

APSE Consultation response on 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

- This APSE briefing includes APSE's response on the Community Empowerment (Scotland) Bill
- APSE has also drawn upon experiences of APSE members with regards to the Localism Act which in general applies to local authorities in England
- Within the response APSE has highlighted some areas where further guidance or clarification are needed or concerns which have been raised

1.0 Introduction

Scottish Government have been 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
- Delivery high quality and improving public services
- Support strong local democracy and local decision making

The full consultation documents can be accessed by [clicking here](#). The remainder of this briefing replicates APSE's response to the consultation.

2.0 APSE's response to the consultation

APSE's aims and values are to support and promote the delivery of excellence in frontline local government services. APSE works with over 300 local authorities, including police and fire

authorities, throughout the UK specialising in frontline service delivery issues. All local authorities within Scotland are members of APSE.

In responding to this consultation APSE has consulted with a number of our member authorities and we have considered their views in our response. APSE has also drawn upon the experiences of APSE members in respect of the Localism Act which in general applies to local authorities within England, which includes similar provisions for community engagement in local public services and introduces new provisions for moratoriums on disposals of land considered to be of community value.

We have not endeavoured to answer every point raised in the consultation but for ease of reference this response, where appropriate, includes the question numbers from your consultation paper and APSE's response is placed immediately below each.

Q1. Do you agree with the meaning of community body at section 1

APSE has some concerns about the draft Bill in this regard. For the purpose of Asset Transfer Requests the designation of a community body is largely reserved to the future discretion of the relevant Minister. It is therefore very difficult to determine the scope and impact of the definition on the legislation itself and on our APSE member local authorities. APSE would therefore welcome sight of draft regulations in this regard.

APSE would also comment that there is inconsistency within the legislation itself. A different definition of 'community body' is used within Part 2 (Public Service Delivery) and the use of 'Participation Requests' than that used within Part 1 (Asset Transfer Requests). Whilst this may be deliberately drafted to be the case it is somewhat ironic that this would occur within legislation designed to empower local communities. This drafting could give rise to confusion and therefore become a barrier to community bodies seeking to utilise the new rights both in Part 1 and Part 2 of the legislation.

If 'community body' is retained in Part 1 then perhaps a more distinct title needs to be applied at Part 2 for example 'Community Organisation' or 'Community Association'.

Timing of dealing with applications under Asset Transfers and other matters to be considered such as appeals (Covered in Q3, Q5 and Q6)

APSE believes that prescriptive timetables could make our member authorities 'hostage to fortune'. Whilst prescriptive response times are in place in terms of housing legislation it is likely that certain Asset Transfers under the new provisions could be complex. This may therefore involve delays in spite of the best endeavours of all parties involved. Accordingly it would be helpful where timescales are prescribed that they are themselves reasonable, for example no less than 12 months. This would allow a reasonable window of opportunity for matters to be completed. It would also be helpful to include a provision for any extended timescales should there be 'exceptional and/or unusual circumstances' which should avoid the risk of councils falling outside of the prescribed timescales and any penalties resulting from that.

In terms of issues of appeal whether such appeals are to the Minister or to the Land Tribunal (as some of our member authorities have suggested), we would expect that safeguards against frivolous or vexatious appeals are put into place.

In respect of further matters to safeguard the public interest, there is much greater clarity needed on the operation of the proposals and the need for a sensible interface with existing duties on local authorities. Such as Best Value and ensuring that local assets are managed in a

sustainable way, and in a manner, which best safeguards public bodies from potential legal challenges such as title restrictions.

APSE would also be concerned by additional burdens on public bodies at a time of fiscal constraints and any new burdens would need to be sensible and proportionate, for example in considering existing duties to retain lists of assets.

Q8. Do you agree with the definition of community body at Section 11 (Part 2 Service Delivery) and other matters in respect of Q9, Q10, Q11, Q12 and Q13

In respect of Q8 you are referred to our comments above in respect to the complexity of differing definitions in Part 1 and Part 2 of the Bill with regard to 'community body'.

With regard to the procedural issues of the participation request process a number of concerns have been raised by APSE members. These reflect the concerns of APSE members in response to similar provisions within the Localism Act. Whilst we welcome what would appear to be less prescriptive measures to potentially enforce tender situations for service delivery (which is the case in respect of the Localism Act within English authorities), we are nevertheless concerned by the potential resource impact on our member authorities within Scotland.

Where resources have already been committed to a review process and councils have already complied with their on-going Best Value requirements, councils which then need to continually deal with new participation requests could suffer an adverse impact on their available resources. Safeguards should therefore be put into place to prevent frivolous or vexatious requests (for example requests which are de facto a challenge to a new mode of service delivery). This would be to ensure that it is not a case of simply the 'loudest voices' being heard which could in fact exclude wider community involvement in the design and planning of local services.

In terms of the specific section 15 (3) (c) arguably equalities considerations should also be included.

Again it is difficult to comment in the absence of further regulations as to any potential grounds for local authorities to refuse a participation request. APSE would argue that in the absence of such regulations, it is necessary to state, that such regulations should allow local authorities to refuse participation requests if such requests are:-

- Frivolous or vexatious
- Are likely to breach a statutory duty (e.g. Best Value)
- Create an exceptional cost burden on the public authority
- Would create a situation whereby persons or bodies are unsuitable to be involved in the participation request (e.g. safeguarding issues for example in the case of children's or care services, or services which relate to vulnerable citizens)

Participation requests in the case of reviewing outsourced contracts

The Bill appears to be silent as to how public bodies would deal with participation requests in the case of a contracted out service. Presumably where citizens are dissatisfied with a service carried out by a contractor the request for participation would be made to the client local authority; the client local authority would in turn be reliant upon the cooperation of the contractor. There is no easy answer to this situation since unless it was a matter accommodated within the originating contract, compelling participation on what is in effect a

service review with the involvement of citizens, to enforce such a measure would cut across the doctrines of contract law. However some form of guidance or statement to clearly state to contractors that they would be expected to comply with a participation request would prove helpful to local authorities.

Guillotine measures

Again in the absence of regulation it is difficult to comment but once a service has been through the process of a participation request and in the situation where an outcome measure has been reported upon, it would be unfair to expect that the council or the individual service should be placed into further immediate reviews. Sensible measures need to be in place to prevent this from happening and disrupting service delivery, budget and business planning processes within local authorities. Many local services are complex and integrated with other services or indeed other public bodies therefore safeguards are needed to ensure service continuity rather than interminable review processes. Such matters should be governed by the principles of reasonableness. Council departments do not tend to operate on a silo basis and therefore the grounds for rejecting involvement in a participation request should reflect the realities of day to day operational issues within public services. In addition such guidance needs to also reflect the significant employment obligations on local authorities and the need to consider such matters in exploring service improvement outcomes.

Thank you for the opportunity to respond to this consultation.

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