Community Empowerment (Scotland) Bill

Response From Community Planning Aberdeen

The Scottish Parliament's Local Government and Regeneration Committee has invited organisations and individuals to submit written evidence to the Committee setting out their views on the provisions of the Bill.

Committee's Call for Evidence

The Committee is inviting responses in relation to the following questions:

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

   Overall the Bill itself will not empower communities on it’s own, success in this area will be determined by how communities and the public sector respond to the provisions and aspirations contained in it, and to what extent it acts as a catalyst to encourage increased participation and action on specific projects.

   The Bill creates opportunities for communities, however whether it will empower remains to be seen. Certainly it provides opportunities to develop community participation and engagement in decision-making and delivery of outcomes and services generally. For this to be successful, communities need to be supported and enabled to take up these opportunities. Capacity building is critical to ensuring that all communities are empowered and can be involved in improving outcomes. Without real support (both practical and in kind) many communities/bodies will be precluded from fully engaging or pursuing the opportunities presented by the Bill, and it will be those community groups with a fortunate blend of members or access to commercial support who will most likely benefit. This in turn may lead to frustration and disengagement for some and it could also increase inequality of community engagement and access to opportunities.

   Throughout the Bill there are different definitions used for community bodies etc. It is essential that whichever definition applies, that the focus is on the needs and wishes of the community itself as opposed to those “representing” that community. It is also essential for there to be mechanisms to ensure that groups do in fact represent the stated community.
The Bill allows communities to identify local issues/priorities and how they would wish to contribute to addressing these priorities by delivering certain services or assisting public bodies in the delivery of services. This may assist in the setting of local priorities, action plans and through additional community involvement local resources to assist in the delivery of shared objectives.

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

There are definite challenges and opportunities for public sector groups. The following are some of the potential implications.

Benefits

The Bill provides an opportunity to ensure genuine community engagement, consultation and active participation by citizens in identifying local needs and involvement in setting priority outcomes and how they should be addressed. Also, in theory, it provides public sector partners with the opportunity to rewrite the way we engage with communities for the better and involve local people more in seeking and participating in local solutions to local issues through “co-production” and community led service design and delivery.

Also, by opening up all public services to participation requests and making participation opportunities core within service delivery there is the potential for improved service delivery and improving public perceptions of public bodies service delivery alongside a better public understanding of existing decision making processes and constraints.

For local authorities and community planning partners it reinforces the importance of the Single Outcome Agreement, joint accountability for delivery, and the need to engage citizens fully in the processes of planning services and plans that deliver improved outcomes. This should strengthen community planning and ensure a wider understanding of what community planning is seeking to achieve, the shared goals of the partnership and ultimately improved accountability for public bodies to the communities they serve. Potentially, this may contribute towards improved public health and social well being, safer
communities and through regeneration better economic outcomes for our most disadvantaged communities and individuals.

The provision in the Bill relating to transfer of assets provides public bodies with the opportunity to transfer surplus and unused assets, thereby acquiring a capital receipt and saving on existing property/maintenance costs. If these types of assets can be moved quickly then better use can be made of existing assets, reduction in backlog maintenance and better use of budgets on core assets.

We agree with the note included on page 58 of the financial memorandum i.e a case by case basis for assessment of financial consequences is required.

For community groups that may have an interest in these assets this could provide an opportunity for them to hold and manage assets to deliver initiatives and projects to the benefit of their organisation and the wider community. Community groups have the potential to attract sources of funding not available to the public sector, borrow investment funds against an asset and via the development of social enterprises bring unused, or underused, assets into use that can become financially viable and contributing towards an improved property infrastructure available in the city.

The requirement to maintain an asset register is a positive provision and should have regard to the practicalities of being responsible for land that has been in public ownership for centuries. Likewise, the similar requirements in relation to Common Good assets and how they are being used will improve transparency.

In principle, the aspirations around increasing allotment space has the potential to increase the “green” aspects of the city and support increased citizen activity, encouraging healthy eating and growing linking to SOA outcomes around improving health.

Disadvantages

The Bill has the potential to significantly reduce the control/determination of what happens to publically owned assets. This loss of flexibility e.g. in determining whether to market estate commercially/for full market value could lead to subsequent loss of income and receipt.
The issues around transfer price requires to be addressed and given further clarity as the assumption of a transfer at market value is not clear. If properties are transferred at less than market value this will impact on capital planning from loss of capital receipt and there may be state aid implications.

There may be additional costs to a public body in terms of staff and asset management costs maintaining an unused property for the time taken to deal with a transfer request by a community body including an appeal, where relevant.

In responding to transfer requests, potentially from multiple community bodies making requests for the same asset, officer involvement from a range of skills and expertise will be required as part of assessing bids and quantifying community benefit.

In relation to Common Good assets if the common good asset holding is large and not transparently documented it may require considerable efforts to create and maintain an accessible register.

Based on the figures supplied - Aberdeen City Council’s Common Good makes up approx. a third of the total city assets therefore Aberdeen has one of the most substantial asset bases of Common Good land in Scotland. While we have a significant asset register that ensures the Common Good secures the rental income it is entitled to, there are occasions, when selling other Council land, the title search is performed resulting in the identification of land that is actually in Common Good ownership. To undertake a detailed review of every title, which date back centuries would in our view be cost prohibitive.

Further clarification is required in relation to Common good assets – definition/other statutory requirements including critche downs.

In relation to Localised Rates relief currently we have 9 schemes for rate relief, this covers 3528 buildings and the total relief value is £21.6m (41% of properties in Aberdeen currently have some form of relief).

An additional scheme could be considered, systems can cope, but cost would be the Council’s and a procedure/scheme would need to be established to identify why/who. We are not clear at this point whether this is required.

There are so many schemes for some form of rates relief it is unclear what the additional benefit would be of another one.
Finally, in relation to potentially having to provide additional land for allotments it is not clear how funding for this would be sourced.

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?

Community capacity and capability will vary. For communities to be truly empowered, affordable and accessible independent support will be required e.g. professional/commercial/financial and technical advice etc. Awareness raising and significant marketing will also be required to ensure that all communities are aware of the rights and opportunities afforded by the proposed legislation, not just those who are accustomed to engaging in this way, or who have members/volunteers with the knowledge and/or confidence to pursue the opportunities afforded by the bill.

Community bodies and groups do not always speak with one voice so there will be a need to consider how the various voices that may at times conflict, or oppose, can be considered and ensuring that community empowerment goes beyond those citizens who are already actively involved. This is perhaps an area as the Bill is implemented that the Scottish Government may want to develop good practice guidelines.

Support requirements will vary from community to community and in particular this should be channelled towards engaging with previously excluded or hard to reach communities and those with specific difficulties in some of the processes envisaged by the Bill e.g. submitting written applications or responses to consultation.

There will need to be extra support provided to support communities to create plans and effectively participate in outcome setting processes via community planning. Due diligence will be needed within projects particularly where purchase of property and transfer of assets is under consideration. The Third
Sector Interfaces i.e Aberdeen Council for Voluntary Organisation here, currently provide some of this type of support but would need to increase staff numbers if the bill was to encourage a regular stream of proposals where community groups and organisations might be seeking independent support.

The potential complexity of individual projects may also require funding for project appraisal by “professionals” in order that correct, legal and financial advice is sought by communities. Whilst some communities will undoubtedly be able to secure pro bono support from such firms, not all will and if not there immediately exists an inequality in the provision.

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?

Clarification on common good and an ability for Council’s to transfer inalienable common good land to communities, where there is agreement, without the need of seeking consent from the Court of Session.

More flexibility for Councils to transfer common good land between council functions.

- Is the bill consistent with the Disposal of land by local authorities (Scotland) Regulations 2010.
- Do public sector partners have similar mechanisms to transfer assets
- Does the bill have to consider restriction on sale/ common good/ HRA/ critchel downs/ title burdens/ land held for future development.
- Asset transfer request has a presumption on transfer to communities taking away the discretion of a LA to manage their own assets.
- Is further consideration required to consider how competing community interests are dealt with.
- Are displacement issues mentioned in provision of facilities and state aid.
- Definition of common good assets required. Appropriate that a register is established albeit this may be an ongoing process.
- Common Good property may fall outwith the scope of the land disposal regs 2010.
Concern over any CPO powers for communities in relation to complexity, legal process and skill to implement.

Further work required to identify a range of detailed reasons to refuse an application. – Council property asset management plan. Market value with other sites etc.?

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?**

**Equality** – it is difficult to be specific in identifying potential problems, however there is scope for inequality and public bodies will have to be vigilant in implementing the terms of the Bill e.g. where a community body seeks to acquire an asset to prevent its use by another group. There is also an issue in relation to the various definitions of community group/body as they all appear to be focused on geographical communities. The inclusion of communities of interest, would perhaps increase the positive impacts of the Bill, as it would help encourage engagement by groups of people with a shared interest.

In addition to the above, and as stated previously, care will be required to ensure that all communities are enabled and supported to develop. Otherwise, communities where there is already capability and capacity will gain more from the Bill, leaving others behind. Community capacity building and support must be properly resourced.

**Environment/Sustainability** - The Bill throws up some concerns in relation to environmental and sustainability issues e.g. where a building which is the subject of an asset transfer request is listed or otherwise classified. Public Bodies need the assurance that they can require robust evidence/guarantees from a community body that they are aware of any restrictions and the difficulties in managing those restrictions e.g. additional maintenance costs etc.

Generally, there must also be absolute clarity in relation to responsibilities and costs in terms of compliance with environmental issues e.g. energy performance.
There are also positive implications in relation to environmental and sustainability issues. The potential for communities to acquire abandoned and neglected land will help promote sustainable development and communities by bringing such assets back into productive and beneficial use.

COMMUNITY EMPOWERMENT BILL
ADDITIONAL COMMENTS ON THE DRAFT LEGISLATION

PART 1 NATIONAL OUTCOMES
Commentary/Analysis
National outcomes will clearly shape local outcomes and priorities. As such national outcomes will need to be sufficiently wide so as to apply to all communities so as to ensure relevance, and must not impinge on the ability of local communities to set local outcomes which are relevant to local circumstances.

There is a lack of certainty around consultation and reporting. It would perhaps be clearer and enhance transparency if the Scottish ministers were required to consult with a list of specific bodies and required regular reporting within a statutory time table which references a minimum frequency.

PART 2 COMMUNITY PLANNING
Commentary/Analysis
The statutory basis for the CPP and its functions is important in underlining its significance and enabling improvements. This is also mirrored by the statutory emphasis on outcomes and an outcomes based approach.

Throughout the Bill there are different definitions used for community bodies etc. It is essential that whichever definition applies, that the focus is on the needs and wishes of the community itself as opposed to those “representing” that community. It is also essential for there to be mechanisms to ensure that groups do in fact represent the stated community and are reflective and representative of communities and are also pursuing the community’s interests.

Whilst it makes sense for the CPP to co-ordinate arrangements for partnership working there may be tensions with other reform and integration initiatives, such as adult health and social care integration. It may be worth specifically listing each Integrated Joint Body as an organisation required to participate in the CPP in its own right.

PART 3 PARTICIPATION REQUESTS
Commentary/Analysis
It is unclear what arrangements would apply if two, or more Community Participation Bodies, which relate to the same community, make a participation request at the
same time. The Council, and the Community Participation bodies, could potentially find themselves in situations where two groups, representing the same community, but with diametrically opposing views, are seeking to participate. The potential for conflict would therefore seem obvious.

Further, if one body makes a participation request that is approved, then other bodies appear to then be excluded from participation if their outcome is the same or substantially the same given that their requests can then be declined before consideration.

There appears to be no provision allowing the authority to decline to consider a participation request deemed to be vexatious or malicious in nature.

It is not clear if the authority has the final decision on a participation request or if ‘rights of appeal’ against the authority’s decision will apply.

Existing forums for community representation / community involvement in outcome improvement processes may be undermined by the very formal nature of the process outlined in Part 3 and some communities may be disengaged / disempowered as a result.

Additionally, the requirement to prepare a submission detailing why the community participation body should participate in the outcome improvement process may impede the ability of some bodies to participate, particularly those with little or no support and those for whom communication may not be particularly easy.

Community participation bodies may find themselves in a position where, having had a participation request agreed, they are bound into the outcome improvement process. Depending on the development of the outcome improvement process, this may have adverse implications on the body’s ability to represent the views of the community and may stifle Community Empowerment rather than enhance it.

It is not clear where the onus for communicating with the wider community about outcome improvement processes will sit – whether with the public service authority or the Community participation body. Should this not be clear, and followed through on, the wider community may feel less empowered than before.

The potential for fairly ‘piecemeal’ involvement for communities in outcome improvement processes appears to be fairly high. If the community participation body requires to make a formal request to participate in each process, the potential for opportunities to be ‘missed’ may increase. There would need to be safeguards to ensure that communities remain engaged with the wider community planning agenda.

It is unclear what the implication, if any, will be if, once a participation request is approved, the body is unable to, or refuses to, then participate in the outcome improvement process.
PART 4    COMMUNITY RIGHT TO BUY LAND
Commentary/Analysis
Whilst this right has applied in rural communities for 10 years, the Bill now proposes to extend its application to urban areas. It also introduces a new community right to acquire abandoned and neglected land where the seller is not agreeable to a sale. As such it will apply within the Aberdeen City boundaries once the Bill is enacted and brought into force.

Value/transfer value?? Will the Disposal of Land by Local Authorities (Scotland) Regulations apply? It would be helpful for this to be clarified.

Timescales – extending the deadline for completion could mean that the Council ends up paying more to maintain an asset. Also, opportunities may be lost if the purchase doesn’t complete.

Community right to buy for urban communities may deliver significant benefits to the community, where the community’s activities are consistent with the Council’s objectives.

It may be prudent to include reference to potential restrictions on transfer/disposal of land e.g. HRA, Common Good, or other legal restrictions on the Council’s ability to transfer ownership e.g. where land was acquired by CPO – will the Crichel Downs rules still apply? If these restrictions are made clear from the outset then they could feature in the Scottish Ministers’ consideration of an application.

HRA land – should this be included within the community right to buy? If so, what cognisance will/should be taken of the restrictions already in place e.g. consultation with tenants?

On the face of it, the proposals for abandoned and neglected are to be welcomed, however there may be human rights challenges as the Bill proposes that Scottish Ministers can extinguish an individual’s ownership rights. There should perhaps be greater clarification in terms of the community benefit to be secured in such a transfer, thereby making it more akin to compulsory purchase.

Landowners may hold on to land for various reasons which may not require maintenance of the site. The Bill could provide an incentive for these owners to ensure that sites are properly maintained, even when not in use.

PART 5    ASSET TRANSFER REQUESTS
Commentary/Analysis
Value/transfer value?? Will the Disposal of Land by Local Authorities (Scotland) Regulations apply? It would be helpful and avoid conflict, delay and expense if this were clarified.
What is more than one community body is interested in the same asset?

Should a public body be required to intimate receipt and consideration of a request to any other public bodies that may be interested in the same asset?

What if the request conflicts with the interests of another community/community body?

There should perhaps be further consideration in relation to public companies and the likes as there may be external funding arrangements in place which are not conducive to these provisions.

PART 6  COMMON GOOD PROPERTY

Commentary/Analysis

Common good property is not defined, therefore it is not clear whether the provisions are restricted to heritable property or extend to moveable assets also? For the purposes of this commentary, I have assumed that it is restricted to heritable property, however even this poses a problem given that there is no standard, agreed definition of common good property. This may result in divergent views as to whether property is, in fact, held on common good and whether it can or cannot be transferred.

On the face of it, the idea of a common good register makes sense in terms of good asset management and transparency. The difficulty may be in the creation of the register. Title checks often throw up unknown common good issues. If it is envisaged that the initial register must contain all property held on common good (as opposed to all property known or believed to be held on common good) then it will create a significant resource issue for the Council as the Council’s extensive property holding will require to be checked. This is a massive exercise and would take up substantial staff time, thereby diverting limited resources away from operational work. It is proposed that the Council should be required to establish and maintain a register of property which is known or believed to be held on common good and which can be updated as other common good property comes to light.

As a follow on from this, it would assist the Council if there was clear direction regarding the on-going maintenance of the common good register. How often should it be reviewed or updated and how often should an amended version be published? Should the Council produce a list of properties and consult with community bodies prior to publishing an updated or amended common good register. If there is no clear guidance or direction re this, then it is almost certain that different practices will develop in each local authority area.

The Bill sets out certain conditions which the Council must comply with before disposing of common good property, including consultation with community bodies and complying with any guidance issued by Scottish Ministers. However the Bill is
silent in respect of other statutory obligations e.g. the duty to secure best value and s.75 of the Local Government (Scotland) Act 1973, which requires the Council to obtain consent of the Court of Session before it can transfer ownership or otherwise dispose of common good property which is inalienable, even to a community body for the benefit of the community. Indeed, in these circumstances the Council is prohibited from even transferring the common good property from one holding account or function to another. Therefore, in terms of the Bill as drafted, the Council may be in a position where it has undertaken extensive community engagement but is ultimately precluded from transferring common good property to a community body by the Court of Session. This would appear to undermine the intention to increase community empowerment. Even where consent is forthcoming, the process involved will cause substantial delays which may have knock on consequences e.g. in relation to the condition and state of repair of the common good property and may ultimately compromise transfer to a community body.

There is an opportunity within the Bill to deliver a genuine improvement in relation to common good property by removing the need for court consent so long as the transfer is within the Council’s functions or to a community body, and where there has been a comprehensive and robust consultation exercise leading to unanimity in terms of the transfer and/or change of use for the community’s benefit.

Publish details of proposed disposal/change of use – This might impinge on commercial confidentiality considerations, which may adversely affect the value that a Council can secure for a property by putting potential private purchasers off. It may also delay transactions, which again could have cost implications for the Council.

PART 7   ALLOTMENTS
Commentary/Analysis
The bill effectively requires the Council to provide allotments. Whilst there are good reasons for this, it does not take account of the potential cost. Land values in Aberdeen are high and the Bill could result in the Council requiring to spend money purchasing land or making land available (which it would otherwise sell for a capital receipt) for the purposes of providing allotments.

The delegation of powers to tenants may result in a saving for the Council and allow for greater community involvement. However this could also create problems depending on how the allotment is run and whether there is harmony amongst tenant of an allotment site. The Council may find itself having to settle disputes or differences which may be more time consuming than exercising the powers itself.

The provision of allotments should perhaps be based on local priorities, as opposed to a national target

PART 8   NON DOMESTIC RATES
The proposed amendment is relatively straightforward in terms of the legislation, however the bigger issue relates to policy/operation and whether another relief scheme is required. At present the Bill does not specify the purpose/extent of the relief scheme.