

**Community Empowerment (Scotland) Bill ("the Bill")
South Lanarkshire Council ("the Council") - Response to Scottish
Parliament's Local Government and Regeneration Committee**

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

The Council considers that the Bill will empower communities. However, as discussed in question 3 it will not necessarily enable communities to successfully secure an asset transfer. The requirements placed upon the community in making an application are very specific and it is unlikely that organisations would succeed if making an application without prior engagement with an authority.

The requirement for the Community Planning Partnership ("CPP") to involve and consult local communities is welcomed, and the provisions within the Bill present opportunities for increased community engagement and empowerment. The Bill proposes to strengthen the governance and accountability arrangements of CPPs, placing a statutory duty on the CPP that should ensure a shared understanding of roles, responsibilities, commitment and common purpose. The duty to consult and involve community bodies in decision making and the requirement to take into account the needs and circumstances of those affected by introduction of Local Outcome Improvement Plans is positive, presenting CPPs with enhanced opportunities to inform, engage, involve and empower communities.

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

It is difficult to assess the impact on authorities' resources and processes in the absence of the detailed regulations and guidance. However, the Council considers that there are there are benefits and disadvantages.

Benefits

The Bill enshrines the outcomes approach to legislation. Partnerships and collective decision making will be strengthened and robust processes will need to be put in place to support the delivery of shared planning, co production, community involvement and community influence.

CPP partners will have a shared understanding of roles, responsibilities and common purpose.

Provisions will encourage local democracy, enhanced (CPP) partner and public accountability and transparency.

Existing arrangements around community ownership and asset transfer will be able to be developed and streamlined.

Communities will be more engaged in community planning and able to participate in processes to improve outcomes in service delivery.

Disadvantages

Some duties remain vague, information and guidance is required around funding, staff and other resources, priority setting and the fulfilment of duties

Duties remain vague about collective accountability and how this will work

The definition of a community body is unclear – does this include “local” and “national” communities?

The process for participation requests is onerous for public sector organisations and for community bodies.

There is a lack of clarity around resource implications of community engagement and the capacity building required to support this.

More clarity is required around the principles of right to buy process legal status of community bodies (e.g. Section 28(4) of the Bill mentions that a Scottish charitable incorporated organisation (“SCIO”) is a community body. Does this mean that unincorporated associations registered with the Office of the Scottish Charity Regulator (“OSCR”) cannot be community bodies?), development needs and attending timescales to secure the transfer of assets.

More guidance is required on how community engagement will be planned resourced and integrated across partners.

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?

The Council considers that larger organisations and those in more affluent areas have capacity and are best placed to take advantage of asset transfer but there is nothing in the Bill to support the development of capacity for new or small scale organisations with aspirations. Accordingly, organisations in disadvantaged areas are unlikely to be able to develop the capacity to manage an asset without assistance.

Extensive capacity building and community infrastructure development would be required particularly in disadvantaged areas, to ensure that the provisions, advantages and opportunities of the Bill can be realised across all communities.

The definition of community bodies could be fine tuned and improved.

The National Standards for Community Engagement have already been endorsed by public sector bodies; implementation and use could be further supported by the introduction of a CPP Community Consultation Plan or Engagement Strategy. A clear articulation of the commitment to deliver effective community engagement is required at a CPP level to ensure that this is supported and promoted at all levels of decision making.

However, there needs to be a focus placed on ensuring that communities are adequately supported and equipped to take full advantages of the arrangements in the Bill, particularly in relation to participation requests, right to buy and asset transfer.

In relation to the costs associated with community capacity buildings, the Council considers that as councils will likely be responsible for managing the process of supporting participation requests, and the other key provisions on behalf of the CPP, additional resources should be provided to ensure that the appropriate level of support is in place. The Council already supports capacity building work, in particular in its most deprived communities. However, the provisions of the Bill

will require additional investment, some of which could be sought from Community Planning partners to establish the appropriate structures. In relation to resourcing community capacity building / engagement, the Council considers that the Scottish Government should be providing additional resources to ensure CPPs are able to maximise the impacts of these Bill provisions. Additionally, the Council is working closely with CPP partners to develop a more strategic approach to community capacity building and engagement and this will require consideration of partner contributions in addition to the current Council investment into community capacity building / engagement structures and activity.

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?

It is unclear whether the intention of the Bill is that community-controlled bodies will have the ability to make application to authorities under both the Community Right to Buy and Asset Transfer. It would seem onerous on authorities to have to deal with applications under both routes.

The inclusion of land leased by an authority has an adverse impact upon the ability of the Council to negotiate cost effective commercial lease terms and should be excluded from Asset Transfer.

The disapplication of restrictions in lease of land to relevant authorities does not reflect the different governing regulations between the different types of Relevant Authority who on occasion share ownership or leasehold interests in property.

The definition of "community- controlled body" is very open and although there are predefined "tests" in terms of the organisations constitution it will, presumably, still be possible for national organisations, geographic or special interest groups to make applications under the Bill. Therefore, the concerns previously raised in the Council's response to the consultation on the Bill in January 2014 still apply.

The Council would comment on particular Sections of Part 5 of the Bill (Asset Transfer Requests) as follows:

Sections 52 -54 (Asset Transfer Requests, Community Bodies requesting ownership transfers, Regulations)

As the Bill is currently written a "community transfer body" is the same as a "community-controlled body" as defined in Part 3 until such times as Scottish Minister make an order that provides further designations. This is a very broad definition.

In addition, however, the organisation must also be a SCIO. This could be seen as discrimination. It is also noted that it is not OSCR but Scottish Ministers who will decide where an asset goes to if an organisation is wound up. This is contrary to the position that generally applies to charities in their constitutions and, as the Council understands it, the requirements of OSCR and charity law.

The Council considers that the requirement for an organisation to have at least 20 members is positive as in order to sustain a project and maintain a property there will need to be capacity within the organisation and succession planning which would be difficult with a lesser number.

The Bill recognises that asset transfer can be by lease or sale which is positive as many groups are not ready for outright ownership and in some cases lease offers more flexible opportunities and allows a project to grow gradually taking on more space as required. However, of concern is the extension of asset transfer to include land which is leased to the Council. The terms and conditions of leases to the Council will contain restrictions in terms of alienation and use and the rental charged takes into account these restrictions. If this legislation takes precedence over the terms of existing and future lease contracts, it will impact adversely upon the Council's ability to negotiate lease terms which are in its best interests. It could result in landlords refusing to renew leases and potentially lead to increases in rental values, particularly if use clauses are opened up. It may be that this is only intended to apply when the lease is between 2 Relevant Authorities however if so the wording is not specific (see Section 60 below for further comment).

The Bill places a duty on the community organisation to specify up front the reason for the transfer and to justify the community benefits that could be derived from the transfer. From the Council's experience most groups are nowhere near ready to make a formal application for transfer when they first approach the Council and if there is no prior engagement upon a proposal an asset transfer request is unlikely to succeed.

It is very difficult to assess the impact of the Bill on the Council's approach to Asset Transfer without the further regulations and guidance referred to in Section 54. The matters referred to in this Section fundamentally affect how asset transfer requests are managed and processed but at present there is no detail.

Section 55 (Asset Transfer Requests – Decisions)

The process for reaching a decision upon an application is not far removed from that the Council has although it may need to be adapted. However, the main concern will be the time scales placed upon reaching decisions and there is no detail in the current Bill wording which would enable useful comment at this stage.

Section 56 (Agreement to Asset Transfer Requests)

At present the Council separates out the decision to consider asset transfer from the negotiation of the specific terms of the transfer. However, this Section implies that as soon as a decision is reached Heads of Terms will be issued and the organisation has to submit a formal offer.

If the timescales (as yet undefined) are restricted then there will be little opportunity for negotiation of terms, particularly price, or refinement of proposals. Given that most organisations will not have a full business plan in place, or an agreed funding package approved at the time of making the application this seems onerous. The development of a viable and sustainable project usually

relies upon several matters running in parallel. Organisations will only make a formal offer on a conditional basis not wanting to commit until they have funding in place over and above the normal matters such as planning consent etc. This is not unreasonable. Therefore, the ability for the authority and the organisation to agree a period is welcomed.

However, the right of the community organisation to apply to Scottish Ministers to set a period for the submission of an offer seems unfair. As there is no right of appeal to Scottish Ministers in terms of the decision to grant an asset transfer it seem inconsistent to allow the Scottish Ministers to determine the length of time that an authority must hold an asset pending transfer. The authority has already agreed to the principal and terms of transfer by this stage in the process, and has under the Bill to agree a minimum of 6 months for the submission of an offer. It is reasonable to allow the authority to set a long stop date, particularly if the asset is a vacant building the condition of which is deteriorating or for a property which has other market interest. The agreement to a long stop date is critical to the transfer negotiations particularly in view of the conditions of Section 57 where authorities cannot even enter into short term lets or uses during the process. It may be that an authority would prefer to make the offer to transfer and it is not clear what is gained by prescribing that the organisation makes the offer. This is particularly relevant if the transfer is by lease where almost certainly the Authority will wish to draft the detailed terms and style (which is the "norm" in landlord-tenant relationships).

Section 59 (Review by local authority)

The Council will have to establish a review process for dealing with applications that are refused or the terms and conditions proposed to the organisation are substantially different to those made by the organisation. Again Scottish Ministers have the right to issue further regulations on the process so at present there is insufficient detail to comment.

The Council's Executive Committee currently takes the decision to agree an asset transfer and the terms and conditions of transfer are approved by its Housing and Technical Resources Committee. The Council will have to give consideration to the appropriate forum for appeals.

Section 60 (Disapplication of restrictions in leases)

This Section of the Bill removes restrictions in lease agreements which would hinder the asset transfer and only applies to leases between Relevant Authorities. However, it can affect the asset value of properties and does not reflect for instance the different legal and financial regulations that apply to the health boards and Councils. For example, if a council has transferred its assets to an arms' length organisation as part of a financial arrangement then the commercial terms of that financial arrangement could be affected by this Section. If a property was owned by the Council and leased to a health board could a community organisation apply to both authorities? It is not clear.

The Council would comment on Part 6 of the Bill (Common Good Property) as follows:

The Council has 4 common good accounts and a list of assets held on each common good account, so initial publication in accordance with the Bill can be achieved quickly. However, the duty to consult on the lists and consider applications for additional assets to be added to the lists will be resource intensive. Common Good accounts are the subject of considerable local interest and it is anticipated that the Council will receive many representations. Detailed title investigations will likely be required which will have an impact on staff time and the Council finances (e.g. through instructing external advice where the title position is unclear).

Again, the impact on the Council in terms of the process of consultation on disposal or alternative use of assets held in common good will depend upon the regulations made by Scottish Ministers in the future.

At present the Council has no common good assets under disposal but a number that are under long term lease agreements.

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

The Council considers that an explicit duty should be placed on CPP partners to reduce inequality and increase a focus on early intervention and prevention.

Specifically, in relation future allotment development, the Council will seek to encourage greater social inclusion as residents participate in this social and educational activity. There is currently provision within the existing allotments for client groups who include physical and mental special needs, and this will be taken into consideration with any future allotment site designs. Again, the provision of any new sites will be taken after considering factors such as available infrastructure, existing utilities, population, minimising nuisance to existing residents etc. The Council will encourage through the development of management rules, sound environmental and horticultural practices and this will provide education benefit to users and communities and encourage biodiversity within the proposed sites.