

Community Empowerment (Scotland) Bill Local Government and Regeneration Committee

The Highland Council Evidence

NB a response from officers and not considered by elected members at this time.

Highland Council officers welcome the opportunity to provide written evidence to the Local Government and Regeneration Committee in respect of the Community Empowerment (Scotland) Bill. The Council has previously supported the aims and objectives of the Bill and envisages that this legislation will have positive impacts across the range of areas it provides for.

Officers are pleased to see a number of the points the Council made during the consultation phase taken on board in the drafting of this legislation. This includes:

- The focus on outcomes and the importance of all relevant partners contributing to community planning.
- A core list of public bodies to be involved while enabling flexibility to include others and the ability for the Community Planning Partnership (CPP) to consider how best to enable the participation of all partners within the CPP's governance arrangements..
- Definition of community body – it is helpful that attempts have been made to simplify the various definitions.
- Community Right to Buy – the inclusion of Community Right to Buy within the Bill will go a long way to promoting community ownership and the benefits that can result.
- Community Participation – the legislation now provides for public service authorities to decline multiple requests for the same outcome.
- The flexibility for public authorities to extend the period in which community bodies have to submit an offer, reflecting the need to be response to the needs of individual groups.
- Asset transfer decision review - that it would not be appropriate for an external body to review any decision taken by a Local Authority but now includes a process for Local Authorities to review their own decisions.
- The definition of allotments – ensuring it is now broad enough to take in community growing.
- Size of an allotment plot – no specific size enables Local Authorities to use such a definition as appropriate to their area.

The Council's evidence focuses on 2 key areas:

1. Previously Drafted Legislation: Points of concern which we have previously highlighted and yet have not been taken on board. These remain of significant concern that we wish to note these once more.
2. Newly Drafted Legislation: Relating to those areas where draft legislation has not been previously seen and its current form causes some concern.

3. General Comments: in relation to the Equality Duty and Community Councils.

The comments outlined below are intended to be constructive to enable this legislation to be as effective as possible in its operation for both communities and public service authorities.

Part 1: National Outcomes

The inclusion of the requirement for Ministers to determine and publish national outcomes following consultation is welcomed. This will provide clarity not only of Government intentions but also provide a focus for public service providers, including public sector organisations. The proposals for reviewing outcomes and reporting performance appear sensible. The extent to which the provisions for national outcomes, their review and performance reporting will empower communities will depend on:

- what those outcomes are;
- how Ministers consult on them, the reach of that consultation and how they can demonstrate they have listened;
- the accessibility of performance information to a range of interests and community groups and how that can have meaning to individual communities.

Part 2: Community Planning

We welcome that the Bill as drafted reflects the Council's earlier feedback on: including a defined list of core public bodies to participate in community planning while providing flexibility to include other community bodies operating in the area; the engagement of partners to fit local CPP governance arrangements and with scope for partners to be involved in particular outcomes or all as the CPP decides; a focus on outcomes; emphasising the importance of all relevant partners contributing to community planning; and recognising that some community bodies might need more support to participate in community planning.

It is helpful to public sector organisations to:

- have a definition of community planning included and for it to mean improving the achievement of outcomes through public services delivered by a range of providers;
- have clarity on which core bodies are expected to participate in a community planning partnership while enabling flexibility over identifying other community bodies to include;
- enabling the CPP to decide how best to arrange their governance arrangements effectively and efficiently and for it to agree which partners may not comply or be involved in a particular theme.
- to be required to prepare, publish and review a local outcomes improvement plan as this is not dissimilar to the current practice for preparing Single Outcome Agreements;

- for the duty of facilitating community planning to be shared across the defined partners for community planning given the shared responsibility for delivering on outcomes;
- that the duties of community planning partners includes contributing funds, staff and other resources as the partnership decides, as this will make collaboration more meaningful and that this relates to achieving outcomes and enabling community bodies to participate; and
- that guidance for community planning will be issued and it will be consulted on.

It would be more helpful to public sector organisations and for empowering communities if the following amendments could be made:

- Under section 4(3) on the requirement for local outcomes to be consistent with national outcomes, a qualification or reference to 5.(4)(b) should be included. This relates to the need for local outcome improvement plans to take into account local needs and circumstances. Otherwise the legislation may be seen to be contradictory, particularly if national outcomes are cast in a narrow way. This could also disempower communities if national policies do not reflect the needs in a CPP area and are too top down.
- Third Sector Interfaces should be listed in the schedule of core bodies to include in community planning partnerships in schedule 1. This would not preclude the engagement of individual third sector bodies from participating in the community planning partnership because they can be included in a CPP's identification of other community bodies to involve. This would enable a better representation of the third sector in the CPP.
- Under section 4(8) the community bodies to include should only be those that are formally constituted. This provides more assurance of their aims, membership (and by default their representativeness) and governance arrangements. Given the support available from Third Sector Interfaces for community groups to be formally constituted this should not be a barrier to the involvement of appropriate groups. It also aligns better with the Bill's provisions for formally constituted groups to be able to participate in improving outcomes. Community groups that are not formally constituted would not be excluded from community planning processes and could e.g. still be consulted as part of a CPP's normal consultation process, but that is different to being a community planning partner. We seek removal of the reference to community bodies not being formally constituted from the definition of community bodies as community planning partners.
- There needs to be clarity in the Bill on the external scrutiny and inspection regime for community planning. Given that the focus of community planning is for the improvement of outcomes, how this will be inspected and audited needs to be clarified along with information on any remedial steps that may need to be followed. This does not appear to be included at all in the Bill and in earlier consultation we have expressed our view that this needs to comply with the principles of the Crerar Review.

Part 3: Participation Requests

Section 14 and 15 – Definition of community bodies

Whilst the attempt to simplify the definition of community bodies able to submit a participation request is welcomed, it still appears overly complex. It is beneficial that there is now synergy between the definition of community body for both asset transfer requests and participation requests, however, it still appears confusing and is likely to be so for both public service authorities and more significantly, community groups.

Section 17 – Participation requests

The process set out under this legislation is a formal process, with a number of key steps. It is therefore surprising that the requirement to present a participation request in writing has been removed. It would appear appropriate, given the circumstances, that community bodies should outline their request and reasons for it in writing to ensure there is no misunderstanding.

Section 19 (5) – Participation requests: decisions

There is still a lack of clarity around the reasonable grounds for refusing any request.

General comment – Simple Guidance

In order to encourage communities to participate, the guidance accompanying the legislation should be written in simple language explaining what terms mean e.g. a definition of outcomes. This will be critical to ensure that groups are not only enabled legislatively, but are able to understand what they have been empowered to participate in.

Part 4: Community Right to Buy Land

Section 28 (3) (c) – Meaning of community

We are concerned about this provision - whereby any person may receive a copy of minutes of the meetings of the company, if the request is reasonable, within 28 days. There is a need for further clarity here. Does the provision apply to all meetings (sub-committees and AGM meetings, which may be available only after approval and once a year)? Is the provision concerned with the provision of approved minutes only or may it include draft minutes? Another concern here is what information may be withheld if any. There is a need for clarity here too.

Council officers would also wish to express concern that this provision may require a wide number of existing associations to change their articles of association. This is particularly significant given that this now must be done prior to the commencement of any process under the modifications made to Part 2 of the Land Reform Scotland Act.

Section 28 (7) – Meaning of community

This provision introduces flexibility for Ministers to prescribe the definition of types of area, other than defined by post code. Clarity around what is meant by 'type of area' should be provided. Perhaps an example would illustrate what the flexibility provided may achieve.

Section 31 – Procedure for late applications

Applications for late registration are becoming the norm (two in Highland in last month). Given the likelihood that the number of late registrations will increase, it is considered that existing hurdles regarding the requirement to demonstrate additional community support and that the registration would be strongly in the public interest are of themselves sufficient, without the new requirements suggested in the Bill.

Section 48 – Abandoned and neglected land

This section appears to introduce a significantly higher barrier to community ownership than is currently the case. There is concern that the requirement for an interested community to demonstrate that land has been abandoned (particularly in a rural setting) would be very challenging indeed.

General comment - Re-registration of an interest in land:

The potential amendments to Part 2 of the Land Reform Scotland Act have omitted to consider the re-registration of an interest in land. We would therefore suggest that there should be simplified arrangements for the re-registering of an interest in land provided that ongoing and continuing community support can be demonstrated. It is also suggested that registration should be extant for 10 years rather than 5 years. This is an issue that has been considered by the Scottish Government's Land Reform Review Group and is one that Council officers would like to see included within the Bill before approval.

General comment – Mapping requirements for Part 2 of Land Reform Act

A further unfortunate omission is the Bill's failure to simplify the onerous mapping requirements which currently exist. Council officers would strongly recommend that it should not be necessary to detail every sewer, line or watercourse, fence, dyke or ditch in order to demonstrate the area of land which is of interest. This is another point considered by the Land Reform Review Group.

Part 5: Asset Transfer Requests

Section 52 (1) – Asset transfer requests

There is no current provision within the legislation if more than one community transfer body makes an asset transfer request (ATR) in connection with the same or similar piece of land/property either:

- a) at same time, or

b) at different times (ie. the relevant authority is already responding to one ATR and another ATR is made).

Provision/guidance will be welcomed for dealing with this eventuality either within the legislation or the regulations.

Consideration should also be given within the Bill/regulations to prescribing some form of period of 'advertisement' (ie. a fixed period of time and place) to allow potential interested community bodies to express interest in an asset transfer of a particular property. This will allow a) multiple requests to be progressed and considered at the same time; b) will allow equal opportunity between different community bodies to prepare and raise a request, and c) will avoid requests being submitted very late in a property disposal or other asset transfer process thereby extending the period over which the authority is required to retain a vacant and surplus property.

Section 52 (4) (d) – Asset transfer requests

In considering any ATR, the relevant authority must take into account whether the transfer will promote or improve: (as section 55(3)(c))

- (i) Economic development
- (ii) Regeneration
- (iii) Public Health
- (iv) Social Wellbeing, or
- (v) Environmental wellbeing

It is therefore recommended that this requirement should also be applied at 52 (4) (d) and that any community transfer body should specify and evidence within its ATR how its proposal will promote or improve and deliver the five requirements outlined above. The ATR should evidence how the proposal and each of the above criteria will promote, improve and deliver the benefits to the community, and how these link in with the Aims and Objectives of the Relevant Authority. Ideally such evidence should be SMARTA (ie. Specific; Measurable; Attainable; Results-Orientated; Timebound; Agreed).

Section 53 (2) (b) - Community transfer bodies and ownership of land

The legislation, as currently proposed, does not deal with or address the asset transfer requirements between the 'company' (ie. the original community transfer body benefitting from the original (below market) asset transfer from the Relevant Authority) and the successor (ie. another community transfer body, or charity).

What would prevent a successor community asset transfer body or charity from selling a public sector asset, originally transferred at below market value to the original company, on the open market and receiving capital receipt? How will the public pound be protected in this scenario?

There is a need to put safeguards in place, either within the legislation or regulations to ensure that the successor owner (ie. another community transfer body, or charity) benefitting from the asset transfer promotes or improves (as section 55(3)(c)) and delivers:-

- (i) Economic development
- (ii) Regeneration
- (iii) Public Health
- (iv) Social Wellbeing, or
- (v) Environmental wellbeing

Section 55 (3) (c) – Asset transfer requests - decisions

As outlined above (s52(4)(d)), the Community Transfer Body Request should specify in its request how its proposal will promote or improve and deliver :-

- (i) Economic development
- (ii) Regeneration
- (iii) Public Health
- (iv) Social Wellbeing, or
- (v) Environmental wellbeing

The ATR should evidence how the proposal and each of the above criteria will promote, improve and deliver the benefits, and how these link in with the Aims and Objectives of the Relevant Authority. Such evidence should be SMARTA (ie. Specific; Measurable; Attainable; Results-Orientated; Timebound; Agreed). This will assist the relevant authority to appropriately and fairly assess any ATR.

Section 55 (5) – Asset transfer requests - decisions

This removes the discretion of the (local) authority to seek a Best Value outcome to a property disposal, and thereby potentially foregoing a capital receipt that could be reinvested/recycled through its capital programme to deliver improved public services.

The Bill does not favour/encourage asset transfers at market value, and may, by stipulating that an 'authority must agree to the request, ' inadvertently encourage ATRs at below market/nominal value.

Given the above, we would query whether other aspects of legislation require to be repealed to reflect this.

Further guidance (including in the regulations) would be helpful in this area.

Section 55 (6) – Asset transfer requests - decisions

As outlined above, provision or guidance is required, either within the legislation/regulations, should more than one community transfer body make an asset

transfer request (ATR) in connection with the same or similar piece of land/property either:-

- a) at same time, or
- b) at different times (ie. the relevant authority is already responding to one ATR and another ATR is made?)

How will different ATRs be assessed to ensure equality and objectiveness between different proposals?

How will different ATRs submitted at different time intervals, possibly with different development and funding timescales be assessed and progressed?

Many (surplus and vacant) properties continue to attract on-going revenue costs (eg. rates; rent; utility costs; maintenance; security/vandalism costs) for the duration that they are retained, as well as having a potential capital asset value that could, upon generation of a capital receipt through an open market disposal, be reinvested/recycled through its capital programme to deliver improved public services.

Provision is required within the legislation or regulations to take account of these issues.

See also 56 (3) and (7) below.

Section 55 (9) – Asset transfer requests - decisions

It will be vital that the 'Relevant Authorities' should be consulted and given the opportunity to comment on the regulations and the procedures within the regulations to ensure that they are pragmatic and achievable.

Section 56 (3) – Agreement to asset transfer request

There are extended time periods prescribed within the Bill:

- a) the period in which an offer is to be made (ie. minimum 6 months); and
- b) period of 6 months beginning with the date of the offer (or such longer period agreed/prescribed) - also having regard to the requirements of 55 (5))

This may well entail the relevant authority retaining vacant and surplus property for extended periods of time that could otherwise:-

- i) be disposed of at market value and thereby contributing through redevelopment/recycling to the creation of local employment/economic (re)development;
- ii) be used to generate a capital receipt through an open market disposal, that could be reinvested/recycled through its capital programme in to delivering improved public services;

iii) could cause blight and attract anti-social behaviour in local communities whereby properties are left vacant, boarded up etc. for extended periods of time.

Section 56 (4) (ii) – Agreement to asset transfer request

Clarification/guidance may be required regarding what is a 'reasonable time'.

Section 56 (7) – Agreement to asset transfer request

As outlined at section 56 (3), there are extended time periods prescribed within the Bill:

- a) the period within the decision notice in which an offer is to be made (ie. at least 6 months) (section 56 (3)); and
- b) period of 6 months beginning with the date of the offer (or such longer period agreed/prescribed) (Section 56 (7)) - also having regard to the requirements of 55 (5).

This may well entail the authority retaining vacant and surplus property for extended periods of time that i) could otherwise be disposed of at market value and thereby contributing through redevelopment/recycling to the creation of local employment/economic (re)development; ii) generation of a capital receipt through open market disposal that could be reinvested/recycled through its capital programme in to delivering improved public services; iii) could cause blight and attract anti-social behaviour in local communities whereby properties are left vacant, boarded up etc for extended periods of time.

Section 57 (2) - Prohibition on disposal of land

The inclusion of a prohibition on the disposal of land during the relevant period and the timescales specified with the Bill (Sections 56 (3) and (7)) may stifle or deter local/national business entrepreneurialism and inward investment that could otherwise contribute through property redevelopment/recycling to the creation of local employment/economic (re)development.

Section 59 Review by local authority

Council officers welcome that the Bill now provides for Local Authorities to review their own decisions as opposed to an external body. However, the regulations which Ministers will prescribe need to ensure they take account of Local Authority standing orders and existing procedures for reviewing decisions taken. It will therefore be important for Local Authorities to be consulted upon any regulations.

Section 61 (1) (b) – Power to decline certain asset transfer requests

This may require Authorities to keep registers and records of ATRS received in order to ascertain whether new requests relate to previous asset transfer requests.

Part 6: Common Good Property

General comment – Bodies to consult with

A concern which the Council raised during the development phase of the Bill was the extent of the consultation proposed. The proposed definition of 'Community Bodies' in terms of the Community Empowerment(Scotland) Bill is extremely broad and would appear to be an unnecessarily onerous task and one open to interpretation. As also noted within the Community Planning section of the Bill, the definition of community body applied in this section also includes unconstituted bodies which would appear inappropriate. A constitution provides assurance of an organisation's aims, membership (and by default their representativeness) and governance arrangements. Overall however, we would suggest it far more appropriate to consult *only* with Community Councils, as proposed, as representatives of their communities. This would require a change at 22 (5) and 24 (5).

The Highland Council has responsibility for administering ten different Common Good Funds (Cromarty, Dingwall, Dornoch, Fortrose and Rosemarkie, Grantown, Invergordon, Inverness, Kingussie, Nairn and Tain). In relation specifically to Community Councils, the current wording in the Bill would require Highland Council to consult with all 156 Community Councils in its area on the establishment of a register and each disposal of property across any of the funds. We would therefore strongly suggest that the wording be amended to read "consult only with Community Councils that represent the inhabitants of the areas to which the Common Good related prior to 16 May 1975."

Part 7: Allotments

Section 70 – Request to lease allotment

The draft legislation states '*any person may make a request to the local authority in whose area the person resides to lease an allotment from the authority*' 70 (1). With an area the size of Highland the legislation still does not allow for a geographical approach within the Authority to ensure allotments are developed and allocated within an acceptable (defined) geographical limit from the requester's home.

Section 70 – Request to lease allotment

The bill only refers to local authority owned or leased land. The legislation still does not recognise the role of other statutory bodies by placing duties on all public sector land owners to make suitable surplus land available. We have evidence that some public sector agencies are however approaching this on an ad hoc basis. The Forestry Commission for instance has encouraged, assisted in the development of; and leased land for allotments directly to allotment associations.

Section 72 – Duty to provide allotments

There is still no provision for the Local Authority to limit the number of sites that must be provided simultaneously across the entire Local Authority area. This should be viewed in the context of the Highlands overall allotment strategy, budget, priorities and man power to meet the duty effectively.

General Comment – Equalities

It would be appropriate for the Community Empowerment Bill to make direct links to the general equality duty of the public sector equality duty set out in section 149 of the Equality Act 2010. The connection should recognise that different groups have historically been under-represented in community activities or faced barriers to participation - the Empowerment Bill is an opportunity to help mainstream the duty into the scope of its powers.

Those subject to the equality duty must, in the exercise of their functions, have due regard to the need to:

- *Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.*
- *Advance equality of opportunity between people who share a protected characteristic and those who do not.*
- *Foster good relations between people who share a protected characteristic and those who do not.*

Having due regard for advancing equality in particular involves:

- *Removing or minimising disadvantages suffered by people due to their protected characteristics.*
- *Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.*
- *Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.*

The Act states that meeting different needs involves taking steps to take account of disabled people's disabilities. It describes fostering good relations as tackling prejudice and promoting understanding between people from different groups. It states that compliance with the duty may involve treating some people more favourably than others.

General Comment – Community Councils

We would once again like to take the opportunity to register our disappointment at the noticeable absence within the Bill of any legislation relating to Community Councils. Given the extensive work over recent years in considering the roles and responsibilities of Community Councils, it would appear a missed opportunity not to address this within the

current Bill where it would sit so comfortably. Community Council legislation primarily dates to the 1973 Local Government Act. The current community context has changed dramatically, as evidenced by this Bill, and therefore it is at odds with the current direction of community empowerment in general not to consider Community Councils given that they are a key building block within our communities.

There is one critical anomaly that urgently requires review and legislation to address it. This Council has consistently lobbied on the issue of Community Councils and the need for legislation to be amended to enable these bodies to have incorporated status. Some Community Councils already own assets but without a change in legislation, the liability and risk will continue to lie with individual office bearers. This is unhelpful we would urge that this particular element is considered as one component of the Bill. It should be considered in the context of an enabling provision for those Community Councils keen to have such a role. This would empower those Community Councils without expecting or compelling all Community Councils to take on this role.

It is important to emphasise that this would not change the fundamental definition of the role of a Community Council but provide protection for individual office bearers and enable any Community Council who would like to take a greater role within their community to enable them to do so.

Of course Community Councils can set up Community Trusts or alternative bodies to take on these roles, however, as noted in previous consultations, within small communities this can result in a lack of interest in a Community Council with individuals more interested in participating in the activities of the Trust.

A strength of Community Councils in terms of owning assets would be that their operation is governed by strict rules and regulations overseen by the Local Authority.

The Bill is about empowering communities and Community Councils are a key building block within our communities. Amending the unincorporated status of Community Councils would greatly assist and empower many Community Councils who wish to play a greater role within their communities. This is an ideal opportunity to address this challenge within an appropriate legislative process and we would urge this element to be included within the Bill.