



Consultation on the Community Empowerment (Scotland) Bill

To: All Chief Executives, Main Contacts and APSE Contacts in Scotland

For information only to England, Northern Ireland and Wales

Key Issues

- [APSE Briefing 12/35](#) highlighted the components of the proposed Community Empowerment & Renewal Bill
- This briefing provides a consultation opportunity following the exploratory consultation in 2012
- The consultation paper identifies a number of proposals which are designed to strengthen and nurture community participation and encourage enterprising community development

1.0 Introduction

Scottish Government are seeking views on a range of proposals which are intended to give people in communities and those supporting them in the public sector, a range of new ways to help deliver a better Scotland. The proposed Bill aims to:

- Make the most of talents that exist in communities
- Deliver high quality and improving public services
- Support strong local democracy and local decision making

The Ministerial foreword in the paper opens by highlighting the belief that Scotland's greatest asset is its people – "Whether making a difference as part of local community organisations or as volunteers, working to deliver first class public services or innovating in the private sector, it is Scotland's people who will deliver a more successful future for the nation.

Our belief in local self-determination, through a strong Scottish Parliament, strong local authorities and strong communities, is the key principle which underpins the proposals in this consultation document”.

Comments from members will be incorporated into the APSE response to this paper.

2.0 Summary of Proposals

This consultation builds from the initial exploratory consultation analysis which can be viewed in full [here](#), as well as further conversations with various stakeholders and includes new areas which have emerged following discussions.

The proposals within the consultation are set out in three groups, these are:-

- Proposals with draft legislation following some consultation
- Detailed policy proposals which have not yet reached the stage of draft legislation but have been discussed in general terms
- New wider policy proposals with regards to the organisation of central and local government

The sections outlined below relate to the first of the three groups above, proposals with draft legislation following some consultation:-

Community Right to Request Rights in Relation to Property

The paper states that there is increasing evidence which highlights that in the correct circumstances community ownership or control of assets, like land or buildings, can bring about positive benefits to economic, social and environmental factors. It further notes that this ownership can be an important factor for some communities in increasing their empowerment and that the public sector can be a useful source of assets which can benefit from being transferred.

Part one of the draft Bill “Asset Transfer Requests” details how this ownership could potentially take place, with questions 1 to 7 relating directly to this section of the draft Bill.

Community Right to Request to Participate in Processes to Improve Outcomes of Service Delivery

The paper highlights the strong history of public sector engagement with communities across Scotland, in particular noting that local authorities have used various engagement techniques over the years and have been at the forefront of tools including the National Standards for Community Engagement. The paper also notes, however that the Christie Commission on the Future of Public Service Delivery recommended that this Bill seek to strengthen the voice of the community in shaping services which affect them.

Part two of the draft Bill “Public Service Delivery” outlines provisions aimed to help make this happen, questions 8 to 13 of the consultation relate directly to this section of the draft Bill.

Increasing Transparency about Common Good

The paper notes that the existence of the common good in Scotland, as an asset with strong ties to local communities is an important in many places throughout Scotland. Assets held for the common good are owned by local authorities having been passed down following consecutive rounds of local government re-organisation. The proposed provisions within this area have been underpinned by the special importance of the common good to communities and that it is treated in many ways differently to other local authority owned assets.

Part three of the draft Bill “Common Good Property” outlines draft provisions for which place a new statutory duty on local authorities to develop and maintain a register of all property held by them for the common good. Also outlined are draft provisions for local authorities to consult with community councils and other community bodies when creating the register, as well as when it comes to disposal and use of common good assets. Question 14 of the consultation relates to this part of the draft Bill.

Defective and Dangerous Buildings – Recovery of Expenses

The paper states that communities can be affected by buildings which become dangerous or defective and that local authorities have powers under the Building (Scotland) Act 2003 to deal with this issue. Should a local authority have to take action and carry out work on a building, under the Act the local authority can only recover its costs through normal debt recovery methods. This can make it difficult to recover costs and therefore can discourage local authorities from using their powers.

Part four of the draft Bill “Liability for expenses under Building (Scotland) Act 2003” inserts new sections into the 2003 Act which would allow for a “notice of liability for expenses” to be registered in the appropriate property register in relation to buildings where work has been carried out. This would mean that if the building is sold the local authority can recover the costs from either the previous or new owner as they are liable for the debt. Questions 15 and 16 of the consultation relate to this area of the draft Bill.

The second of the three groupings of the consultation relates to detailed policy proposals which have not yet reached the stage of draft legislation but have been discussed in general terms:-

Improve and extend Community Right to Buy

The paper notes that Scottish Government recognises the importance of community ownership of land in empowering the people of Scotland. Scottish Government are also ambitious for the future of the community ownership of land, with the First Minister announcing in June 2013 a target of one million acres in community land ownership by 2020.

The paper highlights four main priorities for taking forward the community right to buy as part of the agenda for land reform in Scotland. These are:-

- Extension of the community right to buy

- Compulsory right for communities to purchase land
- Streamlining the community right to buy
- Improving the process of the right to buy

Consultation questions 17 to 51 relate to the detailed proposals for the above four main priorities.

Strengthening Community Planning

The paper states that the purpose of community planning is to get public services working together with each other, with communities, third and private sectors to make the most effective use of their collective resources to deliver better outcomes for communities. Community planning was given a statutory basis by Part 2 of the Local Government in Scotland Act 2003. The 2003 Act makes no provision for establishing Community Planning Partnerships (CPPs), however, the framework of the Act and associated guidance has led to the creation of 32 Partnerships, one in each local authority area within Scotland. Each CPP is made up of a number of partners including local authorities, colleges, Skills Development Scotland and Scottish Natural Heritage, as well as representatives from local communities and other sectors. It also highlights that as each local authority area will have differing circumstances and priorities, each CPP operates in a different way to suit their particular circumstances.

The paper also references the Christie Commission on the future delivery of public services report which stated Scotland's public services need to work more closely with their communities and each other to help tackle the challenges facing Scotland, especially with increasing demands and declining expenditure. Following a review of Community Planning by Scottish Government as part of the response to Christie, Scottish Government and COSLA produced a shared [statement of Ambition](#) on Community Planning and Single Outcome Agreements. As well as setting out what CPPs should do and how they should function and improve outcomes, it also recognised that important changes including changes to legislation would be needed to realise this ambition.

The proposals set out within the paper look to strengthen the roles and responsibilities of CPPs and place new duties on public sector partners to play full and active roles. It is highlighted that the proposals should complement and help to underpin the national and local action which is already taking place to strengthen community planning. The broad proposals noted within the paper are:-

- CPPs and the planning and delivery of outcomes
- Duties on partner bodies
- Which organisations should the duties apply to?
- The role of the local authority
- External Scrutiny

Questions 52 to 60 of the consultation concentrate on community planning and the broad proposals outlined above.

Allotments

The paper states that communities can be empowered by ensuring people have access to land that can provide both health and social benefits and a connection to the local environment. It notes that one way of achieving this is through the access of allotments. Following the commitment to support allotments within Scottish Government's National Food & Drink Policy, it was noted that the legislation surrounding allotments needed to be updated and made less complicated. The consultation asks for views on a number of proposed changes to existing legislation including the definition of an allotment. Other proposals are made in relation to the following areas:

- Local authority duty to provide allotments
- Local authority duties and powers to manage allotments
- Termination of allotment tenancies
- Surplus produce
- Local authority regulations

These include proposals around local authority allotment waiting lists, production of an annual allotment report and local authority regulations for letting allotments.

Questions 61 to 69 directly relate to all proposals regarding allotments.

Local relief schemes for non-domestic (business) rates

The "Supporting Business, Promoting Growth" consultation on business rates reform included a proposal to create a new power for local reliefs which would allow local authorities to create and fund their own localised business rate relief scheme. The introduction was heavily supported through the responses to the business rates reform consultation and it is therefore the intention to include this power in the Community Empowerment (Scotland) Bill.

The third section of the consultation relates to new wider policy proposals which seeks views in relation to:-

- Including within the Bill a provision that places a duty on Ministers to develop, consult on and publish a set of outcomes that describe their long term, strategic objectives for Scotland
- Including a complementary duty to report regularly and publicly progress towards these outcomes
- Whether there are any other actions which could be taken to reflect local democracy principles that would benefit communities over and above the current actions taken by Government and others to enable and support local democracy along with the additional measures outlined within the consultation

The final section of the consultation provides respondents with the opportunity to highlight both positive and negative effects of the proposals outlined within the paper. This includes costs or savings, environmental and equality impacts.

3.0 APSE Comment

In terms of the proposed 'Community Right to Request' and new 'Rights in Relation to Property' and the extension of the 'Community Right to Buy' it is useful to look across the similar legislation from Westminster within the Localism Act 2011, which predominantly applies to local authorities within England.

For example similar measures to the proposed new 'Rights in Relation to Property' also impose a temporary moratorium on disposal of land (of interest to the community). However in reality this new right within England, appears to have been underutilised. A considerable barrier to using community rights in relation to property transactions is clearly the ability of community groups (who will be defined groups under the new Act) to raise sufficient funds for a purchase or an ongoing revenue stream for rental payments. APSE would therefore be concerned by measures which could impose new burdens on local authorities within Scotland which would do little to improve local service delivery. APSE is of the view that authorities should already be looking holistically at how local assets are managed and maintained, and options currently already include community transfer or lease arrangements. However within a tight fiscal situation APSE would be concerned by measures which place potentially costly, but not necessarily effective, new measures on local authorities. Assets can also be a useful way for local authorities to safeguard areas from decline and help to stimulate local economic regeneration. These strategic aims need to be supported by long-term sustainable asset management strategies and there is a distinct possibility that the new rights could raise expectations, within community groups, but which could ultimately lead to proposals being rejected in the interest of the whole area and the local economic circumstances.

In terms of the public service delivery and improvement provisions whilst in principle local authorities would welcome community engagement measures, in respect of continuous improvement of public services, the mechanistic process for engagement may prove to be burdensome. Firstly because of new process requirements which local authorities will need to be mindful of and ensure that resources are available to meet the new regulations and secondly because there is the potential for mischievous misuse of the regulations.

Local authorities within Scotland will undoubtedly wish to ensure that they too are afforded some sensible measures to protect local services from being tied into interminable reviews or improvement processes, which, if used mischievously, could have an adverse impact on service delivery and service improvement. It will also be necessary to safeguard the 'quieter voices' within communities and ensure that the right isn't merely exercised by the loudest or more resource rich community groups. This was also a concern within English authorities at the launch of the Localism Act being that they feared the more affluent areas were better able to use the new rights, potentially diverting resource distribution from poorer communities into more affluent areas. There is no firm evidence however that has emerged to suggest that this has necessarily been the case as again take-up of the new rights in this respect has been very low.

4.0 Response Details

If you wish your comments to be included in the APSE response to this consultation paper please send them to Louise McMillan at Lmcmillan@apse.org.uk. They should reach APSE ideally by Friday 3 January but no later than 10 January 2014.

Alternatively, consultation responses can be submitted directly by email to: Community.Empowerment@scotland.gsi.gov.uk. The closing date for responses is Friday 24 January 2014. The full consultation can be found [here](#)

NB: This briefing is intended to provide a broad overview of the issues for discussion contained within the consultation document. Member authorities are therefore advised to refer to the full document for further information.

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