

**Local Government and Regeneration Committee
Call for Evidence
Community Empowerment (Scotland) Bill**

The Angus Community Planning Partnership welcomes the development of this important legislation and the opportunity to provide written evidence to the Local Government and Regeneration Committee.

1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

We believe that the legislation alone will not empower communities, but will help to create the right culture for partners to engage with communities and for communities to take control themselves.

We believe that this legislation has the potential to create conditions that further empowers those communities who are already empowered and that as partners we need to ensure that the whole community can benefit. This is a key concept about the breadth and depth of empowerment.

It is our contention that empowerment flows from relationships and that it is up to people themselves what they take or do in respect of empowerment.

2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

We welcome the broadening of the Duty of Community Planning however the Third Sector Interface or the Regional Transport Partnership, are listed as key partners. Councils are also not listed in the appendix, but are provided for earlier in the legislation. It would be a significant disadvantage if all key partners were not able to play a significant and named part in the delivery of community planning in Angus, either at a strategic board level, or at a local level.

We do wonder about the provisions in the legislation. It would appear that it is trying to sort out some 'known' problems and is therefore very specific about allotments and community right to buy, whereas other parts of the Bill are rightly establishing a vision and framework for the future, which we welcome. It is almost as if the Bill has different authors and therefore the expectations in each section are not consistent.

It is not difficult for the Council to publish a list of common good assets, but understanding the legal rights and properties of each takes more time and significant resource. With respect to allotments, we are supportive of the concept, but find the number on the waiting list a bit arbitrary at 48. We would rather work with and support communities to develop their own community gardens and allotments which we have already established locally. This requires a change in thinking that the local authority must always 'provide' rather than 'facilitate'.

We believe that the Bill has the opportunity to support the development of Community Planning, but it will be for partners locally to put the effort in to develop the relationships necessary to deliver better outcomes. Fundamentally this is also about a new relationship with

individuals and communities and therefore the culture of public sector organisations needs to change.

We need to become more comfortable with managing risk and look for opportunities that open up through, for example, community asset transfer. We need to find a way to shift our resources which can make both the asset and the community more sustainable. But we also need to know what will happen if something fails over time, when community energy, commitment or relationships break down. Clearly this requires thought and a balanced approach to risk.

We note the key connections to other legislation such as Community Learning and Development and Health and Social Care Integrations in particular. We will need to manage these connections locally, but currently the Community Empowerment Bill is silent on these matters.

We do not envisage a great sea change in Angus following the introduction of the Bill as we are already striving to improve our partnership arrangements and the way in which we work in and with communities, as well as supporting communities to do more for themselves. However, enshrining these key principles in legislation is a positive step towards a bigger goal of shifting resources towards prevention and collective outcome activity.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill or to assist communities, to ensure this happens?

Partnership working takes on many forms and it is essential that partners, including local communities, find the approach that suits them best.

As previously mentioned, we believe that many communities are already empowered and the Bill will provide further opportunities for them. However, people and communities are often at different starting points and we believe that the Bill could have gone further in terms of recognising learning that is sometimes needed to build individual and community capacity. This can often be resource intensive and requires investment by partners to release capacity in communities. The Bill could be more ambitiously linked to tackling poverty. A connection with the Community Learning and Development regulations and guidance needs to be articulated and understood.

Partnerships need to provide assistance to local communities who are struggling to take control and help themselves. Coaching/leadership is one approach, but communities will often need public finances to help run a service. Community officers from local authorities is another approach, but many have been lost owing to funding cuts. This is the aspect of community planning that is most difficult; least supported, but has most to. Indeed, this does need a radical change to local ways of working which will be much more challenging than the current, mostly centralised approach.

We believe that it would be beneficial for the Bill to also focus on peoples' strengths and ability to empower themselves. There are many empowered communities in Angus and sometimes they require very little, if any, input from the local authority or public sector organisation. We are also seeing evidence of empowered individuals through, for example, Self Directed Support.

This is also about relationships, understanding people's stories and building from there. We remain unsure that we can legislate and expect that people will be empowered as a consequence, but we do also recognise the positive intent in the Bill.

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

4.1 Partnership Governance

We are particularly pleased about the section on the Duty of Community Planning and its articulation of outcomes linked to an improvement plan. This will help us enhance our governance arrangements and use our resources more effectively which should in turn lead to better outcomes. But would make the following observations: -

9 Community planning partners: duties

3) Each community planning partner must, in relation to a community planning partnership, contribute such funds, staff and other resources as the community planning partnership considers appropriate—

(a) with a view to improving, or contributing to an improvement in, the achievement of each local outcome referred to in section 5(2)(a), and

(b) for the purpose of securing the participation of the community bodies mentioned in section 4(5)(a) in community planning.

With regard to 9.1, we have no difficulty with the concept of CPP members challenging each other's expenditure, but to give the CPP powers actually to stipulate the sum to be spent by each partner is perhaps a step too far.

12 Establishment of corporate bodies

(1) Following an application by a local authority and at least one other community planning partner for the area of the authority, the Scottish Ministers may by regulations establish a body corporate with such constitution and functions about community planning (including in particular its conduct and co-ordination) as may be specified in the regulations.

Likewise with 12.1, it is questionable to give the power to the Council, with only one other partner, to make an application to Ministers to establish a body corporate.

4.2 Common Good

Firstly, we would wish to reiterate the comments I made in the earlier consultation. No cognisance has been taken of our concerns with our perceived inadequacies of the drafting. The Bill's wording is identical to the draft consulted upon in January 2014. Thus, our original comments stand. We do not think that the provisions go far enough to address the current difficulties faced by councils in dealing with their common good assets. Proposals to use the land in a manner which is in the public's best interests are stymied by the delays and costs involved in disposing or alienating the land where a question arises under Section 75 of the Local Government (Sc) Act 1973. Moreover, the recently reported Opinion of Lord Tyre in the hearing of East Renfrewshire Council's Petition confirms that section 75 does not cover appropriation and thus the court has no power to authorise such appropriation. Thus, the council

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has no means to promote or have authorised an appropriation other than Act of Parliament. A process which could be time consuming and expensive. We appreciate that there would be difficulties in defining common good but would urge the Scottish Minister to take this opportunity to use this Bill to advance proposals which would empower councils to deal effectively with common good property. There are also issues with determination of common good assets and where these assets should be held. Angus Council submitted a petition to the Scottish Parliament “Calling on the Scottish Parliament to urge the Scottish Government to introduce an amendment to the Community Empowerment (Scotland) Bill or to introduce legislation relating to common good property providing any asset which has been regarded and managed as common good property for 50 years without successful legal challenge shall be treated for all legal purposes as common good property” in late 2013. No response has been received.

As regards the specific provisions relating to common good:-

Section 22(3) – It would be preferable if the Scottish Ministers were to determine how the proposed register should be published to any argument as to the perceived insufficiency of publication.

Section 63 (6) – No details are provided as to how local authorities should deal with representations. Para 23 of the Improvement Service Report “The Management of Common Good Assets and Funds” published June 2008 proposed a public testing of the register “This should be for a specified period only, after which the register would be taken as definitive and unchallengeable”. The Improvement Service recommended that statutory provision should be made that any asset that has been regarded and managed as common good for 50 years without successful legal challenge will be treated for all legal purposes as common good. We support this principle of a fixed period for holding assets as is evidenced by our petition to the Scottish Parliament.

Section 63 (8) is unnecessary as details of land and buildings managed by a local authority should be published under class 5 of their publication scheme as required by the Freedom of Information (Sc) Act 2002.

Section 65 (1) – clarity is required to ensure that “disposing of“ or “changing use to” would encompass alienation as the terms has been developed in recent case law arising from the disparate interpretations of section 75 (2) of the 1973 concerning the property arrangements arising from PFI/PPP/SFT projects.

The provisions relating to common good should cover all the necessary aspects of this important area of property law to local authorities. Full and effective provisions would mean that section 75 of the 1973 Act could be repealed.

Turning to the Financial Memorandum, it is noted that “local authorities [had] expressed some concern about the potential resources involved in establishing registers”. The Memorandum then addresses the issues in terms of the consultation process. Whilst we agree with the statement that councils would be starting “from a very firm foundation”, it is our view that the full costs of any check or audit which would be necessary prior to any effective public consultation has not been taken into account. Angus Council recently commenced an audit of common good property. It took a number of months to check the

title deeds of over 50 properties in one burgh and minutes of meetings etc located in archives against with the conclusions reached by Andrew Ferguson in his book “Common Good Law”. Without such an audit, we would suggest that public consultation alone may not result in an improved register. Following this audit, we sought public consultation on one particular property, namely Arbroath Library. It is held on the common good account but was acquired for a statutory purpose and thus, should not be treated as common good. This view was confirmed in a Senior Counsel Opinion. This consultation failed to resolve the issue as the representations received supported the position that it should continue to be held on the common good account. No representation took cognisance of the legal position.

4.3 General Points

We are particularly concerned about the language used about participation. We see communities as partners and there is a connection missing to the Local Government in Scotland Act 2003 in this respect. The intent may be to replace some or the entire 2003 Act, but this is not clear and would in our view diminish community empowerment in legislation.

We also need to think about power deprivation and our vision for local education and learning linked to our values and aspirations for the future in respect of, for example, new infrastructure and economic inclusion.

Also, some partners operate at a national or regional level and creating some difficulty for participation in a range of partnerships with the knock on consequences of servicing arms length companies that are sometimes created. The Bill could give further consideration to enable partnerships to have direct employment by a public body possible.

The Bill is definitely more strongly worded where it talks about physical assets but less so when dealing with creating a new culture of participation. It comes across as people/communities having to make a request rather than an expectation of a way of working. We believe that this does not provide the right environment for growing empowerment through changing cultures within the public sector. The Bill needs to be ‘future proofed’ and it could be clearer in saying that communities should not only have their voice heard, but be influential and part of decision making.

We also believe it would be helpful to consider how we will know if the legislation will have made a difference. We believe it can help us move towards greater empowerment but the ‘proof is in the pudding’ and monitoring will be important. We think communities would welcome knowing how that will be done.

We think allotments are too narrowly defined. Use of green spaces, planning for place, pride in place are better i.e. our environment needs to link outcomes and be part of a bigger vision.

5. What are the views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

We note the Policy memorandum and imagine that much of the content of the Bill will hinge on either guidance or how partnerships embrace the change required through the Bill.

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The issue of rurality also applies to many parts of Angus.

6. Conclusion

We hope that you find our comments and observations useful.