Submission in response to the call for evidence in relation to the Community Empowerment (Scotland) Bill

The Church of Scotland General Trustees wish to submit the following representation in response to the call for written evidence in relation to the Community Empowerment (Scotland) Bill.

Introduction

The Church of Scotland General Trustees are the property-holding corporation for the Church of Scotland having been set up by Act of Parliament in 1921. The Church of Scotland (Property & Endowments) Act 1925 and the subsequent amending Act of 1933 transferred into their ownership the majority of functional buildings used by congregations – churches, halls, manses as well as holdings of agricultural land (glebes).

The Trustees hold glebes and buildings not for themselves but primarily for the benefit of the congregations in whose parishes the properties are located. They are a registered Scottish Charity (SC014574). The Trustees have two charitable objectives which are to support parish ministry and to support congregations in the provision of suitable buildings. As a result, they require to exercise legal and fiduciary responsibilities in the administration of the assets in their care.

General comments

The Trustees have been given administrative responsibilities for the land and buildings vested in them which they discharge in collaboration with congregations. Every congregation is also a registered Scottish charity. In rural areas and in areas of urban deprivation, congregations often represent one of the few stable organisations which exist and which provide a social capital to local communities. It is usual for churches and halls to be well-used not just by congregations but also by non-religious groups. Glebe land is usually let for agricultural use, with the income helping to pay for parish ministry including the provision of services such as weddings, baptisms/blessings and funerals. In other cases, glebe land is used for a wide variety of amenity purposes which often provide a direct community benefit such as a play park, sports pitches, community spaces, woodlands etc.

Specific Areas of Concern
Local Government and Regeneration Committee

Submission Name: The Church of Scotland
General Trustees

Submission Number: 83

The Trustees wish to comment on item 4 of the questions posed in the call for evidence:

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?

(1) Operating the Community Right to Buy –

In principle, the Trustees have no difficulties with the extension of the community right to buy to urban areas, provided that this continues on a “willing seller” basis. However, they do have concerns as to how this will operate in practice. While the Trustees are not a geographically discrete community body (as defined by the Land Reform (Scotland) Act 2003 and as proposed in the Community Empowerment Bill) they would emphasise that they hold each property on behalf of and for the benefit of a local community group – the congregation – with a specific geographical connection to the property in question. Accordingly, although not meeting the statutory criteria for constituting a “community body” the Trustees are required to operate for the benefit of a specific and identifiable geographical community.

The Trustees are therefore concerned as to how a potential conflict between the interests of a property-owning organisation holding assets for a community group on the one hand and a different community body seeking to register an interest on the other, would be managed, particularly in relation to two aspects:

(a) It is proposed that entitlement to be recognised as a “community body” is to be extended to Scottish Charitable Incorporated Organisations. If implemented as proposed, there would be an intolerable situation whereby two charitable organisations – an SCIO and the General Trustees – would be expected to discharge their legal and fiduciary responsibilities in opposition to each other. The Trustees would therefore propose that the definition of “community body” is widened to include charities such as themselves and that land owned by a registered charity as opposed to a profit-making commercial body is excluded from the right to buy.

(b) The Trustees have experience of how the exercise of the existing, pre-emptive, community right to buy can cause division within communities. Current guidance states that, in determining whether it is in the public interest for land to be registered as subject to a community right to buy: “Ministers will also consider the wider public interest. This may include the interest of any sector of the public (however small), which, in the opinion of Ministers, would be affected by the exercise of your right to buy. Ministers do not see this as a measure to place the interests of your CB above the wider public interest. This is intended to protect the interests of distinct existing communities and groups other than the community which your CB represents.” Even when the
Trustees are in the position of being a willing seller, with a sale in prospect (the proceeds from which would benefit the local congregation) that sale can be imperilled by the intervention of a community body attempting to exercise the right to buy.

The Trustees are therefore firmly of the view that the “public interest” referred to should have a clear, statutory definition and application rather than being defined in guidance published subsequent to the passing of the Bill.

The Trustees would also observe that while the Bill proposes a method of adjudicating between two or more competing “community buyers” at the time of first purchase there is no method of dealing with a post-purchase move by a registered community body to acquire property held by another registered body despite the likelihood of such cases becoming more frequent as the target of 1 million acres in community ownership is achieved or exceeded.

(2) Register of Community Interests in Abandoned or Neglected Land

The Trustees are opposed to the introduction of an absolute right for communities to buy abandoned or neglected land when no attempt has been made to define these terms.

The Trustees are concerned that Ministers will make regulations subsequent to the enactment of the Bill to stipulate what factors are to be taken into account in deciding whether land is “abandoned or neglected”. While there are clear difficulties in setting out criteria to define “abandoned or neglected”, it appears to the Trustees that the definition of these terms is at the heart of this element of the proposals. Without statutory definition of these terms, Parliament is being asked to approve a concept, rather than scrutinize the specific terms and application of the legislation with the danger of unintended consequences.

The Trustees would strongly suggest that when the result of the use of this legislation will be to remove property rights from a property owner particularly one which is registered as a charity, it is essential that such definitions are set out and approved by Parliament at the start.

The Trustees submit that the terms “abandoned or neglected” should be defined within the primary legislation and should take into account:

- a property owner’s right to peaceful enjoyment of his or her possessions;
- that land may be “inactive” for valid land management or commercial reasons;
- whether existing local authority powers to enforce maintenance (but not use) of buildings and land have been exhausted.
Final Comment

The General Trustees are aware of the terms of the response which has been submitted on behalf of one of the Church of Scotland’s central Councils, the Church & Society Council, and do not consider that anything in that response cuts across the foregoing submission.