



LOCAL GOVERNMENT AND REGENERATION COMMITTEE

AGENDA

8th Meeting, 2013 (Session 4)

Wednesday 13 March 2013

The Committee will meet at 10.00 am in Committee Room 6.

1. **Decision on taking business in private:** The Committee will decide whether to take item 9 in private.
2. **Subordinate legislation:** The Committee will consider the following negative instruments—

Non-Domestic Rates (Levying) (Scotland) Amendment Regulations 2013 (SSI 2013/34), and the Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2013 (SSI 2013/36).
3. **Subordinate legislation:** The Committee will take evidence on the Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2013 (SSI 2013/37) from—

Derek Mackay, Minister for Local Government and Planning, Graham Owenson, Head of Local Government Finance Unit, and Colin Brown, Senior Principal Legal Officer, Scottish Government.
4. **Subordinate legislation:** Margaret Mitchell to move—S4M-05785—That the Local Government and Regeneration Committee recommends that the Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2013 (SSI/2013/37) be annulled.
5. **Subordinate legislation:** The Committee will take evidence on the Valuation (Postponement of Revaluation) (Scotland) Order 2013 [draft] from—

Derek Mackay, Minister for Local Government and Planning, Graham Owenson, Head of Local Government Finance Unit, and Colin Brown, Senior Principal Legal Officer, Scottish Government.
6. **Subordinate legislation:** Derek Mackay (Minister for Local Government and

Planning) to move—S4M-05883—That the Local Government and Regeneration Committee recommends that the Valuation (Postponement of Revaluation) (Scotland) Order 2013[draft] be approved.

7. **Scottish local government elections:** The Committee will receive a briefing from its Reporters on their work to date on the issues relating to local government elections in Scotland.
8. **Public petitions:PE01433** The Committee will consider its approach to the following petition- PE01433 by John Hancox, on productive land for landless Scots to grow their own food.
9. **Work programme:** The Committee will review its work programme.
10. **The Draft Second Climate Change Report on Proposals and Policies (RPP2) (in private):** The Committee will consider a revised draft report.

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The papers for this meeting are as follows—

Agenda Item 2

Note from the Clerk

LGR/S4/13/8/1

[The Non-Domestic Rates \(Levying\) \(Scotland\) Amendment Regulations 2013 \(SSI/2013/34\)](#)

[The Non-Domestic Rating \(Valuation of Utilities\) \(Scotland\) Amendment Order 2013 \(SSI/2012/36\)](#)

Agenda Items 3 and 4

Note from the Clerk

LGR/S4/13/8/2

[The Non-Domestic Rating \(Unoccupied Property\) \(Scotland\) Amendment Regulations 2013 \(SSI/2013/37\)](#)

Agenda Item 5 and 6

Note from the Clerk

LGR/S4/13/8/3

[The Valuation \(Postponement of Revaluation\) \(Scotland\) Order 2013](#)

Agenda Item 8

Paper from the Clerk

LGR/S4/13/8/4

Agenda Item 9

PRIVATE PAPER

LGR/S4/13/8/5 (P)

Agenda Item 10

PRIVATE PAPER

LGR/S4/13/8/6 (P)

PRIVATE PAPER

LGR/S4/13/8/7 (P)

Local Government and Regeneration Committee

8th Meeting, 2013 (Session 4), Wednesday, 13 March 2013

SSI Cover Note

Introduction

1. This paper seeks to inform members' consideration of two negative statutory instruments.

Non-Domestic Rates (Levying) (Scotland) Amendment Regulations 2013: SSI 2013/34

Background

2. These regulations were laid on 7 February 2013 and the Local Government and Regeneration Committee was designated as lead committee. The regulations are subject to negative procedure.

3. The Subordinate Legislation Committee considered these regulations at its meeting on 19 February 2013 and determined that it did not need to draw the attention of the Parliament to these regulations.

4. The Local Government and Regeneration Committee must report on the regulations by 18 March 2013.

Policy objectives

5. These Regulations amend the Non-Domestic Rates (Levying) (Scotland) (No. 3) Regulations 2012 to correct an error in regulation 6 of that instrument, which revokes the Non-Domestic Rates (Levying) (Scotland) Regulations 2012 (SSI 2012/28). They make no policy change.

Action

6. The Committee is required to consider the instrument and decide whether it wishes to make any recommendation to the Parliament in relation to the instrument.

The Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2013: SSI 2013/36

Background

7. This instrument was laid on 7 February 2013 and the Local Government and Regeneration Committee was designated as lead committee. The instrument is made in exercise of the powers conferred on the Scottish Ministers by sections 6A(1)(aa) and 6A(1B) of the Valuation and Rating (Scotland) Act 1956 and by all

other enabling powers. The regulations set out in the instrument are subject to negative procedure.

8. The Subordinate Legislation Committee considered these regulations at its meeting on 19 February 2013 and determined that it did not need to draw the attention of the Parliament to these regulations.

9. The Local Government and Regeneration Committee must report on the regulations by 18 March 2013.

Policy objectives

10. This instrument amends the Non-Domestic Rating (Valuation of Utilities) (Scotland) Order 2005 ("the 2005 Order") and comes into force on 1st April 2013. The purpose of this instrument is to update the name of six Scottish electricity companies at 2(2)(c) in the 2005 Order and add an extra name at paragraph (f) of the said Order.

11. The names of the electricity companies in Scotland can change; these changes need to be shown in the Order to allow the assessors to add the relevant companies on the valuation roll to allow the councils to bill for business rates.

12. Article 2(2) of this Order substitutes four company names for three companies designated as a "Scottish electricity company" for the purposes of article 2 of the 2005 Order. That article makes provision for the treatment of specified lands and heritages in relation to electricity generation as if they justified only one entry in a single valuation roll.

13. Article 2(3) of this Order substitutes three company names for three companies designated as "a Company" for the purposes of article 3 of the 2005 Order. That article makes provision for the treatment of specified lands and heritages in relation to electricity transmission and distribution as if they justified only one entry in a single valuation roll.

Action

14. The Committee is required to consider the instrument and decide whether it wishes to make any recommendation to the Parliament in relation to the instrument.

Seán Wixted
Assistant Clerk
March 2013

Local Government and Regeneration Committee

8th Meeting, 2013 (Session 4), Wednesday, 13 March 2013

SSI Cover Note

Introduction

1. This paper seeks to inform members' consideration of a statutory instrument. This is a negative instrument, and is the subject of a motion recommending the instrument be annulled.

The Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2013: SSI 2013/37

Background

2. These regulations were laid on 7 February 2013 and the Local Government and Regeneration Committee was designated as lead committee. The regulations are subject to negative procedure.

3. The Subordinate Legislation Committee considered these regulations at its meeting on 28 February 2013. The Committee has drawn the attention of the Parliament to these regulations. The comments of the Subordinate Legislation Committee are set out in Annexe A.

4. The Local Government and Regeneration Committee must report on the regulations by 21 March 2013.

Motion to annul

5. On 28 February 2013 Margaret Mitchell lodged motion S4M- 05785—

That the Local Government and Regeneration Committee recommends that the Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2013 (SSI 2013/37) be annulled.

6. Margaret Mitchell will move, and speak to the motion at the meeting.

Policy objectives

7. This instrument comes into effect on 1 April 2013 and is aimed at creating a package of new measures to incentivise occupation of empty premises and support and encourage diversification of high streets and development of new properties.

8. The instrument changes the rate liability after a 3 month period of exemption for certain unoccupied premises. The liability will alter to 90% of the liability that would arise if the premises were occupied (the rate up to 31 March 2013 is 50%). This means that for a standard (commercial) empty property 100% relief will be received by the taxpayer for the first 3 months and thereafter 10% relief will apply.

9. This instrument makes no change to the rate levied on unoccupied industrial or listed property and these will continue to receive 100% relief for the unoccupied period.

10. In addition 2 new incentives are created by this instrument:

- The first applies where a property has been empty for over 12 months and then becomes occupied. It applies if the property has a rateable value of up to £45,000 and was last previously occupied as a shop or office (or where there has not been previous use, the use is as a shop or office). For the first year of occupancy the ratepayer can apply for the property to be deemed to be unoccupied, which allows a 50% reduction in the rates payable. The value of relief available is capped by State aid de minimis (€200,000 euros over a rolling 3 year period from all reliefs),
- Secondly, where a new property is first entered in the valuation roll on or after 1 April 2013 the ratepayer can apply for 100% rate relief for up to 18 months while it is unoccupied (capped by State aid de minimis). The relief will be available for properties entered on the valuation roll up to 31 March 2016. The 18 months of relief need not be claimed continuously, and can be claimed if the property is unoccupied on or before 31 March 2018.

11. There is no statutory requirement to formally consult on these Regulations. However, extensive engagement took place throughout 2012 and 2013 on reform of empty property relief, as part of the consideration by the Parliament of the Bill that became the Local Government Finance (Unoccupied Properties etc.) (Scotland) Act 2012.

12. No Business Regulatory Impact Assessment has been carried out. Post legislative scrutiny of the policy will be undertaken in 2015.

13. The reduction of empty property rate relief from 50% to 10% will save an estimated £18 million in each of 2013-14 and 2014-15. The costs of the 2 new incentives will be absorbed from within existing non domestic rate income estimates.

Procedure in Committee

14. The Committee will have an opportunity to take oral evidence from the Minister for Local Government and Planning, Derek Mackay, and his officials on this instrument. The Minister will be invited to make a brief opening statement on the instrument, after which members will have the opportunity to ask the Minister and officials for clarification on points of the details of the regulations. The Committee will then formally consider the motion.

Action

15. Following the oral evidence session with the Minister, the Committee will consider the motion recommending the instrument be annulled. The Committee will

be invited to debate the motion. If members decide to debate the motion, Margaret Mitchell will be invited to move and speak to the motion. Other members can speak in this debate. The Minister will be invited to respond to the debate. Finally Margaret Mitchell asked to sum up the debate and asked to press or withdraw the motion. If pressed, the question on the motion will then be put to the Committee for decision.

16. If members decide not to debate the motion, having already taken oral evidence on it, Margaret Mitchell will be invited to move the motion. The question on the motion will then be put to the Committee for decision.

Seán Wixted
Assistant Clerk
March 2013

COMMENTS FROM THE SUBORDINATE LEGISLATION COMMITTEE

17. The Regulations reform the non-domestic rate which is levied on unoccupied properties, and introduce 2 new incentives. The first supports the occupation of certain long term empty properties, and the second assists developers of new properties which are empty when entered on to the valuation roll. The Regulations are subject to the negative procedure. They come into force on 1 April 2013.

18. In considering the instrument, the Committee asked the Scottish Government for clarification of certain points. The correspondence is reproduced at paragraphs 32 and 33.

19. Regulation 6 of the Regulations provides for a rating relief available to certain properties. Certain conditions must be met for this relief to apply, including that the previous use was as office or shop premises, or that that is the current use (if there has been no previous occupancy.)

20. The question raised by the Committee was directed at clarifying whether the requirement for shop or office use (for the relief to apply) is intended to relate to the rating unit in question, or the building of which the rating unit may form a part. (The rating unit in terms of the Regulations is the “lands and heritages”).

21. The requirements for sole or main use for shop or office purposes are set out in 2 places in the Regulations. Regulation 3 defines “use as office premises” and “use as shop premises”. The new regulation 4(1)(b) of the 1994 Regulations contains the requirement that “the lands and heritages were [or are] in use as office premises or in use as shop premises”.

22. Specifically, the Committee’s question was directed at one possible scenario – where the rating unit forms part of a building, eg. a floor in a building. The Government’s response has supplied a detailed analysis of the policy intentions, and the interpretation which is taken of regulation 3 and the new regulation 4(1)(b).

23. The response confirms the intended policy where the rating unit is part of a building. “On the specific query, qualification for relief depends on the sole or principal use of the lands and heritages (i.e. the rating unit). That use must take place in a building. However, where a building is split into several rating units (i.e. several lands and heritages) the office use or shop use need not be the sole use (or even the principal use) of the building itself. “Where the building is split into different rating units, it will be the use of the part of the building that is relevant for the rating unit.”

24. Having regard to that confirmation, the Committee considers that the meaning of the new regulation 4(1)(b) could be clearer when read with the definitions in regulation 3. On a plain reading of 4(1)(b), it is required that either the lands and heritages were “in use as office premises” or “in use as shop premises”, or they are “in use as office premises” or “in use as shop premises” (where there was no previous occupation). That accords with the policy intention that the sole or main use of the lands and heritages requires to be shop or office use.

25. However, “in use as office premises” and “in use as shop premises” are terms defined by regulation 3, and they have the meanings stated there. Those meanings

do not provide that the sole or main use as shop or office requires to be in the rating unit. The definitions provide that the sole or principal use of the lands and *heritages takes place there in a building or part of a building that is used* wholly or mainly for the office or shop purposes. The building or part building within which a rating unit is situated requires by that definition to be used as a shop or office.

26. The Committee considers accordingly that the definitions in regulation 3 could have made clearer that the qualification for rating relief depends on the sole or principal use of the *lands and heritages* as a shop or office, rather than of the building of which the lands and heritages form part.

27. **The Committee draws the Regulations to the attention of the Parliament on reporting ground (h), as the meaning of the instrument could be clearer in one respect. Regulation 6 (inserting a new regulation 4 of the Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 1994) makes provision for rating relief to be available to lands and heritages (rating units) which meet certain conditions. The conditions include in the new regulation 4(1)(b) that the lands and heritages either (when last previously occupied) were in use as office premises or in use as shop premises, or where the lands and heritages have never previously been occupied, they are in such use.**

28. **Where lands and heritages form part of a building, it is intended that the requirement for sole or principal use as a shop or office relates to those lands and heritages, and not to the building of which they form a part. The meaning of the definitions of “use as office premises” and “use as shop premises” in regulation 3 could more clearly provide for that intention.**

29. The Committee also sought clarification of which enabling power is being relied on to make the new paragraph (2) of regulation 4 of the 1994 Regulations, as inserted by regulation 6. That paragraph provides that the rate relief is granted only to the extent that it can be provided as lawful state aid under EU law. (That is, compatibly with Article 107(1) of the Treaty on the Functioning of the EU, which sets out the required criteria for lawful state aid.)

30. The enabling power which is cited in the preamble of the instrument to make regulation 6 is section 24B(3) of the Local Government (Scotland) Act 1966. This power is in terms limited to prescribing the class of lands and heritages which are to continue to be treated as unoccupied.

31. The Committee does not agree with the Scottish Government's view that section 24B(3) of the 1966 Act implies a power which enables the express restriction in relation to state aids, as set out in regulation 6 of these Regulations.

32. The Scottish Government's written response makes a second contention which the Committee prefers. Section 2(2) of the European Communities Act 1972 enables the state aid provision to be made, as that subsection enables provisions in implement of the requirements of the EU Treaties. Reliance on section 2(2) to make the provision has been omitted from the preamble.

33. The Committee accepts that that omission does not affect the validity of the instrument, given the reference to other available enabling powers in the preamble.

The failure to cite section 2(2) in the preamble is considered by the Committee to be a failure to follow the proper drafting practice.

34. **The Committee draws the Regulations to the attention of the Parliament on the general reporting ground, as the preamble of the instrument does not follow proper drafting practice. The new regulation 4(2) of the Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 1994, inserted by regulation 6, is made in reliance on the powers contained in section 2(2) of the European Communities Act 1972, but mention of that subsection is omitted from the preamble.**

Correspondence between the Subordinate Legislation Committee and the Scottish Government

35. On 14 February 2013, the Scottish Government was asked:

1. Which enabling power is being relied on to make the new regulation 4(2) of the 1994 Regulations inserted by regulation 6 (which specifies that the rate relief is granted only to the extent compatible with Article 107(1) of the Treaty on the Functioning of the EU), given that the power in section 24B(3) is limited to prescribing the class of lands and heritages which are to continue to be treated as unoccupied? Why is the provision within the power relied on?

2. The Policy Note explains that the rates relief conferred by regulation 6 is intended to apply if the property was last previously occupied as a shop or office, or where there has been no previous use, where the use is as a shop or office. (Other conditions apply).

Regulation 4(1)(b) of the 1994 Regulations (inserted by regulation 6) requires that the lands and heritages to be treated as unoccupied were or are “in use as office premises” or “in use as shop premises” (as the case may be). Regulation 3 defines those terms. The meaning is “the sole or principal use of the lands and heritages takes place there in a building or part of a building that is used wholly or mainly for the” office or shop purposes, as the case may be. That requirement of whole or main use for office or shop purposes relates to a building or part building in which the lands and heritages are situated, and “the sole or principal use of the lands and heritages” must take place in such building or part.

Please explain therefore-

- a. The intended meaning and effect of the new regulation 4(1)(b) read with the definitions in regulation 3,
- b. Specifically, whether it is intended that the requirement for whole or main use for office or shop purposes relates to the building or part in which the rateable lands and heritages (the rating unit in question) are situated, or the lands and heritages themselves. Could this be clearer?

36. The Scottish Government responded as follows:

1. The power used to make regulation 4(2)

Section 24B of the Local Government (Scotland) Act 1966 allows Ministers to prescribe a class of lands and heritages that are to be treated as unoccupied, despite being in fact occupied. The result is that the class gains the rates relief that being treated as unoccupied attracts.

Rates relief can only be granted to the extent that European Union law permits such relief, and any provision would be outside devolved competence so far as it was incompatible with EU law (in terms of section 29(2)(d) of the Scotland Act 1998).

The Scottish Government considers it appropriate to make clear on the face of the legislation that the class of lands and heritages that qualify for relief is limited to those for which the relief can be compatibly granted. It considers it implicit that the power to prescribe a class includes the ability to provide that it is subject to limitations imposed by EU law. In any event, this instrument is also made in reliance of “all other powers enabling [the Scottish Ministers] to do so” and section 2(2) of the European Communities Act 1972 would allow regulation 4(2) to be made. Reference is made to *Vibixa Ltd v Komori UK Ltd and Ors* [2006] EWCA Civ 536.

2. The meaning of regulation 4(1)(b)

The meaning of regulation 4 is perhaps made more difficult to follow because rating legislation traditionally uses the term “lands and heritages” to describe the unit of property that is entered on the valuation roll.

For shops and offices, this could in practice be a part of a building, with the building being used by several different businesses that have separate entries on the valuation roll. It could be a single building with no additional land that is used by a single business. Or it could be a piece of land that includes a building used as a shop or office, with other parts of the land being used in other ways (an example might be a golf course with a shop).

The definitions of “use as office premises” and “use as shop premises” therefore use the concept of “sole or principal use”, and also that that use must take place in a building. That prevents arguments that, for example, an open air market stall is a shop. Assessors are familiar with the assessment of sole or principal use. The definitions of office use and shop use in the Regulations then refer to activities that are based on definitions in other legislation to describe what those uses are.

Regulation 4(1)(b) provides that in determining whether lands and heritages qualify to be treated as unoccupied, despite being occupied, regard is to be had to the last use when they were previously occupied. Where there was no previous occupation, the regard is to be had to the current use. If in either case the relevant use is as office premises or as shop premises, within the definitions of those, then the relief that the regulations enable will be available.

On the specific query, qualification for relief depends on the sole or principal use of the lands and heritages (i.e. the rating unit). That use must take place in a building. However, where a building is split into several rating units (i.e. several lands and heritages) the office use or shop use need not be the sole use (or even the principal use) of the building itself.

To return to the three scenarios explained above, the way the test applies to a single building with a single business is straightforward. Where the building is split into different rating units, it will be the use of the part of the building that is relevant for the rating unit. In the third instance, the determining factor will be the sole or principal use. For example, a supermarket with an open air car park may be solely used as a supermarket, despite the lands and heritages being only partly a building. In the golf course example, the test will be whether the golf course or the shop is the principal use.

The Scottish Government considers it clear that the principal use element of the qualification relates to the lands and heritages, not the building. However, that principal use must take place within a building.

The Policy Note attempts to explain in simpler language the more complex position outlined above. Policy Notes have that advantage; the legislation itself must achieve a high level of precision as to how to ascertain when a use does, and does not, qualify for a tax relief. The legislation aims to give definitions and a test that can be applied to particular circumstances to determine whether or not the relief can apply.

Local Government and Regeneration Committee

8th Meeting, 2013 (Session 4), Wednesday, 13 March 2013

SSI Cover Note

Introduction

1. This paper seeks to inform members' consideration of a statutory instrument. This is an affirmative instrument, and is subject to a motion recommending the instrument be approved.

Valuation (Postponement of Revaluation) (Scotland) Order 2013 SSI 2013/draft

Background

2. These regulations were laid on 7 February 2013 and the Local Government and Regeneration Committee was designated as lead committee. The regulations are subject to affirmative procedure.

3. The Subordinate Legislation Committee considered these regulations at its meeting on 19 February 2013. The Committee did not draw the attention of the Parliament to these regulations.

4. The Local Government and Regeneration Committee must report on the regulations by 27 March 2013.

Motion to approve

5. On 8 March 2013 the Minister for Local Government and Planning (Derek Mackay) lodged motion S4M-05881—

That the Local Government and Regeneration Committee recommends that the Valuation (Postponement of Revaluation) (Scotland) Order 2013 SSI 2013/draft be approved.

6. The Minister will move, and speak to the motion at the meeting.

Policy objectives

7. The purpose of this instrument is to postpone the next business rate revaluation year to 2017-18. This instrument amends section 37(1) of the Local Government (Scotland) Act 1975 to postpone the next year of non-domestic rating revaluation to 2017 – 2018. As a consequence, it revokes the Valuation (Postponement of Revaluation) (Scotland) Order 1982 which provided that the quinquennial revaluations should run from 1985–1986.

8. The UK Government has confirmed the next business rates revaluation in England will take place in 2017-18. The Scottish Government's policy is to ensure that the business poundage rate in Scotland will not rise above the English rate

during the lifetime of the 2011-2016 Parliament and in order to achieve this, the Scottish Government will also hold the next revaluation in 2017-18. This instrument will result in the next Scottish revaluation coming into effect on 1 April 2017. This will allow the same poundage rate to be set for Scotland as in England for the period up to end March 2017.

Public Petition PE01464: Postponement of the 2015 Non-domestic Rates Revaluation

9. Members may wish to note that a Public Petition have been lodged with the Parliament by Mr P Muir on behalf of Colliers International, calling on the Scottish Parliament to urge the Scottish Government to review its decision to postpone the 2015 non-domestic rates revaluation to 2017, this is the purpose of this instrument (see attached link).

<http://scottish.parliament.uk/GettingInvolved/Petitions/NoDelayTo2015Revaluation>

Procedure in Committee

10. The Committee will have an opportunity to take oral evidence from the Minister for Local Government and Planning, Derek Mackay, and his officials on this instrument. The Minister will be invited to make a brief opening statement on the instrument, after which members will have the opportunity to ask the Minister and officials for clarification on points of the details of the regulations. The Committee will then formally consider the motion to approve the instrument.

Action

11. Following the oral evidence session with the Minister, the Committee will consider the motion recommending the instrument be approved. The Committee will be invited to debate the motion. If members decide to debate the motion, the Minister will be invited to move and speak to the motion. Other members can speak in this debate. The Minister will then be invited to sum up the debate and asked to press or withdraw the motion. If pressed, the question on the motion will then be put to the Committee for decision.

12. If members decide not to debate the motion, having already taken oral evidence on it, the Minister will be invited to move the motion. The question on the motion will then be put to the Committee for decision.

Seán Wixted
Assistant Clerk
March 2013

Local Government and Regeneration Committee

8th Meeting, 2013 (Session 4), Wednesday 13 March 2013

Petition PE 1433

Approach paper

Introduction

1. This paper considers the Committee's possible approach to petition PE 1433, which was referred to the Local Government and Regeneration Committee by the Public Petitions Committee at its meeting on Tues 5 March 2013.
2. The petition, by John Hancox, calls on the Scottish Parliament to urge the Scottish Government to encourage public agencies such as Forestry Commission Scotland, Crown Estates, health boards, public trusts and landowners, public and private, rural and urban, to make land available for people to plant grow and harvest their own food.

Background (Extract from [SPICe briefing](#))

3. Communities can grow their own food on land owned by a third party under a variety of lease arrangements. Allotments are the most common form of community food growing, however, community gardens, community orchards, landshare, community supported agriculture and workplace growing are included in the Grow-Your-Own movement. Demand for land for local food growing vastly exceeds supply (Greenspace Scotland 2010).
4. The 2011 SNP manifesto made a commitment to look at ways of extending land available for allotments using unused or underused publicly-owned land. The Scottish Government is currently drafting a Community Empowerment & Renewal Bill which will aim to make it easier for communities to take over underused or unused public sector assets.
5. Current Scottish Government planning guidance states that Local Authorities have a statutory duty to provide allotments where there is demand. In addition, the Scottish Government Planning Advice Note (PAN) PAN65: Planning and Open Space describes the economic value of allotments with regards to food production.
6. Scotland's National Food and Drink Policy – Recipe for Success – was launched in 2009. It sets out how the Scottish Government plans to link policy actions across a number of food and drink areas including Grow-Your-Own (GYO). The actions needed to deliver the GYO aspects of the Food & Drink Policy are highlighted in the Community Growing in Scotland Report commissioned from Greenspace Scotland by the Scottish Government.

7. The Scottish Government established the Grow Your Own Working Group (GYOWG) in December 2009 which is now the main driver behind the allotment and growing spaces strategies and delivery. The Scottish Government's Growing Spaces Summit (held in May 2010) helped highlight issues which were later developed by the GYOWG into a report detailing 27 recommendations including guidance to landowners and changes to the law to allow more land to be freed up for community growing.

8. On 17th May 2012, Stewart Stevenson, Minister for Environment and Climate Change, announced a £600k package of support to encourage the development of more community growing and launched the GYO Scotland website.

9. The Scottish Government is currently drafting a Community Empowerment & Renewal Bill. This bill aims to address access issues over publicly owned land and make it easier for communities to take over underused or unused public sector assets.

10. Other relevant policy areas include land reform and climate change. The Land Reform (Scotland) Act 2003 allows local communities to register an interest in and buy land when it comes up for sale. 'Getting the best from our land: A land use strategy for Scotland' was published by the Scottish Government in March 2011 as required by section 57 of the Climate Change (Scotland) Act 2009. It gives the principles of sustainable land use and amongst other things highlights the benefits of growing your own food.

Action on the Ground

11. Forestry Commission Scotland (FCS) runs the National Forest Land Scheme which gives community organisations the opportunity to buy or lease National Forest Land where they can provide increased public benefits.

12. There are also some initiatives to lease land which is not state owned. The National Trust (in England) has created a number of allotments and growing spaces on their land. Their allotments are advertised through Landshare which was established to connect those who have land to share with those who need land for cultivating food. Frustration with the wasted use of public and private land has also led to direct action through the Guerilla Gardening network where land is planted with crops or flowers without permission from the landowner.

Information from the Petitioner

13. "We believe that much land is needlessly unproductive, and would urge the Scottish Government to encourage ways to allow people to use land more intelligently. We believe that making land available to poorer Scots offers them a way to grow healthy, accessible local food, and build skills and food security at a local level. While there may be a legal requirement to retain land in public ownership, we suggest that a

presumption of a community right to use, land assets which are not used, should be considered.

14. During wartime – food growing was seen as a national necessity, and the food grown in gardens, spare ground, allotments, across the UK including Scotland was high quality, and healthy, and I'd argue that it was a factor in the fact that the population's nutrition was better during war time than at other times.

15. We are in times of economic downturn, and what Scotland does have in abundance is land. Both in our urban areas such as Glasgow there is a lot of land which is largely passive and unused, while in rural areas, patterns of land ownership which concentrate land into relatively few hands also mean that availability of land for ordinary people is scarce. Public agencies such as Forestry Commission, and others such as National Trust for Scotland, National Museum, and Scottish Natural Heritage, all manage large land holdings. Private landowners and forestry concerns, as well as a range of NGO's such as RSPB and others also have assets that potentially could be used more creatively.

16. Businesses – especially utility businesses such as Power companies, Scottish Water, and many others have land that could be used productively – and this could help them to address their Corporate Social Responsibility obligations.

17. What Scotland also has, and with economic conditions being as they are, will continue to have, is a lot of people who are unemployed, or who are under-employed – or are young and new to the labour market, and have never worked.

18. There are a lot of people who are also under-employed assets – who would love to have useful and worthwhile work, or volunteering opportunities.

19. Scotland historically (as is true of all industrialised countries) has gone from being a peasant economy with the bulk of people growing food locally, Scotland has gone through it's clearances, and rapid industrialisation, and now is into a post industrial period.

20. The question is what is going to happen next – and it seems not unnatural to expect that some return to a 21st century equivalent of the peasant economy – albeit very different in this internet age – will evolve. And a significant blockage with this, is access to suitable and affordable land. A model of land ownership which is successful in a country equivalent to Scotland is Norway, which has had a rather different history.

21. We believe that the current economic downturn is going to be long term and finding useful activities for people will have lots of benefits – self esteem, fitness, health, and being self sufficient will have huge benefits to us prospering into the future.

22. Access to land is absolutely key to this transformation.”

Background to this petition

Scottish Parliament Action

23. The Local Government Committee held an Inquiry into Allotments in 2003 in response to a petition for the Scottish Parliament to recognise the importance and popularity of allotments and to establish an Allotments Working Group.

24. On 25th April 2012, the Scottish Parliament held the Allotment debate (S4M-01922) which recognised the benefits of allotments including sustainable food supply, promoting healthy eating, activity, improving physical and mental health and its benefits in educational activity and fostering community links.

25. On 12 June 2012, the Public Petitions Committee agreed to write to the Scottish Government, Forestry Commission Scotland, Greenspace Scotland, the Scottish Allotments and Gardens Society, Scottish Natural Heritage, Sow and Grow Everywhere, COSLA, the Royal Society for the Protection of Birds, Scottish Land & Estates, NFU Scotland and Community Land Scotland: [Link to Official Report 12 June 2012 \(382KB pdf\)](#)

26. On 18 September 2012, the Public Petitions Committee agreed to write to the Scottish Government and previous respondents. [Link to Official Report 18 September 2012 \(450KB pdf\)](#)

27. On 11 December 2012, the Public Petitions Committee agreed to write to the Scottish Government. [Link to Official Report 11 December 2012 \(518KB pdf\)](#)

28. 5 March 2013, the Committee agreed to refer the petition, under Rule 15.6.2, to the Local Government and Regeneration Committee in anticipation of that Committee being the lead on the forthcoming Community Empowerment and Renewal Bill, and for consideration as part of its Delivery of Regeneration in Scotland Inquiry.

Proposals for action

29. The Committee should consider what, if any, action it should take in dealing with this petition.

30. Given the likely role of the Local Government and Regeneration Committee in scrutinising the forthcoming Community Empowerment and Renewal Bill, the Committee may deem that full consideration of this important issue will support the Committee’s pre-legislative scrutiny of the Bill.

31. The Committee is also currently undertaking an inquiry into the delivery of regeneration in Scotland, which is examining certain areas that will fall within the scope of the forthcoming Community Empowerment and Renewal Bill (such as the use of vacant and derelict land). Findings from the regeneration inquiry will therefore also support the Committee's pre-legislative scrutiny of the Bill.

32. Given the natural linkage of regeneration and community empowerment to the issue raised by the petitioner, the Committee may wish to take evidence on the petition as part of its regeneration inquiry.

33. The Committee could therefore offer the petitioner an opportunity to give oral evidence to set out his concerns, as part of a planned oral evidence session of the regeneration inquiry. These oral evidence sessions are currently timetabled in the Work Programme to take place in May and June of this year.

34. Alternatively, the Committee could write to the petitioner asking for further written evidence, which could also be considered as part of the Regeneration Inquiry.

35. Having taken such evidence, the Committee would have the option of forwarding the *Official Report* of the session to the Scottish Government and the Committee could then, subsequently, offer the Scottish Government an opportunity to respond to the points raised, in advance of the Community Empowerment and Renewal Bill being introduced.

36. If the Committee were to seek to close the petition without taking any evidence on it, it might well be the case that the Parliament would receive further petitions in similar terms.

37. It might also be the case that if the Committee were to follow this suggestion of taking evidence, other potential petitioners might be encouraged to submit petitions in the expectation that the Committee would pursue a similar course of action on each petition.

38. The Committee might, therefore, wish to take the view that any evidence-taking session in relation to petition PE 1433 should be regarded as a one-off session that specifically feeds into the findings of the Committee's Regeneration Inquiry, and that subsequent petitions in similar terms would not necessarily result in further repetition of the same sequence of events.

39. The Committee might wish to consider, therefore, whether this proposed action would enable it to discharge its duties in relation to the petition PE 1433 without raising expectations that any subsequent petitions in similar terms would necessarily trigger further inquiries.

Decision

40. The Committee is invited to consider whether to invite the petitioner to give oral evidence on the petition at a future meeting, as part of the Committee's Inquiry into 'The Delivery of Regeneration in Scotland'.

**Fiona Mullen
Senior Assistant Clerk
March 2013**