The National Trust for Scotland – Response to call for evidence by the Local Government and Regeneration Committee on the Community Empowerment (Scotland) Bill

We refer you to our previous submission on this topic, much of which remains relevant. We have chosen to emphasise key points, but would be extremely happy to expand on these.

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

Definition of community

PAN3/2010 notes:

“Defining ‘community’ is not simple. It means different things in different situations. It can be based on location - those who live, work or use an area. But it can also be based on a common interest, value or background - for example societal groups (based on race, faith, ethnicity, disability, age, gender or sexual orientation), members of sports clubs and heritage or cultural groups. Each community will have different desires and needs which have to be balanced against the desires and needs of others.”

We remain concerned that community is defined more narrowly in the context of Community Empowerment than it is in Community Engagement and fails to recognise the complex nature of inter-connecting community interests.

Partnership Approach to Resilience

The proposed Bill may strengthen the weight of communities in decision-making. This would help improve current methods of community engagement where communities often feel that their input (which can be considerable) is ignored.

As a membership organisation, we manage our national estates on behalf of 320,000 members, and ultimately the national benefit, rather than as an individual landlord, or for private gain.

With property managers and staff often living locally at each of our properties we are members of the geographical community as well as land managers. Our employees contribute to deer management committees, mountain rescue teams and even community councils as well as manage our property interests. In doing so community partnerships have evolved and relationships with the geographical community enhanced and community assets developed both in rural locations such as Balmacara and urban properties such as Robert Burns Birthplace Museum.

The Trust also plays a key role in engaging with those who are socially isolated or part of a harder to reach community. The ability for a community body to do this may be harder and changes to
ownership could inadvertently cause further lack of participation, engagement and empowerment as well as social isolation for members of the geographical community who are not members of the community body. From our own research we know how few people in Scotland feel they are able to influence local decisions and that this falls further with socio economic status. There is a need to protect and ensure engagement and participation in decision making amongst our most vulnerable citizens and ensure that they too can benefit.

Community resilience is not about ownership alone, it is about how the people living and working in an area interact and engage inclusively with one another and work together to influence changes for mutual public benefit.

Hopefully the Bill will allow better community planning across the local area and ensure that everyone feels empowered to get involved with local decision making. The change towards local service provision may also help target services to those who need them most.

Particularly in relation to community buy outs, it is essential that appropriate evaluation researches all members of the postcode community to see how they have been impacted and how their feeling of empowerment and wellbeing has been enhanced.

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

We are strongly supportive of the desire to improve community and civic engagement in local decision making and are very aware that individuals struggle to influence local decision making at present. We also think that there is much that third sector organisations could do in improving services and share knowledge across local authorities. However, this wide-ranging legislation may cause local authorities and public bodies to perform less effectively.

The scope of the proposals is very wide. It would be helpful to have further explanation of the public services covered by the proposals - it is understood that the Bill covers all services which is very broad.

Strong Support Function

Without exceptional guidance and support from the outset the Bill could lead to many speculative bids for assets, partnerships and buyouts which are not fit for purpose. We would strongly urge the Scottish Government to create a strong support mechanism which saves community bodies from spending significant finance on building applications which should not have been raised in the first place. There is a need for this portal to also bring together the various funding bodies which will support these applications and ensure that they are clear on the capacity of their funds so that false expectations of finance are not raised. Many inappropriate or under-developed applications could be stopped at an early stage with the right support and gatekeeping.

This gatekeeping should be designed to manage expectations, ensuring well funded and planned applications can progress, but ensuring those which need more work or are not going to bring public benefit are put on hold to avoid community bodies from over-extending themselves.

This will also create less administrative burden on local authorities, public bodies and land owners.
Managing Market Failure

The issue of community failure and the inability to deliver against objectives must be considered carefully.

- Will the Ministers have power to step in and save the asset for its community if the community body faces market failure and the asset is at risk of being seized by creditors?
- Similarly, if a community body tries to sell or develop a transferred asset, are there wider community protections in place to consult on this before the change of use is permitted?

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?

There are instances where land – particularly in urban areas – may be deemed abandoned, but is allocated for development, subject for example to an improvement in market conditions. Here we could see temporary community gardens, art installations and general improvements to site condition which improve the area during the interim. Thus improving the appearance of abandonment and neglect and improving placemaking. This could also help with capacity growth and skills development within the community and is something that the Community Planning Partnership could help facilitate.

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

Conservation Provision

The Bill gives Scottish Ministers huge discretion to deem land to be “wholly or mainly abandoned or neglected” and, further, to grant a right to buy over it. Although it is stated in the policy memorandum, there is nothing in the Bill which would suggest that land or buildings held for conservation could not be considered to be abandoned or neglected.

The National Trust for Scotland would like all land held for conservation to be excluded from the statutory provisions and the Trust’s inalienable land deemed to be held for conservation.

Should this not be accepted by the Committee, we would suggest that the Scottish Ministers should have power to reject an application where the land is held for conservation and the Trust’s inalienable land should be presumed or (preferably) deemed to be held for conservation.

If the Trust’s inalienable land is not absolutely excluded from the statutory provisions, then we would seek a special parliamentary process to be built into the legislation to allow the Trust to appeal any compulsory sale order (in the same form as in the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 and the Crofters Acts, expanded on below).

Inalienable Land

There is no recognition in the text of the Bill of the statutory status of the Trust to hold inalienable land and buildings. In terms of section 22 of the National Trust for Scotland Order Confirmation Act 1935 we have power to declare land held by us for the benefit of the nation, to be inalienable. This provides an extra protection for donors and members, meaning the sale of significant properties,
gifted to NTS for the nation, must ultimately be approved by the Scottish Parliament. This is why we argue that, if the Scottish Ministers decide not to deem inalienable land as excluded, where land has been granted that status we should have a right of appeal by special parliamentary procedure against any buy out order. The rationale for this is not new and has been recognised in public statute already – notably within the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947:

“4(1) If no objection is duly made by any such person as aforesaid [or if no objection is duly made by the National Trust for Scotland in a case where the land comprised in the order was held inalienably by the Trust on the date of the passing of the Crofting Reform (Scotland) Act 1976 and was acquired from the Trust by a crofter as defined in section 3 of the Crofters (Scotland) Act 1955 in pursuance of an order under section 2(1) or 4(1) of the said Act of 1976] or if all objections so made are withdrawn, the confirming authority, on being satisfied that the proper notices have been published and served, may, if the authority think fit, confirm the order with or without modifications.”

and crucially:

“9 A compulsory purchase order shall, in so far as it authorises the compulsory purchase of land which is the property of a local authority, or has been acquired by statutory undertakers, not being a local authority, for the purposes of their undertaking or of land belonging to the National Trust for Scotland which is held by the Trust inalienably, be subject to special parliamentary procedure in any case where an objection has been duly made by the local authority or the statutory undertakers or the National Trust for Scotland, as the case may be, and has not been withdrawn.”

The Crofters (Scotland) Act 1993 also has conditions attached in section 17(4) and 17(5). Whilst such legal parallels were not drawn in the drafting of the Land Reform (Scotland) Act 2003, it is our view that this was accidental and that it would be logical to recognise existing legal precedents and to adopt similar conditions in community buy out to that given for compulsory purchase orders and crofting.

The National Trust for Scotland has been responsible in using its power of inalienability, which also binds the Trust in its management of properties, and has not used this power to prevent needed or useful developments, while maintaining the public interest in conserving places of historic interest and natural beauty.

We would also question, under the ECHR, whether it is in the public interest for land held in trust for the nation should be subject to sale.

Conditions of Transfer

We would seek S97L to be explicit that the conditions set could include the application of Conservation Agreements or Conservation Burdens. As mentioned above, our preferred position is land which has been granted inalienability for conservation purposes might be deemed to be “excluded” land.

Alternatively, on transferring any land, it may be in the public interest for conditions to be attached to ensure their long term conservation or preservation. We note that the Crofters (Scotland) Act 1993 makes clear that the Scottish Land Court can establish the conditions attaching to a compulsory transfer of crofting land. In doing so though in cases where the owner of the land is the National
Trust for Scotland (and in terms of section 17(4) of the Crofters (Scotland) Act 1993) the court shall have regard to the purposes of the National Trust for Scotland. We suggest that a similar provision should be inserted into the draft Bill in order to allow us to apply appropriate conservation conditions.

Looking at s97H: where a Heritage Lottery Fund or other grant has been awarded – or a duty placed within a donor’s bequest – would this be considered reason that the Trust cannot sell land? We would seek clarification of whether this legislation is intended to override the wishes of donors and force disposal.

Other Issues

We refer you to our previous consultation response with regards our concerns on lack of definition for common good assets. It would seem too easy for a local authority to not recognise a common good simply by omitting it from the register.

Under the Register of Common Good we would like the Keeper to note whether the asset is held inalienably and for what purpose it was acquired.

We have some questions for the committee on the proposals:

- How will the Ministers judge competing public interests? Where two community bodies have put forward bids which are deemed to be in the public interest, what criteria will be used to measure their respective strengths and contributions to public benefit?
- Similar to this point, where there are competing statutory provisions, what procedures are in place for Ministers to prioritise the public interest where a right to buy land has been registered say by an individual croft, a crofting community and a community body?
- Can community bodies choose to enter conservation agreements – for example with the National Trust for Scotland – when they take over title of land?
- At what point does a landowner or land manager’s decision to leave a field fallow become neglect? Neglect must be carefully defined.

The Scottish Government proposes to extend right to buy to communities in all parts of Scotland, where the Scottish Government is satisfied that it is in the public interest. Do you agree with this proposal?

As the Scottish Government is well aware the feeling of engagement with decisions made locally varies greatly and people with the protected characteristics listed are often disengaged and feel unable to influence. We are unsure how the proposals will assist in enfranchising these individuals, and indeed there is a risk that the strong voices in a local community simply become stronger and these individuals become less engaged or worse still caught between two competing bodies who each feel they better represent the local community.

We welcome any proposals by the Scottish Government which strengthen the equality testing of community buyouts. Many communities struggle to recruit active and able volunteers, resulting in pressure for the same core group of volunteers appearing on several community groups. A critical issue is the sustainability of community groups in this regard.

We note that a number of community buyouts have also benefitted from support from communities of interest, for example the Scottish Wildlife Trust on Eigg.
The impact of urban stewardship of nationally important assets could be positive or negative depending on the capability and strengths of the community group.

We would hope that Scottish Ministers take due care in protecting our built heritage and ensure that the impact of the Community Empowerment (Scotland) Bill enhances place-making and community and encourages us to re-use and re-vitalise, where reasonable, our rich built heritage and existing infrastructure.

Please do not hesitate to get in touch should you wish to discuss any of our evidence further:

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