



The Scottish Parliament
Pàrlamaid na h-Alba

Local Government and Regeneration Committee

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25 June 2014

Dear Derek

Re: Policy Memorandum on the Community Empowerment (Scotland) Bill

The Local Government and Regeneration Committee agreed its approach to the Community Empowerment (Scotland) Bill and will launch its call for evidence on the Bill on Thursday 26 June:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/78599.aspx>

As part of its approach, the Committee has agreed I write to you seeking clarification on a number of issues relating to the Policy Memorandum (PM) which accompanies the Community Empowerment (Scotland) Bill.

The Committee notes that paragraph 28 of the PM states a concern “people might have difficulty in understanding the language of the draft legislation”. The elaboration sought in this letter is, in part, to address this concern and make it easier for those who want to participate in the legislative process and provide comment on the provisions to do so.

The questions set out in the Annex are also designed to seek elaboration on information to inform the Committee scrutiny of the Bill and make it easier to meet the challenging parliamentary timetable for consideration. A full response to these questions should significantly reduce the information the Committee will require to gather during the Stage 1 process.

Given the above the Committee have requested that a response to all questions, together with any other information you consider relevant, should be provided to the Clerk of the

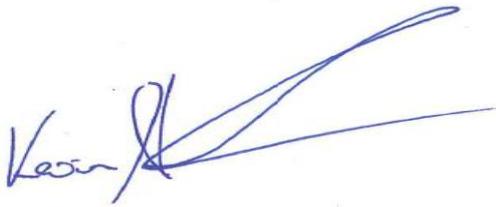
Committee by **1 August 2014** in order to assist those who wish to provide written evidence to the Committee.

In general whenever there is reference in the PM to planned guidance and/or regulations by the Government following the passage of the Bill, it would be helpful if the Committee could have an indication of what is to be contained in said guidance or regulations. In addition, in each instance, the Committee would ask that you indicate whether, and when, drafts of these will be available for the Committee to consider in support of stage 1 scrutiny.

If you, or your staff, have any questions, please feel free to contact the clerk of the Committee.

I look forward to hearing from you.

Yours sincerely,



Kevin Stewart MSP
Convener
Local Government and Regeneration Committee

CC: Joe FitzPatrick MSP – Minister for Parliamentary Business
Alasdair McKinlay - Head of Community Planning and Community Empowerment Unit, Scottish Government
Ian Turner - Community Planning and Community Empowerment Unit, Scottish Government
Jean Waddie – Scottish Government Bill Team leader
Robin Haynes – Scottish Government Local Government Unit
David McGill – Head of Chamber Office, Scottish Parliament
Susan Duffy – Head of Committees and Outreach, Scottish Parliament
Tracey White – Head of Legislation Team, Scottish Government
Jim Johnstone – Clerk to the Finance Committee, Scottish Parliament
Euan Donald – Clerk to the Delegated Powers and Law Reform Committee, Scottish Parliament.

Introduction and Background sections

1. In paragraph 5 reference is made to the bill increasing the “pace” and “scale” of Public Service Reform. Given this statement please indicate the ways in which the Bill delivers on these aspects.
2. In the following line the bill cements the focus on achieving outcomes. Please indicate what parts of the Bill deliver this.
3. In paragraph 6 the bill will ensure people can “meaningfully participate”. Could you explain how that differs from the current participation set out in various parts of the memorandum, see for instance paragraph 12 which suggests local authorities use a range of methods.
4. Please provide examples of communities achieving “significant improvements” by doing things themselves as described in paragraph 7
5. In paragraph 7 the suggestion is made the bill will increase employment. Please indicate which parts of the Bill will contribute to that together with an indication of the respective levels anticipated.
6. Please indicate, preferably with prior examples, how the bill will reduce inequalities as set out in paragraph 7.
7. Paragraph 7 states “Communities can often achieve significant improvements by doing things for themselves because they know what will work for them”. Can you point to evidence in support of this?
8. Could you indicate where the “responsibility” on all public service providers set out in paragraph 11 can be found?
9. Paragraph 12 states that when people are engaged in community issues and come into contact with elected members, “they are more likely to become involved in the electoral process themselves”, please reference to evidence in support of this statement.
10. Towards the end of paragraph 12 there is a suggestion that being ‘heard’ is an insufficient form of engagement in contrast to other parts of the Bill where communities being ‘heard’ is deemed a sufficient form of community empowerment. Could you please clarify this?
11. Please provide examples to justify the “inspire” suggestion in paragraph 12 and also examples of the evidence to support the statements in the second part of the paragraph.
12. In paragraph 14, and elsewhere, “place” is used in quotations. Please explain the significance of the quotations.
13. Paragraph 15 refers to the current CPP process including the role of communities. Could you provide a brief description of how this currently

operates as the Committee have been unable to identify any CPP's which have direct community representation.

14. Could you indicate the extent of progress since March 2012 to the introduction of the bill in developing community planning arrangements as set out in paragraph 16. This will assist the Committee in understanding the need for the Bill and put in context activities to date.
15. Given the statement in paragraph 20 that local authorities have greater experience than other public authorities (of community empowerment) can you explain in what ways this experience is to be shared, and in particular what role What Works Scotland (paragraph 37) will play?
16. In relation to the examples in paragraph 25, please explain how community groups are assisted by the Procurement Reform Bill.(3rd bullet)
17. In relation to the 4th bullet, why is the "right" not being given to communities?
18. On bullet 6 please indicate what work is being taken forward following the Community Council Short Life Working Group reporting.
19. Please provide a link to the consultation analysis. (paragraph 27)
20. Could you indicate which stakeholders will be involved in development of guidance?
21. Given the overarching policy objective of community empowerment, please explain the extent to which the Bill supports delivery of the Scottish Government's *Low Carbon Scotland: Behaviours Framework*?

Part 1 National Outcomes

22. Towards the end of paragraph 30 there is a suggestion that the National Performance Framework is "helping to change the way public services are delivered" can you explain in what ways this is happening and point to supporting evidence.
23. Please elaborate on the role of "National Wellbeing" as set out in paragraph 31 and how it links to Scotland Performs and the National Outcomes.
24. Section 1(6) refers to "any other person" carrying out functions of a "public nature". Please provide some examples of who this might include.
25. The Policy memorandum is silent on sections 2 and 3. Please provide the policy thinking underpinning each of the review and reporting provisions.
26. What is the level of flexibility referred to in paragraph 32 and how might it be used.

27. Who will be consulted under 2(5)?
28. What is this government's intention in relation to the timescales to review and report.
29. Given the government currently publishes information, in what way will the provisions set out in paragraph 33 "enhance accountability"?
30. Who is ultimately accountable for delivery of the national outcomes?
31. Is the parliament expected to contribute to the delivery of the national outcomes and if so where is the scrutiny function?
32. Can you explain why there is no requirement to consult with or report to the parliament?

Part 2 Community Planning

33. Can you indicate the status of the guidance referred to in paragraph 35, and also indicate what other legislation exists in this area to support the suggestion legislation is not currently clear.
34. The Scottish Government "expects CPPs to drive public service reform effectively at local level. Can you indicate the steps being taken by the government to promulgate this expectation?
35. Please indicate, or reference to, the work of the Auditor General and Accounts Commission which has provided the "assurance" referred to in paragraph 37.
36. Can you indicate what is intended to happen with the evaluation referred to in paragraph 37.
37. In paragraph 38 is it the first consultation paper being referenced?
38. Paragraph 35 indicates a need to replace guidance with legislation. But paragraph 38 suggests new guidance will be produced. Can you elaborate and indicate to address the seeming contradiction. What is to be contained in new guidance?
39. Paragraph 39 places communities at the "core". However it would appear from paragraph 39 their role is restricted to consultees. Please explain the apparent conflict.
40. In paragraph 40 can you confirm the CPP is required to **publicly** publish (see for example paragraph 32 re the Government) and also confirm towards what progress they must report.

41. In paragraph 41 mention is made of “key partners”, please confirm that the reports they are required to make will all be publicly available, and in what time frame.
42. Paragraph 42 discusses duties placed by the Bill. Can you extend to indicate how this is to be done, the policy thinking behind the making of these provisions and what the sanctions are for non-compliance.
43. Section 4(8) defines community bodies. In 4(5)(a) how will the selection process work and what role will the bodies chosen be asked/expected/permitted to fulfil?
44. Can you explain the need for section 5(3) given the existence of section 4(5). Are there differences in approach to be taken and if so why.
45. Why does section 6(1) not also apply to section 5(2)(b)?
46. Can you indicate what steps are expected of a CPP under 5(4)(b), will that include full public consultation of those in the relevant area? If not can you indicate why the community are not being empowered here?
47. How long do the plans last for and when do they require to be revised? Please indicate why no mandatory period is specified?
48. What timescale applies to the completion of section 7 plans?
49. Can you indicate what is meant in practice by “facilitate” in section 8(1)(a)
50. Please provide some examples of “reasonable steps” under 8(1)(b).
51. In what circumstances might 9(1) apply?
52. What is to be covered in guidance under section 10?
53. Please explain what is envisaged under section 11 and in particular how it might impact communities, groups and public authorities.
54. Please explain the purpose of section 12 indicating the circumstances envisaged and the potential impacts on the whole process.

Part 3 Participation Requests

55. This part would benefit from a general explanation indicating what powers are given under it, and setting out the background to the need for these powers.

56. While the Scottish Government sets clear expectations as set out in paragraph 45 ,it has been the Committee’s experience during recent inquiry work that public sector organisations do not engage in any meaningful sense. Given Part 3 does not replace the current “expectation” what action is the Government proposing to empower communities in the areas set out in paragraph 45?
57. Please indicate the policy thinking behind requiring a community-controlled body to have a written constitution.
58. Paragraph 46 makes clear communities do not need to be of place. What will happen if a community of interest with virtually no local residents as members seeks to become involved.
59. Perhaps the above might be an example of a reasonable ground to refuse. Could you indicate what might be covered by that provision.
60. What types of bodies or organisations might be covered by section 15(2)
61. Are ALEOS included as part of section 16, if not why not?
62. Does section 16 include the Urban Regeneration Companies?
63. This Part proceeds on the basis the community require to opt in to participation. Earlier the Committee has suggested empowerment would be better enhanced by an opt-out provision with communities automatically eligible unless they decline to participate. Please indicate the policy thinking in favour of the approach adopted as opposed to the Committee’s preference.
64. Paragraph 48 suggests a possible role is to “discuss”. Why is legislation necessary to facilitate a discussion, what prevents this simply being a function of consultation, or a follow up to consultation responses?
65. Please also indicate how “discuss” meets the test at section 17(2)(a).
66. What is envisaged in regulations under section 18?
67. Can you explain the reasons for the list at section 19(3)(c), why were those aspects chosen and how will this operate in practice to avoid any risk they are set at a level which will potentially exclude community involvement?
68. Can you indicate why no provision is made for the application request to be published, which might attract other interested groups.
69. There is no information provided covering sections 19-25 in relation to the process to be followed. Please explain the thinking behind and any derivation of

each of these provisions. In so doing please indicate the benefits of the process at each stage for community participation.

70. What is the maximum period intended to be allowed for publication of a report under section 25?
71. The Financial memorandum is silent on the cost of handling a participation order. Please provide an estimated cost to local authorities for handling a request, including estimated costs for each scenario the Bill provides for.

Part 4 Community Right to Buy

72. The Committee has had no prior involvement in matters covered by this Part and consider the detail provided in this section of the Policy memorandum to be little more than a superficial overview. This does not at present provide the Committee with sufficient material to allow for this Part to be scrutinised in a timely manner as part of the Stage 1 process. Please provide detail of each section individually including the policy thinking behind any changes or reasons for keeping the right to buy provisions the same as the 2003 Act. The following paragraphs in addition to the detail requested here set out specific questions.
73. Please explain the rationale for the one million acres target referred to at paragraph 55.
74. Paragraph 56 refers to “These changes” please provide detail of each change including the reasoning behind making the change.
75. Please indicate who undertook the post-legislative scrutiny of the provisions in the 2003 Act, who was consulted, and provide detail of the findings of that work.
76. Paragraph 57 suggest the Bill provides a “framework”, please indicate where the detail is provided to enable the provisions to operate.
77. What are the “particular issues” referred to in paragraph 59?
78. Please detail the “substantial public benefit” referred in in paragraph 59.
79. Please indicate which consultation is being referred to in paragraph 59 and also provide detail around the position of the other 7% who did not support the extension of right to buy to urban areas. What are the other reasons for these provisions?
80. Please provide the detail surrounding paragraph 62, how many cases were over 80% and which ones were not. What were the views of the other respondents? Which changes have not been subject to consultation and please provide the reasons for not consulting in each case.

81. Paragraph 63 is a useful summary of the main amendments. However the Committee requires details of all amendments including the reasons for making each and the views of those who did not agree. Please also set out the benefits expected from each change.
82. The Committee requires detail of each of the new provisions providing right to buy abandoned or neglected land.
83. Please detail the “other options” referred to in paragraph 65.
84. Please set out the complexities highlighted by local government respondents referred to in paragraph 66.
85. In paragraph 66 please provide the reasons why government does not agree with the views of local government, and the expected benefits.
86. Given the earlier statement about the complexity of the legislation for consultees please amplify the summary provided in paragraphs 69 and 70.
87. The paragraphs covering alternative approaches (71-73) also require to provide detail of the level of support/opposition. What are the “appropriate circumstances” in paragraph 71?
88. Please provide detail of the “broader” rights sought by some stakeholders referred to in paragraph 72.
89. Who suggested the improvements referred to in paragraph 73 and to what extent etc. have they been subject to consultation.
90. Who undertook the “overall review” of the system and where can the details of findings be found.

Part 5 Asset Transfer Requests

91. Please provide detail of the provisions covered by this Part including in particular the policy thinking underlying the approach in each section. The following paragraphs in addition to the detail requested here set out specific questions.
92. Paragraph 77 and elsewhere in this Part use the phrase “Community bodies” as being the bodies who can apply. In fact the detail in the sections is much wider/narrower than the impression given by that phrase. Please provide full information on each class of body who can apply and the policy underpinning their inclusion. Please include reasons why they require to have a written constitution.
93. The basis of a decision is set out in section 55, please provide the policy thinking and linkage to the overall aims of the bill for each part, which we note also

includes regeneration and public health as well as a more wider “any other benefit”. For the latter please provide some indications of what this might cover.

94. What impact will the Asset Transfer Requests’ process have on the Community Ownership Support Service in terms of its role and its resources?
95. Please provide detail of the consultation responses, as requested for earlier Parts. In particular for this Part the detail should cover the views of other public authorities.
96. Please indicate the anticipated demand under this provision, and any goals the Scottish Government has set.
97. Please provide indicative costs for handling each part of the process.

Part 6 Common Good Property

98. Please provide brief details of the “special rules” referred to in paragraph 86 and in particular any impact the bill’s provisions will have on them.
99. Paragraph 87 refers to consultees agreeing, please indicate what the views of the other 25% were, and provide detail of any proposals they suggested which are not being taken forward together with the reasons for not doing.
100. Please indicate how many local authorities currently have registers?
101. How long will local authorities have to establish a register or, amend an existing register to comply with the provisions of the Bill?
102. It would be helpful to specify detail of what bodies are covered in this section by the term “community bodies” (see section 67 of the Bill).
103. Please indicate why consultation on disposal is restricted to those community bodies with a known interest and how this fits with the transparency and consultation approach set out in paragraph 93.
104. Please indicate details of what the ministerial guidance might cover and when this will be available to the Committee.
105. Can you give an example of what might be considered to be a “significant dispute” referred to in paragraph 91, and who will adjudicate on what constitutes a “significant dispute”, and how such an adjudication can be challenged (see question 98)?
106. Given existing requirements referred to (accounting and asset management for example) what is the policy thinking behind not requiring ownership to be legally verified?

107. Why are there no appeal or review provisions in this Part of the Bill?
108. We note in paragraph 93 the demand for communities to have more say in the management of common good property. Please indicate how these provisions meet that aspiration.

Part 7 Allotments

109. Please provide a link to the National Food and Drink Policy referred to in paragraph 95.
110. We note the link in paragraph 99, Can you confirm that link is to the Working Group and contains up to date information on their meetings and recommendations. (see also below)
111. Paragraph 96 refers to consultation, please confirm which of the three consultations later referred to this is intended to cover.
112. Paragraph 96 helpfully sets out an overview of this Part. Unfortunately that is as far as the detail goes in the memorandum. Please provide detail of each section individually including the policy thinking behind any changes or reasons for keeping them the same as the original. Please provide detail of the original provision. The following paragraphs in addition to the detail requested here set out specific questions.
113. Does section 70(6) also apply to joint request made under section 70(5)?
114. Will the list be made public, in some way accepting Data Protection issues, and if not will the Local Authority be under any duty to indicate publicly the length of the list and expected waiting period?
115. Please provide some details of what might be considered “reasonable steps” as set out in section 72.
116. To how many local authorities is this provision expected to apply at commencement?
117. Please indicate the policy thinking behind setting the trigger in section 72 at 15? To how many local authorities will this apply at commencement?
118. Given the earlier work of the working group and the consultations please indicate the reason for allowing a further 2 years from commencement for regulations to be made. Please provide the same details covering section 77.
119. How many local authorities currently have regulations in place?

120. Please indicate what consultation with allotment holders and other persons will be undertaken by Ministers under sections 75 and 76.
121. Please explain why there is no consultation required under section 77 and thereafter any reviews.
122. What period do the government consider is a “reasonably practicable” one under section 79 and why has no specific time limit been specified. Do any local authorities currently produce such a report?
123. Please indicate the extent of the current problem anticipated by section 80.
124. Are delegated schemes of management currently operating, if so please detail experiences to date.
125. Please indicate the policy thinking behind section 82.
126. Please indicate the extent to which section 84 requires prior consultation with tenants.
127. Please indicate the types of produce intended to be covered by section 87 and the policy thinking underpinning this provision.
128. What will happen to items not removed timeously under section 88?
129. Please confirm regulations under section 90 will require consultation with the tenant concerned.
130. Please indicate the detail of the progress being made by the Working Group (paragraph 99) including detail on the recommendations covered by this Part and detail of those not covered including reasons for them not being covered and detail of how they will be taken forward in the future.
131. Paragraph 100 should also provide detail of the consultation responses relating to those supporting the provisions and details of areas not being taken forward. Detail of why the approach taken was thought appropriate and why other options were not is also required.

Part 8 Non-Domestic rates

132. Paragraph 101 refers to the “needs of businesses and the local economy” please indicate what these needs are linking to the promotion of resilient communities and sustainable places.

133. Parts 4, 5, 6 and 7 of the Bill could lead to community groups generating profits for community uses, how does Part 8 support the policy objectives of these Parts?
134. Please indicate the extent of the scope local authorities currently have to vary reliefs locally (paragraph 102 refers).
135. Please provide some examples of the potential uses of the powers being granted by this section.
136. Paragraph 102 indicates powers are without restriction, please indicate how this is consistent with the restrictions set out in paragraph 103.
137. Please indicate the extent to which consultation responses provided examples and full details of the consultation carried out including details of any suggestions received which are not being implemented. Please elaborate on what constitutes “strong support” and indicate the extent of the opposition and details of those not supporting. Please provide policy details covering the provisions in sections 94(2) to (4).

Effects on Equal Opportunities

138. When will the assessment be published?
139. Please indicate what is required under the public sector duty.
140. We note in paragraph 108 the inclusion of the equality duty when considering asset transfer and participation requests. Please indicate why this is not also necessary for other parts of the Bill.
141. In relation to the final sentence in paragraph 108 can you confirm the Government’s position regarding the completion of an EQIA. In what circumstances might this **not** be appropriate?
142. We note the last line in paragraph 113, which states that right to buy abandoned land is “either compatible with Article 1 of Protocol 1 or capable of being exercised in a manner that is so compatible”. Please provide more information on this view and clarify the circumstances where the government believes there may be a doubt over the compatibility of the purchase of such land.

Island Communities

143. Given the subject matter of the Bill and the recent report “Empowering Scotland’s Island Communities” please indicate the extent to which the Bill has been “island proofed” as set out on page 24 of the report.

144. Please indicate which aspects of the Bill will produce a differential impact on the islands.
145. Please clarify whether paragraph 120 is suggesting the approach in the Islands to the provision of allotments to meet demand is to be different from that of other areas.

Local Government

146. It is not clear what purpose paragraph 122 is serving, can you clarify the impact the information provided is designed to have on the consideration the Committee is required to make of this aspect.

Sustainable Development

147. The terms “sustainable development” and “sustainability” appear in the policy memorandum in the context of: Communities (paras 3 and 59); Control of assets (para 53); Access to land and land use (paras 57,65, 67, 72, 113); Place (para 101); and Economics (para 2, 36 and 104). This suggests the Bill is concerned with several social, economic and environmental aspects of Scotland’s sustainable development. However the sustainable development section of the Policy Memorandum includes only a limited consideration of the impacts of the Bill on the environment and land use. Please provide a more comprehensive assessment of the impact on sustainable development to enable the Committee to consider this aspect.