the Act also inserts a new subsection (3B) into section 39 of the 2003 Act. The new subsection (3B) allows Ministers to request further information about an application from any relevant party they deem necessary in connection with the criteria on which Ministers must be satisfied under section 39(3) of the 2003 Act. Ministers can request such information until the end of the 7-day period following receipt of the landowner’s views (or the views of a creditor in a standard security with a right to sell the land) under section 37(5) of the 2003 Act. Such additional information must be provided within 14 days of the request being made by Ministers.
88. **Section 42(6)** of the Act amends section 39(4)(c) of the 2003 Act which sets out the impact of an application being “late” on the community right to buy process. For the purposes of the provisions listed, the community body is deemed to have confirmed their intention to proceed with the purchase on the date on which the interest

is registered. The amendment inserts a reference to the new section 60A(1) of the 2003 Act (inserted by section 57 of the Act).

89. [Section 42\(7\)](#) of the Act inserts a new subsection (4A) into section 39 of the 2003 Act and section 42(8) amends subsection (5) of the same. These provisions provide that where missives have been concluded in respect of the sale of land or an option conferred in respect of that land, Ministers must decline to consider the application. These amendments simplify the wording in the 2003 Act.
90. [Section 42\(9\)](#) of the Act provides for a new subsection (8) of section 39 of the 2003 Act which makes it clear that the land in respect of which the relevant work or steps have been carried out does not need to be the same land as that to which the application relates.

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

91. [Section 43](#) of the Act inserts a new section 39A into the 2003 Act in relation to evidence and notification of concluded missives or option agreements. The new subsection (4A) and amended subsection (5) of section 39 of the 2003 Act (under section 42(7) and (8) of the Act) provide that where an application is received after missives have been concluded in respect of the land or an option conferred, Ministers must decline to consider the application. If the application did not disclose that missives have been concluded or an option conferred then the owner of the land (or a creditor in a standard security with a right to sell) must provide evidence of concluded missives or an option agreement to Ministers within 21 days of receiving a copy of the application under section 37(5)(a) of the 2003 Act. Additional information on option agreements must also be provided, namely, the date of the option agreement and whether or not and how it may be extended. If the application does disclose that missives have been concluded or an option conferred and by virtue of section 39(4A) and (5) of the 2003 Act Ministers are not required to send a copy of the application to the land owner or a creditor in a standard security with a right to sell, then section 39A(4) will apply. This requires Ministers to send a copy of the application to the land owner and any such creditor and require them to provide evidence of the concluded missives or option conferred. The land owner and creditor will also be required to provide further information about the option conferred.

#### Notification of transfer

92. [Section 44](#) of the Act amends section 41 of the 2003 Act which is supplementary to and explanatory of section 40 of the 2003 Act. Section 40 of the 2003 Act prohibits owners and certain creditors from transferring land or taking action with a view to transferring land that is subject to a registered interest for so long as the interest is registered, other than in accordance with section 40(4) of the 2003 Act, which provides for “exempt” transfers.
93. [Section 44](#) of the Act inserts subsection (3) into section 41 of the 2003 Act. It requires that where an owner or a creditor in a standard security with a right to sell land makes a transfer in terms of section 40(4) of the 2003 Act, they must inform Ministers within 28 days of this taking place. The new subsection (3) of section 41 of the 2003 Act also sets out the information which the owner or creditor must provide.

#### Notice of expiry of registration

94. [Section 45](#) of the Act inserts subsections (6) and (7) into section 44 of the 2003 Act. Subsection (6) provides that Ministers must send a written notice to a community body of the expiry of their registered community interest in land. Subsection (7) provides that the notice must be sent no earlier than 12 months before the date on which the registered interest is due to expire, and Ministers will have a period of 28 days from that date in which to send the notification to the community body.

#### Changes to information relating to registered interests

95. [Section 46](#) of the Act inserts a new section 44A into the 2003 Act, which applies where a community interest in land is registered.

*These notes relate to the Community Empowerment (Scotland) Act 2015 (asp 6)  
which received Royal Assent on 24 July 2015*

96. Subsection (2) of the new section 44A of the 2003 Act requires that where any change has been made in the contact information of a community body provided in its application to register an interest, that community body must inform Ministers of that change as soon as is reasonably practicable.
97. Subsection (3) of the new section 44A of the 2003 Act requires that where any change has been made in the contact information of an owner provided in an application by a community body, the owner must inform Ministers of any changes to their contact information as soon as is reasonably practicable.
98. Subsection (4) of the new section 44A of the 2003 Act requires that the owner of the land must in certain circumstances notify Ministers of any changes to the information in an application relating to a creditor in a standard security as soon as is reasonably practicable.
99. Subsections (5) and (6) of the new section 44A of the 2003 Act require that where there is a creditor in a standard security over an interest in land to which an application relates and the application does not disclose the existence of such a creditor (either because the existence of the creditor was omitted or because it did not exist at the time the application was made), the owner must notify Ministers of the existence of the creditor and its contact details as soon as is practicable after the registration of the interest.
100. Subsections (7) and (8) of the new section 44A of the 2003 Act require that a community body or owner of land must, as soon as is reasonably practicable, make Ministers aware of any subsequent changes to any information submitted under subsections (2), (3), (4) or (6) of the new section 44A of the 2003 Act.

Notification under section 50 of the 2003 Act

101. [Section 47](#) of the Act amends section 50 of the 2003 Act. Section 50(1) sets out the circumstances in which the Lands Tribunal must notify Ministers that a landowner or creditor in a standard security with a right to sell the land has acted in breach of a prohibition notice under section 37(5)(e) or section 40(1) of the 2003 Act.
102. [Section 47\(a\)](#) of the Act amends subsection (3)(b) of section 50 of the 2003 Act. It inserts reference to any creditor with a right to sell the land. This requires Ministers to send a copy of the notice from the Lands Tribunal under section 50(1) to such a creditor as well as to the owner of the land.
103. [Section 47\(b\)](#) of the Act provides for a new subsection (6) to be inserted in section 50 of the 2003 Act. This sets out that a community interest in land remains in effect for the purposes of section 50(2)(c) where a community body has applied to re-register an interest under section 44(2) of the 2003 Act and the Keeper has re-entered the interest on the Register accordingly. Where a registered interest in land under consideration by the Lands Tribunal is due to expire, the relevant community body should ensure that it re-registers their interest in terms of section 44(2) of the 2003 Act. Section 50(2)(b) of the 2003 Act is repealed.

Approval of members of community to buy land

104. [Section 48](#) of the Act amends section 51(2)(a) of the 2003 Act which relates to the community's approval of the exercise of the right to buy. Section 51(2)(a) provides that at least half of the members of the community must have voted or, if half of the members have not voted, the proportion which voted is sufficient in the circumstances to justify the community body buying the land.
105. [Section 48](#) of the Act removes the reference to at least half of the members of the community voting and provides that the requirement in section 51(2)(a) of the 2003 Act is met if the proportion of the members of the community who voted is sufficient to justify the community body proceeding to buy the land. Section 51(3)(a) of the 2003 Act is repealed.

Appointment of person to conduct ballot on proposal to buy land

106. Sections 51 and 52 of the 2003 Act provide for a ballot to be carried out by the community body. Section 49 of the Act inserts a new section 51A into the 2003 Act which amends the procedure of the ballot and provides that it is to be carried out by an independent balloter. The responsibility for appointing a balloter and the expense of conducting the ballot lie with Ministers.
107. Subsections (2) to (6) of the new section 51A of the 2003 Act set out the procedure for the conduct of the ballot. So that the balloter has all the necessary information in order to undertake the ballot, Ministers are obliged under subsection (2) to provide the balloter with a copy of the application under section 37 of the 2003 Act and such other information as Ministers may prescribe in regulations. Subsection (3) provides that Ministers must do this within 28 days of the valuer being appointed under section 59 of the 2003 Act. Ministers must also provide the community body with the contact details of the balloter under subsection (4).
108. Subsections (5) and (6) of the new section 51A of the 2003 Act require that the community body must, within 7 days of receiving notification of the value of the land under section 60(2) of the 2003 Act, provide the balloter with wording for the proposition that the community body buy the land, together with other information as set out in regulations. The other information to be set out in regulations may relate to the community body, its proposals, the valuation and other matters. The form of the notification of the other information referred to may also be set out in regulations. Section 52(2) of the 2003 Act is repealed.

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

109. [Section 50](#) of the Act inserts a new section 51B into the 2003 Act. This section sets out the information which Ministers must take account of when deciding whether to approve a community body's exercise of the right to buy.
110. The new section 51B of the 2003 Act confers a power on Ministers to specify the type of information which a community body must provide in regulations, including, in particular, information relating to the matters referred to in subsection (3) of section 51 of the 2003 Act. Subsection (3) of the new section 51B of the 2003 Act requires that the information must be provided in a form set out by Ministers in regulations. Ministers can also take account of any information which they consider to be relevant, regardless of whether it is of the type specified in regulations.
111. Subsection (5) of the new section 51B of the 2003 Act provides that Ministers have 7 days from receipt of information to request further information. Furthermore, in terms of subsection (6) of the new section 51B of the 2003 Act, the community body has 14 days from the receipt of such a request to provide Ministers with the information.

#### Representations etc. regarding circumstances affecting ballot results

112. [Section 51](#) of the Act inserts a new section 51C into the 2003 Act which sets out a process for where a community body considers that circumstances have affected the ballot result.
113. Subsection (1) of the new section 51C allows the community body, within 14 days of receiving notification of the result of the ballot, to make representations to Ministers on circumstances that the community body considers impacted the ballot result.
114. Subsection (2) requires the community body to provide Ministers with such evidence as is reasonably necessary to establish the existence and effect of the circumstances that affected the ballot result. A copy of the evidence and representations must be sent to the owner of the land by the community body. Subsection (3) allows Ministers to request further information if required and the community body must respond within 7 days under subsection (4).
115. Subsection (5) provides that the owner of the land may provide comments in connection with the representations and evidence provided by the community body within 7 days of receiving copies of such representations and evidence. The owner of the land must send

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copies of any comments to the community body (subsection (6)). The community body may give their views to Ministers on the owner of the land's comments (subsection (7)).

116. Subsection (8) provides that Ministers may request further information from the community body and, in terms of subsection (9), the community body must respond within 7 days.
117. Subsection (10) provides that Ministers must take account of any of the representations, evidence, information, comments or views which have been provided in this process when considering whether the ballot turnout requirement under section 51(2)(a) of the 2003 Act has been met.
118. Due to the administrative steps which have been provided for, section 51(2) of the Act amends section 51 of the 2003 Act to extend the length of the period in which Ministers must decide whether to consent to the exercise of the right to buy from 21 days to 35 days in cases where representations have been made under section 51C(1).

**Ballot not conducted as prescribed**

119. [Section 52](#) of the Act amends section 52 of the 2003 Act. Section 52(1) of the 2003 Act provides that a ballot should be conducted as prescribed in regulations. Furthermore, in terms of section 52(2), if a ballot is deemed to be flawed, the community's right to buy is extinguished. As noted, section 52(2) is repealed (see schedule 5 to the Act).
120. [Section 52](#) of the Act provides that section 52 of the 2003 Act is amended to include a new subsection (7). The new subsection (7) provides Ministers with the powers to make regulations in connection with reviewing whether a ballot has been properly conducted and other matters relating to ballots not conducted as prescribed.

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

121. [Section 53](#) of the Act amends section 52(4) of the 2003 Act (which provides the timescale for the conduct of the ballot) and section 60 of the 2003 Act (which provides the timescale for notification of the valuation figure).
122. Section 52(4) of the 2003 Act provides that the ballot is to take place within 28 days of the notification of the value of the land under section 60(2) of the 2003 Act and the ballot date is determined by the date of that notification. Section 53(1) of the Act amends section 52(4) of the 2003 Act to provide that the ballot takes place within the 12 week period beginning on the date the valuer is appointed under section 59(1) of the 2003 Act. Alternatively, in cases where the valuation period has been extended on application by the valuer under section 60(3) of the 2003 Act and the date to which the valuation period has been extended to is after the 12-week period following the appointment of the valuer, the 12-week period begins on the day following the notification of the date under section 60(3C) of the 2003 Act. This means that the ballotter will in all cases have a minimum of 12 weeks to conduct the ballot and notify Ministers of the results.
123. [Section 53\(2\)](#) of the Act provides that section 60 of the 2003 Act is amended to insert new subsections (3A) to (3D). These provisions detail the procedure of when and how the valuer is able to seek an extension to the timings for reporting the value of the land to parties set out in section 60(2). The community body, the landowner and the ballotter must be informed of the existence of any extension, the length of any extension and the end period for the extension.

**Exercise of right to buy: date of entry and payment of price**

124. [Section 54](#) of the Act amends section 56 of the 2003 Act which sets out the time limits which apply to a community body in respect of payment of the price for the land.
125. Subsection (3) of section 56 of the 2003 Act provides that where the valuation figure is not being appealed under section 62 of the 2003 Act and where the time limit has not been extended by agreement, the price must be paid within 6 months of the date on which the community body confirmed its intention to proceed with the community right to buy in response to a notice under section 49(2)(a) of the 2003 Act or, in the

case of a late application, within 6 months of the date of Ministers decision to register that interest in land. Section 54(a) of the Act extends this time period from 6 months to 8 months.

126. **Section 54(b)** of the Act provides for a new subsection (7) in section 56 of the 2003 Act. Where an extension to the 8-month period provided for in the amended section 56(3) (a) of the 2003 Act is required (such extension being permitted by section 56(3) (c) of the 2003 Act), the extension must be agreed, by both parties (landowner and community body), before the 8-month period ends. The community body must notify Ministers of any extension within 7 days of that agreement being made, including when that agreement was made and what that later extended date is. Evidence of such an agreement will be required by Ministers.

#### Notification of application under section 57 of the 2003 Act

127. **Section 55** of the Act inserts subsections 57(6) and 57(7) into the 2003 Act. Subsection 57(6) requires the landowner or community body who makes an application to the Lands Tribunal in connection with the failure or delay to transfer title to the community body to notify the Scottish Ministers in writing within 7 days of that application being made.

#### Valuation: views on representations and time limit

128. **Section 56** of the Act amends section 60 of the 2003 Act, subsection (1) of which requires the valuer to invite the landowner and the community body to comment on issues that may have an impact on the valuation.
129. **Section 56** of the Act inserts a new subsection (1A) into section 60 of the 2003 Act which imposes an obligation on the valuer to pass on any written representations about the value of the land, whether by the landowner or the community body, to the other party and invite counter-representations from that party. The valuer must consider any views made by both or either party while undertaking the valuation under section 59 of the 2003 Act.

#### Circumstances where expenses of valuation to be met by owner of the land

130. **Section 57** of the Act inserts a new section 60A into the 2003 Act. The new section 60A provides that, in certain circumstances, Ministers may require the landowner to pay the expenses of Ministers in connection with the valuation.
131. Subsection (1) of the new section 60A sets out the circumstances in which Ministers may exercise their discretion and require the landowner to pay the expenses incurred by Ministers in connection with the valuation.
132. Subsection (2) sets out that Ministers have a discretion to require the landowner to meet the costs associated with the valuation where the circumstances in subsection (1) are met. Where Ministers exercise their discretion, a demand for payment will be sent to the landowner.
133. Subsection (3) allows Ministers to request information from the landowner before deciding whether to exercise their discretion.
134. Subsection (4) provides that the landowner may appeal Ministers' decision to exercise their discretion to the sheriff within 21 days of the Ministers' decision. In terms of subsection (5), the sheriff's decision is final.
135. Subsection (6) provides that, where the landowner has not appealed the Ministers' decision, the landowner must pay the amount specified within 28 days of receiving the demand. Where the landowner appeals the Ministers' decision and the appeal is not successful, the landowner must pay the amount within 28 days of the determination of the appeal.

#### Creditors in standard security with right to sell land: appeals

136. **Section 58** of the Act amends section 61 of the 2003 Act. Section 61 provides a right of appeal to the sheriff for the landowner, the community body and other interested parties in respect of certain decisions by Ministers. In terms of section 48(4) of the 2003 Act, where there is a creditor with a right to sell the land and that creditor gives notice of a proposal to sell the land under section 48(1), the creditor would also have a right of appeal.
137. **Section 58(a)** of the Act expands the interested parties to include a “creditor in a standard security with a right to sell land” in all cases (including where the creditor has not given notice of a proposal to sell the land under section 48(1) of the 2003 Act). Section 58(b) and (c) of the Act amend the remaining sections of section 61 of the 2003 Act to take account of the creditor’s right of appeal. The words “or” to “person” in section 61(3) of the 2003 Act are repealed by schedule 5 to the Act.

#### Appeals to Lands Tribunal as respects valuations of land

138. **Section 59** of the Act amends section 62 of the 2003 Act, and provides that the Lands Tribunal is required, within 8 weeks of the hearing of the appeal, to issue a written statement of reasons. Where the Land Tribunal considers that it is not reasonable to issue a written statement within 8 weeks, it must notify the parties to the appeal of the date by which it will issue its written statement.
139. **Subsection 59(5)** of the Act inserts subsections (8A), (8B) and (8C) into section 62 of the 2003 Act. Subsection (8A) requires the landowner or community body who appeals to the Lands Tribunal for Scotland in connection with the valuation of the land on an application to notify Ministers in writing within 7 days of the date on which the appeal is made to the Lands Tribunal. Subsection (8B) requires the Lands Tribunal to send to Ministers a copy of the written statement of reasons issued following the appeal decision. Subsection (8C) states that failure to comply with these requirements has no effect on the community body’s right to buy the land or the validity of the appeal.

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

140. **Section 60** of the Act inserts a new section 67A into the 2003 Act which provides that public or local holidays are not to be taken into account when calculating time periods in Part 2 of the 2003 Act.
141. New section 67A(2) of the 2003 Act provides a number of exceptions to the rule provided in new section 67A(1) – statutory periods for the date of entry, the valuation process and any appeals are not to be extended if a public or local holiday falls during the time when these steps are active.

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

142. **Section 61** of the Act inserts a new section 67B into the 2003 Act concerning the monitoring of community right to buy.
143. Inserted section 67B(1) and (2) of the 2003 Act provide that a community body, owner or former owner of land in respect of which an application to register an interest was made may be requested by Ministers to provide information, for the purposes of monitoring or evaluating any impacts that the right to buy land conferred by Part 2 of the 2003 Act has had or may have.
144. Inserted section 67B(3) of the 2003 Act sets out the type of information that may be requested by Ministers. It provides that it is any information which Ministers may reasonably require for the purpose of monitoring or evaluating the impact of the right to buy under Part 2 of the 2003 Act. Where a request has been made by Ministers, the recipient must comply to the extent that they are able to do so (inserted section 67B(4)).

### **Modifications of **Part 3** of Land Reform (Scotland) Act 2003): the crofting community right to buy**

#### Introduction

145. [Sections 62 to 73](#) of the Act amend provisions of Part 3 of the Land Reform (Scotland) Act 2003, the crofting community right to buy.
146. Part 3 of the 2003 Act provides a properly constituted crofting community body representing an identified crofting community with a right to acquire eligible croft land (including salmon fishings, certain mineral rights, sporting rights and the interest of the tenant in tenanted land, where the tenant's interests in the land relate to the land being acquired). Part 3 sets out the eligible land which may be acquired by the crofting community body, and the process for acquiring that land, including procedures for a ballot to prove community support for the acquisition, for valuation of the land, for appeals and for compensation.

#### Crofting community bodies

147. [Section 62\(2\)](#) of the Act inserts subsection (A1) into section 71 of the 2003 Act. This subsection extends the types of body which may be crofting community bodies under Part 3 of the 2003 Act to include Scottish charitable incorporated organisations ("SCIOs") and community benefit societies ("BenComs") and any other type of body which Ministers specify in regulations.
148. [Section 62\(4\)](#) of the Act inserts new subsections (1A) and (1B) into section 71 of the 2003 Act which sets out the provisions that a SCIO or BenCom must include in its constitution or registered rules for it to be a crofting community body and so eligible to make an application under Part 3 of the 2003 Act.
149. [Section 62\(5\)](#) of the Act amends section 71(2) of the 2003 Act which allows Ministers to disapply the requirement that the articles of association, constitution or registered rules of an community body must require that the body have a minimum of 10 members.
150. [Section 62\(6\)](#) of the Act inserts subsection (4A) into section 71 of the 2003 Act. This subsection gives Ministers the power to modify, by way of regulations, the criteria which must be met by companies limited by guarantee, SCIOs and BenComs in order to be crofting community bodies under Part 3 of the 2003 Act.
151. [Section 62\(7\)](#) of the Act amends section 71(5) of the 2003 Act and amends the definition of a "crofting community". The definition of a crofting community will include tenants of crofts whose names are entered in the Crofting Register, or the Register of Crofts, as tenants of those crofts; owner-occupier crofters of crofts in the crofting township whose names are entered in the Crofting Register; and such other persons or classes of persons as may be set out by Ministers in regulations.
152. [Section 62\(8\)](#) of the Act inserts definitions of "owner-occupied croft" and "owner-occupier crofter" into section 71(6) of the 2003 Act.
153. [Section 62\(9\)](#) of the Act inserts definitions of "community benefit society", "registered rules" and "Scottish charitable incorporated organisation" into section 71(8) of the 2003 Act.

#### Modification of memorandum, articles, constitution or registered rules

154. Paragraph (a) of section 63 of the Act amends section 72(1) of the 2003 Act which provides that a crofting community body which bought land under Part 3 of the 2003 Act shall not, for as long as the land remains in its ownership, modify its memorandum or articles of association without the consent of Ministers. The amendment provides for the same restriction in relation to a constitution (in the case of Scottish charitable incorporated organisations) or registered rules (in the case of community benefit societies).
155. Paragraph (b) of section 63 of the Act inserts subsections (3), (4) and (5) into section 72 of the 2003 Act. Subsection (2) provides that Ministers may compulsorily acquire croft land if they are satisfied that the crofting community body which has bought the croft land, if it had not done so, would no longer be entitled to do so. Section 72(3) provides that the provision in section 72(2) will not apply when the land is no longer eligible

croft land. Section 72(4) provides Ministers with the power to make an order relating to the compulsory acquisition of the croft land. Section 72(5) provides that the order made under section 72(4) may apply, modify or exclude any matter as to which an order could be made relating to the compulsory acquisition of the land by Ministers.

**Application: information about rights and interests in land**

156. **Section 64(2)** of the Act removes the provision in section 73(5)(b)(ii) of the 2003 Act which requires a crofting community body to provide information about sewers, pipes, lines, watercourses or other conduits and fences, dykes, ditches or other boundaries in or on the land.
157. **Section 64(3)** of the Act inserts new subsection (5ZA) after section 73(5) of the 2003 Act. Section 73(5) requires all persons listed in new subsection (5ZA) to be correctly identified in the application. Those persons who must be correctly identified are the owner of the land; any creditor in a standard security over the land with a right to sell the land; any tenant of a tenancy of the land in respect of which the right to buy is to be exercised and any person entitled to any sporting interests on the land in respect of which the right to buy is to be exercised.
158. **Section 64(4)** of the Act inserts subsection (5AA) into section 73 of the 2003 Act. Subsection (5AA) allows Ministers to amend or repeal the minimum requirements for information which must be included in or accompany a crofting community right to buy application.
159. **Section 64(5)** of the Act amends section 73(11) of the 2003 Act. Ministers are required to give public notice, by advertisement, of an application by a crofting community body. The form of the advertisement is now to be set out in regulations made by Ministers.

**Criteria for consent by Ministers**

160. **Section 65** of the Act amends the criteria which must be satisfied in section 74(1) of the 2003 Act in order for Ministers to consent to a Part 3 application. The additional criteria in section 74(1) are that Ministers may only consent to an application if the persons listed in section 73(5ZA) are correctly identified in the application.

**Ballot: information and expenses**

161. **Section 66(2)** of the Act inserts additional subsections (4A) and (4B) after section 75(4) of the 2003 Act. Subsection (4A) allows Ministers to request additional information from the crofting community body in connection with the ballot, including any consultation with those eligible to vote in the ballot. Subsection (4B) confirms that the expense of conducting the ballot is to be met by the crofting community body.
162. **Section 66(3)** of the Act inserts additional subsections (6) and (7) into section 75 of the 2003 Act. Subsection (6) gives Ministers the power to make regulations to enable a crofting community body to seek to recover the expense of conducting the ballot from Ministers. Subsection (7) sets out the matters in relation to which such regulations can make provision, including the circumstances in which a crofting community body may make an application and the criteria to be applied by Ministers in deciding whether to reimburse the applicant.

**Application by more than one crofting community body**

163. **Section 67** of the Act amends section 76(4)(b)(i) of the 2003 Act to ensure that, when more than one crofting community body applies to purchase the same land, all parties who were invited to comment on the applications are notified when Ministers decide which application is to proceed and which application(s) are extinguished.

**Reference to Land Court of questions on applications**

164. **Section 68** of the Act amends section 81(1) of the 2003 Act to expand the list of persons who have a right to refer a question to the Land Court before Ministers reach a decision on an application. The list of persons now includes the owner of the land which is the subject of the application, the person entitled to any sporting interests which are the subject of the application and any tenant whose interest is the subject of the application.

#### Valuation: views on representations and time limit

165. [Section 69](#) of the Act inserts new subsections (9A) and (9B) after section 88(9) of the 2003 Act. Subsection (9A) provides that, where representations on the value of the land are received from the owner of the land, the tenant or the person entitled to sporting interests, the valuer must invite the crofting community body to make counter-representations, and similarly the owner, tenant or person entitled to sporting interests must be invited to make counter-representations in response to representations made by the crofting community body.
166. Subsection (9B) requires the valuer to take account of any representations made under subsection (9A) when making a valuation of the land.

#### Compensation

167. [Section 70](#) of the Act amends section 89(4) of the 2003 Act which gives Ministers the power to set out the procedure under which claims for compensation payable in relation to an application to purchase land may be made. The amended section 89(4) gives Ministers the power to make an order to specify amounts payable in respect of loss or expense incurred by a landowner, person entitled to sporting interests or tenant as the case may be, amounts payable in respect of loss or expense incurred by other persons, who may be liable to pay those amounts and the procedure under which these claims for compensation are to be made.

#### Land Court: reasons for decision under [section 92](#)

168. [Section 71\(a\)](#) of the Act amends section 92(5) of the 2003 Act to provide that the Land Court is required to issue a written statement of reasons within 8 weeks of the hearing of the appeal. [Section 71\(b\)](#) introduces a new subsection (5A) which provides that where the Land Court considers that it is not reasonable to issue a written statement within 8 weeks, it must notify the parties to the appeal of the date by which it will issue its written statement.
169. [Section 71\(d\)](#) of the Act inserts subsections (6A), (6B) and (6C) into section 92 of the 2003 Act. [Section 92\(6A\)](#) provides that the person who appeals to the Scottish Land Court in connection with the valuation of the land on an application must notify Ministers in writing within 7 days of the date the appeal is made. [Section 92\(6B\)](#) provides that the Land Court is required to send to Ministers a copy of the written statement of reasons issued following the appeal decision. [Section 92\(6C\)](#) states that failure to comply with these requirements will have no effect on the crofting community's right to buy the land, the tenant's interest or the sporting interests, or the validity of the appeal.

#### Register of Crofting Community Rights to Buy

170. [Section 94](#) of the 2003 Act provides what information is to be made publicly available in the Register of Crofting Community Rights to Buy. [Section 72](#) of the Act amends [section 94](#) of the 2003 Act. [Section 94\(2\)](#) of the 2003 Act provides that the name and address of a crofting community body which is a company limited by guarantee must be recorded in the Register. [Section 72\(2\)\(b\)](#) of the Act extends the provisions and provides that crofting community bodies which are Scottish charitable incorporated organisations or community benefit societies must have their names and addresses recorded in the Register.
171. [Section 72\(3\)](#) of the Act inserts subsections (2A) and (2B) into [section 94](#) of the 2003 Act which require a crofting community body to notify the Crofting Commission of a change to the crofting community body's name or registered or principal office as soon as is reasonably practicable after the change has been made.

#### Meaning of creditor in standard security with right to sell

172. [Section 73](#) of the Act introduces a new [section 97ZA](#) to the 2003 Act, which provides a definition, for the purposes of Part 3 of the 2003 Act, of a creditor in a standard security with a right to sell land.

## **Insertion of Part 3A of Land Reform (Scotland) Act 2003: community right to buy abandoned, neglected or detrimental land**

### Introduction

173. Section 74 of the Act inserts a new Part 3A into the 2003 Act to give communities a right to buy land that is wholly or mainly abandoned or neglected, or where the use or management of the land causes harm to the environmental wellbeing of the community, for the purposes of the sustainable development of that land, where there is no willing seller.

### Meaning of land

174. The new section 97B of the 2003 Act provides that land for the purposes of Part 3A of the 2003 Act includes bridges and other structures built on or over land, inland waters, canals, and the foreshore (which is the land between the high and low water marks of ordinary spring tides).

### Right to buy eligible land

175. The new section 97C of the 2003 Act defines land which is to be classed as eligible for the purposes of Part 3A of the 2003 Act. Subsection (2) provides that eligible land is land which, in the opinion of Ministers, is wholly or mainly abandoned or neglected, or land where the use or management of that land is such that it results in or causes harm to the environmental wellbeing of the relevant community.
176. Subsection (3) provides definitions of ‘harm’ and ‘relevant community’ as used in subsection (2).
177. Subsection (4) requires Ministers to make regulations setting out what factors they must have regard to when deciding whether land is eligible for the purposes of Part 3A.
178. Subsection (5) provides that eligible land does not include certain land. Land which is not eligible includes land on which there is building or other structure which is an individual’s home, other than a building or structure which is occupied by an individual under a tenancy; land pertaining to an individual’s home as may be set out in regulations, eligible croft land (as defined in section 68 of the 2003 Act) or croft land which is occupied or worked by its owner or members of their family; land which is owned by the Crown by virtue of it having vested as *bona vacantia* (because no owner exists or can be identified) or it having fallen to the Crown as *ultimus haeres* (because no heir to the previous owner exists or can be identified); and land of such other descriptions that Ministers may set out in regulations.
179. Subsection (6) gives Ministers the power to set out in regulations what is, or is to be treated as, an individual’s home; and to set out in regulations descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy for the purposes of subsection (3).

### Part 3A community bodies

180. The new section 97D of the 2003 Act outlines the requirements which must be met by a body so that it is eligible to purchase land under Part 3A of the 2003 Act.
181. Subsections (1) to (4) specify that a Part 3A community body must be a company limited by guarantee, Scottish charitable incorporated organisation (SCIO) or community benefit society (BenCom), or any other type of body which Ministers specify in regulations. Subsections (1) to (4) also list the requirements which must be included in the body’s articles of association, constitution or registered rules. If a body does not meet the applicable conditions imposed by subsections (1) to (4), it will not be a Part 3A community body and so will not be eligible to purchase land under Part 3A of the 2003 Act.
182. Subsection (5) allows Ministers to disapply the requirement that the articles of association, constitution or registered rules of a Part 3A community body must require that the body must have a minimum of 10 members.

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183. Subsection (6) provides that a Part 3A community body is not defined as such until Ministers give their written consent that they are satisfied that the body's main purpose is consistent with furthering the achievement of sustainable development. Subsection (7) gives Ministers a power to amend the criteria which a company limited by guarantee, SCIO or BenCom must meet in order to be a Part 3A community body.
184. Subsection (9)(a) sets out that the articles of association, constitution or registered rules of a Part 3A community body must define the community to which it relates by reference to a postcode unit (or units) or a type of area which Ministers set out in regulations. A community may also be defined with reference to both of these things. Subsection (9)(b) provides that the community includes people who are resident in that postcode unit or in one of the postcode units or other areas set out by Ministers in regulations. In addition to being resident, members of the community must also be entitled to vote at local government elections in a polling district that encompasses that postcode unit or postcode units or the alternative areas set out by Ministers in regulations.
185. Subsection (11) specifies that the articles of association of a Part 3A community body may provide that its property may, in circumstances outlined in subsection (2)(h), pass to another person only if that person is a charity. Subsection (8) defines a charity for the purposes of this section as a body which is entered in the Scottish Charity Register.
186. Subsection (12) provides definitions of a "charity", "community benefit society", "company limited by guarantee", "registered rules", and "Scottish charitable incorporated organisation" for the purposes of this section.

**Provisions supplementary to section 97D**

187. The new section 97E of the 2003 Act sets out the constraints which apply to a Part 3A community body after it has acquired land under Part 3A of the 2003 Act.
188. Subsection (1) provides that a Part 3A community body cannot change its memorandum, articles of association, constitution or registered rules without prior consent from Ministers in writing, while the land bought under Part 3A of the 2003 Act remains in its ownership.
189. Subsection (2) allows Ministers to acquire the land compulsorily if a Part 3A community body, which has bought land under Part 3A of the 2003 Act, would no longer be entitled to buy the land.
190. Subsection (3) provides that Ministers cannot exercise their powers under subsection (2) to acquire the land compulsorily if the land is no longer considered to be eligible. This means that Ministers will not be able to exercise their powers on the basis that a Part 3A community body has purchased the land and the land is no longer considered by Ministers to be eligible for the purposes of Part 3A (as defined in section 97C(2) of the 2003 Act).
191. Subsection (4) provides that where Ministers exercise the power conferred by subsection (2), they may make an order in relation to acquiring the land. Subsection (5) sets out the scope of any such order.

**Register of Community Interests in Abandoned, Neglected or Detrimental Land**

192. The new section 97F of the 2003 Act provides for the creation of a Register of Community Interests in Abandoned, Neglected or Detrimental Land.
193. Subsection (1) requires the Keeper of the Registers of Scotland ("the Keeper") to set up and maintain a Register of Community Interests in Abandoned or Neglected Land ("the Register").
194. Subsection (2) specifies information and documents which must be kept in the Register and provides that these must be kept in a form convenient for public inspection.

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195. Subsection (3) provides who must provide the information and documents which are to be recorded in the Register to the Keeper.
196. Subsections (4) and (5) allow a Part 3A community body to require that information or documentation which relates to the raising or expenditure of money to allow land to which the application relates to be used should be withheld from public inspection. Such information or documentation will not be entered in the Register. In terms of subsection (6), Ministers cannot require a Part 3A community body to provide such information or documentation. Subsections (7) and (8) provide that if a community body changes its name or the address of its registered or principal office, it must notify the Keeper of the change as soon as reasonably practicable after the change is made.
197. Subsection (9) confers powers on Ministers to make regulations to amend the information that is to be made publicly available in the Register, to amend the provision about the Part 3A community body requesting that certain information can be withheld from the Register and to amend the type of information that may be withheld.
198. Subsection (10) sets out the duties which are imposed on the Keeper. The Keeper must make the Register available at all reasonable times for inspection free of charge, ensure that members of the public are able to request copies of the entries on payment of a charge as may be set out by Ministers in regulations, and that if anyone requests a certified true copy of the original document this will be supplied on payment of such a charge.
199. Subsection (12) provides that the Keeper means the Keeper of the Registers of Scotland or such person as Ministers appoint to carry out the Keeper's functions under Part 3A of the 2003 Act (and under subsection (13) different persons may be appointed in place of the Keeper for different purposes under Part 3A of the 2003 Act).

**Right to buy: application for consent**

200. The new section 97G of the 2003 Act deals with the process of applying to exercise the right to buy land under Part 3A of the 2003 Act.
201. Subsection (1) provides that the right to buy eligible land (as defined in section 97C(2) of the 2003 Act) can only be exercised by a Part 3A community body. Subsection (2) specifies that the right can only be exercised with Ministers' consent on the written application of the Part 3A community body.
202. Subsection (3) provides that a right to buy land can be exercised on multiple holdings, but separate applications must have been made for each holding of land. A holding of land is defined in subsection (4) as being a plot of land owned by one person or in common or joint ownership. Ministers may consider and make a decision on these applications separately from one another.
203. Subsection (5) specifies that an application must set out who the owner of the land is, any tenant of the land, and any creditor in a standard security with a right to sell the land or any part of it. Ministers have power to set out the required form of the application in regulations. The application must also include or be accompanied by information of the kind specified by Ministers in regulations.
204. Subsection (6) lists the matters which the Part 3A community body must include in the application or which must accompany the application. These include why a Part 3A community body's proposed purchase is in the public interest, how it is compatible with furthering the achievement of sustainable development, and the reasons why it considers the land to be wholly or mainly abandoned or neglected or is being used or managed in such a way as to result in or cause harm to the environmental wellbeing of the relevant community. If the land is being used or managed in such a way as to cause harm to the environmental wellbeing of the relevant community, the community body is required to give to Ministers information about the request the community body has made to all relevant regulators requesting that they take action to remedy or mitigate the harm being caused to that community.

205. Subsection (7) specifies that at the same time as the Part 3A community body applies to Ministers, it must send a copy of its application form (including the associated material) to the owner of the land. It also requires the Part 3A community body to send a copy of the application to any known creditor in a standard security over the land with a right to sell and invite them to give notice, within 60 days, to the Part 3A community body and Ministers if the creditor has taken the steps mentioned in subsection (8) to enforce the security. If such notice is given, creditors must provide any views or comments they may have about the application to Ministers in writing within the 60-day period.
206. Subsection (9) provides that upon receiving the application under section 97G, Ministers must invite the owner of the land, any tenant of the land, any creditor in a standard security and any other person that may have an interest in the application to send back written comments on the application within 60 days of the Ministers' invitation. Ministers must also take reasonable steps to invite comments from owners of land adjacent to the land to which the application relates. The community body must be sent copies of such invitations.
207. Subsection (10) specifies the additional matters which the invitation must invite the landowner to provide comment on.
208. Subsection (11) provides that Ministers must give public notice of receipt of the application as soon as practicably possible and invite views within 60 days of the publication of the notice. Subsection (12) confers a power on Ministers to make regulations to specify the form of the advertisement giving public notice of the application.
209. Subsection (13) provides that Ministers must pass all views received on to the Part 3A community body for further comment. The community body's comments must be received within 60 days of Ministers sending the invitation to comment.
210. Subsection (14) provides that when considering whether or not to give consent to the application, Ministers must have regard to all views received with regard to the application.
211. Subsection (15) provides that Ministers must decline to consider an application that does not comply with the requirements of the new section 97G, is incomplete or where Ministers are otherwise bound to reject it. If such is the case, then Ministers are not bound to follow the steps laid out in subsection (9) to (14).
212. Subsection (16) sets constraints on the timing of the Ministers' decision on an application. It provides that Ministers must not make any decision on the application before the end of the 60-day period within which a community may respond to a landowner's comments, under subsection (13). Alternatively, if by the date of 60 days after the date on which the Part 3A community body may provide Ministers with a response to an invitation sent under subsection (13), the Lands Tribunal has not notified Ministers of any finding under new section 97X of the 2003 Act, Ministers must not make a decision until the date on which the Lands Tribunal provides Ministers with that finding.

#### Criteria for consent

213. The new section 97H of the 2003 Act sets out that Ministers must not consent to a Part 3A community right to buy unless they are satisfied about the matters listed in the section.
214. Subsection (1)(a) requires Ministers to be satisfied that the land a Part 3A community body is proposing to buy is land which is eligible under the new section 97C of the 2003 Act.
215. Subsection (1)(b) requires Ministers to be satisfied that the exercise of the right to buy by a Part 3A community body is in the public interest and its plans for the land are compatible with furthering the achievement of sustainable development.

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216. Subsection (1)(c) requires Ministers to be satisfied that the achievement of sustainable development in relation to the land would be unlikely to be furthered by the owner of the land continuing to be its owner. This requirement only applies when the application is being made on the basis that the land is abandoned or neglected, and not where the use or management of the land is resulting in or causing harm to the environmental wellbeing of the community.
  217. Subsection (1)(f) requires Ministers to be satisfied that the owner of the land is not prevented from selling the land or is not under an obligation to sell the land to someone other than the Part 3A community body (other than an obligation which is suspended by the regulations which are to be made by Ministers under the new section 97N(3)).
  218. Subsection (1)(g) requires Ministers to be satisfied that a Part 3A community body meets the requirements in section 97D.
  219. Subsection (1)(h) requires Ministers to be satisfied that a significant number of the members of the community which the Part 3A community body represents have a connection with the land; the land is sufficiently near to land to which those members of the community have a connection; if the community body is a company limited by guarantee, Scottish charitable incorporated organisation or community benefit society that the land is sufficiently near to the area of the community as defined in the right to buy application; or if the community body is another form of body as prescribed by Ministers, that the land is sufficiently near to the area of the community to which that community body relates.
  220. Subsection (1)(i) requires Ministers to be satisfied that the community which the Part 3A community body represents has approved the proposal to exercise the right to buy under Part 3A. The new section 97J of the 2003 Act provides that the community is taken as having approved the proposal if a ballot is conducted as set out in that section.
  221. Subsection (1)(j) requires Ministers to be satisfied that the Part 3A community body has tried and failed to buy the land, other than by making an application under Part 3A.
  222. Subsection (2) provides that the criteria for consent laid down in subsection (1) are subject to subsections (3) to (7).
  223. Subsection (3) provides that subsections (4) to (7) apply only to an application made on the grounds that the use or management of the land results in or causes harm to the environmental wellbeing of the community.
  224. Subsection (4) provides that, when considering whether to consent to an application, that Ministers are not required to be satisfied that the achievement of sustainable development in relation to the land would be unlikely to be furthered by the land owner continuing to be the owner of the land.
  225. Subsection (5) provides additional criteria of which Ministers must be satisfied in order to consent to an application. Ministers must be satisfied that, in exercising their right to buy, the community body will remove, or substantially remove, the harm to the environmental wellbeing of the community. The community body is also required to have made a request all relevant regulators to take action to remedy or mitigate the harm which is being caused to the environmental wellbeing of the community.
  226. Subsections (6) and (7) provide definitions of “regulator”, “relevant regulator” “relevant functions” “regulatory functions”, “relevant regulatory function” and “regulatory requirement”.
  227. Subsection (8) provides that, when Ministers are considering the criteria for consenting to an application, that references to a community are references to the community as defined in the community body’s application.
- Ballot to indicate approval for purposes of section 97H

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228. The new section 97J of the 2003 Act sets out the requirements for a ballot to establish that a right to buy application by a Part 3A community body has the support of its community.
229. Subsection (1) provides that a proposal by a Part 3A community body to exercise a community right to buy will be deemed to have been approved by the relevant community, if, firstly, the ballot takes place within the six-month period immediately preceding the date of the right to buy application; secondly, that at least half of the community voted in the ballot or where fewer than half of the members of the community voted, the proportion that voted is sufficient to justify the community body proceeding to purchase the land; and finally, that the majority of the votes cast were in favour of making the application.
230. Subsection (2) provides that the ballot must be conducted as prescribed by Ministers in regulations. Subsection (3) sets out the matters which must be prescribed in those regulations.
231. Subsection (4) specifies that the Part 3A community body must notify Ministers of the result within 21 days of the ballot or, where the application is made before the expiry of that 21-day period, at the same time as the application is submitted. This subsection also sets out what information about the ballot the community body must provide to Ministers.
232. Subsection (5) provides that Ministers may require a Part 3A community body to provide further information about the ballot or any consultation that the community body may have held with the wider community about their application.
233. Subsection (6) provides that the Part 3A community body is responsible for the expense of conducting the ballot. Subsections (7) and (8) give Ministers regulation-making powers which can be used to allow a Part 3A community body, in particular prescribed circumstances, to apply to Ministers to seek reimbursement of the cost of conducting the ballot.
234. Subsection (9) provides that where a ballot is not conducted in accordance with the regulations made by Ministers, the Part 3A community body's right to buy will be extinguished.

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

235. The new section 97K of the 2003 Act deals with the situation where there is more than one Part 3A community body interested in buying the same land.
236. Subsection (1) provides that only one Part 3A community body may exercise the right to buy that land.
237. Subsection (2) provides where more than one Part 3A community body submits an application seeking to buy the same land, Ministers will decide which application should be allowed to proceed.
238. Subsection (3) provides that Ministers must not take any decision on any of the applications before they have considered all views and responses related to each application.
239. Subsection (4) provides that once Ministers have decided which Part 3A community body's right to buy application shall be allowed to proceed, the other community body's right to buy shall be extinguished. It also specifies who must be notified of Ministers' decision.

**Consent conditions**

240. The new section 97L of the 2003 Act provides that Ministers may impose conditions to their consent to an application to exercise the Part 3A community right to buy. These conditions may, for example, require that certain actions or steps must be taken by the Part 3A community body.

### Notification of Ministers' decision on application

241. The new section 97M of the 2003 Act sets out how Ministers must notify the relevant parties of their decision to consent to or refuse an application.
242. Subsection (1) provides that Ministers must give notice in writing of their decision to consent to or refuse an application under section 97G to exercise the Part 3A community right to buy, and identifies the persons to whom such notice must be given. The form of the notice is to be set out in regulations.
243. Subsection (2) provides that regulations made by Ministers must require that the notice includes a full description of the land covered by the Ministers' decision and, where consent is given, any conditions imposed by Ministers.
244. Subsection (3) specifies that the notice must contain information about the consequences of the decision and the rights of appeal against it and state the date on which the consent is given.

### Effect of Ministers' decision on right to buy

245. The new section 97N(1) of the 2003 Act gives Ministers powers to make regulations prohibiting certain persons from transferring or otherwise dealing with the land in respect of which an application under section 97G has been made.
246. Subsection (2) sets out matters that the regulations under subsection (1) may include.
247. Subsection (3) provides that Ministers may make regulations to suspend rights over land in respect of which a Part 3A application has been made. Subsection (4) sets out that these regulations may provide for rights which will not be suspended, as well as rights which will not be suspended in certain circumstances.
248. Subsection (5) provides that nothing in Part 3A of the 2003 Act prejudices the position of creditors seeking to prevent the disposal of heritable property by a debtor by means of inhibition, action of adjudication or any other diligence.

### Confirmation of intention to proceed with purchase and withdrawal

249. The new section 97P of the 2003 Act sets out the procedure which follows Ministers consenting to the exercise of a right to buy by a Part 3A community body, depending on whether or not the community body wishes to proceed with the purchase.
250. Subsection (1) provides that a Part 3A community body may exercise its right to buy only if, within 21 days of the valuer notifying Ministers, the Part 3A community body and the owner of the assessed value of the land under 97S(10), the Part 3A community body sends written notice to Ministers and the owner confirming its intention to proceed to buy the land.
251. Subsection (2) provides that, by notice in writing to Ministers, the Part 3A community body may withdraw its right to buy application or its confirmation of its intention to proceed with the purchase at any time.
252. Subsection (3) specifies the action to be taken by Ministers on receipt of such notices.

### Completion of purchase

253. The new section 97Q of the 2003 Act deals with conveyancing practicalities relevant to the transfer of land following Ministers giving consent to a Part 3A community right to buy application.
254. Subsection (1) provides that the Part 3A community body will be responsible for preparing the documents necessary to effect the conveyance of the land and for ensuring that the subjects to be conveyed are the same as those specified in the consent given by Ministers. It places an obligation on the Part 3A community body to ensure that in preparing the documents it takes account of all conditions imposed by Ministers.

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255. Subsection (2) provides that where the Part 3A community body cannot comply with its duty regarding the property to be conveyed, due to the fact that all or part of the land covered by the consent to the Part 3A community right to buy is not owned by the person named as owner in the application, then it must refer this matter to Ministers.
256. Subsection (3) provides that where such a reference is made to Ministers under subsection (2) then Ministers must direct that the right to buy is extinguished.
257. Subsection (4) requires the owner of the land subject to the Part 3A right to buy to make title deeds and other documents available to and transfer title to the Part 3A community body.
258. Subsection (5) provides that if, within 6 weeks of Ministers consenting to the application to buy the land, the owner refuses or fails to make these deeds available, or if they cannot be found, the Part 3A community body can apply to the Lands Tribunal for an order requiring the production of those documents.
259. Subsection (6) provides that the Part 3A community body may apply to the Lands Tribunal to authorise its clerk to effect the transfer of title where the owner refuses, or for other reasons fails, to do so. Where the clerk to the Tribunal does so the effect will be the same as if it were done by the owner.

**Completion of transfer**

260. The new section 97R of the 2003 Act sets out the process for completing the transfer.
261. Subsection (1) provides that the consideration payable for the land in respect of which the Part 3A community right to buy is exercised shall be the value of that land as assessed under section 97S by the valuer appointed by Ministers.
262. Subsection (2) provides that, subject to subsections (3) and (4), the consideration should be paid not later than 6 months after the date on which Ministers consented to the right to buy application.
263. Subsection (3) specifies circumstances where either this payment deadline will not apply or where an alternative deadline will apply. In particular, it allows the landowner and the Part 3A community body to agree an alternative payment date and provides for deferral of payment when the valuation has not been completed or has been subject to an appeal.
264. Subsection (4) specifies that where the owner is unable to grant a good and marketable title to the Part 3A community body by the date of payment, then payment shall be made to and held by the Lands Tribunal pending either completion of the conveyance or notification to the Lands Tribunal by the Part 3A community body that it has decided not to complete the transaction.
265. Subsection (5) specifies that if the consideration is not paid by the Part 3A community body by the due date, the right to buy application will be deemed to have been withdrawn by the Part 3A community body (this subsection does not apply where subsection (4) applies).
266. Subsection (6) provides that when the Part 3A community body records or registers its title, the land acquired is disburdened of any heritable security.
267. Subsection (7) provides that a security that related to the land acquired through the Part 3A community right to buy and to other land continues to apply to that other land.
268. Subsection (8) provides that where land is disburdened of a heritable security on purchase, unless the creditors otherwise agree, the Part 3A community body must pay the creditors under that heritable security whatever sums are due to them.
269. Subsection (9) provides that the Part 3A community body must deduct any sums paid to a heritable creditor under the provisions of subsection (8) from the amount that the

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body is due to pay the owner for the land. In effect, the landowner will receive a sum for the land which will take account of the sum required to clear any securities.

Assessment of value of land etc.

270. The new section 97S of the 2003 Act sets out the procedure for valuation of the land in respect of which a Part 3A community body is exercising its right to buy.
271. Subsection (1) requires that Ministers, where they have consented to a Part 3A community right to buy application, must appoint a valuer to assess the value of that land within 7 days of that consent.
272. Subsection (2) provides that the validity of anything done under the new section 97S will not be affected by Ministers' failure to comply with the time limit specified in subsection (1).
273. Subsection (3) sets out the role of the valuer.
274. Subsection (4) specifies that the value to be ascertained is the market value at the date Ministers consented to the application to exercise the right to buy.
275. Subsection (5) defines market value as the sum of the open market value if the sale were between a willing seller and willing buyer, compensation for any depreciation in the value of other land and interests belonging to the seller as a result of the forced sale, and compensation for any disturbance to the seller resulting from the forced sale.
276. Subsection (6) specifies that in arriving at the open market value for the purposes of subsection (5)(a), account may be taken of the known existence of a potential purchaser with a special interest in the property (other than the Part 3A community body). It also specifies that no account shall be taken of the fact that no time was allowed for marketing the property or of the depreciation of other land or disturbance (since compensation for these latter two items will be added to the open market value by virtue of subsection (5)(b) and (c)).
277. Subsection (7) states that Ministers shall pay for the valuation under this section.
278. Subsections (8), (9) and (10) require the valuer to ask both the owner and the Part 3A community body for their views in writing on the value of the land, and invite written counter-representations from each party on the other's views, and to take these representations and counter-representations into account in arriving at the valuation.
279. Subsection (11) specifies that where the Part 3A community body and the owner have agreed the valuation, they must notify the valuer in writing of that valuation.
280. Subsections (12) and (13) require the appointed valuer to notify Ministers, the landowner and the Part 3A community body of the valuation. This must be done within 8 weeks of being appointed or within a longer period set by Ministers, as requested by the valuer.
281. Subsection (14) sets out that the validity of the transfer is not affected by a failure by the valuer to comply with the time limit.

Compensation

282. The new section 97T of the 2003 Act provides for payment of compensation in connection with an application to exercise the Part 3A community right to buy. It provides that the compensation will be payable by the Part 3A community body except where Ministers have refused the application, in which case the compensation due to the owner of the land will be paid by Ministers.
283. Subsection (1) specifies the circumstances in which eligibility for compensation will arise.

*These notes relate to the Community Empowerment (Scotland) Act 2015 (asp 6)  
which received Royal Assent on 24 July 2015*

284. Subsection (2) provides that the Part 3A community body will not be liable to pay compensation when a Part 3A community right to buy application is made but is not approved by Ministers.
285. Subsection (3) specifies that, in the circumstances covered by subsection (2), compensation for certain losses and expenses can be recovered from Ministers.
286. Subsection (4) provides that Ministers may make an order specifying the amounts payable in respect of loss or expense, who is liable to pay those amounts, and how any compensation is to be claimed under the new section 97T.
287. Subsection (5) provides that if the parties cannot agree whether compensation is payable or the amount of such compensation within the timescale specified in the order, then either party may refer the matter to the Lands Tribunal.
288. Subsections (6) to (9) provide that, when referring a question to the Lands Tribunal, the party referring the question must notify Ministers of the referral within 7 days of making that referral. Subsection (7) requires the Lands Tribunal to send a copy of its findings on the question to Ministers.

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

289. The new section 97U provides that Ministers may, in certain limited circumstances, pay a grant to a Part 3A community body to assist it in meeting the compensation it has to pay in connection with its exercise of a right to buy.
290. Subsection (2) specifies the circumstances in which payment of such a grant would be permitted and subsection (3) makes it clear that Ministers are not bound to pay a grant even when all the circumstances specified arise.
291. Subsection (4) provides that payment of a grant may be subject to conditions including conditions relating to repayment in the event of a breach.
292. Subsection (5) provides that a grant may be paid only if the Part 3A community body applies for it, and subsection (6) provides that the form of the application and the application procedure shall be as Ministers specify in regulations.
293. Subsection (7) provides that Ministers must issue their decision on an application for a grant in writing and, where that decision is to refuse to pay a grant, include the reasons for that refusal. Subsection (8) provides that Ministers' decision on whether to pay a grant or not is final.

**Appeals**

294. The new section 97V of the 2003 Act sets out the rights of appeal which exist in connection with Part 3A of the 2003 Act.
295. Subsections (1), (4) and (5) provide that the landowner, a person who is a member of the community to which a Part 3A community body relates and a creditor in a standard security with a right to sell land to which an application relates may appeal against the Ministers' decision to consent to the application, while subsection (2) allows the Part 3A community body to appeal against a decision to refuse an application. Where there is more than one Part 3A community body wishing to purchase the land, subsection (3) provides that Ministers' decision on which community body's application will proceed is final and cannot be appealed to the sheriff.
296. Subsection (6) specifies the timeframe within which an appeal may be made.
297. Subsection (7) specifies that the sheriff court with the jurisdiction to hear an appeal is the sheriff court where the land subject to an appeal is located.
298. Subsection (8) specifies who each appellant must inform when an appeal is made.

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which received Royal Assent on 24 July 2015*

299. Subsection (9) provides that the sheriff's decision is final and may require rectification of the Register of Community Interests in Abandoned, Neglected or Detrimental Land and may impose conditions on the appellant.

**Appeals to Lands Tribunal: valuation**

300. The new section 97W of the 2003 Act sets out the rights of appeal to the Lands Tribunal in connection with the valuation which is carried out under the new section 97S.
301. Subsection (1) provides that the owner of the land and the Part 3A community body exercising its right to buy may appeal the valuation to the Lands Tribunal.
302. Subsection (2) requires such an appeal to state the grounds of the appeal and that it be lodged within 21 days of valuation being notified under section 97S(12).
303. Subsection (3) provides that the Lands Tribunal may reassess the valuation of the land.
304. Subsection (4) provides that the valuer may be a witness in the appeal proceedings.
305. Subsection (5) requires the Lands Tribunal to give reasons in writing for its decision on an appeal within 8 weeks of the hearing of that appeal. Subsection (6) provides that, where the Lands Tribunal considers that it is not reasonable to issue a written statement within 8 weeks, it must notify the parties to the appeal of the date by which it will issue its written statement.
306. Subsection (8) provides that the party making an appeal must notify Ministers within 7 days of the appeal and the date on which it was made. Subsection (9) provides that the Lands Tribunal must send a copy of its written statement of reasons on the appeal to Ministers. Subsection (10) states that failure to comply with subsection (8) or (9) has no effect on the Part 3A community body's right to buy the land or the validity of the appeal.
307. Subsection (11) provides that Ministers are not competent parties to any appeal by reason only that they appointed the valuer.
308. Subsection (12) provides that Ministers' powers under the Lands Tribunal Act 1949 to make rules are extended so that Ministers can make any rules necessary or expedient in connection with Part 3A.

**Reference to Lands Tribunal of questions on applications**

309. The new section 97X sets out rights of appeal to the Lands Tribunal on a question relating to the Part 3A application.
310. Subsection (1) provides that at any time before Ministers make a decision on an application, any question relating to the application may be referred to the Lands Tribunal by Ministers, the landowner, a person who is a member of the community to which the Part 3A community body relates, any person with an interest in the land giving rise to a legally enforceable right (e.g. a creditor in a standard security with the right to sell land) or any other such person invited to send views on a Part 3A application (under section 97G(9)(a)(iv)).
311. Subsection (2) provides that the Lands Tribunal may consider the views of the Part 3A community body, the owner of the land subject to the Part 3A application and any other person that the Lands Tribunal determines have an interest in the case.
312. Subsection (3) provides that the Lands Tribunal must inform Ministers of its findings on any of the questions referred to it and may, by order, provide for Ministers to consent to an application under the new section 97L only if they impose certain conditions, as directed by the Lands Tribunal.
313. Subsection (4) provides that if the Lands Tribunal finds that the question on the application is not relevant to the Ministers' decision, the Lands Tribunal may decide not to consider the question further and find accordingly.

314. Subsection (5) provides that, when referring a question to the Lands Tribunal, the person referring the question must notify Ministers of the referral within 7 days of making that referral.

#### Agreement as to matters referred or appealed

315. The new section 97Y of the 2003 Act provides that parties to the Part 3A application are not prevented from settling or agreeing on the matter which is subject to an appeal under sections 97V or 97W between them.

#### Interpretation of Part 3A

316. The new section 97Z sets out some matters of interpretation.
317. Subsection (1) provides that any reference to a creditor in a standard security with a right to sell land is a reference to a creditor who has such rights under section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970, or a warrant granted under section 24(1) of that Act.
318. Subsections (2) and (3) provide that public or local holidays should not be taken into account when calculating time periods in Part 3A, except for the 6 month period of completion for the right to buy, the 28-day period for a right of appeal to the sheriff and the 21-day period for a right of appeal to the Lands Tribunal on the valuation.

#### Parts 2, 3 and 3A of the Land Reform (Scotland) Act 2003: mediation

319. [Section 75](#) of the Act inserts subsection 97Z1 into the 2003 Act. Subsection 97Z1 provides powers for Ministers, upon a request by certain persons including owners of land and community bodies, to take such steps as they consider appropriate for the purposes of arranging, or facilitating the arrangement of, mediation. Subsection (4) allows Ministers to appoint a mediator, make payments to mediators for services provided, and to reimburse the reasonable expenses of mediators.

### **Part 5: Asset transfer requests**

320. This Part sets out how a “community transfer body” can request to buy, lease, manage, occupy or use land or buildings belonging to a “relevant authority”, how the authority is to decide whether to agree to or refuse the request, and the procedures to be followed if the request is agreed.
321. Throughout this Act (except where it amends other legislation) “land” has the meaning set out in Schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010, which is that ““land” includes buildings and other structures, land covered with water, and any right or interest in or over land”.

#### **Community transfer body**

322. [Section 77](#) defines a “community transfer body”. This is either a community-controlled body, as defined in section 19, or a body designated as a community transfer body by the Scottish Ministers by order. The Scottish Ministers may designate individual bodies to be community transfer bodies or may designate a whole class of bodies, so that any body of that type will qualify as a community transfer body. Subsection (3) states that where a trust is designated, the designated body will be the trustees, since a trust is not incorporated.

#### **Relevant authority**

323. A “relevant authority” is defined by section 78. This may be a person (or organisation) listed in schedule 3, or one designated as a relevant authority, or falling within a class of persons designated as relevant authorities, by the Scottish Ministers by order. Schedule 3 includes local authorities, the Scottish Ministers, Health Boards, and certain other Scottish public bodies, which have been specified because they own significant amounts of land and buildings.

324. The remainder of section 78 gives the Scottish Ministers a power to remove or amend any entry on the list set out in schedule 3, or to make an order designating other persons or classes of person as a relevant authority. Subsection (4) provides that persons may only be designated if they fall into the following categories:
- part of the Scottish Administration, which has the meaning given in section 126(6) to (8) of the Scotland Act 1998;
  - “Scottish public authorities with mixed functions or no reserved functions under the Scotland Act 1998” – this means that UK Government departments and public bodies that deal with matters reserved to the UK Parliament cannot be included;
  - companies wholly-owned by relevant authorities.

### **Asset transfer requests**

325. [Section 79](#) sets out how an asset transfer request can be made. It must relate to land (which includes buildings) owned or leased by a relevant authority. The community transfer body may ask to have ownership of the land transferred to it, if the land is owned by the relevant authority; it may ask to lease the land from the relevant authority; or to obtain other rights in respect of the land, for example to manage or use it for a specified purpose.
326. Subsection (4) sets out the information which must be included in the request. In addition to specifying the land (or building) to which the request relates, and whether the request is for ownership, lease or other rights, the community transfer body must describe the reasons for making the request and the benefits which it considers will arise if the request is agreed to. It must also state how much the body would be prepared to pay, either to buy the land or in rent, and any other terms and conditions that would apply to the request.
327. [Section 79\(3\)](#) provides that a request for transfer of ownership of land may only be made by a community transfer body which meets the criteria set out in section 80, in addition to falling within section 77. This means it must be a company, a Scottish charitable incorporated organisation (SCIO), a community benefit society, or a body designated as a community transfer body under section 77 where the designation states that the body may make a request for transfer of ownership. Classes of bodies may also be designated as eligible to make a request for transfer of ownership.
328. If a company is to meet the criteria to request transfer of ownership, section 80(2) requires that it must have at least 20 members, and provision in its articles of association to ensure that, on winding up, any remaining property remains within either the community sector or the charitable sector.
329. In order to be registered as a SCIO, a body is required to have appropriate provision in its constitution for surplus property to be distributed for charitable purposes. Similarly, there are restrictions on how community benefit societies can use or deal with their assets, and assets can only be transferred to other community or charitable organisations. Therefore, the only additional requirement for a SCIO or a community benefit company to be able to make an asset transfer request for ownership of land is that it has at least 20 members, which is provided for in subsection (1)(b) and (c) of section 80.

### **Regulations**

330. A community transfer body may need more information about the property before determining the purchase price, level of rent or other terms and conditions to be proposed. The Scottish Ministers may make regulations under section 81 about asset transfer requests. These may include, under subsection (3), details of how a community transfer body can request such information and how a relevant authority is to respond. Regulations under subsection (2) may also specify how asset transfer requests are to be

made, additional information to be included in them, and the procedure to be followed by a relevant authority in relation to requests. They may also include requirements to publish the fact that a request is being made, and to notify specified people about them.

## **Decisions**

331. A relevant authority must decide whether to agree to or refuse an asset transfer request in accordance with section 82. It must compare the benefits that might arise if the request is agreed to with those that might arise from any other proposal for the land, whether made through another asset transfer request, by the authority, or by any other person (subsection (3)(e) and (6)). In doing so it must consider whether the proposals will promote or improve economic development, regeneration, public health, social wellbeing or environmental wellbeing or reduce inequalities of outcome which result from socio-economic disadvantage, and any other benefits that might arise, and the decision must be reached in a manner which encourages equal opportunities and the observance of the equal opportunity requirements. The relevant authority must also consider other matters it considers relevant, including the functions and purposes of the authority, and any obligations that may affect its ability to agree to the request. Subsection (5) requires that the authority must agree to the request unless there are reasonable grounds for refusing it.
332. Subsection (7) requires the relevant authority to give notice to the community transfer body of its decision, and the reasons for that decision, within a specified period, as described in subsection (8). Subsection (9) gives the Scottish Ministers power to make regulations about the information to be included in this decision notice and how it is to be given.
333. [Section 83](#) sets out the process to be applied by a relevant authority when an asset transfer request is agreed to. The decision notice given by the relevant authority must specify the terms and conditions on which the authority is prepared to carry out the transfer. These terms and conditions may or may not reflect those included in the asset transfer request. The community transfer body must in turn submit an offer, within a period specified in the decision notice, reflecting the terms and conditions set out in the decision notice, and any other terms and conditions needed to make sure the transfer can take place, and that it takes place within a reasonable time. After this the community transfer body and the relevant authority will make arrangements to conclude a contract, as would happen with any sale or lease of property. Subsections (5) to (9) set out a timescale for this.
334. The period for concluding a contract is normally a minimum of 6 months from the date of the offer. A longer period can be agreed between the relevant authority and the community transfer body. If the relevant authority does not agree to extend the period, the community transfer body may apply to the Scottish Ministers seeking a direction under subsection (7)(b)(ii) that the period should be extended. This can be done more than once. The Scottish Ministers may make regulations under subsection (10) about these directions and how to apply for them. Under subsection (6), if the contract is not concluded within the required period, an appeal can be made to the Scottish Minister under section 90 unless the relevant authority is the Scottish Ministers.
335. When an asset transfer request is made, section 84 prevents the authority from disposing of the land in question to anyone other than the body that made the request. This applies from the day the request is made to the day on which the request is disposed of. Subsections (4) to (9) set out the ways in which a request may be disposed of. Essentially these are when a contract for transfer of the land has been concluded, when all avenues of review and appeal have been exhausted, or when the community body abandons the process, by not taking any action within the required time limit. If the relevant authority enters into a contract with another person, during this period, to sell or lease the land to them, subsection (11) makes that contract unenforceable.

336. Subsection (12) provides that the prohibition on disposal does not apply where the relevant authority has advertised the land for sale, or has entered into negotiations with another person to transfer or lease the land, before the asset transfer request was made. Subsection (13) also allows the Scottish Ministers to direct that the prohibition on disposal of the land in question to any person other than the community transfer body that made the request does not apply in a specified case.

### **Appeals and reviews**

337. Sections 85 to 90 set out arrangements for appeals and reviews in relation to asset transfer requests. A community transfer body can appeal or apply for a review if:
- the request has been refused;
  - the request has been agreed but the relevant authority has required terms and conditions which are significantly different to those proposed in the request; or
  - no decision has been made within the required period.
338. The arrangements depend on the relevant authority to which the asset transfer request was made, and therefore by which the original decision was made.
- Decisions made by a local authority are subject to review by the local authority, under section 86.
  - Decisions made by a relevant authority specified by the Scottish Ministers in an order under section 85(2)(c) are subject to review by a local authority.
  - Decisions made by the Scottish Ministers are subject to review by the Scottish Ministers under section 87.
  - Decisions made by any other relevant authority are subject to appeal to the Scottish Ministers under section 85.
  - Decisions made by local authorities following a review under section 86 (or provided for by section 89) are subject to appeal to the Scottish Ministers under section 88, following the procedures set out in section 85.
339. For each type of appeal or review, the Scottish Ministers may make regulations about how they are to be carried out and the time limits for making the application. These regulations may allow the authority undertaking the process to determine how certain stages are carried out.
340. In the case of an appeal to the Scottish Ministers under section 85 or section 88, the Scottish Ministers may allow the appeal or may dismiss it and may reverse or vary any part of the decision of the relevant authority, including changing any terms and conditions that were imposed. The Scottish Ministers may reverse or vary part of the decision of the relevant authority even if the appeal does not relate to that part. If the Scottish Ministers decide the relevant authority must transfer ownership, lease or confer rights in or in relation to land, or agree to certain terms and conditions, they must issue a direction requiring the relevant authority to issue a new decision notice in line with the appeal decision. That notice will replace the original decision notice.
341. In a review carried out by a local authority, section 86(8) means that the local authority must consider the same issues when reviewing a decision as it would in making an initial decision on an asset transfer request, and must agree to the request unless there are reasonable grounds for refusal. Subsection (10) displaces the general rule set out in section 56 of the Local Government (Scotland) Act 1973 (that a local authority may delegate any of its functions to any of its committees, sub-committees or officers or another local authority) to require that the review must be carried out by the authority or a committee or sub-committee of the authority, and may not be delegated to officers. Subsection (5) provides that, having carried out a review, the local authority may

confirm or change its decision, including altering any terms and conditions set out in the original decision notice. It must then provide a new decision notice, providing the reasons for the decision made on review. This notice replaces the original decision notice, and must be issued within a period prescribed in regulations, or a longer period agreed between the local authority and the community transfer body.

342. A review of a decision made by the Scottish Ministers under section 87 follows much the same procedures as a local authority review. However, it allows for the Scottish Ministers to appoint persons in connection with carrying out the review. This might, for example, allow for an independent reporter or panel to scrutinise the original decision and make a report to Ministers. There is no time limit for the Scottish Ministers to issue their decision notice following the review.
343. **Section 89** provides that decisions made by a relevant authority specified by the Scottish Ministers in an order under section 85(2)(c) are subject to review by a local authority. The local authority to which an application for review is to be made may be specified or determined by factors set out in an order under section 89(4)(b). This allows certain decisions to be reviewed by the local authority rather than the Scottish Ministers. For example where the relevant authority is a company wholly owned by one or more local authorities. The review procedures set out in section 86 will apply, subject to such modifications as the Scottish Ministers think appropriate.
344. When an appeal or review results in an asset transfer request being agreed (with or without amended terms or conditions), the process then continues under the provisions of section 83, with the community transfer body making an offer and the two parties proceeding to conclude a contract.
345. If no contract is concluded within the required period as set out in section 83, the community transfer body may appeal to the Scottish Ministers under section 90, unless the request was made to the Scottish Ministers. If the appeal is allowed, the Scottish Ministers will issue an appeal decision notice setting out the terms and conditions of an offer to be made by the community transfer body. If such an offer is made and no contract is concluded within 28 days, the Scottish Ministers may direct the relevant authority to conclude the contract, and ultimately the relevant authority may be deemed to have accepted the offer and concluded the contract, under subsection (7). As with other forms of appeal and review, the Scottish Ministers may make regulations about procedures, time limits etc., under subsections (12) to (14). Subsections (8) to (10) provide for other ways in which the asset transfer request process may come to an end.
346. **Section 91** provides that, when a request has been agreed, a community transfer body may not appeal or apply for a review in relation to the terms and conditions set out in the decision notice at the same time as making an offer. An appeal or review may not be brought if an offer has already been made and not withdrawn; if an offer is made after the appeal or application for review is made, that appeal or application for review is treated as having been withdrawn.

### **Land leased to a relevant authority**

347. **Section 92** applies where all the criteria set out in paragraphs (a) to (d) of subsection (1) are met. It deals with the situation where an asset transfer request is made to lease or otherwise occupy land (including a building) which is leased to a relevant authority by another relevant authority, or by a company wholly owned by another relevant authority. Subsections (2) and (3) mean that any conditions in that lease which restrict the relevant authority's ability to sublet or share occupancy of the land, or restrict how the land may be used, do not prevent the relevant authority agreeing to lease the land to the community transfer body or to allow the body to occupy the land.
348. This does not apply if any other person is entitled to occupy the land (subsection (1)(d)). Subsections (4) and (5) also provide that it does not affect any restrictions on the power of the relevant authority to assign or transfer rights and liabilities under the lease,

and the relevant authority continues to be subject to any obligations under the lease, even if it leases the land to the community transfer body or allows the body to occupy it. For example, the relevant authority would still be responsible to the landlord for any maintenance requirements set out in the lease between them.

### **Repeated requests**

349. [Section 93](#) is intended to help relevant authorities deal with repeated, vexatious requests. It means that if a second request relating to the same land or building is made within two years of a previous request, which was refused, the relevant authority may choose not to consider that second request. Subsections (4) and (5) provide that this only applies if the new request seeks the same type of transfer, but it does not matter whether the new request is made by the same body or a different one. For example, if one community transfer body requests to lease a particular building, and is refused, and another body requests to lease the same building within two years, the relevant authority may decline to consider that second request. On the other hand, if the second request was for transfer of ownership instead of a lease, the relevant authority would have to consider it. Declining to consider a request under these circumstances does not count as a refusal of the request and therefore is not eligible for appeal or review.

### **Registers of relevant authorities' land**

350. [Section 94](#) requires each relevant authority to establish, maintain and make available to the public a register of land which they own or lease (to the best of the authority's knowledge and belief). There is a power for the Scottish Ministers to specify land that need not be included in the register, and relevant authorities must have regard to any guidance issued by the Scottish Ministers in relation to these duties.
351. This provision is intended to assist community bodies in identifying property that may be available for asset transfer. However, the fact that a property is not on the register will not prevent an asset transfer request being made for it. It is expected that regulations will be used to exclude types of "land", such as retaining walls and mineral rights, which are unlikely to be targets for asset transfer in themselves. Guidance will set out what information about the land is to be included, as well as issues such as how the register should be published and how often it must be updated.

### **Annual reports**

352. [Section 95](#) requires each relevant authority to publish an annual report on the number of asset transfer requests received and their outcomes, including the outcome of any appeal or review, and any action taken by the authority to promote the use of asset transfer requests and support community bodies to make them. The report will relate to a year from 1 April to 31 March and must be published no later than 30 June following the end of the reporting year to which the report relates.

### **Part 6: Delegation of Forestry Commissioners' functions**

353. Section 7B of the Forestry Act 1967 ("the 1967 Act"), inserted by the Public Services Reform (Scotland) Act 2010, allows the Forestry Commissioners to delegate their functions (to such extent and subject to such conditions as they think appropriate) to community bodies, in relation to land in Scotland which is let to the community body.
354. Section 7C of the 1967 Act sets out the requirements that a body must meet to be a community body under section 7B of the 1967 Act. It must be a company limited by guarantee, the articles of association of which include a definition of the community to which the company relates. The community must be defined by reference to postcode units. The company must also have no fewer than 20 members; the majority of the members of the company must consist of members of the community, and those members must have control of the company; and there must be provision for proper financial management of the company and the auditing of its accounts.

355. The Forestry Commissioners manage land which is owned by the Scottish Ministers and placed at their disposal for the exercise of their functions, under section 3 of the 1967 Act. Since the Scottish Ministers are listed in schedule 3 to the Act as a relevant authority, a community transfer body may make an asset transfer request under Part 5 to lease such land, and may seek to have forestry functions delegated to it in relation to that land. Part 6 of the Act amends section 7C of the 1967 Act, to make the requirements for a community body in that section closer, but not identical, to the requirements for a community controlled body under section 19 of the Act, which may be a community transfer body under section 77.
356. Subsection (2)(a) of section 98 of the Act removes the requirement for a community body to be a company limited by guarantee and allows it instead to be any form of body corporate, with a requirement that certain provisions are set out in a written constitution rather than having to be in articles of association. Subsection (2)(c) adds a requirement that membership of the body must be open to any member of its defined community, and that its aims and purposes must include the promotion of a benefit for that community. Subsection (2)(d) removes the requirement in relation to auditing of the accounts (although the requirement for ensuring proper arrangements of the financial management of the body remains), but adds a provision that any surplus funds or assets of the body must be applied for the benefit of the community. Subsection (4) removes the requirement for the community to be defined by postcode units, allowing for communities of interest to be included as well as those defined by geographical boundaries.

## **Part 7: Football Clubs**

### **Overview**

357. This Part provides the Scottish Ministers with a power to make regulations about the role that the supporters of football clubs play in connection with the club they support.
358. There are two main aspects to what the Scottish Ministers can do by means of these regulations. Firstly, the Scottish Ministers may make provision designed to assist the supporters of a football club to become more involved in the making of decisions about the management, operation or governance of the football club they support. Secondly, regulations may be made to facilitate supporter ownership of football clubs (for example, by conferring a right to buy the club or part of it).
359. The power is provided in section 99(1) and the remaining provisions of the Part provide further detail as to how the power may be exercised. The provision should also be read in conjunction with section 142 (which makes general provision about subordinate legislation under the Act) which provides that different provision may be made in different circumstances and allows for a range of ancillary provision to be made in connection with the regulations. Section 142 also specifies that regulations made under section 99(1) are subject to the affirmative procedure.

### **Facilitation of supporter involvement in football clubs**

360. **Section 99(1)** confers power on the Scottish Ministers to bring forward regulations which may facilitate:
- supporter involvement in the making of decisions that are about the management, operation or governance of the football club which they support; and
  - supporter ownership of their club.
361. Subsection (2) confirms that the regulations may include the creation of rights or interests or the imposition of liabilities or conditions assigned to property (or an interest in property) of any description. This type of provision may be necessary for the creation of a right to buy or other form of supporter ownership scheme. For example, it may be

necessary to restrict the options that the owner of a football club has to sell their interest in the club where supporters have followed the appropriate procedures to indicate they wish to buy the club (or a part of it).

362. Subsection (3) requires the Scottish Ministers to consult widely before making any regulations under the section. In particular, they must consult representatives of football clubs, the leagues those clubs play in, the players and the supporters as well as any other person or body that the Scottish Ministers consider appropriate.

### **Supporter involvement in decision-making**

363. [Section 100](#) elaborates on the regulations which may be made under section 99(1)(a) to facilitate supporter involvement in the decision making of a football club. It is largely self-explanatory. However the key aspects are:

- The regulations will need to identify the clubs that are to be regulated (paragraph (a)), how the fans of the club are to make it known that they want to be involved in the decisions of the club (paragraph (b)) and the types of decisions involved (paragraph (e)). That might, for example, involve specifying that the provisions apply to clubs in a specific league or which share certain characteristics (e.g. professional clubs). For fans to be involved, they may need to hold season tickets, join a supporter organisation or take some other action. And, for clubs to be able to function efficiently and effectively, it may be appropriate to specify that the involvement of fans is focused on particular decisions (e.g. the relocation of the stadium).
- The regulations may require football clubs to provide information to their supporters about how the club is run and how the property of the club is held (paragraph (c)). This may include information on a range of topics from the management structure to who owns particular assets (like the stadium or training grounds).
- Paragraph (d) confirms that the regulations can set out the manner in which supporters are to be involved in decision making. There is a range of options available in this regard and different management structures may necessitate different approaches. In that regard, it is also possible that individual clubs may develop different strategies to best reflect their particular circumstances over and above anything that may be set out in the regulations.
- Lastly, paragraph (f) confirms that the regulations may provide for the consequences for football clubs if they fail to involve their supporters in decision making in contravention of the regulations.

### **Supporter ownership**

364. [Section 101](#) elaborates on the regulations which may be made under section 99(1)(b) to facilitate supporter ownership of football clubs.
365. As with other regulations which may be made under section 99(1), provision may specify the types of club that are subject to the regulations (paragraph (a)) and the steps a person must take, firstly to be recognised as a supporter and secondly in order to be able to exercise rights conferred by the section (paragraph (e)).
366. Additionally, regulations in connection with facilitating supporter ownership may address the type of asset that the supporters are to be able to buy (paragraph (b)), how the value of that asset is to be ascertained (paragraph (c)), the circumstances in which the rights may be exercised (paragraph (d)), how supporters are to go about the purchase (paragraph (e)), and the rights and obligations of the owners, creditors and other people with an interest in the club (paragraphs (g), (h) and (i)). Given the variety of ownership models for football clubs the regulations may need to set out different procedures in relation to different types of club and asset.

367. Supporters may be required to form into bodies or associations to be able to exercise any right to buy (paragraph (e)). In that situation, it is expected that the regulations would deal with the constitution of such a body or association and how it represents its members and makes decisions.
368. Regulations under this section may also deal with the resolution of disputes, appeals and the consequences of failing to comply with the regulations (paragraphs (h), (j) and (k)). Again, the regulations may have to cater for a variety of circumstances in this regard given the range of interests in football clubs and the different types of assets involved.

## **Part 8: Common good property**

369. Common good property is property owned by local authorities for the common good of the inhabitants in their areas which has been passed down, through local government reorganisation, from the former burghs. Those burghs would have received it as a gift or purchased it. It includes land and buildings, moveable items such as furniture and art, and cash funds. It is sometimes difficult to know whether property forms part of the common good, and there may be restrictions on how certain items of common good property are allowed to be used and whether the local authority can dispose of them. In some cases this has to be decided by the courts.
370. This Part of the Act aims to increase transparency about common good assets and community involvement in decisions taken about their identification, use and disposal. It does not define or redefine common good or remove or alter any restrictions on the use or disposal of common good property.

### **Common good registers**

371. [Section 102](#) requires each local authority to establish and maintain a register of its common good property. Before establishing this register it must publish a list of what it proposes to include, and notify any community councils and other community bodies in its area. In this Part, “community bodies” are defined as any group set up to promote or improve the interests of any communities which exist in the area. Community councils and community bodies must be invited to comment on the proposed register, and the local authority must take account of any comments made by those bodies or anyone else. This gives everyone the opportunity to say whether they think the local authority has missed any common good property from the list, or included anything which is not part of the common good.
372. Subsection (8) requires the local authority to make its completed common good register available for the public to inspect in person, and to make it available on a website or by other electronic means.
373. [Section 103](#) requires local authorities to have regard to any guidance issued by the Scottish Ministers about common good registers. Before issuing any guidance, the Scottish Ministers must consult local authorities, community councils, and appropriate community bodies.

### **Disposal and use of common good property**

374. [Section 104](#) provides that communities must be consulted before a local authority disposes of any common good property or changes its use. As with establishing the common good register, the local authority must publish its proposals, notify community councils and community bodies, and take account of any comments made by them or anyone else.
375. In this case the local authority only needs to consult community bodies which it knows have an interest in that particular property. They must also, where the local authority is Aberdeen, Dundee, Edinburgh or Glasgow City Council, consult any community council in the local authority area. Apart from Aberdeen, Dundee, Edinburgh and

Glasgow City Councils, many local authorities have one or more common good funds that are used for the benefit of different former burgh areas, and they are required to administer these funds with regard to the interests of the inhabitants of the relevant area. It would not be appropriate to consult community councils from other parts of the local authority area. Therefore section 104(5)(b) provides that the local authority must notify and invite representations from community councils whose area covers or overlaps with the area to which the common good property related prior to the abolition of burgh councils in 1975.

376. [Section 105](#) requires local authorities to have regard to any guidance issued by the Scottish Ministers about disposal or change of use of common good property and about the management and use of common good property.

## **Part 9: Allotments**

### **Meaning of “allotment”**

377. Earlier legislation on allotments does not provide a clear definition of “allotment”. Section 107 of the Act defines “allotment” for the purpose of this Part. Paragraph (a) provides that an allotment is land that is either owned or leased by a local authority. Privately leased or owned allotments are not covered by this Part of the Act. Additional requirements for land being an allotment under Part 9 of the Act are that the land is leased, or intended to be leased, by a person from the local authority and that the land is used wholly or mainly for the non-commercial cultivation of vegetables, fruit, herbs or flowers (subsection (c)(i)) otherwise than with a view to making a profit (subsection (c)(ii)).

### **Meaning of “allotment site”**

378. No specific definition of “allotment site” has been included in earlier allotment legislation. Section 108 defines “allotment site” for the purpose of Part 9 as an area of land consisting wholly or partly of “allotments”, as defined in section 107. An “allotment site” also includes other local authority land that allotment tenants use in connection with their allotments, such as communal buildings, and environmental areas.

### **Request to lease allotment**

379. [Section 109](#) makes provision relating to requests to lease allotments. Subsection (1) provides that a resident of a local authority area may make a request to lease an allotment from that local authority or sublease an allotment from a tenant of the authority to whom the authority has leased an allotment site.
380. Subsection (2) provides that this request must be in writing and include the name and address of the applicant. Regulations may also set out further information that must be included in the request. Subsection (8) provides that, before making these regulations, the Scottish Ministers must consult local authorities and any other person appearing to have an interest.
381. Subsection (3) provides that the person making the request must specify the area of allotment sought if it is less than 250 square metres.
382. Subsection (4) makes provision for requests for allotments by disabled persons and allows details of any additional requirements regarding access to and adaptation of the allotment or site to be provided in the request. For example, a need for adaptations such as raised beds and wider paths should be specified.
383. Subsection (5) provides that a request for an allotment may be made even if the local authority does not currently provide allotments in their area. A joint request for an allotment may also be made by two or more persons provided that each of the applicants are all resident in the relevant local authority area (subsection (6)).

384. Once a request is received, the local authority is under a duty to acknowledge the request in writing within 14 days (subsection (7)).

### **Offer to lease allotment**

385. [Section 110](#) provides an entitlement to wait for an allotment of 250 square metres or a smaller size if it is requested. Subsections (2) and (3) apply where a person specifies an allotment of an area less than 250 square metres in a request made under section 109(1). If a person requests a particular size smaller than 250 square metres and is offered this size then the request is treated as having been agreed for the purpose of maintaining the waiting list under section 111(3)(a)(i) (subsection (2)). The person's name will be removed from the waiting list. If a person is offered and accepts an alternative size of allotment then the request is treated as having been agreed to for the purpose of section 111(3)(a)(i) and the person's name will be taken off the list. Should that person not agree to the offer of an alternative size, the request is treated as not agreed to (subsection (3)). The person is therefore entitled to remain on the list until the particular size requested is offered.
386. Subsections (5) and (6) apply where a person does not specify an area of allotment sought (of less than 250 square metres) in their request made under section 109(1). The request is treated as agreed for the purpose of section 111(3)(a)(i) when an allotment of approximately 250 square metres is offered (subsection (5)). The person's name will then be removed from the waiting list. If the person is offered and accepts an allotment of other than approximately 250 square metres, the request is treated as agreed to for the purpose of section 111(3)(a)(i) and the person's name will be removed from the list. Should a person be offered an allotment that is not approximately 250 square metres and rejects the offer the request is treated as not agreed and the person's name remains on the waiting list (subsection (6)).

### **Duty to maintain list**

387. [Section 111](#) imposes an obligation on local authorities to establish and maintain a waiting list of residents who have requested an allotment (subsection (1)).
388. Subsection (2) provides that there is no set format for such lists and local authorities may manage them as they see fit. They may, for example, wish to split the list into applicants' preferred geographical areas. Subsection (3) provides that a person's details must be removed from the list when their request to lease an allotment is agreed to or if the person withdraws their request.

### **Duty to provide allotments**

389. [Section 112\(1\)](#) imposes a duty on local authorities to take reasonable steps to provide sufficient allotments to keep the list referred to in section 111 at no more than half the authority's current number of allotments, and to ensure that a person entered on the list does not remain on it for a continuous period of more than five years.
390. Where a local authority does not on the date that section 112 comes into force own or lease allotments, subsection (2) sets out that this duty is triggered when there are 15 people on the local authority waiting list maintained under section 111(1). However, where a local authority already owns or leases allotments, subsection (3) sets out that the duty arises when only one person is on the waiting list.
391. Subsection (4) requires local authorities, when taking reasonable steps to meet the duty in subsection (1), to take into account the desirability to provide allotments in reasonable proximity to where people on the waiting list reside.
392. The Scottish Ministers may by order amend the number of people on the waiting list that triggers the requirement on the local authority to take reasonable steps to provide more

allotments, or the maximum proportion of persons on the waiting list as compared to the number of allotments owned or leased by the local authority (subsections (5) and (6)).

### **Duty of tenant of allotment site to grant sublease**

393. [Section 113](#) provides that where a local authority has leased an allotment site to a tenant, e.g. an allotment association, the tenant must grant a sublease of an unoccupied allotment to a person who has made a request for an allotment and is on the authority's waiting list when requested to do so by the local authority.

### **Access to allotment and allotment site**

394. Under section 114 where a local authority leases an allotment to a tenant the authority must provide reasonable access to the allotment and any allotment site. Where an authority leases an allotment site to a tenant the authority must provide reasonable access to the site and to allotments on it.

### **Allotment site regulations**

395. An obligation is placed on each local authority under section 115(1) to make allotment site regulations for their area within two years of this section coming into force.
396. The matters set out in subsection (3) must be included in the regulations.
397. In addition to the mandatory requirements under subsection (3), subsection (4) sets out other matters local authorities may include in the regulations.
398. Local authorities are permitted to vary the regulations for different areas or different allotment sites in order to take account of local circumstances (subsection (5)).

### **Allotment site regulations: further provision**

399. [Section 116](#) sets out the process that local authorities must undertake to make allotment site regulations, or to vary or revoke them. Subsection (2) provides that local authorities must at least one month before making regulations advertise their intention to do so, the purpose of the regulations, where they may be inspected and details about making representations. They must also make copies of the proposed regulations available. A person who objects to the regulations may make representations to the local authority and must be allowed an opportunity to be heard and his or her representations taken account of before the local authority makes its final decision (subsections (3) and (4)). Where regulations contravene the local authority's lease of the site, the provision in the lease is to prevail (subsection (11)).

### **Disposal etc. of allotment sites owned by local authority**

400. [Section 117](#) applies where an allotment site is owned by a local authority.
401. If a local authority wishes to change the use of or dispose of the whole or part of an allotment site it owns, before doing so it must obtain the consent of the Scottish Ministers (subsection (2)). Subsection (3) requires the Scottish Ministers to consult both the local authority and other persons with an interest before granting consent. The Scottish Ministers may consent subject to conditions (subsection (4)), and in particular may only grant consent if they are satisfied that each of the allotment tenants from the site or the part of the site affected is to be offered an alternative allotment of an area the same or similar to that of the tenant's allotment, on the same site or within a reasonable distance, or that the provision of an alternative allotment is not necessary or reasonably practicable in the circumstances (subsection (5)). Subsection (6) sets out that a purported transfer of ownership without the Scottish Ministers' consent is of no effect.

### **Disposal etc. of allotment sites leased by local authority**

402. [Section 118](#) applies where a local authority leases an allotment site.
403. Subsection (2) provides that the local authority may not renounce (terminate voluntarily) its lease of an allotment site without the consent of the Scottish Ministers. In addition, even where a change of use is permitted by the lease, the local authority may not change the use of the allotment site unless the Scottish Ministers consent (subsection (3)). Subsection (4) requires the Scottish Ministers to consult both the local authority and other persons with an interest before granting consent.
404. As with section 117, the consent of the Scottish Ministers may be subject to conditions (subsection (5)), and the Scottish Ministers may not grant consent unless they are satisfied that the tenants of the site or part of the site affected by the proposed renunciation or change of use are to be offered an alternative allotment, of the same or similar size to that of the tenant's allotment, on the same site or within a reasonable distance, or that the provision of an alternative is unnecessary or not reasonably practicable in the circumstances (subsection (6)). Subsection (7) sets out that a purported renunciation of a lease without the Scottish Ministers' consent is of no effect.

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

405. [Section 119](#) places a duty on every local authority to prepare a food-growing strategy which must be published within two years of this section coming into force. Subsection (3) provides that the food-growing strategy must identify land in the local authority area which could be used by a community to grow vegetables, fruit, herbs or flowers, as well as land that could be used for allotments, and must describe how the authority intends to increase the provision of allotments or other land for community growing, should there be an identified need. Subsection (4) requires a local authority, when detailing how it intends to increase the provision of allotment sites and community growing areas of land in its area, to describe whether and how this will apply to communities which experience socio-economic disadvantage. The Scottish Ministers may also prescribe by regulations other information to be included in a food-growing strategy.
406. Once complete, the local authority must publish the food-growing strategy on a website or by other electronic means (subsection (5)).

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

407. Each local authority is under a duty to review its food-growing strategy under section 120. This must be done 5 years after the date of initial publication and every 5 years thereafter (subsection (1)). Where the local authority makes changes to its food-growing strategy following a review, the revised strategy must be published on a website or by other electronic means (subsection (2)).

### **Annual allotments report**

408. Under section 121, every local authority is under a duty to prepare and publish an annual allotments report. This requires to be done as soon as is reasonably practicable after the end of each reporting year (as defined in subsection (4)). Publication must be on a website or by other electronic means (subsection (3)).
409. Subsection (2) sets out the matters which require to be detailed in the annual allotments report and allows other information to be required in the report by regulations made by the Scottish Ministers.

### **Power to remove unauthorised buildings from allotment sites**

410. The regulations regarding allotment sites to be made under section 115(1) must include provision for buildings and structures that are permitted on allotments, including

modifications that may be made and the materials that may or may not be used in connection with such structures. The regulations may also include provision for buildings or structures that are permitted on land mentioned in paragraph (b) of the definition of “allotment site”, being communal areas within the site, including permitted modifications and materials. If a building or structure is not permitted under regulations made under section 115(1), and at the time it was erected or modified, that erection or modification was prohibited by such regulations, section 122 confers power on a local authority to remove the building or other structure.

411. Subsection (2) provides that a local authority may:
- remove the building or other structure from the site;
  - dispose of the materials that formed the building or other structure; and
  - recover the cost of the removal and/or disposal of the materials from a “liable tenant”, being the tenant from whose allotment it is removed or, if on a part of the site that is not an allotment, from the tenant or tenants responsible for its erection (subsection (3)).
412. In cases where more than one tenant has consented to the erection of an unauthorised building or structure, each such tenant shall be jointly and severally liable for the recoverable costs (subsection (4)).
413. Prior to exercising this power to remove unauthorised buildings, a local authority must follow the procedure set down in subsection (5). Firstly, notice must be given to every tenant who may be affected by the removal of the building or structure. Secondly, the tenant(s) must be given the opportunity to make representations about the proposed action and there is a duty placed on the local authority to give appropriate consideration to these representations. Once a decision is reached, the local authority must notify this decision to the affected tenant(s) in writing, specifying the date on which the action is to take place, if applicable. Upon receipt of a notice under subsection (5)(d) a tenant has 21 days to appeal to a sheriff against the decision of the local authority.
414. A limitation placed on this power is that where a local authority leases an allotment site, it cannot remove buildings or other structures if this removal is in breach of a provision of the lease (subsection (8)).
415. Subsection (7) allows the Scottish Ministers to make regulations regarding the procedure to be followed in relation to the exercise of the power to remove buildings or structures, dispose of the materials and recover the costs of removal and disposal.

### **Delegation of management of allotment sites**

416. **Part 9** of the Act imposes certain management functions on local authorities in relation to allotment sites. Section 123 allows a local authority to delegate certain functions to a person who represents the interests of all or the majority of the tenants of the allotments on a particular site. Usually, this “person” will be an allotment association.
417. Only the functions set out in subsection (3) may be delegated by the local authority.
418. In order for functions to be delegated, a written application must be made by the person wishing to take over the functions of the local authority. The application must include the name and address of the applicant, in addition to such other information as the Scottish Ministers set out in regulations (subsection (4)).
419. Upon receipt of an application the local authority has 14 days in which to request from the applicant such further information as it requires in order to make a decision as to whether to agree or refuse the request. The applicant must provide this information within 14 days of it being requested (subsection (5)).

420. There are time limits by which the local authority must make and notify a decision on an application and these are set out in subsection (6). Where no further information has been requested from the applicant, the decision must be notified to the applicant within 28 days of receipt of the application. Where further information has been requested, this time limit is increased to 56 days.
421. If the request is refused, the local authority must send the applicant a decision notice which sets out the reasons for the refusal of the application (subsection (7)).
422. If the request is agreed, the local authority must decide which of its functions mentioned in subsection (3) it is delegating to the applicant and when the delegation will be reviewed (subsection (8)). Prior to the decision on which functions to delegate, the local authority is under an obligation to consult with the person who has made the request (subsection (9)).
423. In cases where the local authority considers that the person to whom they have delegated functions is not carrying out these functions satisfactorily, or where there is a disagreement between this person and the local authority, the local authority has the power to recall any of the functions it has delegated under this section (subsection (10)).
424. It is also set out in subsection (11) that where the local authority is leasing an allotment site from another person, any delegation of its functions must not contravene the head-lease.

### **Promotion and use of allotments: expenditure**

425. [Section 124\(1\)](#) permits a local authority to incur expenditure for the purpose of promoting allotments in its area and providing training by or on behalf of the local authority to tenants and potential tenants about the use of allotments. Local authorities must take into account the desirability of exercising this power in relation to communities which experience socio-economic disadvantage (subsection (2)).

### **Use of local authority and other premises for meetings**

426. Under section 125 a tenant of an allotment site or a person who represents the interests of all or the majority of tenants on an allotment site may make a request to the local authority to use certain premises, free of charge, for holding a meeting about allotment site related business. The premises are a public or grant-aided school or other premises within the area that are;
- maintained by the local authority;
  - maintained by a person other than the authority and used for or in connection with the delivery of services that have been delegated to that person by the authority; or
  - maintained and managed by a person other than the authority on behalf of the authority
427. This request must be made in writing at least one month before the date of the proposed meeting and include the name and address of the person making the request as well as information about the particulars of the meeting. The local authority must respond to the request within 14 days either granting or refusing the request or offering alternative arrangements for the meeting.

### **Termination of lease of allotment or allotment site**

428. [Section 126](#) confers a power on a local authority to terminate the lease of whole or part of an allotment or an allotment site.
429. Where a tenant has been complying with allotment site regulations made under section 115, the minimum notice of termination the local authority is required to give is one year (subsection (2)). This applies where the Scottish Ministers have consented

to disposal of the site, change of its use, or renunciation of the lease of the site under section 117 or 118. Where there has been a breach of allotment site regulations by a tenant, the notice of the proposed termination that must be given by the local authority to the tenant is one month (subsection (2)).

430. A local authority must write to any tenant to inform them of its intention to give notice to terminate a lease no later than one month in advance of serving such a notice (subsection (5)). The local authority is also required to allow the tenant any opportunity to make representations to the authority in relation to the proposed termination and must take account of such representations. After considering these representations the local authority must write to the tenant to inform them of their intention to no longer proceed or to give notice (subsection (5)(d)). A tenant who is aggrieved by a notice may appeal to the sheriff within 21 days of the date of the notice (subsection (6)). A notice served under this section does not take effect until the appeal period has expired or, where there is an appeal, the appeal has been withdrawn or finally determined (subsection (8)).
431. The written notice must specify the termination date of the lease (subsection (1)) If, however, the local authority has given notice under section 128 where its lease of the site has been terminated by its landlord, it does not require to also give notice under this section (subsection (11)).

### **Resumption of land by local authority**

432. If allotment land is required by the local authority for building, mining or other industrial purpose (or for the construction, maintenance or repair of roads or sewers necessary in connection with these purposes), the local authority can, in certain circumstances, resume the whole or part of an allotment or allotment site, under section 127. This power can only be exercised with the consent of the Scottish Ministers and where the tenant has been given notice in accordance with subsection (3). The Scottish Ministers may grant consent subject to such conditions as they think fit (subsection (4)) and may only grant consent if they are satisfied that each of the allotment tenants from the site or part of the site affected has been offered an alternative allotment of the same or similar size within a reasonable distance, or that the provision of an alternative allotment is not necessary or reasonably practical in the circumstances (subsection (5)).
433. Subsection (3) provides that written notice of the resumption must be given to allotment tenants and this notice must specify the date on which the resumption is to take place. The minimum notice period is 3 months and the notice must therefore be served in accordance with this prescribed time limit.

### **Notice of termination: sublease by local authority**

434. Where an allotment site is leased to a local authority and then the authority sub-leases either the site or particular allotments on the site to subtenants, it is possible that the local authority's landlord may terminate the head lease granted to the local authority in whole or in part. The effect of this is that the sublease(s) granted by the local authority in relation to that site or part of site will come to an end on the date that the head lease between the landlord and the local authority comes to an end. Section 128 applies in these circumstances.
435. Subsection (2) places an obligation on the local authority to send a copy of the notice of termination of the head lease to each subtenant and inform them that the effect of the termination of the head lease will be the termination of the sublease(s).

### **Notice of termination: sublease by allotment association etc.**

436. Where a person, such as an allotment association, leases an allotment site from a local authority and is given notice by the local authority in relation to the whole or part of that site, section 129 provides that that person must give notice to each subtenant of

that whole or part site informing them that the effect of termination of the head lease will be termination of the sublease(s) on the same date.

### **Prohibition against assignation or subletting**

437. **Section 130** requires that a tenant of an allotment must not assign the lease of whole or part of the allotment without the consent of the local authority which granted the lease of either the allotment or the site on which the allotment is situated (subsection (1)). A tenant of an allotment must not sublet the whole or part of the lease (subsection (2)). Should the tenant undertake either of these actions, the action is of no effect (subsections (3) and (4)).

### **Sale of surplus produce**

438. **Section 131** sets out that, subject to any regulations made by local authorities under section 115(1), allotment tenants may sell produce grown on their allotments provided this is not with a view to making a profit (e.g. it may be sold for charity).

### **Removal of items from allotment by tenant**

439. **Section 132** provides that before the expiry or termination of a tenant's allotment lease a tenant may remove certain items from their allotment. These items are any buildings or other structures erected by or on behalf of or acquired by the tenant, or any produce, trees or bushes acquired by the tenant or planted by or on behalf of the tenant.

### **Compensation for disturbance**

440. Where an allotment lease is terminated, in whole or part, on the grounds of termination mentioned in subsection (1)(a), section 133 provides tenants with a right to be compensated by the local authority for damage caused by the disturbance of the enjoyment of the allotment (subsections (1) and (2)). The grounds of termination mentioned under subsection (1)(a) are:- (i) notice under section 126(2)(b)(ii); (ii) as a result of notice of termination of the lease of the allotment site on which the allotment is situated under section 126(2)(b)(ii); (iii) as a result of notice of resumption of the allotment, or the allotment site on which it is situated, under section 127(2); or (iv) as a result of a notice mentioned in section 128(1)(c).
441. Subsection (3) provides that the minimum amount of compensation is one year's rent or a proportion of that where the termination of the lease relates to part of an allotment. Subsections (4) and (5) require the Scottish Ministers to make further provision in regulations about the process involved in determining liability for, and the amount of, compensation. Before these regulations are made, the Scottish Ministers must consult local authorities and any other person with an interest. There is a right of appeal to the sheriff against a local authority's decision in respect of compensation for disturbance (subsection (7)).

### **Compensation for deterioration of allotment**

442. Under section 134, where a lease of an allotment has ended and the allotment has deteriorated during the tenant's tenancy due to the tenant's fault or negligence, the sum required to remedy the deterioration is due in compensation from the tenant to the landlord (subsections (1), (2) and (3)). Subsections (4) and (5) require the Scottish Ministers to make further provision in regulations about the process involved in determining liability for, and the amount of, compensation. Before these regulations are made the Scottish Ministers must consult local authorities and any other person with an interest (subsection (6)). A tenant has a right of appeal to the sheriff against a decision of a local authority in respect of compensation for deterioration (subsection (7)).

## **Compensation for loss of crops**

443. [Section 135](#) provides that where an allotment lease is terminated by way of resumption and the tenant loses crops due to the resumption, the local authority is liable to compensate the tenant for the loss of crops (subsections (1) and (2)). The Scottish Ministers are required to make regulations about determining liability for, and the amount of, compensation (subsection (3) and (4)). Before these regulations are made the Scottish Ministers must consult with local authorities and any other person with an interest (subsection (5)). A tenant has a right of appeal to the sheriff against a local authority decision in respect of compensation for loss of crops (subsection (6)).

## **Set-off compensation etc.**

444. Where a lease is terminated, section 136(1) allows local authorities who are liable to compensate a tenant or subtenant for disturbance or loss of crops to deduct from the sum due any sum due by the tenant in connection with the lease.
445. Subsection (2) provides that where a tenant is liable to pay a sum to the local authority in connection with the lease, the tenant can deduct any sum due to them by the local authority by way of compensation for disturbance or loss of crops.

## **Guidance**

446. [Section 137](#) requires local authorities to have regard to guidance issued by Scottish Ministers when carrying out the functions provided in Part 9. Before this guidance is issued, the Scottish Ministers must consult local authorities and any other person with an interest.

## **Part 10: Participation in public decision making**

### **Participation in decisions of certain persons exercising public functions**

447. [Section 139](#) provides a regulation-making power enabling the Scottish Ministers to require Scottish public authorities to promote and facilitate the participation of members of the public in the decisions and activities of the authority, including the allocation of resources. Subsection (5) provides that the regulations can confer functions on authorities, specify the activities to which the regulations can apply, and require the authorities to prepare and publish a report. The authorities must also have regard to any guidance issued by the Scottish Ministers.

## **Part 11: Non-domestic rates**

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

448. The Act provides for a power relating to reduction or remission of rates for non-domestic properties (referred to as “lands and heritages”) in Scotland. It creates a power to allow rating authorities (which are the local authorities) to reduce or remit non-domestic rates (often referred to as business rates) leviable by them, in any financial year from 2015-16 onwards. This power will allow any rating authority to create, if it wishes, local relief schemes for any non-domestic rates leviable by it.
449. The power is created by an amendment of the Local Government (Financial Provisions etc.) (Scotland) Act 1962. Section 140(1) of the Act inserts section 3A into the 1962 Act to provide the power. Section 3A(4) allows reliefs to apply in accordance with schemes which may be defined by categories of property, areas, activities or any other matter. Any relief awarded ceases to apply at such time as the rating authority determines (subsection (3) of section 3A), or when there is a change in the occupation of the premises (subsection (5) of section 3A). Subsection (6) requires the rating authority to have regard to the authority’s expenditure and income and the interests of people liable to pay council tax set by the authority before creating or amending a relief scheme.

450. **Section 140(2)** amends Schedule 12 to the Local Government Finance Act 1992 (payments to local authorities) to ensure that the arrangements for pooling of income from non-domestic rates and funding of rating authorities will accommodate and remain unaffected by the authority's power to create relief schemes, so that any loss of income from non-domestic rates incurred by the scheme must be funded from the local authority's wider budget. Subsections (3) and (4) make consequential amendments to allow these changes to take effect.

## **Part 12: General**

451. **Part 12** provides general information which relates to all Parts of the Act.
452. **Section 141** requires the Scottish Ministers to publish any guidance they issue under Part 2, Part 3, Part 5, Part 8, Part 9 and Part 10 of the Act. (These are the only Parts that require people to have regard to guidance issued by the Scottish Ministers.)
453. **Section 142** regulates how the Scottish Ministers can make orders or regulations under the Act, including the procedure by which they are to be scrutinised by the Scottish Parliament.
454. **Section 143** gives the Scottish Ministers power to make additional provision that is necessary or expedient to make sure the provisions of the Act work properly. Section 142(2) provides that any order under section 143 which amends the text of an Act must be scrutinised in the Scottish Parliament by the affirmative procedure.
455. **Section 144** of the Act introduces schedule 4, which contains minor amendments and amendments consequential to the provisions of this Act, and schedule 5 which lists enactments that are repealed.
456. **Section 145** sets out when the provisions of the Act come into force. Part 12 comes into force the day after Royal Assent. The rest of the Act will come into force on dates decided by the Scottish Ministers, which will be set out in commencement orders. Different commencement days may be appointed for different purposes.

## **Schedule 4: Amendments relevant to Part 4**

457. **Schedule 4** makes a number of minor amendments and amendments consequential to this Act. Paragraph 8 of Schedule 4 makes a number of amendments to the provisions of the Land Reform (Scotland) Act 2003 ("the 2003 Act").
458. **Paragraph 8(6)(b)** adds new subsection (5A) to section 98 of the 2003 Act. Paragraph (5A) requires Ministers to have regard to the International Covenant on Economic, Social and Cultural Rights when making certain decisions. Those decisions are when Ministers:
- (i) make a decision to enter a community interest in the Register of Community Interests in Land for a Part 2 application made under section 38(1) of the 2003 Act;
  - (ii) make a decision to re-enter a community interest in the Register of Community Interests in Land for a Part 2 re-application made under section 44(3) of the 2003 Act;
  - (iii) make a decision to consent to a Part 2 community body exercising its right to buy the land under section 51(1)(b) of the 2003 Act;
  - (iv) make a decision to consent to an application from a Part 3 crofting community body to buy land, tenancy or sporting interests under section 73(2) of the 2003 Act; and
  - (v) make a decision to consent to an application from a Part 3A community body to buy land under section 97G(2) of the 2003 Act.